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**THE QUEST FOR ECONOMIC CONSTITUTION IN
ETHIOPIA**

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PHD THESIS

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ETİYOPYA'DA EKONOMİK ANAYASA ARAYIŞI

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ÖZET

Anayasa, belirli bir yönetim biçiminin yol haritası olduğundan, ekonomik rehberlik olarak kullanılabilir. Bir ekonomik anayasanın evrensel olarak kabul edilmiş bir standardı olmamasına rağmen, genellikle temel ekonomik konuları, mali kuralları, ekonomik hakları ve kurumları sistematik bir şekilde içermesi beklenir. Bir anayasayı daha ekonomik yapan şey, tezde tartışılan çeşitli faktörlere bağlıdır. Bir ekonomik anayasanın teorileri ve ilkelerinin kısa bir tanımını vermenin yanı sıra, bu tez esas olarak Etiyopya anayasal çerçevesini ekonomik bakış açısından incelemektedir. Bu tez ayrıca, FDRE anayasasının, devletin ekonomik büyümeyi ve istikrarı geliştirmesine yardımcı olacak ekonomik üstü kuralları yeterince dahil edip etmediğini analiz etmeye de ayrılmıştır. Böylece temel anayasal ilkeler, ekonomik haklar, mali kısıtlamalar, ekonomik kurumlar ve mali uygulamalar derinlemesine analiz edilmiştir.

FDRE anayasası takıntılı bir şekilde etnik temelli grup haklarını vurguladığı için eleştirilmiş olsa da anayasal-ekonomik hükümler hafife alınmamıştır. Aslında, Etiyopya'nın etnik grupları ekonomik ilerlemesini sağlamak olan temel amacını

gerçekleştirme perspektifinden anayasanın ekonomik boyutunda boşluklar ve boşluklar var. Örneğin, bazı ekonomik kurumların bağımsızlığı ne anayasal olarak garanti altına alınmış ne de pratikte gözetilmiştir. Bu nedenle, çalışma, temel ekonomik konuları dahil etmek ve kurumsal tarafsızlığı sağlamak için FDRE anayasasında bir değişiklik yapılması gerektiğini önermektedir. Ayrıca anayasa, temel ekonomik hakları, özellikle de kentsel arazilerin vatandaşlara mülkiyetini güçlendiren bir reform getirmelidir.

Anahtar Kelimeler: Ekonomik Anayasası, Ekonomik Hakları, Kurumsal Mekanizma, Piyasa Düzenlemesi, Maliye Sistemi



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ABSTRACT

As a constitution is a road map of a specific polity, it can be used as economic guidance. Despite no universally accepted standard of an economic constitution, it is supposed to systematically incorporate fundamental economic topics, fiscal rules, economic rights, and institutions. What makes a constitution more economical depends on various factors discussed in the thesis. Therefore, besides providing a brief description of the theories and principles of an economic constitution, this thesis mainly examines the Ethiopian constitutional framework from the economic point of view. The thesis is also devoted to analyzing whether the FDRE constitution adequately incorporated supra economic rules that would help the state enhance economic growth and stability. Thus, fundamental constitutional principles, economic rights, fiscal constraints, economic institutions, and financial practices have been analyzed thoroughly.

Although the FDRE constitution was criticized for obsessively emphasizing ethnic-based group rights, the constitutional-economic provisions are not underestimated. However, there are gaps and loopholes in the economic aspect of the Constitution from

the perspective of achieving its fundamental aim of economic advancement. For example, the independence of some economic institutions is neither constitutionally guaranteed nor practically observed. Hence, the study recommends that there should be an amendment to the FDRE constitution to incorporate core economic matters and ensure institutional efficiency. Moreover, the Constitution should introduce a reform that strengthens fundamental economic rights, particularly citizens' ownership of urban land and freedom of contract.

Key Words: Economic Constitution, Economic Rights, Institutional Mechanism, Market Regulation, Fiscal System

TABLE OF CONTENTS

ACKNOWLEDGMENT.....	i
ÖZET	ii
ABSTRACT	iv
TABLE OF CONTENTS.....	vi
ABBREVIATION.....	xiii

INTRODUCTION

I. BACKGROUND OF THE STUDY	1
II. STATEMENT OF THE PROBLEM.....	4
III. RESEARCH QUESTIONS.....	6
IV. OBJECTIVE OF THE STUDY	7
V. METHODOLOGY.....	8
VI. SCOPE AND LIMITATION.....	9

CHAPTER ONE

ECONOMIC CONSTITUTION: CONCEPTUAL AND THEORETICAL FRAMEWORK

I. CONCEPTUAL UNDERSTANDING OF ECONOMIC CONSTITUTION ...	10
A. TAXONOMY OF THE ECONOMIC CONSTITUTION	15
1. Fiscal Constitution	16
2. Monetary Constitution	18
3. Foreign Trade Constitution.....	19
4. Constitution of Competition	20
5. Liberal-Bourgeois Constitutions.....	22

6. Constitution of Social Market Economy	23
7. Socialist Constitution	25
B. HISTORICAL BACKGROUND	26
C. THE NEXUS BETWEEN ECONOMIC CONSTITUTION AND LIBERAL DEMOCRACY	28
D. THEORIES LEADING TO THE QUEST FOR AN ECONOMIC CONSTITUTION	33
1. Virginia School of Political Economy and Teaching	34
2. Ordo-Liberalism and Economic Constitution.....	36
3. Constitutional Political Economy (Constitutional Economics)	39
a. Positive Constitutional Economics	40
b. Normative Constitutional Economics	41
II. ECONOMIC CONSTITUTION AND CONSTITUTIONALISM: THEORETICAL FRAMEWORK.....	42
A. DEVELOPMENTAL STATE THEORY	45
B. METHODOLOGICAL INDIVIDUALISM.....	46
C. THE NEOCLASSICAL THEORY	47
D. CONSTITUTIONAL THEORY OF PUBLIC GOODS	48
E. CONSTITUTIONAL GUARANTEES OF ECONOMIC ISSUES.....	49
III. THE ECONOMIC EFFECTS OF CONSTITUTIONS.....	57

CHAPTER TWO

APPRAISAL OF ECONOMIC ISSUES IN THE ETHIOPIAN CONSTITUTIONAL FRAMEWORK

I. GENERAL OVERVIEW.....	60
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A. ECONOMIC ISSUES IN THE ETHIOPIAN CONSTITUTIONAL DEVELOPMENT.....	64
1. Pre-1931 Period	65
2. The 1931 Constitution	67
3. The 1955 Revised Constitution.....	69
4. The 1987 PDRE Constitution	71
5. The 1995 FDRE Constitution	73
B. ECONOMIC ASPECTS DRAWN FROM THE 1995 FDRE CONSTITUTION.....	74
1. Economic Perspectives Within the Preamble	75
2. Advancing Social and Economic Development in the Constitutional Framework.....	76
3. Rectifying Economic Inequality	78
4. Building One Economic Community	79
5. Incorporation of Economic Ideology in the FDRE Constitutions.....	81
6. Accountability and Transparency of the Government as Fundamental Constitutional Principle	83
7. Self Determination	85
8. FDRE Constitution and Private Property	86
C. CONSTITUTIONAL BASIS FOR PRIVATIZATION OF PUBLIC ENTERPRISES IN ETHIOPIA.....	87
D. LAND VS FDRE CONSTITUTION.....	90
E. CONSTITUTIONALIZING ECONOMIC RIGHTS.....	93
1. Descriptive Economic Rights in the FDRE Constitution.....	96

2. National Policy Principles and Objectives: Considering Economic Ideology ..	97
F. PRACTICAL IMPLICATIONS OF THE NATIONAL POLICY PRINCIPLES AND OBJECTIVES.....	99
G. ECONOMIC PRINCIPLES in the fdre constitution	100
H. DO THE NATIONAL ECONOMIC PRINCIPLES AND OBJECTIVES INDICATE ANY NATIONAL ECONOMIC IDEOLOGY PREFERENCE?... 111	
I. OTHER ISSUES WHICH NEED TO BE INCLUDED IN THE FDRE CONSTITUTION.....	113
II. INSTITUTIONAL SETUP IN THE ECONOMIC CONSTITUTION	114
A. GENERAL OVERVIEW.....	114
B. CENTRAL BANK AS AN INDEPENDENT REGULATORY INSTITUTION.....	116
1. National Bank of Ethiopia: Historical Root	117
2. Constitutionalizing Central Bank.....	120
3. Independence of the National Bank	121
C. THE CABINET.....	124
1. Economic Roles of Council of Ministers within the FDRE Constitutional Framework.....	124
2. Macro-Economic Committee and Home-Grown Economic Reform.....	126
D. MINISTRY OF FINANCE	127
1. Formulate Economic Co-operation and Fiscal Policies	129
2. Mobilize, Negotiate, and Sign Foreign Aid and Loans and Monitor their Execution.....	129
3. Formulating Favorable Legislative Framework to Public-Private Partnership	130

4. Budgetary Roles	131
E. AUDIT INSTITUTION.....	132
F. HOUSE OF THE FEDERATION.....	136
1. Deciding subsidies and Division of Revenues	138
2. Interpreting the Constitution	141
G. HOUSE OF PEOPLES' REPRESENTATIVE: LEGISLATIVE ROLE IN THE LIGHT OF ECONOMY	141
H. THE JUDICIARY.....	143
I. THE MINISTRY OF REVENUE	145
III. FISCAL PRINCIPLES IN THE ETHIOPIAN CONSTITUTIONAL FRAMEWORK.....	146
A. FISCAL FEDERALISM AND CONSTITUTIONS	150
B. CONSTITUTIONALIZING THE POWER OF TAXATION	152
C. CONSTITUTIONAL FISCAL ECONOMY IN ETHIOPIA	156
D. THE EXTENT OF RESPONSIBILITY FOR FISCAL POLICY ASSIGNMENTS.....	162
1. Joint Decision Making	163
2. The Budget Framework	166
E. CONSTITUTIONAL BALANCED BUDGET	170
1. Constitutionalizing Budgeting Authority	171
2. Functions of Constitutional Institutions in Fiscal System.....	174
IV. ECONOMIC CONSTITUTION IN THE REGIONAL AND LOCAL GOVERNMENT: ETHIOPIAN CONTEXT.....	175

A. REGIONAL AND LOCAL GOVERNMENT IN ETHIOPIA: INTRODUCTORY OVERVIEW	175
B. STRUCTURAL ORGANIZATION OF REGIONAL STATES: COMPARATIVE CONSTITUTIONAL VIEW	179
1. Power and Duties of Zones	182
2. Power and Duties of Different Organs in A Nationality Administrations.....	183
3. Economic Administration of Regional States.....	190
C. JUDICIARY ECONOMY IN LOCAL GOVERNMENT	192
D. ACCOUNTABILITY OF LOCAL GOVERNMENTS.....	193
E. FINANCIAL SOURCES OF LOCAL GOVERNMENT	194
F. ECONOMIC AUTONOMY OF LOCAL GOVERNMENT AND CENTRAL SUPERVISION	195

CHAPTER THREE

ECONOMIC CONSTITUTION IN COMPARATIVE PERSPECTIVE

I. GENERAL OVERVIEW.....	198
II. TÜRKIYE.....	199
A. ECONOMIC MATTERS WITHIN THE 1982 TURKISH CONSTITUTION 	199
B. INSTITUTIONAL SET-UP	203
1. Turkish Court of Accounts.....	203
2. The Turkish Economic and Social Council	206
3. Central Bank of The Republic of Türkiye.....	208
4. The State Supervisory Council of the Republic of Türkiye	210
5. Capital Market Board of Türkiye	210

C. ECONOMIC RIGHTS IN TÜRKIYE	211
D. OTHER ECONOMIC ASPECTS OF THE Turkish CONSTITUTION.....	215
III. GREAT BRITAIN.....	219
A. ECONOMIC MODEL IN THE UK UNWRITTEN CONSTITUTION	219
B. INSTITUTIONAL SETUP	220
1. The Treasury	221
2. Bank of England.....	222
C. ECONOMIC RIGHTS IN THE UNITED KINGDOM	222
IV. GERMANY	224
A. ECONOMIC IDEOLOGY WITHIN THE GERMAN CONSTITUTION.....	225
B. ECONOMIC INSTITUTIONS IN GERMANY	226
1. The Federal Bank	226
2. The Federal Minister of Finance	228
3. The Federal Court of Audit.....	228
C. ECONOMIC RIGHTS IN THE GERMAN CONSTITUTION.....	229
CONCLUSION AND RECOMMENDATIONS	232
REFERENCES	240

ABBREVIATION

AMRS	: Amhara Regional State
AR	: Afar Regional State
Art	: Article
BGRS	: Benishangul Gumuz Regional State
C.	:Cilt
CBRT	: Central Bank of the Republic of Türkiye
CEDAW	:Convention on the Elimination of Discrimination Against Women
CMBRT	: The Capital Market Board of the Republic of Türkiye
CML	: Capital Market Law
COM	: Council of Ministers
CPE	: Constitutional Political Economy
CPR	: Civil and Political Rights
CSO	: Civil Society Organization
Eds.	: Editions
EPRDF	: Ethiopian Peoples Republic Democratic Republic
ESR	: Economic and Social Rights
FDRE	: Federal Democratic Republic of Ethiopia
GDP	:Gross Domestic Product
GNAT	: Grand National Assembly of Türkiye
GRS	:Gambelia Regional State
HIM	: Her Imperial Majesty
HOF	: House of the Federation
HoPR	: House of Peoples Representative
HRS	: Harari Regional State
ICCPR	: International Covenant on Civil and Political Rights
ICESCR	: International Covenant in Economic, Social, and Cultural Rights
IDEA	: International Institute for Democracy and Election Assistance
IMF	: International Monetary Fund
INTOSAI	: The International Organization of Supreme Audit Institutions
KAS	: Konrad-Adenauer-Stiftung
KHK	: Kanun Hükmünde Kararname
LEQS	: London School of Economics 'Europe in Question' Series
MoF	:Ministry of Finance
NBE	: National Bank of Ethiopia
NNPs	: Nation Nationalities and Peoples

No.	: Number
OECD	: Organization for Economic Co-operation and Development
ORS	: Oromia Regional State
p.	: Page
PDRE	: Peoples' Democratic Republic of Ethiopia
pp.	: Pages
PPP.	: Public Private Partnership
PPP.DG	: Public Private Partnership Directorate General
s.	: Sayıfa
Sa.	: Sayı
SAI	: Supreme Audit Institutions
SNNPRS	: South Nation Nationalities and Peoples Regional State
SORS	: Somali Regional State
SRS	: Sidama Regional State
ss.	: Sayıfaları
SSCRT	: State Supervisory Council of the Republic of Türkiye
SSRN	: Social Science Research network
T.B.M.M	: Türkiye'nin Büyük Milet Meclisi
T.C.	: Türkiye Cumhuriyeti
TBB	: Türkiye'nin Barolar Birliği
TCA	: Turkish Court of Accounts
TESC	: Turkish Economic and Social Council
TODAIE	: Türkiye ve Orta Dogu Amme Idaresi Enstitüsü
TPLF	: Tigray People Liberation Front
TRS	: Tigray Regional State
UK	: United Kingdom
UN	: United Nations
UNICEF	: United Nations Children's Fund
USA	: United States of America
V.	: Volume
y.	: Year/yıl
YTB	: Yurtdışı Türkler ve Akraba Topluluklar Başkanlığı

INTRODUCTION

I. BACKGROUND OF THE STUDY

The relationship between the economy and the government has been gaining momentum recently. When markets fail to deliver social fairness, economic stability, and solvency, the government often steps into the economy to restore economic order¹. However, the government may abuse the intervention to gain short-term acceptance without considering the economy's bigger picture and the state's long-term economic interest². Governments' intervention in the economy is often justified for various reasons, including political or economic objectives, such as promoting economic growth, increasing employment, rising wages, raising or lowering prices, promoting income equality, managing the money supply and interest rates, and increasing profits, or addressing market failures³. Hence, entrenching fundamental economic principles within the constitutional framework would help balance short-term goals achieved through government intervention in the economy and long-term economic interests⁴.

In the current political system, state intervention in society's socio-economic life is inevitable. On the other side, there is a common understanding that no matter how state intervention in some of the economic issues of citizens can be reasonable, the power of the executive should be restricted in a way that would protect individual freedom and liberty through the constitutional framework⁵. Besides increasing state intervention in the

¹ PROSSER, Tony, **The Economic Constitution**, Oxford University Press, Oxford 2014, p, 11.

² PROSSER, **The Economic Constitution**, P.27.

³ UYANIK Atilla, **Maliye Politikaları: Devlet ve Kamu Maliyesi işlevleri ile geliştirilmesi Gerekli Maliye Politikaları**, Der Yayınevi, İstanbul 2020, s.25.

⁴ UYANIK, s.25.

⁵ ERGUN, Ozbudun, "Methodological Issues of Constitutional Making", **Constitutional Law Journal**, V.1, No.2, 2012, p.8.

market, the enshrinement of fiscal, monetary, and financial policy matters begins as basic constitutional principles in the third wave of constitutional democracy⁶.

Contrary to the state-interventionist approach, some take a different slant to the economic Constitution⁷. Instead, they raise theoretical justifications that state economic interventions have detrimental and harmful effects. For instance, state intervention may affect the functioning of the market system, the security of individual freedoms, the management of politics following ideal democracy goals, and contemporary members of the classical liberal tradition unless restrained through constitutional provisions⁸.

Undeniably, liberal ideology presupposes 'individual' in terms of freedoms. In other words, liberal ideology views the individual as the sole guide of the political and economic process. It considers the state, constitutions, economics, and social life through the lens of the individual⁹. Constitutions are agreements between individuals on how they want to be governed and to which rules they will be subjected. The political institutions are responsible for protecting individual freedoms rather than creating individual liberties. Therefore, the government should refrain from infringing individual rights in any way.

The liberal interpretation of constitutionalism focuses on constitutional methods of power limitation. Some constitutions incorporate economic principles or economic ideologies to increase the efficiency of state functioning and limit government power. Yavuz Atar defined the Constitution as the product of cognition of specific social,

⁶ The term "third wave of democracy," created by Samuel Huntington in 1991, refers to a wave of democracy that began in Southern Europe in the mid-1970s and expanded to Latin America, Eastern Europe, Asia, and Africa. Therefore, although just a quarter of nations had democratically elected governments in the early 1970s, more than half had them two decades later. By the end of the 1990s, almost 75% of governments throughout the world had been elected by democratic means. See, HUNTINGTON, Samuel, "Democracy's Third Wave", **Journal of Democracy**, V.2, No. 2, 1991, p. 34; VAUT, Simon/JOCHEN, Dahm, **Economics and Social Democracy**, Friedrich-Ebert-Stiftung, Bonn, Germany, 2011, p. 62.

⁷ HUNTINGTON, p.7.

⁸ HUNTINGTON, p.7.

⁹ NIHAN, Demirkasimoğlu, "Toplum Yaşamında Kurallar: Birey-Kural İlişkisi", **Celal Bayar Üniversitesi Sosyal Bilimler Dergisi**, C.13, Sa, 1,2015, s.3.

economic, political, and similar factors¹⁰. The main factors affecting constitutional reform directly or indirectly are social and economic issues¹¹.

Although the meaning of the economic Constitution lacks a universal definition, it denotes the co-relation between constitutional principles and the financial performance in a specific jurisdiction. It is also one branch of a study exploring economic policies' legal, political, and social aspects to enhance economic growth. Some scholars argue that the economic Constitution aims to reduce the state's interference and function in economic life, preserve economic freedoms, and avoid the deterioration of individual liberties caused by the state's excessive power in modern democracies.

Policies towards solving macro-economic issues, such as unemployment and inflation, require state intervention in the economy and planning in certain areas¹². However, in the liberal economic understanding, state intervention and national economic planning can only be possible with constitutional provisions. Therefore, the rules to regulate the economy through intervention must be regulated in the constitutions¹³. In contrast, there are fewer detailed economic-related rules in the constitutions of liberal countries, unlike that the socialist constitutions¹⁴. However, in the third wave of constitutional democracy, the economic and political systems have been well regulated¹⁵.

A constitutional guarantee is vital for facilitating economic operation and performance¹⁶. According to the Ordo-liberal school, if specific requirements, often known as the constitutional guarantees provided in the primary document by which a country's legal culture abides, are met, the economic system's Constitution and functioning

¹⁰ ATAR, Yavuz, **Demokrasilerde, Anayasal Değişmenin Dinamikleri ve Anayasa Yapımı**, Konya, 2000, s. 9.

¹¹ ATAR, p.9.

¹² ATAR, p.19.

¹³ ATAR, p.20.

¹⁴ PERÇİN, Önder, "Ekonomi Hukuku: Hukukun Sınıflandırılmasında Paradigma Kayması", **Ankara Üniversitesi Hukuk Fakültesi Dergisi**, C. 59, Sa. 2, 2010, ss. 277-307, s.281.

¹⁵ PERÇİN, s.281.

¹⁶ ATAR, p.20.

may be considerably facilitated¹⁷. These requirements include freedom of contract, a guarantee of private property, synchronization of control and liability, constancy and predictability of economic policy, provision of a stable currency, and open access to markets¹⁸. Therefore, the Ethiopian constitutional framework must be explored in light of incorporating such basic guarantees. Constitution theorists have characterized the Constitution as, among other things, an agency, a contract, and a regulation¹⁹. The Constitution guarantees land interests and successfully enforces contracts, lowering transaction costs and obtaining a credible promise as an agency. As a civil contract, the Constitution governs all of society's relationships. As a law, the Constitution redefines property rights and, as a result, redistributes wealth to interest groups.

Over the last couple of years, various regulatory laws and government actions have been done in Ethiopia. These regulatory measures were criticized for contravention of the free-market economic policy in Ethiopia. Unless the Constitution has not outlined the free-market monetary policy, regulating anti-competitive acts and protecting societal safety or satisfaction cannot contradict the economic policy. Some also believe that constitutionalizing economic issues are useful to entrench economic policy and create long-term economic stability²⁰.

II. STATEMENT OF THE PROBLEM

The preamble of the FDRE constitution stated that creating one economic community was raised as one of the Constitution's purposes. On the other hand, article 89 explicitly listed the economic policy objectives that more or less indicate the Ethiopian

¹⁷ BACKHAUS, Jürgen, “An Economic Analysis of Constitutional Law”, **Research Memorandum of Maastricht University of Limburg**, V.11, 1995, p.12, available at <https://doi.org/10.26481/umamet.1995011>, (accessed on May 12, 2021).

¹⁸ BACKHAUS, An Economic Analysis, p.12.

¹⁹ ACEMOGLU, Daron, “Constitutions, Politics, and Economics: A Review Essay on Persson and Tabellini’s the Economic Effects of Constitutions”, **Journal of Economic Literature**, V.43, No. 4, 2005, pp. 1025–48.

²⁰ WERNHARD, Möschel, “Corporation Policy from an Ordo Point of View”, In: ALAN, Peacock/HANS Willgerodt (eds), **German Neo-Liberals and the Social Market Economy**, St. Martin's Publication, New York, 1989, pp. 142-178.

government's economic goals that have been entitled to regulate the economy in favor of social justice. It also aims to enhance the individual's life standard by one-third of the Constitution, off-course covered by human and democratic rights. The constitutional guarantee of human and democratic rights affects the economic ideology of the Ethiopian constitutional system. Furthermore, the fiscal policy and vertical power-sharing between federal and regional states regarding revenue sources are incorporated within the Constitution from article 95 up to 100. Almost 20 % of the provisions of the FDRE constitution are devoted to economic-related issues in one way or another²¹.

The Ethiopian People Liberation Front (EPRDF), the ruling party of Ethiopia for the last 27 years, officially declared that the developmental state economic policy contravenes neo-liberalism as the Ethiopian economic policy. Indeed, as a framer and promulgator of the Constitution, the EPRDF party would have a chance to introduce any economic policy explicitly. Nevertheless, this study would still like to determine whether any economic policy is reflected directly or indirectly in the Constitution. Moreover, the practical implementation of such economic constitutional rules requires deeply exploring the gap and loopholes in the legal system.

Moreover, the FDRE constitution has no provision about citizens' duty while dealing largely with the rights and freedoms of the people. However, some countries like Türkiye incorporated their duties parallel with their rights in the constitutional framework. Therefore, it is useful to impose a duty to all stakeholders, including individuals within the constitutional framework, to give high priority and supremacy.

Ludwig von Mises articulated money from the constitutional perspective that *"it is impossible to grasp the meaning of the idea of sound money if one does not realize that it*

²¹ The sixth paragraph of the preamble of the FDRE constitution stated that ‘ convinced that to live as one economic community is necessary in order to create sustainable and mutually supportive conditions for ensuring respect for our rights and freedoms and for the collective promotion of our interests...’, Art 12, Art 40, 41, 42, 43, 44, 51(12), 62(7), 65, 77(4,5,6), 79(6),89, 90(3), 94,95,96,97,98,99,100, 101 of the constitution consists of rules related to the economy. That means, budget, tax, expenditure, economic rights, economic obligations of the government, accountability, and other economic-related issues incorporated in these provisions.

*was devised as an instrument for protecting civil liberties against despotic inroads on the part of the government*²²." Ideologically, the economic Constitution belongs in the same class as political constitutions and bills of rights²³. Despite not dealing about detail issues of monetary administration, the FDRE constitution enshrines important rules regarding who should administer the national bank and the monetary system at the national level. Ethiopia adopts the central bank administration or monetary control model that has not yet been explored through constitutional principles of in-depth research.

The government spending to the GDP ratio had increased since 2010 until its interruption in 2018 when violent protests erupted across Ethiopia's two biggest regional states. Such an economic phenomenon has a constitutional implication regarding government accountability and governance effectiveness. Furthermore, although Ethiopia's tax to GDP ratio is also the lowest in sub-Saharan Africa, the taxpayers in major cities have complained about high tax payments for the last two years. Hence, this study has investigated Ethiopia's constitutional legal principles regarding government accountability, tax principles, and fiscal policy.

III. RESEARCH QUESTIONS

Although the economic Constitution is a broad topic, this research will try to make a comprehensive appraisal of the economic issues in the Ethiopian constitutional framework on the one hand and investigate the constitutional pitfalls from the economic point of view on the other hand. Hence, this study has addressed the following specific research questions.

- Is any economic ideology implicitly or explicitly reflected within the FDRE constitution?

²² HAUWE, Ludwig, **Monetary Constitutionalism: Some Recent developments**, University Library of Munich, Germany, 2017, p.7.

²³ HAUWE, **Monetary Constitutionalism**, p.17.

- What are the constitutional principles that deal with the economic matters in Ethiopia?
- Does the FDRE constitution adequately incorporate economic matters such as economic rights, fiscal rules, economic principles, and major public finance rules?
- Does the FDRE constitution adequately entrench economic institutions to manage the economy independently and efficiently?
- How does the Ethiopian government manage the economy in terms of accountability from the constitutional point of view?
- What are Ethiopia's governmental actions and regulatory reforms for the last three decades? Do all the regulatory reforms and government actions have a constitutional basis?

IV. OBJECTIVE OF THE STUDY

Main Objective

The main objective of the research is to find out the normative, legal, or institutional gaps in the Ethiopian constitutional framework from the perspective of economic principles, economic rights, and the fiscal system.

Specific Objectives

The study has the following specific Objectives:

- Exploring and analyzing the Ethiopian economic policy in the FDRE constitution;
- Identifying and analyzing the economic-related provisions and gaps within the FDRE constitution;
- Analyzing the constitutionally entrenched fiscal system in terms of addressing the fiscal problems;

- Exploring the economic rights enshrined in the FDRE constitution;
- Examining the local government economic regime from the FDRE constitution perspective;
- Assessing the independence and efficiency of constitutionally established economic institutions.

V. METHODOLOGY

This research mainly relies on desktop (doctrinal) research. It has integrated both analytical and comparative in its approach. It has also traced the historical origins of the economic Constitution that formed a normative basis for the economic policy, besides analyzing the effects of the Constitution on the economy and the positive correlation between constitutional principles and regulatory laws toward a sound economy in a specific country. Comparatively, it proceeds to critically evaluate the constitutionalizing of economic issues and the models of an economic constitution based on comparative constitutional theory. The comparative approach is also used while comparing and examining what happens in Ethiopia regarding any aspect of the study *vis-à-vis* other jurisdictions. The comparative element has covered specific topics of the research. For this purpose, Türkiye, the UK, and Germany have been selected. The Turkish constitutional experience has been taken because Türkiye is one of the emerging economies in the world, and convenient to collect data related to the issues. UK and Germany have better experience in the economic Constitution, particularly the two popular constitutional economics schools in these countries. Random comparisons in various aspects have covered a wide range of jurisdictions. In this way, the study has identified gaps in the existing literature on the subject of the work, which in the end, enabled the work to reach logical conclusions and offer prescriptions.

The deskwork has analyzed Ethiopia's legal texts and policy instruments, the FDRE constitution, and various policy documents. Hence the study is qualitative research that uses primary and secondary data. The primary sources include international and regional instruments on economic constitution-related matters; constitutions; national legislation;

judicial decisions by national, regional, and international courts; constitutional-related decisions. The secondary sources consulted, examined, and analyzed include books, journal articles, papers, reports presented at seminars and workshops, newspapers and periodicals, commission reports, press releases, and internet sources, Ethiopia's legal and policy. Finally, intense comparative analyses shall be made with Türkiye, UK, and Germany's laws and policies.

VI. SCOPE AND LIMITATION

This dissertation mainly focuses on the economic aspect of the Constitution in Ethiopia. So, it is not principally concerned with the interdisciplinary concept of constitutional economics by which the economics principles are applied in the design and operation of constitutional law. Instead, the study has primarily focused on the constitutional framework of the federal government. Nevertheless, the regional and local government economic issues have been analyzed generally. The dissertation also focuses on the government's constitutionally mandated function concerning Ethiopia's economy. The research's major limitation is problems accessing relevant data from government institutions and online & off lines. In addition, there are not many written texts and data regarding the constitutional economy in Ethiopia since the concept is relatively new.

CHAPTER ONE
ECONOMIC CONSTITUTION: CONCEPTUAL AND THEORETICAL
FRAMEWORK

I. CONCEPTUAL UNDERSTANDING OF ECONOMIC
CONSTITUTION

Understanding the notion of 'constitution' is vital before defining an economic constitution. The substance and context of a given constitution and its connection to the rest of the legal and political order differ significantly among nations. Consequently, there is no universally agreed-upon definition of a constitution²⁴. However, there should be a common understanding that a constitution is a legal and political document and an economic roadmap of a specific nation. The Constitution is the higher law that contains the underlying principles of the state, the institutions and procedures of governance, and people's fundamental rights²⁵. The concept of a constitution is understood as the basic political structure of the state, its administrative form, the establishment and functioning of the organs that make up the state, and the rules of law that include the basic political rights and freedoms of individuals; argue that political constitutions give the state and the individual²⁶.

Every Constitution of the democratic states is supposed to contain economic-related issues despite differences in the size of the problems they address. Tony Prosser explained constitutions as mapping documents, which set out the key state institutions, their interrelations, and their relationship with civil society to permit effective governance and coordinated public policy development²⁷.

²⁴ BULMER, Elliot, **What is a Constitution? Principles and Concepts: International IDEA Constitution-Building Primer 1**, International Institute for Democracy and Electoral Assistance, first edition, 2014, p.3.

²⁵ BUCHANAN, the Constitution of Economic Policy, p.247.

²⁶ BULMER, p.11.

²⁷ PROSSER, **The Economic Constitution**, p.11.

A constitution can be categorized into political, legal, and economic parts in light of its content. In the political Constitution, the state's rights, powers, duties, and responsibilities and the political rights and freedoms of the individual are determined. Accordingly, the state has the responsibility and powers to make laws and ensure social peace, tranquility, justice, and internal and external security. Political rights and freedoms of the individual include personal immunity, inviolability of property, the privacy of private life, due to vote and be elected, freedom of communication, freedom of travel, freedom of residence, freedom of religion and conscience, freedom of thought, and similar rights and freedoms. A constitution's economic aspect deals more with the economic principles, objectives, institutions, and financial management issues at the macro level. Finally, the legal part of a constitution is more about the accountability mechanisms, legislative procedures, and related topics, which may contain some political and economic aspects. Vanberg argued that traditional constitutions have a political identity²⁸.

Economic constitutions are constitutions that include economic features apart from their political ones. In other words, constitutions should incorporate individuals' economic rights and powers, duties, and responsibilities on the one hand and economic rights and powers of the state on the other hand in order to be considered as an economic constitution to the minimum level²⁹. Tony Prosser defines an economic constitution as a collection of rules and principles within the constitutional framework that specifies the structure and substance of the state's role in the economy³⁰. The notion of an economic Constitution is

²⁸ VANBERG, Viktor, **Economic Constitution, the Constitution of Politics and Interjurisdictional Competition**, European law publishers, Berlin, 2009, p.61.

²⁹ Economic duties and responsibilities of the government need to be understood as the provision of public goods or services, regulation of external economies and negative external economies, regulation of production activities involving internal economies, regulation and promotion of competitive markets, ensuring economic growth and development, efficiency in resource use, and resource allocation, ensuring a fair distribution of income and wealth, ensuring balance in the balance of payments and regulating international economic relations, ensuring economic stability, protecting worker health and the like. See Senior Budget Officials, **OECD**, OECD Principles Of Budgetary Governance, Public Governance And Territorial Development, June 2014, <https://www.oecd.org/gov/budgeting/Draft-Principles-Budgetary-Governance.pdf>, (accessed on January 17, 2021).

³⁰ PROSSER, **The Economic Constitution**, p.40.

different from a 'constitutional political economy'³¹. It is proper to use the term 'economic constitution' to explore the issue of the constitutional legal framework considering the economic issues.

John Elster pointed out that constitutions could partly serve as a flywheel and partly as a feedback mechanism³². According to Elster, the economic-related provisions of constitutions and non-economic rules might impact economic performance in a given country. Generally, it is agreeable that constitutions are essential for economic success since they foster stability, responsibility, and trustworthiness³³. The impact of a constitution on economic performance is another topic that is not covered within the scope of this thesis.

The Nobel Prize Laureate James Buchanan once urged economists to examine the "constitution of economic polity" in terms of the rules and constraints political agents act within³⁴. Since then, several writings have been published on the economic perspectives of the Constitution and constitutionalism. Nonetheless, national constitutions have not been adequately explored in economic theories and principles. The writer of this thesis believes that in-depth research has to be undertaken to explore the constitutions regarding economic and public finance principles.

The subjects and categories of rights and freedoms included in the economic Constitution may show that the state's scope of duty and responsibility to implement the constitutional design is broad³⁵. In that case, it is a matter of curiosity what the criteria and features can distinguish the constitutional lawyers' understanding of constitutions from the economic perspective. It must be noted that the political and economic dimensions of

³¹ PROSSER, *The Economic Constitution*, p.40.

³² ELSTER, Jon, "The Impact of Constitutions on Economic Performance", *The World Bank Economic Review*, V.8, No.1, 1994, pp.209–26.

³³ ELSTER, p.210.

³⁴ BUCHANAN, James, "The Constitution of Economic Policy", *the American Economic Review*, V.77, No.3, pp.243-250, <http://www.jstor.org/stable/1804093>, (accessed on 27 June 2021).

³⁵ VANBERG, *Economic Constitution*, p.62.

a designed constitutional structure define the individual and the state based on duties, powers, rights, and freedoms³⁶.

Economic Constitution seeks to understand how constitutions address economic issues and examines the role of key constitutionally established institutions in the economy³⁷. The direct understanding of Economic constitutions, as stated by Bui, is a constitution driven by an overall economic rationale made or reformed through a legitimate process that works as a platform for various public sectors³⁸. The aim is to deliberate economic inquiries and subsequently address economic identity, standards, rights, and fundamental structural, organizations in their substantive content³⁹. Thus, the economic Constitution concerns the relationship between the law and the fundamentals of the economic system⁴⁰.

Tony Prosser described the economic Constitution in light of the constitutional principles towards economic management⁴¹. He also tried to clarify the economic Constitution in terms of institutional accountability. William A. Niskanen defined the economic Constitution as the constitutional provisions bearing on the government's economic power and the economic rights of individuals⁴². He has illustrated the economic constitution issues in light of the USA constitution. According to Niskanen, the power of congress to authorize appropriations of public money for public purposes, the power to coin money, the power to regulate commerce, and non-state laws that affect contractual freedom are examples of constitutional provisions denote features of the economic

³⁶ BUCHANAN, the Constitution of Economic Policy, 246.

³⁷ BUI, Ngoc Son, "Economic Constitutions in the Developing World", **Law and Development Review**, V. 12, No. 3, 2019, pp. 669–90.

³⁸ BUI, p.679.

³⁹ BUI, p.680.

⁴⁰ TUORI, Kaarlo, "The Economic Constitution and European Constitutions", **Revue Internationale De Droit Économique**, V. 25, No. 4, 2011, pp. 559-599, <https://doi.org/10.3917/ride.254.0559>, (accessed on January 12, 2021).

⁴¹ PROSSER, **The Economic Constitution**, p.75.

⁴² NISKANEN, Wiliam, "The Erosion of the Economic Constitution", **The Good Society Journal**, V.7, No.3, 1997, pp. 19-20, <http://www.jstor.org/stable/20710832>,(accessed on January 12, 2021).

Constitution⁴³. Serge Audier understood an "economic constitution" as a constitutional order which stems from an overall political decision about how the country's economic life should be structured, which would serve as a guide for decisions over legal matters of all kinds⁴⁴. Hence, all scholars agree that lawyers and economists should explore the hurdles and opportunities of this economic, legal higher principle to enhance fair competition and freedom.

Economic constitutionalists believe that the economy is an integrated system that the market and the state should coexist, and that different fundamental ethical concepts, such as the view that fairness necessitates the balance of risk and responsibility, a focus on individual rights, and a related current of cynicism against the government, exist⁴⁵. According to Bohm, individual plans of members of society will be governed by an automatically working coordination mechanism⁴⁶. It would relieve the state of the role of central economic regulation and limit it to establishing the institutional mechanism that would maintain and impose compliance with the control laws. Furthermore, the state's position in the ultimate implementation of this scheme would be structured so that government discretion would be minimal⁴⁷. The margin of preference granted to people in positions of political power is restricted by the compulsion to adhere to the regulation system, which is set out as moderate or minimum. This minimum, while leaving many opportunities available to the imaginative creativity that conforms to the system, strongly

⁴³ NISKANEN, p. 19.

⁴⁴ SERGE Audier, "A German Approach to Liberalism? Ordo liberalism, Sociological Liberalism, and Social Market Economy", *L'Économie Politique*, No. 60, pp. 48-76.

⁴⁵ WHITE, Jonathan, "Between Rules and Discretion: Thoughts on Ordo-Liberalism", *LEQS Paper*, No. 126, 2017, p.12, available at <https://ssrn.com/abstract=3066640>, (accessed on January 19, 2021).

⁴⁶ BÖHM, Franz, "Rule of Law in a Market Economy", in ALAN, Peacock/ HANS Willgerodt (eds), **Germany's Social Market Economy: Origins and Evolution**, London: MacMillan, 1989, pp. 62-3; DOLD, Malte/TIM Krieger, **Ordoliberalism and Beyond, Ordoliberalism and European Economic Policy**, Routledge, London, 2019, pp.247, available from: doi:10.4324/9780429202032-18, (accessed on January 19, 2021); See also WHITE, p.13.

⁴⁷ WHITE, p.12.

limits the possibilities of ignoring the score and behaving in a way that does not conform to the system by unleashing the wrath of economic and political tragedy on the sinners⁴⁸.

According to the theory of "public choice" and "constitutional economics", a constitution is the collection of rules that impact the relations between the social structure and people, and it is defined in terms of the following elements: The safeguard of individual and property rights; the protection of these rights against other persons by a coercive system; outlining the procedures for amending the entitlement above; guidelines for making group decisions; the agreed-upon set of values that define the priority preferences among these collective norms.

A. TAXONOMY OF THE ECONOMIC CONSTITUTION

Tony Prosser divides the economic Constitution into 'substantive' and 'contestatory' categories. A substantive economic constitution lays forth the rules for how economic management should be carried out. According to Prosser, the second type of economic Constitution, a "contestatory economic constitution," does not provide such principles of substance but rather develops the institutional structures for economic administration and, crucially, the means of scrutinizing them⁴⁹. A constitution of this type might lay the groundwork for economic management to be held to a higher standard of deliberative responsibility.

From an economic standpoint, there are at least seven ideal types of constitutions, roughly matching three successive phases in the modern state's historical evolution. Most constitutions fall between these ideal categories, which are large of analytical interest⁵⁰. These constitutional categories have been analyzed as follows. Indeed, these categories of

⁴⁸ BÖHM, p.62.

⁴⁹ PROSSER, Tony, The United Kingdom, p.645.

⁵⁰ CRUZ, J. Baquero, "Community Economic Constitutional Law", in: TOPULOS, Katherine/DUNCAN, Alford (eds), **Between Competition and Free Movement: The Economic Constitutional Law of the European Community**. London: Hart Publishing, 2002, pp. 63–84; <http://dx.doi.org/10.5040/9781472562586.ch-005>, (accessed on January 27, 2022).

economic constitutions can be either contestatory or substantive as per Prosser's definition.

1. Fiscal Constitution

As the phrase "Fiscal Constitution" may be seen, our view of revenue and expenditure is restricted to the "constitution" perspective. It leads us to establish what should be interpreted to implement a fiscal system from the "constitution"⁵¹. Since a constitution is a framework of rules, it can be used as a rule of the game by which one can decide how the game will be played, what type of increments of action one can have, what the aim is, and when the game will be won or lost. The most obvious example of the state's power to use force on an ordinary citizen is the power of taxation. The power of taxation assumes the imposition of an obligation to transfer some resources from persons to the state to ensure their fundamental rights are fulfilled. Such important management needs to gain recognition in the rules of a game (a constitution)⁵². That kind of Constitution is a fiscal constitution.

The fiscal Constitution includes public goods, public expenditures, general revenues, borrowing, a balanced budget, and fiscal federalism. The monetary side gives adequate answers to numerous public good problems. For example, what should the state's responsibility be, and what job should the state be authorized? Furthermore, should the state undertake obligations beyond internal and exterior security, diplomacy, justice, and so on, referred to as "complete public goods?"

The aim of the "fiscal constitution," which is foreseen to be included in the economic Constitution, is to prevent each incoming political power from increasing expenditures as much as it wants and making the changes it wants on tax rates⁵³. In addition, the Constitution should control borrowing, which imposes a great financial burden on future

⁵¹ SAVAŞ, Vural, "Mali Anayasanın Temel Konuları", *Anayasa Yargısı Dergisi*, C.8, 1991, ss.333-370.

⁵² SAVAŞ, Mali Anayasanın Temel Konuları, s.339.

⁵³ IŞIK, Abdulkadir/SAKAL, Mustafa/MERİÇ, "Anayasal İktisat Teorisi ve Mali Kurallar: Türkiye'de Uygulanabilirliği", Metin, *Süleyman Demirel Üniversitesi İktisadi ve İdari Bilimler Fakültesi Dergisi*, C.15, Sa.2, 2010, ss.1-25.

generations⁵⁴. Certain rules and control of public revenues and expenditures will also constitute a small and equivalent budget, which means a smaller public economy. In addition, "Fiscal Federalism" is advocated for regulating inter-administrative financial relations. With a "Constitution of Financial Federalism" to be prepared, the financial distribution between the administrations, especially taxation, is based on the realization of partial delegation of authority⁵⁵.

In summary, the fiscal Constitution incorporates general laws governing the role and duties of the state in the economy. The fiscal Constitution tries to impose some "quantitative" limits on the state's public expenditures⁵⁶. According to constitutional economists, the state's unrestricted increase in public spending is the primary cause of economic and political corruption⁵⁷. The essential concerns relating to the tax system and the boundaries of taxing authority are specified in the fiscal Constitution.⁵⁸ This type of Constitution consists of an important area of financial matters, including the balanced budget principle, discussed in another section of this thesis⁵⁹. Constitutional economists believe that Keynesian economics' adoption of compensatory and circular budget approaches instead of the balanced budget principle leaves contemporary democracies with chronic budget deficits⁶⁰.

It is important to understand how the political powers can use their taxation, borrowing, and the spending power and cautiously predict the appropriate economic

⁵⁴ IŞIK/SAKAL/MERİÇ, s.5.

⁵⁵ IŞIK/SAKAL/MERİÇ, s.5.

⁵⁶ ALLEN, Richard/TOMASSI, Daniel, **The Public Expenditures Constitution**, OECD publishing service, 2001, p.123, <http://www1.worldbank.org/publicsector/pe/oecdpehandbook.pdf>,(accessed on 12.03.2021).

⁵⁷ ALLEN/TOMASI, p. 123.

⁵⁸ ALLEN/TOMASSI, p.128.

⁵⁹ SUITS, Daniel/RONALD, Fisher, "A Balanced Budget Constitutional Amendment: Economic Complexities and Uncertainties", **National Tax Journal**, V. 38, No. 4, 1985, pp. 467–77.

⁶⁰ BOWLES, Samuel/HERBERT Gintis, "Walrasian Economics in Retrospect", **The Quarterly Journal of Economics**, V. 115, No. 4, 2000, pp. 1411–1439.

modes Operandi to protect individual freedoms from the state⁶¹. The best economic Constitution foresees how to limit the ability of taxation and expenditure of the government. It is also stated in the economic Constitution that constitutional economic emissions are defined in times of emergency or crises such as war, violence, pandemic, or economic situation⁶². The emergence of democracies is the result of developments in the direction of limiting the taxation power of absolute political powers. The concept of constitutionalism requires guaranteeing individuals' fundamental rights and autonomy and limiting government power. However, the essence of fundamental rights and the essence of taxation authority are subjected to certain limitations⁶³. Therefore, the Constitution must clearly and concisely enshrine the control and restriction of taxation.

2. Monetary Constitution

The Monetary Constitution contains constitutional norms regarding the monetary system and how to increase the money supply⁶⁴. Apart from the state's power to collect taxes in the economic field, another critical power is printing money. The monetary Constitution briefly determines the general rules regarding the financial system. In a country where the paper money system is valid, the economic Constitution includes provisions on how and how the state will increase the money supply. The state has always used the printing of money to raise revenue. Improving the state's income by printing money can be handled similarly to expanding the wealth tax. Giving the state a monopoly privilege in printing money is the same as providing the right to impose a tax on the amount of money available. According to the constitutional economics approach, printing

⁶¹ GÖKBUNARK, Ramazan, “Kamu Finansmanında Demokratileşme ve Ekonomik Anayasa Öneisi, Kamu Finansmanında Demokratikleşme ve Ekonomik Anayasa Önerisi”, **Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi**, (Prof. Dr. Şükrü Postacıoğlu'na Armağan), 1997, ss. 1-9, <https://docplayer.biz.tr/106634444-Kamu-finansmaninda-demokratiklesme-ve-ekonomik-anayasa-onerisi.html>, (accessed on February 6, 2022).

⁶² GÖKBUNARK, s.5.

⁶³ GÖKBUNARK, s.6.

⁶⁴ YEAGER, Leland, **In Search of a Monetary Constitution**, Harvard University Press, 2014, p.230.

money is a form of borrowing. It allows the state to spread the revenues from the taxation power over various periods⁶⁵.

However, the main economic problem that will arise from the power of the state to create money is inflation. The government's continuous increase in the money supply causes the inflation rate to increase continuously. The increase in the inflation rate causes individuals to hold less short-term money in their hands. Individuals' decisions depend on their expectations that the government will increase the money supply as much as before. As the inflation rate decreases, the amount of money the government has to re-create to keep the actual value of the money stock at a certain level increases. As a result, the state and society follow a mutual game strategy⁶⁶. As individuals run away from money, the condition tends to prefer higher inflation rates. According to the model advocated by Friedman, any increase in the money supply must be met by the same amount of budget surplus that will occur in the same period⁶⁷. The way to do this is to limit the power of the state to create money with constitutional rules. For example, a constitutional limit that determines how many percent the money supply will increase each year, on the one hand, binds political power, on the other hand, and leads to the dominance of stability in the expectations of individuals.

3. Foreign Trade Constitution

The Foreign Trade Constitution lays down norms in the fields of constitutional norms regarding international economic relations, constitutional standards regarding protective and free foreign trade policies, and determination of exchange rate systems⁶⁸. The economic Constitution examines the constitutional norms of a closed economy and the state's economic relations with other states in an open economy. In short, the general

⁶⁵ YEAGER, p.231.

⁶⁶ YEAGER, p.231.

⁶⁷ HAHN, F. H, "Equilibrium with Transaction Costs", *Econometrica*, V. 39, No. 3, 1971, pp. 417–39, <https://doi.org/10.2307/1913257>, (accessed on 25 June 2021).

⁶⁸ PETERS, Anne/ ARMINGEON, Klaus/ MILEWICZ, Karolina/ PETER, Simone, "The Constitutionalisation of International Trade Law", in: THOMAS, Cottier/PANAGIOTIS, Delimatsis, (eds.), **The Prospects of International Trade Regulation: From Fragmentation to Coherence**, Cambridge University Press, UK, 2011, pp. 69-102.

framework of international economic relations is drawn with the foreign trade constitution. As it is known, the table explaining the monetary aspect of international economic relations is called the "balance of payments." Theories for balancing the balance of payments are free-to-trade ideas and protective foreign trade theories. The following issues are important in the foreign trade constitution regarding international economic relations: To what extent should international economic ties be included? What measures should facilitate free foreign trade (reducing customs tariffs, removing quantity restrictions, etc.)? Should emerging domestic industries be protected from foreign competition? In what form and for how long should the rules be included in the Constitution? Should the free exchange or fixed exchange rate regime be applied?

4. Constitution of Competition

The abolition of direct control and intervention of the state in the economy includes establishing rules and institutions that encourage competition in the economy and determining standards that will prohibit and punish destructive and unfair competition that falls within the scope of the Constitution⁶⁹. Constitutional economists, like representatives of other contemporary economic ideas (Monetarism, Rational Expectations Theory, Austrian School, Supply Side Economics), defend the basic principles of classical economics⁷⁰. Some economists favor the concept of the state's direct intervention in the economy, including the removal of regulations and controls. The main task of the state is to determine the rules of the game at the constitutional level; In the post-constitutional stage, they state that it is to ensure the implementation of constitutional norms⁷¹. According to constitutional economists, the state should determine the basic norms for realizing competition at the constitutional level⁷². Legal-institutional liberalization is one

⁶⁹ **World Bank:**

https://openknowledge.worldbank.org/bitstream/handle/10986/5980/9780195211146_ch04.pdf?sequence=28&isAllowed=y (accessed on 12/07.2021).

⁷⁰ WORLD BANK, p.3.

⁷¹ PETERS/ ARMINGEON/ MILEWICZ, / PETER, p.76.

⁷² VANBERG, Viktor, The Freiburg School: Walter Eucken and Ordoliberalism, **Freiburg Discussion Papers on Constitutional Economics**, V.04, No.11, 2004, p.19, available at <http://hdl.handle.net/10419/4343> (accessed on May 10, 2021). .

of the basic policies recognizing a competitive free market economy. Legal-institutional liberalization means abolishing direct control and state interventions in the economy⁷³. There is a strong need for rules and regulations to encourage foreign trade and competition within the economic Constitution.

The free-market theory holds that the best way to solve economic issues is to let the market work on its own, and this idea is particularly strong in classical theory. However, when it comes to a social structure, everyone's interests must be maximized or brought to the highest potential degree for it to be most effective and total well-being compared to other social structures⁷⁴.

The pricing mechanism is credited by Adam Smith for the effectiveness of the free market. It demonstrates the importance of resource allocation in the economy⁷⁵. The efficient and optimal utilization of these resources in various production branches determines a country's prosperity. When it comes to the distribution of resources, Smith asserts that no one but the market itself can do it. The existence of a well-developed social division of labor and the free trade system that goes along with it would assure the most equitable allocation of resources⁷⁶.

This chain of logic requires intervention without the need to go any further. First, to limit, regulate and control the state, which surrounds a ring of detailed powers and duties, and even authorize the Constitution. How and to what extent it will intervene in international economic relations, determine the currency box, reduce customs tariffs, remove quantity restrictions, and many other areas.

Determining the state's primary duty in terms of the economy within the Constitution to ensure the implementation in the post-constitutional stage implies the

⁷³ HILL, R, "Liberalization and Producer Price Risk: Examining Subjective Expectations in the Ugandan Coffee Market", *Journal of African Economies*, V. 19, No. 4, 2010, pp.433–58.

⁷⁴ ÜMIT, Erol, *Eleştirel Bir Gözle Serbest Piyasa*, Bağlam Yayınları, İstanbul, 1997, s. 11.

⁷⁵ ÜMIT, s.11.

⁷⁶ ÜMIT, s.11.

creation of a tyrant⁷⁷. A tyrant can play the game by setting the rules and then including other players on the field with the rules he has set. This explanation also contradicts the original content of the Public Choice and Constitutional Economics theory, which describes a constitutional approach as "contractual constitutionalism." Contractual constitutionalism predicts that the constitutions that will direct both the legal and institutional structure of the society will take their ideal form with the conscious efforts of the citizens. The members of the contractual relationship determine it as unanimously as possible. The contract is not between individuals and the state but between individuals themselves. At this stage in creating the Constitution, the state is a passive party waiting for the drawing of its authority and duty area and the game's rules to be played. Otherwise, the possibility of the state, which first determines the rules and then supervises the game's playing by these rules, to be influenced by certain circles while constitutionalizing the game rules, makes the Constitution no longer a "social consensus document." Furthermore, finally, it is stated that the economic issues included in the economic Constitution are not limited to these. These rules can be increased to prevent political power from making arbitrary decisions in a post-constitutional environment.

5. Liberal-Bourgeois Constitutions

These Liberal Bourgeois constitutions, aside from the usual protection of private property and individual rights, lack economic provisions. They allow the government much discretion in terms of economics⁷⁸. The Constitution constrains the public and private spheres in exercising economic power. The legislature may impose limits in statutory law, but the Liberal Bourgeois constitution does not guarantee them.

This constitutional silence can be explained by the fact that the public sector's involvement in the economy was little. Historically, the boundaries of such public sector

⁷⁷ See HILL, p.439, It is "determining the rules of the game at the constitutional level" and assigning the responsibility to "ensure the implementation of constitutional norms may create tyranny.

⁷⁸ SIEGAN, Bernard, "Economic Liberties and the Constitution", *Michigan Law Review*, V.80, No.4, 2017, pp. 383-88 available at - <https://repository.law.umich.edu/mlr/vol80/iss4/19>, (accessed on January 20, 2021).

intervention became relevant after the Great Depression of the 1930s, prompting a drastic shift in economic policies⁷⁹. The US constitutional system until 1937 can be the best example of this constitutional type. In 1905, the Supreme Court of the USA ruled that a New York law setting maximum working hours for bakers was unconstitutional in *Lochner Vs. New York* case

6. Constitution of Social Market Economy

Some constitutional systems have several stated provisions relating to the economy. Still, their efficiency is so low that they rarely check economic governance and private economic power. Moreover, it is not easy to imagine a circumstance in which the Constitution might effectively limit economic power because these limits are so flexible. For example, there is a rejection of both a completely liberal and a completely public economy, and certain subjects are reserved for legislation.

These are mostly post-World War II constitutions adapted to the mixed economy. They are undecided about the Cold War-era constitutional translation of the tension between the market and government action. Their economic measures are rendered ineffectual due to this lack of clarity, which is reflected in the conflicts and contradictions in their wording. The constitutions of Italy, Germany, and Spain are good examples of this type because they put public and private economic initiatives on the same level and gave the political arena a wide variety of possibilities to modify the economy's structure⁸⁰.

The social market economy or a coordinated market economy, also called Rhine capitalism, is a socioeconomic model combining a free-market capitalist economic system alongside social policies that establish fair competition within the market and a welfare state⁸¹. The social market economy originated from the Freiburg school of

⁷⁹ SIEGEN, p.386

⁸⁰ SIEGEN, p.387.

⁸¹ RALPH, Wrobel, "Social Market Economy as Alternative Approach of Capitalism after the Financial and Economic Crisis", **Economic and Environmental Studies**, V.12, No.1, 2012, pp.47-63.

thought and was implemented in West Germany⁸². The social market economy was designed to be a third way between laissez-faire economic liberalism and socialist economics based on the principles deduced from ordoliberalism, social-democratic reformism, and the political ideology of Christian democracy, or more generally, the tradition of Christian ethics⁸³. The social market economy refrains from planning and guiding production, the workforce, or sales. Still, it supports planned efforts to influence the economy through the organic means of a comprehensive economic policy coupled with flexible adaptation to market studies⁸⁴. Combining monetary, credit, trade, tax, customs, investment, social policies, and other measures, this type of economic policy aims to create an economy that serves the welfare and needs of the entire population, thereby fulfilling its ultimate goal⁸⁵.

The term "social" is sometimes mistaken with the terms "socialism" and "democratic socialism." For example, the social market approach opposes socialist ideals of replacing private property and markets with communal ownership and economic planning, despite certain elements being influenced by democratic socialism⁸⁶. The "social" aspect of the model refers to support for providing equal opportunity and protection for those unable to enter the free-market labor force because of old age, disability, or unemployment⁸⁷.

Some authors use the term *social capitalism* with roughly the same meaning as a social market economy⁸⁸. It is also called "Rhine capitalism," typically contrasting it with

⁸² LAMBERTS, Emiel, "Christian Democracy in the European Union: 1945-1995", **Proceedings of the Leuven Colloquium**, No. 15, 1995, p.39.

⁸³ LAMBERTS, p.39.

⁸⁴ **Social Market Economy**, https://germanhistorydocs.ghi-dc.org/docpage.cfm?docpage_id=3415, (accessed on January 17, 2021).

⁸⁵ **Social Market Economy, p.4.**

⁸⁶ **Social Market Economy p.4.**

⁸⁷ MARKTANNER, Marcus, Addressing the Marketing Problem of the Social Market Economy, **KAS Confernces Proceeding**, No. 1, 2010, available from, https://www.kas.de/c/document_library/get_file?uuid=05ec95ce-d45f-b808-ff4e-a1cff703a101&groupId=252038, (accessed on January 22, 2021).

⁸⁸ STEVEN, Hill, **Europe's Promise: Why the European Way is the Best Hope in an Insecure Age**, University of California Press, 2010, p. 20; MATTHIAS, Zimmer, **Germany--Phoenix in Trouble?** The University of Alberta Press 1997, p. 157; LOWELL, Turner, **Fighting for Partnership: Labor and Politics in Unified Germany**, Cornell University Press, 1998, p. 18.

the Anglo-Saxon model of capitalism⁸⁹. However, some authors describe Rhine capitalism as a successful synthesis of the Anglo-American model with social democracy rather than see it as an antithesis⁹⁰.

7. Socialist Constitution

Socialist constitutions emphasize a centralized and supervisory state in accomplishing particular economic goals⁹¹. The 1936 Soviet Constitution was the first to declare the triumph of socialism in the world's constitutional history. Socialist constitutions use a centralized and supervisory governmental machinery to achieve economic, political, or military goals. Hence, the 1936 Soviet constitution consolidated authority in a hierarchy of legislative councils (soviets) commanded by a strong chairman at the top. The 1936 Constitution served as a model in socialist revolutions across Asia, Africa, and Latin America, and it was far more than just Marxism-Leninism. In fact, for many of these countries emerging from colonial or pseudo-colonial backgrounds, socialism's model of statist mobilization seemingly offered the best path to economic prosperity and independence.

Although the Soviet Union collapsed and the Cold War ended, centralism and surveillance are still prevalent in communist countries. Centralization and surveillance remain key ideals in this huge territory, where many still see the western-style division of powers as suspicious. Some still utilize a socialist constitution. According to Article 5 of the Chinese Constitution, sustaining China's "socialist legal system" is of utmost significance, and all continuing legal reform stresses that it is based on communist ideals

⁸⁹ ABIGAIL, Bakan/ ELEANOR, MacDonal, **Critical Political Studies: Debates and Dialogues from the Left**, McGill-Queen's Press, 2002, pp. 69–7; SALLY, Wheeler, **Corporations and the Third Way**, Hart Publishing, 2002, p. 17, TADEUSZ, Kowalik, "Systemic Variety under the Conditions of Globalization and Integration", In GRZEGORZ Kołodko (ed.) **Emerging Market Economies: Globalization and Development**, Ashgate Publishing, UK, 2003, pp. 214–215.

⁹⁰ ABIGAIL/ ELEANOR, p.69

⁹¹ PARTLETT, William, "The Historical Root of Socialist Law", in: HUALING, Fu/ GILLESPIE, John/NICHOLSON, Pip/ PARTLETT, William, **Socialist Law In Socialist East Asia**, Cambridge University Press, UK, 2018, pp.37-70.

and serves a socialist objective⁹². The Vietnamese Constitution also states that Vietnam is a socialist rule of law state' under Article 2 of the document⁹³.

There are still countries that believe that centralization and state control are necessary to overcome poverty and mobilize the state in order to compete with and catch up with the West, whether it is China's increasingly centralized "socialism with Chinese characteristics" system or Russia's super-presidential "sovereign democracy" system. Their capacity to legitimize a centralized and supervisory state as an instrument for accomplishing these ends will determine how long these systems last.

B. HISTORICAL BACKGROUND

The historical understanding of constitutionalism⁹⁴ dates back to the seventeenth century in the West when it has deviated considerably from pure liberal doctrine in its last two hundred years and added separate dimensions and meanings to today's modern constitutions⁹⁵. The inclination to offer up a political space to individuals who oppose the prevailing liberal economic system has been heavily challenged in twenty-first-century constitutional thought⁹⁶. After the mid-20th century, the constitutional and legal regulations that exclude those who tend to destroy the liberal economic order from the political sphere tend to increase rapidly⁹⁷.

Studying the economic perspective of the constitutional system in a structured manner can be regarded as a recent field that began in the 20th century. The American and German Universities had contributed to constitutional and economic theories more than any other counterparts had. When the Ordo-liberal School was established in the 1930s at the University of Freiburg in Germany, it intended to include law and economics to offer

⁹² HAULING, Fu/ GILLESPIE, John/NICHOLSON, Pip/ PARTLETT, William, *Socialist Law in Socialist East Asia*, Cambridge University Press, UK, 2018, pp. 1-36.

⁹³ HAULING, p.14.

⁹⁴ Constitutionalism denotes the protection of individual freedoms against state power and restricts power in the state" of the liberal doctrine

⁹⁵ ALEXANDER, Larry, *Constitutionalism*, Cambridge University Press, Cambridge 1998, p.17.

⁹⁶ ALEXANDER, p.18.

⁹⁷ BARTELS, Larry, *Unequal Democracy: The Political Economy of the New Gilded Age*, Second edition, Princeton University Press New Jersey, 2009, p.9.

a conducive context for integrating legal and economic viewpoints typical of the Freiburg School and the Ordo-liberal tradition⁹⁸.

The Virginia School of Political Economy is a school of economic thinking that emerged in Virginia universities in the 1950s and 1960s, focused mostly on public choice theory, constitutional economics, and law and economics⁹⁹. One of the best and longest-lasting achievements made by the Calculus of Consent in public choice was by James Buchanan and Gordon Tullock. They were among the first economists in the Virginia School of Political Economy to apply economic theory to national constitutions¹⁰⁰.

The Chicago School is a neoclassical economic school that began in the 1930s at the University of Chicago. The main tenets are that free markets are the only way to distribute money in an economy. None of any government interference is best for economic growth¹⁰¹. Richard Posner, a lawyer, and an economist, has contributed to the enshrinement of constitutional legal rules in the economic principles in terms of constitutional and economic analysis.

The economic Constitution was first recognized and practiced during the Weimar Republic of Germany, which enacted the Weimar constitution in 1919¹⁰². However, scholars like Guillaume Grégoire linked the history of an economic constitution with European integration¹⁰³. Massive research has been done by Hugo Sinzheimer, who initially proposed the idea of a 'economic constitution,' arguing that economic liberty must

⁹⁸ The Freiburg School was founded by economist Walter Eucken (1891-1950) and two jurists, Franz Böhm (1895-1977) and Hans Großmann-Doerth (1894-1944). See VANBERG, Viktor, **the Freiburg School**, p.18.

⁹⁹ BOETTKE, Peter/ALAIN, Marciano, “The Past, Present and Future of Virginia Political Economy”, **Public Choice Review**, 163, No. 2, 2015, p. 53–65, www.jstor.org/stable/24507589, (Accessed 25 June 2021).

¹⁰⁰ BOETTKE/ALAIN, p.57.

¹⁰¹ MILLER, Laurence, “On the Chicago School of Economics”, **Journal of Political Economy**, V.70, No. 1, 1962, pp. 64–69, www.jstor.org/stable/1827022, (Accessed 25 June 2021).

¹⁰² GRÉGOIRE, Guillaume “The Economic Constitution under Weimar” In: GRÉGOIRE, Guillaume/MINY, Xavier(eds.), **The Idea of Economic Constitution in Europe: Genealogy and Overview**, Brill, Nijhoff, Leiden -The Netherlands, 2022, pp.53-93.

¹⁰³ GRÉGOIRE, p.59.

be legally protected while being subordinate to and aligned with society's needs¹⁰⁴. On the face of it, even if these constitutional principles defining this social orientation have no immediate impact, they are of particular importance in that they represent a "legal philosophy" and give the Constitution its distinctive meaning.

C. THE NEXUS BETWEEN ECONOMIC CONSTITUTION AND LIBERAL DEMOCRACY

When we refer to modern governments as liberal-democratic, we are talking about a form of government that makes freedoms functional and protected in a democratic environment, limiting political power to those with power and responsibilities. Like any theory, liberal-democratic state theory is based on certain assumptions. One of the theoretical assumptions is the independence of the democratic organization of the state, and the other is the accountability of the government institutions¹⁰⁵. The economic Constitution also presupposes the autonomy of economic institutions and the accountability of government organizations.

Studying the nexus between the Constitution and economics is important to ensure that the well-being of the entire society is maintained and secured based on the legal and regulatory systems that can be designed for a healthy economic system to function properly¹⁰⁶. The constitution or regular laws are responsible for establishing a legal framework that allows for the smooth operation of the economy¹⁰⁷. Nevertheless, on the other hand, rules and regulations controlling the economy must be developed in conformity with the reality of economics¹⁰⁸.

¹⁰⁴ GRÉGOIRE, p.59.

¹⁰⁵ FINER, Samuel, "Problems of the Liberal-Democratic State: An Historical Overview", **An International Journal of Comparative Politics**, V. 25, No.3, 1990, pp. 334-358.

¹⁰⁶ BAYKAL, Murat, "Hukuk-Ekonomi İlişkisi ve Ekonomi Hukuku Üzerine", **Ankara Barosu Dergisi**, C.66, Sa. 4 2008, ss. 76-87.

¹⁰⁷ GÜRSEL, Ozer, Ekonomik Kamu Düzeni Ve Devletin Ekonomiye Müdahalesi, **Uyuşmazlık Mahkemesi Dergisi**, C.1, Sa.6, ss.363-393.

¹⁰⁸ GÜRSEL, s.370.

The concern here is to constantly examine the representation of the political economy in a specific country and verify the claim that the state may create the existence of political economy with public support at any time"¹⁰⁹. The second assumption of democratic liberal state theory advocates that the political economy's public opinion is based on renewed public support at any moment and will be formed openly and freely¹¹⁰. It requires that specific opportunities and tools such as the right to political participation, freedom of expression, and voting rights be entrenched to form and convey such ideas. It is necessary to compare direct democracy, where the people are gathered, and their opinion is taken through a referendum or plebiscite, and representative democracy, in which they choose their representatives to a legislative organization at certain intervals¹¹¹. However, in both cases, the condition must "express itself clearly and freely by the public, which creates and holds accountable political power." It gives rise to the third assumption within the framework of the right to vote: in the event of conflicts between certain public segments, the majority prevails. It is because democracy aims and includes the majority's historically and logically decisions¹¹². Therefore, there was great pressure to cover large masses of people. Several conditions are also sought for the existence of liberal democracy, which is shaped by these basic assumptions.

There are two main conditions or features of liberal democracy: limited political power and pluralistic social structure¹¹³. Political power cannot intervene in autonomous individual areas, including private property ownership rights. Intervention can only be possible if the political power proves it is necessary for the general public. Undoubtedly, political power has a significant and wide-ranging task in fulfilling the minimum

¹⁰⁹ ACEMOGLU, Daron, "Theory, General Equilibrium, and Political Economy in Development Economics", **The Journal of Economic Perspectives**, V. 24, No. 3, 2010, pp. 17–32. JSTOR, www.jstor.org/stable/20799152, (Accessed 25 June 2021).

¹¹⁰ WARE, Alan, "Liberal Democracy: One Form or Many?" **Journal of Political Studies**, V. 40, No.1, 1992, pp. 130-45.

¹¹¹ WARE, p.138.

¹¹² WARE, p.138.

¹¹³ BOLLEN, Kenneth, "Liberal Democracy: Validity and Method Factors in Cross-National Measures", **American Journal of Political Science**, V. 37, No. 4, 1993, pp. 1207–1230, www.jstor.org/stable/2111550 (Accessed 21 June 2021).

conditions for social order and internal peace and defending the country against the outside. If these duties are not fulfilled, autonomous and voluntary organizations formed by the free will of individuals cannot continue their existence. However, the state's responsibility begins when voluntary and autonomous organizations fail to achieve the desired results due to their independent actions or if the public does not approve of other negative situations. Within any constitutional rights or liberties, there is a protective fence. That fence is a constitution. The responsibility of making the society accept the reason and measure falls on the political power with the necessity of intervention.

The second feature of liberal democracy is a pluralistic social structure¹¹⁴. This pluralism means that society consists only of various autonomous organizations and segments; it also requires the belief that the values and interests of each organization are sacred to its members. Therefore, the acceptance of pluralistic society is the acceptance that any group or alliance of groups of political economics will serve social interests rather than the name of the crony. Pluralism also means that the decision can be wrong, that there is a wide range of opinions, that the idea should be taken into account, and that political power should observe it to the extent possible¹¹⁵.

A compromise is one of the requirements of a democratic responsibility of the state to achieve different economic objectives¹¹⁶. Liberal democracy is supposed to implement and maintain legal and institutional practices in the economic sphere based on its users' operation. It is another requirement of the state holiday. The economic Constitution comprises the same things, the economic machinations that will take place to realize and make the most suitable economic principles that can be practiced to fulfill the rights and interests of majorities¹¹⁷. No other state legislature establishes policy-making policy. These are the requirements of liberal democracy, but they are no longer required (elected);

¹¹⁴ BOLLEN, p.1210.

¹¹⁵ BELLAMY, Richard, **Liberalism and Pluralism: Towards a Politics of Compromise**, Routledge London, 1999, p.27.

¹¹⁶ CROWDER, George, "Pluralism, and Liberalism", **Journal of Political Studies**, V.42, No.2, 1994, pp.293-305.

¹¹⁷ CROWDER, p.294.

it is an institution whose interests are organized together and, even more, governing and thus excluded from legislative planning. According to the contemporary liberal "democratic 18th century, the administrative unit of the number of laws is active in the formation of politics, firstly, aiming and targeting establishment within the organization; secondly, the administrative unit of the system of policies is active in the formation of politics. The term "diversity" can be misapplied by an inexperienced user, which might create ethnic tensions within the polity¹¹⁸.

On the other hand, the state of public policy and planning related to development-related influence is the dominant global phenomenon. This phenomenon is called "interest-group liberalism"¹¹⁹. Interest group liberalism from an economic perspective worsens the bureaucracy situation, leading to a concentration of power and can threaten economic stability¹²⁰. The economic Constitution is a guard against dangerous interest group liberalization pressures to destabilize the economy in the guise of liberal democracy. In such types of economic intimidation, proper economic management can be achieved through constitutions and the eradication of political corruption.

It is accepted that the economic reality is formed within the constitutions created through public consent. This acceptance creates two consequences: tolerance and the limitation of majority decisions¹²¹. Tolerance, because there is no objective value regarding society and tradition, no group or even political power will find the right to impose their beliefs, philosophy, religion, or ideology on other segments of society¹²². Moreover, political power is conditional and temporary in a system where individual preferences guide the economic process since these preferences can be changed over time¹²³. Since the social fluctuations that suggest the policies of the political power are

¹¹⁸ ROLAND, Paris, "Peacebuilding and the Limits of Liberal Internationalism", **International Journal of Security Studies**, V. 22, No. 2, 1997, pp. 54-89. JSTOR, www.jstor.org/stable/2539367, (Accessed 25 June 2021).

¹¹⁹ ROLAND, p.60.

¹²⁰ ROLAND, p.60.

¹²¹ ROLAND, p.61.

¹²² ROLAND, p.62.

¹²³ ROLAND, p.60.

inevitable, it should be considered that in such a conditional political system, the political power is a sensitive representative of the public¹²⁴. In cases where there is no unanimity on the issues, it takes and implements decisions based on the majority. However, these majorities will also change constantly, so mechanisms that provide certain guarantees for minorities with the potential to become a majority must be established. Therefore, political power must be limited to them.

In such a system, the argument that political power should not interfere with the original functioning of the market for whatever reason seems to have drawn the border lines of private and social spheres¹²⁵. However, when it comes to economic aspects, this is not the case, and determined, planned. Therefore, detailed arrangements have been carefully considered for the state's establishment and development of the market economy.

Even in the public sphere, we see that the existing constitutional rules and policies are not considered sufficient, and efforts are being made to bring the concept of "a public space compatible with the market economy" to life¹²⁶. In short, the economic Constitution does not suggest that the state withdraws its hand from the economy but should constitutionally establish and protect the economic structure in line with the dominant economic ideology.

Moreover, even the public sphere should be reshaped from an "economy" point of view. So, how can one evaluate the economic constitution's claim that the constitutional systems within which it proposes reform of liberal democracies? First, designing a constitutional reform within this system is meaningless as long as it does not aim to extend the reform to all areas of liberal democracy within the framework of principles, institutions, and rules. Instead, it limits it to the purely economic field¹²⁷. Liberal democracies do not recognize any social or traditional objective value other than the

¹²⁴ FREEMAN, John, *Democracy and Markets, the Politics of Mixed Economies*, Cornell University Press, 1989, p.5.

¹²⁵ FREEMAN, p. 6.

¹²⁶ FREEMAN, p. 6.

¹²⁷ THIGPEN, Robert, "Liberalism & Democracy: A Relationship under Strain" *Polity Series*, V. 18, No. 4, 1986, pp. 733–743, www.jstor.org/stable/3234892, (Accessed 25 June 2021).

results that will emerge through individual choices; therefore, political powers have no right to impose their ideology on society. In this case, to what extent can it be considered democratic to set economic policies that are not universally valid and have not been proven true by practice. Third, have various economies always survived under the shield of state interventions and only partially in certain periods through constitutions? Finally, those who do the constitutions are the founding fathers, who have personal interests and are possible and likely to protect these interests¹²⁸.

In short, Constitutional Economics does not have a solid theoretical framework to explain the practice. While proposing a new social and economic structuring model through constitutions, narrow and limited observations should not be contented with establishing a model based on fixed variables without considering the diversity and variability of the number of variables in the equations related to socioeconomic events increases the margin of error.

D. THEORIES LEADING TO THE QUEST FOR AN ECONOMIC CONSTITUTION

While the branch of classical economics deals with the economy within the social and political order surrounding it¹²⁹; neoclassical economics deals with the economy in a completely abstract and utopian way¹³⁰. Classical economics, developed in the late 18th and early 19th centuries, attempted to foster economic growth and freedom by promoting laissez-faire policies and the concept of free-market competition¹³¹. Constitutions adopted in the same period had similar economic policy principles. On the other hand, the social

¹²⁸ ROBERT, McGuire, “the Political Economy of the Constitution”, in PRICE, Fishback (eds.), *Government and the American Economy: A New History*, the University of Chicago Press, Chicago, 2007, pp.1774-1791.

¹²⁹ SAMUELS, Warren, “The Political Economy of Adam Smith”, *An International Journal of Social, Political and Legal Philosophy*, V. 87, No. 3, 1977, pp. 189–207.

¹³⁰ DIETER, Zimbauer, “From Neo-Classical Economics to New Institutional Economics and Beyond”, *London School of Economics Development Studies Institute’s Working Paper Series No.01*, 2001, p.7.

¹³¹ DIETER, p.8.

market order examines the economy in a legal and institutional setting when Keynesian prescriptions were in demand after World War II¹³².

After determining the reasons for the need for reform, it will be necessary to decide on the objectives and direction of the reform. Two schools in the world guide the search for an economic constitution. One of them is the Freiburg School, which continues its studies within the framework of liberal teaching in Germany, and the other is the Virginia School of Economics under the leadership of James Buchanan and Gordon Tullock¹³³. Both the Freiburg School and the Virginia School of Economics, which developed the theory of Constitutional Economics, have adopted Smith's approach, which examines the economy in a legal and institutional setting¹³⁴. Although both schools reveal that rules should determine the duties and powers of political power in the economic field, they differ in their basic assumptions and the limits of state intervention¹³⁵.

1. Virginia School of Political Economy and Teaching

In the USA, social-democratic government policies were introduced long before Europe¹³⁶. Some saw the major federal interventions that formed the welfare state of the 1960s as an extension of the New Deal, shaped by Roosevelt to help remedy the economic depression caused by the Great Economic Crisis of the 1930s¹³⁷. It is difficult to separate the views of schools such as American liberalism, which has an important place in contemporary American economic and political thought. The Virginia School of

¹³² KARSTEN, Siegfried, "Eucken's 'Social Market Economy' and Its Test in Post-War West Germany", **The American Journal of Economics and Sociology**, V. 44, No. 2, 1985, pp. 169–183, www.jstor.org/stable/3486836, (Accessed 25 June 2021).

¹³³ EMERSON, Bruce, A history of the Relationships between the State of Virginia and its Public Normal Schools, (Unpublished Ph.D. thesis), College of William & Mary, USA, 1973, P.11, <https://dx.doi.org/doi:10.25774/w4-g7yc-zj12>, (accessed on June 12, 2021).

¹³⁴ EMERSON, p. 12.

¹³⁵ BIRCH, Kian, **A Research Agenda for Neoliberalism**, Edward Elgar Publishing, Cheltenham, United Kingdom, 2017, p.34.

¹³⁶ KATZNELSON, Ira, "Considerations on Social Democracy in the United States", **Journal of Comparative Politics**, V. 11, No. 1, 1978, pp. 77–99, retrieved from, www.jstor.org/stable/421791, (Accessed 25 June 2021).

¹³⁷ PAUL, Catherine, **The New Deal**, Virginia Commonwealth University, Social Welfare Library Publication, Virginia, 2011, p.9, <https://socialwelfare.library.vcu.edu/eras/great-depression/the-new-deal/> (accessed on June 06, 2021).

Economics and Chicago School keep the classical liberal tradition alive from the experiences of the economic crisis that happened at that particular time¹³⁸.

To American liberals, the 1930s crisis showed the failure of a self-regulated economy to realize the country's economic and social potential and the catastrophic collapse of production and employment, especially after 1931, that an unregulated economy based on private property created misery for the majority and great wealth for a small minority¹³⁹. On the other hand, classical liberals see the undue intervention of the state to ensure welfare in the self-functioning processes of the market¹⁴⁰. Classical liberals were the source of the 1930 crisis and the heavy depression in which capitalism rolled again in the 1970s¹⁴¹.

Advocates of this idea argue that the widespread social reforms and interventionist policies of the 1960s played a major role in destroying American social stability and traditional values of freedom and responsibility¹⁴². The constitutional reform they propose aims to understand and solve the current crisis of American constitutionalism. First, the state has turned to services beyond the provision of basic public services and has taken over a large part of the private sector. It imposed taxes¹⁴³ not only for providing basic services but also for redistributing income. In addition, the legislature (Congress) structure constitutes majority votes based on a coalition of interest groups rather than reflecting a simple majority's will. Finally, the Supreme Court actively attempts to make laws instead of impartially applying the state's basic rules. Since the problem is fed by disease and

¹³⁸ PAUL, p.254.

¹³⁹ CRAFTS, Nicolas, and PETER, Fearon, Lessons from the 1930s Great Depression, **Oxford Review of Economic Policy**, V.26, No. 3, 2010, pp. 285–317, <https://doi.org/10.1093/oxrep/grq030>, (accessed on June 6, 2021).

¹⁴⁰ CRAFTS, p.290.

¹⁴¹ CRAFTS, p.290.

¹⁴² **University of Dyton**, The Origins of the Occupational Safety and Health Act of 1970, https://ecommons.udayton.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&Art=1045&context=soc_fac_pub, (accessed on April 12, 2021).

¹⁴³ CRAFTS, p.290.

irregularity that permeates all the institutions of the constitutional system, constitutional reform covers a wide area that will reframe all these institutions.

2. Ordo-Liberalism and Economic Constitution

In the early 1930s, the economist Walter Eucken and the lawyers Franz Böhm and Hans Grobmann-Doerth formed the Freiburg School¹⁴⁴. The school created an ideal for combining the legal and economic viewpoints that have become synonymous with the Freiburg School tradition, for which the term Ordo-liberalism was later coined¹⁴⁵. Ordoliberalism is an economic policy approach developed by German scholars, in response to the broken, highly cartelized economy of the Weimar Republic and in opposition to the statist, authoritarian interventionism of the Nazi regime¹⁴⁶. Kotz mentioned that the German "Ordo-liberal" scholars introduced the economic constitution in the aftermath of the Second World War¹⁴⁷. Ordo liberals argue that the constitutional dimension of the liberal paradigm has to comprehend an economic constitution and establish and maintain an appropriate political constitution.

Ordo-liberalism stress in political failure affects the economic condition. Ordo-liberalism is one of many schools of federalism, which differs from them in that it emphasizes preventing cartels and monopolies¹⁴⁸. However, Ordo-liberalism keeps several beliefs central to other strands of economic liberalism. First, it advocates for a strong state to limit consumer control; a pure "laissez-faire results in distortions in the market mechanism through crippling the price mechanism." The market is revered as a tool for power reduction, especially for containing powerful special interests within a

¹⁴⁴ VANBERG, Viktor, **Ordoliberalism and Ordnungspolitik: A Brief Explanation**, Aktionskreis Freiburger Schule Initiative für Ordnungspolitik publishers, Fribourg, 2017,p.8.

¹⁴⁵ VANBERG, p.9.

¹⁴⁶ THORSTEN, Beck/ HANS-HELMUT, Kotz, **Ordo-liberalism: A German oddity**, London, 2017, https://carnegieendowment.org/files/Ordoliberalism_Nov22.pdf ,(accessed on June 6, 2021, p. 8).

¹⁴⁷ VANBERG, **Ordoliberalism and Ordnungspolitikp**, p. 19.

¹⁴⁸ DOLD, Malte/KRIEGER, Tim, p.257.

competitive order and the rule of law¹⁴⁹. Ordo liberalism seeks to create a private law society and a competitive economic order¹⁵⁰. The German model of the economic constitution is dependent on the rule of law and governed by a principle of market system preservation. They are preserving the scarcity-signaling capacity of relative markets to ensure allocative productivity and retaining continuing competitive pressure to avoid the concentration of private economic power. Ordo-liberalism was about insisting on microeconomic principles, emphasizing the supply side, and conceiving rules for a resilient economy, close to Buchanan-type constitutional economics. Furthermore, the founders of ordo-liberalism imagined an ordo as a competitive order governed by a constitutional order intimately connected and regulated by the Rule of law.

As a result, the liberal paradigm's constitutional component must include an economic constitution and establishing and maintaining an effective political constitution. Politics should be constrained by legislation rather than arbitrary power to address specific policy issues since the latter is based on practicality at the cost of long-term concerns. Ordo-liberalism supporters maintained that the game's laws are the foundation for any stable economic structure. Economic orders comprise the formal-institutional system and the informal norms and customs that regulate economic activities in the respective societies since economic activities are the product of changing historical and institutional facilities.

The adherence to a stable set of rules for socioeconomic operation is a central concept in the ordo-liberal tradition, present in one form or another in its different incarnations. The economic constitution conjures up an ideal of constitutional order in which state actors provide a stable structure to support the workings of market culture. As is well known, ordo-liberals have commonly referred to this concept as an "economic

¹⁴⁹ KOLEV, Stefan, **Ordoliberalism and the Austrian School**, The Oxford Handbook of Austrian Economics, Oxford United Kingdom, 2015, pp. 418-444., <https://doi.org/10.1093/oxfordhb/9780199811762.013.18>, (accessed on June 6, 2021)..

¹⁵⁰ KOLEV, p.420.

constitution," building on ideas still in circulation in the early 1900s and fashioning them into the foundation of their construction¹⁵¹.

The ordo liberals applied a "constitutional" component to their economic analysis. They claimed that the democratic constitution of a nation and the laws used to enforce the constitution would essentially determine the characteristics of its economic structure. Economic processes were "created" rather than "happening" due to political and legal decision-making. This foundational decision formed a country's "economic constitution"¹⁵².

The ordo liberals combined legal and economic theory into the idea of an economic constitution. As a result, the circle possessed the *idée-force* of an economic constitution, which accelerated all of their personal views, guided their labor, and turned them into a wholly new and original School¹⁵³. The Freiburg School did not coin the word "economic constitution." Nevertheless, it was popular in the 1920s, referring to the basic features of an economic system¹⁵⁴. The relative advantages of "capitalist" and "socialist" constitutional debate during the Weimar Republic contributed to the birth of the economic constitution¹⁵⁵.

An economic constitution was conceived to synthesize legal and economic viewpoints and discourses. It turned the central concept of classical liberalism that the economy should be separated from politics and law, arguing that the economy's characteristics and usefulness relied on how it interacted with the political and legal structures. The ordo liberals understood that basic political decisions established the fundamental foundations of an economic system¹⁵⁶.

¹⁵¹ WHITE, p.17.

¹⁵² GERBER, David, "Constitutionalizing the Economy: German Neo-liberalism, Competition Law, and the New Europe", *The American Journal of Comparative Law*, V.42, No. 1, 1994, p. 29, <https://doi.org/10.2307/840727> (accessed on May 12, 2021).

¹⁵³ GERBER, p.11.

¹⁵⁴ GERBER, p.11.

¹⁵⁵ GERBER, p.11.

¹⁵⁶ GERBER, p.11.

3. Constitutional Political Economy (Constitutional Economics)

James Buchanan won the Nobel Prize for his contribution to the contractual and constitutional bases for economic and political decision-making theory in just three and half decades; the constitutional lawyers' contribution in the legal field is very limited. On the other hand, economists are more interested in the topic and contribute much than lawyers. Therefore, it is vital to revisit the theories of public choice theory in light of the economic constitution. Moreover, understanding the philosophical background of the state, economy, politics, and constitution is very useful.

Constitutional Political Economy is interchangeably called Constitutional Economics. Within a rational-choice framework, it studies the choice of some of the constraints facing individuals in their decision-making process¹⁵⁷. In the 1970s and beyond, the word 'Constitutional Economics' (Constitutional Political Economy) was coined to describe and categorize a precise science and policy debate strand. Constitutional economics differs from public choice because the latter looks at how agents behave in the political sphere under given institutional structures¹⁵⁸.

Perçin defines constitutional law as one of the branches of public law that specifically concerns public economic law¹⁵⁹. There is no straightforward definition of constitutional political economy but characterizing it simply as 'the economic analysis of constitutional law' is the best way to understand it¹⁶⁰. Constitutional Political Economy is a logic, process, and recommendation for reducing the state's cumbersome, inefficient, and liberty-threatening structure, which has been growing since the second half of the twentieth century and has stuck in the economic area of societal life. It is a constitutional design established by Public Choice and Constitutional Economics theory.

¹⁵⁷ NICKLAS, Berggren, **Essays In Constitutional Economics, Stockholm School of Economics**, (Unpublished Ph.D. Dissertation), Stockholm School Of Economics, Stockholm, 1997, p.12, retrieved from <https://ex.hhs.se/dissertations/221867-FULLTEXT02.pdf>, (accessed on March 12, 2022)

¹⁵⁸ NICKLAS, p. 12.

¹⁵⁹ PERÇİN, s.285.

¹⁶⁰ BACKHAUS, **An Economic Analysis**, p.13.

A Constitutional Political Economy is defined as a constellation of interests that exists before formal arrangements and determines how formal rules and procedures operate within a specific setting¹⁶¹. Political economy is usually concerned with the interface and joint forces between a given society's economic and political arrangements. At the same time, the constitution generally refers to the legal and political norms, laws, and regulations that regulate the citizens within a given jurisdiction¹⁶². In other ways, political economy is managing the state's economic affairs. Political economy was founded on advising politicians on how to handle the state's economic relations in a better way so that citizens' needs be fulfilled. Politics is described in terms of organization, laws, and agency in the politics-as-government approach. Courts, bureaucracies, and political parties are some examples of these institutions.

The return to the classical tradition of economics as the study of "how markets function," with markets interpreted to include "the organization of human actions across the social system," is known as public choice theory or constitutional political economy. The public choice theory aims to influence the state to intervene in the economy. It proceeds from the principle of "Failure of the Public Economy" as opposed to the principle of "Failure of the Market" advocated by Welfare Economics¹⁶³. Public Choice theorists argue that individuals' rights, powers, and responsibilities and the state should be as precise as possible¹⁶⁴. Accordingly, they argued that constitutions should predetermine the market and developed the Constitutional Economic Theory¹⁶⁵.

a. Positive Constitutional Economics

Due to the platform's cross-disciplinary structure, the techniques or approaches used in constructive constitutional economics are distinct from traditional economic tools.

¹⁶¹ ADRIAN, Pabst/ ROBERTO, Scazzieri, "The Political Economy of Constitution", **Economia**, V. 6, No.3, 2016, pp. 337-362.

¹⁶² ADRIAN/ ROBERTO, p.340.

¹⁶³ UZUN, Turgay, "Kamu Tercih ve Anayasal İktisat Kuramı Üzerine Bir Değerlendirme", **Muğla Üniversitesi Sosyal Bilimler Enstitüsü Dergisi**, C. 1, Sa.23, 2009, ss. 223 – 228.

¹⁶⁴ UZUN, p.223.

¹⁶⁵ UZUN, p.223.

"Comparative structural study," which consists of four key components, is the fundamental approach of constructive constitutional economics¹⁶⁶. The first component looks into how such constitutional rules came to be and what factors led to the establishment of the regulations due to aggregated individual contributions¹⁶⁷.

The second component examines how rules may be identified between individual and collective variables, but Voigt concedes that this analysis is rarely employed¹⁶⁸. The third issue is the likelihood of additional statute (or rule) modifications. Finally, any proposed change to legislative limitations or restraints law is submitted to economic analysis to determine its impact on performance and equality¹⁶⁹.

b. Normative Constitutional Economics

Normative constitutional economics is concerned with legitimizing the state and its behavior as the appropriate route for maximizing production. The usefulness, assessing sufficient conditions or laws, and perceptive and analyzing productive democratic processes in which the outcome of mutual decisions is deemed "equal," "just," or "successful"¹⁷⁰.

According to both Buchanan and Stefan Voigt, the fundamental principle of normative constitutional economics is that no individual's goals or principles will outweigh the worth of another¹⁷¹. As a result, there can be no universal, absolute social norm or target. Politics, according to Buchanan, is a means of trade, similar to where people agree to exchange commodities. He argued that if individuals behave rationally in

¹⁶⁶ VOIGT, Stefan, "Positive Constitutional Economics: A Survey", **Journal of Public Choice**, V. 90, No. 1, Springer, 1997, pp. 11–53, <http://www.jstor.org/stable/30024182>, (accessed on June 7, 2021, p.17).

¹⁶⁷ VOIGT, p.18.

¹⁶⁸ VOIGT, p.18.

¹⁶⁹ VOIGT, p.19.

¹⁷⁰ HAUWE, V. Ludwig, "Constitutional Economics: in ", 2nd edition, BACKHAUS, Jurgen, (eds.), **The Companion to Law and Economics**, Edward Elgar Publishing Limited: Cheltenham, UK 1999, pp. 29-47.

¹⁷¹ BUCHANAN, Jams, "The Domain of Constitutional Economics", **Journal of Constitutional Political Economy**, V.1, No.1, 1990, p-15.

their own supposed self-interest, and the decision is voluntary and knowledgeable, any such compromise is "effective" and therefore normatively ought to occur.

II. ECONOMIC CONSTITUTION AND CONSTITUTIONALISM: THEORETICAL FRAMEWORK

Richard Posner has expounded on the economic theory of constitutionalism as the economic properties and the results of requiring a supermajority for some kinds of political change¹⁷². He specified that constitutional amendment through a supermajority of the legislative body implies a specific economic implication on the public, and the constitutional interpretation by the judiciary has an agency cost effect. Constitution, unlike ordinary laws, is often interpreted or amended through a special procedure that the assigned interpreters or supermajority approval of the legislators respectively.

Economic constitution alludes to an economical way to deal with the overall issue of constitutional design, especially in investigating the constitutional structure and the rules that are conjured to judge alternative constitutions¹⁷³. An economic constitution derived using the analytical apparatus, general approach of economics, and the intellectual tradition represents terms of constitutional design. The economic constitution, which contains provisions, establishes the rules of the game, makes the rules to govern; and the state in the referee's position observes the game's functioning¹⁷⁴. Just as the game's laws bind every player, the rules undoubtedly bind the state in the referee position and create the system of constitutional democracy. The state has always prioritized realizing and maintaining justice in all areas at the highest possible level. One of the expectations of individuals and societies from the democratic state within the constitutional economic system is undoubtedly justice in all respects¹⁷⁵.

¹⁷² BUCHANAN, *The Domain of Constitutional Economics*, p.15.

¹⁷³ BRENNAN, Geoffrey/ ALAN, Hamlin, "Economical Constitutions", *Journal of Political Studies*, V. 44, No. 3, 1996, pp. 605–619, <https://doi.org/10.1111/j.1467-9248.1996.tb00603.x>,(accessed on June 18, 2021).

¹⁷⁴ GÜNAYDIN, Abdullah, "Anayasa, Kamu Yönetimi ve Ekonomi Bağlıklarında Ekonomik Haklar ve Özgürlükler", *İnsan Hakları Yıllığı*, C.36, 2018, ss.75-104.

¹⁷⁵ GÖZLER, Kemal, *Anayasa Hukuku*, Ekin Basım Yayın Dağıtım, Bursa, 2012, s.72.

The expansion and unlimited exercise of the state's powers in the people's economic life have led to debates about whether the powers should be limited. In this section, it is important to discuss how the classical understanding of economics underwent a process of intellectual development in parallel with the socio-economic development of societies to understand how the constitutional, economic approach emerged.

Although the legal basis for fiscal rules can take various forms, such as constitutions, codes, administrative directives, or international treaties, the legal tool to entertain economic matters applied by countries depends on the traditions and legal practices of the respective countries¹⁷⁶. It is generally known that the enforcement of constitutional rules is stronger than any other legal instrument. Indeed, laws and political measures have the same enforcement power as constitutional regulations in some countries. The Constitution is an agreement the state made with its citizens while creating its institutions. In recent years, economic rights have become very frequent in debates about moral and constitutional issues. The constitutionally protected concept of rights here requires freedom of conduct and, in some cases, the power of action¹⁷⁷. In other words, the fact that one person is free to buy food and get medical treatment to sustain his life is, to some extent, a consequence that another person does not have the economic resources to do these things. Therefore, constitutions should protect such "Economic Rights" mentioned herein.

A constitution is the state's power (authority) map first and foremost¹⁷⁸. It means constitutions show the official distribution of powers to various government organs. In other words, the constitution defines the rules of the political game and sets the rules that will dominate the administration of the state. However, unless the constitution considers

¹⁷⁶ YERELİ, A. Burçin, Yeni Türkiye Cumhuriyeti Anayasası için Bir Ekonomik Anayasa Önerisi, **Anayasa Değişikliği Hakkında T.B.M.M. Başkanlığı'na Sunulan Kişisel Görüş ve Öneriler**, Aralık., 2011, s.7.

¹⁷⁷ YERELİ, s.7.

¹⁷⁸ GÜNAY, Ayşe/ ÖZEN, Ahmet "Avrupa Birliği' nde Mali Disiplinin Sağlanmasına Yönelik Maastricht Kriterlerinin Anayasal İktisat Perspektifinden Değerlendirilmesi", **Dokuz Eylül Üniversitesi, Sosyal Bilimler Enstitüsü Dergisi**, C. 4, Sa. 2, 2002, s. 66.

the values that prevail in society, its chances of functioning stably and successfully are slim¹⁷⁹.

The recognition and protection of fundamental freedoms constitute the essence of the constitutional-democratic system. This point is related to the function of constitutions to provide "guarantees for individual freedoms." This main feature makes a constitution truly a "constitution." As a matter of fact, in the majority of modern liberal democratic constitutions, the fundamental rights section has a predominant place. However, the expansion of normative regulations on fundamental rights to include "social and economic" rights, which over time gave the state a positive role, seems to have dragged modern constitutions into an absurdity¹⁸⁰. An absurdity happened because the value of the constitutional guarantee of fundamental rights is that it gives individuals freedoms against the state. It is a negative obligation imposed on the state to limit itself from infringing fundamental civil and political rights. It is clear that these Social and Economic Rights, which are based on the understanding of the "social welfare state," are expanding in the constitutions due to the positive role they assign to the state, rather than limiting the state. For this reason, some argue that the understanding and practice of the social welfare state undermines individual freedom by making individuals significantly dependent on the state.

Constitutionalism presumes constitutionally legitimate and limited government. Such a presumption of constitutionally legitimate government as a yardstick for constitutionalism inculcates that constitutional provisions should be interpreted and amended as indicated in the constitution itself¹⁸¹. Moreover, the interpretation mechanism must be respected if a specific constitutional issue is changed over time.

The theoretical approach to the economic constitution is related to "Constitutional Economics," which was introduced as an economic theory in the early 20th Century¹⁸².

¹⁷⁹ ERDOĞAN, Mustafa, **Anayasal Demokrasi**, Siyasal Kitabevi, Ankara 1996, s. 42.

¹⁸⁰ ERDOĞAN, s.43.

¹⁸¹ BRENNAN/ALAN, p.611.

¹⁸² HAUWE, **Constitutional Economics**, p.11.

Applying the methods of economic analysis to the state, politics, the constitution, and all other government institutions manage the political process, and the economic constitution holds the functioning scheme of the institutions from various perspectives. Hence, this research will present, analyze, and produce solutions with the templates used by constitutional and economic sciences.

Various theories are available impliedly related to the Economic constitution. Most of the theories are framed by economists rather than lawyers. For this reason, the approaches are better described as economic theories related to constitution, constitutionalism, and democracy. First, the economic theory of the state is discussed. Then other theories are explained in detail.

A. DEVELOPMENTAL STATE THEORY

Placing the developmental state hypothesis between a free-market market model and a centrally planned model implies that its texture is neither capitalist nor socialist¹⁸³. Incorporating developmental state theory into state philosophy entails shifting away from neoliberal economic liberalism and toward state interventionism. Incorporating developmental state theory into state philosophy entails shifting away from neoliberal economic liberalism and toward state interventionism¹⁸⁴.

The developmental state theory focuses on an economic development model that emphasizes the state's important, deciding, and leading responsibilities in a country's economic development and change¹⁸⁵. Reciprocity and cooperative character point to a mutually beneficial connection between the state and the market. This interaction aims to

¹⁸³ ANDRZEJ, Bolesta, "China as a Developmental State", *Montenegrin Journal of Economics*, V.3, no 5, 2007, pp. 105-111.

¹⁸⁴ HUNG, Pham, *The Developmental State, the Evolving International Economic Order, and Vietnam*, (Unpublished Ph.D. Thesis), University of Birmingham, UK 2012, p.10, <https://core.ac.uk/download/pdf/9837603.pdf>, (accessed on June 12, 2021).

¹⁸⁵ HUNG, p.10.

achieve developmental goals, and company survival is important consideration¹⁸⁶. When the Developmental State is functioning properly, neither party has an advantage. At that moment, the state operates as a "catalytic" agency, and business managers operate according to the state's incentives and disincentives.

B. METHODOLOGICAL INDIVIDUALISM

Michael Buchanan cited a well-known quote in his Nobel Lecture from Wicksell: "If utility is zero for each member of the community, the total utility for the community cannot be other than zero"¹⁸⁷. It claims that social processes must be clarified by demonstrating how they are the product of individual behavior. This must be explained by referring to the deliberate actions that empower the individual actors. Indeed, the idea that the individual should be the ultimate component of social research can be traced back to social-contract thinkers such as Hobbes and Locke. It is highlighted in J. S. Mill's claim that society's norms must be taken from the laws of human psychology¹⁸⁸. Max Weber developed the doctrine of methodological individualism in the way that collectivities such as state, business organizations, legislators, courts, and others must be viewed exclusively as the outcomes and forms of organization of specific acts of individual people. It is because only these can be treated as agents in the process of the subjectively understood activity¹⁸⁹.

Methodological individualism aims not to elevate the individual over the group in social-scientific explanation but rather to elevate the action-theoretic standard of proof¹⁹⁰. This methodological preference for the action-theoretic level is enforced by the framework of interpretive social science, whose purpose is to provide an interpretation of

¹⁸⁶ JOHNSON, Chalmers, "The Developmental State: The Odyssey of A Concept", in: MEREDITH, Woo-Cumings(eds.), **The Developmental State**, Cornell University Press, New York, 2019, pp. 32-60.

¹⁸⁷ BUCHANAN, Jams **Lecture to the memory of Alfred Nobel**, Oslo, December 8, 1986, retrieved from <https://www.nobelprize.org/prizes/economic-sciences/1986/buchanan/lecture/> (accessed on April 12, 2021).

¹⁸⁸ BUCHANAN, **Lecture to the memory of Alfred Nobel**, p.3.

¹⁸⁹ WEBER, Max, **Economy and Society**, University of California Press, Berkeley, 1968, p.9.

¹⁹⁰ WEBER, Max, p.10.

social phenomena. Since conscious states guide actions, they can be interpreted in ways other psychological processes cannot. The theory also stated that only entities have deliberate conditions, so methodological privileging behavior implies privileging individuals¹⁹¹. Friedrich von Hayek endorsed the idea, arguing that instead of considering these fictitious things (Government Organs) as 'facts,' we should begin with the conceptions that guide persons (government leaders) in their activities, rather than the outcomes of their reasoning about their actions¹⁹².

C. THE NEOCLASSICAL THEORY

From a pragmatic perspective, the neoclassical theory assumed that the constitution was written to increase public welfare by a generous and benevolent politician¹⁹³. There is no strategic engagement with this approach, and institutions are not considered. Several recent methods have criticized this, such as Public Choice, New Institutional Economics, and Law and Economics. From a moral standpoint, the neoclassical theory assumed that the constitution is written to maximize the public benefit by a generous and benevolent politician. There is no strategic engagement with this strategy, and organizations are neglected.

Neoclassical thought first appeared in the early 1900s. However, it was not until 1933 that neoclassical economics was introduced to imperfect competition models¹⁹⁴. Indifference curves and marginal revenue curves were among the innovative techniques employed. Using these new resources, the mathematical complexity of neoclassical economics was raised to unprecedented heights. Keynesianism and neoclassical microeconomics were integrated in the mid-1950s. When these two ideas came together,

¹⁹¹ WEBER, Max, p.10.

¹⁹² AHIKPOR, James, "Wicksell on the Classical Theories of Money, Credit, Interest and the Price Level", *American Journal of Economics and Sociology*, V.58, 2006, pp. 435 – 457.

¹⁹³ LANDES, William/ POSNER, Richard, "The Independent Judiciary in an Interest Group Perspective", *Journal of Law and Economics*, 1975, p.17; ÇETIN, Tamer/CETINKAYA, Kemal, an Economic Theory of Constitution Making, Ankara 2018, p.7. Retrieved from https://www.academia.edu/36259483/An_Economic_Theory_of_Constitution_Making(accessed on May 12, 2021).

¹⁹⁴ ÇETIN /CETINKAYA, p.7.

they created the foundation for the neoclassical synthesis, which has dominated economic thought ever since.

In neoclassical economics, resource allocation is the primary issue. It also takes into account the long-term growth of the resources, which will allow for the expansion of products and services production¹⁹⁵. Cost of production theory is integrated with utility maximization and marginalism in Neoclassical economics. According to classical economics, the value of a product or service is determined by its production costs. According to neoclassical theory, a product's or service's value is mostly determined by demand.

D. CONSTITUTIONAL THEORY OF PUBLIC GOODS

Since the 1950s, the economic theory of the public sector has relied heavily on the concept of public goods¹⁹⁶. The approach of public goods aims to explain why the private sector cannot create effective commodities with clearly defined features of publicness, leading to a market failure that entails the participation of the government in creating goods for which the market fails¹⁹⁷. The theory of public goods aims to explain why the private sector cannot make effective commodities with clearly defined features of publicness, leading to a market failure that entails government participation in creating goods for which the market fails¹⁹⁸.

More firmly than the market failure view, a constitutional theory of public goods emphasizes the necessity for rigorous institutional design and formulation of public functions. The constitutional choice of general provision binds individuals once it has

¹⁹⁵ ÇETIN, Tamer/CETINKAYA, p.8.

¹⁹⁶ HOLCOMBE, Randall, "Public Goods Theory and Public Policy" **The Journal of Value**, V. 34, 2000, pp. 273-286.

¹⁹⁷ HOLCOMBE, p.272.

¹⁹⁸ HOLCOMBE, p.272.

been made. However, their sense of utility interdependence in the consumption of products may alter over time for whatever cause¹⁹⁹.

One justification for opting for constitutionally mandated public supply of some commodities is that individuals may seek to be bound by an overarching contract as a buffer against shifting preferences. In addition, the constitutional requirement that goods be made available to the public demonstrates not just that utility interdependencies are high but also a notion that they must be increased. In other words, by voting for the public supply of a benefit, everyone communicates a normative judgment about what post-constitutional preferences for that good should be²⁰⁰.

A constitutional theory of public goods may argue more forcefully for cautious constitutional arrangement and delimitation of general powers than a market failure theory²⁰¹. The explanation for that in constitutional economics, provisional authority stands on the consensual ground and may thus be overturned by consensus. In the logic of constitutional economics, the crucial issue is no longer efficiency but appropriate institutional design.

E. CONSTITUTIONAL GUARANTEES OF ECONOMIC ISSUES

Richard Posner pointed out various elements of exploring the constitution in economics²⁰². Therefore, it is useful to explain some of the topics of the economic constitution in detail. When the specified elements in the next section are fundamental protections inherent in the basic text under which a country's legal culture abides, the economic system's constitution and the financial system's functioning are highly facilitated²⁰³. These elements are freedom of contract; guarantee of private property;

¹⁹⁹ MARMOLO, Elisabetta, "A Constitutional Theory of Public Goods", **Journal of Economic Behaviour and Organization**, V.38, 1999, pp. 27-42

²⁰⁰ MARMOLO, p.38.

²⁰¹ MARMOLO, p.39.

²⁰² POSNER, Richard, The Constitution as an Economic Document, **George Washington Law Review**, V.4, 1987, p.9.

²⁰³ POSNER, p.9.

synchronization of control and liability; constancy and predictability of economic policy, provision of a stable currency, and open market access²⁰⁴.

1. Freedom of Contract

Freedom of contract is a critical safeguard because it guarantees, as a sufficient prerequisite, that all available knowledge in a community is used to make strategically appropriate choices and that all available services are put to the best possible use. From an economic point of view, weighing freedom of contract against any other guarantee, such as the principle of equality, is insufficient without considering the full implications of the trade-off. Therefore, the fundamental right to freedom of contract was extended to a branch of the freedom of liberty, along with a due process for evaluating legislatively enforced limits on the right to contract²⁰⁵.

Many constitutions have adopted the freedom of contract in one way or the other. For instance, under Article I, section 10, the US constitution forbids states from interfering with contractual commitments. This provision has the potential to be the cornerstone of a broader right to contract rights. The provision specifically extends to retroactive contract impairments, not general police power legislation concerning future contracts²⁰⁶. Freedom of Contract can be restricted to protect a weak party or a minority, the environment, or the capital market²⁰⁷. The economic interest of one of the contracting parties might be affected in the guise of freedom of contract.

One of the economic constitution features is the recognition of freedom of contract in the national constitution. The European Union constitution, for instance, is one of the best examples of a constitutional guarantee of liberty of contract²⁰⁸. The free movement

²⁰⁴ WERNHARD, p.144.

²⁰⁵ RONALD, Rotunda/ JOHN, Nowak, **Treatise on Constitutional Law**, Fifth Edition, Loyola University Press, Chicago, 2007, p.32.

²⁰⁶ OGDEN vs. SAUNDERS, 25 U.S. p.213, <https://supreme.justia.com/cases/federal/us/25/213/> (accessed on March 12, 2021).

²⁰⁷ RUTGERS, Jacobine, The European Economic Constitution, Freedom of Contract, **European Review of Contract Law**, V. 5, No.2, 2009, pp. 95-108.

²⁰⁸ RUTGERS, p.99.

of goods, services, people, and money, undistorted competition, and the non-discrimination principle are hallmarks of the European Economic Constitution²⁰⁹. However, the European Economic Constitution also demonstrates that constitutions do not need contract liberty as an absolute starting point for future European Union legislative actions in contract law but rather provide a balance between contract liberty on the one hand and other social or health objectives on the other²¹⁰.

It is vital to ask how far the legislature can regulate freedom of contract without infringing the constitutional right to property and the right to liberty²¹¹. Over the last three centuries, the jurisprudential development of the freedom of contract has slowly changed the emphasis of the Anglo-Saxon legal system rights ranging from property to contract in part an extensive as real property, personal property, labor, and legal status²¹². Three types of cases restrict freedom of contract: inequality of parties, capital market protection, and environmental protection.

2. Guarantee of Private Property

The concept of production, possession, and utilization of properties exercised by people takes place in a social environment and raises the question of who can own these goods and how²¹³. Therefore, it is very important and controversial to whom the power of disposition, use, and utilization over property belongs within the legal order. Indeed, the problem has been debated since ancient times. In ancient Greek, for example, the debate

²⁰⁹ GERBER, p 25. See also JOERGES, Christian, Social Market Economy as Europe's Social Model? **UN Working Paper**, No. 8, 2004, p.12.

²¹⁰ GERBER, p 25

²¹¹ **Harvard Law Review Association**, Freedom of Contract under the Constitution, **Harvard Law Review**, V. 28, No. 5, 1915, pp. 496–499. JSTOR, www.jstor.org/stable/1326867, (Accessed 30 May 2021).

²¹² JOHN, Orth, **Contract and the Common Law**, In: HARRY N. Schreiber, (eds), *The State and Freedom of Contract*, 1998, pp.22-24.

²¹³ BULUT, Nihat, Mülkiyet Konusundaki Temel Yaklaşımlar Ve Türk Anayasasında Mülkiyet Hakkı, **Erzincan Binali Yıldırım Üniversitesi Hukuk Fakültesi Dergisi**, C.10, 2006, ss.15-26.

over societal ownership of property and individual ownership had continuously influenced philosophical thoughts²¹⁴.

There was a mystical mentality in primitive societies that humans were connected in a mystic way to what he owns²¹⁵. Within this understanding, the nation is collective, and the land belongs to humanity. There was a belief that real unity is formed in a community, and it cannot be considered that individuals have a separate existence from society, including the living and the dead²¹⁶. Therefore, in the ancient primitive society, the deceased had as many rights over the land as the living²¹⁷. However, the development of trade in Ancient Greece and the importance of money introduced the understanding of the Holy Family Ideal. Economic development increased the number of goods that could be exchanged, thus ensuring the advancement of trade²¹⁸. A movable wealth has gained importance, so people who want to buy goods somehow have to dispose of their land. This situation has led to the clarification of the rich-poor distinction and has sharpened the struggle for social. The deterioration of democracy in ancient Greece coincided with this process, establishing oligarchy and tyranny.

In the Middle ages²¹⁹, Europe, which was cut off from the eastern trade centers due to the Norman invasions on the one hand and the Islamic domination on the other, entered into a closed economic order and lost the vitality of trade and urbanism life²²⁰. Moreover,

²¹⁴ GÜRİZ,Adnan, Teorik Açından Mülkiyet Sorunu, Ankara Üniversitesi Hukuk Fakültesi Yayın, Ankara, 1969, s. 1-12.

²¹⁵ BERKTAY, Halil, Kabileden Feodalizme, Kaynak Yayınevi., İstanbul, 1989, s. 196.

²¹⁶ GÜRİZ,s.10.

²¹⁷ BULUT, s.17.

²¹⁸ BULUT, s.18.

²¹⁹ The Middle Ages lasted from the fall of the Western Roman Empire until the end of the 1400s, an era dominated by the feudal order. The feudal order has a rich content because it refers to the system that determines the social, political, economic, and legal order of the Middle Ages. But despite this wealth, it should be noted that it was primarily a mode of production, and it stabilized in the 10th century. The essence of this mode of production is the appropriation of the surplus value produced by the dependent direct producers (serfs) by the land-owning class (seigneurs) as labor-rent, product-rent, or money-rent.

²²⁰ KILIÇ, Ramazan/ DEMİRÇELİK, Mine, Mülkiyet Kavramının Tarihsel Gelişimi Sürecinde Ortaçağ Ve Reform Hareketi, **Dumlupınar Üniversitesi Sosyal Bilimler Dergisi**, sa.30, 2011.

in the feudal period, where the social structure was determined by the relations of people with the land, the land owner naturally became the owner of political power²²¹.

As for those who work on the land, it makes little sense for them to speak of the right to nationhood. Because they were economically, socially, legally, and politically under the rule of the landowner, the political structure of the feudal order expressed the order in which state power was fragmented. The people were not subordinate to a central authority but to those who owned the land. Political and administrative powers, even jurisdiction, were rights that depended on the senator's assets.

The feudal system allows the powerful to establish their sovereignty; it leaves the weak ones with no choice but to fall under the protection of the powerful to ensure the security of life and property. This initiates the patronage system of the feudal order and causes the feudal hierarchy to take root. Therefore, the aim of maximizing profit will not be established due to religious thinking. In the Middle Ages, goods were produced and sold at best to ensure the good life of producers and consumers and to meet their needs. For this reason, the feudal order is considered to be a system based on production for use.

The new period of capitalism describes the transition from a use-purpose economy to a for-profit economy. It refers to a system in which the whole country is private property²²². When the transition from feudalism to capitalism, from the economy of use to the economy of exchange, which is for-profit and aims to accumulate capital, is controversial, it is a fact that it took many years. What is the main factor or factors that initiated this transition is much more controversial²²³.

It should be immediately stated that with the development of capitalism, the land has lost its former importance, and business and securities have gained prominence. In the meantime, developments in banking have reached significant dimensions, and capital has

²²¹ KILIÇBAY, Mehmet, Feodalite ve Klasik Dönem Osmanlı Üretim Tarzı, Teori Yayınö Ankara, 1985, s. 211

²²² GENÇOĞLU, Aylin, “Kapitalizme Teorik Yaklaşımlar: Kapitalist Ekonomik Sistemin Temel Nitelikleri Üzerinden Karşılaştırmalı Bir Analiz”, **Temaşa Felsefe Dergisi** , c.14, 2020, ss. 237-256.

²²³ GENÇOĞLU, s.242.

been gradually shifted to large industrial investments²²⁴. The fact that industry and trade became the basis of economic life led to adopting the concept of "liberal property." Within the framework of this understanding, private property is an innate right and has an absolute, inviolable character. The property owner shall exercise this right as he wishes, enjoy the products of this right as he wishes, and may dispose of the object as he wishes.

The protection of the private property is especially crucial when it comes to the means of production²²⁵. Thus, from an economic perspective, the promise extends well beyond the security of people's goods and services. The explanation is easy to understand. Property rights identify and limit options for meaningful behavior in economics. As a result, simple ownership of a good, such as land, is worthless because it implies discretionary alternatives and choices that can be exercised.

3. Sanction to the Failure of Synchronized Liability

To be relevant, the institution of accountability must supplement the two fundamental rights of contractual freedom and private property. The diligent observance of contractual terms necessitates the security of a responsibility cover for failing to live up to contractual terms, just as the respective private property rights require holding the attacker accountable. Institutions should be designed to enforce the state's and individuals' obligations concerning the economy.

While this theory is clear, the economic implications can be far-reaching. A sanction should be consigned only if the party found responsible was in charge of the circumstances resulting in the liability²²⁶. For instance, if one of the contracting parties fails to abide by his obligation to the other party, he could be subject to specific sanctions. Specific civil or criminal sanctions should be imposed on those who fail to abide by the economic-related laws, contracts, and accepted practices.

²²⁴ GENÇOĞLU, s.242.

²²⁵ JOHN, p.23.

²²⁶ BACKHAUS, An Economic Analysis, p.10.

4. Economic Policy Constancy and Predictability

The most useful constitutional and economic components are consistency and predictability of monetary policy, which would aid in joining contracts covering the present and the future²²⁷. This is also true for long-term land rights, such as investment choices. However, economic policy predictability is essential for private property rights because it influences the transition costs that must be paid by the private sector and fall into the property, possibly lowering its worth²²⁸.

This criterion has no bearing on the scope and domain of economic policy but rather on the time horizon, it can be implemented. The lower the transition costs, the more predictable economic strategies are. According to the corollary reasoning, the more drastic a policy reform, the longer its implementation must be delayed, and the more precisely the parameters of the present policy must be specified to allow for smooth transitions in the private sector²²⁹. A regulation may be unlawful simply because the legislature failed to take the required measures, such as writing it out and providing reasonable transition times before implementation.

5. Provision of a Stable Currency

A stable currency is essential in the constitutional framework as an auxiliary right²³⁰. Rather than a specific monetary strategy, what is truly required is a structural framework that stabilizes the currency²³¹. No provision in any constitution imposes any certain monetary policy on a central bank, nor does it compel just one currency to circulate in a

²²⁷ NIKOLAOS, Antonakakis/ MEHMET, Balcilar, “Components of Economic Policy Uncertainty and Predictability of US Stock Returns and Volatility: Evidence from a Nonparametric Causality-in-Quantile Approach”, **Journal of Frontiers in Finance and Economics**, V. 14, No. 22, 2016, pp. 20 – 49.

²²⁸ BACKHAUS, Juergen, “Increasing the Role of Environmental Taxes and Charges as a Policy Instrument in Developing Countries: Some Conceptual Considerations”, **American Journal of Economics and Sociology**, V. 63, No.5, 2004, p.5, <https://doi.org/10.1111/j.1536-7150.2004.00336>, (Accessed on May 17, 2021).

²²⁹ BACKHAUS, Increasing the Role of Environmental Taxes, p.7.

²³⁰ BACKHAUS, Increasing the Role of Environmental Taxes, p.7.

²³¹ BACKHAUS, Increasing the Role of Environmental Taxes, p.8

given market²³². However, leading monetary economists have demonstrated that having several currencies in circulation is not only consistent with the idea of keeping the unit of account constant; it may also be beneficial to preserve this principle²³³. Hence, the stability of a currency is one of the criteria to determine economic stability through a constitutional guarantee.

Some countries like Russia incorporated the stabilization of its currency as a central task of the Central Bank of Russia. As a result, there has been a resurgence of interest in the role of Central Banks in managing currencies. The Central Bank of every country has two options for fixing the currency rate²³⁴. Stabilization can be approached in several ways, the first of which is "adaptive." The Central Bank "adjusts itself" to market trends rather than seeking to influence them²³⁵. Another alternative would be for the Central Banks to take an "active" approach to currency stabilization. To avoid currency interventions, it is necessary to affect the exchange rate in this manner. There is no need to spend gold or foreign currency reserves on these two approaches. In the case of an active approach, the Central Bank may change the target by fixing the exchange rate to retain a strong position.

6. Open Access to Markets

Market access must remain free for such fundamental human rights to be meaningfully practiced. This is evident with the right to contract. Still, it also applies to such classical fundamental rights as freedom of the press, freedom of political speech, freedom to practice one's chosen religion, freedom to practice one's chosen occupation, intellectual liberties such as freedom of instruction and study, and so on. By the way, the dilemma is exacerbated if a single government or other private agents eliminate the existence of a sector. The promise of freedom of access to markets requires the guarantee

²³² BACKHAUS, Increasing the Role of Environmental Taxes, p.8.

²³³ YEAGER, Leland, Deregulation and Monetary Reform, *American Economic Review*, V.75, No.2, 1985, pp. 103-107.

²³⁴ BLINOV, Sergey, How to stabilize the currency exchange rate, *Munich Personal RePEc Archive (MPRA)*, No. 70650, 2016, p. 7.

²³⁵ BLINOV, p.8.

of having such markets created, which does not predetermine the form such markets take, as long as they have an open platform for communication and trade, which is what a market is all about.

"Consumers and producers modify their behaviors in voluntary collaboration" in an open market. As a constitutional ideal, the notion of consumer sovereignty postulates that the game's rules should be such that producers are as responsive to consumer interests as possible²³⁶. The game's rules should be set up so that providing superior customer service is the only way to achieve corporate success²³⁷. Keeping markets open benefits a country's economy²³⁸. As a result, private pressure organizations cannot be granted the authority to abolish this. This right is part of the regulatory policy and should not be left to private individuals. Von Mises argued that, so far as the operation of the market is not sabotaged by the interference of government and other factors of coercion, business success is the proof of services rendered to the consumers²³⁹. Ordoliberalism also argued that a functional market order could not be guaranteed without a proper economic constitution, a set of laws and institutions that, ideally, enables economic success to be achieved only via competition in terms of improved customer service²⁴⁰. Working market competition requires more than just acceptable constitutional limits. A similar but distinct criterion is that a competitive order is protected from anti-competitive interests, which attempt to avoid competitive limitations through private agreements or political measures²⁴¹.

III. THE ECONOMIC EFFECTS OF CONSTITUTIONS

Despite analyzing the economic effects of constitutions are not within the scope of this thesis, it is important to raise some of the intriguing issues of direct basic constitutional rules from economic upshots. For example, some constitutionally

²³⁶ VANBERG, Victor, **The Constitution of Markets: Essays in Political Economy**, Routledge, New Fetter Lane, London, 2001, p.45.

²³⁷ VANBERG, **The Constitution of Markets**, p.46.

²³⁸ VANBERG, **The Constitution of Markets**, p.46.

²³⁹ VANBERG, **The Constitution of Markets**, p.46.

²⁴⁰ VANBERG, **The Constitution of Markets**, p.23.

²⁴¹ VANBERG, **The Constitution of Markets**, p.2.

entrenched principles such as electoral matters, government systems, and civil and political rights might have a sense of the national or provincial economy directly or indirectly. In addition, there are several studies on the effects of constitutional rules on the economy. Nonetheless, there is no clear-cut conclusion regarding fundamental constitutional systems' positive or negative implications on the economy.

Which form of government is more favorable for economic development is one of the crucial issues in the economic effects of the constitution debate. Torsten and Guido argued that the economic impact of presidential government systems are more preferable to parliamentary systems in terms of economic development²⁴². On the other side, McManus and Ozkan make presidential regimes less favorable economic outcomes than parliamentary regimes²⁴³. They stated that the presidential system implies slower output growth, higher and more volatile inflation, and greater income inequality²⁴⁴. On the other hand, the study conducted by Gerring et al.; indicated that the parliamentary system is more interrelated with good governance, which eventually positively correlates with economic and human development²⁴⁵.

The effects of constitutional electoral systems on the economy is also debatable in many ways. For example, Torsten and Guido praised majoritarian electoral for having more direct accountability because voters choose among individuals (under plurality rule) rather than among parties, which would eventually restrict rent extraction²⁴⁶. They also argue that majoritarian Electoral systems are generally associated with smaller government spending and taxes because of smaller district size and plurality rule²⁴⁷. On the other hand, Ezaskun

²⁴² TORSTEN, Persson/ GUIDO, Tabellini, **The Economic Effects of Constitutions**, Massachusetts Institute of Technology Press, 2005, p.17.

²⁴³ MCMANUS, Richard/OZKAN, F.Gulcin, "Who does better for the economy? Presidents versus parliamentary democracies", **Public Choice**, V.176, 2018, pp.361–387.

²⁴⁴ MCMANUS/OZKAN, p.386.

²⁴⁵ JOHN, Gerring/ STROM C. Thacker/ CAROLA, Moreno, "Are Parliamentary Systems Better?," **Comparative Political Studies**, V. 42, No. 3, 2008, pp. 327-359.

²⁴⁶ TORSTEN / GUIDO, p.18.

²⁴⁷ TORSTEN / GUIDO, p.18.

praises proportional electoral systems for lower-income inequality than majoritarian or mixed systems²⁴⁸.

Sometimes the interpretation of constitutional principles may have an implicit economic effect. For example, freedom of speech, when conceived of as a guarantor of a free market as an idea. When designed as a guarantor of a national common market, the commerce clause and the takings clause developed as a guarantor of property rights. Even though in the presidential system, a president is in a strong position and seen as a danger in protecting individual freedom, it might have a guardianship role for freedoms from being threatened by a strong executive²⁴⁹. It should be noted that a vigorous march for freedoms is necessary rather than a danger because the improvement of the socio-economic status of citizens can be achieved through strong execution²⁵⁰. What is important for freedom is to eliminate the hazards that may arise from the executive branch to the freedoms and to keep the executive power under control²⁵¹.

Finally, the economic effects of constitutional systems require in-depth study through specific econometrics methodology beyond the socio-legal research. Therefore, this dissertation does not cover the economic impacts of the Ethiopian constitutional system, as explained in this section.

²⁴⁸ IZASKUN, Zuazu, “Electoral Systems and Income Inequality: A Tale of Political Equality,” **Empirical Economics**, 2021, p.9.

²⁴⁹ BİLİR, Faruk, **100 Soruda Hükümet Sistemleri Ve Başkanlık Sistemi**, Adalet Yayınevi, Ankara, 2017, s.71.

²⁵⁰ BİLİR, 100 Soruda, s.71.

²⁵¹ BİLİR, 100 Soruda, s.71.

CHAPTER TWO

APPRAISAL OF ECONOMIC ISSUES IN THE ETHIOPIAN CONSTITUTIONAL FRAMEWORK

I. GENERAL OVERVIEW

Ethiopia, one of the oldest states in the world, began modernizing its governmental system in the late 19th Century and early 20th centuries during the reign of Emperor Menelik II²⁵². The national unification project, which began during Tewodros II, got its current feature during the Menelik II regime. The imperial and feudal government administration stayed until the 1974 revolution and the coming into power of the Derg socialist junta. The emperor and royal nobles/landlords dominated the economic system during this period. There were different classes of societies as long as the economy was concerned in the Ethiopian imperial period, which was the feudal system dominated by the agricultural economic policy in Ethiopia from the imperial government until the 1974 revolution.

While the dictatorial Socialist Military power ruled the country from 1974 to 1990, the Ethiopian economy was highly centralized and regulated due to the socialist political ideology of the then government. However, unlike its predecessors, the Derg regime introduced two milestone economic reforms: nationalization of private property and distribution of land to the tillers²⁵³. The land policy based itself on two principles: historical justice, which aims to change the exploitative character of lord-agrarian relations, and second justice, egalitarianism, which provides each farm family with equal access to cultivation land according to their demands²⁵⁴.

²⁵² To assist in the administration of the then Ethiopian Empire, Menelik organized the first Cabinet of Ministers, assigning reliable and generally recognized lords and retainers to the first Ministries. see Zewde, Bahru, *a History of Modern Ethiopia: 1855-1991*, Oxford: Currey, 2007, p.140.

²⁵³ ZEWDE, Bahru, *A History of Modern Ethiopia, 1855-1991*, Oxford, Currey, 2007, p.143.

²⁵⁴ CREWETT, Wibke/ KORF, Benedikt, Ethiopia: Reforming Land Tenure, *Review of African Political Economy*, V. 35, No. 116, 2008, pp- 203–20. <https://doi.org/10.1080/03056240802193911>,(accessed on May 12, 2021).

After the fall of Derg until 1994, the EPRDF regime took power and introduced a transitional charter, which had been used as a de-facto constitution for about four years. In 1995, the current Federal Democratic Republic of Ethiopian Constitution (hereinafter referred to as the FDRE constitution) was promulgated and enforced for almost a quarter of a century without any amendment. Among the unique features of the constitution, the two most critical distinctive features are the enshrinement of the right to self-determination up to secession and the vesting of constitutional interpretation power to the House of the Federations. The FDRE constitution distributed the government power between the federal government and regional states. It lists the power of both tiers of government and leaves the residual power to the regional states. The economic aspect of government power is also distributed similarly to the federal and provincial governments. However, such a vertical division of power has created asymmetrical development among the regional states.

In recent years, Ethiopia renewed its unscrupulous label tied to poverty by registering a double-digit growth rate for a decade since 2004²⁵⁵. The Ethiopian government's spending to GDP ratio has increased yearly since 2010 except for the 2014 and 2015 slight decreases. Since then, the economic policy has been praised along with the diplomatic lobbies for attracting huge foreign direct investment to Ethiopia. However, the three-year political turmoil from 2016 until 2018 ended with a big political reform that has created obstacles to economic growth and new investment entrances. This figure has a constitutional implication regarding government accountability and governance effectiveness. Although Ethiopia's tax to GDP ratio is also the lowest in sub-Saharan Africa, the government has not taken any tax reform steps to update the tax administration system and broaden the tax bases.

The most important thing for this excerpt is to explore whether the Ethiopian economic policy is well integrated into the supreme legal framework, the constitution.

²⁵⁵ DAWIT, Senbet/TADESSE, Wodajo, "Double-Digit Economic Growth vs. Social Wellbeing in Ethiopia: A Cross-Country Comparison", *African Journal of Economic Review*, V.5, No.2, 2017, p.5.

Indeed, incorporating economic policies with the constitution suggested safeguarding and appropriating implementation²⁵⁶. Hence, this study will investigate Ethiopia's constitutional legal principles regarding institutional independence and accountability, economic rights, tax principles, fiscal policy, and related topics.

The preamble of the FDRE constitution stated that creating one economic community was raised as one of the constitution's purposes. On the other hand, article 89 explicitly listed the economic policy objectives, which more or less indicate the economic ideology of the Ethiopian government. That has been entitled to regulate the economy in favor of social justice or to enhance the individual's life standard one-third of the constitution off-course covered by the n and democratic rights. The constitutional guarantee of human and democratic rights affects the economic ideology of the Ethiopian constitutional system. Furthermore, the fiscal policy and vertical power-sharing between federal and regional states regarding revenue sources are incorporated within the constitution from article 95 up to 100. Almost 20 % of the constitution's provisions (21 articles out of 106) are devoted to economic-related issues in one way or another²⁵⁷.

Article 89 of the constitution imposes multiple obligations on the government to fulfill the economic interests of citizens in many respects. An attempt has been made to explore whether these constitutional provisions indicate any economic ideology within the constitutional text. Even though the Ethiopian People's Revolutionary Democratic Front (EPRDF), the ruling party of Ethiopia from 1991-to 2018, officially declared a developmental state economic policy, in-depth research must be undertaken to understand the constitutional stand in this regard clearly. Indeed, as a framer and promulgator of the constitution, the EPRDF party would have inserted a specific economic policy explicitly

²⁵⁶ BACKHAUS, J.G, *An Economic Analysis*, p.18.

²⁵⁷ The sixth paragraph of the FDRE constitution stated that ' convinced that to live as one economic community is necessary in order to create sustainable and mutually supportive conditions for ensuring respect for our rights and freedoms and for the collective promotion of our interests...', Art 12, Art 40, 41, 42, 43, 44, 51(12), 62(7), 65, 77(4,5,6), 79(6),89, 90(3), 94,95,96,97,98,99,100, 101 of the constitution consists of rules related to the economy. That means, budget, tax, expenditure, economic rights, economic obligations of the government, accountability, and other economic-related issues incorporated in these provisions.

within the constitution. Moreover, the practical implementation of such economic constitutional rules requires exploring deeply to find out the gap and loopholes in the legal system.

Although electoral laws are not often part of the constitution, and even when they are, details are left usually to the statute, the FDRE constitution explicitly contains the electoral system as a first past the post majoritarian system. The Majoritarian one has significant economic differences from the proportional one. Evaluating the electoral system in terms of its impact on the national economy is the primary task of lawmakers before choosing the system. Moreover, the FDRE constitution has no provision about the duty of citizens while dealing largely with the rights and freedoms of the people.

Imposing a constitutional duty on all stakeholders, including individuals within the constitutional framework, is essential to make that responsibility uncompromised and supreme. The commitment of persons to pay tax and general tax principles are often incorporated in many constitutions. For example, Türkiye included the duties of its citizens towards paying taxes or respecting the rights of citizens in the constitutional framework.

Ludwig Hauwe first articulated money as a constitutional issue. He said that it is impossible to grasp the meaning of the idea of sound money if one does not realize that it was devised as an instrument for protecting civil liberties against despotic inroads on the part of governments. Ideologically it belongs in the same class as political constitutions and bills of rights²⁵⁸. Despite not dealing about detail issues of monetary administration, the FDRE constitution enshrines important rules regarding who should administer the national bank and the monetary system at the national level. Which central bank administration or monetary control model Ethiopia adopts has not yet been explored through constitutional principles of in-depth research? Hence, this chapter is committed to dealing with all the above points in detail.

²⁵⁸ HAUWE, Monetary Constitutionalism, p.10.

A. ECONOMIC ISSUES IN THE ETHIOPIAN CONSTITUTIONAL DEVELOPMENT

Kuddusi Yazıcı stated that the basic rules of economic life, which are closely related to all layers of society, and constitutional provisions could prevent the implementation of political powers that ignore the long-term interests of the country's economy with a short-term populist approach. Therefore, economic life should be included in the constitutions²⁵⁹. Therefore, exploring the Ethiopian constitutional framework is vibrant in light of the economic principles that may have practical value to the general public and individuals.

Ethiopia adopted four written constitutions, including the current one, within the last century. A draft constitution was prepared on the eve of the 1974 revolution, and the adoption halted by the revolution is one of the draft constitutions. The transitional charter of 1991 acted as the provisional constitution from 1991 to 1995 since it was the "supreme law of the land" as stated under article 18 of the charter itself. Therefore, the 1974 draft constitution and the 1991 transitional charters are not part of the discussion in this thesis.

The First modern Ethiopian constitution was adopted in 1931. The second written constitution was adopted in 1955 and is commonly known as the revised constitution of Ethiopia. Subsequently, after the overthrow of emperor Haile-Selassie by the military junta force in 1974, the socialist Derg regime had taken fourteen years to prepare a new constitution. Finally, the Derg adopted a socialist constitution in 1987. The Peoples' Democratic Republic of Ethiopia (PDRE) constitution has accepted the socialist ideology of the soviet republic. New constitutional dynamics took only eight years after the 1987 PDRE constitution and were replaced by the current Federal Democratic Republic of Ethiopian (FDRE) Constitution in 1994. These constitutions have been explored in terms of the economic and financial dimensions.

²⁵⁹ YAZICI, Kuddusi, "Suggestions for the Economic Constitution in Türkiye", **Suleyman Demirel University the Journal of Faculty of Economics and Administrative Sciences**, V.19, No.3, 2014, p.287.

1. Pre-1931 Period

Ethiopia is one of the world's oldest countries, shifting its borders over centuries. It had once centered on Aksum, an imperial capital located in the current state's northern region, some 100 miles from the Red Sea coast²⁶⁰. Ethiopia rose to prominence in contemporary international affairs after defeating colonial Italy in the Battle of Adwa in 1896 and again in 1935–36 when it was attacked and occupied by fascist Italy²⁶¹. The Allied powers liberated Ethiopia during World War II, paving the way for Ethiopia to play a more important role in global affairs. Ethiopia was one of the first sovereign states to sign the United Nations Charter. It provided moral and material support for Africa's independence and the expansion of Pan-African cooperation. These efforts resulted in forming the Organization of African Unity (later renamed the African Union) and the United Nations Economic Commission for Africa, both of which have their headquarters in Addis Ababa²⁶².

Various traditional legal texts share some features of the constitution of the Ethiopian empire in terms of establishing government structure. One of the best examples is *Kebre Nagast*, which aims to legitimize the ascendancy of Emperor Yekuno Amlak and the "restored" Solomonic line in the 14th Century²⁶³. The *Kebre Negast* is a national epic that praises a certain monarchical dynasty and history while linking Ethiopia to the Judeo-Christian heritage²⁶⁴. It is the authority for the descent of Ethiopian kings from Menilek, son of King Solomon, and Makeda, Queen of Sheba²⁶⁵. The *Kebre Negast* successfully legitimized the ruling elite of that time to govern the entire Ethiopian empire. *Sera'ata Mengistu* of Amda Zion in the 14th Century as part of *Kibre Nagast* could be considered the first written constitution in Ethiopian History²⁶⁶. This ancient law significantly

²⁶⁰ HAROLD, Marcus, **A History of Ethiopia**, University of California Press, London, 1994, p.31.

²⁶¹ HAROLD, p.32.

²⁶² ZEWUDE, p.75.

²⁶³ ZEWUDE, p.75.

²⁶⁴ ZEWUDE, p.78.

²⁶⁵ ZEWUDE, p.78

²⁶⁶ SCHOLLER, Heinrich, **Ethiopian Constitutional and Legal Development**, Köln, Köppe, 2006, p.19.

contributed to the then Ethiopian polity bridging the socio-economic and political relationship between the royal elite and the ordinary people.

‘Feta Negest²⁶⁷’ of Zara Yakob governed the law of the land since the Middle Ages. Although Fetha Nagast contains rules of the emperor and the church, it has incorporated some economic-related topics. In 1907/08, Menelik II introduced economic-related cabinet reform and procedure rules, which must be considered as bylaws to the unwritten constitution. It is a ‘set of ecclesiastical’ and ‘civil law,’ which was ideally the base of Ethiopian law, but there is some divergence in practice. Feta Negast was originally written in Arabic in the thirteenth century and is said to have been translated into Ge'ez until late in the seventeenth century. However, there are signs that a text bearing this title was current at least as early as the sixteenth century, though the recorded manuscripts in England, France, and Germany date from 1681 onwards²⁶⁸.

Fetha Nagast consists of three important issues related to finance and the economy: the prohibition of usury and slavery and the imposition of taxes. The Fetha Nagast under the second part prohibited usury. It stated that if a priest or a layperson takes any usury (interest on the loan), he shall abstain from this or be deposed. Furthermore, Fetha Nagast stated, “War and the strength of horses bring some to the service of others because the law of war and victory makes the vanquished slaves of the victors”²⁶⁹. The assertion indicated that enslaved people could be people who lost the war. The other method of acquiring enslaved people is commercialization, reflected in the text “You shall buy slaves from among them and from among their offspring born in your land”²⁷⁰. Hence, the pre-1931 era was not popular in recognizing current economic issues with traditional-constitutional

²⁶⁷ The Fetha Nagast is compiled around 1240 by the Egyptian writer Abu'l-Fada'il ibn al-Assal in Arabic and translated into an Ethiopian language called Ge'ez and expanded upon with numerous local laws. Fetha Nagast was copied from apostolic writings, and partly from former legal codes of the Byzantine rulers.

²⁶⁸ HUNTINGFORD, G. W, “The Constitutional History of Ethiopia”, **The Journal of African History**, V.3, No.2,1962, pp. 311–315, retrieved from <https://doi.org/10.1017/s0021853700003182>, (accessed on July 15, 2021).

²⁶⁹ **The Fetha Nagast**: Haile Selassie I, preface: the Law of the Kings,(translated by Abba Paulos Tzadua), 197, p, 175

²⁷⁰ HUNTINGFORD, p.315.

documents. The only exception to some extent is the Fetha Nagast. Nevertheless, there were some economic principles in the Fetha Negast, as discussed above.

2. The 1931 Constitution

1931 was a crucial year in Ethiopian history that the imperial regime of Haile Selassie I proclaimed the first written constitution. In 1931, Ethiopia began constitutionalizing imperial institutions to set up the emperor's authority on a more stable foundation and provide initial forms of restraint and participation. This resulted in the adoption of Ethiopia's first ever-modern constitution in 1931²⁷¹. The 1931 Constitution, as a colonial grant to the cherished people, did not recognize civil rights as such. Rather, it emphasized duties while maintaining the idea that they were "entitled" to special rights and rewards based on the preferences and assertions of the Kings, from which all benefits and privileges, as well as all justice and influence, flowed. The state was to owe no responsibility to the people. There were few legislative restraints on state authority other than those placed implicitly by religion and custom²⁷².

The 1931 Constitution consists of seven chapters divided into 55 articles. The contents of the chapters are not devoted to dealing with economic matters. Article 2 is concerned with the duties of government ministers, a system of executive officers, which Menelik II had established in 1908. Article 18 of the constitution established a bicameral parliament for Ethiopia for the first time. The unique aspect of the 1931 constitution was its' establishment of bicameral parliament: the Senate and Chamber of Deputies. The Senate was composed of members appointed by the emperor from among the nobility.

²⁷¹ It was issued in "an amazing ceremony" on July 16, 1931, in the presence of Emperor Haile Selassie, who had long desired to issue one for his country. "It is worth noting that this was the first instance in history where an absolute monarch tried freely to share sovereign power with the people of his kingdom," William Stern writes in the preface to his translation of this constitution into English. This argument, however, is not entirely accurate, since the adoption of a constitution was somewhat pushed by international opinion. See <https://amp.blog.shops-net.com/23766930/1/1931-constitution-of-ethiopia.html>, (accessed on May 21, 2021).

²⁷² ARARSA, Tsegaye, "Making Legal Sense Of Human Rights: The Judicial Role In Protecting Human Rights in Ethiopia", *Mizan Law Review*, V. 3, No. 2, 2009, pp. 288-330.

In contrast, the nobility or the local chief nominated members of the Chamber of Deputies until the people reached a position to elect them by themselves. Despite the law-making function of the parliament being very restricted, it had a chance to adopt ten different laws from its creation until the Italian occupation²⁷³. After the cease of the Italian occupation, the parliament re-convened and served as a legislative body till the 1955 revision of the constitution.

The 1931 constitution has a constraint of elucidating economic aspects of the government system. Only two provisions have dealt with related economic issues: article 21 iterates that the nation is bound to pay taxes. Article 55 requires the Government Treasury to create an annual budget that specifies how the government's funds will be spent. As a result, the ministry of finance has gained constitutional recognition. The ministry of finance must propose the annual budget and be framed by the deliberations of the two houses (chamber of deputies and senate).

Despite the constitutional design and content drawbacks, the 1931 constitution tried to institutionalize the Ethiopian government system, at least in the written constitutional framework. As a result, this constitution was the first document that established the legislative body for the first time in Ethiopian history²⁷⁴. Moreover, the judicial system was not recognized legally before the 1931 constitution in Ethiopia.

The main question is why the 1931 constitution has limited incorporation of economic issues or financial matters. It is possible to raise three main reasons for that. The first reason is that Emperor Haile Selassie had just adopted the first ever-Ethiopian constitution to consolidate the imperial power rather than solve socio-political and economic issues. The duplicate of the Japanese Meiji constitution, the 1931 Ethiopian

²⁷³ SELASSIE, Bereket, "Constitutional Development in Ethiopia", *Journal of African Law*, V. 10, No. 2, 1966, p. 78.

²⁷⁴ Laws were adopted under the jurisdiction of both the emperor and the parliament until the end of February 1944, when the emperor's sole authority was restored, which lasted until the beginning of November of that year, when the parliament reconvened. The 1931 Constitution was repealed during Emperor Haile Selassie's Silver Jubilee in 1955, when a new constitution was promulgated.

constitution, was composed of 55 provisions. Almost half of the provisions of the 1931 constitution have dealt with the imperial powers, prerogatives, and obligations of citizens to the emperor. The second reason is that when the constitution was promulgated was not compelling to entertain economic matters in a specific feudal nation.

3. The 1955 Revised Constitution

In 1955, Emperor Haile Selassie proclaimed a revised constitution like its 1931 predecessor, concerned with an international opinion by which Ethiopia incorporated Eritrea, where an elected parliament and more current administration had existed since 1952²⁷⁵. The 1955-revised constitution of Ethiopia is the second modern constitution in Ethiopian history. The bicameral Ethiopian parliament, which the 1931 constitution had created, had little input into the 1955-revised constitution. Rather than restricting the emperor's power, it stressed imperial power's Orthodox Christianity origins and accelerated the centralization process. Although the Senate remained appointive in a similar way to the previous constitution, the members of the Chamber of Deputies were left to the people to elect, at least officially.

Unlike its predecessor, the 1955 constitution devoted much to human rights issues and economic perspectives. Chapter three of the revised constitution incorporates the rights and duties of citizens in a general manner and fundamental freedoms of the people, such as the right to life, liberty, and property in particular. The right to equality was also one of the constitutional human rights enshrined in the revised Ethiopian constitution during almost all African nations were under Western colonial rule.

The property right was detailed within the constitutional framework, which helped the citizens accumulate private property until 1967 nationalizes personal property law. Article 44 of the constitution specified that everyone has the right to own and dispose of the property within the confines of the law. No one's property may be taken away without a ministerial order issued following the requirements of a special expropriation law

²⁷⁵ SELASSIE, p.4.

enacted following the Constitution and without payment of just compensation determined by judicial procedures established by law in the absence of agreement. Moreover, the constitution obliges any ministerial order to be published after promulgation by the minister.

Chapter seven of the revised constitution focuses on public finance, particularly taxation, revenue, expenditure, and budgetary principles. This chapter of the constitution has exclusively devoted to dealing with the public's financial aspects. Article 113 recognizes the principle of taxation with representation, which refers to any taxation or exemption from payment of any tax or duty imposed by law authorization. The expenditure from public revenues is required to be authorized by law. Furthermore, the constitution indicated that the fiscal year was fixed by special law.

The 1955 revised constitution also incorporated the budget issues. Each year, with the emperor's permission and following the law, the Council of Ministers is required to send to Parliament a draft of legislation for the approval of the next year's budget²⁷⁶. The Senate and Chamber of Deputies scrutinize the budget and vote on each item separately²⁷⁷. The constitution also requires that Parliament's entire budget amount for expenditures may not be increased by any circumstances²⁷⁸. Generally, the constitution indicates that Parliament sets the budget's provisions for unanticipated costs²⁷⁹. Furthermore, at least one month before the next fiscal year, Parliament was compelled constitutionally to finish the budget vote for submission to the emperor²⁸⁰.

The 1955 revised constitution did not mention any economic policy principle. Indeed, Ethiopia was in the feudal government system at that time despite Emperor Haile Selassie's effort to modernize the country. Eritrea's annexation with Ethiopia, as a

²⁷⁶ The Revised Constitution of the Empire of Ethiopia, 1955, Art 115.

²⁷⁷ The Revised Constitution of the Empire of Ethiopia, 1955, Art 116.

²⁷⁸ The Revised Constitution of the Empire of Ethiopia, 1955, Art 116.

²⁷⁹ The Revised Constitution of the Empire of Ethiopia, 1955, Art 116.

²⁸⁰ The Revised Constitution of the Empire of Ethiopia, 1955, Art 116.

triggering factor to revise the constitution to harmonize the socio-political phenomenon, economic policies were not the primary focus of the imperial regime.

Although the constitution had been promulgated in the aftermath of the Second World War, the 1955 constitution had not incorporated the basic standards that would make the constitution the economic constitution. As a sovereign power, the emperor was obliged to take all measures necessary to ensure the safety and welfare of Ethiopians, including their enjoyment of the human rights and fundamental liberties recognized in the present Constitution²⁸¹.

The 1955 revised Ethiopian constitution also set accountability of government institutions for financial matters. Within four months of the fiscal year's end, the Council of Ministers must submit a thorough report on the year's receipts and expenditures to the Emperor and Parliament, as stated under article 120. The report should be promptly forwarded to the Auditor General, who has the power to offer its views to the Emperor and Parliament within three months²⁸². The emperor was empowered to designate an Auditor General to oversee the financial system, inspect all government ministries and departments' accounts, and regularly deliver reports on the government's fiscal activities to the Emperor and Parliament²⁸³. The Auditor-General also required a person of great moral character with the necessary technical skills. The Auditor-General also had unrestricted access to all books and documents about the accounts above²⁸⁴. All these accountability principles, except the imperial intervention, are relevant for the contemporary constitutional accountability of the financial systems in Ethiopia.

4. The 1987 PDRE Constitution

The Peoples' Democratic Republic of Ethiopia (PDRE) constitution was drafted by the constitution drafting commission in August 1987 and enacted through a referendum.

²⁸¹ The Revised Constitution of the Empire of Ethiopia, 1955, Art 36.

²⁸² The Revised Constitution of the Empire of Ethiopia, 1955, Art 120.

²⁸³ The Revised Constitution of the Empire of Ethiopia, 1955, Art 121.

²⁸⁴ The Revised Constitution of the Empire of Ethiopia, 1955, Art 121.

The constitution contains 17 chapters and 119 articles and is backed by the socialist ideology of the Soviet Union. Nevertheless, the 1987 PDRE constitution's preamble recognized the Ethiopian people's historical bravery, praised the country's substantial natural and human resources, and assured to linger the struggle against imperialism, poverty, and hunger.

This constitution can be the first constitution in modern history, with a single political party (Workers Party of Ethiopia) guardians of citizens' rights²⁸⁵. Like other socialist constitutions, the constitution focuses on centralizing most government functions, including the economic ones. However, beyond incorporating a single party within the constitutional text, the 1987 PDRE constitution specified that the party could determine the development perspective of Ethiopia.

The second chapter of the 1987 PDRE constitution dealt with Ethiopia's economic system. Under article 9, the constitution sets the fundamental goal of the economic constitution: it aims for the state to promote the material and cultural growth of the working class. The state was committed to forming a highly interdependent and integrated national economy and instituting favorable development conditions. Furthermore, the PDRE constitution entrusted the state to central planning, state ownership of the means of production, distribution, and exchange, and expansion of cooperative ownership among the population²⁸⁶. The state aimed to lift the country out of economic obscurity by gradually extending and deepening socialist production relations and speeding the development of productive forces via science and technology. Creating a national economy that is highly interconnected and integrated and improving economic ties between rural and urban regions had also been falling on the shoulder of the state²⁸⁷.

Moreover, the state was obliged to guide Ethiopia's economic and social activities through a central plan²⁸⁸. Therefore, the 1987 PDRE constitution can be considered the

²⁸⁵ The Constitution of Peoples Democratic Republic of Ethiopia (PDRE), 1987, Art 6.

²⁸⁶ The 1987 PDRE constitution, Art 9.

²⁸⁷ The 1987 PDRE constitution, Art 9.

²⁸⁸ The 1987 PDRE constitution, Art 10.

only Ethiopian constitution which explicitly incorporates a specific economic ideology in the constitution. The preamble of the PDRE constitution clearly stated that laying the socialist principle is one of the constitution's aims. Furthermore, the economic principle indicated under article 9 emphasized the gradual widening and strengthening of the socialist principle of production in Ethiopia to relieve poverty.

The constitution guarantees the right to private property and the right to transfer it in line with the law²⁸⁹. The government's power to snatch citizens' private property in the guise of nationalization or expropriation had been restricted by the 1987 constitution. After 12 years of a unique nationalization law of 67/1975, many hardworking citizens were poor. However, the constitution explicitly specified that where the public interest necessitates, the state might acquire, requisition by making adequate payment, or nationalize any property in line with the law²⁹⁰.

The budget issues are not incorporated adequately within the constitution. For example, it mentions that the National Shengo, the highest legislative council, is mandated to approve the national budget prepared by the council of ministers. Furthermore, unlike its predecessor, the 1987 constitution fails to incorporate the financial accounting principles and procedures except for recognizing the appointment of the Auditor-General.

5. The 1995 FDRE Constitution

The current Ethiopian constitution (herein referred to as the FDRE constitution) was adopted by the constituent assembly on 8th December 1994. It came into “full force and effect” on 21 August 1995²⁹¹. From now on, the 1995 FDRE constitution (From now on referred to as the FDRE constitution) was particularly keen on making a clean break from the societies’ previous dominant mode of governance, a centralized unitary type of

²⁸⁹ The 1987 PDRE constitution, Art 16.

²⁹⁰ The 1987 PDRE constitution, Art 17.

²⁹¹ See the Proclamations issued to pronounce the Coming into Effect of the Constitution of the Federal Democratic Republic of Ethiopia, Proclamation No. 1/ 1995, Federal Negarit Gazeta, Year 1, and No.1.

government with little acknowledgment of the ethnolinguistic communities that make up Ethiopia's demographic whole²⁹².

Ethiopia is unique because it adopted an ethnic-based federal structure and ethnic-based right to self-determination within the 1995 constitution. As a result, the Tigray People's Liberation Front (TPLF), which is currently labeled as a terrorist group after twenty-seven years of ruling the country, climbed to the federation as one of the most important instruments of public mobilization, which assisted the TPLF to come to power in 1991.

In many respects, the FDRE constitution can be characterized as an ethnic-obsessed constitution rather than the Economic Constitution. Ethnic-based self-determination is one of the ideological foundations of the FDRE constitution²⁹³. Indeed, the NNP's commitment to advance in economic development is articulated in the first paragraph of the preamble of the FDRE constitution. The preamble also explained that one economic community is necessary to create sustainable and mutually supportive conditions for the NNPs' to ensure respect for rights, freedoms, and the joint promotion of interests.

B. ECONOMIC ASPECTS DRAWN FROM THE 1995 FDRE CONSTITUTION

Despite the EPRDF party, the framer of the FDRE constitution, implementing different economic systems until its power end in 2018, there is no explicit policy framework in the constitution. Historically, the EPRDF evolved from socialism to a market economy, to a developmental state, and finally to a democratic state. Solomon Gebru argues that EPRDF's ideological shift from socialism up to Democratic Developmental State derives from the personal ideological passion and conviction of the

²⁹² ARARRSA, Tsegaye, the making and legitimacy of the Ethiopian Constitution: Towards bridging the gap between constitutional design and constitutional practice, *Afrika Focus*, V. 23, No. 1, 2010, pp. 98–104.

²⁹³ Self-determination is a right of every Ethiopian ethnic group to create a region internally and a new country externally.

Late Prime Minister of Ethiopia-Meles Zenawi (until 2012)²⁹⁴. This clearly shows that the lack of constant economic ideology within the party system in Ethiopia during the FDRE constitutional-making process is the primary reason for not incorporating an explicit economic model in the constitution. The second reason for not introducing any economic model in the FDRE constitution is that the pressing issue during the constitution-making time was ethnic self-rule and federalism rather than economic issues.

One of the issues, which can be raised here, is whether a particular economic policy or system preference can be deduced from the FDRE constitution's economic-related provisions. To respond to this question, it is important to focus on the content of constitutions and the degree to which the economic policies are expressed based on the social and political dynamics that gave rise to liberal democracy or social market constitution. The 1995 Ethiopian constitution is better than its predecessors in introducing economic rights, economic institutions, and a fiscal system. Therefore, exploring each aspect of the constitution is vital to understanding the issue.

1. Economic Perspectives Within the Preamble

Much has been said about the 1995 FDRE constitution's ideological foundation, which is ethnic-based self-determination. Undeniably, the constitution emphasizes much ethnic-based self-rule and human rights matters. Examining the content of a preamble is useful for identifying the incorporation of economic policy in the constitution. The first paragraph indicated that one of the aims of adopting the constitution is to advance the economic development of the ethnic groups of Ethiopia. The primary hint is that some innovative economic principles must be within the constitution, which would help hasten the country's economic advancement. The third paragraph in the preamble of the FDRE constitution indicates that the common destiny of the ethnic groups can be protected in best by rectifying historically unjust relationships and further promoting their shared

²⁹⁴ SOLOMON, Gebru, "Political Parties, Party Programmability and Party System in Post 1991 Ethiopia", *European Scientific Journal*, V.10, No.16, 2014, p.20.

interests. The phrase ‘rectifying historically unjust relationships’ has huge economic implications in the constitutional dispensation. The constitution under the preamble recognizes that there was inequality in terms of economy, culture, or governance among ethnic groups in the previous regimes. Economic inequality can be rectified by adopting regulatory legal frameworks rather than constitutional-economic policy. Indeed, the constitution can provide an umbrella policy framework. Furthermore, the preamble also reflected the necessity of building one economic community to create sustainable and mutually supportive conditions for respecting the rights and freedoms and the joint promotion of interests of Ethiopia's nation nationalities and peoples.

Hence, as reflected in the preamble, three economic targets aimed to be achieved by the FDRE constitution: economic advancement, rectifying economic inequality, and building one economic community²⁹⁵. Although the preamble is not part of the binding text of the constitution, it helps to understand and interpret the substantive aspect. In its broadest sense, the economic constitution is a set of legal rules and legislation framing the economic system subjected to legal regulations.

2. Advancing Social and Economic Development in the Constitutional Framework

Let us extract the phrase advancing economic development from the first paragraph of the preamble because this thesis's scope concerned economic constitution. It is easy to understand from the wordings of the first paragraph in the preamble that the NNPs of Ethiopia is committed to advancing economic development besides social development. Indeed, promoting economic growth depends on another main contingency that constructed one economic community.

Tom and Leo argue that constitutions should have the ability to restrain government actions by reducing the stakes of politics, such as making it so that not every new

²⁹⁵ The FDRE constitution 1995, Preamble.

government can change the country's economic policy²⁹⁶. They added that constitutions should provide a guarantee of property rights. If every government could change the game's rules in economic activities, no one would invest, and economic activity would be insecure²⁹⁷. Hence, property rights' stability by entrenching it in the constitutional framework is fundamental to a given market economy²⁹⁸. Suppose a constitution promises to ensure economic advancement. The constitution should contain any provision to incentivize investment by protecting people's core interests. People's interests can be used to ensure non-discrimination in transactions or non-interference of the government in enforcing contracts²⁹⁹. Moreover, the constitution should also guide the general design, establish, and operate good institutions to apply the abovementioned principles³⁰⁰.

Considering this description, the FDRE constitution lacks some necessary points. For example, it does not incorporate freedom of contract, land ownership right, and non-discrimination in transactions within the main body of the text. Indeed, the constitution clearly and unequivocally imposes a duty on the government to support citizens' development endeavors³⁰¹.

It is also vital to investigate the FDRE constitution in the light of its commitment to advancing socio-economic development through its provisions beyond showing the aspiration in the preamble. Does the form of government help promote economic development in Ethiopia is the basic issue? Some scholars debate those parliamentary systems are better at fiscal redistribution than presidential systems; some argue that presidential systems, on the other hand, provide for more checks and balances in the budget process, which can lead to more efficient expenditure³⁰². The political structure of

²⁹⁶ GINSBURG, Tom/LEO, Spitz, Constitutional Design and the Promotion of Economic Growth and Competitiveness, **International IDEA's Charter Change Issues Brief**, No. 4, 2019, p.3.

²⁹⁷ GINSBURG/LEO, p.4.

²⁹⁸ GINSBURG/LEO, p.4.

²⁹⁹ GINSBURG/LEO, p.6.

³⁰⁰ GINSBURG/LEO, p.7.

³⁰¹ The FDRE constitution 1995, Art 89(6).

³⁰² AKEE, Randall/MIRIAM, Jorgensen/ UWE, Sunde, "Constitutions and Economic Development: Evidence from the American Indian Nations", **SSRN Electronic Journal**, No.12, 2012. <https://doi.org/10.2139/ssrn.2157896>, (accessed on July 12, 2021).

government within the constitutional context from the economic perspective can be dealt with in another in-depth research.

The FDRE constitution entrenches Federalism and a Parliamentary form of government. From an Ethiopian perspective, the ramification of installing a parliamentary form of government on economic development requires further independent research. Nonetheless, the Ethiopian parliamentary system has clear economic ramifications on economic advancement. Empowering the House of the Federation (HOF), the upper chamber, to design a budget grant formula to distribute Federal block grants to the regions is a grave mistake that affects the imbalanced economic growth among regions in Ethiopia³⁰³. The HOF lacks the proper expertise to formulate a budget subsidy procedure to enable the Federal government to dispatch annual budget backing to areas. Moreover, snatching the constitutional adjudication power from the judiciary and giving it to the HOF negatively impacts economic advancement.

3. Rectifying Economic Inequality

What does it mean to rectify economic inequality? Economic in-equality among whom? What measures should be incorporated into the constitution to rectify economic inequality? These are the main questions to be addressed here. Economic Inequality among citizens is indeed rampant across the globe in recent years. Economic inequality is inevitable within the market economy because some fortunate individuals gain large profits and control the economy while others remain poor for various reasons. Governments often adopt progressive taxation and distributive justice policy to mitigate these income inequality challenges. However, the FDRE constitution does not indicate economic measures in the text.

The FDRE constitution's concern is not the economic inequality among individuals. Rather it is more concerned with ethnic groups' economic disparities. After all, the preamble hinted that the Nation, Nationalities, and Peoples (Ethnic groups) are the central

³⁰³ The FDRE constitution, Art 62(7).

subject of the constitution. However, there are arguments that there was no economic inequality among ethnic groups; the disparity was based on class differences. The ruling class from all ethnic groups was advantageous economically, while the lower class was poor. The main cause of discrepancy was indeed land that its administration, ownership, and possessory rights have been changed many times in Ethiopia in half a century. So, how does the FDRE constitution envisages remedying such discrepancy? Unfortunately, there is no provision for this issue in the constitution.

The constitution stands from the point that there was an economic discrepancy among ethnic groups in Ethiopian history. That is why the constitution explicitly included a provision that compels a government to provide special assistance to ethnic groups who are least advantaged in economic and social development³⁰⁴. The current financial status of Ethnic groups may not necessarily show their historical injustice.

The main constitutional provision supports the objective of rectifying economic inequality for least disadvantaged groups regardless of ethnic identity. In addition, the FDRE constitution recognizes governments' duty to take measures to assist women, children, disabled persons, and internally displaced persons³⁰⁵. Therefore, affirmative action to rectify historical injustice against women can be underlined as one of the manifestations expressed within the constitution to support the the primary economic objective in the preamble.

4. Building One Economic Community

The first paragraph of the preamble of the FDRE constitution explicitly states that - We the Nation Nationalities and Peoples of Ethiopia:

“...strongly committed, in the full and free exercise of their right to self-determination, to building a political community founded on the rule of law and capable

³⁰⁴ The FDRE constitution 1995, Art 89(4).

³⁰⁵ See the FDRE constitution 1995, art 35(3), 36, 44(2).

of ensuring a lasting peace, guaranteeing a democratic order, and advancing our economic and social development.”

The Amharic and English version of this preamble paragraph has a slight difference. The Amharic Version reads as follows:

«እኛ የኢትዮጵያ ብሄሮች ብሄረሰቦች እና ህዝቦች»

«በሀገራችን ኢትዮጵያ ውስጥ ዘላቂ ሰላም ዋስትና ያለው ዲሞክራሲ እንዲሰፍን እኩኔጫና ማህበራዊ እድገታችን እንዲፋጠን፤ የራሳችንን እድል በራሳችን የመወሰን መብታችን ተጠቅመን፤ በነጻ ፍላጎታችን በህግ የበላይነት እና በራሳችን ፈቃድ ላይ የተመሰረተ አንድ የፖለቲካ ማህበረሰብ በጋራ ለመገንባት ቆርጠን በመነሳት...»

The Translation of this Amharic version states that:

We the Nation Nationalities and Peoples of Ethiopia:

“...Strongly committed, in the exercise of our right to self-determination, to building a political community founded on our free will and the rule of law, and capable of ensuring a lasting peace, sustainable democracy, and advancing our economic and social development.”

The Amharic version included sustainable democracy as a precondition to building one economic community and economic advancement. Nonetheless, the English version missed this aspect. Moreover, the Amharic version emphasizes free will as a foundation for building one economic community.

Furthermore, the fifth paragraph of the FDRE constitution's preamble states that: Ethiopia's NNPs (ethnic groups) are convinced to live as one economic community to create sustainable and mutually supportive conditions for ensuring respect for their rights and freedoms and the joint promotion of their interests. However, what does it mean by one economic community? What are the indicators of one economic community? How is one economic community realized within a deeply divided society? Why does the

preamble emphasize building one economic community as the primary aim of the FDRE constitution?

Building one economic community in a specific country is unique, although it is habitual in confederate multi-national polities such as European Union or ASEAN³⁰⁶ countries. After all, a single economic community can be presumable within a specific country regardless of state structure, whether Federal or Non-federal. Indeed, a decentralized form of government does the governing principle of Federal nations. However, decentralization should not apply at the cost of national common economic issues. The FDRE constitution is very ardent about building a single economic community, on the one hand, and guarantees the ethnic groups' right to self-administration.

According to the FDRE Constitution, the legislative body, the House of Peoples' Representative, has the power to enact civil laws, which the Upper Chamber (House of the Federation) deems necessary to establish and sustain one economic community³⁰⁷. This clearly shows that the legislature must enact civil laws, which would assist the primary aim of the constitution to build an economic community across Ethiopia.

5. Incorporation of Economic Ideology in the FDRE Constitutions

Economic and social challenges, which would face the government system's axis, should be addressed when it is important to establish the fundamental lines of the constitutional order to reshape the shared public sphere. Some classic constitutions cherish individual economic life as an ideological foundation of liberal economy and brought along political institutions and guarantees as an appropriate method to the liberal transformation that Western societies underwent in the 18th Century. Should constitutions contain the economic ideology? The answer to this question is dependent on the essence of constitutions which is expounded. As explained earlier, the purpose of the constitution

³⁰⁶ ASEAN represents the "Association of Southeast Asian Nations", which was established on 8 August 1967 in Bangkok, Thailand, with the signing of the ASEAN Declaration (Bangkok Declaration) by the Founding Fathers of ASEAN: Indonesia, Malaysia, Philippines, Singapore and Thailand.

³⁰⁷ The FDRE constitution 1995, Art 55(6).

is to protect individuals against the state and address social, political, cultural, and economic issues of society. To what extent the constitution handles economic matters determines the status of that constitution, whether it contains economic ideology or not.

There are arguments advocating that constitutions should not incorporate specific economic ideologies. The main reason for that is constitution should not bind future generations to any particular ideology but should assume that individual socio-economic and cultural rights are important. Very few constitutions in the world explicitly incorporated specific economic ideology or policy. For example, the 2008 Ecuadorian constitution adopts the mixed monetary policy under article 283. On the other hand, the 1987 Peoples Democratic Republic of Ethiopian Constitution incorporated socialist ideology as a guiding economic ideology of the state. Indeed, this constitution only stayed for three and half years until the coming into power of the EPRDF regime.

There are other arguments that advocate constitutions should indicate a specific economic principle. According to B. Tanör, the essence of Classic Western liberal constitutionalism is limiting political power, particularly the rising bourgeois-democratic dominions, feudal monarchies, and the social classes from arbitrary and unbridled rule through declarations of rights and constitutions³⁰⁸. Although constitutions marked by liberal philosophy are equipped with rules appropriate to the interests of their makers, it is a legitimate aim to create a constitution that includes directions to create equal uncertainty for all individuals and social groups. In practice, the efforts undertaken for this purpose will protect the interests of some groups more. Consequently, the constitution will be an ideological manifesto that reflects the social project in the mind of the sovereign power. Bui argues that economic rationale, process, or identity can trigger some constitutions of developing countries to make or amend constitutions³⁰⁹. For example, the Philippines has taken the initiative to amend its constitution to ease constitutional limits on foreign ownership of companies, to attract foreign capital and encourage

³⁰⁸ TANÖR, Bülent, *İki Anayasa 1961-1982*, On İki Levha Yayıncılık, İstanbul 2019, s.97.

³⁰⁹ BUI, p.271.

competition³¹⁰. The future generation can amend the constitution if the economic ideology needs to be changed.

In the Ethiopian context, there is no explicit economic ideology within the FDRE constitution. Despite the developmental state theory being the main economic policy of the ruling party for almost three decades, there is no clear incorporation within the constitution. Indeed, the constitution obsessively deals with the development-related provisions regarding right-based expression and government obligation.

6. Accountability and Transparency of the Government as Fundamental Constitutional Principle

A concept of accountability and transparency may be taken from the constitution, according to Bröhmer, and this has a variety of implications for democracy³¹¹. When transparency and accountability are written into the constitution, it applies to all three branches of government: the legislative, executive, and judicial³¹². In order to combat corruption and maladministration and to promote good governance, principles of transparency imply public trust as a critical component of democracy and a modern public administration system, as well as the provision of fair services and responsible government³¹³. Besides ensuring clear standards for executive authority access, contemporary constitutional democracies must also assure the transparency of public functions, allowing the general public to assess the effectiveness of governmental administration and the work of civil servants³¹⁴.

Accountability refers to the numerous institutional checks and balances that control government behavior in a democracy. Accountability and transparency of the government

³¹⁰ BUI, p.271.

³¹¹ JASHARI, Murat/PEPAJ, Islam, “The Role of the Principle of Transparency and Accountability in Public Administration”, *Acta Universitatis Danubius*, V. 10, No. 1, 2018, pp.60-69.

³¹² JASHARI /PEPAJ, p.65.

³¹³ JASHARI /PEPAJ, p.65.

³¹⁴ JASHARI /PEPAJ, p.65.

are one of the five basic principles of the FDRE constitution³¹⁵. The constitution under Article 12 states, “The conduct of the government's affairs shall be transparent and accountable.” Beyond incorporating accountability and transparency as a core constitutional principle, the constitution has committed to implementing these important principles through the institutional and legal framework. For example, the National Auditor General has been established by the constitution to make the government organs accountable for their financial affairs³¹⁶. Moreover, all executive bodies must submit their annual report to the House of People’s Representatives besides the relevant standing committee’s oversight of government activities.

Based on these constitutional provisions, beginning in 2017, the Ethiopian government introduced the concept of financial transparency and accountability to regional and federal level institutions. It issued a directive to implement Financial Transparency and Accountability (FTA) at the federal and regional levels to mainstream the initiative in all public institutions³¹⁷. The Ministry of Finance and Regional Bureaus of Finance implement financial Transparency and Accountability nationally, and Economic Developments are in charge of the regional implementation of the initiative. The implementation is being carried out at all levels of government (from federal to woreda), with the Expenditure Management Reform Directorate managing the overall implementation at the federal and regional levels through its team, and at the regional/city administration level, FTA focal persons in BOFED coordinating the implementation. FTA is implemented in collaboration with the other citizens’ engagement components to ensure accountability and transparency in public basic service delivery sectors (Social Accountability-SA and Grievance Redress mechanisms-GRM)³¹⁸.

³¹⁵ Check the 1995 FDRE constitution from Art 8-11. It includes constitutional supremacy, secularism, popular sovereignty, the inalienability of human and democratic rights and accountability and transparency of government conduct as fundamental principles of the FDRE constitution.

³¹⁶ The FDRE constitution 1995, Art 101.

³¹⁷ **Ministry of Finance and Economic Development of Ethiopia:** <https://www.mofed.gov.et/en/programmes-projects/fta/> (accessed on April 2, 2021).

³¹⁸ **Ministry of Finance and Economic Development of Ethiopia**, p.2.

The goal of FTA is to improve transparency and accountability in public budget processes (budget preparation, allocation, execution, and audits) at the federal, regional/city administration, and Woreda administration levels through the development of various tools such as budget and expenditure templates, budget literacy training manuals, procurement and audit templates, media disclosure, and other supplementary materials.

7. Self Determination

The right to self-determination is one of the founding principles of the FDRE constitution. The current Ethiopian constitution is the only constitution globally that recognizes cessation of any ‘Nation Nationalities and Peoples³¹⁹’ from Ethiopia in contravention with territorial integrity and indivisibility of the nation without conditions. The right to self-determination, including secession, of every Nation, Nationality, and People shall come into effect when the requirements stipulated under Article 39(4) are fulfilled. One of the requirements of exercising self-determination is that the division of assets is effected in a manner prescribed by law. However, there is no law dealing with the division of assets yet.

The provision of the Ethiopian constitution deals with the right to self-determination. While very radical in many ways, it does not provide for the right of nations, nationalities, and peoples to economic self-determination over land and natural resources in the territories they occupy (Art 39). This is a significant departure from the approach taken by the two UN covenants, which present economic self-determination as the core of self-determination (Art 1 of ICESCR and ICCPR). As a result, one could argue that economic self-determination does not receive the same emphasis and priority as secession or external self-determination under the Ethiopian constitution. One of the

³¹⁹ Art 39(5) of the FDRE constitution defines ‘Nation Nationalities and Peoples’ as a group of people who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory.”

issues relevant to economic self-determination³²⁰, namely ownership of land and natural resources, is excluded from the provision dealing with the right to self-determination and is included in a general provision on the property right. This provision (Art 40(3)) states that ownership of land and natural resources “is exclusively vested in the state and peoples of Ethiopia.” However, this provision falls short of addressing the issue of economic self-determination.

8. FDRE Constitution and Private Property

The 1995 FDRE Constitution under article 40(1) guarantees the right to private property. The right to private property includes acquiring, using, and disposing of such property by sale, bequest, or other transfer means. However, this right might be infringed on for legitimate public interest and the rights of other persons. The constitution defines private property as any tangible or intangible object with worth and the labor; creativity produces it; enterprise or capital of Ethiopian physical persons, legal persons, or communities specifically entitled to own property in common by law³²¹. This definition is unique in terms of incorporating communal properties as private property.

Private property is not an absolute right. The government can expropriate private property for public purposes subject to payment in advance of compensation proportional to the property's value³²². The right to immovable property has been fully guaranteed to every Ethiopian he builds. In addition, to the permanent improvements, he brings about on the land by his labor or capital. This right to immovable property comprises alienating, bequeathing, and removing the property where the right of use expires, transferring their

³²⁰ Collective control over land and other natural resources is an essential component of the right to self-determination in general, and it serves as the foundation for exercising fundamental rights and freedoms on an equal footing with others, such as members of advantaged groups. It is also critical for redressing past injustices and exploitation, ensuring equitable access to and enjoyment of economic and social services, and ensuring groups' survival as distinct peoples. Check KYMLICKA, Will, **Justice and Minority Rights, Multicultural Citizenship**, Oxford Scholarship Online, United Kingdom, 1996, pp.107–30.

³²¹ The FDRE constitution 1995, Art 40(2).

³²² The FDRE constitution 1995, Art 40(8).

title, or claiming compensation³²³. The constitution left the detail about the right to property to other laws. The land-related issues have been discussed in the other section.

The FDRE constitution does not restrict the right to private property as observed in the practice and other legal frameworks. However, someone might lose his/her property as a punishment for criminal conduct. In this case, the loss of property rights is justified for the public interest.

C. CONSTITUTIONAL BASIS FOR PRIVATIZATION OF PUBLIC ENTERPRISES IN ETHIOPIA

Privatization transfers operations previously undertaken by the state and state agencies and other state-owned firms to private enterprises, privately-owned corporations, partnerships and groups, and people³²⁴. The narrow sense of privatization is defined as the transfer of economic production from public ownership and administration to the private sector. In the narrow definition of privatization, at least 51% of the ownership and management of public enterprises must be transferred to the private sector³²⁵. In the broader understanding, more than just the transfer of ownership or control, privatization strives to change an economic organization into one that performs following the free-market mechanism and contains the required applications³²⁶.

‘Privatization of Public Enterprises Proclamation No. 146/1998’ defines ‘privatization’ as transferring an enterprise of government shareholdings to private ownership. The transfer can be undertaken through sale, including making an enterprise or government contribution to a shared company to be formed with the participation of private investors and privatization of an enterprise's management³²⁷. The new

³²³ The FDRE constitution 1995, Art 40(7).

³²⁴ NATHAN, KvsK, Privatization of public assets in developing countries, *Amicus Curiae*, Issue 44, 2002, p.5, retrieved from <https://sas-space.sas.ac.uk/3526/1/1270-1328-1-SM.pdf>, (accessed on March 6, 2022).

³²⁵ ÜSTÜN, Süleyman, *Türkiye’de Vergi Ve Bütçe Hakkı Cumhurbaşkanlığı Sistemi Sonrasında Vergi(leme) ve Bütçe(leme) Hakkının Görünümü*, Ankara 2019, s. 325.

³²⁶ ÜSTÜN, *Türkiye’de Vergi Ve Bütçe Hakkı*, s.325.

³²⁷ The Ethiopian Federal Privatization of Public Enterprises Proclamation No. 146/1998, Art 2.

privatization law no. 1206/2020 defines privatization as “a transaction or transactions resulting in either a sale of assets or share capital of a Public Enterprise, in full or in part, to private ownership³²⁸”.

In the disposition and disposal of state assets to the private sector, the government must ensure that it has the authority to do so under the constitution. The provisions of a constitution or law should provide the benefits of such actions accrue to the people³²⁹. Therefore, preparing the state-owned enterprise for transferring to the private sector would be essential before moving forward with the privatization operation³³⁰. A decision on the constitutionality of privatization in any given situation would need this.

The FDRE constitution was enacted in the aftermath of the demise of the socialist regime, and there were large public enterprises in Ethiopia. Therefore, three main questions about the privatization of public enterprises in Ethiopia must be answered. The first question is whether the constitution has any explicit or implicit provision that allows or eases the privatization of public enterprises? The second question is whether the government is permitted to acquire public enterprises? Finally, is there any modality or principle concerning privatizing the public enterprises in the constitution?

Regarding the first question, there is no explicit provision allowing the government to privatize state-owned enterprises. However, the federal government has the power to enact legislation on matters specifically assigned to the federal government³³¹. Based on this, various legislations were promulgated by the House of Peoples’ Representatives regarding privatizing state-owned businesses. The latest one is the Public Enterprises Privatization Proclamation No. 1206/2020. The Proclamation mentions the objectives of privatization. The proclamation underlines that, as part of the country's economic change, the privatization program must adhere to the ideals of transparency, openness, and

³²⁸ The Ethiopian Federal Public Enterprises Privatization Proclamation No. 1206/2020, Art 2(1).

³²⁹ NATHAN, p.6.

³³⁰ NATHAN, P.7

³³¹ The FDRE constitution Art 55(1).

honesty³³². In addition, the efficiency, competitiveness, and ability to attract technical expertise and skillsets should be improved and generated from privatization. Furthermore, the availability of development financing will be increased, and the country's economic development will be bolstered by enhancing the policy environment for private investment³³³. Nevertheless, the proclamation has not incorporated any post-privatization monitoring mechanism regarding whether the privatized entity meets the underlined objectives.

The FDRE constitution does not encourage the privatization of publicly owned enterprises. However, despite public enterprises' existence being not explicit in the constitutional text, it has been promoted in the FDRE constitutional setup. For example, the federal and regional governments have given authority under the FDRE constitution to tax public corporations that their respective governments had set up³³⁴. Federal and regional governments are also empowered to levy and collect taxes on jointly established public businesses³³⁵. Moreover, the constitution underlines that the federal and regional governments must take proactive measures to ensure that all Ethiopians benefit from the country's rich heritage of intellectual and material resources. Therefore, everyone should have an equal opportunity to improve their economic circumstances and promote a more equitable distribution of wealth³³⁶. It clearly shows that the government has the primary option of pursuing this goal as a public enterprise by both earning revenues from taxes and creating job opportunities for citizens. Therefore, privatizing without constitutional principles would affect the government's option to earn income and may have a negative macro-economic impact.

³³² The Ethiopian Federal Public Enterprises Privatization Proclamation No. 1206/2020, Art 3.

³³³ The Ethiopian Federal Public Enterprises Privatization Proclamation No. 1206/2020, Art 3.

³³⁴ See, The FDRE constitution Art 96(3) and Art 97(7). According to Art 97 of the constitution, regions can "impose and collect profit, sales, exercise, and personal income taxes" on the state-owned firms as well as their employees, which includes the state's own employees. Art 96(3), on the other hand, gives the federal government the same authority.

³³⁵ The FDRE constitution 1995, Art 98(1).

³³⁶ The FDRE constitution 1995, Arts 89 and 92.

Concerning air, train, river, and sea transportation and main roadways (highways), the FDRE Constitution clarifies that the Federal Government is in charge of developing, administering, and regulating these services³³⁷. In addition, telecommunication and postal services are also part of the public service matters within the federal government³³⁸. Hence, privatization of these constitutionally recognized public services should be justified in a broad public interest objective.

D. LAND VS FDRE CONSTITUTION

The Ethiopian Constitution of 1995 establishes a broad framework for the country's land policy and enshrines the concept of public land ownership and the inalienability of landholdings. The Ethiopian Constitution declares that land belongs to the state; there are no private property rights inland. Article 40(3) states:

“The right to own rural and urban land and natural resources belong only to the state and the people. The land is an inalienable common property of Ethiopia's nations, nationalities, and peoples and shall not be subject to sale or other transfer means.”³³⁹

While it is widely assumed that the Constitution's provisions have resolved the land tenure situation, the Constitution itself is ambiguous, with significant variations in interpretation by officials at various locations and levels of administration. The FDRE constitution stipulated that the government must hold on behalf of the People, land, and other natural resources and deploy them for their common benefit and development.³⁴⁰ According to the constitution, the right to ownership of rural and urban land and all-natural resources is entirely vested in the State and the peoples of Ethiopia,” according to Article 40(3) of the constitution. The land is a common property of Ethiopia's Nations, Nationalities, and Peoples, and it cannot be sold or exchanged in any way. This means that the state and Ethiopian people own rural and urban land and all-natural resources. The land is a common property of Ethiopia's countries, ethnicities, and peoples, and it may not

³³⁷ The FDRE constitution 1995, Art 51(2).

³³⁸ The FDRE constitution 1995, Art 51(2).

³³⁹ The FDRE constitution 1995, Art 40(3).

³⁴⁰ The FDRE constitution, Art 89(5).

be sold or exchanged in any way.” There are two types of land tenure in Ethiopia: rural and urban.

Article 40(4) of the Constitution stipulates that Ethiopian peasants have the right to purchase land without paying a fee and are protected against being evicted from their land. Likewise, article 40(5) states that Ethiopian pastoralists in lowland areas have the right to free land for grazing and agriculture and not to be evicted from their land. Although the peasant is denied private ownership rights to the land, they are given a "complete title" to the immovable property he constructs and the permanent improvements he makes to the land via his labor or cash. This right includes the ability to alienate, legacy, and if the right of use expires, the ability to remove, transfer or seek compensation for his property.³⁴¹ Furthermore, according to article 40(8), the government may expropriate private property for public use subject to payment in advance of compensation equivalent to the worth of the property.

The state ownership of land has been a controversial topic in Ethiopia since the Ethiopian People’s Revolutionary Democratic Front (EPRDF) came into power in 1991. The ruling government argued that allowing private ownership of rural land might result in large evictions or relocation of the farming community. Poor farmers are compelled to sell their holdings to unscrupulous urban speculators, especially during times of difficulty.³⁴² The rationale raised by the government also supported that there is no sufficient arable land in the lowlands for large-scale modern farms, both for rain-fed and irrigated farming. On the other hand, most farmers live in the highlands, where land is scarce, but human power is abundant due to high population density. Allowing the farmer to sell land here would result in the farmers being displaced or converted to renters.

On the other hand, the opposing neo-liberalist scholars and political party leaders argued that state/public land ownership might erode land tenure security. They claim that

³⁴¹ The FDRE constitution 1995, Art 40(7).

³⁴² Federal Democratic Republic of Ethiopia Rural Development Policies, Strategies and Instruments (Amharic). Addis Ababa: Ministry of Information, Press and Audiovisual Department, 2001, p.12.

land users' lack of tenure security offers little or no incentive to improve land productivity through long-term investment. It also increases transaction costs due to land disputes and inhibits establishing property markets such as credit availability/land mortgage. Furthermore, critics and advocates of private land ownership are concerned that the government may use the property as a political weapon by granting and taking it away from its owners.

However, the government of Ethiopia has tried to respond to the critics practically by conducting the land registration and certification processes in Tigray, Amhara, Oromia, and the Southern regions, which has enabled farmers to have a land certificate for their holdings since 2001. However, the land sale proponents still consistently argued that farmers could not feel secure in their holdings since the land laws do not completely avoid the possibilities of future land distribution. Moreover, the government still possesses the power to take land by appropriation. Therefore, land ownership by private vs. public is not a deciding element in and of itself.

What matters is if there are appropriate procedures and laws to provide tenure security, long-term rights, effective governance, lack of corruption, and the independence of courts and access to justice, among other things. In addition, the rights granted to peasants and the safeguards afforded to individual farmers must be fair and equitable.

Under the FDRE constitution, the federal government can "enact legislation for the exploitation and conservation of land and other natural resources, historical places and items"³⁴³. In 1997, the federal government passed the "Land Administration and Use Proclamation," known as Proclamation 87/1997, later superseded by Proclamation No. 456/2005. Regional states are empowered by Proclamation 456/2005 to "enact rural land administration and land use law" that is consistent with it to execute the land administration law at the regional level. There is also other land-related legislation in Ethiopia. The Urban Land Lease Proclamation 721/2011 and the Land Expropriation

³⁴³ The FDRE Constitution 1995, art 51(5).

Proclamation 455/2005 are some of the land-related laws. To execute the federal rural and urban land-related proclamations, almost all regional states except the new region Sidama have enacted their own Rural Land Administration and Use proclamations and urban lands holding lease rules.

E. CONSTITUTIONALIZING ECONOMIC RIGHTS

Social and economic rights are among the most contentious issues in rights theory and practice. They are frequently referred to as "second-generation rights" instead of "first-generation rights," including civil liberties and political rights³⁴⁴. This distinction has historical significance. Civil liberties existed long before the concept of socio-economic rights was developed. Martin P. Golding distinguishes between the option rights and the claim-rights³⁴⁵. However, the idea of social and economic rights is vague and perplexing. Property rights and enterprise freedom are, in fact, basic freedoms rather than social rights: they empower individuals and limit government intrusion rather than implying government benefits or regulation. For Maurice Cranston, the right to private property is a civil right "inseparable from liberty"³⁴⁶. In fact, for Cranston, the foundation of all other liberties is analogous to personal liberties or political rights³⁴⁷. Even when we consider socio-economic rights, we find that they serve a wide range of functions for the state. Free choice of employment and protection from unemployment implies a state-protective role. Many social rights call for the state to play a regulatory role. Very few economic rights require the state to provide direct goods and services.

Theories of economic development have assumed that the private law protections of contracts and property secured by police and courts can primarily address the state's

³⁴⁴ GOLDING, Martin, **The Concept of Rights: A Historical Sketch**, In: ELSIE, Bandman(eds), *Bioethics and Human Rights* Little, Brown and Company, Boston, 1978, p.67.

³⁴⁵ CRANSTON, Maurice, **What are Human Rights?** Taplinger, New York, 1973, p.7, as cited by OSIATYŃSKI, Wiktor, "Needs-Based Approach to Social and Economic Rights", in: HERTEL, Shareen/ MINKLER, Lanse (eds.), **Economic Rights: Conceptual, Measurement, and Policy Issues**, Cambridge University Press, Cambridge, 2007, p. 65, retrieved from doi:10.1017/CBO9780511511257.003, (accessed on June 17, 2021).

³⁴⁶ OSIATYŃSKI, p. 67.

³⁴⁷ OSIATYŃSKI, p. 67.

responsibility to eradicate poverty³⁴⁸. Theories of law have assumed that public laws applicable to legislatures, governments, officials, and courts play a smaller role in addressing the individual's lack of enjoyment of basic goods and services such as food, water, health, housing, or education³⁴⁹. Constitutionalizing economic rights promises the impossible: guaranteed access to food, water, health care, housing, and education based on each state's resources (with assistance from other states and the international order)³⁵⁰.

The government has both negative and positive obligations in terms of socioeconomic rights. Such distinctions are well described by the conceptual separation of duties to respect, protect, promote, and fulfill economic and social requests, which is common in international human rights and constitutional law³⁵¹. The first duty establishes a negative obligation, while the others outline the areas where the state has a positive obligation to act³⁵². These provisions are important because they apply to civil, political, economic, social, and cultural rights. As a result, rights protection may be limited by an act that fails to respect the right in question or an omission that fails to protect, promote, and fulfill the duty. Because economic and social rights frequently (but not always) correlate to positive obligations on the part of the state, rights are often limited through omissions. According to one analysis, all economic and social rights and civil and political rights are “positive” because government action is involved at every stage³⁵³. The claim that certain rights are negative in that they impose only negative duties of non-interference while others are positive in that they impose only positive obligations of assistance has a lot of potential benefits. Others argue that distinguishing between state acts and omissions

³⁴⁸ YOUNG, Katharine, **Constituting Economic and Social Rights**, Oxford University Press, Oxford 2012, p.453.

³⁴⁹ YOUNG, p. 454.

³⁵⁰ YOUNG, p.455.

³⁵¹ The UN General Comment No. 12 on the Right to Food,1999, 15.

³⁵² FRIED, Charles, **Right and Wrong**, Harvard University Press, Massachusetts, 1980, p.18.

³⁵³ STEPHEN, Holmes/ CASS, Sunstein, **The Cost of Rights: Why Liberty Depends on Taxes**, Norton and Company, NewYork 1999, p.112; SANDRA, Fredman, **Human Rights Transformed: Positive Rights and Positive Duties**, Oxford Legal Studies Research Paper, No. 38, pp. 498-520, 2006, Available at SSRN: <https://ssrn.com/abstract=923936>, (accessed on June 19, 2021).

can be very useful in assessing the intentions and deliberateness of certain actions³⁵⁴. Some scholars reject the constitutional enshrinement of economic rights while accepting civil and political rights, which are examples of negative liberties³⁵⁵.

One of the reasons to reject the constitutional enshrinement of positive rights is that the constitution is intended to protect people from the state's interference in their lives, not to call for governmental action³⁵⁶. Economic rights are positive rights that impose positive duties on the government to assist the people even if scarce resources exist. Hence, they argued that glorifying inherently incompatible constitutional rights is difficult. Another common criticism of enshrining economic rights in the constitution is that economic rights are based on the notion of needs, which is famously difficult to understand, owing to the inability to separate needs from preferences, making it hard to define precisely what constitutes a need³⁵⁷.

Chapter three of the FDRE constitution is fully devoted to human and democratic rights. Almost One-third of the constitutional provisions deal with human rights, although most replicate international human rights provisions. Exceptionally, the FDRE constitution divides the human rights provisions into two parts. The first refers to 'human rights, and the second is democratic rights. Categorizing these 'human' and 'democratic' dichotomy of constitutional rights is unclear. Various legal scholars explain why the FDRE constitution categorizes rights into 'human' and 'democratic' parts in the constitutional structure. For instance, some argue that the FDRE constitution provides a hint under article 10 that the 'human rights' emanate from the nature of humanity, whereas 'democratic rights' are those inherent in democracy³⁵⁸. The contrary argument states that

³⁵⁴ CECILE, Fabre, **Social Rights under the Constitution: Government and the Decent Life**, Oxford University Press, Oxford 2000, p. 41.

³⁵⁵ PEREIRA, Menault, Against Positive Rights, **Valparaiso Law Review**, V.22, 1988, pp. 359-83; see also CECILE, P.17.

³⁵⁶ CECILE, P.7.

³⁵⁷ BRAY, Brooke, **Meeting Needs**, Princeton University Press, New Jersey 1987, p.29.

³⁵⁸ ABEBE, Adem, Human Rights under the Ethiopian Constitution: A Descriptive Overview, **Mizan Law Review**, V.5, No.1, 2011, p.9, <https://www.ajol.info/index.php/mlr/Art/view/68768>, (accessed on July 19, 2021).

the categorization is artificial because some of the ‘rights’ labeled as ‘democratic rights in the constitution incorporate rights classically defined as human rights³⁵⁹. Almost all economic and social rights (ESR) are mostly found in the second part of the democratic rights category. About seven constitutional provisions specifically mention the economic issue of human rights. These are article 35(3), Article 39(5)(E), article 40, article 41, article 42, article 43, and article 44 of the FDRE constitution. The Ethiopian constitution incorporated socio-economic rights in two ways. The first way is a direct recognition of socio-economic rights, and the second is in the way of National Policy Principles and Objectives. Both ways of incorporating economic rights in the Ethiopian constitutional framework are discussed in the following sections.

1. Descriptive Economic Rights in the FDRE Constitution

Socioeconomic rights are acknowledged in Ethiopia's (FDRE) Constitution to a limited extent. However, only a single provision is written in the title “social, economic, and cultural rights’ to mention some of these rights. There seems to be a misunderstanding that only the listed rights under article 41 are socio-economic and cultural. The rights related to labor, gender rights, an adequate standard of living, and the right to development discussed under different constitution provisions are socio-economic and cultural. Hence, the title given to article 41 confuses a layman that it denotes the only provision committed to socio-economic and cultural rights.

Nonetheless, the FDRE constitution misses incorporating some important socio-economic rights such as the right of everyone to social security, including social insurance, the right to health, education, house, food, and even economic self-determination as enshrined in the ICESCR. In addition, the FDRE constitution recognizes the right to self-determination outside the context of the ICESCR.

³⁵⁹ YESHANEW, Sisay, The Justiciability of Human Rights in the Federal Democratic Republic of Ethiopia, *African Human Rights Law Journal*, V. 8, No. 2, 2008, Available at SSRN: <https://ssrn.com/abstract=1530825>, (accessed on July 18, 2021).

The FDRE constitution gives ratified international human rights treaties the capacity to serve as interpretive standards for the Constitution's bill of rights, many of which treat socio-economic rights as justiciable. On the one hand, article 9(4) of the constitution states that regional and international treaties are part and parcel of the national laws. In contrast, article 13(2), on the other hand, stipulates that ratified human rights treaties serve as the interpretive criteria for constitutionally recognized human rights.

2. National Policy Principles and Objectives: Considering Economic Ideology

There is a unique type of provisions dealing with socio-economic rights in the FDRE constitution and those mentioned in the substantive section of the Constitution. These provisions are enlisted under the title of National Policy Principles and Objectives. They are unique from other constitutional provisions in imposing responsibility on the government to fulfill the citizens' social, cultural, economic, and political demands.

In some jurisdictions³⁶⁰, constitutions incorporate national policy principles and objectives commonly known as 'Directive Principles of State policy'. Historically, Directive Principles of State Policy was introduced to the constitutional text of Ireland in 1937 for the first time³⁶¹. Likewise, the Indian constitution has incorporated these important provisions in a detailed manner. Nevertheless, the Indian constitution declared that the directive principles of state policy are not justiciable.

These national policy principles and objectives can be considered as guiding principles of a government in current policy action and future direction regarding its nation and people. These policy principles are the standards that the government must consider in formulating policies and laws to ensure that every citizen's social, economic,

³⁶⁰ The constitutions of Ireland, Nepal, Nigeria, Namibia, Lesotho, Sierra Leone, Ghana, and India have more or less similar provisions to the FDRE constitution chapter 10. See, GEBEYE, Berihun, *The Potential of Directive Principles of State Policy for the Judicial Enforcement of Socio-Economic Rights: a Comparative Study of Ethiopia and India*, **Vienna Journal on International Constitutional Law**, V. 10, No. 5, 2016, p. 5.

³⁶¹ ALI, Abdi, and KWADWO, Appiagyei, "Justiciability of Directive Principles of State Policy in Africa: The Experiences of Ethiopia and Ghana", **Ethiopian Journal of Human Rights**, V.1, 2013, p.4.

and political rights are fulfilled³⁶². For instance, article 85 of the FDRE constitution stipulates that any government organ of the Federal or State level, as the case may be, should be guided by the principles and objectives specified in the implementation of the Constitution, other laws, and public policies. This constitutional chapter typically focused on principles in external relations, national defense, political, economic, social, cultural, and environmental objectives. The constitution from article 84-89 are devoted to deal with the directive principles of state policy which encompasses social, cultural, economic, and foreign relation policy directions.

There are two opposing arguments regarding the applicability of national policy objectives and policy principles enshrined in various constitutions across many jurisdictions. On the one hand, these principles are regarded as core principles that give life to the people's and nation's aspirations. On the other hand, they specify the state's programs and mechanics for achieving the constitutional and economic goals. Most importantly, they are both means and ends for achieving socio-economic and political justice. Furthermore, these principles are instrumental in furthering the people's aspirations and implementing the constitution's aims and objectives³⁶³. However, some scholars claim that the national policy principles and objectives are only constitutional promises with no method for enforcing them. Therefore, even though they are supposed to be enduring values that govern the operation of the state, their lack of justiciability makes their hollow promises. As Ethiopia is a federal nation, two levels of government are recognized under the FDRE Constitution. The FDRE constitution imposes the duty to realize the national policy principles and objectives on both levels of government³⁶⁴. Hence, the regional government is also responsible for learning the economic principles.

³⁶² MEHTA, SM, **A Commentary on Indian Constitutional Law**, Deep & Deep Publications 1990, p.215.

³⁶³ GEBEYE, p.5.

³⁶⁴ The FDRE constitution 1995, Art 85(2) which clearly stated that the term "Government" mean a Federal or State government in understanding the national policy principles and objectives.

F. PRACTICAL IMPLICATIONS OF THE NATIONAL POLICY PRINCIPLES AND OBJECTIVES

The nature of national policy principles and directives within the FDRE constitutional context clearly shows that there are guiding standards in formulating and implementing laws and policies. Moreover, the constitutional provisions-imposed obligations not only on the government but also on the individuals. Some provisions are also indirect Economic, Social and Cultural entitlement of citizens.

It requires independent, in-depth research to ensure the practicability of these special constitutional provisions at the grassroots level. But it is vital to explain some of the practical implications of National Policy Principles and Objectives in the light of justice-ability in court and legal formulation. There is no provision in the FDRE constitution or other laws that defines which matters are justiciable or non-justiciable. Defining the justice-ability of a specific issue is left to the judiciary's discretion. Hence, one can sue a government organ for failing to comply with the constitutionally enshrined national policy principles and objectives. Even if the issue lacks justice-ability in front of courts, the constitutional adjudicator (House of the Federation via the Council of Constitutional Inquiry body) could decide on a matter. A handful of cases have been submitted to the Ethiopian Council of Constitutional Inquiry.

At the same time, the regular courts rejected the case for whatsoever reason, including non-justice-ability. For instance, in 2018, a group of people who lost their house due to the government's action of demolition the houses for the illegality of construction sued the government of Oromia regional state for compensation and to regain their house. The provincial court rejected their case for non-justice-ability. Then, the victims submitted their cases to the Federal Council of Constitutional Inquiry for the violation of their right to the house, guaranteed by the FDRE constitution of article 89(8). Nevertheless, the case is still pending. Another practical incidence was that related to election issues. The Tigray regional state has insisted on undertaking the regional election contradicting the Federal Government's postponement of the elections for covid-19 reasons. The reason raised by

the Tigray regional state officials was that any provisions of the constitution or national laws should be interpreted in line with the constitutional national policy principles and objectives, which are enshrined in articles 85-92 of the 1995 FDRE constitution. They cited Article 88(1) of the FDRE constitution, which states that guided by democratic principles, the government should promote and support the peoples' self-rules. The then Tigray regional officials argued that the federal government should help the people of Tigray to vote for the provincial election at the regionally scheduled time rather than the federal government's election schedule.

On the other hand, scholars supported the Federal Government's stand, claiming that conducting the election at a time when covid-19 overwhelms the country could not make the election democratic. Scholars also cited article 88(1) that the self-rule people should be guided by democratic principles such as free and fair elections and the electoral principle of universal suffrage. Hence, the Council of Constitutional Inquiry decided that the regional election scheduled by the Tigray regional government ahead of the National Election Board's planned election was in contravention of the constitutional principles. The House of Federation also approved the council's decision.

The national policy principles and objectives are crucially important in practice. But there are still some hurdles in the judiciary that they reject cases in the guise of non-justice-ability and lack of jurisdiction in constitutional adjudication. Moreover, the absence of an explicit definition of justice-able matter in the Ethiopian legal system is another practical challenge.

G. ECONOMIC PRINCIPLES IN THE FDRE CONSTITUTION

Article 89 of the FDRE constitution principally deals with the Economic Objectives of the state. The constitutional, economic principle contains nine distinct principles, which fundamentally impose duties on the government to fulfill the economic demands of citizens. Therefore, explaining whether these economic policy objectives indicate any economic ideology within the constitutional framework is vital. Each of the principles is described in detail as follows.

1. Policy on Material and Intellectual Resource Benefits

The duty to formulate national policies, ensuring that all Ethiopians can benefit from the country's legacy of intellectual and material resources, has been imposed on the government constitutionally³⁶⁵. This responsibility of the government intends to realize the socio-economic rights specified under article 41 of the constitution on the one hand and ensure every citizen of the country could benefit from the national resources fairly. On the other hand, the constitution also clearly states that the country's tangible and intangible resources should be accessible to citizens indiscriminately. Nevertheless, this governmental responsibility may not be fully implementable in practice because there are no clear indicators to measure national intellectual resources.

The primary challenge in this respect is that there is no generally accepted practice to formulate such policy, particularly to ensure intellectual property benefits to all citizens³⁶⁶. What are the academic resources, after all? The Amharic version clearly states that 'the government must formulate a way which enables all Ethiopians to benefit from the accumulated wealth and knowledge of the country. The provision has technically devised a governmental obligation to map the tangible and intangible national resources before formulating the policy. However, the Amharic and English versions of the constitution have differences. The English version speciously indicates 'the national intellectual capital' on the one hand and the 'material capital' on the other. National intellectual capital mainly consists of five components: human capital, market capital, process capital, renewal capital, and financial capital as the basis for more comprehensive coverage³⁶⁷. Ethiopia has only the first component – more abundant human capital than other capitals. There is no stock market or any national electronic payment system yet. As such, the government of Ethiopia is not complying with its constitutional duty to formulate a policy that ensures the benefit of all citizens.

³⁶⁵ The FDRE constitution 1995, Art 89(1).

³⁶⁶ CAROL Yun/ LEIF, Edvinsson, **National Intellectual Capital, A Comparison of 40 Countries**, Springer-Verlag, New York 2011, p. 34.

³⁶⁷ CAROL / LEIF, p.34.

The Federal Government of Ethiopia is empowered to protect intellectual property rights³⁶⁸. Protecting the inventions and copyrights is within the Federal Government's exclusive jurisdiction. However, state governments are not excluded from formulating policy frameworks to benefit the regional residents from intellectual and material resources. Equal Opportunity to Improve Citizens' Economic Conditions and to Promote Equitable Distribution of Wealth

The government also must ensure that all Ethiopians get equal opportunities to improve their economic conditions and promote equitable distribution of wealth³⁶⁹. This government responsibility is one of the main constitutional responses to eradicate income inequality among citizens, which is prevalent in many developed countries.

Article 89 of the FDRE constitution signifies that the government should formulate procurement policies and laws to ensure equal opportunity to improve citizens' economic conditions and promote equal distribution of wealth. Some constitutions, like the South African one, explicitly incorporate principles of public procurement into the constitution. Section 217 of subsection 1 of the South African constitution stipulates that when state organs contract for products or services, they must do so in a fair, equitable, transparent, competitive, and cost-effective manner. The South African constitution does not prevent state organs from implementing a procurement policy providing for categories of preference in contract allocation; and (b) the protection or advancement of persons or categories of persons disadvantaged by unfair discrimination³⁷⁰. The Ethiopian constitution does not specifically recognize the affirmative action practice regarding tender issues. However, there is some preference for youth-based business associations to participate in public tenders without providing bank guarantees and bid bonds.

³⁶⁸ The FDRE constitution 1995, Art 51(6).

³⁶⁹ The FDRE constitution 1995, Art 89(2)

³⁷⁰ PHOEBE, Bolton, "Government Procurement as a Policy Tool in South Africa", **Journal of Public Procurement**, V.6, No.3, 2006, p.177.

2. Duty to Avert Disasters and Support Victims

The FDRE constitution is the first-ever constitution explicitly recognizing the right of everyone to protection from disasters. Article 89(3) of the FDRE constitution states that government should take measures to avert any natural and man-made disasters and, in the event of disasters, to provide timely assistance to the victims. This provision guarantees every Ethiopian citizen protection from natural or/and artificial disasters. Ethiopia is prone to drought and famine since the agricultural sector depends on rain. Moreover, the flood has been taken at different times when the rainy season was heavier. The constitutional protection from disaster is very relevant because of the severity and repeatability of disaster. The Ethiopian government has taken measures to avert disasters at the federal or regional level. But the common understanding is that the government is doing it compassionately and voluntarily.

This special duty of the government to avert disasters and compensate victims may depend on the availability of resources. The government should take appropriate steps to prevent natural and man-made disasters and establish an institutional structure that could combat disasters and rehabilitation mechanisms. The state has a constitutional commitment to protect human rights based on the concept of the social contract and by enacting constitutional provisions in terms of international human rights law. The government in Ethiopia classified disaster relief as a humanitarian issue, requiring action motivated by altruism and compassion for the last couple of years. Nevertheless, the government must recognize that disaster loss protection is a matter of rights, not charity or pity.

The right to protection from disaster losses is impliedly related to fundamental human rights of everyone to the right to life, liberty, and security of person and own property. Moreover, it is also associated with the right to a standard of living. Since disasters rob human beings of their rights to life, security, healthy living, and the right to own property, the government must work to prevent disasters from occurring, or at the very least reduce the risks they pose to vulnerable human populations and their

livelihoods. Johnson stated that the state/government is the chief duty-bearer and has the moral and legal obligation to respect, protect, facilitate, and fulfill human rights, including the right to protection from disaster losses by recognizing the international standards in the constitution³⁷¹.

3. Duty to Provide Special Assistance to NNPS

The fourth underlying economic principle within the FDRE constitution is that the government must provide special assistance to the least advantaged ‘Nations, Nationalities, and Peoples (NNPs)’³⁷² in economic and social development. Indeed, there is certain economic inequality among citizens or ethnic groups across the globe. The constitution specifically indicates that the least advantaged ethnic groups in Ethiopia are required to be supported by the government. Likewise, all the nine regional state constitutions have included this duty to assist disadvantaged NNPs. Even the Somali, Afar, and Harari regional states, which have almost homogenous societies, included this provision. This cannot be implemented for those with only one ethnic group.

The most important issue here is the yardstick to measure the developmental level of ethnic groups in society. Limited infrastructure, few educated people, war-torn areas, and peripheral territory were some of the variables used by the Federal Government of Ethiopia to grant additional budget subsidies to five regional states of the country. Benishangul Gumuz, Gambella, Afar, Southern Nation Nationalities, and Peoples’ region and Somali regions were beneficial from this block grant subsidy based on Article 89(4) of the FDRE constitution. Furthermore, the Tigray region also benefited from the subsidy

³⁷¹ JONSSON, Urban, **Human Rights Approach to Development Programming**, UNICEF Eastern and Southern Africa Regional Office Publication, Johannesburg 2003, p.32, <https://www.corteidh.or.cr/tablas/24204.pdf> (accessed on July 12, 2021).

³⁷² Nation, Nationalities and Peoples as defined by Art 39(5) of the FDRE constitution is a group of people who have or share large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identities, a common psychological make-up, and who inhabit an identifiable, predominantly contiguous territory. This clearly shows that every ethnic group can be regarded as Nation, Nationalities and Peoples despite controversy in the meaning.

because the area was disadvantaged during the war between Derg and EPRDF from 1968- to 1991. The higher education entrance score was also lowered substantially for the specified five region students as part of the ethnic groups' assistance until 2015.

Scholars like Haileyesus argued that the constitutional guarantee of providing special assistance to economically least advantaged groups is indeed another measure in promoting minority rights in the country³⁷³. However, it is possible to argue the opposite, that the majority ethnic group might be economically disadvantaged for many reasons. For instance, Oromo, the largest ethnic group in Ethiopia, has been the least advantaged in the economy for obvious historical reasons of political dominance from northern Ethiopia and the feudal political system. Hence, taking this special provision as protection of minority rights requires revisiting.

4. Duty to Promote Popular Participation in the Formulation of National Development Policies and Programs

Article 89(6) of the FDRE constitution imposes a duty on the government to always promote the participation of the People in the formulation of national development policies and programs. This specific constitutional economic principle needs to be analyzed in line with other constitutional provisions, such as Article 43(2), which deals with the right to participate in national development, including consulting on development policies and projects.

Popular participation is defined as citizens' involvement in a wide range of activities related to policymaking and implementation. It includes determining service levels, budget priorities, and the acceptability of physical construction projects to orient government programs toward community needs³⁷⁴. Citizen engagement refers to the people's capacity to take part or participate in the processes and activities of nation-states,

³⁷³ HAILEYESUS, Chekole, **Issues of Minority Rights in the Ethiopian Federation**, European Centre for Minority Issues Working Paper No. 59, 2012, p.7.

³⁷⁴ FOX, William/MEYER, Ivan, **Public and Development Management**, Stellenbosch University Press, Bellville, 1995, p. 13.

particularly in the development of public policy and important decision-making that impacts their day-to-day life³⁷⁵. Individuals must become more involved in and understand public policy-making, enabling citizens to comprehend and actively consider policy options before society. Public participation is a deliberative process in which interested people, civil society groups, and government actors participate in the policymaking process³⁷⁶. There are three degrees of participation: (1) access to information, (2) consultation, and (3) active engagement through discussion and cooperation. The following is a brief overview of how these levels are described in various texts.

Access to information is one of the fundamental and most crucial rights that underpins the whole process of public participation by which the government tells the public about its goals and the sorts of papers it intends to adopt at the start of the process. It also emphasizes the public's right to access all information (e.g., drafts, comments, and reasons) throughout the process³⁷⁷. Freedom of the Mass Media and Access to Information Proclamation 590/2008 has been enacted in Ethiopia. This bill is the first to recognize access to information in Ethiopia. The preamble of the access to information law stipulates that the bill aims to promote and consolidate the values of transparency and accountability in public affairs and to impose a legal obligation on public officials. While there is no need for intensive interaction between the government and the public at this level of public participation, the government should not apply measures that prevent the public from receiving the information crucial for the process. Article 12 of the Proclamation specified that all persons have the right to seek, obtain, and communicate any information held by public bodies, except as expressly provided for by law. The right to access data includes the right to be informed whether the public body has a record containing the requested information and to obtain information from any public body.

³⁷⁵ CAMPBELL, Heather/MARSHALL, Robert, Public Involvement, and Planning: Looking Beyond, The One To The Many, *International Planning Studies*, V. 5, No.3, 2000, pp.321-344.

³⁷⁶ <https://www.eukn.eu/fileadmin/Lib/files/EUKN/2013/Factsheet.pdf>, (accessed on July 17, 2021).

³⁷⁷ CAMPBELL/MARSHALL, p.237.

Consultation is a type of involvement in which the government encourages the public to offer feedback, comments, and thoughts on a certain policy or legislative draft document. While the government defines the subjects on which the public is consulted, this procedure should also allow the public to voice their views on other issues included in the draft policy or law. Public consultation can be held with a larger group of people, CSO representatives, or Political Party Leaders. It is a reactive kind of involvement where the public becomes involved because of the government's request. However, this does not exclude the public from requesting to be consulted. The Federal Administrative Procedure Proclamation 1183/2019 precludes public participation in administrative rule-making.

Active participation (partnership) entails cooperation and shared responsibility at all levels of the decision-making process (agenda setting, issue identification, drafting, decision, and implementation). It is the greatest level of involvement; it may be defined as a situation in which public representatives sit at the same table as representatives of the government. Both parties can take the initiative. While there should be consensus on the process's shared aims, people engaged from the public should be free to maintain their independence, advocate, and campaign for the ideas they wish to implement.

5. Duty to Support the Initiatives of the People in their Development Endeavors

Supporting the people's initiative in the developmental endeavor seems very subjective and difficult to implement. However, the FDRE Constitution imposes a duty on the government to support the People's initiatives in their development endeavors³⁷⁸. What does development endeavor mean from the constitutional perspective? Does it mean individual efforts to grow included in the realm of this provision? To what extent is the governmental support extended. All these questions require an analytical response.

People's development endeavors can be defined as the effort to fulfill fundamental economic needs such as roads, clean water, food, and other related social goods and services. For example, it is habitual that every community individual contributes money

³⁷⁸ The FDRE constitution 1995, Art 89(7).

to road or tap water construction in many rural parts of Ethiopia. This public endeavor to gain basic social needs requires governmental support from many perspectives. Off-course, the government is the primary duty bearer in providing accessible social goods and services. However, the public may take initiatives to fulfill their needs despite the government's insistence on scarce resources.

The FDRE constitution identifies that the government's duty is supporting the people's development endeavors. However, despite the FDRE constitution's remark 'people' instead of 'individual citizen' while imposing a commitment to support development endeavors, there is a common understanding that individual development efforts result in community development. Indeed, the government is responsible for creating job opportunities for individual citizens, per article 41(6). Hence, the government can be constitutionally accountable in that it should provide finance or technical assistance to citizens who wish to develop their economic gain through entrepreneurial work.

The constitution is unclear about the extent of governmental support in citizens' development efforts. Let alone this duty; the constitution does not mention the limits of some economic rights while imposing the duty to fulfill them. Nonetheless, it can be commonly understood that the state may do it if the resources are sufficient to fulfill this obligation.

6. Duty to Ensure Gender Equality in All Economic and Social Development Endeavors

The FDRE constitution can be cited as one of the modern constitutional texts guaranteeing gender equality. The Ethiopian government shall ensure the participation of women in equality with men in all economic and social development endeavors³⁷⁹. Indeed, the FDRE constitution guarantees women in Ethiopia fully exercise their civil, political, social, and cultural rights. Most importantly, the constitution confers women the right to enjoy economic interests equally, even in some instances better than men by affirmative

³⁷⁹ The FDRE constitution 1995, Art 89(7).

action. The constitution also recognizes that women want labor and property rights, such as the right to equal pay for equal work and land rights.

Very few constitutions of democratic countries such as India, Canada, and South Africa recognize affirmative action to equalize historically marginalized groups in terms of social, cultural, and economic aspects. However, the FDRE constitution under article 35(3) explicitly recognizes affirmative action for women. Therefore, affirmative measures could be undertaken in favor of the Ethiopian women to remedy the historical legacy of inequality and discrimination they suffered. Furthermore, the principle obliges the government to enable women to compete and participate based on equality with men in political, social, and economic life as well as in public and private institutions by providing special attention to them.

1993, Ethiopia adopted the first national women's policy, which sought to develop suitable structures within government offices and organizations to produce fair and gender-sensitive public policies³⁸⁰. In 2006, the national action plan for gender equality replaced the 1993's women's policy. However, Ethiopia's federal government reaffirmed its commitment to this the 1993's women's rights protection strategy in the 1995 FDRE constitution. Since then, the government has set up a women's affairs ministry at the federal level and women's affairs offices at the regional level to protect gender equality effectively and efficiently.

Ethiopia joined the Convention on the Elimination of Discrimination against Women (CEDAW) on July 8, 1980, and ratified it on December 10, 1981. Ethiopia has also ratified the International Covenant on Civil and Political Rights, the Convention on the Suppression of Traffic in Persons and the Exploitation of Prostitution of Others, and

³⁸⁰ Implementing the Ethiopian Policy for Women: Institutional and Regulatory Issues, 1998. The Women's Affairs Office, Federal Democratic Republic of Ethiopia, **The World Bank**, <https://openknowledge.worldbank.org/bitstream/handle/10986/9885/571430BRI0Find10disclosed0101211101.pdf?sequence=1&isAllowed=y>, (accessed on July 17, 2021).

the Convention on the Child's Rights³⁸¹. However, Ethiopia has not yet ratified additional international treaties that deal with specific women's issues

Ethiopia's customary patriarchal laws of various ethnic groups restricted women's access to resources differently. Previously, women were not allowed to possess and benefit from the land³⁸². In addition, the inheritance rights of women in Ethiopia had been limited in some religious communities. The legal framework prohibiting poor women from entering informal labor markets has been replaced with new legislation that ensures women with men. The family law, which affected women in marriage and common properties, had been replaced with the new family code, which guarantees women's rights. Despite traditional gender biases against women, the de-jure practice in allocating land and other properties to women is now fairly incorporated into the legal system of Ethiopia. Until recently, women's access to resources was limited due to biases resulting from the traditional family mediation systems³⁸³. Inadequacy of access to legal services and women's organizations at the grassroots level contributed to the protection of gender equality in economic activities.

7. Duty to Fulfill the Rights of Health, Welfare, and Living Standards of the Working Population of the Country

Three provisions of the constitution imposed the duty to fulfill the citizens' Rights of Health, Welfare, and Living Standards in different ways.

Budgetary duty: Article 41(1) of the FDRE constitution states that the Ethiopian government must allocate an ever-increasing resource to provide public health, education, and other social services. This duty of the government reminds us that the annual general budget should prioritize essential social services such as health, welfare, and standard of living. Article 89(9) of the constitution also states that the government shall endeavor to

³⁸¹ **Japan International Cooperative Agency:** https://www.jica.go.jp/english/our_work/thematic_issues/gender/background/pdf/e06eth.pdf, (accessed on July 21, 2021).

³⁸² **Japan International Cooperative Agency, p.17.**

³⁸³ **Japan International Cooperative Agency, p.17.**

preserve and promote the country's working population's health, welfare, and living standards.

Limitation on Government's Duty: Article 90(1) of the FDRE constitution also states that to the extent the country's resources permit, policies should aim to provide all Ethiopians access to public health and education, clean water, housing, food, and social security. Both the Federal and State government are obliged to protect and promote the health, welfare, and living standards of the working population of Ethiopia. The constitutional right to "better living conditions," which is recognized under article 43(1) and Article 89(9) also recognized in international human rights agreements in a detailed manner. For instance, the Universal Declaration of Human Rights (UDHR) provides an individual's and their family's right to a "standard of living suitable for the health and well-being," including food, clothes, shelter, medical treatment, and essential social services, as well as the right to security. Likewise, the ICESCR-recognized right to an "adequate standard of living" provides the right to "adequate food, clothes, and shelter." It has been construed to encompass the water right.

H. DO THE NATIONAL ECONOMIC PRINCIPLES AND OBJECTIVES INDICATE ANY NATIONAL ECONOMIC IDEOLOGY PREFERENCE?

The right to development, the state's obligation to support the peoples' endeavor to develop, and other development-related rights are incorporated within the FDRE constitutional framework. Constitutional obsession with incorporating development-related rights arise from the then ruling party (EPRDF) developmental state political ideology.

Despite the FDRE constitution failing to mention the state's economic ideology explicitly, there are implied indications of developmental state economic ideology, which has been practiced for a quarter of a century in Ethiopia. According to Mehari Taddele, constitutionally, state ownership of land and a federation policy can be employed in the

interest of the developmental state since land meets the core requirement of a natural resource³⁸⁴.

The developmental state is one in which the government is deeply involved in macroeconomic and microeconomic planning to build the economy while also striving to utilize its resources to improve people's lives³⁸⁵. The developmental state is a system of government including direct, deliberate, and persistent engagement in national economic development through industrial policies such as export-led growth and labor regulation.³⁸⁶ A developmental state ideology centered on consensus-based constitutional state-building, inclusive post-conflict rebuilding and development, and distributive social justice³⁸⁷. Initially, a developmental state paradigm may enhance public goods delivery and democracy. Furthermore, efficient delivery of public goods may establish performance credibility, promoting state-society interactions.

The developmental state hypothesis is neither capitalism nor socialism. The developmental state is built on a mix of good private-sector benefits and a positive role for government, which advocates that economic development necessitates the existence of a state capable of creating and regulating favorable circumstances for development³⁸⁸. Incorporating developmental state theory into the constitutional framework denotes a shift from neoliberal economic ideology toward state interventionism³⁸⁹. Hence, this interventionism appears to promote socioeconomic growth or a developmental trajectory, as observed in Ethiopia.

³⁸⁴ MARU, Mehari, the Developmental State Experience in Ethiopia, and Rwanda: Lessons for Libya? **Dialogue Platform for Peace and Stability in Libya series**, No.1, 2021, p.4, <https://cadmus.eui.eu/bitstream/handle/1814/71219/QM-02-21-566-A8-N-EN.pdf?sequence=1&isAllowed=y>, (accessed on July 21, 2021).

³⁸⁵ **UN Economic and Social Commission for Western Asia**, Developmental State Model, 2017, <https://www.unescwa.org/developmental-state-model>, (Accessed on July 21, 2021).

³⁸⁶ RODGERS, Alisdair/ NOEL, Castree/ ROB, Kitchin, **A Dictionary of Human Geography: Developmental State**, Oxford University press, Oxford 2013, <https://www.oxfordreference.com/view/10.1093/acref/9780199599868.001.0001/acref9780199599868-e-391>, (accessed on July 12, 2021).

³⁸⁷ MARU, p.11.

³⁸⁸ ANDRZEJ, p.106.

³⁸⁹ ANDRZEJ, p.106.

Caldentey defines ‘developmental state’ as “the phenomenon of state-led macroeconomic planning where the state had autonomous political power and control over the economy”³⁹⁰. The government of Ethiopia is responsible for planning and operating macroeconomic issues such as combating unemployment and inflation to meet its constitutional responsibility to pursue policies. The government should plan to expand job opportunities for the unemployed and the poor and undertake programs and public works projects as outlined under article 41(6) of the FDRE constitution. Moreover, the state is also constitutionally obliged to the government to undertake all measures necessary to increase opportunities for citizens to find gainful employment in Ethiopia³⁹¹.

I. OTHER ISSUES WHICH NEED TO BE INCLUDED IN THE FDRE CONSTITUTION

Individuals have the freedom to make contracts without intervention from the government. Legal academics frequently reject the strict constitutional protection of contractual freedom, claiming that it imposed a strong laissez-faire attitude on the country, interfered with progressive reform laws, and affected public welfare, particularly that of employees, consumers, and the poor³⁹². According to ordoliberalism, the freedom to contract, which is "clearly important to the fulfillment of a competitive system," is being exploited as a tool to "eradicate competition and build monopolistic positions"³⁹³. A functional competitive order based on contract freedom requires the government not just to refrain from actively impeding competition, but also to "guarantee that the market is not restricted by private pressure groups"³⁹⁴.

³⁹⁰ CALDENTY, Esteban, “In Search of the Developmental State”, **International Journal of Political Economy**, V. 37, No.3, 2007, p.27- 53, retrieved from 10.2753/IJP0891-1916370302,(accessed on July 21, 2021).

³⁹¹ The FDRE constitution 1995, Art 41(7).

³⁹² GORDON, Aaron, An Empirical Appraisal of the Liberty of Contract,(Honors Thesis), Department of Political Science Northwestern University, 2017, p.12.

³⁹³ GORDON, p.12.

³⁹⁴ VANBERG, Victor, The Constitution of Markets, p.14.

According to the constitutional approach, the concerns of "what the exact content of contract law ought to be" and "what contracts should be enforceable" are constitutional³⁹⁵. They are the rules of the game under which catallaxy is to be played. What kinds of restrictions the "freedom of contract" should be subject to is a matter of constitutional choice, and which among potential alternative "regulations" are preferable is to be judged against the constitutional interests of the respective constituents, i.e. the constituents' preferences regarding the kind of constitutional order in which they want to live. It is a question that cannot be answered only by examining whether the individual contracts give mutual benefits to the contractual parties³⁹⁶. Instead, it must be determined if generally allowing for particular types of contracts makes the socioeconomic game more appealing to all participants than if the corresponding contracts were disallowed³⁹⁷.

The FDRE constitution doesn't incorporate the freedom of contract in an explicit manner. Indeed, the right to acquire private property implies the individual's liberty to enter into contracts. It doesn't mean that the freedom of contract in every aspect is allowed by the constitution. Recognition of freedom of contract by ordinary laws is not adequate.

The FDRE constitution also mises to incorporate a specific principle of consumer protection. There is a parliamntary legislation which contains consumer protection rules. However, the constitution is silent about the foundational rules to protect the consumer interests against unfair competition.

II. INSTITUTIONAL SETUP IN THE ECONOMIC CONSTITUTION

A. GENERAL OVERVIEW

In many countries' constitutions, independent economic institutions oversee economic planning, execute development plans, and evaluate the impact of financial actions³⁹⁸. The Economy's regulatory and supervisory bodies are formed by common

³⁹⁵ VANBERG, Victor, *The Constitution of Markets*, p.15.

³⁹⁶ VANBERG, Victor, *The Constitution of Markets*, p.15.

³⁹⁷ VANBERG, Victor, *The Constitution of Markets*, p.16.

³⁹⁸ BULMER, p.16.

statutory law in certain nations³⁹⁹. In contrast, constitutions in other countries set up generic structures, leaving specifics to ordinary laws. Rather than depending exclusively on legislation, it may be beneficial to include independent economic regulatory and supervisory organizations in the constitution to note that these institutions are significant. Constitutionally, it is evident that these institutions are essential to a free and effective state and cannot be interfered with for political ends⁴⁰⁰. Moreover, constitutionally established institutions are more protected and guaranteed independence. The constitution's protection of these institutions' autonomy and authority can also be considered an excellent way to ensure their stable and long-term survival in the national economic performance and regulation, disregarding the regime changes.

There are different regulatory and supervisory institutions in Ethiopian economic management. Regulatory institutions are independent ones established by the constitution and accountable directly to the House of Representatives. In contrast, the other institutions are executive-reliant institutions often established by proclamations and responsible to the Council of Ministers or a specifically designated minister. The independent institutions are the Auditor General and National Census Commission. At the same time, the second groups are Executive institutions, the National Bank of Ethiopia, and Ministries such as the Ministry of revenue and finance. This chapter deals with the institutional framework of the FDRE Constitution, considering its role in economic governance, regulation, and impact. This researcher does not claim that all economic institutions are discussed exhaustively in this research. Various institutions play different roles in the country's economic system in one or the other way. But the major constitutional and legally legitimate economic institutions have been mapped in this section.

³⁹⁹ BULMER, p.18.

⁴⁰⁰ BULMER, p.18.

B. CENTRAL BANK AS AN INDEPENDENT REGULATORY INSTITUTION

The independence of National Banks can be defined as a cumulative and complementary numbers of aspects, such as political autonomy⁴⁰¹ and operational independence⁴⁰². The absence of political influence on the central bank is political independence. Appointment and firing processes for central bank personnel, government representation on central bank consultative or decision-making bodies, and the possibility of conflicts of interest for prominent bank officials are all aspects of determining a bank's political independence⁴⁰³. Political independence is the influence elected politicians have over the central bank. Political independence denotes that the government does not appoint the governor and Board of the Central Bank. Furthermore, the governor's term must be more than five years; no government representative on Board; no government approval for monetary policy formulation or provisions to strengthen the central bank in a conflict with the government.

Operational independence concerning monetary policy implies that the central bank will keep interest rates at the desired level in any case. The prime motivation for functional autonomy concerning monetary policy relates to the political sensitivity of interest rate adjustments operational independence as the ability of the central bank to select and use economic instruments with autonomy. Operational autonomy implies that the direct credit facility to the government is not automatic, at market interest rates, temporary, for a limited amount. The central bank does not participate in the primary market for government debt while the bank has operational autonomy.

⁴⁰¹ The autonomy of the central bank is enshrined in law and shields the central bank from political interference.

⁴⁰² The central bank has the autonomy to determine the best way of achieving its policy goals, including the types of instruments used and the timing of their use. Moreover, the central bank has the right to set its own policy goals, whether inflation targeting, control of the money supply, or maintaining a fixed exchange rate.

⁴⁰³ WALSH, Carl, "Central Bank Independence Revisited, Economic Papers", **Journal of Applied Economics and Policy**, V. 30, No. 1, 2011, p. 20.

Constitutional structures are the foundation of autonomous monetary power to achieve a stable economic system in a state⁴⁰⁴. Rawls thinks it's more rational to delegate political authority to an independent monetary body to combat inflation rather than rely on the government to implement economic policies⁴⁰⁵. The least advantaged will profit from low inflation, which a truly independent monetary authority will achieve. Wealth distribution is the major problem in the national economy, Rawls argues. An absolute criterion for equal distribution of wealth is not possible. Social and economic inequities must be addressed by promoting the less fortunate or delineating the tasks and responsibilities that should be given under equal opportunity settings. According to this reasoning, the independence of economic institutions should be maintained within the constitution.

Most economists agree that a country's ability to control inflation depends on the central bank's ability to act independently⁴⁰⁶. An autonomous central bank/monetary authority, on the other hand, has a lower inflation rate on average, as shown by Rogoff's classic research on the issue⁴⁰⁷. It is only possible to keep inflation under control with such a cautious monetary policy, according to Rogoff⁴⁰⁸. The historical roots of the National Bank of Ethiopia and the overall functional aspects are the discussion points in the next section. Furthermore, the National Bank of Ethiopia has been evaluated in detail based on the independence measurement criteria.

1. National Bank of Ethiopia: Historical Root

The modern banking system was introduced in Ethiopia in 1905 when the then Ethiopian Emperor Menelik II signed a pact with a British-owned National Bank of Egypt

⁴⁰⁴ HAYO, Bernd, "Inflation Culture, Central Independence and Price Stability", **European Journal of Political Economy**, V.14, 1997, pp.241-263.

⁴⁰⁵ HAYO, p.244.

⁴⁰⁶ BAYDUR, Mehmet/SÜSLÜ, Bora, "Independence of Central Bank: The Turkish Experience", **İktisadi Ve İdari Bilimler Dergisi**, C.22, Sa.1, 2008, s.7.

⁴⁰⁷ ROGOFF, Kenneth, "The Optimal Degree of Commitment to an Intermediate Monetary Target", **Quarterly Journal of Economics**, 1985, pp.1169-1189; as cited by BAYDUR/SÜSLÜ, p.3.

⁴⁰⁸ ROGOF, p.1178.

representative to establish the country's first bank⁴⁰⁹. In 1906, the treaty established the first Ethiopian Bank, the Bank of Abyssinia, which the Egyptian National Bank entirely administered.⁴¹⁰ Despite setting the Bank of Abyssinia for 50 years concession period under the supervision of the Egyptian national Bank, Emperor Haile Selassie has managed to liquidate the bank and changed it to the Bank of Ethiopia as the first indigenous African National Bank. The then Egyptian National Bank abandoned the rest of 25 years' cessionary rights to the newly established Bank of Ethiopia in return for a payment of forty thousand Pound Sterling⁴¹¹.

The Bank of Ethiopia only served until the 1935' Italian invasion. From 1935 until 1943, various Italian and British banks were established and operated in Ethiopia⁴¹². The year 1943 remarks the establishment of the State Bank of Ethiopia after ceasing five years of Italian aggression against Ethiopia. The State Bank of Ethiopia served as Commercial Bank and regulatory Central Bank for two decades until 1963. After that, the Ethiopian Monetary and Banking law established two banks called the national and commercial banks separately. Hence, the Central Banking system started operating as a separate entity in Ethiopia in 1964. The Imperial Decree number 206/1963 was the first legal framework that had established the NBE as a central bank and raised the NBE's capital to 10 million Ethiopian dollars. In addition, the decree had granted NBE broad administrative autonomy and juridical personality. These include regulating the supply, availability, and cost of money and credit; managing and administering the country's international reserves; licensing & supervising banks & holding commercial banks' reserves & lending money to them; supervising loans of commercial banks and regulating interest rates; issuing paper

⁴⁰⁹ **National Bank of Ethiopia**, <https://nbebank.com/history-of-banking/> (accessed on May 12, 2021).

⁴¹⁰ **National Bank of Ethiopia**, p.4.

⁴¹¹ **National Bank of Ethiopia**, p.4..

⁴¹² The Italians established branches of their main Banks namely Banca d'Italia, Banco di Roma, Banco di Napoli and Banca Nazionale del lavoro were established and operated in Ethiopia until liberation. In 1941 the British' Barclays Bank, came to Ethiopia with the British troops and organized banking services in Addis Ababa, until its withdrawal in 1943.

money and coins; acting as an agent of the government; fixing and controlling the foreign exchange rates⁴¹³.

Following the emergence of the socialist Derg regime in power in 1974, the powers of the National Bank of Ethiopia extended to realize the government's aim to control the whole economy and nationalize all large corporations. The 1976 monetary and banking proclamation No. 99 shaped the National Bank of Ethiopia's role in the socialist economic principle that the government adopted. NBE was mandated to collaborate with the relevant state organs to participate in national financial planning. The NBE's supervisory role had also been extended to insurance institutions, credit cooperatives, and investment-oriented banks. Furthermore, proclamation no.99/1976 introduced the new Ethiopian currency called 'birr' instead of the former Ethiopia Dollar.

After the fall of the socialist regime, the National Bank of Ethiopia was re-established by proclamation no.83/1994, which recognized the continuation of the 1964th NBE. However, previous constitutions adopted in Ethiopia and the current FDRE constitution do not explicitly establish the NBE. Instead, the 1995th FDRE Constitution has bestowed the power to administer the National Bank to the Federal Government⁴¹⁴ and the Council of Ministers⁴¹⁵.

Banking Business Proclamation No. 592/2008 has replaced proclamation no. 83 /1994. This proclamation amends in 2019 by the Banking Business Amendment Proclamation no 1159/2019. Article 4 of Banking Business Proclamation No. 592/2008 stated, "The purpose of the National Bank is to maintain a stable rate of price and exchange, foster a healthy financial system, and undertake such other related activities conducive to the rapid economic development of Ethiopia."

Although Article 77(4) of the FDRE constitution clearly stated that the Council of Ministers is responsible for administering the NBE, article 4 of the Banking Business

⁴¹³ The Ethiopian Monetary and Banking decree No. 206/1963 see <https://nbebank.com/about-national-bank-of-ethiopia/> (accessed on June 12, 2021).

⁴¹⁴ The FDRE constitution 1995, Art 51(7).

⁴¹⁵ FDRE constitution 1995, Art 77(4).

Proclamation No. 592/2008 makes the NBE accountable to the prime minister. In contradiction with article 77(4) of the FDRE constitution, the national bank has the mandate to coin, print, or Cause to be coined printed and circulated the legal tender currency; and formulate and implement exchange rate policy as already vested by proclamation No.592/2008. Why doesn't the FDRE constitution provide these powers to the NBE rather than the Council of Ministers?

2. Constitutionalizing Central Bank

Constitutions can contain various provisions about the National Bank. For example, constitutions may grant it the right to exist, outlining its structure and the bank's independence; detailing the bank's mission; prohibiting the lending of money to the government; and outlining procedures for selecting and dismissing bank officials, as well as discussing these issues in more detail⁴¹⁶. Comparatively speaking, many nations with a civil law background included provisions on the central bank in their constitutions, whereas common law countries were less likely to do so.⁴¹⁷ Indeed, some constitutions provide adequate autonomy while other constitutions limit their independence.

According to Sir Paul Tucker, if the monetary authority is always a lender of last resort, the central bank's engagement in prudential policy, regulation, and supervision of the private sector's economic system is unavoidable⁴¹⁸. Tucker also said that central banks have evolved as a third major pillar of unelected authority as a constitutional dispensation in addition to the military and judiciary.

The main issue here is why constitutionalizing the Central Banks is significant? First, the central bank's authority might be short-lived or long-lived depending on whatever body of legislation is invoked. Second, unlike an ordinary decree, a constitutional provision cannot be easily amended. A rigid statute, such as the constitution, can better protect the central bank's authority against tampering. Third, relatively high

⁴¹⁶ GUILLERMO, p.53.

⁴¹⁷ GUILLERMO, p.60.

⁴¹⁸ <https://www.cato.org/cato-journal/spring/summer-2020/central-banking-rule-law> (Accessed on 12/05/2021).

hurdles for proposed modifications in such bodies of legislation reduce the risks of withdrawing power or changing the aim.

3. Independence of the National Bank

One of the challenges in contemporary democracy is the political vulnerability of economic institutions. Elected politicians tend to control the regulatory central banks and use the banking system to appease the subjects. Transitional economies' constitutions, according to Lybek, are generally reasonably explicit regarding the nomination, appointment, and, in certain circumstances, expulsion of the governor and other board members⁴¹⁹. However, like in South Africa, only a few constitutions explicitly specify the central bank's objective. After the problems in the early 1980, several Latin American countries have amended their constitution and included detailed provisions on the central bank, including prohibiting direct central bank credit to the government⁴²⁰."

In this regard, the FDRE constitution is unique among its contemporaries because it does not guarantee the national bank's independence. The national bank during the imperial regime was under the direct control of the emperor. However, the socialist Derg regime allowed the government to monopolize all financial institutions, including the national bank. Therefore, the EPRDF regime influences the national bank, including the current government. Consequently, it is vital to deeply look into how the officials of the National Bank appointed its relationship with the federal system and its practical problems.

Let alone guaranteeing independence, the constitution vested the administrative authority over the national bank to the Council of Ministers, which could never be neutral from political party interests. Despite Proclamation No. 591/2008 trying to fill the NBE's independence concern through explicit statements such as an autonomous or independent bank, the organizational structure, and functional practice show its susceptibility to

⁴¹⁹ LYBEK, Tonny, "Central Bank Autonomy, Accountability, and Governance: Conceptual Framework", **IMF Legal Department Seminar**, No.1, August 2004, p.7.

⁴²⁰ LYBEK, p.8.

political influences. Despite Proclamation 591/2008 tried to fill up some of the FDRE constitution gaps. The proclamation gives the wrong impression when it calls for establishing an "independent" national bank. On closer inspection, the legitimacy of this provision can be easily refuted; as Sparve correctly points out, the mere use of terms like "independence," "independently," or "autonomous" in an establishing law does not always imply true independence.

The existing Ethiopian constitutional system emphasizes the need for accountability and transparency⁴²¹. Public officials are expected to carry out their duties openly and take responsibility for their acts. However, researchers increasingly demand that central banks be held accountable for their actions. Appointment procedures in the governance of the National Banks can help increase the level of transparency and accountability. In addition, the Newer CB regulations have transferred the responsibility of central banks from the executive to the legislature⁴²². Preferably, rather than reporting to the executive, the Central Banks should be held accountable for their actions to the parliament⁴²³.

Central Banks often make decisions behind closed doors. Still, they increasingly embrace transparency as an ally in fulfilling demands for more openness and accountability and explaining the monetary policy⁴²⁴. Greater responsibility necessitates open and transparent decision-making through reporting to parliament, an oversight board, assessments by independent commissions, and judicial examination⁴²⁵. In addition,

⁴²¹ The FDRE constitution 1995, art 12.

⁴²² LYBEK, Tonny/MORRIS, JoAnne, "Central Bank Governance: A Survey of Boards and Management", **IMF working paper**, No. 226, 2004, p.23, Retrieved from, <https://www.imf.org/external/pubs/ft/wp/2004/wp04226.pdf>, (accessed on May 19, 2021).

⁴²³ AHSAN, Amirul/SKULLY, Michael/WICKRAMANAYAKE, John, "Determinants of central bank independence and governance: Problems and Policy Implications", **Journal of Administration and Governance**, V. 1. No. 1, 2006, p.10.

⁴²⁴ AMTENBRINK, Fabian, **The Three Pillars of Central Bank Governance - towards a Model Central Bank Law or a Code of Good Governance?**, Erasmus University, Rotterdam, 2008, Retrieved [https://www.rug.nl/research/portal/en/publications/the-three-pillars-of-central-bank-governance\(26e200a4-fec6-48dd-8900-6985ffd06baa\).html](https://www.rug.nl/research/portal/en/publications/the-three-pillars-of-central-bank-governance(26e200a4-fec6-48dd-8900-6985ffd06baa).html), (accessed on May 12, 2021).

⁴²⁵ **Bank for International Settlements (BIS)**, Issues in the governance of central banks, Central Bank Governance Group, 2009, Retrieved from - <https://www.bis.org/publ/othp04.htm>, (accessed on May 12, 2021).

of course, there must be repercussions for wrongdoing, but openness is difficult to achieve until timely and accurate information disclosure is made available⁴²⁶.

The NBE is governed by a Board of Directors composed of seven members elected by the federal government⁴²⁷. The Board of Directors comprises the NBE's governor and deputy governors. The whole Board of directors and governors has no term restriction. No clear rules govern how members can be dismissed from their positions. It suggests that the NBE's leadership is susceptible to political pressure. The other challenge is that NBE does not balance the Center-state financial issues in the Ethiopian federal system. The organizational structure of NBE does not involve any representative from regional states. NBE is a federal government's financial agent without any regional state elements. NBE has played as a political weapon of the ruling party to overcome governmental enemies.

Since 2008, the NBE has lost more government institutional, management, and operational independence. The 1994 Proclamation establishing the NBE had many provisions guaranteeing more autonomy than the current 2008 Proclamation. For instance, the NBE advances to the government in the 1994 Proclamation were strictly limited in volume and had to bear market-related rates determined by the NBE⁴²⁸. More independent central banks reduce the possibility of governments' interference to monetize their debts or to discretionary channel resources to other publics. In recent decades, the principle of central bank independence has been established quasi-constitutional in developed and developing countries. The government should consider re-establishing the principles of NBE independence enshrined in the 1994 Proclamation and strengthening them when relevant: for instance, by imposing a limit on the quantity and duration of advances from the NBE to the government eventually phasing them out altogether.

⁴²⁶ PERRY, Richard, "Central Bank Corporate Governance, Financial Management, and Transparency", **IDEA Bulletin**, V. 64, No. 1, 2001, p.6.

⁴²⁷ LYBEK, p.8.

⁴²⁸ The NBE proclamation No.83/1994, Art 25(3)(a).

C. THE CABINET

In any parliamentary system of government, the prime minister chooses ministers and organizes their own Cabinet, known as the Council of Ministers. The Cabinet is a group of ministers in the government designated by the Prime Minister to lead on several policy areas such as finance, health, transportation, trade, foreign affairs, etc. The Cabinet plays a pivotal role in regulating the national economy. Most of the time, macro-economic decisions are rendered by the Council of Ministers in many parliamentary government systems. Nevertheless, the constitution is a legitimate roadmap to limit the excessive power of the Council of Ministers to protect the nation from economic problems.

According to Article 76 of the Ethiopian Constitution, the Prime Minister is responsible for the Council of Ministers. The Council of Ministers, which includes the Prime Minister, the Deputy Prime Minister, Ministers, and other members, is accountable to the House of People's Representatives in all its decisions. Article 77 of the Constitution outlines the Council of Ministers' powers and responsibilities. The following section demonstrates the economic management roles of the COMs in the FDRE constitutional context.

1. Economic Roles of Council of Ministers within the FDRE Constitutional Framework

The Council of Ministers' role in the Economy can be categorized into three main categories. The primary and inherent part of the COMs is executing laws and policies. The second role is legislative, while the third is the surveillance role. It might be challenging to demonstrate a fundamental distinction between the administrative and legislative powers of COMs. The executive power is sometimes mistaken for the Council of Ministers' legislative and oversight responsibilities. The FDRE constitution makes no distinction between the functions of the COMs.

At the heart of the Ethiopian Federal government, the Council of ministers is the primary decision-making body in financial and fiscal matters. The FDRE constitution under article 77 stipulates that the Council of Ministers is responsible for ensuring the

effective implementation of the country's economic and monetary policies. Moreover, it administers the National Bank, decides on money printing and coin minting, borrows money from domestic and external sources, and regulates foreign currency affairs⁴²⁹.

Furthermore, based on the finance minister's recommendation approves the main budget parameters and fiscal targets; sets spending priorities; decides significant policy issues; resolves budget disputes between the finance minister and his ministerial colleagues; and approves the draft budget for submission to parliament. It is worth noting that the Council of ministers wields a lot of influence because it has the unique prerogative to submit the budget to parliament. The rationale behind the Council of ministers' involvement in budgeting may be effectively viewed as balancing ministers' interests as a group against ministers' claims individually⁴³⁰. The Council's fundamental aim as a collective entity is to keep parliament's trust and continue in power⁴³¹. The individual minister's preference for ever-increasing expenditure within their own respective sector is natural. Still, it runs against the Council's collective goal of keeping taxes and borrowing low while directing spending to the most politically important issues.

The legislative function or role of the COMs is two-fold. First, the FDRE constitution under article 77(13) stipulated that the Council of Ministers may enact regulations according to powers vested in it by the House of Peoples' Representatives. It is a constitutionally recognized delegated-legislative power by which the executive passes the detail as per the mandate given by the parliament. A second legislative job is to bring draft resolutions on any subject, like taxes, to the House of Representatives. Article 77(11) of the FDRE constitution clarifies that the COMs must submit draft laws to the House of People's Representatives on any matter that the House of People's Representatives can handle, including draft laws on declaring war.

⁴²⁹ The FDRE constitution 195, Art 77(4).

⁴³⁰ **World Bank**, The Legal and Institutional Framework, p.7, <http://www1.worldbank.org/publicsector/pe/befa05/OECDChapter2.pdf> (accessed on May 31, 2021).

⁴³¹ **World Bank**, The Legal and Institutional Framework, p.8.

According to article 77(5) of the FDRE constitution, the COMs have the power to protect patents and copyrights. Therefore, protecting patents and copyrights is one of the main economic issues. The protection of patents and copyrights is exclusively given to the federal government in Ethiopia according to the FDRE constitution. However, there is no provision regarding the protection of trademarks in Ethiopia. In the absence of an explicit requirement that provides exclusive power to one government level, a residual power is left to the Ethiopian constitutional region. Hence, it is possible to assume that trademark protection is a regional matter whenever the ancillary trade registration is undertaken in the concerned area.

The COMs is also constitutionally endorsed federal organ to formulate and implement economic, social, and development policies and strategies⁴³². The Federal and Regional Governments are responsible for developing social and economic policies that benefit the citizens and improve the standard of living⁴³³. Therefore, the administrative decision to implement the financial policies was also entrusted to the COMs in Ethiopia.

The surveillance functions of COMs are confined to monitoring the execution of legislation and decisions passed by the House of People's Representatives and maintaining law and order. Because the COMs are a group of ministers, they are responsible for ensuring they carry out their duties. The COMs played a variety of surveillance functions in the national Economy's regulation. For example, the COMs significantly oversaw numerous committees in the recently launched home-grown economic reform program.

2. Macro-Economic Committee and Home-Grown Economic Reform

After the coming into power of prime minister Abiy Ahmed in 2018, many reform agendas have been on the table. One of the reform agendas was the home-grown economic program. The primary goal of Ethiopia's home-grown economic program is to transform the nation from an agricultural low-income country to an industrialized lower-middle-income country by 2030. This will need the private sector to take up growth due to

⁴³² The FDRE constitution 1995, Art 77(6).

⁴³³ The FDRE constitution 1995, Art 89 and 90.

dwindling public sector funding capability. For this purpose, the prime minister has established a macro-economic committee. This Macroeconomic Committee is the principal organ of the government that coordinates economic policymaking in Ethiopia. It is chaired by the Prime Minister and includes the National Bank of Ethiopia Governor, Ministers of Finance, Planning, and Revenue, and Senior Economic Advisers. It bases its decisions on the thoughts and analyses of experts from governments, universities, and research institutes. In addition, a small policy research team backs it up. The Committee's Secretary is the Director of Policy and Performance.

The macroeconomic committee formed by the Prime Minister Abiy Ahmed has no constitutional or legal basis for rendering huge macroeconomic decisions. Constitutionally the Council of Ministers is empowered to decide on main macro-economic matters. However, the macroeconomic committee passed several new economic rules and decisions. For example, the committee has improved the interest rate on the controversial 27 percent National Bank of Ethiopia (NBE) bill that private banks must purchase every time they disburse a loan⁴³⁴. Accordingly, the interest rate of 3 percent with a maturity of five years has increased to 5 percent. Furthermore, the Macroeconomic Committee increased the interest rate yield for a "27 percent NBE bill," which mandates private banks to acquire National Bank of Ethiopia (NBE) bonds from 3% to 5%⁴³⁵.

D. MINISTRY OF FINANCE

Effective budget management starts with a clear division of tasks and duties inside and between levels of government, as well as an adequately balanced allocation of powers between the legislature and the executive branch. The legal framework must be correctly structured for this aim. The custody and administration of all public funds are the responsibility of finance ministries. Therefore, the Ministry of finance must be adequately equipped through the requisite legislative and technical instruments and have staff with

⁴³⁴ **Capital Ethiopia**, <https://www.capitalethiopia.com/capital/macroeconomic-committee-changes-forex-rules/> (accessed on January 12, 2022).

⁴³⁵ **Capital Ethiopia**, p.2.

the skills and training to succeed as the protector of the government's collective budgetary integrity.

The finance ministry must oversee and regulate the budget's execution. Therefore, accounting standards, financial control, internal audit processes, and associated personnel and administrative operations should be handled. In addition, it should be able to obtain information from other ministries and agencies and other levels of government (particularly in federal nations like Austria and Germany) that it considers essential for analysis and control.

The FDRE Ministry of Finance was established just immediately after the promulgation of the FDRE constitution in 1995⁴³⁶. It was restructured under the 'name' of the Ministry of Finance and Economic Development in 2001⁴³⁷. After a decade since 2001, the Ministry of Finance and Economic development changed to the Ministry of Finance and Economic Cooperation. In 2018, when the current regime came to power, it changed the minister to its initial name, the Ministry of Finance⁴³⁸. For almost two decades⁴³⁹, the Ministry of Finance has taken additional responsibility for handling economic cooperation aspects to create economic cooperation, mobilizing, negotiating, and signing foreign development assistance and loans, and following up on the implementation⁴⁴⁰. Handling economic cooperation includes leading and coordinating bilateral economic cooperation with countries and international and regional organizations. The Ministry of Economic Cooperation and Development, which had served for a brief period of five years (1995-2000), was abolished. Some of its powers and duties were transferred to the Ministry of Finance.

⁴³⁶ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 4 /1995, Year 1, No. 4, Art 9.

⁴³⁷ Reorganization of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No. 256/2001, Year 8, No.2, Art 4.

⁴³⁸ Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation No.1097/2018, Year 25, No.2, Art 9.

⁴³⁹ Since 2001 till now, the Ministry of Finance has overtaken the powers and duties of the Ministry of Economic Cooperation besides the Ministry of Finance duties.

⁴⁴⁰ Proclamation No.1097/2018, Art 11(b)(c).

The Ministry of Finance is an essential macro-organization responsible for fiscal policy, public finance, and international trade. According to Article 16 of the Proclamation No.1097/2018 Definition of Authorities and Tasks of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation, the Ministry of Finance has the following powers and duties:

1. Formulate Economic Co-operation and Fiscal Policies

One of the Ministry of Finance's responsibilities is formulating economic cooperation and fiscal policies that serve as a foundation for taxes and duties, monitoring their effective execution, and proposing reforms. Preparing Economic cooperation is one of the main economic-related functions of the government bestowed to the Ministry of Finance. Economic cooperation is undoubtedly one of Ethiopia's most critical challenges that must be addressed with foreign aid. Economic cooperation can be either horizontal or vertical. The Ethiopian government uses horizontal economic cooperation in its foreign policy. This adds to Ethiopia's political, economic, and cultural ties with other nations, strengthens Ethiopia's representation in multilateral organizations, and raises the country's worldwide reputation.

On the other hand, Ethiopia has obtained vertical cooperation to supplement national efforts in critical underdeveloped areas. The Ministry of Finance also has the mandate to lead and coordinate economic cooperation with bilateral, multilateral, and regional organizations established to foster economic collaboration; monitor the impact of such connections on the country's financial performance. Regarding fiscal issues, the Ministry of Revenue and Customs and the House of the Federation have additional powers.

2. Mobilize, Negotiate, and Sign Foreign Aid and Loans and Monitor their Execution.

Following the reform initiatives, the Ministry's mandate was stretched to lead and coordinate economic cooperation with bilateral, multilateral, and regional organizations established to foster economic cooperation. The mandates of mobilizing, negotiating, and signing foreign aid and loans and monitoring their execution are different from country to

country in terms of institutional setup. The Ethiopian context shows that the FDRE constitution provides a blanket provision that the Council of ministers must formulate foreign policy and follow up implementation. The constitution also established a general national policy principle that promotes foreign relations policies based on the protection of national interests and respect for the country's sovereignty. It also notes the necessity of mutual respect for national sovereignty and equality of states, non-interference in other states' internal affairs, and ensuring that foreign relations policies are based on the protection of national interests and respect for the country's sovereignty⁴⁴¹. Moreover, the constitution also underlines the principle to forge and promote ever-growing economic union and fraternal relations of Peoples with Ethiopia's neighbors and other African countries⁴⁴².

3. Formulating Favorable Legislative Framework to Public-Private Partnership

The Ministry of Finance has formulated a policy on Public-Private Partnership (PPP)⁴⁴³, initiated proclamations. It adopts a directive based on its mandate vested by the Proclamation No. 1076/2018, facilitating Public-Private Partnership (PPP) has been undertaken by the Ministry of Finance and adopted by the House of Peoples Representative. Recognizing that the private sector is essential to support the country's economic growth and improve the quality of public services, particularly in infrastructure, this proclamation sets a foundation for the Public-Private Partnership for the country's economic development. A 'PPP' Board has also been formed to grant approvals at key milestones in the project development process. For example, it is responsible for

⁴⁴¹ The FDRE constitution 1995, Art 86.

⁴⁴² The FDRE constitution 1995, Art 86(5).

⁴⁴³ Public-Private Partnerships are a framework for the government to acquire and implement public infrastructure and/or services with the help of the private sector's resources and skills. When governments are faced with issues such as old infrastructure or the need for more efficient services, partnering with the private sector can help create new ideas and provide funding. PPPs bring together the public and private sectors' expertise and resources by sharing risks and duties. This allows governments to benefit from private sector experience while outsourcing day-to-day operations, allowing them to focus on policy, planning, and regulation. See - <https://ppp.worldbank.org/public-private-partnership/about-public-private-partnerships> (accessed on 23/05/2021).

supporting PPP pipeline projects and approving a project to tender and award. The Board consists of the Ministry of Finance (that chairs the Board), National Bank of Ethiopia, Ministry of Water, Irrigation and Electricity, Minister of Transport, Public Enterprises Holding and Administration Agency, National Planning Commission, Ministry of Peace, and two members from institutions representing the private sector.

Public-Private Partnership Directorate General (PPP DG) has been established within the Ministry of Finance and acts as Secretariat to the Board according to the Ministry of Finance and Economic Cooperation directive. The directorate-general is working to fulfill the public's increasing demand for service delivery and infrastructure. It also encourages PPP to design, identify, categorize projects, offer recommendations, develop policies and procedures, coordinate operations, and guarantee compliance. Depending on the amount of delegation agreed upon by the Board, these are fundamental powers under the proclamation. The Board also authorizes acceptable structures, and feasibility studies establish minimum criteria and mandates demonstrating value for money.

4. Budgetary Roles

The Ministry of Finance has given the budgetary mandate by the proclamation 1097/2018, which defines the powers and responsibilities of executive organs of the government under Article 16(1) (E). The Ministry of finance is also the depository for the Federal Government's shares, negotiable and non-negotiable instruments, and other comparable financial assets.

The MoF establishes and monitors federal budgeting, accounting, disbursement, and internal audit systems harmonized and aligned with international standards at the federal and regional levels. It also prepares documentation required for the privatization of public firms; works with necessary government agencies to facilitate privatization processes.⁴⁴⁴ The MoF has four key policy and budgetary responsibilities: Develop and implement

⁴⁴⁴ **World Bank**, Public-Private Partnership, <https://ppp.worldbank.org/public-private-partnership/about-public-private-partnerships> (accessed on May 23, 2021).

fiscal policies, policies for public finance management; external resource mobilization; and public-private partnerships.⁴⁴⁵

E. AUDIT INSTITUTION

The notion of external audit independence is covered in INTOSAI statements⁴⁴⁶. Whereas the Lima Declaration of Guidelines on Auditing Precepts (hereafter referred to as the Lima Declaration) says that Supreme Audit Institutions (hereinafter referred to as SAIs) may only carry out their duties if they are independent of the audited company and safeguarded from outside interference⁴⁴⁷. "Promoting the efficiency, accountability, effectiveness, and transparency of public administration by strengthening supreme audit Institutions" has been endorsed by the United Nations General Assembly in resolutions 66/209 and 69/228⁴⁴⁸. These two resolutions have recognized the principles of the Lima Declaration. In addition, a 2015 UNGA resolution backed the Addis Ababa Action Agenda on Financing for Development, which calls for strengthening national control mechanisms, including supreme audit institutions, and encouraging the mobilization and efficient use of domestic public resources⁴⁴⁹.

The Lima Declaration's main goal is to advocate for independent government audits⁴⁵⁰. A Supreme Audit Institution that fails to meet this requirement is not up to snuff. The Declaration of Lima rests on the tenets of the rule of law and democracy as prerequisites for a truly independent government auditing system⁴⁵¹. The Supreme Audit

⁴⁴⁵ **World Bank**, Public-Private Partnership, p.11.

⁴⁴⁶ INTOSAI: International Organization of Supreme Audit Institutions is an autonomous, independent, and non-political organization. The International Organization of Supreme Audit Institutions (INTOSAI) operates as an umbrella organization for the external government audit community. It is a non-governmental organization with special consultative status with the Economic and Social Council (ECOSOC) of the United Nations. See <https://www.intosai.org/> (accessed on March 2, 2022).

⁴⁴⁷ INTOSAI P-10, Mexico Declaration on SAI Independence, <https://www.issai.org/pronouncements/intosai-p-10-mexico-declaration-on-sai-independence/> (accessed on March 2, 2022).

⁴⁴⁸ INTOSAI, p.5.

⁴⁴⁹ INTOSAI, p.6.

⁴⁵⁰ INTOSAI, p.5

⁴⁵¹ INTOSAI, p.6

Institution (INTOSAI) international gathering in Mexico produced the following eight principles.

Principle one states that it is essential that a constitutional/statutory/legal framework and provisions are applied in practice following this framework. SAI independence needs to be defined in detail in legislation⁴⁵². Principle two emphasizes the protection of tenure and legal immunity for SAI leaders and members (of collegial institutions) in the usual course of their responsibilities⁴⁵³. According to relevant law, SAI's head and members of its collegial institutions must be nominated, reappointed, employed, terminated, and retired under a procedure that ensures their independence from the executive⁴⁵⁴. It is also important that the SAI's authority be appointed for lengthy and set periods to carry out their mandates without the fear of reprisal. They should be immune to prosecution for any conduct that emerges from the regular fulfillment of their responsibilities, past or present⁴⁵⁵.

The third principle urges that the SAI have a broad mandate and unfettered authority to carry out its duties. The use of public funds, resources, or assets by a recipient or beneficiary should be subject to audit by SAIs, regardless of the legal legality of the usage. SAIs should also conduct audits of the government's or public entity's ability to collect money owing to them, their legality and regularity, and the quality of their accounting and financial reporting.

The fourth Mexico principle on the independence of SAIs is related to their ability to unrestricted access to relevant information. To fulfill their statutory duties, SAIs require sufficient authority to collect the documents and information they need quickly, unhindered, direct, and unrestricted. The fifth principle is that the SAIs have a right and a duty to report on their activities. When it comes to audits, the results should not be kept

⁴⁵² INTOSAI, p.7.

⁴⁵³ INTOSAI, p.7.

⁴⁵⁴ INTOSAI, P.7.

⁴⁵⁵ INTOSAI, p.8.

secret by SAIs. They should be obligated to report on the findings of their audits at least once a year by law.

For the sixth principle, the ability to produce and disseminate audit reports is critical. The substance of audit reports is entirely up to the discretion of SAIs. They can provide remarks and suggestions in the audit report, considering the audited entity's perspective as appropriate. The legislation outlines the minimum reporting criteria and particular issues that should be subject to a formal audit opinion or certificate. If a specific reporting obligation is mandated by law, SAIs can choose the timeframe of their audit reports. When requested by the Legislature, one of its agencies, or government, SAIs may be able to handle particular inquiries and audit requests. As soon as their reports have been legally submitted or handed to the relevant authorities, SAIs can publish and disseminate them.

The seventh principle There must be a system to follow up on SAI suggestions. To ensure that their suggestions for remedial action are implemented, SAIs provide their reports to the Legislature, one of its commissions, or the governing board of the auditee, as the situation requires. Following up on SAI findings and recommendations and those made by legislators, commissions, or auditees' governing boards is done internally by the SAI to ensure that their findings and recommendations are implemented. Even though SAIs have their legislative powers for follow-up and punishment, SAIs send their follow-up reports to the Legislature, one of its commissions, or the auditee's governing board, as appropriate, for review and action.

Principle eight Human, material, and financial resources must support financial and managerial/administrative autonomy. To be effective, SAIs must have access to all necessary and reasonable resources including human, material, and financial—without interference from the Executive. SAIs are in charge of their financial planning and management. For SAIs to accomplish their role, the Legislature or one of its commissioners must provide adequate funding. If the resources supplied are insufficient, SAIs can directly appeal to the Legislature.

The FDRE constitution has established the Office of the Auditor General of the Federal Government of Ethiopia under article 101. However, the constitution left the details of functions of the Auditor General to be determined by law. Hence, Office of the Federal Auditor General Establishment Proclamation No. 68/1997 was adopted by the House of Peoples Representatives for the first time in 1997. This proclamation had served until 2010, when the new Auditor General Proclamation No. 669/2010 was proclaimed. This proclamation was also repealed in 2016 and replaced by the currently serving law known as the proclamation amendment to the Federal Auditor General Re-establishment Proclamation 982/2016.

Article 101 of the FDRE constitution deals with the Federal Auditor General. The constitution required the Federal Auditor General to be appointed by the House of Peoples' Representatives upon recommendations by the Prime Minister. Similarly, all the repealed proclamations and the existing amendment of the proclamation to the Federal Auditor General re-establishment Proclamation 982/2016 declares the same appointment procedure to the Federal Auditor general⁴⁵⁶. Therefore, the Federal Auditor General is responsible to the House of Peoples' Representatives and, in between sessions, to the President of the Federal Republic⁴⁵⁷. In the absence of the Federal Auditor General, a Federal Deputy Auditor-General who the House of Peoples' Representatives can appoint on the Prime Minister's recommendation shall assist the Federal Auditor General and be responsible for the direction of the activities of the Office of the Federal Auditor General⁴⁵⁸.

Article 101 sub-article 2 of the FDRE constitution also deals with the function of the Auditor General. The functions include auditing and inspecting the accounts of ministries and other Federal government agencies to ensure that expenditures are appropriately made for activities carried out during the fiscal year, following the approved

⁴⁵⁶ The amendment of Proclamation to the Federal Auditor General Re-establishment Proclamation 982/2016, 22nd Year No 109, Addis Ababa, 21st September 2016, Art 6.

⁴⁵⁷ The Ethiopian Federal Auditor General Re-establishment Proclamation 982/2016, Art 6.

⁴⁵⁸ The Federal Auditor General Re-establishment Proclamation 982/2016, Art 6.

allocations, and submitting his reports to the House of Peoples' Representatives. The Federal Auditor General aims to strengthen an audit system required for accurate information and efficient management of the Federal Government's programs and budget. It also assures that all receivable money and property of the Federal Government are collected, maintained, and utilized correctly in line with Federal Government rules and regulations and reports this to the Council. The FAG is responsible for conducting financial and performance audits of federal government departments⁴⁵⁹.

The Federal Auditor General's Office has the following powers and authorities. Audit or Cause to be audited the Federal Government Offices and Organizations accounts. In all matters concerning the audit work, the Auditors General, and the audit team, individual auditors should be devoid of personal and environmental impediments to independence in both fact and appearance. They should project an independent attitude and demeanor⁴⁶⁰.

F. HOUSE OF THE FEDERATION

One of the federal government houses, the House of the Federation (hereinafter referred to as HoF), is a peer-institution of the 'senate'⁴⁶¹ in terms of structure than functions. Article 53 of the FDRE constitution states the presence of two houses at the federal level: The House of Peoples' Representatives and the House of the Federation. Each 'Nation, Nationality and People (NNPs)⁴⁶²' are supposed to be represented by at least one member in the HoF, plus one representative per million inhabitants of each NNPs⁴⁶³. In the HoF, individual ethnolinguistic groups are represented instead of constituent states

⁴⁵⁹ Office of the Federal Auditor General Establishment Proclamation No. 68/1997, Art 4, The amendment of Proclamation to the Federal Auditor General Re-establishment Proclamation 982/2016, Art 4.

⁴⁶⁰ The Ethiopian Federal Auditor General Establishment Proclamation No. 68/1997, Art 4.

⁴⁶¹ The Ethiopian Federal Auditor General Establishment Proclamation No. 68/1997, Art 4.

⁴⁶² The Ethiopian Federal Auditor General Establishment Proclamation No. 68/1997, Art 5.

⁴⁶³ The FDRE constitution 1995, Art 61.

of the federation. Despite the absence of any legislative function⁴⁶⁴, HoF plays a pivotal role in the financial and economic governance of the country.

Besides the FDRE constitution, the power and functions of the HoF have been consolidated by proclamation no.251/2001. This proclamation enacted by the other house(House of People's Representative) aims to elucidate the constitutionally stipulated general power and functions of the HoF. The main powers of the HoF are more elaborated in this statute. For instance, article 4 of the proclamation 251/2001 clarified that the ability to interpret the Constitution does not mean rendering a consultancy service on Constitutional interpretation. Furthermore, the enacted law is presumed constitutional, while the House starts to review its constitutionality unless the contrary is proved. Suppose the law's constitutionality is found to be controversial. In that case, a government body with a mandate to consult the government(Ministry of Justice) must consult the Federal or State government⁴⁶⁵.

House of the Federation has various functions in the Ethiopian constitutional system. Every six years, the HoF participates in the election of the president. The HoF is also involved in the constitutional amendment process, which can occur in two stages. As a result, the human and democratic rights enshrined in Chapter 3 will be changed if they get a majority vote from all regional councils and approval from a two-thirds majority in each HoF and HoPR. On the other hand, amendments to other provisions of the constitution need support by a two-thirds majority in the joint federal parliament and a majority vote by at least two-thirds of the member states. Furthermore, the House of Federations is involved in electoral constituency delimitation because it has the authority to decide the borders of electoral districts based on census findings. This is "reviewing

⁴⁶⁴ Despite the House of Federation exercising no legislative powers, it has the authority to rule on civil cases that may need the introduction of legislation due to their importance in establishing the federation's "one economic community." This role is even limited to drafting the bill and sending it to the lower house, the House of Peoples' Representatives, which has the authority to pass legislation.

⁴⁶⁵ Consolidation of the House of the Federation and Definition of its Powers and Responsibilities Proclamation No. 251/2001, No. 41, Addis Ababa,2001, Art 9.

and approving" a recommendation from the National Election Board, which reports to the House of Peoples' Representatives.

As the constitutional umpiring organ, budget grant formulator, and tax designator⁴⁶⁶, the HoF was invented to bridge the federal government, the regional states, and the NNPs in light of the equitable distribution of resources and the National Economy. Therefore, it is essential to examine each of the powers of the HoF in detail. In addition, the HoF has created three standing committees under article 62(10) of the FDRE constitution.

1. Deciding subsidies and Division of Revenues

A formula-based equalization transfer system may be categorized into four main categories: revenue-raising capacity, expenditure need, equal per capita, and expenditure need and revenue-raising capacity⁴⁶⁷. Instead of employing advanced formulas to estimate the budget subsidy that each regional state needs, the FDRE administration uses basic metrics of expenditure needs to make the budget grant determination⁴⁶⁸. This method, however, does not include scientific measures of each regional state government's budgetary capacity and demands. Unjust allocation of cash and provincial bargaining can readily result from this. It might also harm municipal autonomy, flexibility, fiscal efficiency, and fiscal equality⁴⁶⁹. There is little chance that budget subsidy based on expenditure need estimation of the regions will positively impact government fiscal transfer policy.

The HoF has the power to determine the division of revenues derived from joint Federal and State tax sources and the Federal Government's subsidies to the States. Article

⁴⁶⁶ The FDRE constitution 1995, Art 99 clearly provided a power determine on the exercise of powers of taxation which have not been specifically provided for in the Constitution, to the House of the Federation and the House of Peoples' Representatives in a joint session, by a two-thirds majority vote.

⁴⁶⁷ BARATI, Izabella/SZALAI, Akos, **Fiscal Decentralization in Hungary**, Centre for Public Affairs Studies, Budapest University of Economic Sciences, Budapest, 2000, p.11; BOADWAY, Robin, "The Theory and Practice of Equalization", **Cesifo Economic Studies**, V.50, No.1, 2004, pp. 211–54.

⁴⁶⁸ **FDRE House of the Federations**: The Federal General-Purpose Grant Distribution Formula 2017/18 - 2019/2020, Addis Ababa, 2017, <http://www.hofethiopia.gov.et/web/guest/decisions-documents/-/document/files/21546>, (accessed on February 14, 2022), p.5. .

⁴⁶⁹ **FDRE House of the Federations**, p.5.

35 of proclamation no.251/2001 states that based on information obtained from appropriate executive organs, the HoF should establish a credible and continual improvement formula of subsidies that the federal government may offer to states. The HoF is also authorized to develop procedures and processes for dividing funds from shared tax sources between the Federal Government and the Regional State.

The HoF has established an 'income distribution' standing committee within its organizational structure to undertake various functions relating to the block grant formula and income distribution to regional states⁴⁷⁰. The budget grant and income distribution standing committee is accountable to the HoF and has undertaken various functions regarding the division of revenue and subsidies. The standing committee is responsible for formulating and implementing a plan to promote and develop unity based on the equality and consent of the people, to bring about balanced development among the regions, and to create one economic community.⁴⁷¹ Furthermore, the committee offers to the House a study-based proposal on the formula for the distribution of subsidies and ordinary income; once authorized, it monitors its performance.

According to the Ethiopian Federal Constitution, the House of Federation (HoF) and the House of Representatives share the authority to provide federal budget subsidies from the Federal Government to regional governments (HoR). The House of Federation has the authority to develop a federal grant formula to allocate subsidies that the federal government may pay to regional states⁴⁷². At the same time, the House of People Representatives is granted the ability to approve the national budget, including deciding the overall pool and how much of this entire national budget would be allotted for the regions⁴⁷³. In other words, the whole collection of the funding authorized by the House of Representatives will be dispersed among the regional governments using the Federal Budget Subsidy Allocation Formula devised and approved by the House of Federation. It

⁴⁷⁰ The House of Federation Working Procedures and Members' Code of Conduct No. 3/2013, Art 72.

⁴⁷¹ <http://213.55.98.35/web/guest/income-distribution>(accessed on May 12, 2021).

⁴⁷² The FDRE Constitution 1995, Art 62(7).

⁴⁷³ The FDRE Constitution, Art 55(11).

also has the power to conduct research that evaluates the role of the budget grant in realizing equality among regional states and equitable distribution of wealth. Besides the subsidy-related responsibilities, the committee was mandated to present a tax designation proposal to the joint session of HoF and HoPR after identifying undesignated tax powers and in consultation with a relevant HoPR committee.

The formula-based fiscal equalization transfer system, if correctly structured, is favored over the political bargaining and ad hoc alternative. A formula-based fiscal grant formula should comply with international standards and practices for effective intergovernmental fiscal transfers and federal funding distribution. As a result, it's more likely to meet constitutional and legal norms, including vertical and horizontal equity and efficiency and revenue sufficiency. Vertical equality is accomplished if a region's revenue is compatible with its expenditure obligations and requirements. In contrast, horizontal equity is achieved when two areas with the same expenditure needs but differing tax bases can deliver a comparable level of service at similar tax rates.

To be considered efficient, a budget allocation formula must be independent of sub-national governments' decisions on allocating resources among various economic activities. While it may not be a panacea, it should help regions meet their obligations and generate enough income to support economic growth and public service delivery in their respective jurisdictions.

Since 1994/95, the House of Federations (HoF) has been in charge of how much money each region receives in terms of budget subsidies and other duties and obligations. The HoF has appropriately implemented subsidy allocation to reflect the state's fiscal imbalances. As a result, the House of Federations periodically revises the formula for allocating federal subsidies to keep up with changes in the socio-economic situations in each state and to fill any budget deficiencies in the vertical fiscal system.

2. Interpreting the Constitution

One of the unique features of the FDRE constitution is that it bestows the power to interpret the constitution to the HoF⁴⁷⁴. However, it also has the authority to form the Council of Constitutional Inquiry, which has the authority to investigate constitutional problems and, if required, interpret the Constitution to provide recommendations to the House of Federation⁴⁷⁵. Then the HoF must approve or reject the constitutional interpretation suggestions forwarded by the Council of Constitutional Inquiry.

A constitutional interpretation standing committee has been established within the HoF to facilitate constitutional dispute adjudication issues⁴⁷⁶. This standing committee is composed of members of the HoF and other experts. Some of the main functions of this standing committee are applying various constitutional interpretation principles, investigating the constitutional interpretation suggestions forwarded by the council of constitutional inquiry body, and supervising the proper implementation of the related constitutional decisions of the HoF⁴⁷⁷.

House of the Federations has rendered several economic-related constitutional decisions so far. 79.41% (82 out of 102 cases) of the total cases in which the constitutional interpretation rendered by the HoF from its establishment till 2021 is related to economic issues.⁴⁷⁸ This data indicated that the financial provisions of the constitution are more prone to the constitutional dispute in Ethiopia.

G. HOUSE OF PEOPLES' REPRESENTATIVE: LEGISLATIVE ROLE IN THE LIGHT OF ECONOMY

The House of Peoples' Representative (hereinafter referred to as HoPR) is the federal legislative organ that has a significant role in the economic governance in Ethiopia.

⁴⁷⁴ The FDRE constitution, Art 62(1).

⁴⁷⁵ The FDRE constitution, Art 84(2).

⁴⁷⁶ The House of Federation Working Procedures, Art 72.

⁴⁷⁷ The House of Federation Working Procedures, Art 74.

⁴⁷⁸ This data has been calculated based on the fact that 82 cases are related to property-related constitutional rights out of the total 102 cases which got a decision of the HoF, see **Error! Hyperlink reference not valid.** (accessed on September 21, 2021).

The constitution designates HoPR to legislate in all federal matters. The role of HoPR in the light of economic governance can be categorized into three. The first role is inherent by its nature and the legislative function. The second role is the supervisory role. The third one is the constitutive role or the role that creates an institutional system to regulate the Economy.

Despite the FDRE, Constitution designated the HoPR to legislate on all federal matters, the power to enact civil laws, which the House of the Federation deems necessary to establish and sustain one economic community⁴⁷⁹. In addition, the HoPR has the power to approve general policies and strategies of the country's economic, social, and development, and fiscal and monetary policy, which has never been exercised yet. The local currency, the administration of the National Bank, and foreign exchange-related laws could also be enacted by the HoPR. It has delegated its power of enacting directives on foreign currency issues to the National Bank of Ethiopia (NBE)⁴⁸⁰. NBE has adopted many directives on foreign exchange regulation. Such directives determine the conditions, limitations, and circumstances under which a person/entity can possess and utilize foreign currency or instruments of payment about foreign exchange; regulate the terms and conditions for the transfer of foreign currency to and from Ethiopia, especially concerning export and import. Delegating the power to legislate foreign exchange issues to the NBE can be unconstitutional. Moreover, the FDRE constitution designated the HoPR to enact laws on foreign exchange matters and administration of the NBE.

⁴⁷⁹ The FDRE constitution, Art 55(1) and Art 55(5) .

⁴⁸⁰ Art 20 of Proclamation No. 591/2008 stated that the National Bank of Ethiopia Establishment (as Amended) Proclamation, the conditions, limitations, and circumstances under which residents of Ethiopia, and non-residents visiting Ethiopia, or any other person may possess and utilize foreign currency or instruments of payments in foreign exchange shall be determined by the directive to be issued by the National Bank.

H. THE JUDICIARY

The judicial legitimacy is fundamentally sourced from the constitutional provisions that guarantee its independence⁴⁸¹. Democratic legitimacy within a specific country can't be achieved without securing judicial independence and holding the public trust and confidence in the judicial system. Indeed, the absence of accountability mechanisms parallel with the independence of the judiciary may cast a shadow over the public legitimacy of the judiciary⁴⁸². Judicial Financing is one of the factors that may affect both the autonomy and accountability of the judicial system, which can be related to the judicial legitimacy in one way or another.

An independent judiciary is enshrined in the Ethiopian Constitution, which grants the courts sole authority over judicial matters⁴⁸³. Human rights provisions of Ethiopia's constitution continue to be adjudicated by courts, notwithstanding opposing views on the role of courts in judging the constitution. The federal and state judiciaries are both established by the Constitution. The Constitution establishes the Federal Supreme Court, and the House of Peoples' Representatives is authorized by a two-thirds majority vote to create Federal High Courts and First Instance Courts countrywide or in certain areas of the country as considered essential. The Constitution has provisions that ensure both the personal independence of judges and the institutional independence of the judiciary. Courts at all levels must be devoid of intervention or influence from any governmental entity, government person, or another source⁴⁸⁴.

An important standard has been adopted by almost all democratic countries regarding the establishment, structure and powers of the “supreme judicial councils”, to

⁴⁸¹ BİLİR, Faruk, “Demokratik Meşruluk, Yargı bağımsızlığı ve Yargı Tarafsızlığı bağlamında Yargı Organının (Yeniden)Yapılması”, in: GÖZTEPE, Ece/ÇELEBİ, Aykut, Demokratik Anayasa; Görüşler ve Öneriler, Metis Yayınları, İstanbul,2012, ss. 369-418.

⁴⁸² BİLİR, Demokratik Meşruluk, s.376.

⁴⁸³ FDRE Constitution, art 79(1).

⁴⁸⁴ FDRE Constitution, art 79(2).

ensure the independence and impartiality of the judiciary⁴⁸⁵. The high judicial councils should be structured following the principles of independence, impartiality, accountability, transparency, democratic legitimacy, broad-based representation, appointing members from different categories, and the board having constitutional status. In most democratic countries, the structure of high judicial councils conforms to these principles.

To guarantee the judiciary's financial independence, the Constitution empowers the FSC to create the budget for federal courts and present it directly to the House of Peoples Representative for approval⁴⁸⁶. In legal documents, the executive has no meaningful role in creating and approving the judiciary's budget. The Federal Supreme Court handles the budget after it has been approved.

The president of the Federal Supreme Court of Ethiopia is mandated under Art. 79 (6) of the Constitution to draft a budget for Federal Courts and propose it to the House of People's Representatives. Furthermore, the President and any other judicial authorities he designates must justify the Federal Courts' budget proposal to the House of Peoples' Representatives⁴⁸⁷. The Federal Supreme Court shall make a report to the House of People's Representatives on the administration of federal courts' budgets.

Although the state councils primarily decide the budgets of the regional courts, the FDRE constitution stipulates that the House of Peoples' Representatives provides budget compensation to the regional supreme and high courts, which adjudicates the federal matters which could have been adjudicated by the federal high and first courts. The Federal Courts Proclamation No. 1234/2021 stipulates that the Federal Supreme Court decides on federal compensation claims filed by state courts for their services delivered to adjudicate federal matters. Accordingly, the budget compensation claim can be submitted to the House of Representatives by the Federal Supreme Court. Under this legal

⁴⁸⁵ BİLİR, Demokratik Meşruluk, s.377.

⁴⁸⁶ FDRE Constitution, art 79(6).

⁴⁸⁷ The Federal Courts Proclamation No.1234/2021, art. 17(2)(c).

framework, annual compensatory(subsidy) budgets can be provided to state courts. In practice, the subsidy budget is allocated through the general yearly budget on a lumpsum basis, and the Federal Supreme Court considers special budgets in exceptional circumstances. There is no clear formula or criteria to calculate the compensation budget allocated.

There are three main roles of the judiciary in the economic constitution perspective. The first role of the judiciary is providing economic justice today, individual or group claims in the court. Article 37 of the FDRE constitution clearly states that everyone can bring any justiciable matter to the courts' attention to obtain judicial relief or justice. This function is an inherent power of courts; they exercise it every time based on ordinary laws of the country.

The second role of the judicial system is adjudicating constitutional, and economic rights. Despite the presence of counter-arguments that claims constitutional rights are interpreted by the House of Federation rather than courts, recently adopted laws strengthened the power of courts to entertain any fundamental human rights.

The third role of the judicial system in Ethiopia is the Cassation power at the Federal level, which enables the review of all types of errors of law committed throughout the country. The Federal Supreme Court of Ethiopia can review economic injustices committed in any part of the country, and justice can be served. However, there are debates regarding the constitutionality of this power.

i. THE MINISTRY OF REVENUE

In 2008, the Ministry of Revenue merged with the Ethiopian Customs Authority and the Federal Inland Revenue Authority and created the Ethiopian Customs and Revenue Authority⁴⁸⁸. The reason for connecting the three institutions was that they had similar responsibilities and aims to achieve resource utilization and organizational arrangement.

⁴⁸⁸ See the preamble of the Ethiopian Revenues and Customs Authority Establishment Proclamation 587/2008.

After a decade-long service, the Ethiopian Revenue and Customs Authority converted to the Ethiopian Revenue Authority. Article 31-sub article 1 of Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 1097/2018 transferred the powers and duties given to the Ethiopian Revenues and Customs Authority. Therefore, the provisions of the law in force are to the Ministry of Revenues. Furthermore, the Customs Commission has been established by the same regulation as the 'Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation 1097/2018'.

III. FISCAL PRINCIPLES IN THE ETHIOPIAN CONSTITUTIONAL FRAMEWORK

Although the absence of a uniform definition for fiscal policy, it can be defined as a set of policies that govern the allocation of public resources and the collection of taxes. The fiscal policy category includes taxation, public debt, income from public firms, macro-financial planning, and all the budgetary activities linked with the budgetary cycle. "Fiscal policy phases" refer to the generation, mobilization, allocation, and execution of resources and the monitoring of fiscal policy.

Monetary policy and fiscal policy instruments are interrelated. Therefore, collaborative remedies can support using the economy for a certain recovery process⁴⁸⁹. It is evident from the fact that many countries have utilized integrated monetary and fiscal policies to fight against the pandemic and accompanying economic crisis after the World Health Organization declared the Covid-19 Global Pandemic in early 2020⁴⁹⁰. In addition, effective tax policy planning and execution within the constitutional framework have been seen as efficient in recovering from the pandemic impact.

⁴⁸⁹ YAVUZ, Erdem, **Türkiyede Vergi Harcamaların Sosyo-Ekonomik İncelenmesi Ve Seçilmiş OECD Ülkeleri İle Karşılaştırılması**, Gazi Kitabevi, Ankara, 2022, s.32.

⁴⁹⁰ YAVUZ, s.32.

Statutory or constitutional limits on fiscal policy that regulate the budgetary balance, debt, expenditure, or taxation are often referred to as fiscal principles⁴⁹¹. There are several ways in which fiscal policy may help protect the rights of citizens in a variety of ways. Poverty, inequality, climate change, power imbalances, and other structural problems that impede the full implementation of the constitutional bill of rights may all be addressed using a balanced fiscal system⁴⁹². For example, the unprecedented income inequality problems can be easily solved if tax and budget decisions are passed properly with popular participation⁴⁹³.

Fiscal principles relate to fiscal policy's statutory or constitutional restrictions that control the budgetary balance, debt, expenditure, or taxation⁴⁹⁴. Fiscal policy may be used in several ways to defend the rights of citizens⁴⁹⁵. For example, equitable fiscal systems can address issues such as poverty and inequality, climate change, and power imbalances that limit the effective implementation of these rights⁴⁹⁶.

Fiscal policy impacts the economy through government spending and taxation to promote robust, long-term growth and reduce poverty⁴⁹⁷. Fiscal policy reforms determine the optimum allocation of duties and powers between the federal and subnational governments. It also includes delegating fiscal decision-making authority to subnational governments⁴⁹⁸. In addition, well-designed constitutional provisions pave the way for the

⁴⁹¹ **Centre for Economic and Social Rights**, Principles for Human Rights in Fiscal Policy, 2015, p.17, <https://www.cesr.org/rinciples-human-rights-fiscal-policy/>, (accessed on Jun 17, 2021).

⁴⁹² **Centre for Economic and Social Rights**, p.18.

⁴⁹³ Principles for Human Rights in Fiscal Policy, p.18.

⁴⁹⁴ Declaration by UN Special Rapporteur on Extreme Poverty and Human Rights, “Brazil 20-year public expenditure cap will breach human rights, UN expert warns”, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21006>, (accessed on June 17, 2021).

⁴⁹⁵ See above Declaration by UN Special Rapporteur.

⁴⁹⁶ **Othering and Belonging Institute**, <https://belonging.berkeley.edu/six-policies-reduce-economic-inequality>, (accessed on May 27, 2021).

⁴⁹⁷ HORTON, Mark/ASMAA, El-Ganainy, **Fiscal Policy: Taking and Giving Away**, International Monetary Fund, 2017, p, 35, available from, <https://www.imf.org/external/pubs/ft/fandd/basics/36-fiscal-policy.htm>, (accessed on June 18, 2021).

⁴⁹⁸ MOGES, Abu Girma, “Challenges of Building Democratic Institutions for Governance and Development in Ethiopia and the Horn of Africa”, **Northeast African Studies**, New Series, V 10, No. 2,2003, p. 127.

best fiscal policy by restricting or compelling lawmakers to achieve more developmental goals through significant budget surpluses and minimizing government expenditures⁴⁹⁹.

When influencing the economy, policymakers often use fiscal policy by altering the base and rates of taxes, the extent and design of expenditure, and the degree and form of borrowing⁵⁰⁰. The goal activity of such macro-level fiscal policy indirectly affects the money supply through changes in interest rates, bank reserve requirements, and purchases and sales of government securities and foreign exchange, usually carried out by Central Banks⁵⁰¹. Therefore, countries that provide independent monetary regulation power to the central bank can be beneficial in financial crises by managing the financial system without political interference.

Governments can also use fiscal policy to bridge the production gap. There are two types of fiscal policies concerning the management of a national economy: expansionary fiscal policy and contractionary fiscal policy⁵⁰². Expansionary fiscal policy increases aggregate demand by raising government spending or decreasing taxes, bridging a negative output gap⁵⁰³. A contractionary or "tight" fiscal policy is implemented when the output gap is positive to reduce demand and battle inflation through lower expenditure and increasing taxes⁵⁰⁴. Expansionary fiscal policy can boost a lagging economy, and contractionary fiscal policy is used to cool a hot economy.

Even though only a few governments have specific fiscal principles in their constitutions, most of which were enacted after 2000, rule-based fiscal policies have

⁴⁹⁹ PRIMO, David, **Rules, and Restraint: Government Spending and the Design of Institutions**, University of Chicago Press, 2007, P.3; PRIMO, David, **State Constitutions and Fiscal Policy**, Mercatus Center, George Mason University, 2016, p.12, available from: <https://doi.org/10.2139/ssrn.3211650> (accessed on June 17, 2021).

⁵⁰⁰ HORTON/ASMAA, p.36.

⁵⁰¹ HORTON/ASMAA, p.36.

⁵⁰² HORTON/ASMAA, p, 24.

⁵⁰³ **Lumen Learning Centre**, <https://courses.lumenlearning.com/wm-macroeconomics/chapter/expansionary-and-contractionary-fiscal-policy/> (accessed on June 27, 2021).

⁵⁰⁴ HORTON/ASMAA, p, 24.

gained favor throughout the world since the 1990s⁵⁰⁵. In the previous two decades, both federal and non-federal countries have incorporated fiscal rules into their constitutional system in one or the other way⁵⁰⁶. The vital question here is whether constitutions must entrench fiscal or budgetary principles? To what extent do fiscal rules need to be included in the constitutions? Constitutions are challenging to modify and supreme; they resist short-term desires, such as impulsive spending, and serve as commitment mechanisms to restrict ardent, profligate governments⁵⁰⁷. Because of their visibility and symbolic importance, Constitutions may be ideal tools for coordinating politicians' and people's behavioral expectations⁵⁰⁸. As a result, whether they contain particular rules of involvement, constitutional fiscal principles, or rules can serve as core points for coordinated reactions to executive infringements of fiscal norms⁵⁰⁹. From the perspective of deterring excessive executive spending, an entrenched constitutional budgetary system can be a viable solution. But still, there are arguments from the opposite that constitutional fiscal rules are hurdles for flexible government spending towards achieving developmental goals and ultimately solving socio-economic problems of the society.

The poorly designed constitutional framework might tie policymakers to measures that lock in ineffective or ill-advised fiscal policies. Constitutionally recognized fiscal policy rules⁵¹⁰ are essential in achieving budget and public finance equilibrium. Some

⁵⁰⁵ CANGIANO, M/ CURRISTINE, Teresa/LAZARE, Michel, Public Financial Management and Its **Emerging Architecture**, **International Monetary Fund**, 2013, p. 7, Available from, <https://www.elibrary.imf.org/view/IMF071/20033-978147531091/20033978147531091/ch14.xml>, (accessed on June 13, 2021).

⁵⁰⁶ MOGES, Abu Girma, “an Economic Analysis of Fiscal Federalism in Ethiopia”, **Journal of Northeast African Studies**, V. 10, No. 2, 2008, pp. 117, Available from, <https://doi.org/10.1353/nas.0.0005>.(accessed on June 17, 2021).

⁵⁰⁷ AMICK, Joe/ TERRENCE, Chapman/ ZACHARY, Elkins, “on Constitutionalizing a Balanced Budget”, **The Journal of Politics**, V.82, No. 3, 2020, p.6, available from: <https://doi.org/10.1086/707618>, (accessed on June 19, 2021).

⁵⁰⁸ AMICK/TERRENCE/ZACHARY, p.8.

⁵⁰⁹ AMICK/TERRENCE/ZACHARY, p.8.

⁵¹⁰ Fiscal policy principles are defined as rules, regulations, statutory or constitutional provisions on economic policy that place a specific norm or constraint on something like a fiscal indicator such as fiscal balance, public debts, government expenditure, tax rates, and frameworks.

countries have used restrictive fiscal instruments, such as fiscal control principles, to maintain fiscal balance and economic prosperity⁵¹¹.

To combat economic instabilities, budget deficits, and public financial imbalances, both developed and emerging countries have adopted fundamental fiscal policy rules within their constitution. Over the last two decades, the issue of budgetary policy has gotten much attention, as many countries have implemented fiscal rules to reduce high budget deficits⁵¹². Ethiopia is among these countries adopting extensive fiscal policy rules despite focusing more on fiscal federalism perspectives.

A. FISCAL FEDERALISM AND CONSTITUTIONS

Fiscal federalism is distributing and redistributing fiscal decision-making jurisdiction across several levels of government⁵¹³. Its structure and features are derived from constitutional requirements, economic activity, income and capital allocation patterns, and the system's structural capability⁵¹⁴. The constitutional framework, in general, specify the context within which fiscal decision-making can take place, as well as the vertical and horizontal organs which find meaning within the governmental system's socioeconomic setting. The vertical arrangement outlines the division of fiscal decision-making authority between the federal and lower levels of government. At the same time, the horizontal one represents the nature of interaction across cross-sections of government levels. One of the reasons why nations adopt a federal system is that there is a conjecture that lower-level or local governments are more open to peoples' preferences than higher-level or senior governments⁵¹⁵.

⁵¹¹ ARAS, Osman/MUSTAFA, Öztürk, “Constitutional Economics, Fiscal Policy Rules, and the Case of Türkiye”, **International Journal of Social Sciences and Humanity Studies**, V. 3, No. 2, 2011, p.4.

⁵¹² ARAS/MUSTAFA, s.9.

⁵¹³ <https://www.britannica.com/topic/fiscal-federalism> (accessed on June 14, 2021).

⁵¹⁴ SHAH, Anwar, Fiscal Federalism, and Macroeconomic Governance: For Better or for Worse? World Bank, **Working Paper**, No.2 2005, p.4.

⁵¹⁵ BRETON, Albert/SCOTT, Anthony, **The Economic Constitution of Federal States**, Australian National University Press, Canberra, 1978, p. 23.

Assigning fiscal duties to the federal government and subnational governments and operational means of financing these responsibilities is one of the essential features of fiscal federalism practice⁵¹⁶. Unfortunately, fiscal federalism theory does not have a consistent division of fiscal duties to foster economic efficiency and resource allocation.

The Canadian scholar Anderson George defines fiscal federalism as the study of governments' functions and interactions within federal structures, specifically emphasizing revenue-raising, borrowing, and expenditure⁵¹⁷. Anderson also clarifies that fiscal federalism investigates how these processes work and attempts to establish a principled framework for measuring them. The study of fiscal federalism may also be applicable for the fiscal structures of devolved forms of government that are not exclusively federal⁵¹⁸.

As discussed in the previous sections, the Federal Government has provided a budget subsidy to the regional states every year. The budget grant formula needs to be approved by the HoF after being technically and methodologically studied by independent experts. The first step in developing a grant allocation formula is to estimate the relative fiscal gap, which is done by comparing the revenue and spending demands of different areas⁵¹⁹. In the previous budget grant formulas, the fiscal gap in each region had been determined by subtracting the necessary expenditures from the available revenue⁵²⁰. The gap indicates the ability of a region's government to collect funds from its sources to pay for a standard basket of public goods and services. Hence, several methodologies have been devised to quantify fiscal capacity, even though it is difficult to estimate a region's

⁵¹⁶ BRETON/SCOTT, p.29.

⁵¹⁷ GEORGE, Anderson, **Fiscal Federalism: A Comparative Introduction**, Oxford University Press Catalogue, Oxford, 2009, p.8.

⁵¹⁸ ANDERSON, George, **FISCAL FEDERALISM: A COMPARATIVE INTRODUCTION**, Oxford University Press, Oxford 2009, p.4.

⁵¹⁹ **FDRE House of the Federations**, The Federal Budget Grant Distribution Formula to Regional States, <http://www.hofethiopia.gov.et/web/guest/decisions-documents/-/document/preview/25881/21546>, (accessed on February 12, 2022), p.14.

⁵²⁰ **FDRE House of the Federations, p.14.**

capability for revenue-raising activities⁵²¹. A wide range of factors had been considered, including per capita income, regional GDP, total taxable resources, and a representative tax structure.

B. CONSTITUTIONALIZING THE POWER OF TAXATION

Aktan defines tax as a price for people to live in peace and order after the human being is transferred from a 'natural' social environment to a 'political' social environment⁵²². Tax is an economic value that should be collected from all citizens who can pay to finance the responsibilities of the government⁵²³. The main topic of tax legislation revolves around the relationship between individuals and the government⁵²⁴. Individuals who want the protection of their private property, life, and security should pay the price for the state to fulfill the individuals' minimal demand for the safety of their personal belongings and life⁵²⁵. In this sense, it is possible to understand taxes' legitimacy and accept taxes as a natural result of living within political society⁵²⁶. However, while individuals consent to the state to use a power expressed as "taxation authority", they have to determine the principles regarding how the state can use its taxation authority and the limits of taxation within the constitution. Brennan and Buchanan define the constitutional power of taxation as the most typical manifestation of the government's power to coerce⁵²⁷. As these renowned constitutional economists define it, the power to tax means imposing fees that can only be paid by transferring economic resources to the government or making financial claims on those resources; prices that carry effective enforcement powers by definition of taxing power⁵²⁸. The right to tax does not imply any responsibility

⁵²¹ **FDRE House of the Federations, p.14.**

⁵²² AKTAN, Çoşkun, **Anayasal Vergi Hukuku, Vergileme Yetkisinin Meşrûyeti ve Sınırları**, seçkin akademik ve meslek yayınları, 2019, p.17.

⁵²³ PEHLIVAN, Osman, **Vergi Hukuku, Genel Hükümleri ve Türk Vergi Sistemi**, Trabzon 2018, p.20.

⁵²⁴ PEHLIVAN, **Vergi Hukuku**, p.19.

⁵²⁵ PEHLIVAN, **Vergi Hukuku**, p.19.

⁵²⁶ ÇOŞKUN, p.18.

⁵²⁷ BRENNAN, Geoffrey/BUCHANAN, James, **the Power to Tax: Analytical Foundations of a Fiscal Constitution**, Cambridge University Press, New York 1980, p. 35.

⁵²⁸ BRENNAN /BUCHANAN, p. 35.

to spend the tax funds collected in a particular manner⁵²⁹. Hence, the nature of expenditure is not logically indicated by the ability to tax⁵³⁰.

Constitutions are not supposed to incorporate specific tax bases and rates. As Buchanan and Brennan argue, the person who can select between tax arrangements will be restrained constitutionally by the person who does not know his position and chooses a revenue-maximizing model for the government's behavior in post-constitutional eras⁵³¹. In the long run, constitutional taxation restrictions may prove too demanding⁵³². There will undoubtedly be post-constitutional incentives to go from specificity to comprehensiveness by making constitutional-style amendments to broaden the bases and allow more flexible rate structures⁵³³.

If the principles and rules regarding taxation are not determined within the constitution, a social contract, it may be subjected to abuse by the state. Indeed, when we look at the taxation history, it is possible to understand that the taxation authority has been abused by the state officials such as kings, emperors, and sultans, who hold the power of taxation. In almost periods of taxation history, the state officials used these powers in various ways. For example, the baron's revolt against King John resulted in the borne of no taxation without representation principle.

The constitutionalization of taxes and spending entails the ability to compare their costs and benefits before their implementation and, as a result, before the start of the implementation period⁵³⁴. Indeed, the public consultations in the constitutional making process, which might occur to reach an agreement on a fiscal aspect of the constitution, would undoubtedly benefit citizens by providing relevant facts and reducing budgetary

⁵²⁹ BRENNAN /BUCHANAN, p. 35.

⁵³⁰ BRENNAN /BUCHANAN, p. 35.

⁵³¹ BRENNAN /BUCHANAN, p. 60.

⁵³² BRENNAN /BUCHANAN, p. 60.

⁵³³ BRENNAN /BUCHANAN, p. 60.

⁵³⁴ EMPOLI, Domenico, The Theory of Fiscal Illusion in a Constitutional Perspective, **Public Finance Review**, V. 30, No.5, 2002, pp.377-384.

illusion⁵³⁵. Economic figures are composed of many components to form monetary and fiscal results. These include tax and expenditure laws, intergovernmental affairs, budget rules and mechanisms, and constitutional settings such as the executive, legislative, and judicial branches of government and the role of bicameralism.

The OECD research, which Blöchliger has conducted, and Jaroslaw, identified that a liberal federal state constitution with the most vital fiscal laws consists of five components. These are the autonomy of Regional State Governments to manage their fiscal policy; the extent to which such Regional State Governments are kept responsible for fiscal policy outcomes; the extent to which Regional State Governments influence central fiscal policy; the strength of intergovernmental budget rules; and the stability of constitutional fiscal policy structures⁵³⁶. Based on these yardsticks, it is vital to examine the status of the FDRE constitution as follows.

Determination of tax principles in the constitution is customary in many jurisdictions contemporarily, even though setting tax rates is entirely at the discretion of the parliaments. Increasing tax rates, widely applied in many democratic systems today, are subject to frequent changes both with the power of parliaments to make laws and the power of governments to issue decrees in the form of rules. Determining the tax principles is one of the ways to eliminate the negative consequences of the frequent changes in the tax system and tax rates.

Increasing the public revenue from taxation is only achievable by acting fairly. The main approaches in fair tax are ‘solvency’ and ‘benefits’ approaches in taxation⁵³⁷. The solvency approach in taxation was first expressed in the sixteenth century and emphasized

⁵³⁵ Empoli defines fiscal illusion as taxpayer misinformation about fiscal principles or a faulty understanding of the fiscal system among the general public in the context of taxation. See EMPOLI, p. 378.

⁵³⁶ BLÖCHLIGER, Hansjörg /JAROSLAW, Kantorowicz, Fiscal constitutions: An empirical assessment, **OECD Economics Department working Papers**, No.12, 2015, p.5.

⁵³⁷ GEDİK, Melek, “Kamu Açıklarına İlişkin Maliye Politikası Uyarlamaları Ve İktisadi Etkileri”, **Çukurova Üniversitesi Sosyal Bilimler Enstitüsü Dergisi**, Cilt 17, Sayı 1, 2008, ss.245-268.

that the tax burden should be distributed equally to everyone⁵³⁸. It is understood that Smith made similar statements in the eighteenth century, and it is stated that the citizens of each state should contribute to their power to the extent possible in financing public expenditures⁵³⁹.

It is important to note that independent fiscal institutions are governmental entities with a mission to critically review and give non-partisan budgetary policy and performance recommendations under certain circumstances. While democratically elected authorities are ultimately responsible for making fiscal decisions, Independent Fiscal Institutions help promote sound fiscal policy and sustainable public finances, typically with realistic budgetary norms⁵⁴⁰. Therefore, particular attention should be paid to ensuring that the fiscal constitution is well-coordinated. To achieve fiscal coherence, a constitution's institutional structures must be balanced. Each state has roughly the same degree of control over different aspects of the budget, taxation, expenditure, borrowing, etc⁵⁴¹. A balance between numerical and procedural fiscal regulations can also be achieved by aligning autonomy with a certain amount of accountability⁵⁴². Alternatively, a less cohesive fiscal constitution unequally mixes components and building blocks, such as granting great fiscal liberty while requiring minimal monetary stewardship or placing stringent numerical restrictions while allowing for lax procedural limits. The random weight approach measures coherence as the variance in aggregated indicator values⁵⁴³.

Public trust in public finances is one of the important reasons to incorporate fiscal matters in constitutions⁵⁴⁴. Trust in public finances generally changes and evolves depending on the constitutional and legal system, besides the understanding of fairness,

⁵³⁸ GEDİK, s.251.

⁵³⁹ GEDİK, s.252.

⁵⁴⁰ OECD/ KOREA INSTITUTE OF PUBLIC FINANCE, p.5.

⁵⁴¹ BLÖCHLIGER/JAROSLAW, p.9.

⁵⁴² BLÖCHLIGER/JAROSLAW, p.9.

⁵⁴³ OECD/ KOREA INSTITUTE OF PUBLIC FINANCE, p.5.

⁵⁴⁴ HEPAKSAZ, Engin, "Kamu Tercihi ve Anayasal İktisat Teorisi Perspektifinden Anayasal Mali Reformu", *Finans Politik & Ekonomik Yorumlar* C,44, Sa.14, 2007, s.17.

the level of satisfaction that taxpayers receive from public services, and the level of relations between public service providers and taxpayers⁵⁴⁵. For citizens to have confidence in public finances in a country, the basic principles and rules for public financial management and the tax system must be constitutionally guaranteed⁵⁴⁶. To take and enact day-to-day decisions by applying discretionary policies destroys predictability and stability in the economy and, as a result, leads to the disappearance of the public confidence and trust in the financial system⁵⁴⁷.

C. CONSTITUTIONAL FISCAL ECONOMY IN ETHIOPIA

Before 1991/92, Ethiopia was governed by regimes that could be described as unitarist for almost a century. However, after the Ethiopian People's Revolutionary Democratic Front (EPRDF) took power in 1991/92, the administrative structure was converted to an ethnic-based federal system by which decision-making authority is supposed to be distributed through many levels of government in a democratic scheme. Improving the public sector's capital mobilization and distribution efficiencies, resolving diversity challenges (such as self-governance, race, tradition, and history), building a favorable market climate for the private sector, and achieving rapid and sustained national economic development are some of the justifications for implementing a decentralized fiscal system in Ethiopia⁵⁴⁸.

The Ethiopian constitutional system is based on a dual structure in which all three branches of government coexist parallelly in the Federal and Regional authorities. Constitutionally, the Federal Government and the Regional States have absolute legislative, executive, and judicial jurisdiction over the taxation powers⁵⁴⁹. In practice,

⁵⁴⁵ HEPAKSAZ, s.17.

⁵⁴⁶ AKTAN, Çoşkun/DİLEYİCİ, Dilek, "Parasal Düzen ve Parasal Anayasa", **Kamu Tercih ve Anayasal İktisat Dergisi**, c.2, sa. 1, 2001, s.7.

⁵⁴⁷ AKTAN/DİLEYİCİ, s.7.

⁵⁴⁸ **FDRE House of the Federation**, working Paper, the Federal General-Purpose Grant Distribution Formula 2017/18 - 2019/20, Addis Ababa, 2020, p.7.

⁵⁴⁹ The FDRE constitution 1995, Art 51.

nonetheless, the Federal Government has dominated the legislation on all types of taxes regardless of the level of government in which the authority is bestowed.

The 1995 FDRE constitution has just installed fundamental principles of fiscal federalism. The Ethiopian federal structure adheres to the traditional model of dividing revenue sources between the federal government and constituent units⁵⁵⁰. In fiscal terms, the first component of the economic constitution is the autonomy of regional or subnational states, which consists primarily of tax autonomy, spending autonomy in various policy areas, borrowing autonomy, and autonomy over setting budget frameworks. As shown below, it is necessary to separate revenue and expenditure autonomy for a better understanding.

The FDRE constitution specifies that the federal government has the authority to levy taxes and collect duties on sources reserved to it and that the regional states have similar jurisdiction over sources within their control. As a result, the two tiers of government (Federal and Regional Governments) wield their regulatory and administrative power within their respective taxing jurisdictions. The word "tax assignment" refers to the government responsible for deciding the level and rate structure of different taxes and whether their revenue will be collected, received, or exchanged with others⁵⁵¹.

Even though the revenue derived from respective sources belongs exclusively to each level of government, the constitution does not expressly restrict the states' powers to change taxes or control tax bases. Instead, article 95 of the FDRE constitution establishes a revenue-sharing concept, stating that the federal government and states should share revenue while keeping the national system in mind. The revenue sharing is divided into exclusive federal control, regional, and concurrent power.

⁵⁵⁰ FISSEHA, Assefa, **Federalism and The Accommodation of Ethnic Diversity In Ethiopia: Comparative Study**, Wolf Legal Publishers, Utrecht, 2007, p.56.

⁵⁵¹ FISSEHA, p.57.

The FDRE Constitution divides most taxes into pieces and distributes them between the Federal Government and the Regional States according to the jurisdictional scope of the tax base. For example, the federal government is solely responsible for customs duties, income taxes from national lotteries and other games of chance, air, rail, and sea transportation, and federal stamp duties. In contrast, the regional government is solely responsible for collecting taxes on forests and land⁵⁵². Employment taxes on employment income, for example, are shared based on the status of employers, such that if an employer is a Federal Agency or a foreign corporation, the Federal Government has the authority to levy tax on the workers. On the other hand, if an employer is a local government or a private company, state governments have the power to impose tariffs on the employees⁵⁵³.

Both levels of government have a duty to ensure that any tax levied is relevant to the source of revenue taxed and that any tax imposed does not harm their relationship. For example, suppose a state's tax affects interstate commerce, and the federal government steps in. In practice, however, tax law is consistent across the country. For instance, Government Universities, constructed in regional states, have been built in regional states' lands. Therefore, the regional states should have paid the royalty tax from hiring land within the university compound. Nevertheless, the federal government has paid the tax for the last couple of years. This issue has been submitted to the Council of Constitutional Inquiry but dismissed for primary reasons.

The FDRE constitution has uniquely eliminated the principle of residually from the power of taxation. Instead, it adopts the 'parliamentary designation' principle if leftover tax creates controversy. That means taxes that are not exclusively given to the Federal Government, exclusive to the Regional States," Or "Concurrent to both" should be submitted to the joint session of the House of the Federation and the House of Peoples' Representatives to decide the exercise of taxation powers by a two-thirds majority vote.

⁵⁵² The FDRE constitution 1995, Art 100.

⁵⁵³ The FDRE constitution 1995, Art 96(2) and Art 97(1).

For instance, Value Added Taxes (VAT) has not been mentioned in the FDRE constitution regarding whose influence can be exercised⁵⁵⁴.

Some scholars like Tadesse Lencho argued that the Ethiopian constitution is very generous in specifying revenue assignments to the levels of government⁵⁵⁵. But it has to be noted that when the constitution was silent or ambiguous on the competencies and spending responsibilities of all tiers of government, there was instability and controversy in the practice of autonomous regimes. There are constitutional gaps regarding revenue assignment in the Ethiopian context. One of the problems in the Ethiopian constitutional framework is that it does not allow the regional states to raise funding from foreign sources to accrue in their revenue.

Unlike most federal regimes, borrowing is another source of revenue for sub-national governments; the constitution does not permit domestic and international borrowing for states. As such, the FDRE constitution guarantees regional conditions plenty of taxation autonomy. The right of a state to borrow on financial markets and from public institutions is referred to as borrowing autonomy. The federal government has a variety of tools to restrict state borrowing. States had the right to borrow in the most difficult situations. The German constitution demands structurally sound budgets that do not depend on borrowing⁵⁵⁶. Borrowing restrictions can also be more lenient. The Brazilian constitution allows the federal government to approve state-level borrowing⁵⁵⁷. Most nations use differentiated deficit and debt laws when limiting states' ability to add debt. Furthermore, as in Brazil, the federal government can restrict or completely prohibit borrowing from state-owned banks. The federal government of both Switzerland and the United States places no limits on state borrowing.

⁵⁵⁴ Ethiopia implemented VAT for the first time on January 1, 2003, with a regular rate of 15% applicable to every taxable trade by a registered individual on; every import of commodities, other than exempt imports; and import of services, as well as other positive rates of 0%.

⁵⁵⁵ LENCHO, Tadesse, the Ethiopian Tax System: Excesses and Gaps, *Michigan International Law Review*, V.20, 2013, p. 327.

⁵⁵⁶ See, the 1949 German Constitution, article 115.

⁵⁵⁷ See, the Brazilian Constitution article 72.

In some nations, the federal government severely limits the state level's revenue, expenditure, and borrowing power. In contrast, others allow for significant spending and borrowing while allowing broad tax autonomy.⁵⁵⁸ Both institutional settings should ensure long-term fiscal sustainability. However, an unequal autonomy allocation can lead to unfavorable fiscal policy outcomes. For example, in Argentina and Germany, states acted opportunistically. They refused to reach their budget goals amid deficit laws due to a lack of subnational tax autonomy and broad borrowing autonomy.⁵⁵⁹

The Ethiopian Experience is different from the above countries constitutional system. There is no any constitutional limit on the Federal power of borrowing. The Council of Ministers has been empowered to borrow money on behalf of the government. There is no legislative surveillance requirement set by the FDRE constitution. Nonetheless, the federal constitution prohibit states from borrowing money from external sources.

A constitution should incorporate a provision that restricts budget deficits and borrowing in order to achieve a balanced budget. Turkish scholars like Acar stated that, for exceptional cases, a maximum deficit of 6% may be allowed and borrowings to be made through the budget should be at most 60% of the gross domestic product⁵⁶⁰. According to another view, the executive should be given the power to borrow up to 10% of the revenue budget with the budget law⁵⁶¹. In terms of planning, it is at the discretion of the political power whether to give weight to the state or the private sector⁵⁶². The Constitutional Court of Turkey has decided on this issue: "Taking measures to ensure that private enterprises operate following the requirements of the national economy is left to the discretion of the political powers. Each government determines the measures it deems

⁵⁵⁸ ASSEFA, p.22.

⁵⁵⁹ TOMMASI, Mariano/SAIEGH, Sebastian/SANGUINETTI, Pablo, Fiscal Federalism in Argentina: Policies, Politics, and Institutional Reform, **Economia-Journal of Latin American and Caribbean Economic Association**, V.2, No.2, 2001, pp. 147-201.

⁵⁶⁰ ACAR, Mustafa/BİLİR, Hüsni, "Türkiye'de Sivil Anayasa Arayışları, Anayasal İktisat ve Anayasada Bulunması Gereken İktisadi-Mali Hükümler", **Karamanoğlu Mehmetbey Üniversitesi Sosyal ve Ekonomik Araştırmalar Dergisi**, C. 15, Sa. 24, 2013, ss. 87-96.

⁵⁶¹ ACAR, p.90.

⁵⁶² KARLUK, Rıdvan, "Türkiye'de Ekonomik Anayasa ve Üç Önemli Konu", **Anadolu Üniversitesi Sosyal Bilimler Dergisi**, C. 13, Sa. 2, 2013, ss. 71-89.

appropriate within the framework of its economic policy, provided that they do not contradict the rules in the Constitution”.

Although different proposals are put forward regarding the economic provisions in the existing constitutions, it is thought that these regulations are appropriate. However, a constitutional limitation on borrowing is deemed necessary in terms of healthy public finance. Furthermore, the fact that governments have unlimited borrowing opportunities may mean leaving serious burdens on future generations. Thus, governments should be constitutionally limited in borrowing to respect the rights of future generations⁵⁶³.

Indeed, elections are important weapons to the people to punish those who borrow an excessive amount of money and leave a burden on the generation. Although it is difficult to put forward a definite figure about how much the limit of borrowing should be, the average amount can be determined by analyzing the country's financial situation and taking into account the marginal situations.

Fiscal decentralization entails delegating certain fiscal and tax functions to lower levels of government⁵⁶⁴. The degree to which subnational agencies are granted autonomy in deciding the distribution of their budgets is a significant factor in determining the form of fiscal decentralization⁵⁶⁵. Fiscal decentralization practice varies between unitary and federal governments. Unitary nations do not have sub-national governments that are legally allowed to make decisions on specific government roles and services; rather, they have several tiers of government under the same government.

On the other hand, federal states have legally covered sub-national governments; therefore, the opportunities for independent policymaking are more significant under these regimes. It is necessary to remember that city governments do not always have statutory rights under federal powers. Nonetheless, lower levels' degrees and decision-making

⁵⁶³ KARLUK, p.75.

⁵⁶⁴ **World Bank**, Decentralization, 2010, p.5, <http://www.ciesin.org/decentralization/English/Issues/Expenditure.html>, (accessed December 12, 2021).

⁵⁶⁵ **World Bank**, Decentralization, p.5.

authority vary significantly from country to country in both federal and unitary countries. It can shift at any moment in any direction.⁵⁶⁶ In most constitutions, the central government assumes expenditure responsibility for national public services, foreign relations, monetary policy, economic policy coordination, regional equity, and maintaining an internal common market. State governments can have primary responsibility for education, health care, social security, inter-municipal matters, and city government regulation.

D. THE EXTENT OF RESPONSIBILITY FOR FISCAL POLICY ASSIGNMENTS

Fiscal Responsibility is a critical characteristic in federal constitutions since it determines how states may compromise the national government's fiscal status and render fiscal results unsustainable⁵⁶⁷. As a result, responsibility is equivalent to the severity of the regional states' expenditure constraints in federal countries.⁵⁶⁸ The degree to which states must bear the effects of their fiscal decisions is called responsibility. In contrast, autonomy refers to how states have the freedom to execute their policies⁵⁶⁹. The risk of bankruptcy or a bailout, the fiscal and legal framework status, and the strength and scale of fiscal-transfer arrangements such as grants and equalization payments can determine state liability. If these budgetary policy constraints are identical, responsibility structures are said to be coherent⁵⁷⁰.

Constitutions of many federal countries include a variety of rules for dealing with provinces experiencing financial difficulties. Some jurisdictions, like South Africa, outright prohibit a state default, while others, like Brazil and Switzerland, have provisions for a regulated default and an insolvency framework. Bailouts are especially important and must be handled differently. Brazil and Spain's constitutions prohibit bailouts, while

⁵⁶⁶ **World Bank**, Decentralization, p.5.

⁵⁶⁷ **World Bank**, Decentralization, p.5.

⁵⁶⁸ TIMOTHY, Goodspeed, Bailouts in a Federation, *International Tax and Public Finance*, V. 9, 2002, p.409.

⁵⁶⁹ BLÖCHLIGER/JAROSLAW, p.5.

⁵⁷⁰ BLÖCHLIGER/JAROSLAW, p.9.

Argentina and Germany's constitutions permit bailouts, and the Italian constitution also gives a place to bailout measures⁵⁷¹. Some constitutions of federal countries do not have explicit bailout provisions, but they do include alternatives like federal borrowing guarantees, like an implied bailout. The FDRE constitution can be grouped with the last one.

Article 94(2) of the FDRE constitution states that the federal government may provide emergency, rehabilitation, development assistance, and state loans. Such aid and loans do not obstruct states' proportionate development⁵⁷². Fiscal discipline is a challenge for all federal governments, even those in countries from the global north. On the other hand, Regions in Ethiopia are chastised for not successfully investing their funds⁵⁷³. As a result, the debt crisis and bailout demands have not yet been major issues for the last three decades.

1. Joint Decision Making

The degree to which states can influence federal fiscal policy can be denoted as they participate in the central decision-making⁵⁷⁴. Although state autonomy refers to a state's ability to legislate within its territory, joint-decision making refers to a state's or a group of state's ability to control national fiscal policy⁵⁷⁵. States can influence overall fiscal policy across various mechanisms, the most powerful of which is likely to be the federal parliament's second chamber and constitutional umpiring body.

Since federalism is characterized by bicameralism, Ethiopia has adopted two Federal houses in the 1995 FDRE constitution. The Upper chamber often called the second house of the federal parliament, is supposed to act as a formal mechanism for state representation and state co-decision making of national policies. The degree to which

⁵⁷¹ BLÖCHLIGER/JAROSLAW, p.9.

⁵⁷² The FDRE constitution, Art 94(2).

⁵⁷³ ALEFE, Belay, System of Division of Revenue in Ethiopia, *European Scientific Journal*, special edition, V.2, 2014, p.7.

⁵⁷⁴ ALEFE, p.8.

⁵⁷⁵ ALEFE, p.8.

states can co-exercise any decision at the central level is determined by the strength of the second chamber and the degree of representation of states' interests⁵⁷⁶. The Upper Chamber Senate's formal function is to represent states. However, the second chamber's effect on national policymaking differs from country to country. Furthermore, although the Senate has absolute legislative and veto authority in most federations, its power is limited in a few situations⁵⁷⁷. The Ethiopian experience is different from this one in practice.

Generally, the interests of states are reflected, claimed, and protected to varying degrees in the second chamber. Two things are crucial to achieving the objective of state interests via the second house: First, the electoral system, and second, seat distribution among states. Electoral system of the Upper Chamber: Members of the second house or senators might be elected by the state legislature or executive or directly by the people⁵⁷⁸. There are arguments that senators elected by the state legislature or executive with a vote can vigorously serve their states' interests. At the same time, senate representation may be weaker or have limited effectiveness over state representation⁵⁷⁹. Second, as seats are divided evenly, state preferences appear to be best represented: When representation in the second chamber is (partially) equal to population size, the central government is more inclined to match policy with the interests of the larger states⁵⁸⁰.

Although increased state involvement in federal policymaking may help align the needs of more parties, it may also contribute to a shared decision trap in which no policy

⁵⁷⁶ ARRETCHE, Marta, Federalism, bicameralism, and institutional change: general trends and one case-study, **Braz. Political Science Review**, V.5, 2010, p.10, Available from http://socialsciences.scielo.org/scielo.php?script=sci_arttext&pid=S1981-38212010000100006&lng=en&nrm=iso, (accessed on 11 April 2021).

⁵⁷⁷ In Canada and India, for example, the second chamber can be barred from introducing regulations. Only laws affecting the Länder can be vetoed by the Senate in Germany. In Austria, the first chamber has the power to overturn nearly every Senate ruling.

⁵⁷⁸ BLÖCHLIGER/JAROSLAW, p.17.

⁵⁷⁹ In Germany, senators are elected by the state legislature or executive with a vote; in the USA senators are elected at the ballot box, and in Canada, senators are appointed by the general governor on the recommendation of the prime minister

⁵⁸⁰ In Belgium and South Africa, representation in the second chamber is partially equal to population size.

decisions are made. The key goal of Germany's federalism reform in 2006 was to reduce the degree of collective decision-making, where shared competencies, conflicting roles, and political negotiations contributed to numerous legislative deadlocks. As a result, the German law increased the central government's decision-making power and state sovereignty.

The second way for regional states to collaborate on central determination is by judicial oversight via an independent supreme or constitutional umpiring body. Many federal countries have a sort of judicial oversight of federal legislation. Legislation infringes the constitution's provisions and can be declared unconstitutional by a competent constitutional court, Supreme Court, or any other organ designated for constitutional interpretation. States will influence constitutional scrutiny in two areas. First, states may initiate a review of federal law explicitly⁵⁸¹ or by the second chamber⁵⁸². The statute may then be repealed or changed by the constitutional court, the Supreme Court, or another organ with constitutional interpretation power. The Ethiopian upper chamber, the House of the Federations (HoF), is in charge of oversight the legislation if they are contradicted with other legislations. However, abstract review of laws has been restricted in Ethiopia. Council of Constitutional Inquiry Proclamation No. 798/2013 under article 3(2)(c) states that the request of constitutional interpretation of any non-justiciable issue could be forwarded to the Council of Constitutional Inquiry by one-third or more representatives of the federal legislative body or state legislative organ, or by federal or state executive organs. However, there has been no instance of state organs initiation for a constitutional interpretation related to fiscal issues for the last three decades.

In one instance, the Federal Auditor General's office requested the Council of constitutional interpretation for the fiscal-related case in 2020. The case was related to the payment of land-related tax to the Federal Government. Gonder University raised the issue

⁵⁸¹ In Italy and Spain states can initiate explicitly the review of laws by the constitutional court if the federal laws affect their interest in the light of the constitution.

⁵⁸² In Germany and South Africa, States can challenge the unconstitutionality of the federal laws by using the upper chamber.

of paying land royalty tax to the Amhara regional state, where the University found instead of paying to the Federal Government. This issue was forwarded from the Federal Auditor general office to the Council of Constitutional Inquiry body. Hence, the council rejected the case because the Auditor General has no mandate to initiate constitutional interpretation. The exclusive right of states and the second chamber to appeal federal law in constitutional court can be interpreted as a deterrent tool for unfavorable state legislation. Hence, a strong constitutional mechanism can best protect states' interests.

2. The Budget Framework

Budget Framework is one of the components of good fiscal rules within the state constitutional framework. At all levels of government, the extent to which fiscal laws and budgetary structures constrain discretionary fiscal policymaking is referred to as a budget framework. The budget framework includes numerical fiscal regulations, formal fiscal laws, and fiscal councils⁵⁸³.

Numerical fiscal rules are numerical thresholds or constraints that aim to turn budgeting from an open-ended mechanism in which indexes are set at the end, after funding bids have been made and checked, into a disciplined process in which totals are set at the beginning and enforced during budget planning and execution⁵⁸⁴. The primary reason for establishing fiscal rules is perceived spending and deficit bias and states' unwillingness to adhere to fiscal discipline because numerical fiscal laws limit policymakers' decision-making flexibility. As a result, numerical fiscal laws had grown in worldwide since the 1990s, when they were implemented to mitigate the fiscal fallout from reckless fiscal actions at all levels of government. The four primary categories of numerical fiscal rules are the budget deficit, debt, spending, and tax rules. Policymakers' discretion is more limited when a country employs all four categories of numerical fiscal

⁵⁸³ BLÖCHLIGER/JAROSLAW, p.5.

⁵⁸⁴ EDEN, Holger/KHEMANI, Pokar/ RICHARD, Emery, "Developing Legal Frameworks to Promote Fiscal Responsibility: Design Matters", In: CANGIANO, Marco/TERESA, CURRISTINE/Michel, Lazare(eds), **Public Financial Management and Its Emerging Architecture**, International Monetary Fund, 2013, pp. 79-106.

laws. Procedural budgetary laws ensure that budget preparation, approval, and execution are properly regulated and accountable. As a result, the annual budget legislation complies with medium and long-term financial goals and priorities. There are principles in the budget approval process.

The budget framework's strength is the prevalence and prerogatives of fiscal councils and other arms-length bodies. There are usually non-partisan public bodies that evaluate the financial situation and make fiscal policy recommendations. Fiscal councils, in particular, may provide objective analysis and evaluate government fiscal forecasts. Finally, fiscal councils can evaluate compliance with fiscal rules and sustainability standards and recommend specific budgetary policy items. As a result, councils increase concern among policymakers and the general public about budgetary policies' short and long-term risks and advantages⁵⁸⁵.

Three measures are used to determine the strength of fiscal councils. Institutional Foundation: Fiscal councils are more likely to enjoy stability, legitimacy, and recognition if they are enshrined in the constitution, as in Germany or Spain, rather than in common law, Australia, or Canada. Fiscal councils have long been enshrined in the constitutions of some countries, such as Argentina and Brazil, but they have yet to be created. Fiscal councils have strong powers in some jurisdictions. They can determine both the federal and state governments (e.g., the Parliamentary Budget Office in Italy and the High Council of Finance in Belgium). Only the Russian Public Council and the United States Congressional Budget Office are authorized to review the federal budget.

The independence of a fiscal council is determined by the composition of its legislative body (e.g., members of parliament, state officials, ministers, impartial experts) and the council's position (e.g., to the parliament). Fiscal councils are essentially autonomous in Germany and Spain, for example. In Italy and the United States, partially autonomous fiscal councils – legislative finance offices – exist.

⁵⁸⁵ CALMFORS, Lars/ SIMON, Wren-Lewis, What Should Fiscal Councils Do? **Economic Policy Journal**, V.26, No.68, pp.649-695.

Constitutional stability is one of the building blocks of the best constitutional fiscal system. Of course, the number and strength of actors and veto powers play a big role in fiscal constitutions' stability. However, constitutional stability can be ensured in many ways. Stable institutions can provide the basis for long-term fiscal planning at all levels of government, but they can also prevent reform and adjustment to changing circumstances⁵⁸⁶.

The strength of the second chamber, the power of constitutional courts; the majority required to amend the constitution; and the extent of direct democracy/popular veto are all factors to consider while assessing the stability of a constitutional system. The extent of veto power and the distribution of seats in the second chamber are used to assess the strength of a bicameral veto⁵⁸⁷. Suppose the Upper Chamber (Senate) may override all legislation proposed by the first chamber, as it has more veto power in most federal countries. Indeed, the second chamber only has limited veto power in certain nations, such as Germany or Mexico. Even though in most federal countries, the second chamber is involved in the legislative process and can veto a reform of the constitution in the light of the best fiscal principles, the use of the Federations, which is the second chamber in Ethiopia exceptionally, excluded from any legislative tasks.

An Upper Chamber with an even allocation of seats among regional states should be more vulnerable to vetoes because it is more difficult to rally support for reform in a heavily divided house. In a proportional or partly proportional seat allocation (as in Germany and India), the federal government would secure approval from only the largest and, most likely, fewer than half of the provinces⁵⁸⁸. The power of a constitutional interpreter depends on the degree of constitutional review and the power to strike down unconstitutional legislation. The status of judicial review, the coverage of laws, certain

⁵⁸⁶ TSEMBELIS, George, "Federalism and Veto Players", in WAGSCHAL, Uwe/HANS, Rentsch (eds.), **The Price of Federalism**, The Neue Zürcher Zeitung, Verlag, 2002, pp. 295-318.

⁵⁸⁷ BLÖCHLIGER/JAROSLAW, p.5.

⁵⁸⁸ BLÖCHLIGER/JAROSLAW, p.8.

statutes are not subject to judicial scrutiny. The Swiss Federal Court has no authority to decide on legislation enacted by the federal government, only by state legislatures.

The number of actors who may file a lawsuit with the court determines the power of judicial appeal. For example, many political actors may file a court case in certain nations, such as Austria and Brazil. However, only a few groups have ties to the constitutional court in Argentina and Australia. Judicial power is greatest where the court has the authority to review the constitutionality of legislation both before and after their enactment and execution, as is the case in India and South Africa. Conversely, judicial power is reduced where the court can only amend laws after it has been passed, as in Canada or Mexico.

Any statutes are not subject to judicial scrutiny. The Swiss Federal Court has no authority to decide on legislation enacted by the federal government but only by state legislatures. There are few options for dealing with unconstitutional legislation: (1) the statute can be immediately abolished (as in Russia and Italy), (2) the law can be referred to the legislature for review, or (3) the constitution can be ambiguous on what happens with unconstitutional laws (e.g., Canada and India). Judicial veto is best where no statutes are exempt from court adjudications. Many actors can oppose federal legislation in court when opposing legislation can occur before and after the statute is enacted and when an invalid law is automatically invalid.

Any constitution has a provision outlining how to amend it. The laws governing constitutional reform control the pace of actual amendments and, as a result, constitutional continuity. Five principles determine the ease with which constitutions may be modified. First, a qualified majority is expected in most countries to pass a constitutional amendment. For example, issues relating to the federal level in Russia will be changed with the agreement of a 3/4 majority of both houses. A two-thirds majority in both chambers must pass an amendment in Belgium or Germany. In India and Italy, an absolute majority is expected.

E. CONSTITUTIONAL BALANCED BUDGET

To limit the debt ratio, some constitutions introduce budget-balancing laws. Debt sustainability may be improved by adhering to clear operational guidelines such as balanced budget standards provide. Even in the oldest constitutions, some budgetary regulations may be seen. Constitutions sometimes incorporate financial clauses, although specific budget restraints (such as a balanced budget requirement) are less common. About 85% of the constitutions across the Globe from 1789 to 2015 have balanced budget provisions⁵⁸⁹. Portugal's Constitution of 1822 was the first-ever constitution that included a balanced budget rule and stated that “Contributions [taxes] would be proportional to public expenses⁵⁹⁰. New numerical fiscal rules were a critical component of budgetary reform. Many European countries have introduced balanced budget rules in their constitutions, such as Switzerland (2001), Germany (2009), Italy (2011), and Spain (2012). followed suit, although the laws they enacted were more comprehensive since they included the general government rather than just the federal level, as in Switzerland.

According to Hallerberg, politicians are motivated to maximize spending that directly helps their constituents but are less worried about the tax burden that would be more equally dispersed⁵⁹¹. As a result, governments face the difficult task of devising a fiscal strategy that reduces the incentives for people to drain the commons. As a result, one of the remedies is altering the incentives of elected officials through the delegation of budgeting decisions to a separate government institution or implementing enforceable spending limitations. Unfortunately, constitutional laws generally allow fiscal policymakers to circumvent any limits⁵⁹².

⁵⁸⁹ AMICK/TERRENCE/ZACHARY, p.1087.

⁵⁹⁰ AMICK/TERRENCE/ZACHARY, p.1088.

⁵⁹¹ HALLERBERG, Mark, Measuring Fiscal Governance, **American Political Science Association Comparative Politics Newsletter**, V.23, No.1, 2013, p.23.

⁵⁹² AMICK/TERRENCE/ZACHARY, p.1088.

1. Constitutionalizing Budgeting Authority

The budget authority is a concept that expresses not only the taxes collected but also the public expenditures to be made subject to the approval of the parliament and its audit by being approved every year⁵⁹³. The Government's Authority of Budget is defined as all the rights and powers of parliaments to allow the executive to collect taxes and support the public expenditure⁵⁹⁴. Therefore, the budget authority can be defined as the right to determine, certify, and control general revenues and spending types and amounts. The government's budgeting power arises from the struggles over who should have the right and authority to determine the income and expenses of the state. Therefore, the government's right to budget is the right to choose a tax and the extent of tax allocated to public services on behalf of the state⁵⁹⁵.

Human rights can only be protected if the government has budgeting authority⁵⁹⁶. There can be no rights if there are no resources⁵⁹⁷. Budgeting authority puts parliaments' duty to examine and monitor the state budget into a constitutional framework of rights⁵⁹⁸. Thus, parliaments have the right to review whether the various spending areas set by governments are compatible with the demands of voters and the country's development goals. It also has the power to examine income and expense targets, approve which public

⁵⁹³ GÜRSOY, Bedri, **Kamusal Maliye, Bütçe**, Ankara 1981, s. 72. ÜSTÜN, **Türkiye'de Vergi Ve Bütçe Hakkı**, s.193.

⁵⁹⁴ ÜSTÜN, **Türkiye'de Vergi Ve Bütçe Hakkı**, s.192.

⁵⁹⁵ PEHLIVAN, Osman, **Devlet Bütçesi**, Ekin Kitabevi Yayinlari, Bursa, 2018, , s. 28., ÜSTÜN, **Türkiye'de Vergi Ve Bütçe Hakkı**, s.193

⁵⁹⁶ CHAPARRO, Sergio/MAMBERTI, María, **Principles for Human Rights in Fiscal Policy**, Bones sires 2021, p.5, https://www.cesr.org/sites/default/files/2021/Principles_for_Human_Rights_in_Fiscal_Policy-ENG-VF-1.pdf, (accessed on March 2, 2022).

⁵⁹⁷ CHAPARRO/MAMBERTI, p.5.

⁵⁹⁸ KESIK, Ahmet, **Bütçe Uygulama Aşamasında Parlamentonun İzleme/Gözetim Fonksiyonu: Komisyonların Rolü ve Bütçe Analiz Kapasitesi, Bütçe Sürecinde Parlamentonun Değişen Rolü**, Ankara 2009, s. 287; ÜSTÜN, **Türkiye'de Vergi Ve Bütçe Hakkı**, s.194.

services public resources will be allocated, and determine whether resources are being used effectively, economically, and efficiently⁵⁹⁹.

The FDRE constitution requires the Ethiopian government to allocate ever-increasing resources to public health, education, and other social services⁶⁰⁰. On the other hand, the government policy should consider giving all Ethiopians access to public health and education, clean water, housing, food, and social security to the degree the country's resources allow⁶⁰¹. States must utilize and create the maximum available resources through adequate and sustainable taxes efficiently and fairly⁶⁰². Aside from distributing scarce resources properly, the government is responsible for expanding their availability through domestic income mobilization⁶⁰³. Ethiopia's tax burden, on the other hand, is far lower than that of other sub-Saharan nations, limiting Ethiopia's capacity to meet its duties under international human rights law. Human rights principles underpin the key functions of fiscal policy: mobilization of resources to finance social progress to the "maximum of available resources"; redistribution of economic gains to reduce socio-economic inequality; accountability between the State and citizens; and correction of market failures that drive violations of rights, including to a healthy environment⁶⁰⁴.

Drawing up the national budget has been distributed to both the federal and state governments in Ethiopia. However, there are no detailed budgeting principles within the Ethiopian constitutional framework. What if the government fails to approve the national budget at the beginning of a fiscal year? Do the people refuse to pay taxes for the government's failure to approve the national budget? The FDRE constitution has no clause

⁵⁹⁹ KESIK, p.287.

⁶⁰⁰ The FDRE constitution 1995, Art 41(2).

⁶⁰¹ The FDRE constitution 1995, Art 90(1).

⁶⁰² **Center for Economic and Social Rights**, Fiscal Policy and Human Rights in the Americas, Mobilizing resources to secure on the occasion of the Thematic Hearing on Fiscal Policy and Human Rights 156 Session of the Inter-American Commission on Human Rights (IACHR) Washington DC, 2015, p.3, https://www.cesr.org/sites/default/files/cidh_ddhh_fiscalidad_exec_summary_eng.pdf, (accessed on March 2, 2022).

⁶⁰³ **Centre For Economic and Social Rights**, p.3.

⁶⁰⁴ **Center For Economic And Social Rights**, p.3.

to answer these sensitive questions. There are arguments in other countries like Türkiye that Citizens have the right to budget for public expenditure to pay taxes. If the government fails to allocate a budget, citizens might refuse to pay taxes according to the constitution of Türkiye article 73, a-contrary reading. The budget right is the right of the legislature to authorize the executive branch to determine the expenditure limits and control its results by collecting public revenues on behalf of the people and spending the revenues on behalf of the people⁶⁰⁵.

The budget right is the right to determine and approve the type and number of public expenditures with taxes and similar revenues. This right belongs to the legislative body, the most authoritative body consisting of representatives elected by the people in countries that have adopted the democratic system of parliamentary governance. The budget is the government's basic responsibility mechanism towards Parliament". Therefore, it has power in the content of the right to budget. Accordingly, the right to a budget can be defined as the right to determine, certify, and control the types and amounts of public revenues and expenditures and the de facto and legal power based on national sovereignty in repeating their approval every year, carrying out all these.

Governments prepare the budget and present it to parliament for approval. Parliament has the right to approve (or reject) it. In addition, the budget realizations of the relevant period are subject to the supervision of the parliament. Accordingly, although the executive branch has the authority to prepare the budget, the right to review, amend and accept the budget belongs to the legislature, a prominent feature of parliamentary democracy, including Ethiopia. The main task of the Parliament is to establish the rules regarding the sources of public revenue, expenses, and property of the State and their management and supervision⁶⁰⁶.

⁶⁰⁵ ÜSTÜN, **Türkiye’de Vergi Ve Bütçe Hakkı**, s.198.

⁶⁰⁶ ÜSTÜN, **Türkiye’de Vergi Ve Bütçe Hakkı**, s.200.

The power to tax and spend can be likened to the two shrouds of the scale⁶⁰⁷. The power to spend makes sense of the right to tax/taxation. If the power to spend cannot be realized, then the power to tax will have no meaning⁶⁰⁸. It is of great importance that the taxes imposed by the government are carried out following the law with the people's consent (by the representatives). If the taxes collected are not spent with the people's consent, there will be little responsiveness in collecting the taxes that constitute the other shroud of the scale following the people's consent.

2. Functions of Constitutional Institutions in Fiscal System

The stability of macro-aggregate aspects of the economy is one of the main functions of the Federal and Regional State Governments in the modern constitutional system⁶⁰⁹. The stabilization functions at the central level can be related to taking specific steps to stabilize any range of aggregate magnitudes. These include production, wages, costs, and so on, as well as the rate of change in these aggregate magnitudes. The stabilization functions will then refer to the ability to take specific steps to stabilize any aggregate magnitudes, such as production, wages, costs, and so on, and the rate of change in these aggregate magnitudes⁶¹⁰. There are both micro and macro-level stabilization policies in several jurisdictions. However, the main issue in this section is the stability of the constitution in terms of flexibility or rigidity.

A simple assignment of functional obligations to various levels of government should be the first fundamental step in designing an intergovernmental fiscal relations framework. Ethiopia has two-tiered administrative units under the Federal Constitution⁶¹¹. However, the constitution left the power to decide on each regional state's number of

⁶⁰⁷ FEYZIOĞLU, Bedî, Modern Anayasalarda Bütçe Hakkı, **İstanbul Üniversitesi İktisat Fakültesi Maliye Araştırma Merkezi Konferansları**, 1984, C. 29, s. 3; ÜSTÜN, **Türkiye'de Vergi Ve Bütçe Hakkı** s.201.

⁶⁰⁸ GÜNEŞ, Gülsen, **Verginin Yasallığı İlkesi**, İstanbul 1998, s. 1.

⁶⁰⁹ BRETON/SCOTT, p.23.

⁶¹⁰ BRETON/SCOTT, p.24.

⁶¹¹ There are 10 regional states in Ethiopia, namely: Amhara, Oromia, Tigray, Somali, Afar, Benishangul-gumuz, Gambella, South Nation Nationalities and Peoples, Somali, and Sidama.

organizational units and jurisdictional limits. As a result, almost all regional states adopt three-tiered administrative units: regional, zonal, and Woreda.

IV. ECONOMIC CONSTITUTION IN THE REGIONAL AND LOCAL GOVERNMENT: ETHIOPIAN CONTEXT

A. REGIONAL AND LOCAL GOVERNMENT IN ETHIOPIA: INTRODUCTORY OVERVIEW

The making of the Regions in Ethiopia has taken place in two rounds. The first round occurred in 1992; fourteen regions were crafted out of the pre-existing provinces, mainly on ethnic lines⁶¹². As overwhelming ethnic groups have less than a million population, all ethnic groups cannot enjoy regional status. Therefore, several minor ethnic groups with similar cultures and languages were combined to form one more extensive region. The FDRE Constitution has redefined the regions. It reduced the fourteen areas of the TGE to nine by merging five regions to create a giant State known as the SNNP⁶¹³. Besides, the Federal Constitution recognizes the City Government of Addis Ababa as a seat of the Federal Government and accountable to the center⁶¹⁴. Dire Dawa has not been mentioned in the FDRE Constitution but remains responsible to the Federal government. The territorial mapping of the regions has ethnic as well as territorial features. The States are restricted based on settlement patterns, language, identity, and consent of the people concerned⁶¹⁵.

Afar, Amhara, Benishangul/Gumuz, Gambella, Harari, Oromiya, Somalia, Southern Nations Nationalities and Peoples (SNNP), Sidama, and Tigray are Ethiopia's

⁶¹² The Proclamation lists the following Regions: Tigray, Afar, Amhara, Oromia, Somali, Benshangul-Gumuz, (Gurage, Hadiya, Kembata, and Alaba, Tembaro, and Yem), Sidama, Gedeo, Burji, Amaro, and Gicho, Kilil 9 (Wolaita, Dauro, Konta, Aydi, Gamo, ...), Baskito, Murssi, Ari, Hamer, ...), (Kefficho, Dizo, Surna Bench, Sheko, ...), (Gambella), Harari and (Addis Ababa).

⁶¹³ Gurage, Hadiya, Alaba, Timbaro, and Yem); (Sidama, Gedeo, Burgi, and Amaro/ Koyra); (Welayta, Dawro, Konta, etc), Kilil 10 (Biskito, Mursi, Hamer, ... etc), and Kafficho, Surna, Shekocho, and etc were merged together to form the SNNP State.

⁶¹⁴ The FDRE Constitution, 1995, Art.49 (3).

⁶¹⁵ The FDRE Constitution 1995, Art.46.

ten ethnic regions. In Ethiopia, the second tier of administrative units is known as a 'region.' As a result, the word "region" in this chapter refers to the self-administered and autonomous provinces that derive legitimacy from the FDRE constitution article 47. According to the Federal constitution, which allows all regional governments to create their regional constitution, each regional state, except Sidama, approved its first-ever constitution in 1995 and revised it in 2001/2002⁶¹⁶.

One of the distinctive elements of Ethiopia's regional constitutions is its comprehensive recognized economic governing system. This distinguishes regional constitutions from the FDRE constitutions. In addition, administrative power is decentralized in all regions, from regional administration to the Kebele level. Therefore, it is feasible to say that the formation and structure of regional government are outlined in their comprehensive constitutions.

Local government has not been defined anywhere in the Ethiopian federal constitution and state constitutions. The term “local government” generally denotes the units of administration at the grass-root level that provides direct services to citizens at the lower intermediate and lowest levels⁶¹⁷. Local governance can be understood as a vehicle of decentralization⁶¹⁸ of power to the lowest level of government. The United Nations defines local government as a political subdivision of a nation or state, which is constituted by law and has substantial control of local affairs, including the power to impose taxes or to enact prescribed purposes⁶¹⁹. The Nigerian Local Government Reforms Guideline defines local government as a government at the local level exercised through a representative council established by law to exercise specific powers within defined

⁶¹⁶ The FDRE constitution Art 47.

⁶¹⁷ BAILEY, Stephen, **Local Government Economics: Theory, Policy, and Practice**, Basingstoke, Macmillan publishers, United Kingdom 1999, p.12.

⁶¹⁸ Decentralization means a system of dispersal of power from a central government to other units or agencies of government.

⁶¹⁹ **United Nations Documentary On Public Administration**, <http://www.unidep.org/Release3/library/englishpages>, (accessed on November 20, 2011).

areas⁶²⁰. Hence, local government is established by law to perform specific functions within defined areas or jurisdictions. The definitions also reveal that local government is a lower tier of government depending on the political arrangement. The local government refers to specific institutions or entities created by national constitutions,⁶²¹ state constitutions, ordinary legislation of a higher level of the central government by provincial or state legislation, or executive order⁶²² to deliver a range of specified services to a relatively small geographically defined area⁶²³. Local governance is a broader concept defined as formulating and executing collective action locally⁶²⁴. Thus, it encompasses the direct and indirect roles of formal institutions of local government and government hierarchies, as well as the roles of informal norms, networks, community organizations, and neighborhood associations in pursuing collective action by defining the framework for citizen-citizen and citizen-state interactions, collaborative decision making, and delivery of local public services⁶²⁵. In the same tradition, Breton provides a comprehensive typology of models of government. He distinguishes two broad types of government⁶²⁶. The first embodies the doctrine of the common good, and the second acts to preserve the self-interest of the governing elites. The second type can assume either a monolithic or a composite structure. In a monolithic structure, local government is subject to capture by bureaucrats or interest groups⁶²⁷.

⁶²⁰ **The 1976 Local Government Reforms Guidelines of Nigeria,**

at <http://cdj.oxfordjournals.org/content> (accessed on 20th November 2011).

⁶²¹ The Constitutions of some countries such as Brazil, Denmark, France, India, Italy, Japan, Sweden recognize loconal government in the federal constitution.

⁶²² China is well known that the local government can be entrusted to undertake specific activities by the executive order.

⁶²³ SHAH, Anwar/SHAH, Sana, “the New Vision of Local Governance and the Evolving Roles of Local Governments”, in: Shah, Anwar (eds.) **Local Governance in Developing Countries**, Washington, D.C, World Bank, 2006, <https://openknowledge.worldbank.org/handle/10986/7192>, p.43, (accessed on June 12, 2021).

⁶²⁴ SHAH Anwar/SHAH Sana, p.35.

⁶²⁵ BAILEY, p.12.

⁶²⁶ BRETON, Albert, **Competitive Governments**, Cambridge University Press, United Kingdom, 1997, p. 28.

⁶²⁷ BRETON, p.28.

In Ethiopia, sub-national state constitutions establish local governance. According to state constitutions, local executive authorities are responsible for providing public services and products. Local government in Ethiopia can be referred to as "grass-roots government" because it is the closest to the rural people and, in most cases. The most well-known level of government is the rural areas where most citizens live, where rural dwellers account for approximately 85 percent of the Ethiopian national population. Ethiopia now has three local government levels: zonal (special Woreda), woreda, and kebele administration, with the kebele administration being the lowest level. However, local governments are not sufficiently independent under Ethiopian state constitutions, and regional states have exercised control and monitoring without a legal basis. As a result, local governments are generally set up nearly the same way in all locations under all state constitutions.

The first feature of Ethiopian local government is that the responsibilities and duties of local governments are more precisely outlined in the constitutional frameworks of all regions. Almost all Regional State Constitutions went into considerable length about the responsibilities of local governments. Every regional state has a four-tiered judicial structure, ranging from the kebele social court to the state Supreme Court. In this case, all state constitutions recognize Kebele Level social court at the grassroots level, directly relevant to ordinary folks and people in local communities. The Social Courts play an essential role in regulating the economic activities of the local population.

In all layers of government organization, state constitutions recognize legislative, executive, and judicial entities, with the legislative body having supremacy over political authority. Ethiopian Federalism includes certain unusual characteristics, such as ethnicity, to establish state boundaries and the delegation of authority to ethnic groups⁶²⁸. In diverse regions, local borders are also determined based on ethnic identification. Locally valid

⁶²⁸ ARARSA, Tsegaye, **State Constitutions in Federal Ethiopia: A Preliminary Observation**, A Summary for the Bellagio Conference, Addis Ababa 2004, p.6.

ethnic identity is nearly a prerequisite for the appointment of local administrators in regional states. Ethiopia's ideological underpinning is, in fact, ethnic self-determination.

**B. STRUCTURAL ORGANIZATION OF REGIONAL STATES:
COMPARATIVE CONSTITUTIONAL VIEW**

The regional states' administrations installed local government systems at the three tiers within the regional states. These are Regional, Woreda, and Kebele levels, according to the amended constitutions of Amhara Regional State (ARS), Tigray Regional State (TRS), Gambella Regional State (GRS), Benishangul Gumuz Regional State (GRS), Somali Regional State (SORS), and Afar Regional State (ARS)⁶²⁹. What makes different the Oromiya Regional State (ORS), Sidama(SIRSA), and South Nation Nationalities and Peoples Regional State (SNNPRS) revised constitution is a zone or special woreda is involved in the level of the state structure⁶³⁰. That means ORS, SIRS and SNNPRS are structured at the regional, zonal (special woreda), woreda, and Kebele levels. The revised constitution of SORS provides that the administration of the regional state is structured in such a way as to comprise woreda and kebele administrative units or municipalities and state councils⁶³¹. The SORS constitution differs from other regional state constitutions because it allows a choice of municipal and state council forms for the organization of the regional state. The HRS constitution allows the regional state to establish two levels: regional and kebele⁶³². Zones and woredas are not part of the Harari region's structural organization, not in the constitutional sense. In actuality, Benishangul Gumuz's new constitution takes a different approach to the structural formation of the state. It specifies how the region is organized at the regional, state council, and administrative levels⁶³³. Instead of identifying the levels, the constitution adopted the broad word "administrative

⁶²⁹ The Revised constitutions of Amhara Region, Tigray Region, and Afar Region, Art 45.

⁶³⁰ The Revised Constitution of Oromiya, Gambella, and SNNPRS, Art 45

⁶³¹ The Revised Constitution of Somali, Art 45.

⁶³² The Revised Constitution of Harari, Art 45.

⁶³³ The Revised Constitution of Benishangul Gumuz, Art 45.

levels." Therefore, it is feasible to deduce that the Benishangul Gumuz regional state's structural layout excludes "zone" as a level of regional government organization.

The state administration is the primary political power in all areas. Three main institutions unite Ethiopia's regional states: A Regional/State Council, a Regional Administrative Council, and a judicial body. The Regional Council is the legislative organ of the regional state governments, composed of elected members from the regions' peoples. The Regional Administrative Council is also a state government executive entity. It comprises the chief regional administrator, his deputy, and the heads of the other executive bureaus. Finally, a judicial organ is also part of the state administration. The federal Constitution delegated to state governments a range of authorities and tasks.

Zonal administration is the largest local government entity in the regional states. In general, zonal administration is not a self-contained administrative unit. It is just a branch of the regional administrations created at the zonal level, including several woredas⁶³⁴. Despite the lack of a designed formula in all regional state constitutions to create zonal administration, there are some practical applications in ARS, TRS, ORS, SORS, and ARS in which zones are centered on relatively large cities of the regions, and a zone is established in a geographical area inhabited by 10,000 or more people⁶³⁵. Zones are created based on ethnic identity in SNNPRS, GRS, and BGRS.

What is usually called 'nationality administration' is formed at the zonal level in ARS, GRS, and SNNPRS? The Nationality Administration was founded in line with Article 39(3) of the Federal Constitution, which provides each ethnic group the right to self-governance and necessitates the formation of government institutions in regional states⁶³⁶. Ethiopia's federalism is ethnically oriented; hence regional states were founded based on the geographical settlement patterns of the country's major ethnic groupings. Nonetheless, each state has a variety of regional minority ethnic groups. Thus, national

⁶³⁴ AYELE, Zemelak, *Local Government in Ethiopia: Adequately Empowered?* (unpublished Ph.D. thesis), University of Western Cape, South Africa), 2011, p. 12.

⁶³⁵ AYELE, p.12.

⁶³⁶ AYELE, p.15.

administrations were formed to accommodate these regional ethnic minorities and allow them to exercise self-determination in the form of territorial autonomy. Nationality administration is acknowledged as the highest political institution of the ethnic group it was founded for, below the federal and regional governments. The nationality administration has a representative council and an executive organ⁶³⁷. The administrative organ consists of a chief administrator elected by the representative board and additional members selected by the chief administrator with the permission of the representative council. In addition, there are Special Woredas in SNNPRS that have the same status as zones. These woredas are too tiny to be zones and are ethnically distinct from neighboring zones. Special woreda administrations are in direct contact with regional administrations. Except for the regional administrations, no mediator or monitoring authority exists over such particular woredas.

A woreda administration is located under zonal administration. A Woreda administration is the most significant local administrative institution in the local government system of regional states. Except for Harari, it is enshrined in all provincial state constitutions. The woreda administration comprises the Woreda Council, which is made up of popularly elected representatives of the Kebeles organized under it. The Woreda Administrative Council, which is made up of the Woreda Chief Administrator, who is elected by the woreda council from among its members, and other members who the woreda administrator appoints with the approval of the woreda council; and the First Instance Judicial Body, which is made up of Woreda Councils are made up of directly elected delegates from each kebele in the woreda. The number of kebele delegates at the woreda level varies by location. In Oromia, for example, each kebele has three representatives in woreda councils, but in Tigray, the number of kebele delegates varies according to the size of the kebele population.

The Woreda Council is held to two levels of accountability: it's individual Zonal and Regional Executive Committees. The Woreda Cabinet (also known as the Executive

⁶³⁷ AYELE, p.15.

Committee) comprises about a dozen members, mainly sector bureau chiefs. Woredas also have a court that is overseen by the regional judicial machinery. Below the zones and woredas are kebeles, which have a population of 5,000-10,000 people. The kebele administration is the lowest level of local government. Kebeles have a skeleton administrative framework consisting of elected politicians intended to represent common folk. The Kebele Administration consisted of three principal organs: the Kebele Council, the Kebele Administrative Council, and the Social Court⁶³⁸. Kebeles are not budgetary units; woredas do not fund them⁶³⁹.

Not all regional state constitutions acknowledge the formal administrative level below the kebele. However, in Amhara and SNNPRS, there are de facto sub-kebele administrative Units. For example, sub-kebeles and Gots(ጎጥ) are the other types of communities in Amhara regional state. Similar sub-kebele units are known as kantas in Southern Nations, while ketenas are found below. Oromiya and Afar have no recognized sub-kebele structures. Kebeles, on the other hand, commonly form community committees, such as water users' committees to oversee spring management and upkeep, health brigades to drain and spray malarial areas, and particular women's committees to raise awareness, educate, and mobilize females. Each kebele also has a parent-teacher association and a school board to manage problems and complaints about school administration.

1. Power and Duties of Zones

Zone is not a different level of governance like the woredas. The local administration can't be found in the zone level. As a result, the transfer of authority from the regional government to the Zonal Administration might be described as

⁶³⁸ The Revised Constitution of ANRS Art.83; constitution of TNRS Art 80, the constitution of SNNPRS Art 90, the constitution of BGNRS Art 79, the constitution of GNRS Art 85.

⁶³⁹ AYELE, p. 38.

deconcentration⁶⁴⁰ rather than devolution⁶⁴¹. The regional government de-concentrates some powers and duties to the zonal administration⁶⁴². Generally, the functions of zones can be categorized into two in terms of their role of control over woredas⁶⁴³.

Since 2001, the governments of four regional states (ORS, TRS, AMRS, and ORS) have moved vital sector departments from the zonal to the woreda level, including health, education, agricultural extension, water supply, and social services. However, the responsibilities of zones in economic administration varies between these domains. Zone administrations are active administrative entities in Amhara and SNNPRS, having supervisory powers over the woreda. They play a minor part in economic considerations in ORS and TRS. Other regions, on the other hand, are still in the process of devolving to the woreda level. The modified Oromian constitution, on the other hand, has made the better move by recognizing zone administration and specifying zonal government's authority and tasks. The other regional constitutions do not address the issue of zone government. Other main functions of the zonal administration include mediating between the woreda administrations and the province government, as well as coordinating the operations of the woreda administrations within the zone to provide technical support⁶⁴⁴.

2. Power and Duties of Different Organs in A Nationality Administrations

The Nationality Council, together with the House of People's Representatives and the Regional Council, is recognized as the highest political entity of the ethnic community

⁶⁴⁰ Deconcentration, also known as administrative decentralization, is the transfer of responsibilities, authorities and resources from a centre to local units of the center. Through deconcentration, powers and responsibilities are transferred to governmental institutions within the jurisdictional authority of the central government. See, MANOR, James, **The Political Economy of Democratic Decentralization**, World Bank Books NewYork, 1999, p. 5.

⁶⁴¹ Devolution refers to a situation where a local level government is constituted legally as a 'separate governance body' and that powers and responsibilities are transferred to such unit on a permanent basis. See MANOR, p.6.

⁶⁴² Serdar, Yilmaz/Varsha, Venugopal, Local Government Discretion and Accountability in Ethiopia, the Andrew Young School of Policy Studies, Georgia State University, International Studies Program Working Paper, V.8, No.38,2006, p. 3.

⁶⁴³ SERDAR|VARSHA, p.4.

⁶⁴⁴ SERDAR|VARSHA, p.4.

in question⁶⁴⁵. The Nationality Council has various responsibilities and obligations under the Amhara Regional Constitution. It has the authority to make all economic related laws directives at the Nationality Administration level⁶⁴⁶. The Nationality Council is responsible for defending the rights of members of the ethnic group to speak and write in their native language. Furthermore, it is responsible for supporting the rights of people of ethnic minorities to maintain, develop, and promote their social and economic life⁶⁴⁷.

Furthermore, the Nationality Council has the power to issue laws relating to economic and non economic matters for the nationality zones as defined by the regional constitution⁶⁴⁸. However, the Nationality Council's legislation must be consistent with those adopted by the state and federal governments⁶⁴⁹. The Nationality Council has also the power to approve the budget of the nationality zones in line with the regional budget allocation and the revenue capacity of the zone⁶⁵⁰. However, the special Nationality Zone totally depends on the state government's intergovernmental grants and the regional fiscal directions⁶⁵¹. As a result, while establishing the Nationality Administration's budget, the Nationality Council must consider what the regional government has allotted to the Nationality Administration.

The executive council has numerous responsibilities. It is responsible, as the administrative body, for ensuring that the laws and decisions of the federal, regional, and nationality zone governments, as well as the legislative council of the nationality zone, are carried out⁶⁵². All zonal economic activities and finance matters are administered by the executive council. It also has the authority to organize the nationality zone's

⁶⁴⁵ ANRS Constitution 2001, Art 74 (2), GNRS constitution 2002, Art 76(2), BGNRS constitution 2002, Art 75(2).

⁶⁴⁶ ANRS Constitution 2001, GNRS constitution 2002, Art 74(2) (a), BGNRS constitution Art 76(2) (a), Art 75(2) (a).

⁶⁴⁷ ARS Constitution Art 74(2) (b), GNRS Constitution Art 76(2) (b), BGRS constitution Art 75(2) (b).

⁶⁴⁸ ARS Constitution, Art 74(2) (b), GNRS Constitution Art 76(2) (b), BGRS constitution Art 75(2)(b).

⁶⁴⁹ ARS Constitution, Art 74(2) (c), GNRS Constitution Art 76(2) (c), BGRS constitution Art 75(2) (c).

⁶⁵⁰ ARS Constitution, Art 74(2) (d), GNRS Constitution Art 76(2) (d), BGRS constitution Art 75(2)(d).

⁶⁵¹ ARS Constitution, Art 74(2) (a), GNRS Constitution Art 76(2) (a), BGRS constitution Art 75(2)(a).

⁶⁵² ARS Constitution, Art 78(1) (a), GNRS constitution Art 80(1) (a), BGRS constitution Art 79(1)(a).

departments and other executive bodies⁶⁵³. It also has the authority to formulate and implement the national administration's social, economic, and development policies and goals⁶⁵⁴. Finally, it is in charge of; however, the regional Constitutions of all does not specifically state which social services and economic growth concerns are under the scope of a nationality zone.⁶⁵⁵ There seems to have nothing left to the zonal administration to govern.

The Chief Administrator is the head of the executive council and the representative of the nationality zone⁶⁵⁶. The Chief Administrator has a specific obligation as the leader of the executive council to coordinate and monitor the execution of the nationality zone's social and economic programs, as well as the policies, legislation, and directives of the national and regional governments. In addition, he fulfills any additional duties delegated to him by the President of the regional state and the Nationality Council⁶⁵⁷.

The Woreda Administration is made up of three key organs in each area. First-instance jurisdiction is held by the Woreda Council, Woreda Administrative Council, and Woreda Court⁶⁵⁸. The Woreda Executive Council is presided by by the Chief Administrator. The Chief Administrator has a variety of responsibilities and abilities as the Woreda Executive Council's head.

The woreda is given varied authorities and tasks in most states' constitutions. The woreda council is the woreda administration's legislative body. A Woreda Council has the capacity to issue directives to ensure peace and security in the woreda as part of its legislative function⁶⁵⁹. It is also permitted to approve the woreda's budget. Furthermore,

⁶⁵³ ARS Constitution, Art 78(1) (b), GNRS constitution Art 80(1) (b), BGRS constitution Art 79(1) (b).

⁶⁵⁴ ARS Constitution, Art 78(1) (d), GNRS constitution Art 80(1) (d), BGRS constitution Art 79(1) (d).

⁶⁵⁵ ARS Constitution, Art 78(1)(c), GNRS constitution Art 80(1)(c), BGRS constitution Art 79(1)(c).

⁶⁵⁶ ARS Constitution, Art 80(1), GNRS constitution Art 82(1), BGRS constitution Art 81(1).

⁶⁵⁷ ARS Constitution, Art 80(1), GNRS constitution Art 82(1), BGRS constitution Art 81(1).

⁶⁵⁸ ARS Constitution, Art 83, and other regional constitutions in the same manner.

⁶⁵⁹ ANRS Constitution Art 86 (2)(g); TNRS Constitution Art 74 (2)(e); ONRS constitution Art 79 (2)(h); SRS constitution Art 78(2)(e); SNNPRS constitution Art 83(1); BGRS constitution Art 88(1), GRS constitution Art 88(e), AFRS constitution Art 79(2)(e).

on the advice of the Woreda Administrative Council, it can support revenue streams that the Woreda Administration can utilize that are not designated and handled by the regional government.⁶⁶⁰ It may also levy additional service fees. Furthermore, it has the authority to study and approve the woreda's economic growth, social service, and administrative working plans, which are prepared by the Woreda Administration Council.⁶⁶¹

It also has the authority to evaluate and approve proposed economic development social services plans, as well as administrative working plans and programs for the Woreda in question⁶⁶². The woreda Executive Council is responsible for ensuring that fundamental agricultural development operations are carried out in accordance with the right season, and that the mission of development, conservation, and care of natural resources is carried out with special attention paid to it⁶⁶³. The woreda executive council also creates a suitable condition in which the resident public is massively inspired and mobilized to engage in development efforts⁶⁶⁴.

Furthermore, the council is required by law to publish rules to control its internal working procedures; ensures that rural land user fees, agricultural income tax, and other revenues are collected on schedule, and even levies additional service costs; The Woreda Administrative Council/Woreda Executive Council has the authority and responsibility to enforce the federal and regional governments' policies, legislation, directives, plans, and programs⁶⁶⁵. It also has the power to coordinate and supervise the different executive offices in the woreda⁶⁶⁶. The Woreda Executive Council is also responsible for preparing

⁶⁶⁰ ANRS Constitution, Art 86(2)(h), TNRS Constitution Art 74 (2)(g), ONRS constitution Art 79(2)(g), SRS constitution Art 78(2)(g), GRS constitution Art(88)(2)(f), AFRS constitution Art 88(2)(g)

⁶⁶¹ ANRS Constitution, Art 86(2)(i), TNRS Constitution Art 74 (2)(d), ONRS constitution Art 79(2)(e), SRS constitution Art 78(2)(h), GRS constitution Art(88)(2)(g), AFRS constitution Art 88(2)(f).

⁶⁶² ANRS Constitution, Art 86(2)(i), TNRS Constitution Art 74 (2)(d), ONRS constitution Art 79(2)(e), SRS constitution Art 78(2)(h), GRS constitution Art(88)(2)(g), AFRS constitution Art 88(2)(f).

⁶⁶³ ANRS Constitution, Art 86(2)(2)(I), and other constitutions of similar manner.

⁶⁶⁴ ANRS Constitution, Art 86(2)(2)(I), and other constitutions of similar manner.

⁶⁶⁵ ANRS Constitution Art 91(1)(h), TNRS Constitution Art 74 (2)(g), ONRS constitution Art 79(2)(g), SRS constitution Art 78(2)(g), GRS constitution Art(88)(2)(f), AFRS constitution Art 88(2)(g).

⁶⁶⁶ ANRS Constitution Art 91(1)(c), TNRS Constitution Art 74 (2)(b), ONRS constitution Art 79(2)(e), SRS constitution Art 78(2)(b), GRS constitution Art(88)(2)(g), AFRS constitution Art 88(2)(e).

the annual budget and submitting it for approval to the Woreda Council⁶⁶⁷. Moreover, it is accountable for collecting rural land use fees, agricultural income taxes, and other revenues⁶⁶⁸. It is also required to recommend additional revenue sources other than those that the state governments administer and seek the Woreda Council's approval⁶⁶⁹.

The Woreda Executive Council is responsible for preparing social services, economic development, and administrative plans for Woreda Council⁶⁷⁰. Upon approval by the Woreda Council, it implements the plan⁶⁷¹. To that effect, it has the power to direct and supervise security and police organs in the woreda. It is also part of the Woreda Executive Council's responsibility to ensure the people's participation in developmental activities⁶⁷². It also must protect natural resources and heritages in a *woreda*⁶⁷³. In addition to the duties above and powers, the Woreda Executive Council may be given additional responsibilities by the regional governments and the Woreda Council.

The Chief Administrator is the head of the Woreda Executive Council⁶⁷⁴. As the head of the Woreda Executive Council, therefore, the Chief Administrator has a special responsibility to coordinate and supervise the implementation of the social services and economic development programs of the woreda⁶⁷⁵. It is also the responsibility of the Chief Administrator to ensure the implementation of the national and regional governments'

⁶⁶⁷ ANRS Constitution, Art 91(1)(d), TNRS Constitution Art 74 (2)(c), ONRS constitution Art 79(2)(f), SRS constitution Art 78(2)(c), GRS constitution Art(88)(2)(e), AFRS constitution Art 88(2)(d).

⁶⁶⁸ ANRS Constitution Art 91(1)(e), TNRS Constitution Art 74 (2)(d), ONRS constitution Art 79(2)(b), SRS constitution Art 78(2)(f), GRS constitution Art(88)(2)(c), AFRS constitution Art 88(2)(c).

⁶⁶⁹ ANRS Constitution Art 91(1)(b), TNRS Constitution Art 74 (2)(e), ONRS constitution Art 79(2)(i), SRS constitution Art 78(2)(g), GRS constitution Art(88)(2)(d), AFRS constitution Art 88(2)(b).

⁶⁷⁰ ANRS Constitution Art 91(1)(h), TNRS Constitution Art 74 (2)(h), ONRS constitution Art 79(2)(e), SRS constitution Art 78(2)(i), GRS constitution Art(88)(2)(a), AFRS constitution Art 88(2)(f).

⁶⁷¹ ANRS Constitution Art 91(1)(i), TNRS Constitution Art 74 (2)(i), ONRS constitution Art 79(2)(c), SRS constitution Art 78(2)(h), GRS constitution Art(88)(2)(b), AFRS constitution Art 88(2)(a).

⁶⁷² ANRS Constitution Art 91(1)(g), TNRS Constitution Art 74 (2)(g), ONRS constitution Art 79(2)(h), SRS constitution Art 78(2)(a), GRS constitution Art(88)(2)(h), AFRS constitution Art 88(2)(h).

⁶⁷³ ANRS Constitution Art 91(1)(f), TNRS Constitution Art 74 (2)(a), ONRS constitution Art 79(2)(a), SRS constitution Art 78(2)(d), GRS constitution Art(88)(2)(i), AFRS constitution Art 88(2)(I).

⁶⁷⁴ ARS Constitution Art 93 (1); TRS Constitution Art 82 (1); ORS constitution, Art 87 (1); SRS constitution Art 85(1); SNNPRS constitution Art 90(1); BGRS constitution Art 94(1), GRS constitution, Art 95, AFRS constitution, Art 85(1).

⁶⁷⁵ ARS Constitution Art 93(2)(f); TRS Constitution Art 82(2)(e); ORS constitution Art 87(2)(e); SNNPRS constitution Art 85(2 e); BGRS constitution Art 90(2)(d), AFRS constitution Art 94(2)(c).

policies, legislation, and directives⁶⁷⁶. Furthermore, he is charged with coordinating the kebeles in the woreda and supervising the woreda police forces are parts of the responsibilities of the Chief Administrator⁶⁷⁷. Additionally, the Chief Administrator discharges other responsibilities that may be given to them by the President of the regional states and the Woreda Council.

A kebele administration has sole power for the kebele's social services and economic growth, according to the regional constitutions⁶⁷⁸. However, issues such as social services and economic growth, which fall under the purview of the kebele, are not addressed in the state constitutions of all areas. Except for the Harari constitution, all regions' constitutions include the power and duties of the kebele council, kebele cabinet, and chief administrator. The Harari constitution makes no mention of the authority and responsibilities of the respective kebele administration; rather, it leaves the details of kebele administration power and duties to other area regulations⁶⁷⁹. In terms of the power and obligations of the Kebele government, the Somali constitution differs from other regional constitutions. It disregards several essential authorities and obligations of the Kebele council and Kebele cabinet, which are recognized in all other regional constitutions. Although state constitutions serve as guidance for regional governments, the Somali constitution suffers from a relative flaw in that it does not specify the functions and tasks of local government or Kebele administration.

The Kebele council has the following essential authorities and tasks, according to the constitutions of all regions except Harari and Somali: The authority to give locally operational recommendations such as social affairs in a manner that is not conflicting with policies, rules, regulations, and directives established by its higher Administrative Organs,

⁶⁷⁶ ARS Constitution Art 93(2)(a); TRS Constitution Art 82(2)(b); ORS constitution Art 87(2)(b); SNNPRS constitution Art 85(2 (b); BGRS constitution Art 90(2)(c); AFRS constitution Art 94(2)(b).

⁶⁷⁷ ARS Constitution Art 93(2)(c); TRS Constitution Art 82(2)(a); ORS constitution Art 87(2)(a); SNNPRS constitution Art 85(2 (c); BGRS constitution Art 90(2)(b), AFRS constitution Art 94(2)(a).

⁶⁷⁸ ARS Constitution Art 98, Art 87, TRS Constitution Art 97, Art 86, and other state constitutions of the same manner.

⁶⁷⁹ Revised Constitution of Harari,2002, Art 75(3).

and so strives for their implementation in the Kebele in question; The authority to elect the Speaker, Deputy Speaker, and Chief Administrator of the Kebele from among the Council members, and so establish the Kebele's Administrative Council; Power to Request Questioning of the Kebele's Chief and Deputy Administrators, as well as Inquiries into the Executive Body's Workings⁶⁸⁰.

It also has the authority to appoint social court judges, who must be pre-selected and recommended by the Kebele's Administrator, taking into account the evaluation and critical opinion of the local population. Kebele council is also responsible for introducing other initiatives that may be of interest to the residents of the kebele in question and closely monitoring their execution. It must also encourage the kebele's resident population to participate in development efforts and closely monitor activities aimed at the development and care of the kebele's natural resources; duty to ensure the protection of peace and security of the resident public, as well as the maintenance of law and order throughout the kebele⁶⁸¹.

The kebele administrative council serves as the executive body of the kebele administration. The chief administrator is elected by the kebele council from among its members and other members to serve on the kebele administrative council⁶⁸². The kebele administrative council is the regional administration's lowest executive body, with the following powers and tasks. The authority to monitor and supervise the implementation of social service programs within the limits of the Kebele; prepares comprehensive development plans and submits them to the Kebele Council for approval. It is also responsible for accelerating rural development, pursuing the conservation, care, and development of natural resources, and mobilizing and coordinating the populace to participate in development initiatives. Furthermore, the peace and security of the Kebele

⁶⁸⁰ ANRS constitution Art 98 (2), TRS constitution Art 90(1), ORS constitution Art 96(2), BGRS constitution Art 96(2), and other state constitutions of the same manner.

⁶⁸¹ ANRS constitution Art 98 (3,4,5), TRS constitution Art 90(2,4,6), ORS constitution Art 96(3,4,6), SNNPRS constitution Art 96(3,4,5), and other state constitutions of the same manner.

⁶⁸² ANRS constitution Art 98 (1,7), and other state constitutions of the same manner.

are preserved or protected. Submits monthly reports to the Kebele Council on its actions; performs any other obligations given by the Kebele Council.

The kebele's chief administrator has been acknowledged in all area constitutions, and the kebele chief administrator is the leader of the kebele executive council⁶⁸³. It has the authority to call the Kebele Administrative Council together and hence preside over its operations. It also receives and communicated to him by his upper Administrative organs policies, rules, regulations, directives, and plans. It also monitors and supervises their execution across the kebele in question. The Kebele government is beset with a number of issues.

It nominates and obtains Kebele Council approval for proposed appointments of Kebele Administrative Council members, including the Deputy Administrator; submits the list of proposed Kebele Social Court judges and thus secures their appointment by the Kebele Council after having them scrutinized and screened by the Kebele Administrative Council with due regard for the opinion of the resident public concerned⁶⁸⁴.

The Kebele administrator is also responsible for providing periodic activity reports to the Kebele Council, the resident public, and the urban and or Woreda Administration encompassing such kebele, as the case may be; and carrying out such other functions as may be delegated to him by the Kebele Administrative Council, the Kebele Council, and the Urban and or Woreda Administration concerned⁶⁸⁵.

3. Economic Administration of Regional States

All regional state constitutions permit cities, and urban centers may indirectly have their council and talk of urban centers. They do not, however, govern the structural organization, authorities, and functions of urban centers. Furthermore, the Ethiopian

⁶⁸³ ANRS constitution Art 104(2)(a), and other state constitutions of the same manner.

⁶⁸⁴ ANRS constitution Art 104(2)(b), Art 96(2)(c), Art 98(2)(a), Art 96(2)(c), and other state constitutions of the same manner.

⁶⁸⁵ ANRS constitution Art 104(2)(c,d,e,f), Art 96(2)(c,d,f), Art 98(2)(b,a,e), Art 96(2)(b,c,e,f), and other state constitutions of the same manner.

Decentralization system, including the 1995 Constitution, did not recognize metropolitan areas as autonomous entities to whom authorities and resources might be delegated⁶⁸⁶.

Most metropolitan districts were previously controlled by a parallel municipal government system in which institutional structures, powers, and obligations were allocated under laws going back to 1945⁶⁸⁷. Municipalities were neglected and not functional as autonomous local entities under the heavily centralized Derg rule. However, from the year 2000, national decentralization strategies have been implemented as part of large-scale government reform, culminating in the establishment of institutional and legal frameworks for urban local government agencies. The Bureau of Works and Urban Development is in charge of the regional government's urban management and development concerns in most areas. Furthermore, all nine Regional States have issued "City" Proclamations, which establish metropolitan local government (or city) authority with an urban governance model based on an elected council, elected mayor, Mayor's Committee, and city manager system.

In the year 2000, Amhara National Regional State issued its first City Proclamation No. 43. (EC1992). The Revised Proclamation No. 91/2003 currently directs urban reform in Amhara Regional State by establishing, organizing, and defining the authorities and obligations of urban centers in the Amhara Region (EC 1995).

Oromia Regional State issued its first City Proclamation, No. 65/2003, in 2003. (EC1995). The amended City Proclamation 116/2006 (EC 1998) currently governs the Oromia Regional State's urban transformation initiative.

The Southern Nations Nationalities and Peoples Regional State issued its first City Proclamation, No. 51/2002, in 2002. (EC1994). The Revised Proclamation 103/2006

⁶⁸⁶ TEGENIE/ G/Egziabhier, "Literature Review Of Decentralization In Ethiopia", in TAYE, A/ Tegene G/Egziabhier (eds), *Decentralization in Ethiopia*, Forum for Social Studies, Addis Ababa, 2007, p. 30.

⁶⁸⁷ Decree No. 1 of 1942, Proclamation No. 74 of 1945 as cited in Ministry of Works and Urban Development Plan, 2007, p. 5.

governs urban transformation in the SNNP Regional State (EC 1998). No. 65/2003 was Tigray's first regional City Proclamation (EC 1995).

Tigray Regional State's urban reform is regulated by Tigray updated City Proclamation 107/2006. (EC 1998). In GC 2006/07 (EC 1998/99), the five Regional States of Afar, Benshangul/Gumuz, Gambela, Harari, and Somali developed legislation and City Proclamations to form local urban government bodies.

For urban areas, the regions have chosen a Council-Mayor arrangement. As a result, each regional urban administration is comprised of a Council, a Mayor's Committee, an executive body, and a Mayor. Furthermore, competent city administrators are chosen on merit in the major areas. However, with the exception of a few towns and cities, most urban and semi-urban locations in the states under review do not have their own elected councils. In many cases, these metropolitan centers are placed under the control of the woreda government. As a result, urban service and development are downgraded to a secondary level⁶⁸⁸.

C. JUDICIARY ECONOMY IN LOCAL GOVERNMENT

Except for the Harari constitution, all state constitutions extend judicial power from the regional to the kebele level. Courts have judicial power in the states. According to all state constitutions, the state judicial apparatus is organized as the Supreme Court, zonal high courts, and woreda courts (first instance court). On the one hand, the constitution of all regional states specifies that woreda courts are the judicial organ with the lowest and first instance judicial power in the state, while on the other hand, kebele social courts are founded below woreda first instance courts. These are two contradicting statutes concerning the jurisdiction of courts in the first instance.

Kebele social courts have first instance jurisdiction since all land disputes and civil actions involving less than 1,500 birrs are filed before Kebele social courts, as are minor misdemeanors. Social courts are not solely judicial institutions. Instead, they are a hybrid

⁶⁸⁸ This is based on the city proclamations of regional states as explained in the text.

of the executive and judiciary because they are not part of the court structures, which are divided into three layers: woreda, zonal, and state supreme courts, as stipulated by the state constitutions of all regions.

On the other hand, all regional state social court establishment proclamations appear to envision kebele-level power separation and kebele social courts⁶⁸⁹. One issue with social courts is that they are mostly handled by laypeople with no legal training. Judges are appointed by the Kebele council on the proposal of the Kebele Executive council. The kebele council also has the authority to dismiss social court judges at any moment for failing to perform their responsibilities effectively or for engaging in immoral behavior⁶⁹⁰.

D. ACCOUNTABILITY OF LOCAL GOVERNMENTS

The constitutions of all regional states set forth the accountability matter in the same way as follows. First, as far as being elected directly by the people, members of the woreda council are accountable to the people that elect them⁶⁹¹. Second, the speaker of the woreda council is also accountable to the woreda council, and the Deputy Speaker of the woreda council is accountable to the speaker and the woreda council⁶⁹². Third, the woreda executive council is responsible to the woreda council chairman⁶⁹³. Fourth, the woreda chief executive is accountable to the council and the state chief executive. Finally, the woreda deputy chief executive is accountable to the woreda chairman and the executive council⁶⁹⁴.

The kebele council is accountable, depending on the circumstances, to the municipal council or the woreda council in which it is embraced. Depending on the circumstances, the kebele administrative council is accountable to the kebele council and

⁶⁸⁹ HAILEMARIAM, Abera, “the APAP’s experience on social court judges”, **A Seminar Series**, No. 2, Mekelle, Ethiopia, 2002, p 6, <http://www.apapeth.org/Docs/APAP%20EXPERIENCE.pdf> (accessed on 14 June 2021).

⁶⁹⁰ HAILEMARIAM, p.12.

⁶⁹¹ ARS constitution, Art 85(2), Art 78(2), and other state constitutions in the same manner.

⁶⁹² ARS constitution, Art 86(1), Art 79(1), and other state constitutions at the same manner.

⁶⁹³ ARS constitution 90(1), Art 83(1), and other state constitutions at the same manner.

⁶⁹⁴ ARS constitution 91(1), Art 84(1), and other state constitutions at the same manner.

the woreda executive council or municipal council.⁶⁹⁵ The kebele chief administrator is accountable to, depending on the circumstances, the kebele council and the municipal council or woreda council.⁶⁹⁶ Finally, the kebele deputy administrator is accountable to the kebele chief administrator and the kebele administrative council.⁶⁹⁷

E. FINANCIAL SOURCES OF LOCAL GOVERNMENT

Under the regional constitutions, the woredas are given the power to adopt their annual budget⁶⁹⁸. The constitutions also provide that the woredas can use sources of revenues that the state government does not administer. However, the regions have retained almost all revenue sources, which they are, authorized to use under the federal Constitution. The woredas collect land use fees and agriculture income taxes⁶⁹⁹. However, the proceeds are transferred to the state's treasuries. The only reliable financial source of woredas and kebeles is the block grant they get from the regional administration. The block grant covers around 83% of the woredas budget⁷⁰⁰.

The regional constitutions of the regional states authorize the Woreda Administration to use the sources of revenue that are not managed and operated by the state government. Accordingly, the Woreda Administrative Council is responsible for identifying the sources of income allocated to the states by the federal Constitutions. Those sources of revenue are not used by the states and are recommended use by the Woreda Administration. It is the authority of the Woreda Council to approve the recommendations by the Woreda Administrative Council to make use of such sources of revenue by the Woreda Administration.

The FDRE Constitution provides that regional states may borrow money from internal sources⁷⁰¹. They are authorized to borrow money under terms and conditions that

⁶⁹⁵ ARS constitution, Art 101(2), Art 94(2), and other state constitutions at the same manner.

⁶⁹⁶ ARS constitution, Art 104(1), Art 97(1), and other state constitutions at the same manner.

⁶⁹⁷ ARS constitution, Art 105(2), Art 97(2), and other state constitutions at the same manner.

⁶⁹⁸ ARS constitution, Art 103(2), Art 95(2), and other state constitutions in the same manner.

⁶⁹⁹ ARS constitution, Art 103(2), Art 95(2), and other state constitutions in the same manner.

⁷⁰⁰ AYELE, p. 38.

⁷⁰¹ FDRE constitution (1995), Art 51(7).

the federal government determines by law⁷⁰². However, there is nothing provided in the national or Constitutions regarding whether local government(woreda or zones) can borrow money. In providing essential public services, local government authorities everywhere play an increasingly crucial role. Despite this, authorities still confront several difficulties. The UN-Habitat report indicated that, for various reasons, many municipal governments in developing nations cannot make large-scale capital investments to keep pace with local government populations' increasing demands for infrastructure and services⁷⁰³. Local financial management is usually hindered by a lack of technology infrastructure and ability, inadequate legislative frameworks or unfavorable political systems that limit income production options⁷⁰⁴. Urban efficiency and local economic activity suffer because of budgetary deficiencies, resulting in a vicious cycle of budgetary shortfalls, stifling urban conditions, and economic stagnation⁷⁰⁵.

F. ECONOMIC AUTONOMY OF LOCAL GOVERNMENT AND CENTRAL SUPERVISION

According to government policy documents, woreda administrations should be autonomous administrative units⁷⁰⁶. Nevertheless, woreda autonomy cannot be discussed without specific functions and internal finance sources. Furthermore, because all local governments are controlled by the governing party and other ethnic-based parties that the ruling party purportedly formed, and because decisions within the ruling party are made centralized, one cannot talk of local autonomy⁷⁰⁷. The regional constitutions charge zonal administration with coordinating and aiding the woredas⁷⁰⁸.

⁷⁰² FDRE constitution (1995), Art 51(7).

⁷⁰³ **UN-Habitat**, The Challenge Of Local Government Financing In Developing Countries, 2015, https://sustainabledevelopment.un.org/content/documents/1732The%20Challenge%20of%20Local%20Government%20Financing%20in%20Developing%20Countries%20_3.pdf, (accessed on March 12, 2022).

⁷⁰⁴ UN -Habitat, p.39.

⁷⁰⁵ UN -Habitat, p.39.

⁷⁰⁶ AYELE, p.5.

⁷⁰⁷ AYELE, p.5.

⁷⁰⁸ AYELE, p.5.

The zonal authority tightly controls the woredas. They do not have budgetary independence. Because the woredas get most of their funding (83 percent) from the regional government, their budgets must be approved by the zonal administrations⁷⁰⁹. No legislative structure exists that specifies the federal government's supervisory function over municipal administrations. Regional governments, on the other hand, exert some type of monitoring through zonal administration. There is a practice of periodic supervisory review carried out by zonal administration, the legal basis for which is unknown⁷¹⁰.

While this evaluation's stated purpose is to guarantee the responsibility and responsiveness of elected woreda officials to the voters, it is also used to remove party members whose allegiance has grown doubtful⁷¹¹. Moreover, by their financial dependence, regions wield considerable influence on and control local governments and their elected representatives.

The distribution of public revenue and expenditures among the various levels of government is recognized in Ethiopia by the Federal and State constitutions. For the last two decades, fiscal decentralization has been recognized and exercised in Ethiopia. Ethiopia's decentralized federalism has a mixed revenue-sharing structure as a fundamental component. Regional states get block funds from the federal government in exchange for distributing tax and other money collected by the federal government.

Ethiopia's Proclamation no 33/1992 gives the country's federal and state governments the authority to implement fiscal decentralization policies. These policies aim to improve federal and state governments' ability to carry out their duties and responsibilities and support local governments' efforts to develop their regions.

As a result of fiscal decentralization-related constitutional provisions, the federal government has the authority to seize all trade and state enterprise profits. In addition,

⁷⁰⁹ Zonal administration permission is required for expenditures above 30,000 Ethiopian Birr, according to research done in Ethiopia's Amhara region. Submitting economic and social plans for approval by the zone administration is mandatory. See: AYELE, p.17.

⁷¹⁰ AYELE, p.19.

⁷¹¹ AYELE, p.20.

federal and state governments can now levy personal income taxes on non-federal and foreign personnel and on unincorporated activity inside their borders because of the passage of this legislation.



CHAPTER THREE

ECONOMIC CONSTITUTION IN COMPARATIVE PERSPECTIVE

I. GENERAL OVERVIEW

When examining the constitutional underpinnings of various nations from a comparative viewpoint, it is easy to pit diverse economic constitution models against one another. However, there are considerably more fascinating topics to examine from a comparative perspective in economic constitutions. The comparative analysis put on a qualitative research method that ensures whether each country has different economic perspectives in constitutional design. Three countries have been identified for comparative purposes in this research. These are Türkiye, the UK, and Germany. It is vital to justify why the researcher selected these countries for comparative purposes in this research.

It is important to remind that the researcher is sponsored by YTB, the generous Turkish government scholarship institution, and knows the Turkish language, making it easy to find resources regarding the Turkish constitutional system. Furthermore, the Turkish constitutional experience differs from other countries regarding economic regulation and principles, which could be deduced as a lesson to other countries. The second country chosen for comparative perspective is the United Kingdom. Although the UK's unwritten constitution is not well cited in many kinds of literature, many lessons can be taken from their constitutional conventions. It is also vital to discuss the economic features of the unwritten constitutional aspects. Germany is the birthplace of Ordoliberalism, referred to as economic constitution in English. Hence, the research would be more analytical if the comparison was made between these nations. The main issues discussed in each country's constitutional system focus on three main issues.

The first is whether these countries incorporate any economic ideology, principle, or concepts within their constitutional system explicitly or implicitly. The second point is regarding the institutional setup of these countries has been explored in the light of economic aspects. The third one focuses on the extent of economic rights incorporation

within their constitution. Constitutional progression in considering economic rights has been a trend in many constitutions⁷¹². For example, property rights are broadly recognized in both liberal and social democratic constitutions. However, the inclusion of welfare benefits as a kind of property appears to have varying ramifications, resulting in procedural duties in many jurisdictions. Finally, the third aspect is started on any unique constitution features regarding economic principles and the national economy.

II. TÜRKIYE

Any economic debate from the constitutional perspective should rely on the economic-related provisions of the constitution, which is the highest legal norm of the state, rather than referring to economic public law legislation created in the light of constitutional, economic thesis. Hence, the Turkish experience in the economic constitution aspect has been explored from the texts of the official constitutions. The Republic of Türkiye has adopted four constitutions since the conversion of the huge Ottoman Turkish Empire to the small Turkish republic. The 1921 Turkish constitution was the first-ever constitution that stayed only for three years in the Türkiye. In 1924, the second constitution was promulgated and served the republic 37 years until the adoption of the 1961 constitution. The current constitution replaced the then 1961 constitution in 1982.

A. ECONOMIC MATTERS WITHIN THE 1982 TURKISH CONSTITUTION

Despite the current Constitution of Türkiye lacking any explicit provision, which recognizes any economic ideology considering liberalism or non-liberalism perspective, there are indications from the constitution that Türkiye allows state intervention to create public economic order. Article 167 of the latest Turkish constitution states that the Turkish government should adopt efforts to safeguard and promote the sound and orderly

⁷¹² EWING, Keith, “Economic Rights”, ROSENFELD, Michel /SAJÓ, András(eds), **The Oxford Handbook of Comparative Constitutional Law**, Oxford University Press, Oxford, 2012, p.12.

functioning of money, credit, capital, goods, and services markets, as well as to limit the spread of monopolies and cartels in those markets, whether by custom or consensus⁷¹³. Moreover, the constitutional amendment introduced in 2017 makes the President of the Republic as the head of the executive empowered by the constitution to impose extra financial impositions on imports, exports, and other international trade transactions, save taxes and similar impositions, to control foreign commerce for the benefit of the country's economy whenever allowed by the law⁷¹⁴. The Turkish constitution allows state intervention in the economy to create public economic order. Therefore, it is vital to address public economic order from Turkish scholarly literature.

Economic Public Order was first introduced to Türkiye in 1975 to incorporate in the Turkish constitution in the Economic Law Congress organized by the Union of Turkish Bar Associations⁷¹⁵. Aşkun argues that the Principle of Republicanism and Sovereignty of the people are some of the principles deduced from the famous Kemal Mustafa Atatürk's basic principles, which determine the management of the public economic order in Türkiye⁷¹⁶. Moreover, since the constitution and other parliamentary acts are sourced from the people, they can determine the stability and order of the nation through legislation. Hence, economic public order in the Turkish context is that the government can intervene and regulate the economy whenever the public economic order is affected.

The Turkish constitutional permission for state intervention in the national economy to govern economic public order can be comprehended with article 5 of the 1982 constitution. The Turkish constitution stipulates that striving for elimination of economic hurdles, which restrict the fundamental rights and freedoms of the individuals in a manner

⁷¹³ The 1982 constitution of the Republic of Türkiye, Art 167(1).

⁷¹⁴ The 1982 Turkish constitution as amended on April 16, 2017: Act No. 6771, Art 67 paragraph 2.

⁷¹⁵ AŞKUN, İnal , “Türkiye de Ekonomik Kamu Düzeni Kavramına Bağlı Örgütsel Yönetimin Atatürkçü Düşünce Ve Kişilik Temelinde Konumuna İlişkin Bir İnceleme”, *Atatürk Yolu Dergisi*, c.2, s.7, 1991, p.5

⁷¹⁶ AŞKUN, p.7.

mismatched with the principles of justice and the social state governed by the rule of law, is one of the fundamental aims and duties of state⁷¹⁷.

The 1982 Turkish constitution included the ‘Social State’⁷¹⁸ principle as one of the fundamental principles of the constitution. But does the ‘Social State’ principle mean any economic model? Many Turkish scholars provide their line of argument against the concept that the ‘Social State’ principle does not mean Türkiye is a socialist country. Rather, the ‘Social State’ principle resembles the ‘welfare state,’ which signifies the idea that the government is primarily responsible for the welfare of its citizens beyond the minimum level of protecting peace and security of the country. The welfare state also suggests that the state plays a main role in protecting and promoting its citizens' economic and social well-being⁷¹⁹.

Apart from the principles stated under Article 73 of the Constitution of Türkiye , which directly concerns tax law, there are also basic principles that concern tax law⁷²⁰. According to Article 2 of the Turkish Constitution, the Republic of Türkiye is both a “State -with rule of law” and a “welfare state”. The notion of a “a state with rule of law”⁷²¹

⁷¹⁷ The 1982 constitution of the Republic of Türkiye, Art 5.

⁷¹⁸ Social State means the welfare state by which individuals are guaranteed a minimum income by the welfare state, which also shields them from social hazards and offers social security. It also provides all people with educational, health, and housing services. With the dilemma of how to share the wealth created by capitalism among individuals, the welfare state's theoretical framework has gained relevance. With the rising need for protection in society following years of war and crises, its transition into practice became conceivable in the second part of the twentieth century. See, COŞKUN, Karaca/YEŞİM, Çam, “Türkiye’de Sosyal Devlet Anlayışının Değerlendirilmesi”, **Maliye Dergisi**, Sa. 172, 2019, ss.72-97, <https://ms.hmb.goV.tr/uploads/2019/09/176-04.pdf>, (accessed on June 21, 2021).

⁷¹⁹ COŞKUN/ YEŞİM, p.80

⁷²⁰ ÜSTÜN, Ü. Süleyman, “Vergi Hukuku ile İlgili Anayasal İlkeler”, **Selçuk Üniversitesi Hukuk Fakültesi Dergisi**, C.11, Sa.1-2, 2003, ss.251-271.

⁷²¹ The English term “a state with rule of law” is a translation of the Turkish term “Hukuk Devlet”. “a state with rule of law” is not a common term in English works of literature. “a state with a rule of law” as defined in a decision of the Constitutional Court of Türkiye, that “every action and operation of a government is supposed to be in accordance with the national law, respects human rights, protect and strengthen these rights and freedoms, establish and maintain a just legal order in every field. Moreover, any action or operation of a state or citizens avoids situations and attitudes contrary to the Constitution, makes the law sovereign in all state organs, considers itself bound by the rules of the Constitution and the rule of law, and is open to judicial review.” See - ÜSTÜN, Vergi Hukuku ile İlgili Anayasal İlkeler, s.253.

ensures the advanced establishment of the rule of law⁷²². The fundamental goals and responsibilities of the welfare state are to provide social justice, social welfare, and social security⁷²³. Within the scope of these goals, the state must protect the economically vulnerable on the one hand, while safeguarding citizens promotes social security and economic progress on the other⁷²⁴. In other words, the notion of social rule of law puts on the state the need to control social life as well as to take constructive steps toward its growth.

Kemal Gozler argues that the 1982 constitution of Türkiye has not incorporated any specific economic ideology or model⁷²⁵. However, he has substantiated his argument that the 1982 constitution incorporated the ‘social state’ principle on the one hand and liberal economic principles on the other, which clearly shows that the constitution tries to strike the right balance to protect the public economic order of the Republic of Türkiye⁷²⁶.

Another Turkish constitutional law scholar Turgut argues that Economic interventionism, a requirement of the social state principle, does not mean a socialist economic order where all economic decisions are made with a centralized mechanism instead of a market economy.⁷²⁷ Tan also agreed with another Turkish constitutionalist that the Turkish constitution doesn’t impose any economic model or ideology on the Turkish people. Rather, it tries to protect the Republic’s peace and security by giving power to the government to decide on some macro-economic issues in case any type of economic irregularity affects the national stability and peace.

⁷²² ÜSTÜN, Vergi Hukuku ile İlgili Anayasal İlkeler, s.253.

⁷²³ ÜSTÜN, Vergi Hukuku ile İlgili Anayasal İlkeler, s.253.

⁷²⁴ ÜSTÜN, Vergi Hukuku ile İlgili Anayasal İlkeler, s.253.

⁷²⁵ GÖZLER, Kemal, **Turkish Constitutional Law Lessons**, Ekin Kitabevi, Bursa 2000, p.142.

⁷²⁶ GÖZLER, p.142.

⁷²⁷ TAN, Turgut, **Legal Order of Planning**, TODAIE Publications, Ankara 1976, p.7.

Hence, the 1982 constitution of Türkiye does not set any economic model in Türkiye. However, Türkiye is no more a laissez-faire⁷²⁸ state, let alone the economy. Almost all except a few countries in the world accept some government intervention in the economy. Therefore, Türkiye is not different from that the economy needs to be regulated to protect the Turkish people's fundamental economic and social rights.

B. INSTITUTIONAL SET-UP

The 1982 Turkish constitution establishes various economic institutions. The court of accounts and the Economic and Social Council are Türkiye's two most important constitutionally recognized economic institutions.

1. Turkish Court of Accounts

John Elster says that constitutions are important for economic success because they encourage stability, responsibility, and credibility⁷²⁹. The constitution must ensure that politicians are held accountable for their acts and that a process for removing them from office exists. Accountability has an impact on both the economy and security⁷³⁰. The executive branch cannot make meaningful commitments if it is not subject to consequences⁷³¹.

His Majesty Sultan Aziz I issued an imperial decree on 29 May 1862 established the Turkish Court of Accounts (TCA), which was included in the first Ottoman Constitution of 1876 as a Supreme Audit Institution⁷³². The model used in continental Europe, particularly France, was used to create the TCA and was incorporated in the 1924 Constitution and all other constitutions of Türkiye⁷³³. In 2003, The Turkish Public

⁷²⁸ Laissez-faire is a free-market economic ideology that opposes government interference. The laissez-faire doctrine was established by the French Physiocrats in the 18th century, and it states that the less government involvement in the industry, the better. See - <https://gocardless.com/en-us/guides/posts/laissez-faire-definition-principles-and-examples/> (accessed on July 12, 2021).

⁷²⁹ ELSTER, p.213.

⁷³⁰ ELSTER, p.213.

⁷³¹ ELSTER, p.214.

⁷³² AKYEL, Recai/BAŞ, Hasan, "Kamu Yönetimi ve Denetimi Bağlamında Sayıştay'ın Anayasal ve Yargısal Konumu", *Maliye Dergisi*, No. 158, 2010, pp. 374–387.

⁷³³ AKYEL/BAŞ, p.385.

Financial Management and Control Law No. 5018 was passed, which stopped the practice of allocating monies to individual departments and mandated that all state revenue, spending, and debt be included in the state's annual budget and subject to parliamentary review⁷³⁴. The TCA Law No. 6085 of 2010 mandated that all operations that received public monies be audited by the TCA⁷³⁵. Additionally, the Prime Ministry Supreme Auditing Board, which was established to oversee the audits of state-owned firms, was merged into the TCA by this law, thereby ending the previous system's dual structure⁷³⁶.

Court of Accounts: article 160 of the 1982 constitution of the Republic of Türkiye states that on behalf of the Grand National Assembly of Türkiye, the Court of Accounts is responsible for auditing all revenues, expenditures, and properties of public administrations and social security institutions within the scope of the central government budget, adjudicating the accounts and transactions of those responsible and carrying out the examination, auditing, and adjudications mandated by the laws. In the case of the Turkish Court of Accounts' final provisions, the people affected may request a rectification of the judgment only once, within fifteen days after receiving written notification⁷³⁷.

In 2005, the constitutional amendment introduced in the Turkish constitution made the Court of Accounts charge of auditing the accounts and transactions of local governments and issuing final judgments⁷³⁸. In addition, the law regulates the foundation, operation, audit processes, qualifications, appointments, responsibilities, and powers of its members, rights and obligations, and other personnel concerns. The Court of Accounts law number 6085 was enacted in 2010. The purpose of the post-expenditure external audit

⁷³⁴ AKYEL/BAŞ, p.381.

⁷³⁵ ÜSTÜN, Ü. Süleyman/ HEPAKSAZ, Engin/ KILIÇ, Ramazan/KULUÇLU Erdal, “Kamu mali yönetimi ve Sayıştay hesap yargısında mali sorumluluk”, **Süleyman Demirel Üniversitesi İktisadi ve İdari Bilimler Dergisi**, V.16, No. 2, 2011, ss. 379-397, available at <https://dergipark.org.tr/en/download/Art-file/194496> , (accessed on March 1, 2022).

⁷³⁶ See, **T.C. Sayıştay Başkanlığı**. sayıştay tarihçesi, retrieved from: <https://www.sayistay.gov.tr/pages/149-history?lang=en>, (accessed on March 1, 2022).

⁷³⁷ The 1982 constitution of Türkiye, Art 160.

⁷³⁸ The 1982 constitution of Türkiye, Additional Third paragraph: 29/10/2005-5428/2.

to be carried out by the TCA is to determine the management's financial activities, decisions, and transactions within the framework of the accountability of the public administrations within the scope of the general government⁷³⁹. It examines the law in compliance with the institutional goals, objectives, and plans and reports the Turkish Grand National Assembly results.

The TCA has auditing, reporting, and judicial functions within the scope of both the Constitutional provisions and the TCA Laws⁷⁴⁰. TCA has the power to examine the accuracy of financial reporting and whether public administrative bodies' financial choices and transactions comply with the law⁷⁴¹. During a compliance audit, the auditee's revenue, spending, and other accounts and transactions are examined by TCA to see if they are following the law and other legal procedures in place⁷⁴². The TCA serves as the country's top auditing organization to safeguard Parliament's monetary authority. The chambers of trial, each of which is a court of accounts, make decisions about judicial reports on public losses discovered during audits.

The TCA's independence is protected by the current Turkish Constitution and the TCA Law⁷⁴³. However, the TCA's relationship with the executive, legislative, and judicial branches is not specifically specified in the constitution or legislation. One of the corollaries of independence of the auditing institutions is budget autonomy. In this sense, the TCA is considered a general budget organization capable of handling its budget without aid or scrutiny from the executive authority, even though the TCA's budget is given directly to GNAT, with one copy sent to the Turkish Presidency⁷⁴⁴.

⁷³⁹ The Turkish Public Financial Management and Control Law No. 5018 Art 68.

⁷⁴⁰ SELEN, Ufuk/ TAYTAK, Mustafa, "Türkiye'de Bütçenin Yasama Organı Tarafından Denetimi ve Sayı,stayın Konumu", *Afyon Kocatepe Üniversitesi Sosyal Bilimler Dergisi*, V.19, No.1, 2017, pp. 193–223.

⁷⁴¹ ŞAHİN, İpek, E.A, "Reforms of Turkish Court of Accounts", In: AKDEMİR Tekin/ KIRAL, Halis (eds), *Public Financial Management Reforms in Türkiye: Progress and Challenges*, Springer, V.2, 2020, pp. 233-262. https://doi.org/10.1007/978-981-15-4226-8_13 (accessed on March 2, 2022).

⁷⁴² ŞAHİN, p.245.

⁷⁴³ The Turkish Court of Accounts Legislation No 6085/2010 under Art 3.

⁷⁴⁴ ŞAHİN, P.237.

The auditors often conduct auditing operations independently and impartially, and the TCA would not be informed regarding the audit engagement's design, programming, and execution⁷⁴⁵. However, the auditors are authorized with free, timely, and unrestricted access to all the information and documents they may need to perform their responsibilities properly⁷⁴⁶. Under the Turkish constitutional framework, the TCA is charged with auditing and judicial functions, and the laws have also included the responsibility of reporting⁷⁴⁷. The obligation for the Court of Accounts to send reports to the appropriate authority is explicitly underlined in the legislations⁷⁴⁸, ensuring that the topic of freedom of publishing and distribution of TCA reports once they are submitted to the relevant authority is managed⁷⁴⁹.

The 1982 Constitution provided that the administrative judiciary could not overturn TCA rulings and accorded supremacy to decisions of the Council of State in cases of disagreements between the Council of State and the TCA on tax and related financial responsibilities and duties⁷⁵⁰.

2. The Turkish Economic and Social Council

The Turkish Economic and Social Council (referred to as TESC) was introduced in the Turkish constitutional framework in the 2017 constitutional amendment⁷⁵¹. Article 166 at the final paragraph of the constitution of Türkiye states that the Economic and Social Council is established to provide the President of the Republic with consultative

⁷⁴⁵ The Turkish Court of Accounts Legislation No 6085/2010, Art 35.

⁷⁴⁶ The Turkish Court of Accounts Legislation No 6085/2010, Art 6.

⁷⁴⁷ In this context, according to The Turkish Court of Accounts Legislation No 6085/2010, Art states that the TCA generates three sorts of reports: the audit report, the TCA report, and the report as the foundation for the decision.

⁷⁴⁸ See, the Turkish Court of Accounts Legislation No 6085/2010 Arts 38, 39, 40, 41, and 42.

⁷⁴⁹ The Turkish Court of Accounts Legislation No 6085/2010, Arts 38, 39, 40, 41, and 42. Art 44 of The Turkish Court of Accounts Legislation No 6085/2010 states that The TCA presidency makes the TCA reports available on its website. Moreover, The TCA Law states that the TCA will undertake regularity and performance audits as a matter of principle; Art 10 of the same legislation provides that The TCA will perform monitoring to see how well-audited firms follow audit recommendations.

⁷⁵⁰ TAŞIR, Ahmet, "Sayıştay'ın Anayasal Konumu Üzerinde Tartışmalar", **TBB Dergisi**, No. 133, pp. 81-96.

⁷⁵¹ The constitutional amendment was conducted in Türkiye on 21/1/2017-6771/16.

opinions in the formulation of economic and social policies⁷⁵². The president of the Republic of Türkiye is the chairman of TESC and appoints the members⁷⁵³. Moreover, The TESC has a responsibility to ensure the participation of Turkish society in the government's economic and social policies and reconciliation and strengthen the cooperation between the state and the social segments and between the social segments themselves.

The TESC has the functions such as presenting the opinions, suggestions and reports it has created to the relevant authorities, establishing permanent and temporary task forces, and determining their members to discuss the reports of these boards⁷⁵⁴. The Council also determines the members of the Türkiye-European Union Joint Advisory Committee members by taking into account the structure and characteristics of the European Union Economic and Social Committee and monitoring the work of the Committee⁷⁵⁵. Furthermore, the TESC is responsible for organizing national and international seminars and meetings in line with its objectives, sending Turkish representatives to meetings⁷⁵⁶. In addition, the Council, upon the request of the President, on all matters of an economic and social nature, prepare legislation, development plan, and annual programs that directly affect the economic and social life of the people⁷⁵⁷.

The TESC is one of the constitutionally introduced economic organs with only advisory functions in Türkiye. This institution is fundamentally chaired and controlled by the president of the Turkish republic. The functions of the TESC are specifically identified and clear. Moreover, it has a responsibility to abridge the economic relationship between Türkiye and the European Council. The Ethiopian Macro Economic Committee can be considered the counterpart of TESC regarding some of the functions and structure.

⁷⁵² The Turkish constitution of 1982, under Art 166.

⁷⁵³ Ekonomik Ve Sosyal Konseyin Kuruluşu, Çalışma Esas Ve Yöntemleri Hakkında Kanun Kanun Numarası : 4641, Değişik: 2/7/2018 – KHK/703/109 md.

⁷⁵⁴ Ekonomik Ve Sosyal Konseyin Kuruluşu, Çalışma Esas Ve Yöntemleri Hakkında Kanun Kanun Numarası : 4641, md. 3.

⁷⁵⁵ Ekonomik Ve Sosyal Konseyin Kuruluşu kanunu, md. 3.

⁷⁵⁶ Ekonomik Ve Sosyal Konseyin Kuruluşu, kanunu, md. 3.

⁷⁵⁷ Ekonomik Ve Sosyal Konseyin Kuruluşu, kanunu, md.3.

However, the Ethiopian macroeconomic committee has no constitutional foundation. Instead, the prime minister formed the committee and assigned macroeconomic decision-making responsibilities. One of the similarities between the Turkish and the Ethiopian one is that the head of state chaired the TESC and the Ethiopian macroeconomic committees and appointed the members.

3. Central Bank of The Republic of Türkiye

Central banks as institutions responsible for monetary policy have the potential to influence all economic activities at the center of the financial system. In this context, the effective work of these institutions is of vital importance for the entire economic structure⁷⁵⁸. The monetary policy authority for the central bank has several issues. It's impossible to be completely free of political influence because there might be several unpleasant outcomes from the bank's policy. Changes to the Central Bank laws and constitutions can be made by political power to achieve their own economic goals. A legally and politically independent Central Bank is indispensable for price stability and growth stability⁷⁵⁹.

The latest Turkish constitution doesn't specifically establish the Central Bank. The Central Bank of the Republic of Türkiye (hereinafter referred to as CBRT) was created as a joint-stock enterprise with the only authority to issue banknotes in Türkiye and the ability to stabilize the economy⁷⁶⁰. The Bank may create a banknote printing works by Board resolution, which must be communicated to the President of the Republic⁷⁶¹. The fundamental goal of the CBRT is to keep the price of goods and services stable by

⁷⁵⁸ DELİCE, Güven, "Türkiye Cumhuriyet Merkez Bankası: 85 Yıllık Bir Geçmişin İzlerinden Tarihe Kayıt Düşmek Ekonomi İşletme", *Siyaset Ve Uluslararası İlişkiler Dergisi*, C.1, Sa.2, 2015, ss.21-55.

⁷⁵⁹ YENİPAZARLI, Aslı, "Merkez Bankasının Bağımsızlığı, Yönetişim, Enflasyon ve Ekonomik Büyüme", *Adnan Menderes Üniversitesi Sosyal Bilimler Enstitüsü Dergisi*, C. 1, S. 2, ss. 1-15.

⁷⁶⁰ **Türkiye Cumhuriyeti Merkez bankası:** <https://www.tcmb.gov.tr/wps/wcm/connect/TR/TCMB+TR/Main+Menu/Banka+Hakkinda/Genel+Bakis>, (accessed on March 2, 2022).

⁷⁶¹ TUNAY, Batu, "Türkiye'de Merkez Bankası Müdahalelerinin Döviz Kurlarının Oynaklarına Etkileri", *Bankacılık ve Finansal Piyasalar*, c.2, s.2, 2008, ss.77-112.

adopting monetary policy and employing monetary policy instruments⁷⁶². For the CBRT to be effective, it must not interfere with the government's goal of ensuring that prices remain stable while promoting economic development and job creation⁷⁶³.

The CBRT is obligated to operate in the open market, take the required steps to safeguard the Turkish Lira's domestic and international value, and set up the exchange rate regime⁷⁶⁴. Other exchange swaps, spot and forward purchases, sales of currency and banknotes, and other derivatives transactions are part of the CBRT's role in determining the value of the Turkish lira versus foreign currencies⁷⁶⁵. Among its other duties, the CBRT oversees rediscounting and performing advanced operations and overseeing its gold and foreign exchange reserves⁷⁶⁶. The Central Bank of Türkiye also regulates the Turkish lira's volume and circulation, forms the Turkish Lira's payment and settlement systems, monitors uninterrupted operations, and determines the Turkish Lira's procedures and instruments for payments⁷⁶⁷.

One of the main differences between the Turkish and Ethiopian central banks is that the Turkish Central Bank mainly works on regulating price stability and monetary matters. At the same time, the Ethiopian counterpart also has the power to supervise and regulate the banking system in Ethiopia. Türkiye has established an independent institution known as Banking Regulation and Supervision Agency. The Turkish Banking Regulation and Supervision Agency was established as an agency with legal personality and administrative and financial autonomy by Banking Law No.4389 (abolished in 2005) in 1999 for the first time⁷⁶⁸. In 2005, the Turkish Banking Regulation and Supervision

⁷⁶² YENİPAZARLI, p.5.

⁷⁶³ YENİPAZARLI, p.7.

⁷⁶⁴ TUNAY, p.79.

⁷⁶⁵ **Türkiye Cumhuriyeti Merkez Bankası**, Bülten, s.3, 2006, retrived from <https://www.tcmb.gov.tr/wps/wcm/connect/a411659f-b758-441d-9e58-c1fd3a9f116c/bulten-turkce3.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-a411659f-b758-441d-9e58-c1fd3a9f116c-m3fb9z7>, (accessed on March 14, 2021).

⁷⁶⁶ TUNAY, p.80.

⁷⁶⁷ DELİCE, p.22.

⁷⁶⁸ **Bankacılık Düzenleme ve Denetleme Kurumu**, <https://www.bddk.org.tr/KurumHakkinda/Detay/19>, (accessed on March 7, 2022).

Agency was re-established by the Banking Law no. 5411, aiming to increase the efficiency of the audit and surveillance system in financial markets and provide independent decision-making mechanisms of banks; independence was strengthened in terms of efficiency and capacity.

4. The State Supervisory Council of the Republic of Türkiye

Türkiye's constitution established the State Supervisory Council of the Republic of Türkiye (hereinafter referred to as the SSCRT) to ensure the legality, regularity, and efficiency of administration, conduct all administrative investigations, inquires, investigations and inspections of all public bodies/organizations, and all enterprises in which those public bodies/organizations share a monetary interest⁷⁶⁹. However, the State Supervisory Council has no authority over the judiciary⁷⁷⁰.

The Presidency of the Republic is constituted under the presidency, and the council members, including the chairman, must be selected by the President of the Republic⁷⁷¹. Presidential decrees govern all aspects of state supervision, including how it works, who may serve on it, and how long they can serve⁷⁷².

5. Capital Market Board of Türkiye

Article 167 of the Turkish constitution empowers the state to take measures to ensure and promote the sound and orderly functioning of the markets for money, credit, capital, goods, and services, as well as to prevent the formation of monopolies and cartels in the markets, whether in practice or by agreement. According to the Turkish Capital Market Law(CML), a fund has been formed to support the activities of the Turkish Capital Market Board (The CMBRT). Registration fees, which are deducted from the volume of securities registered with the CMBRT, are a major source of revenue for the CMBRT⁷⁷³. The CML outlines capital market activities and the types of institutions permitted to

⁷⁶⁹ The Constitution of the Republic of Türkiye, 1982, Art 108.

⁷⁷⁰ The Constitution of the Republic of Türkiye, 1982, Art 108.

⁷⁷¹ The Constitution of the Republic of Türkiye, 1982, Art 108.

⁷⁷² The Constitution of the Republic of Türkiye, 1982, Art 108.

⁷⁷³ Capital Market Law No.6362, Published in the Official Gazette edition 28513 on 30.12.2012, Art 28(b).

engage in capital markets. It allows the CMB to set the required standards for these institutions. CMB licenses intermediary institutions and collective investment organizations registers businesses that issue securities and oversees Türkiye's clearing organization and securities and precious metal exchanges.

The Capital Markets Board of the Republic of Türkiye (hereinafter referred to as CMBRT) is Türkiye's securities market regulator and supervisory authority, established in 1981 by the then Turkish Capital Market legislation⁷⁷⁴. The CMBRT aims to ensure fair and orderly market functioning, safeguard investors' interests, and preserve investor security while taking the essential steps toward stimulating growth in the country's capital markets⁷⁷⁵. Besides adopting international capital market norms and fully integrating them into regulations, the CMBRT intends to enhance investor protection, promote supply-side efficiency, promote market transparency, facilitate market structure modernization, and improve infrastructure⁷⁷⁶.

In contrast, Ethiopia introduced a capital market law in 2021. However, there is no capital market institution in Ethiopia yet. Moreover, unlike the Turkish counterpart, no constitutional provision directly refers to establishing a capital market in Ethiopia.

C. ECONOMIC RIGHTS IN TÜRKIYE

Economic rights are the necessary conditions for a competitive market economy, the material basis of prosperity, development, and democracy. In contrast, the market is the economic organization that allows economic freedoms to exist⁷⁷⁷. Economic freedoms

⁷⁷⁴ The Financial Markets Law, one of three major pieces of legislation created to control Türkiye's capital markets, was approved by the Turkish Grand Assembly. The list is completed by the Turkish Commercial Code and the Decree with Force of Law No. 91 on Securities Exchanges. The Turkish Capital Market laws' mission is to guarantee that capital markets are secure, fair, and orderly, as well as to protect investors' interests. Since the 1981 introduction of the Capital Market Law in Türkiye which provided a framework for markets and capital market organizations. See: Capital Markets Board of Türkiye, <https://www.cmb.goV.tr/Sayfa/Index/0/2>, (accessed on March 12, 2022).

⁷⁷⁵ **Capital Markets Board of Türkiye**, <https://www.cmb.goV.tr/Sayfa/Index/0/2>, (accessed on March 12, 2022).

⁷⁷⁶ **Capital Markets Board of Türkiye**, s.1.

⁷⁷⁷ GÜNERİ, Akalin, Yeni Anayasa Önerisi İçin Ekonomik Ve Sosyal Hükümler, **Liberal Perspektif Analiz**, Sa. 2, 2016, p.9.

are related to each other. The freedoms of property, contracts, and exchange give birth to each other. The freedom of property, exchange, and the contract is at the heart of every economic freedom.

Unrestricted economic rights can jeopardize economic security in a variety of ways⁷⁷⁸. For example, unrestricted contract freedom might jeopardize individual wellbeing by causing issues ranging from collective action issues to asymmetric information issues to willpower weakness. A significant application in the constitutional framework is the free alienability of land. Frederic Bastiat said that the basis of private property is justice, and the basis of justice is private property⁷⁷⁹. Therefore, the property regime is the element that marks the economic organization. It is the free exchange that constitutes the market economy⁷⁸⁰. However, the availability of exchange depends on private property and its transferability.

Türkiye began constitutionalizing economic rights in 1924 when the then constitution was enacted. The 1924 constitution extensively entertained the economic rights of citizens in a detailed manner. Relatively, the first and short-lived constitution of the Turkish republic did not separately recognize economic rights. The 1961 constitution incorporated citizens' relevant economic rights and freedoms better than its predecessors. The 1982 Turkish constitution under article 35 prescribes the right to freedom of property.

Article 35 of the 1982 Turkish constitution states that everyone has the right to own and inherit property. These rights may be limited by law only because of public interest. The exercise of the property right shall not contravene public interest. “The social state principle,” which has been enshrined in the 1982 constitution of Turkey, does not mean any person has an absolute right to property. Throughout the history of the Turkish constitution, it has been accepted that the right to property can be limited for the purpose of public interest. Although the means of limiting the right to property are different, they

⁷⁷⁸ ELSTER, p.211.

⁷⁷⁹ FREDERIC, Bastiat, **The Foundation for Economic Education**, New York 1990, p.6

⁷⁸⁰ HERMAN, de Soto, Securing Property Rights, **Economic Reform Today**, No.1, 1996, pp.1-19

are basically implemented in terms of tax, expropriation, and nationalization processes. In expropriation and nationalization processes, the state purchases immovables belonging to individuals or businesses of strategic importance for the country for the purpose of public benefit. As long as this purchase is made over its real value and for the public use, there is a measured limitation on the property right⁷⁸¹.

Article 44 of the 1982 Turkish constitution defines land Ownership. The state must take the necessary steps to preserve and promote effective land cultivation, avoid erosion, and offer land to farmers who do not have enough land of their own⁷⁸². According to different agricultural areas and farming, the law may determine the size of acceptable land units. Providing land to farmers who do not have or do not have enough land will not result in a drop in output or the depletion of forests, other lands, or underground resources. Regarding land ownership, the Turkish constitutional stand resembles the Ethiopian counterpart only in parts of the rural land parts.

Article 44 under the second paragraph states that lands distributed for agriculture for farmers should not be divided or transferred to others unless through inheritance and may only be farmed by the farmers to whom they were allocated and their heirs⁷⁸³. This constitutional principle of land is more stringent than the Ethiopian constitutional framework on rural land. Ethiopia allows rural farmers to lease their land, and they can also transfer their possessory land rights through donation. The principles governing the State's recovery of the land so allocated in the case of the loss of these circumstances should be established by legislation.

Both the Turkish and the Ethiopian constitutions are committed to imposing a duty on the state to support farmers and livestock breeders in obtaining machinery, equipment, and other inputs to prevent improper use and destruction of agricultural land, meadows,

⁷⁸¹ ŞİMŞEK, Suat, "Hakkinin Kapsami, Sinirlendirme Nedenleri Ve Şartlari Açısından 1982 Anayasasi Ve Avrupa İnsan Haklari Sözleşmesi: Karşılaştırmalı Bir Analiz", **Türkiye Barolar Birliği Dergisi**, C.91, 2010, ss.181-228.

⁷⁸² The 1982 Turkish constitution, Art 44.

⁷⁸³ The 1982 Turkish constitution, Art 44.

and pastures, and ultimately to improve crop and livestock output in accordance with agricultural planning principles⁷⁸⁴. The State is also constitutionally responsible for taking necessary measures to promote the values of crop and livestock products and enable producers to be paid their real value⁷⁸⁵.

When the public interest requires it, the State and public corporations are constitutionally authorized to expropriate privately owned real estate in whole or in part or to impose administrative servitude on it by legal principles and procedures, provided that compensation is paid in advance⁷⁸⁶. The Turkish constitutional framework is better than any other constitution in determining the public expropriation methods and limitations⁷⁸⁷. Despite the technique and mechanism for determining expropriation compensation left to ordinary laws, the 1982 Turkish constitution sets preconditions to be included in the laws. These include considering tax declarations, the current value determined by official assessment at the takeover, unit pricing, and con⁷⁸⁸. Furthermore, the method of taxation, as well as the difference between the amount payable in compensation with the value reported in the tax declaration, are left to be governed by ordinary Turkish laws.

Relatively, the constitution of Türkiye shows its real concern for the agricultural citizens by fixing the compensation to be paid in advance and in cash. However, such advance and cash payments can be restricted when the land is expropriated for land reform, enormous energy and irrigation projects, housing, resettlement programs, afforestation, and safeguarding of the beaches, and development of tourism amenities, which must be governed by law.⁷⁸⁹ In such exceptional cases of land expropriation, payment by installment can be allowed by legislation, but the payment time must not exceed five years. Beyond that, payment must be made in equal installments with an

⁷⁸⁴ See the 1982 Turkish constitution Art 45 and the FDRE constitution Art 40.

⁷⁸⁵ The 1982 Turkish constitution Art 45.

⁷⁸⁶ The 1982 Turkish constitution, Art 46.

⁷⁸⁷ The Turkish Constitution, Art 46.

⁷⁸⁸ The Turkish Constitution, Art 46.

⁷⁸⁹ The Turkish Constitution, Art 46.

interest rate equivalent to the highest interest paid on the public debt for the remaining installments.⁷⁹⁰ Moreover, it is mandatory to pay compensation for land taken from a small farmer who cultivates his own property in advance without any exception.

D. OTHER ECONOMIC ASPECTS OF THE TURKISH CONSTITUTION

The 1982 Turkish Constitution under article five states that the fundamental aims and duties of the State are to safeguard the independence and integrity of the Turkish Nation. Furthermore, the indivisibility of the country, the Turkish Republic, and democracy are included in the fundamental constitutional aims. The constitution also underlines the assurance of the welfare, peace, and happiness of the individual and society, striving for the removal of political, economic, and social obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and the social state governed by the rule of law. Ultimately the state is responsible for providing the conditions required to develop the individual's material and spiritual existence in the Turkish constitutional framework. In line with this duty provided by the Constitution, economic measures to protect individual rights, taking into account the undeniable effects to realize the specified objective, should be seen as an expected reflex from the state⁷⁹¹. In line with this purpose and duty, the Turkish Constitution also gave the state the authority to restrict fundamental rights and freedoms. For example, it may be shown that the freedom of movement and residence specified under article 23 of the 1982 Turkish Constitution can be restricted to ensure social and economic development. In contrast, the 1995 FDRE Constitution has not included any exception for the freedom of movement and residence despite citizens being often confiscated from their homes in the guise of the economic development of the general public.

In Article 166 of the 1982 Turkish Constitution; the State's duties include planning the country's economic, social, and cultural development, particularly the rapid, balanced,

⁷⁹⁰ The Turkish Constitution, Art 46.

⁷⁹¹ The Turkish constitution 1982, Art 5.

and harmonious development of industry and agriculture throughout the country, as well as the efficient use of national resources by inventorying and evaluating them, and the establishment of the necessary organization for this purpose⁷⁹². Measures to increase national savings and production, to ensure stability in prices and balance in external payments, to promote investment and employment are also required to be included in the plan; in investments, public interests and necessities shall be taken into account, and the efficient use of resources shall be proposed. Development activities shall be realized according to this plan⁷⁹³. The procedure and principles governing the preparation of development plans, their approval by Türkiye's Grand National Assembly, their implementation and revision, and the prevention of amendments that disrupt the plan's unity shall be governed by law⁷⁹⁴.

This planning increases the saving of national resources and production, stability in prices, and external measures to ensure balance in payments and improve investment and employment. Placement: public interest in investment planning observance, targeting efficient use of resources should be aimed. The government is responsible for the formulation of economic and social policies. The government is supposed to establish the Economic and Social Council, which will give an advisory opinion⁷⁹⁵.

The constitution of Türkiye under Article 162 clearly states that annual budgets will decide the expenditures of the state and public companies other than state economic enterprises. Indeed, the constitution indicates that ordinary legislation can govern specific issues such as the planning, execution, and management of the central government budget, particular times and processes for investments, and works and services anticipated to continue over a year.

⁷⁹² The 1982 Turkish Constitution Art 166(1).

⁷⁹³ The 1982 Turkish Constitution Art 166(1).

⁷⁹⁴ The 1982 Turkish Constitution Art 166(1).

⁷⁹⁵ The Economic and Social Council shall be established to provide the President of the Republic with consultative opinions in the formulation of economic and social policies. The establishment and functioning of the Economic and Social Council shall be laid down in law. September 12, 2010; Act No. 5982; as amended on April 16, 2017; Act No. 6771.

At least 75 days before the start of the fiscal year, the President of the Republic must present to the Grand National Assembly of Türkiye a budget bill that focuses only on the budget issue⁷⁹⁶. Then, the draft budget bill should be discussed at the Grand Turkish National Assembly's Committee level (the Parliament)⁷⁹⁷. Finally, the Committee must approve the budget bill within fifty-five days and then examine and approve it by the full meeting of parliament (the Plenary) before the fiscal year begins⁷⁹⁸. A temporary budget law can be adopted if budget legislation is not implemented promptly. If the interim budget legislation is not passed, the previous year's budget will be implemented incrementally on the revaluation rate until the new budget law is passed. Members of the Grand National Assembly of Türkiye may express their opinions in the Plenary on the budgets of public administrations during the debates on each budget. Still, they shall not make proposals that entail an increase in expenditure or a decrease in revenue. Budgets of the public administrations and the motions for amendments shall be read out and voted without further debate in the Plenary. The appropriation granted by the central government budget shall indicate the limit of expenditure allowed. No provision shall be included in the Budget Act to the effect that a presidential decree may exceed the expenditure limit. In motions of amendment entailing an increase in appropriations under the current fiscal year budget and bills entailing financial burden in the current or following fiscal year, the financial resources to meet the stated expenditure shall be indicated. Central government final accounts bills shall be submitted to the Grand National Assembly of Türkiye by the President of the Republic within six months of the end of the relevant fiscal year. The Court of Accounts shall submit its statement of general conformity to the Grand National Assembly of Türkiye within seventy-five days of submitting the final accounts bill to which it is related. The submission of the final accounts bills and the statement of general

⁷⁹⁶ The content of budget legislation is also determined by the constitution of Türkiye that no provisions other than those pertaining to the budget must be incorporated. See Art 161 the Turkish constitution of 1982.

⁷⁹⁷ The Turkish constitution of 1982, Art 161.

⁷⁹⁸ The Turkish constitution of 1982, Art 161.

conformity to the Grand National Assembly of Türkiye shall not preclude the auditing and trial of the accounts for the relevant fiscal year that the Court of Accounts has not concluded. But it does not mean that a final decision has been taken on these accounts. The final accounts bill shall be debated and adopted together with the budget bill of the new fiscal year.

Article 73 of the Constitution of Turkey has comprehensively mentioned the tax basics, principles, and obligations. In addition to the principles stated in article 73 of the constitution, some principles emerge because of applying general constitutional principles to tax⁷⁹⁹. The principle of legality, the principle of the social state, and the principle of proportionality are some examples of constitutionally recognized principles⁸⁰⁰. Article 73 of the Turkish constitution added the principle of ability to pay, generality, and justice to emphasize the equitable and balanced distribution of the tax burden, which is the social purpose of fiscal policy⁸⁰¹. All the regulations and actions made by the state in tax-related matter aims to increase the social living standards of all Turkish citizens and should comply with the constitutional principles of taxation⁸⁰². Examples of these regulations are progressive tax tariffs, deductions, and exemptions. As a result of applying the principle of proportionality to tax law, the principle of the ability to pay focus which equalizes the poor and rich, can be achieved. Turkish lawyers like Durdu argue that the transfer of an authority to create additional financial obligations to regulate foreign trade to the executive branch contradicts the tax's legality principle⁸⁰³. However, one of the justifications for the newly introduced intervention of the president in foreign trade-related tax determination is the rapid-time necessity to regulate the sector⁸⁰⁴. The foreign trade

⁷⁹⁹ ÇAĞAN, Nami, “Demokratik Sosyal Hukuk Devletinde Vergilendirme”, **Ankara Üniversitesi Hukuk Fakültesi Dergisi**, C. 37, Sa. 1, 1980, s. 131.

⁸⁰⁰ ÜSTÜN, Vergi Hukuku ile İlgili Anayasal İlkeler, s.262.

⁸⁰¹ ÜSTÜN, Vergi Hukuku ile İlgili Anayasal İlkeler, s.262.

⁸⁰² DURDU, Muhammet, “Anayasalarımızda Yer alan İktisadi Hükümleri Hukuki Çerçevesi”, **Necmettin Erbakan Üniversitesi Hukuk Fakültesi Dergisi**, C. 2, Sa. 2, 2019, ss. 111-134.

⁸⁰³ DURDU, s.127.

⁸⁰⁴ KARAKOÇ, Yusuf, “Anayasal Vergilendirme İlkeleri Üzerine Bir Değerlendirme”, **Dokuz Eylül Üniversitesi Hukuk Fakültesi Dergisi**, C. 15, Özel Sayı, 2013, ss. 1259-1308.

sector is the backbone of the Turkish economy, and it requires urgent decisions in case the sector weakens for any reason.

III. GREAT BRITAIN

The United Kingdom has never had a written constitution condensed in a single document. Instead, the Magna Carta, issued by King John of England in 1215, is the fundamental constitutional charter for the United Kingdom⁸⁰⁵. Since then, the constitution has developed organically due to political, economic, and social developments⁸⁰⁶. As a result, the current constitution incorporates statutory law, major court decisions, and several conventions or unwritten standards of constitutional practice⁸⁰⁷.

A. ECONOMIC MODEL IN THE UK UNWRITTEN CONSTITUTION

The unwritten constitutional dispensation of the United Kingdom makes the constitutional lawyers understand whether the UK economic model is constitutional or unconstitutional. After all, the conventional economic approach in the UK seems to follow the well-known Anglo-Saxon model of Capitalism. This economic model is distinguished by low levels of regulation and taxes, with the public sector providing minimal services⁸⁰⁸. It also implies robust private property rights, contract enforcement, ease of conducting business, and minimal trade obstacles⁸⁰⁹. The Anglo-Saxon model has taken the economic ideas from the Chicago School of Economics (discussed in the first chapter), which was praised for the idea that combating inflation is dependent on managing the money supply while maximizing resource utilization efficiency and that free markets are the most efficient for this goal around the 1970s⁸¹⁰. The failure of Keynesian economic

⁸⁰⁵ UK Constitutional Law, George Town Law library:
<https://guides.ll.georgetown.edu/c.php?g=365741&p=2471214>, (accessed on August 2021)

⁸⁰⁶ UK Constitutional Law, p. 1.

⁸⁰⁷ UK Constitutional Law, p.2.

⁸⁰⁸ RICHTER, Eberhard/Fuchs, Ruth, Rhine Capitalism, Anglo-Saxon Capitalism and Redistribution, Indymedia UK, 2003, p.4.

⁸⁰⁹ RICHTER/FUCHS.

⁸¹⁰ KONZELMANN, Suzanne/FOVARGUE, Marc/SCHNYDER, Gerhard, Varieties of Liberalism: Anglo-Saxon Capitalism in Crisis? *SSRN Working Paper Series*, 2010, p.19.

management to prevent stagflation in the 1970s and early 1980s is one of the causes for the return to economic liberalism in the United Kingdom⁸¹¹. The Anglo-Saxon model was created using Friedman's and Chicago School economists' ideas and conventional wisdom from pre-Keynesian. These liberal economic ideas stated that success in combating inflation depends on managing the money supply while maximizing resource utilization efficiency and that free markets are the most efficient for this goal.

T. Roman argued that the United Kingdom has shifted from a "principles-based" approach to supervision and "light-touch" enforcement that predominated before the crisis to a "rules-based" supervisory system that is more interventionist and deterrence-oriented in enforcement⁸¹². According to Roman and other scholars, the 'light touch' principle, which denotes the interference of British banks in the economy after the 2008 financial crisis, shows the Anglo-Saxon economy model lacks its original perspective of pure capitalism⁸¹³. Fred Block argued that the economy of the United Kingdom is far from being a pure model of market liberalism; rather, it is a complicated amalgam of the market and non-market features⁸¹⁴. Furthermore, despite political leaders' assertions, the importance of some non-market components has grown in recent years⁸¹⁵. Hence, the UK unwritten constitution does not provide any clear model of the economy despite the dominant implantation of the Anglo-Saxon model of capitalism.

B. INSTITUTIONAL SETUP

In his book 'the Economic Constitution, Tony Prosser argues that the UK has no coherent constitutional scheme for the allocation of powers in the UK system, and there

⁸¹¹ KONZELMANN/FOVARGUE/SCHNYDER, p.20.

⁸¹² ROMAN, Tomasic, '**Beyond Light Touch' Regulation of British Banks after the Financial Crisis**, 2010, p. 11, retrieved from https://www.researchgate.net/publication/228125973_Beyond_'Light_Touch'_Regulation_of_British_Banks_after_the_Financial_Crisis, (accessed on October 12, 2021).

⁸¹³ ROMAN, p. 12.

⁸¹⁴ BLOCK, Fred, **Towards a New Understanding of Economic Modernity**, in: JOERGES, Christian/STRÁTH, Bo/ WAGNER, Peter, *The Economy as a Polity: The Political Constitution of Contemporary Capitalism*, UCL Press, London 2005, p.12.

⁸¹⁵ BLOCK, p.12.

is a preference for the use of different types of ‘arm’s length body⁸¹⁶ to carry out public functions⁸¹⁷. However, there are popular institutions in economic management and scrutiny of public money in the UK.

1. The Treasury

Her Majesty’s Treasury of the United Kingdom is one of the central economic institutions responsible for managing the United Kingdom's economic system. It serves as the government's finance ministry and, in addition to generating income, disburses cash to government ministries⁸¹⁸. The Treasury's main job is to ensure economic stability, putting it at the center of the financial crisis response and raising serious issues about its relationship with the Bank of England⁸¹⁹. The history of the Treasury starts back with the Norman Conquest when it gained control over spending departments in the seventeenth century⁸²⁰. However, it was only in the 1940s that it became responsible for broader economic management of the economy due to the "accident" of the minister of economic affairs inheriting the Treasury upon the departure of the Chancellor⁸²¹. The Chancellor and the other ministers lead the Treasury. They are officially the Chief Secretary to the Treasury, the Financial Secretary to the Treasury, the Exchequer Secretary to the Treasury, the Economic Secretary to the Treasury, and the Commercial Secretary to the Treasury. The Treasury Board is the most senior body, led by the Chancellor and composed of an equal number of ministers, non-executive, and executive board members⁸²².

⁸¹⁶ Arms’ Length body is defined by Freedictionary.com as an organization or agency that is financed by a government but that acts independently of it. See <https://www.thefreedictionary.com/Arm%27s+Length+body> (accessed on July 23, 2021).

⁸¹⁷ PROSSER, *The Economic Constitution*, p. 22.

⁸¹⁸ PROSSER, *The Economic Constitution*, p.23.

⁸¹⁹ PROSSER, *The Economic Constitution*, p.23.

⁸²⁰ PROSSER, *The Economic Constitution*, p.24.

⁸²¹ WHITELEY, Paul, *The Treasury and Whitehall: The Planning and Control of Public Expenditure, 1976–1993*, *American Political Science Review*, V.90, No. 4,1996, pp. 945–46, retrieved from: <https://doi.org/10.2307/2945913> (accessed on October 12, 2021).

⁸²² WHITELEY, p.945.

2. Bank of England

the other economic institution in the UK economy is the Bank of England, closely linked to the Treasury⁸²³. Once the Bank of England was founded as a private bank in 1694, different legislations changed the nature of the Bank of England, more of a public fund regulator than the private finance sector⁸²⁴. After the Bank of England was nationalized, significant changes in its responsibilities and governance structure happened after 1998 is the Bank of England's act. The Banking act in 2009 and the Financial Services law in 2012 also provided some additional powers to the Bank. One of the Bank of England's main tasks is setting the interest rate in the UK. Furthermore, the Bank has the power to issue banknotes, maintaining the banking system's stability, including providing liquidity to depositing banks and acting as a lender of last resort.

C. ECONOMIC RIGHTS IN THE UNITED KINGDOM

All residents in the United Kingdom have the right to a decent place to live, health care, social security, and other economic benefits under international treaties signed by the country's government. ICESCR, which was enacted by the United Nations General Assembly on December 16, 1966 and signed and ratified by the United Kingdom on September 16, 1968, and May 20, 1976, respectively, is the preeminent treaty encompassing these rights⁸²⁵. The 1961 European Social Charter, a Council of Europe treaty, also includes social and economic rights. The UK approved it on July 11, 1962, after it was signed on October 18, 1961.

Most of the domestic legislation in the United Kingdom does not meet with the right to sufficient housing under the Economic, Social, and Cultural Rights⁸²⁶. The English Housing Act No.1988, for example, does not safeguard renters if a landlord fails to

⁸²³ PROSSER, *The Economic Constitution*, p.29.

⁸²⁴ PROSSER, *The Economic Constitution*, p.29.

⁸²⁵ BUEREN, Geraldine/ LAIN, Byrne/KOLDO, Casla, **Towards an Economic, Social and Cultural Rights Bill**, Consultation document on a draft bill, Newcastle University 2019, p.4, <https://research.ncl.ac.uk/Art22/consultation/1%20Consultation%20document.pdf>, (accessed on June 12, 2021).

⁸²⁶ BUEREN/LAIN/KOLDO, P.4.

maintain a property in a suitable state for human habitation, and the legislation allows landlords to remove tenants without presenting a cause⁸²⁷.

There are neither procedural protections to defend socio-economic rights, nor substantive socioeconomic provisions, in the UK constitutional or legal system⁸²⁸. While explicit mention of some social rights is made in the UK's Human Rights Act, it is far from enough to safeguard socio-economic rights. Normal judicial review standards provide protection for socio-economic rights in the UK in recent years⁸²⁹. The 'Equality and Human Rights Commission'⁸³⁰ of the UK has supported the protection of socio-economic rights through Judicial Review mechanism⁸³¹. However, under regular judicial review rules, socioeconomic rights are only granted limited protection⁸³². It is not because of judicial enforcement of socio-economic entitlement that claimants receive medical care or sufficient housing, but because they have been discriminated against on banned grounds when exercising their UK's Human Rights Act's rights⁸³³. In addition, if a civil and political right recognized by common law or the Human Rights Act intersects with a socio-economic issue, such socio-economic entitlement may be enforced⁸³⁴.

⁸²⁷ BUEREN/LAIN/KOLDO, P.5.

⁸²⁸ JAMES, Asha, *The Forgotten Rights: The Case for The Legal Enforcement of Socio-Economic Rights In The UK National Law*, the UK national law, 2007, p.5, retrieved from https://www.ucl.ac.uk/opticon1826/archive/issue2/VfPLAW_SE_rights.pdf, (accessed on June 12, 2021).

⁸²⁹ JAMES, p.6.

⁸³⁰ The Equality Act 2006 created the 'Equality and Human Rights Commission' as an independent organization with a responsibility to promote equality and human rights. The commission is in charge of 'encouraging good practice in human rights,' among other things. See: Section 9(1)(b) of the Equality Act of the United Kingdom, 2006. Available at: <http://www.legislation.gov.uk/ukpga/2006/3/section/9>, (accessed: 16 December 2017).

⁸³¹ Equality and Human Rights Commission, *Progress on socio-economic rights in Great Britain: Update report on Great Britain's implementation of the International Covenant on Economic, Social and Cultural Rights*, March 2018, p. 73; retrieved from <https://www.equalityhumanrights.com/sites/default/files/progress-on-socio-economic-rights-in-great-britain.pdf>, (accessed on June 17, 2021).

⁸³² JAMES, p.7.

⁸³³ JAMES, p.7.

⁸³⁴ JAMES, p.7.

Asha James argued that, as with political-civil rights, the UK's constitution (Human Right Act) need not include socio-economic rights⁸³⁵. According to James, the distinction between civil, political, and socioeconomic rights is not one of value, but rather of nature. So, the non-inclusion of socio-economic rights in the UK's constitutional system seems purposeful⁸³⁶. It is unlike other countries that 98 percent have incorporated socio-economic rights in their constitutional system.

IV. GERMANY

The Federal Republic of Germany comprises sixteen federal states, or Länder, and is in Western and Central Europe⁸³⁷. After World War II, Germany was split into East and West Germany, which served as a focal point for the Cold War between US-led Western nations and the Soviet Union until 1990, when the two separated regions were reunited⁸³⁸.

Even though the Austro-Prussian War of 1866 led to the German Confederation's disintegration and the establishment of the North German Confederation in 1867 under Otto von Bismarck, the new constitution has been implemented since then. Friedrich Ebert, a member of the Social Democratic Party and the interim president of the German Reichstag (government), signed the Weimar Constitution into law in 1919, thereby establishing Germany's first parliamentary democracy.

After the split of Germany to East and West German in 1945, both Germans adopted their constitutions⁸³⁹. The 1949's West German constitution with some amendments is currently the constitution of German. The German Basic Law has a unique history because it was enacted after WWII and was founded on the influence of occupying foreign

⁸³⁵ JAMES, p.10.

⁸³⁶ JAMES, p.10.

⁸³⁷ See: Constitutionnet, <https://constitutionnet.org/country/germany>, (accessed on June 19, 2021).

⁸³⁸ QUINT, Peter, The Constitutional Law of German Unification, *Maryland Law Review*, V. 50, No.3, 1991, pp. 475-630, available at: <http://digitalcommons.law.umaryland.edu/mlr/vol50/iss3/3>, (accessed on June 19, 2021).

⁸³⁹ QUINT, p.498.

countries. While the Reich government remained in principle after the war, the German government's institutions were utterly devastated.

For more than a century, the concept of a legal economic constitution has piqued the interest of German jurists and academics alike⁸⁴⁰. Since its inception in the Weimar Constitution, it has been linked to the fundamental rights of Germany's constitution, but the Federal Constitutional Court has not recognized it as a constitutional principle. However, it has been revived in its conceptual relevance by the emergence of the European Community's common market law and its practice.

In contrast to the German Empire's Constitution of 16 April 1871, which dealt with "the economic life" as a separate issue, Germany's Weimar Constitution of August 14, 1919 gave the concept of an "economic constitution" a formal legal framework. This was the first time that the concept had been formalized in Germany⁸⁴¹.

A. ECONOMIC IDEOLOGY WITHIN THE GERMAN CONSTITUTION

Whether the German constitution provides a specific economic system is the basic question addressed in this section. Article 20 of the current German constitution stipulates that the Federal Republic of Germany is a Democratic and Social Federal State. Does Social Federal State indicate any economic ideology in any way? What does a Social Federal state mean?

The notion of a "social market economy" was inherent in the German constitution and discernible when examining its provisions from the standpoint of economic models⁸⁴². Müller-Graff argues that the "social market economy" emerges as its own constitutional standard for the interpretation of individual provisions (such as the notion of "constitutional order" as a limit of the individual right of every person to free development of his personality in Article 2 of the German Constitution (Basic Law) or as a standard for

⁸⁴⁰ MÜLLER-GRAFF, Peter, "The Idea of an Economic Constitution (Wirtschaftsverfassung) in German Law", In: GRÉGOIRE, Guillaume/MINY, Xavier(eds.), **The Idea of Economic Constitution in Europe: Genealogy and Overview**, Brill, Nijhoff, Leiden -The Netherlands, 2022, pp.617-637.

⁸⁴¹ MÜLLER-GRAFF, p.618.

⁸⁴² MÜLLER-GRAFF, p.617.

determining the relationship between various freedoms) as well as a constitution (in particular of state intervention in competition)⁸⁴³.

According to some, the German constitution recognizes a social market economy in terms of summarizing the constitutional provisions on economic policy and legislation in general and describing the tensions that exist between them in relation to economic issues, but it does not establish its own comprehensive constitutional criteria for doing so⁸⁴⁴. Moreover, it appears to suggest a kind of surrender to the intrinsic scientific task of searching and identifying the inner substantive system of principles that connects the individual provisions and that can unfold the persuasive authority of considering systemic rationality for consistent interpretation of existing provisions and for legal policy.

B. ECONOMIC INSTITUTIONS IN GERMANY

1. The Federal Bank

The basic law of Germany has incorporated a provision that enables the Federal government to establish Federal Bank, which can issue banknotes and currency⁸⁴⁵. The constitution also assures that within the framework of the European Union, the responsibilities and powers of the Federal bank can be transferred to the European Central Bank⁸⁴⁶. The independence and commitment of the European Central Bank to the superseding goal of assuring price stability has been guaranteed by the Constitution. In Europe, the central bank's independence is a prerequisite to joining the European Monetary Union⁸⁴⁷.

⁸⁴³ MÜLLER-GRAFF, p.621.

⁸⁴⁴ MÜLLER-GRAFF, p.623.

⁸⁴⁵ The 1949 constitution of Germany, as amended in 2014, Art 88.

⁸⁴⁶ The 1949 constitution of Germany, as amended in 2014, Art 88.

⁸⁴⁷ CROSS, Sam, Following the Bundesbank: The Spread of Central Bank Independence, *Foreign Affairs*, V. 73, No. 2, 1994, pp. 128–133. JSTOR, www.jstor.org/stable/20045924 (Accessed 31 July 2021).

Peter Hall agrees that Germany's Central Bank is the most independent in Europe⁸⁴⁸. The independence of its Central bank accompanies the Secret behind the low inflation rate in Germany. Within the European System of Central Banks, The Primary aspect of independence of Central Banks is known as Institutional Independence, by which Central Banks should be independent of political instructions, including the prohibition of Central Banks to seek or accept instructions from Community institutions or any government⁸⁴⁹. Hence, the Federal Bank (Bundesbank) of Germany is institutionally independent, which is why it is said to be successful in eradicating inflation in Germany. The second component of central bank independence is personal independence under the European Monetary Union. National central bank governors should be selected for at least a five-year term, whereas the European Central Bank's executive board members are appointed for an eight-year tenure⁸⁵⁰.

Financially Independence is the third feature that denotes the central banks in Europe required to be financially reliant on themselves⁸⁵¹. This implies that they are not reliant on funding from other institutions in their nations. This also serves to shield central banks from political pressure, such as restricting the banks' financial capacity. Functional Independence is the final and fourth component of the central bank independence in the European Monetary Union. The major goal of central banks should be to preserve price stability, which is entrenched in the Treaty creating the European Community⁸⁵².

⁸⁴⁸ HALL, Peter, Central Bank Independence, and Coordinated Wage Bargaining: Their Interaction in Germany and Europe, *German Politics & Society*, No. 31, 1994, pp. 1–23. JSTOR, www.jstor.org/stable/23736282 (Accessed 31 August, 2021).

⁸⁴⁹ See- Art 108 of the Treaty establishing the European Community.

⁸⁵⁰ WEBER, Axel, **The Independence of the Central Bank and Inflation**, The Bundesbank Example Speech Held At The Narodowy Bank Polski (National Bank of Poland) Warsaw, 2006, p.8; available <https://www.bundesbank.de/resource/blob/702662/34bb8b57bf00dc1d0b5e47a2ddf28e27/mL/2006-10-26-weber-independence-central-bank-and-inflation-the-bundesbank-example-download.pdf> (accessed on July 12, 2021).

⁸⁵¹ WEBER Axel, p.8.

⁸⁵² WEBER Axel, p.8.

2. The Federal Minister of Finance

In the German political system, the Ministry of Finance is considered one of the "traditional portfolios" that were also part of Otto von Bismarck's first German cabinet following the Unification of 1871⁸⁵³. The Ministry of Finance in Germany is the highest Economic Institution responsible for revenue administration. It oversees various subordinate federal, intermediate, and municipal agencies, including the Federal Centre for Data Processing and Information Technology⁸⁵⁴. The Ministry's broader responsibility includes public-law agencies and companies, including the Federal Finance Regulator (BaFin) and real estate regulatory organizations. The finance minister is the only cabinet minister who has the authority to veto a government action if it would result in increased spending. According to the German daily FAZ, the Ministry of Finance is the most significant ministry in the German government. Article 112 of the German constitution states that expenditures over-budgeted appropriations or for reasons other than those intended by the budget must be approved by the Federal Minister of Finance⁸⁵⁵. Only in the case of an unanticipated and unavoidable requirement may such permission be granted. Moreover, the Federal Minister of Finance should account for all income and expenditures and assets and obligations during the prior fiscal year to the Bundestag and the Bundesrat to discharge the Federal Government⁸⁵⁶. The Finance Ministry is in charge of all economic aspects of German tax and revenue policy and plays an important role in European Union policy.

3. The Federal Court of Audit

The Federal Court of Audit in Germany is the highest federal authority subject exclusively to the law as an independent body of government audit. The Federal Court of

⁸⁵³ **German Finance Minister**, https://www.bundesfinanzministerium.de/Content/EN/Standardartikel/Ministry/Advisory_Board/advisory-board.html, (accessed on July 23, 2021).

⁸⁵⁴ **German Finance Minister**, p.2.

⁸⁵⁵ The German constitution 1949, Art 112.

⁸⁵⁶ The German Constitution 1949, Art 114.

Auditors is responsible for assisting the German Bundestag, Bundesrat, and Federal Government in making decisions within its legislative responsibilities.

Article 114 of the German constitution sets the principle for accountability of the economic system. To discharge the Federal Government, the Federal Minister of Finance should present yearly to the Bundestag and the Bundesrat an account of all income and expenditures and assets and obligations for the preceding fiscal year. The Federal Court of Audit, whose members will have judicial independence, will audit the account and assess whether public funds have been appropriately managed. It must present an annual report to the Bundestag, the Bundesrat, and the Federal Government. In all other ways, the Federal Court of Audit powers shall be governed by federal law.

C. ECONOMIC RIGHTS IN THE GERMAN CONSTITUTION

Human and civil rights were made legally enforceable in 1948 when the Frankfurt Parliament approved the Imperial Act protecting the Basic Rights of the German People in 1848. The basic components of those rights, such as equality before the law, freedom of expression, and the repeal of the death sentence, inspired later German constitutions. A year later, in 1849, the Parliament passed the Frankfurt Constitution, which would ultimately become the German Empire's Constitution.

The Constitution of Germany makes no explicit reference to socio-economic rights, but it confers powers over socioeconomic matters to legislative bodies. The right to personal property is guaranteed to a very limited extent⁸⁵⁷. The content and limit of the property right are not the subjects of constitutional provisions; rather, the constitution left these matters to the legislature⁸⁵⁸.

⁸⁵⁷ The 1949 Constitution of Germany, Art 14.

⁸⁵⁸ The 1949 Constitution of Germany, Art 14.

Despite the non-recognition of some socioeconomic rights in the constitution, they can be inferred indirectly from recognized civil-political rights⁸⁵⁹. The courts may conclude that successful enjoyment of civil-political rights necessitates a basic degree of socioeconomic well-being. Consequently, they may broadly interpret procedural fairness and equality principles that promote such well-being. The European Convention on the Protection of Human Rights⁸⁶⁰ and Fundamental Freedoms and the German constitution omits socio-economic rights. However, the Constitutional Court of Germany has provided ground-breaking decisions on the legislative power to specify the socio-economic rights and deducing these rights from articles 1 and 20 of the constitution, which are related to human dignity and social welfare principles. Moreover, the Constitutional Court's stand in deriving the right to the assurance of a dignified minimum subsistence directly from the word "human dignity" shows the socioeconomic entitlements in the literal sense coming from the Constitution's fundamental civic and political rights.

Capitalist property and economic relations were backed by the German Constitutional Amendment on June 17, 1990, which guaranteed private property rights in land and the means of production, and unrestricted economic activity⁸⁶¹. Article 2 allows for government engagement in economic concerns, but the use of property must serve the common good and preserve the natural foundation for existence⁸⁶². However, the text of the amendment seems to qualify property rights more than the Basic Law's related

⁸⁵⁹ DAWOOD, Ahmed/ BULMER, Elliot, Social and Economic Rights, **International IDEA Constitution-Building Primer**, No.9, 2014, <https://www.idea.int/sites/default/files/publications/social-and-economic-rights-primer.pdf> (accessed on July 12, 2021).

⁸⁶⁰ The European Convention on Human Rights (ECHR) protects the human rights of people in countries that belong to the Council of Europe. All 47 Member States of the Council, including the UK, have signed the Convention. Its full title is the 'Convention for the Protection of Human Rights and Fundamental Freedoms. See, https://www.echr.coe.int/documents/convention_eng.pdf (accessed on July 12, 2021).

⁸⁶¹ QUINT, p.504.

⁸⁶² QUINT, p.504.

language, and also appears to acknowledge a qualification in favor of environmental preservation⁸⁶³.



⁸⁶³ QUINT, p.504.

CONCLUSION AND RECOMMENDATIONS

The constitution is not only a politico-legal document but also an economic roadmap of the nation. Therefore, a constitutional framework, which addresses economic issues in a detailed and conscientious manner, can be called a monetary constitution. Despite the absence of an agreeable definition, the notion of the economic constitution also denotes that the normative and cohesive supreme rules guide the state in managing the economic structure and substance stably.

In this dissertation, theoretical aspects of the economic system in the light of the constitution, constitutional law, and constitutionalism have been explored in detail in the first chapter. This part is a general overview of the economic constitution and constitutional economics from a historical point of view. The second discussion, which emphasizes the extent of incorporation of economic aspects, has been explored in detail from the Ethiopian constitutional development perspective.

The history of the modern Ethiopian constitution was only 90 years (1931-2021). The firstling constitution of Ethiopia was hardly ever praised for including the economic system or structure in 1931. The then feudal economic system of the time did not even get recognition in the constitutional system, at least as entitlements for the nobles or impediment to the Tillers (Peasants). Hence, the first Ethiopian constitution is not worth being called as the economic constitution. The revised constitution of Ethiopia (commonly known as ‘the 1955 constitution’) was better than its predecessor in terms of incorporating economic aspects. It consists of provisions related to the budget system, taxation principle, and economic rights. The third Ethiopian constitution, adopted by the Socialist Derg regime in 1987, devoted more to economic matters. The 1987 constitution explicitly duplicates the Soviet constitution, and recognizes socialism as the guiding economic ideology.

The main part of this dissertation revolves around the economic aspects of the current constitution of Ethiopia (the FDRE constitution), which has been operative since its adoption in 1995. Despite incorporating some economic aspects in the FDRE

constitution, there are various economic matters that the constitution still needs to consider. Primarily, it is wise to mention the corollaries that could make the FDRE constitution an economic constitution. Then, the loopholes within the FDRE constitution are summarized.

‘Building one economic community’ has been revealed as the foundation of the Federal Democratic Republic of Ethiopia (FDRE) at the very preamble of the constitution. Textually, the constitution introduced landmark provisions, which may assist in realizing the objective of building a single economic community in the horrendously divided Ethiopian society in the guise of federalism. For instance: the legislature is constitutionally empowered to enact civil laws, which can apply everywhere in the country; the Federal Supreme Court is empowered to provide a binding interpretation to all lower courts for the basic error of law, which both state and federal judicial organs might deliver, and the Council of Ministers (the federal chief executive) is the one who can decide on macro-economic matters.

There is no explicit or implicit economic model within the FDRE constitution. However, the constitution seems obsessed with development because the framers’ economic policy inclined to a ‘developmental state,’ which gained success in the Asian Tigers. From the preamble to the end, the term ‘development’ was mentioned more than twenty times in various ways with the FDRE constitution. In-deed, some of them are redundant. The right to development also gets constitutional recognition in the FDRE.

The FDRE constitution legitimatizes economic rights in two ways: the descriptive way of economic rights inclusion and duty imposer type of rights incorporation. However, economic rights are not adequately recognized in the constitution. Forinstance, the right to freedom of contract is not recognized in the FDRE constitution. Some other economic rights such as the right to water, food, and housing are not explicitly recognized in the constitution except their implicit indication in the national policy directives.

Another loophole in the constitution is the absence of any provision regarding privatization and nationalization of properties. the FDRE constitution is silent about the

nationalization of private properties as well as the privatization of public properties in an explicit manner. There is no clear and detailed method of expropriation indicated in the constitution. Private immovable properties are often expropriated without adequate compensation in Ethiopia because the constitution doesn't set any clear and detail rules on how the compensation is calculated. In the guise of government ownership of land, people get small money and leave their property even for another person's interests, not public interests. The notion of 'public interest' has not been defined in the constitution and remains vague. Indeed, the FDRE constitution guarantees the citizens' right against unlawful eviction from their property or even their land in which they claim possessory rights. However, the constitution has loopholes in setting the public expropriation methods and limitations. Therefore, although the technique and mechanism for determining expropriation compensation can be given to ordinary laws, the constitution should have incorporated some preconditions. These include considering tax declarations, the current value determined by official assessment at the takeover, unit pricing and construction expenses for real estate, and other objective factors in establishing compensation.

The Ethiopian context's institutional setup of economic governance gains limited legitimacy and effectiveness. The National Bank, Council of Ministers, House of the Federation, and the Auditor General are popular constitutional institutions in economic activities. Other economic institutions are also explored despite their omission in the constitutional text.

National Bank of Ethiopia is the central bank of Ethiopia and that regulates the banking sector, manages the foreign exchange, prints money, and coins designs monetary policy, and other important rules. However, the national bank's independence is not recognized in the constitution. The nomination of governor of the national bank, administration process and organizational structure of the National Bank plays key role in securing the independence of National Bank. The governor of NBE is highly affiliated with the ruling political party. Hence, the constitution should recognize the independence of National Bank of Ethiopia. Furthermore, the NBE tasks are too bulky. NBE regulates the monetary system and regulates the banking sector. The experience of other countries

shows that monetary regulation is exclusively given to Central Banks and the banking sector regulatory functions can be vested to other executive institution.

The Auditor General is constitutionally established and supposed to be independent based on the international audit institution's independence framework. Constitutionally mandating the Federal Auditor General to ensure financial accountability of the Federal public institutions is one of the strengths of the FDRE constitution. Nonetheless, the constitution still fails to guarantee the Federal Auditor General's independence explicitly.

House of the Federation is a legislative body designated by the constitution to formulate a budget grant subsidy formula and adjudicate constitutional disputes from an economic point of view. The problem is that the House of the federation is not a suitable institution to set criteria for block grants and other economic aspects. Technically, there should have been a permanent organ to support the HoF in formulating economic elements, just like the Council of Constitutional Inquiry established to assist constitutional adjudication.

The Council of Ministers is constitutionally designated to handle many economic issues. It is the national bank's supervisor and all other economic executive organs. The prime minister chairs it. Although the Council of Ministers' power to regulate the macro economy is not different from the other parliamentary systems, the absence of a constitutionally legitimate specialized economic committee or council to support the Council of Ministers can be considered a defect. Indeed, the macro-economic advisory committee can be established informally or formally outside the constitutional framework in Ethiopia.

Regarding the autonomy of Regional State Governments to manage their fiscal policy, the FDRE constitution contains some provisions. However, the accountability of regional state governments for budgetary policy outcomes has not been ensured by the FDRE constitution. The Federal Government's power to audit and inspect the proportionate development of states doesn't necessarily indicate fiscal accountability of regional states. There should be some sort of objective fiscal accountability of regions.

Local government financing is not recognized in the FDRE constitution. Despite each of the regional constitutions incorporated various local government financing systems, it creates disparities among regional local government development which ultimately have spillover effects.

Regional State Governments' influence on national fiscal policy is very limited. Although all NNPs are represented in the House of Federation, their role in deciding on the fiscal matter is too weak. Undeniably, the FDRE constitution should take the applause at least for its endeavor to accept the principle of regional states influencing central fiscal policies through the HoF role in formulating budget grant procedures. The weakness in the FDRE constitution is the lack of strict intergovernmental budget rules within the constitutional framework and the stability of fiscal policy structures. The other gap in the FDRE constitutional system is that it does not allow the regional states to raise funding from foreign sources to accrue in their revenue.

The constitution fails to include specific budget rights and detail principles in the constitution. Although drawing up the national budget has been granted to the Federal Government, regions have still have the power to draw their own annual budget. However, there are no detailed budgeting principles within the Ethiopian constitutional framework. There are no answer for questions like : what if the government fails to approve the national budget at the beginning of a fiscal year? Do the people refuse to pay taxes for the government's failure to approve the national budget? The FDRE constitution has no clause to answer these sensitive questions.

There is no limitation on the Federal Government's borrowing power. The executive has the power to borrow from both domestic and international sources. There is no any indication in the constitution that the Cabinet has limitation from borrowing. Ethiopia is now the second top highly indebted country in the world. The Constitution should introduce some sort of limitation in government's power of borrowing. There are two options: one is legislative's approval of any borrowings and, the second is fixing a specific proportion of amount in reference to the GDP.

The FDRE constitution is unique for recognizing the right to self-determination up to secession. The constitution also indicates the seceded region may claim asset division from the country. This provision has massive economic implications in the Ethiopian constitutional dispensation. However, the constitution is silent about whether the seceded state should share the economic liabilities(debt). Furthermore, there is no specific principle of asset division between the parent state and the newly formed state. There should have been rules regulating how the economy (asset, debt, recurrent finance) can be shared with the newly formed state. Because the constitution is the higher law, it is supposed to do so. The international rules of succession of state only apply to the international treaties rather than the economic division between the parent state and the newly formed state.

The constitution does not incorporate fiscal principles in an adequate manner. The constitution fails to include fundamental taxation principles such as legality, generality, specificity and other. The expenditure assignments are too problematic. The federal system itself created dual expenditure assignments and regions have much public expenditure assignments but limited revenue raising powers. Hence, the regions are always waiting for the federal government budget subsidy. The constitution does not have any clear-cut budget subsidy criteria in order to set the block grant to regions. The constitution designated the Federal upper house to create a formula for budget grants to regions. But the budget formula implemented for the last quarter of a century created asymmetry in the regions' economic development.

The FDRE constitution has not been amended even a single time since its enactment in 1995. After the 2018 government reform, there are some movements (formal and informal) to initiate constitutional amendments in Ethiopia. No matter when the amendment happens, the amendment should include the following important economic issues.

- Setting new economic institutions: in addition to the current institutions, the constitution should have incorporated new institutions in financial management.

For example, the National Economic Council, operational on a de facto basis as the 'Macro-Economic Council,' must be recognized in the constitution. The constitutional establishment of economic institutions could cease the unstable institutional change through parliamentary legislation. In addition, the mandates of the ministry of finance should be constitutionally determined. Furthermore, the constitution should guarantee the independence of key economic institutions such as the National Bank of Ethiopia and the Auditor General Office.

- Fundamental fiscal decision-making power should be given to specialized economic institutions rather than political ones. For example, framing the budget distribution formula should be given to 'a relevant institution' rather than the House of Federation. A 'relevant institution' can be either a new institution composed of various economic stakeholders and experts; or the Ministry of Finance subject to approval by the legislature.
- The constitutional amendment should include explicit and adequate recognition of economic rights. For example, the right to freedom of contract should be recognized within the new constitutional framework.
- Ethiopian citizens' urban land ownership rights should be guaranteed in the constitution. In addition, clear methods and criteria for calculating compensations for lawful expropriation should be included within the constitution. Although the technique and mechanism for determining expropriation compensation can be given to ordinary laws, the constitution should have incorporated some preconditions. For instance, the constitution should recognize the requirement of considering tax declarations, the current value determined by official assessment at the takeover, unit pricing and construction expenses for real estate, and other objective factors in establishing compensation.
- The constitution should incorporate a provision that ensures the accountability of regional state governments for fiscal policy outcomes to the federal government clearly and explicitly.

- The constitution should recognize the freedom of contract and fundamental consumer protection rules.



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