

Review Article

Political and Legal Disarrays of Separation of Powers in the Oromia Regional State Structure

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Abstract

In principle, a functional division of powers is a prerequisite for limited government. Oromia Regional State, the largest sub-national state in the Ethiopian federation, can exercise upward influence if it develops a limited government with a strong separation of power within its borders. The purpose of this paper is to make an effort to look into the political and legal difficulties that threatened separation of power among the major participants in the region's power dispersion structure. In order to achieve this, the study employed interviews with a few specifically chosen experts and officials from the three arms of regional government, as well as a pertinent literature analysis and personal observation. This led to the discovery that several political and legal constraints significantly restrict the power structure in the region. Ultimately, it was proposed that in order for the region to ensure genuine separation of powers, political players would need to work together to create a political culture that supports constitutionalism and maintain their commitment to the rule of law.

Keywords

Separation of Powers, Check and Balance, Caffee Oromia

1. Introduction

The Oromia Regional State was founded in 1994 as a constituent state of the Ethiopian Federation, at which point it adopted its own constitution and began operating under its own administrative institutions. The regional constitution re-established the regional state, within the Federal Constitution's framework.

In terms of population and area of coverage, the Oromia Regional State is the largest in the country. A significant portion of the people in this regional state are of Oromo descents. However, there are a sizable number of population of non-Oromo ethnic background in the region. The region is also well-known for making important economic, social, and political contributions to the national government. As a result,

whatever happens in the region, favorable or adverse, is bound to have an impact on the federal government and other regions depending the nature of the impacts.

The Revised Constitution of Oromia (hereafter referred to as the Constitution), like most democratic constitutions, was designed with the intention of building a functional democratic subnational polity in the Oromia region. [1] To ensure democracy and the rule of law, the constitution specifically aspired to incorporate democratic ideas such as check and balance, and separation of powers.

However, as the four branches of government, party included, share more domain of influence, the nature of their ties attracts meticulous academic attentions. In the earlier

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years of the region, the president was head of the Caffee, the legislative body of the regional administration. Later, in 2001, the role of Speaker was formed to coordinate the Caffee's activities and that made a clear demarcation between the executive and legislative branches. Despite the fact that the Constitution includes a flexible amending procedure, no major change, aiming at reinforcing the separation of powers and checks and balances, was introduced.

Despite its stated intention to establish constitutionalism and democracy in the region, constitutional engineering was unable to achieve constitutionalism and successful democratization between powers in the region. [2] This has a lot to do with the federal government's character and its interplays with the regional states. However, for the sake of this study, the constitutional and political spaces that were available to ensure democratic and effective interaction amongst the regional state's institutions will be emphasized.

2. Constitutional Gadgets to Regulate the Interaction

Several approaches for regulating interactions between government departments were included in the Revised Oromia Regional State Constitution. The majority of these are basic democratic principles available in the strong democracies. Constitutional procedures incorporated in the document of the constitution itself protect these ideals from being trampled upon during implementation in properly drafted constitutions. In this regard, the RORSC has a long way to go. Restrictions on government power are crucial, but constitutions' ability to monitor and enforce those restrictions is equally important in preserving constitutional order.

This failure of the regional constitution to incorporate the safeguarding procedures bears a strong resemblance to the federal constitution and, of course, adds to the body of the constitution's apparent contradiction. It is true that the shortcomings in the federal constitution have primarily highly influenced the regional constitution in these regards. Despite the difficulties, the framers of the Constitution attempted to create rules to govern their interactions. Now, let's examine the conceptually established constitutional protections that were meant to govern the relationships between the several branches of government.

2.1. Separation of Powers

The principle of separation of power is part and parcel of any democratic systems of governance. Constitutions' primary duty is to apportion powers to various branches of government in accordance with the principles of separation of powers. Aristotle, the Greek philosopher, recommended the separation of powers for Greek city-states as a daring approach to limit aristocratic powers of the rulers, but there are equally strong arguments that claims separation of powers was also meant to increase efficiency of any government. [3]

The French Revolution in the late 18th century was the reason for the advent of the contemporary understanding of separation of powers as a crucial tool for curbing the power of the bloated Westphalia states [4].

The Revised Oromia Regional State Constitution (RORSC) established three branches of the Regional State that are recognized as key components of the Regional State and tamed their interactions in accordance with the principles of separation of powers. Separation of powers is also stipulated in the institutional framework of the Constitution of the Federal Democratic Republic of Ethiopia (FDRE). As a result, the regional state was divided into three separate entities following the constitutions: legislative (the Caffee), executive (headed by the president), and judiciary.

The legislative branch, with all its conceptual ambiguities, is seen as the supreme organ, having the authority to enact laws and supervise other two branches. Moreover, Caffee acts as a platform where elected leaders exercise popular sovereignty. In this context, sovereignty roughly refers to the authority to determine the region's political, social, economic, and other issues. These powers appear to be a justification for the "supremacy clause" adopted by the constitution. Together with the district (Woreda) Councils, the Caffee has the power to enact and change the regional constitution, which is analogous to the exercise of sovereign power.

The executive is the second branch of government that is distinguished by the enormous power it wields in any political system. The hegemonic tendencies that this branch exhibits over the legislative and judiciary branches are expected and normal as long as the constitution provides an adequate mechanism to mitigate its adverse effects. Following this general trend, the RORS constitution vests executive power in the President and the Regional Government's Administrative Council. Security and financial powers, for example, offer the executive branch tremendous leverage over the rest.

In Oromia, the regional Presidents are often either the leaders of the ruling party or higher-ranking member of the party at the regional level, with the party serving as the most powerful fourth branch of government in the region. This implies that he is responsible for the nomination or proposal of any official in the region, including the president and vice president of the regional Supreme Court, as well as the whole high-ranking Caffee leadership.

The regional judiciary was also formed by the regional constitution. The court in the region is the most professional organ in carrying out its duties. Significant work has been done in different aspects to ensure its independence. Previously, the executive would prepare and submit the Judiciary budget to the Caffee for approval, but this is no longer the case as they prepare themselves but submit to the Caffee along with the budget of the government. The Caffee appoints the president of the regional Supreme Court based on the nomination of the President of the regional Government. The constitution is silent on the tenure and removal of the president and vice president of the regional Supreme Court. In practice,

the Regional President removes the president or vice president of the Regional Supreme Court at any time.

However, there are two qualitatively distinct obstacles to the smooth functioning of the separation of powers in the region. The first is the lack of a political culture that values the preservation of allegedly weaker branches, combined with the parliamentary system's inherent power fusion. Although power fusion is inherent in parliamentary systems, the legal and political frameworks should strive to minimize its detrimental effects on democratic interactions between government institutions. Jeremy Waldron, a law professor at New York University School of Law, contends that, while not being officially stated in the Constitution, separation of powers is a fundamental part of the political life of American society and thus an essential aspect of American political culture. [5] Therefore, elevating the concept of separation of powers to the level of political culture would make it easier to incorporate it into the legal and political contexts and exercise them. Political and legal actors in the region must be convinced that the system cannot function without well-functioning and interconnected governmental agencies. As a result, the absence of this culture, as well as the resulting weakness in the legal and political structures designed to maintain separation of powers, is the first impediment.

The party's disproportionate presence in all government agencies is the second hindrance to the separation of powers. The party is more feared and respected than the government. Almost every appointee is more devoted to the party than to natural institutional authorities. The party controls all government functions, particularly through its role in nomination and appointment of officials of the Caffee and the Judiciary. The Caffee's speaker is elected from among its members, whereas the president of the Supreme Court is nominated by the regional president and appointed by the Caffee. The Party has an absolute involvement in the Caffee as a result of the mechanism by which the speaker is elected. Because there are no constitutional procedures governing this area, only the victorious party can nominate and remove the speaker at any moment. As a result, it is considered that the speaker is only a choice of the winning party. The same is true for the Supreme Court's President and Vice President. Once the leaders of these two branches have been lawfully subdued, the institutions can be approached through them for better or worse.

In essence, the system is similar to an Aristotelian Mixed Regime, in which authority is divided among the one, the few, and the many. Although the party acts like an aristocrat and the legislature reflects democratic components of the system, the regional president's legal and political authority is comparable to that of an Aristotelian monarch. This archaic notion of power distribution intersects with the region's present power structure to some extent.

2.2. Check and Balance

Separation of powers and checks and balances are philo-

sophically and practically interconnected. Both are founded on democratic notions of monitoring public authorities entrusted to agencies and individuals. The concept of checks and balances logically follows from power separation and is critical to its effectiveness. It is a mechanism for sustaining allocation of powers consistently, and as such, these two concepts are "nearly interchangeable" [6].

According to the regional constitution, the Caffee is the supreme political organ in the region. However, there is conceptual confusion between legislative supremacy/legislative sovereignty and constitutional supremacy in both the federal and regional constitutions. In Ethiopia, the legislature's supremacy is more of a role supremacy, as is common in most parliamentary systems, than a supremacy as defined by the British model.

Meanwhile the constitution is silent about hierarchy of the executive and the judiciary in the trio interaction. Nonetheless its supremacy does not spare it from being checked by the other branches. The Caffee checks and balances the executive and the judiciary via constitutionally bestowed powers of law making, appointment of higher officials, performance evaluations, and calling and questioning procedures in case of significant deviances from their legitimate train. [7] In many democratic countries, legislators employ these techniques to check the executive and the judiciary. The first two, law-making and performance evaluations, are usual Caffee procedures. Aside from these procedures, it makes frequent field visits to monitor the progress of significant government projects. The third option, calling and questioning, is quite rare. The Caffee revoked the immunity of one of its members who also worked in the executive branch because of charges of abuse of authority and corruption. So far six Caffee members have had their immunity revoked at various periods. Due to the charges of corruption, the Caffee relinquished the immunity of Hon. Zelalem Jemaneh, who was then the government whip and held the vice president's portfolio, in Motion No. 6/2008 E. C. In 2023 and 2024, it also removed the immunity of two of its members due to allegation of a crime committed in collaboration with the Oromo Liberation Front (OLF) army wing, dubbed 'Shane' by the government. Despite the prevalent corruption in government entities, no visible actions have been taken since then.

The court's essential instruments for checking and balancing the legislative and executive branches are judicial independence, constitutional review, and judicial review. Only the first is formally adopted by the RORS constitution. Chapter Seven of the Constitution, established an independent judiciary with the inherent authority to interpret the Caffee's primary legislations and the Executive's secondary laws. As a result, the judiciary has the chance to tame the authors' objectives and limit their authority during interpretations. Under Proclamation No. 216/2018, the Supreme Court's Cassation Bench, comprised of at least five judges, including the President and Vice President, has the jurisdiction to interpret legislations in a way that binds lower courts. By adding this

particular clause, the court expanded the power it had by preventing subordinate courts from making differing decisions and thereby systematically limiting their exposure to other branches of government.

The second factor on which the Oromia courts intended to strengthen their autonomy was the procedure by which the President and Vice President may be removed. The aforementioned proclamation states that the President and Vice President may be removed only upon fulfillment of the following conditions: (1) voluntary retirement, (2) serious violation of judicial ethics, and (3) poor leadership. It took a bold step towards maintaining the judiciary's independence from the executive. However, one instance of a change in Supreme Court leadership since the proclamation's ratification shows that implementing this provision takes more than just a legislative acceptance.

Constitutional review, in which the judiciary assesses the constitutionality of laws, is another way of check and balance. Oromia Regional State courts lack this authority. Instead, the Revised Oromia Regional State Constitution formulates the Commission of Constitutional Interpretation, which is made up of one representative from each Woreda Councils in the region [8].

Another method of control that is not in place in the Constitution of the Oromia Regional State is judicial review. This is a prerogative power by nature, since it entails ensuring that governmental entities' decisions are consistent with the law. [9] It is the judiciary's role to interpret the laws enacted by the legislature that give the executive a mandate to make decisions and implement administrative measures. Following the lead of the Federal Attorney General, the regional attorney general has recently started the process of drafting an administrative procedures law to exercise this judicial authority.

The executive uses more political instruments than formal constitutional check and balance mechanisms. Formally, there are powers such as law enforcement power, policy making power, and delegated power of regulation enactment that could be utilized to balance the other two branches. Nevertheless, the most effective means by which the executive branch controls, rather than checks and balances, the others is through party channels. The leader of the executive is also the chairman of the ruling party, hence he/she has complete power to nominate the speaker and the president of the Supreme Court. In most cases nominees are endorsed without marked challenge from the Caffee members mainly due to the strong internal control within the Caffee itself. On top of this, the president is given the power to endorse any legislation done by the Caffee. However, this power seems nominal as the law may take effect without his signature within 15 days [10].

Power might be abused in both the legislative and judicial branches, but the means of check and balance must be formed by a legislation, as informal checks are more exposed to abuses. In actuality, there are regulations governing appointment techniques that are not followed. The issue here is how these individuals can be removed from office. According

to existing behavior, the Regional President can fire the heads of these two branches just as easily as he would any other bureau head in his administration. The procedures established in Proclamation No. 216/2018 for the dismissal of the President of the Supreme Court must be followed, and an equivalent assurance for the removal of the speaker must be stipulated.

3. Excessive Allegiance to the Party

Ethiopia has a long history of volatile politics and governance. Political authority was used to carry out identity based oppression and subjection. Despite considerable development in areas other than politics, virtually every authoritarian regime has been ruthless in the face of any perceived danger to their power. As a result, retaining political power at any cost remains the only way to achieve the political goals that have driven the nation's racially motivated power struggle throughout its history. [11] This has led to the emergence of a political culture that is skeptical of every arrangement of government structures.

This political legacy can sensibly be understood throughout the region's current political and legal chaos. A political party that assumes political power tends to be haughty in exercising such powers in all aspects of government functions. Without such tighter controls, the party fears that the government institutions might stray from or even impair their broader political goals. As a result, party activities are prevalent in, practically, every government institution, including the legislature. In this aspect, courts appear to be considerably better at limiting and countering party influences, while it is impossible to say that they are completely devoid of its impact.

Both the appointed officials and bureaucrats fear the party and place party interests above their official duties. Performing party duties at the cost of their legal responsibilities is a sufficient justification for evading government accountability. On the other hand, the presence of party may strengthen the institutions' capacity to implement government programs. However, this only works if the interests of the two, the government and the party, agree.

In these two branches, the costs of party presence outweigh the benefits. It will be difficult to develop institutions that can independently survive and outlive regimes as long as the bureaucracy is not given the opportunity to test and improve itself in its day-to-day tasks.

4. Where the Constitution Fall Short in Protecting Power Separation

One of the primary goals of the regional constitution is to divide authority among the three branches and ensure their implementation through the construction of adequate protection mechanisms. In certain ways, the Revised Constitution of Oromia Regional State may be considered insufficient to

ensure that the relationships between the three branches are healthy and that each assigned power is exercised as the constitutional design intended them to be implemented. Hence, it appears that the flaws in the constitution emanate from the constitutive approach the constitution employed.

The constitution named the legislature “a supreme political body” without establishing the constitutional safeguards required to ensure its supremacy. Regardless of all the powers granted to the Caffee, the constitution made the Caffee's leadership vulnerable to the executive. Therefore, whenever the Caffee seeks to use its power in a manner that appears to oppose the President or the party, there would undoubtedly be repercussions for its leadership. As is the case in nations such as Kenya, the constitution should have required that all the Caffee leadership positions be filled by means of secret ballot election and their removal by resolution of the Caffee members.

Similarly the trend in the appointment of the president of the Supreme Court shows the excessive power of the party/Executive in that branch. From the experience, the president of the Supreme Court comes and goes with the president of the regional government. As per article 61(1) of the Regional Constitution an independent judiciary was established. This is a general article depicting determination of the constitution to come up with an independent judicial institution. The president of the Supreme Court is appointed by the Caffee upon recommendation of the president of the region. [12] However the constitution does not provide the procedures to remove the president of the regional Supreme Court. The proclamation No. 216/2018 has procedures to this end, [13] but it is completely disregarded. Therefore, removing the Supreme Court President is as easy as removing a cabinet member for the party or the executive.

On the other side, the party secretariat at the regional level is the party whip, member of the Caffee Executive Committee, and member of the Judicial Administration Council (JAC), representing the Caffee. According to Article 6 of Proclamation No. 217/2011, the JAC has two Caffee representatives among its members. The party whip in the Caffee, who is also supposed to be the head of the party secretariat, is usually one of the two Caffee representatives in the JAC. It signals a blatant desire on the side of the party and a serious compromise to the separation of powers in the region. This is a tiny party channel in the Caffee and the Judiciary to ensure absolute allegiance to the party.

The constitution contains no provisions governing how the courts might check and balance the exercise of executive authority. The judicial review system is the appropriate tool for curbing the exercise of executive power. There is currently no legal framework in the region that provides for judicial review of administrative decisions. There are two theories on whether the Caffee has the authority to pass legislation to this effect under the Constitution. One school of thought holds that the Constitution should necessarily not have stipulated judicial review as a check and balance mechanism. This group

thinks that if the constitution accepts separation of powers in a democratic framework, all mechanisms for ensuring check and balance between the separated organs, including judicial review, are implicitly agreed to. As a result, they argue, judicial review should be available as it is inextricably linked to the separation of powers. The second line of argument emphasizes the importance of judicial review and how the constitution addressed other means of check and balance, such as the summoning and questioning procedure, performance evaluation, and other similar mechanisms that are clearly specified under the power of respective organs. As a result, they believe the Constitution should have regarded judicial review similarly.

The region's draft administrative procedure statute appears to have followed the first line of argument. Article 49(1) of the Regional Constitution is used as an enabling provision. This provision gives the Caffee the authority to legislate on any regional issues. [14] The Federal Administrative Procedure Proclamation No. 1183 /2020 followed the same approach, citing Article 55 (1) of the FDRE Constitution as an enabling article.

5. Non-Constitutional Conundrums to Effective Separation of Powers

One of the main reasons to revise the Oromia Regional State Constitution in 2001, as stated in the preamble, was to ensure ‘separation of powers and accountability of the state organs’. However, for some reasons, the region's state structure suffers from a multifarious conundrums, the most of which are linked with the separation of powers among several organs. In the preceding part, we saw the ways the Constitution failed to safeguard the division of powers that it established. Let us now concentrate on secondary laws, implementation, and some structural issues that have hampered effective separation of powers in the region. In terms of undermining the system as whole, these issues are regarded as equally important as the constitutional ones. [15] This is mainly due to its proximity to implementations than the constitutional provisions.

Proclamations no. 201/2017, 242/2021 and 2016/2018 respectively defined powers and structures of the Caffee, the Executive and the Judiciary. On top of defining their respective powers, these proclamations embedded provisions which have implications on the relations among themselves.

The Caffee establishing proclamation grants new powers that were not provided in the regional Constitution. It empowers the Caffee to 'call for questioning and, if necessary, take measures' against heads of the President's Office and Bureaus, as well as other executive and judiciary. [16] This section broadens the power slightly further than the Constitution and exempts the president from being subject to this power. The Official Version, Afaan Oromo, regional constitution, on the other hand, limits this power to 'calling and

questioning'. [17] In practice, however, the Caffee undertakes performance and plan review, field oversight, and legislation, none of which has resulted in any substantial measure against any executive or judicial institution or their heads.

Another significant inclusion to the proclamation is about budget approval. The Caffee, in compliance with the constitution, adopts the regional government's budget, however, if the term 'regional government' is to comprise the three branches, it must be explained. Based on practice, one can deduce that the consensus among them is it includes the three organs. In contrast to the practice and silence of the constitution, the proclamation authorizes the speaker to propose the Caffee's budget for approval to its session. [18] Despite repeated attempts to put this clause into effect, it does not appear to have had any results thus far.

The same is true for the budget of the judiciary. In line with Art.64 (7) of the regional constitution and Art.79 (7) of the Federal Constitution, its establishment proclamation permits the Supreme Court to formulate its budget, submit it to the Caffee for approval, and manage it once approved. [19] Despite these constitutional and statutory provisions, the Judiciary's budget is nevertheless developed alongside the Executive and the Caffee. However, due to a minimal influence from the Finance Bureau, the management of its budget differs from that of the Caffee.

Regarding human resource administration the Judiciary has better autonomy than the Caffee. Its establishment proclamation clearly dictates its autonomy in administration and recruitment of human resources. [20] Unlike other facets of the judicial autonomy, the executive and the Caffee, observe the judicial branch's autonomy in this regard. Meanwhile, contrary to what proclamations No. 201/2017 and 191/2015 state, Caffee's human resource recruiting and administration is handled by ordinary rules and procedures in the executive [21].

In general, the regional government's policies and procedures exacerbate the problem of separation and check of powers among the three bodies. As a result, it inevitably jeopardizes the fundamental goals of the constitution that intend to ultimately engraft constitutionalism in the region.

6. As a Critical Hindrance to the Nation Building and Constitutionalism

In federal systems, the interaction between the center and the units is critical for keeping the federation on course. That is one of the primary reasons why federations must be democratic in order to survive. [22] The behavior of the units would influence the behavior of the center and vice versa. The federal tiers of government are considered distinct and collaborate to the extent that their functions complement one another. Federalism was designed to treat political ailments, [23] thus, it must not produce them. As a result, it is necessary

to use caution when designing and implementing the federal system.

The FDRE constitution embellished the federal system with a plethora of democratic flavors. To ensure the federal notion of self-rule and the democratic concept of separation of powers, the constitution necessitates the establishment of legislative, executive, and judicial institutions at both the national and regional levels. [24] In accordance with the federal constitution's prescription, the Oromia Regional State Constitution also separates powers to some extent. Both the federal and regional constitutions separated powers, yet failed to create an effective separation of powers in which the rule of law and constitutionalism prevailed.

There will be no autonomy in the legislative or the judiciary if there is no meaningful separation of powers. This, in turn, undermines the exercise of legally granted authorities, perhaps leading to tyranny. [25] The presence of the party and/or the executive in the legislature and the court through multiple constitutionally inappropriate paths threatens the formation of limited government in the Oromia Regional State. When combined with the fact that the leadership of these two branches is chosen on suggestion and dismissed at the discretion of the executive, its presence at the highest level of these organizations concentrates the power of the three branches in one spot. This runs counter to the concept of democracy envisioned in the regional and national constitutions. Tyranny has always been faced with impunity and opposition throughout history. The Prosperity Party's nation-building initiative, which has already faced multiple difficulties, may soon face a fresh one.

The absence of a clear and efficient division of powers, as well as its entanglement with political and legal setbacks, would do more harm to the government's efforts to build a nation. Attempts to distort these constitutional canons will cause the entire system to malfunction and eventually threaten its survival.

7. Conclusion

Constitutional systems usually develop gradually, and the path leading up to constitutionalism is quite perplexing. The effectiveness of constitutional systems is determined by numerous factors and players. Aligning and coordinating these factors and stakeholders calls for a high degree of selflessness and commitment to democracy. In this instance, stakeholders in particular must be committed to preserving constitutionalism in a nation.

The practice of separation of powers in the region is gravely threatened by the stakeholders' unequal commitment to constitutionalism. To the detriment of the general public interest, stakeholders exploit every legal gap in the region's constitution and other laws. Separation of powers in the region would therefore be jeopardized if everyone, including the incumbent party, tried to take advantage of the system and push the entire system out of the democratic process.

The Regional Constitution itself lacked robust safeguards to maintain the separation of powers. The protective mechanisms ought to be capable of defending the entire system against threats to its integrity as well as from powerful individuals and groups that provide a common danger to all constitutional systems. A robust judiciary with the authority to review constitutional rules, as well as other independent branches with extremely restricted authority that operate under the framework of an efficient check and balance system is also among the areas where the Regional Constitution failed in terms of ensuring separation of powers.

The catastrophic failure of the separation of powers in the region has typically been caused by political mischief and legal clumsiness. The lack of an effective separation of powers resulted in frequent conflicts and long-lasting multifaceted devastation in the region. The sincerity and integrity of the stakeholders' actions on matters pertaining to the separation of powers are just as important as how the actors handle contentious political issues in the system.

As a result, in order to restore the system and guarantee an efficient separation of powers, the nation or region's political culture as well as its legal systems must be genuinely committed to constitutionalism. In this sense, the regional government may take the lead in democratization and the establishment of limited government throughout the nation.

Abbreviations

RORSC	The Revised Oromia Regional State Constitution
FDRE	Federal Democratic Republic of Ethiopia
OLF	Oromo Liberation Front
JAC	Judicial Administration Council

Author Contributions

Sibhat Keyfalew Kelbessa is the sole author. The author read and approved the final manuscript.

Conflicts of Interest

The author declares no conflicts of interest.

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Research Fields

Sibhat Kefyalew Kelbessa: Constitutional Law, Public laws, Constitutional and Political Identity, Legislatures, Sabnational Constitutions, Comparative Constitution