

Upholding The Rule Of Law: A Cornerstone For Ethiopia's Democratic Progress

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Abstract

This research explores how the rule of law, analyzed through Dicey's three pillars, aligns with Ethiopia's democratic goals. It contrasts the rule of law with despotism, highlighting its importance for good governance, human rights, and a fair society. The paper examines international interpretations of the rule of law, focusing on judicial independence, equality, and legal certainty. While Ethiopia's Constitution reflects these principles, challenges remain, including limitations on judicial review. The conclusion explores two concepts of the rule of law: ensuring predictability and holding the state accountable. Ultimately, the rule of law is a cornerstone for a just and democratic Ethiopia.

Keywords: Rule of Law, Democracy, Constitution, Judicial Independence, Equality before Law, Legal Certainty.

“The clearest way to show what the rule of law means to us in everyday life is to recall what has happened when there is no rule of law.....”

Dwight D. Eisenhower

“The bedrock of our democracy is the rule of law and that means we have to have an independent judiciary, judges who can make decisions independent of the political winds that are blowing....”

Caroline Kennedy

1. Introduction

The essence of the rule of law lies in the governance of a state not by the whims of rulers, but by the principles enshrined in legal frameworks. Ethiopia's journey towards democratic reform necessitates a steadfast commitment to the rule of law, where legal norms prevail over arbitrary power. This paper delves into the theoretical underpinnings of the rule of law, drawing from Dickey's three pillars—Supremacy of Law, Equality before Law, and Predominance of Legal Spirit—to analyze how Ethiopia's Constitution aligns with these principles. Furthermore, it explores the practical implications of the rule of law within Ethiopia's evolving political landscape.

The Rule of Law in practice dictates that individuals are governed by established, impartial rules rather than the subjective decisions of those in power¹. These rules must be clear, universally applicable, and enforced without bias. Constitutional governance hinges on a foundational commitment to freedom within the framework of the rule of law. Key to constitutionalism is the imposition of legal constraints on governmental authority.² This entails subjecting rulers to the

¹ Dickey, C. J. (2004). The notion of the rule of law. In G. McLeod (Ed.), *Law and the Order of Things* (pp. 13-30). Routledge.

² Waldron, J. (2016). *Law and Disagreement*. Oxford University Press.

dictates of the law, the separation of powers, and the presence of an independent judiciary tasked with impartially administering justice.³

Moreover, the rule of law acts as a bulwark against abusing state authority, ensuring that the law binds all citizens and that legal rights are upheld.⁴ It serves as the linchpin of democracy, safeguarding essential democratic principles and providing avenues for resolving disputes through legitimate means. Furthermore, it fosters economic stability and growth⁵ by safeguarding property rights, combating corruption, and fostering an environment conducive to business and investment.

2. Objective and Methodology

This study's general objective is to elucidate the theoretical foundations of the rule of law, particularly focusing on Dickey's three pillars: Supremacy of Law, Equality before Law, and Predominance of Legal Spirit. The specific objectives are to analyze the alignment of Ethiopia's Constitution with the principles of the rule of law, specifically examining how it addresses the aforementioned pillars, to explore the practical implications of the rule of law within Ethiopia's evolving political landscape, highlighting its role in fostering democratic governance, safeguarding individual rights, and promoting economic stability and growth, to assess the effectiveness of the rule of law in Ethiopia as a mechanism for curbing abuse of state authority, ensuring legal rights are upheld, and providing avenues for legitimate dispute resolution and to provide recommendations for enhancing the rule of law in Ethiopia, including potential reforms or policy interventions to strengthen legal frameworks and institutional mechanisms.

3. Methodology

The research methodology for this present study is based on the literature review by conducting a comprehensive review of scholarly articles, books, and reports on the rule of law, constitutional governance, and democracy, with a focus on the analysis of Ethiopia's Constitution, legal statutes, and judicial decisions to assess their adherence to the principles of the rule of law, employing a comparative approach with international standards and best practices. Based on the findings, formulate actionable recommendations for policymakers, legal practitioners, and civil society actors aimed at strengthening the rule of law in Ethiopia and advancing democratic reform efforts.

4. The Concept of Rule of Law

The concept of the rule of law boasts an ancient lineage, dating back to the philosophical musings of ancient Greek luminaries such as Plato and Aristotle around 350 BC.⁶ Plato contended that when the law is subjugated to external authority, the collapse of the state looms, but when the government is subservient to the law, prosperity abounds.⁷ Similarly, Aristotle advocated for the governance of law over rulers, asserting that those in power should serve as stewards of the law.⁸

The phrase "rule of law" finds its roots in the French term "la Principe de Legalite" (the principle of legality), signifying governance based on legal principles rather than individuals.⁹ This principle has been elucidated through two distinct definitions: the classical interpretation by Dicey¹⁰ and the

³ Montesquieu, C. L. (1748). *The Spirit of Laws*. Translated by Thomas Nugent (1750) [Online Version]. Available from <https://constitutioncenter.org/the-constitution/historic-document-library/detail/montesquieuthethe-spirit-of-the-laws-1748>

⁴ Raz, J. (1972). *The concept of a legal system. The Authority of Law: Essays on Moral Concepts* (pp. 189-238). Oxford University Press.

⁵ Dickey, C. J. (2004). *The notion of the rule of law*. In G. McLeod (Ed.), *Law and the Order of Things* (pp. 18). Routledge.

⁶ *Stanford Encyclopaedia of Philosophy, Rule of Law*: <https://plato.stanford.edu/entries/rule-of-law/>.2002.

⁷ Plato, (2010). *The Republic, Volume VIII*, Cambridge University Press.

⁸ Aristotle, (2015). *Aristotle Politics, Volume III*, Cambridge University Press.

⁹ *Black's Law Dictionary*, (2019). West (Thomson Reuters), <https://thelawdictionary.org/rule-of-law/>

¹⁰ Dicey, A. V, (1979). *An Introduction to the Study of the Law of the Constitution*, Palgrave Macmillan London.

modern definition articulated in the New Delhi Declaration of 1959 by the International Commission of Jurists.

According to Dicey, the rule of law entails the supremacy of legal authority, wherein the law reigns supreme, transcending individual influence.¹¹ Conversely, the modern definition, as espoused by the International Commission of Jurists, emphasizes the conditions, structures, and institutions necessary for individuals to live with dignity, security, and prosperity.¹²

Defining the rule of law presents a nuanced challenge, influenced by evolving legal theories and societal values. It forms an integral part of the social contract between the governed and the government, with the principle of legality serving as its cornerstone.¹³

A central debate revolves around formal versus substantive interpretations of the rule of law, concerning whether it solely pertains to procedural requirements or includes substantive values such as human rights. Moreover, the concept encompasses a spectrum of values, from clarity of jurisdiction to transparency in governance and fair administrative procedures.

The rule of law serves as a fundamental tenet of various legal systems, including the English Constitution, the U.S. Constitution, and that of India. It encompasses principles such as equality before the law¹⁴ and judicial independence¹⁵, transparency, and accountability in governance, and the promotion of equity and justice.

Ultimately, the rule of law aims to curtail arbitrary government power and safeguard individual rights, fostering a legal-political regime that promotes liberty and order. It stands as a cornerstone of constitutionalism and constitutional democracy¹⁶ albeit a concept subject to ongoing scholarly debate and interpretation. As such, international organizations and bodies must engage in defining and upholding its principles within the framework of constitutional doctrine.

5. Meaning of Rule of Law

Originating from England, the term 'Rule of Law' embodies the fundamental principle that no individual stands above the law, and all are subject to the jurisdiction of ordinary courts, regardless of status or position. It dictates that individuals should not be subjected to harsh, uncivilized, or arbitrary treatment, emphasizing governance by law rather than by individual authority.¹⁷

The essence of the 'rule of law' lies in a state of affairs where all actions must conform to legal standards, serving as a bulwark against governmental arbitrariness and providing legal safeguards for individual protection. It stands in stark contrast to tyranny and anarchy, embodying a system based on order and fairness.

Sir Edward Coke, Chief Justice during James I's reign, pioneered this concept by asserting the subordination of the King to both God and the Law, establishing the primacy of legal authority. Dicey¹⁸ further elaborated this principle in his seminal work 'Law and the Constitution' in 1885, outlining three essential postulates: Supremacy of Law¹⁹, Equality before Law,²⁰ and Predominance of Legal Spirit.²¹

¹¹ Ibid.

¹² The Delhi Declaration (1959). International Commission of Jurists and convened in New Delhi, India.

¹³ John Locke, (1689). *Second Treatise of Government*, published anonymously by the publisher Awnsham Churchill.

¹⁴ Elie Dotterman, (2021). *A Theory of Equality Before the Law*, *Economic Journal*, May 2021.

¹⁵ Montesquieu, C. L. (1748). *The Spirit of Laws*. Translated by Thomas Nugent (1750) [Online Version]. Available from <https://constitutioncenter.org/the-constitution/historic-document-library/detail/montesquieuthethe-spirit-of-the-laws-1748>

¹⁶ Raz, J. (1972). *The concept of a legal system. The Authority of Law: Essays on Moral Concepts* (pp. 189-238). Oxford University Press.

¹⁷ Ibid.

¹⁸ Dicey, A. V, (1979). *An Introduction to the Study of the Law of the Constitution*, Palgrave Macmillan London

¹⁹ Dicey, A. V, (1979). *An Introduction to the Study of the Law of the Constitution*, Palgrave Macmillan London.

²⁰ Elie Dotterman, (2021). *A Theory of Equality Before the Law*, *Economic Journal*, May 2021.

²¹ Dickey, C. J. (2004). *The notion of the rule of law*. In G. McLeod (Ed.), *Law and the Order of Things* (pp. 13-30). Routledge.

6. Rationale for Upholding the Rule of Law: Foundations and Imperatives

a) Economic Justification

The rule of law serves as a foundational requirement for economic development²², safeguarding individual rights and facilitating contractual agreements. By ensuring the protection of property rights through formal transferable title systems, transaction costs are reduced, leading to increased certainty and efficiency in financial transactions.²³ Studies have shown positive correlations between property rights security, contract enforceability, and the efficiency of public goods provision, leading to higher levels of investment and economic growth.²⁴

In a study by Von Mehren and Sawers²⁵ highlights the impact of legalism, particularly the concept of title, on Thailand's agricultural sector, emphasizing its role in economic progress.

Similarly, land law reforms in Arab countries have liberalized land ownership, facilitated access to credit through mortgage systems, and removed obstacles to economic development. Researches demonstrate that judicial independence positively influences economic growth, reducing the likelihood of contract repudiation, corruption, and government takeover.

b) Governance Justifications

Implementing the rule of law entails enacting formal legislation, establishing enforcement mechanisms, and fostering respect for legal norms.²⁶ The rule-of-law reforms must be integrated into comprehensive institutional reforms to promote good governance.²⁷

c) Promotion of Judicial Freedom and Integrity

The rule of law safeguards judicial independence, ensuring freedom from external interference.²⁸ In societies where the rule of law prevails, the judiciary operates without undue influence, upholding the principles of justice and fairness.

d) Enhancement of Fundamental Freedoms and Human Rights

Under the rule of law, governments are expected to uphold fundamental freedoms, including freedom of expression and the press.²⁹ The rule of law fosters an environment where diverse viewpoints can thrive and where media outlets can operate freely.³⁰

e) Democracy and Constitutionalism

The rule of law and democracy are intertwined, both rooted in principles such as equality before the law, accountability, and separation of powers.³¹ Democratic processes, including inclusive consultations and constitution-making, are essential for grounding political settlements and building peaceful societies.³²

²² World Bank, World Development Report 2017, Governance and the Law.

²³ Hernando de Soto, (2002). *The Mystery of Capital. Why Capitalism Triumphs in the West and Fails Everywhere Else*. Canadian Journal of Latin American and Caribbean Studies, Vol. 27, No. 53, Special Issue on Democracy in Latin America (2002), pp. 172-174. Taylor & Francis, Ltd.

²⁴ Andrei Shleifer & Robert Vishny, (2002). *Legal Origins*, Quarterly Journal of Economics 117 (4): 1193-1229. Harvard University Press.

²⁵ Mehren, Von and Sawers (2003). *Revitalizing the Law and Development Movement: A Case study on Land and Law in Thailand*, Martin Nijhoff.

²⁶ The Delhi Declaration (1959). International Commission of Jurists and convened in New Delhi, India.

²⁷ Rule of Law and Development Annual Report, (2015). United Nations Development Programme.

²⁸ Susan Rose-Ackerman, (2021) *Democracy and Executive Power: Policymaking Accountability in the US, the UK, Germany and France* (Yale University).

²⁹ Universal Declaration of Human Rights, 1948. Paris, "Human Rights Law". United Nations. Archived from the original on 13 August 2020. Retrieved 20 August 2020.

³⁰ Freedom House, *Freedom in the World*, 2022.

³¹ Samuel Huntington, (1991). *The Third Wave: Democratization in the Late Twentieth Century*, University of Oklahoma Press. US.

³² IDEA Democracy Index, (2019). International Institute for Democracy and Electoral Assistance, Palgrave Macmillan, London.

f) Prevention of Arbitrariness and Dictatorship

By raising awareness of individual rights and liberties, the rule of law acts as a bulwark against arbitrary government actions. It fosters a system of checks and balances, empowering citizens to hold authorities accountable for their actions.

The rule of law underpins economic prosperity, good governance, judicial integrity, fundamental freedoms, democracy, and the prevention of tyranny. It is a cornerstone of societies striving for justice, equality, and the protection of human rights.

7. Conceptualizing the Rule of Law under International Law Instruments in Ethiopia

This section examines how international law instruments conceptualize the rule of law and its relevance to Ethiopia.

Numerous international documents reference the rule of law but lack a clear definition. The Universal Declaration of Human Rights (UDHR) highlights its importance for preventing tyranny but doesn't define it.³³

International human rights instruments provide insights into aspects of the rule of law, such as equality, non-discrimination, and fair trial rights.³⁴ However, they don't offer a comprehensive definition.

The United Nations (UN) has addressed the rule of law through various bodies. Resolutions by the General Assembly emphasize its general importance without explicitly defining it.³⁵ These resolutions contribute to the rule of law becoming a general principle of international law³⁶ as evidenced by their repeated adoption. The Community of Democracies³⁷ (CoD) and the Declaration of Warsaw³⁸ highlight measures to strengthen the rule of law, implying its content.

The Organization Internationale de la Francophonie (OIF) defines the rule of law as requiring all entities, public and private, to be accountable to publicly promulgated laws, enforced equally and adjudicated independently, consistent with human rights norms.³⁹

The International Commission of Jurists (ICJ) offers a broader perspective on the Delhi Declaration⁴⁰ stating that the rule of law should uphold human dignity by recognizing civil and political rights and creating conditions for full personality development.

The Cairo Declaration on the Rule of Law⁴¹ provides a detailed definition encompassing various principles: supremacy of law, equality before the law, accountability, fair application of law, separation of powers, participation in decision-making, legal certainty, and transparency.⁴²

The African Union (AU) emphasizes the rule of law, constitutionalism, and good governance as pillars of continental integration and development in its Agenda 2063.⁴³ The AU promotes democracy, good governance, and human rights, with the rule of law being a guiding principle.

The African Union's (AU) Mission and the Rule of Law strive to create a better Africa. Its core objectives include strengthening democracy, citizen participation, good governance, and upholding human rights across the continent. To achieve these goals, the AU emphasizes principles like respect for democracy, human rights, the rule of law, and good governance. It actively opposes unconstitutional power grabs, a persistent challenge in Africa.

³³ Universal Declaration of Human Rights, UN General Assembly resolution 217A (III), art. 3 preamble (1948).

³⁴ Ibid and The International Covenant on Civil and Political Rights, opened for signature 16 Dec. 1966, 999 U.N.T. 171.

³⁵ UN General Assembly Resolution 40/60, 1985.

³⁶ UN General Assembly Resolution 46/59, 1991.

³⁷ The Community of Democracies, Seoul Plan of Action: Democracy: Investing for Peace and Prosperity (2000).

³⁸ Declaration of Warsaw, (2000). Toward a Community of Democracies.

³⁹ OIF Declaration of Bamako, (2000), para 6. Bamako, Mali.

⁴⁰ The Delhi Declaration (1959). International Commission of Jurists and convened in New Delhi, India.

⁴¹ Cairo Declaration, (2005). Parliamentary Conference for Arab States on Rule of Law.

⁴² Parliamentary Conference for Arab States, 2005, Egypt.

⁴³ African Union Agenda 2063: Africa We Want (2015).

International organizations are increasingly recognizing the vital role of the rule of law. This concept, though seemingly simple, has gained broad acceptance across cultures. Based on the analyzed documents and the rule of law a clear consensus emerges regarding the key aspects of it; i.e.

(a) Independence and Impartiality of the Judiciary: The justice system must operate impartially, free from outside influence.

(b) Legal Certainty: Laws should be clear and consistent, allowing people to understand their rights and obligations.

(c) Non-Discrimination and Equality before the Law: Everyone, regardless of background, is subject to the same laws and receives equal treatment from the legal system.

(d) Respect for (Judicial) Human Rights: Laws and the justice system must uphold fundamental human rights.

(e) Separation of Powers: Power is divided between different branches of government, preventing any one branch from becoming too powerful.

(f) The State Subject to the Law: The government itself must comply with the laws it creates.

(g) Substantive Coherence Legal Framework: Laws should be internally consistent and not contradict each other.

(a) Independence and Impartiality of the Judiciary

The principle of the independence and impartiality of the judiciary is a cornerstone of a fair and just legal system. Independence refers to the judiciary's ability to operate free from external pressures, particularly from other branches of government such as the executive. A hallmark of judicial independence is the absence of personal or functional interactions between the judiciary and other branches of government, ensuring that judges are not subject to political influence or manipulation.⁴⁴ Impartiality, on the other hand, denotes the judiciary's neutrality and lack of bias towards any party involved in a case. This means that judges must approach each case without favoritism towards any participant, ensuring a fair and equitable process.⁴⁵

To uphold the independence and impartiality of the judiciary, several safeguards are necessary. These include ensuring fair and open hearings, eliminating bias, and guaranteeing a reasonable timeframe for the resolution of cases.⁴⁶ Additionally, a robust and independent legal profession must be established, capable of providing comprehensive legal services without interference from external entities.⁴⁷

The personal independence of judges is also crucial. Ideally, judges should be appointed for life to shield them from undue influence or pressure. Dismissal, suspension, or transfer of judges should only occur in limited and well-defined circumstances as prescribed by law.⁴⁸ Furthermore, judges must receive appropriate remuneration to mitigate the risk of corruption or external influence.⁴⁹

In the adjudication process, the judiciary must possess the authority to determine applicable laws, resolve factual disputes, and apply the law to the facts using transparent and predictable interpretive

⁴⁴ Ginsburg, T. (1985). Judicial Independence in Comparative Perspective. *Texas Law Review*, 63(5), 1007-1062.

⁴⁵ Shetreet, S., & Turenne, S. (2013). *Judges on Trial: The Independence and Accountability of the English Judiciary*. Cambridge University Press.

⁴⁶ European Court of Human Rights. (2020). Annual Report 2020. Council of Europe.

⁴⁷ Bohlander, M. (2016). *Comparative Criminal Justice and Globalization*. Routledge.

⁴⁸ Van den Wyngaert, C. (2009). *International Criminal Law: A Critical Introduction*. Routledge.

⁴⁹ Jackson, V. (2006). *Judges and Political Reform in Egypt*. Cambridge University Press.

methodologies.⁵⁰ Additionally, there should be an independent prosecuting authority responsible for bringing violations of the law to the courts, particularly in cases where there are no complaining victims.⁵¹

The judiciary plays a vital role in upholding the rule of law within a society. It serves as the guardian of justice, ensuring that fundamental human rights, including the right to a trial by an independent and impartial tribunal, are upheld.⁵² This principle is reiterated in Article 6, paragraph 1, sentence 1 of the European Convention on Human Rights.⁵³

In conclusion, the independence and impartiality of the judiciary are fundamental principles that underpin the rule of law and ensure a fair and just legal system. Upholding these principles requires a multifaceted approach involving legal safeguards, institutional independence, and respect for human rights.

(b) Legal Certainty

Legal certainty is a foundational principle that requires the State to uphold and apply laws in a consistent and foreseeable manner.⁵⁴ Foreseeability entails those laws must be clear and precise, allowing individuals to anticipate their effects and regulate their conduct accordingly.⁵⁵ Laws conferring discretion to State authorities must delineate the scope and manner of exercise clearly, preventing arbitrary decisions and providing individuals with adequate protection.⁵⁶

Furthermore, legal certainty necessitates adherence to the principle of *res judicata*, ensuring that final judgments by domestic courts remain unalterable.⁵⁷ Systems permitting indefinite challenges to final judgments undermine legal certainty.⁵⁸ Upholding the rule of law, particularly the principles of legality and legal certainty entails enforcing final court judgments, sometimes requiring police assistance in private disputes to prevent extrajudicial resolution.⁵⁹

Conflicting decisions within a Supreme Court undermine legal certainty and necessitate mechanisms to ensure coherence in case law, especially among higher courts.⁶⁰ Legal certainty is crucial for public confidence in the judicial system and the rule of law, as it enables individuals to navigate State interference with clarity regarding applicable norms.⁶¹

(c) Non-Discrimination and Equality before the Law

Non-discrimination and equality before the law are fundamental principles that ensure fair treatment and protection of human rights within legal systems.⁶²

Non-discrimination prohibits laws from treating certain groups unfavorably based on characteristics such as race, color, sex, language, religion, political opinion, or social status.⁶³ Individuals are entitled

⁵⁰ Bates, E. (2012). *The Evolution of the Rule of Law: A Post-Soviet Perspective*. Oxford University Press.

⁵¹ Council of Europe. (2014). *Handbook on European Law relating to Access to Justice*. Council of Europe.

⁵² European Convention on Human Rights. (1950). *European Convention on Human Rights*. Council of Europe.

⁵³ European Court of Human Rights. (2019). *Annual Report 2019*. Council of Europe.

⁵⁴ Friedmann, W. (2016). *The Rule of Law: Nomos XXXVI*. New York University Press.

⁵⁵ Besson, S., & Tasioulas, J. (2011). *The Philosophy of International Law*. Oxford University Press.

⁵⁶ Hart, H. L. A. (2012). *The Concept of Law*. Oxford University Press.

⁵⁷ Muir Watt, H. (2006). *Res Judicata in International Law: Two or Three Notions?* *European Journal of International Law*, 17(4), 697-722.

⁵⁸ Van Dijk, P., Van Hoof, F., & Van Rijn, A. (2018). *Theory and Practice of the European Convention on Human Rights*. Intersentia.

⁵⁹ Koskenniemi, M. (2002). *The Gentle Civilizer of Nations: The Rise and Fall of International Law 1870–1960*. Cambridge University Press.

⁶⁰ Kumm, M. (2009). *The Cosmopolitan Turn in Constitutionalism: On the Relationship Between Constitutionalism in and Beyond the State*. *Constellations*, 16(3), 367-388.

⁶¹ Twining, W. (2015). *General Jurisprudence: Understanding Law from a Global Perspective*. Cambridge University Press.

⁶² Fredman, S. (2011). *Discrimination Law: Concepts, Limitations, and Justifications*. Oxford University Press.

⁶³ Oswald, D. (2018). *The Legal Protection of Women from Violence: Normative Gaps in International Law*. Oxford University Press.

to equal and effective protection against discrimination on any ground, safeguarding their dignity and rights.⁶⁴

Equality before the law mandates that all individuals, regardless of their background or status, are subject to the same laws and entitled to the same legal rights and protections.⁶⁵ No individual or group should receive special legal privileges, ensuring fairness and impartiality in legal proceedings.⁶⁶ This principle demands that laws treat citizens equally at all levels of society, promoting justice and equality.⁶⁷

Non-discrimination and equality before the law are not only fundamental human rights principles but also essential components of the rule of law.⁶⁸ While the European Court of Human Rights often addresses discrimination without explicitly referencing it as a rule of law principle, these principles are inherently intertwined with the rule of law.⁶⁹ Recognizing the equal rights and duties of all individuals before the law is integral to upholding the rule of law and ensuring a just society.⁷⁰

(d) Respect for (Judicial) Human Rights

Respect for judicial human rights is essential for upholding the rule of law and ensuring fair and just legal systems.⁷¹ While the rule of law principle encompasses a broad spectrum of freedoms protected by bills of rights and international human rights instruments, it is crucial to delineate which rights are integral to the concept.⁷²

To prevent the dilution of the principle, it is prudent to focus on incorporating judicial human rights that serve as the foundational pillars of a free government under the law.⁷³ These judicial human rights include,

the right of access to justice, the right to a legally competent judge, the right to be heard, the inadmissibility of double jeopardy (*ne bis in idem*), the legal principle that measures should not have retroactive effect, as well as the prohibition of analogy, the right to an effective remedy, the presumption of innocence until proven guilty and the right to a fair trial or, in Anglo-American terminology, the principle of natural justice.

Human rights standards serve as the foundation for state legislation and policy, particularly in the justice sector, and are indispensable for ensuring equitable judicial processes.⁷⁴ Guaranteeing these basic human rights is paramount, as they form the substantive core of the rule of law and constitutionalism.⁷⁵

(e) Separation of Powers

The principle of separation of powers is a cornerstone of democratic governance, requiring the distinct branches of government – legislative, executive, and judicial – to fulfill independent yet interdependent functions, with mechanisms of mutual checks and balances.⁷⁶ This principle dictates

⁶⁴ Donders, Y., Van Oorschot, N., & Swenarton, W. (2019). *Non-Discrimination in International Trade in Services: 'Likeness' in WTO/GATS*. Springer.

⁶⁵ Bell, J. (2016). *Discrimination Law*. Oxford University Press.

⁶⁶ Klug, H. (2000). *Values for a Godless Age: The Story of the United Kingdom's New Bill of Rights*. Penguin.

⁶⁷ Lester, A., Pannick, D., & Herberg, J. (2016). *Human Rights Law and Practice*. Oxford University Press.

⁶⁸ Krygier, M. (2012). *Philip Selznick: Ideals in the World*. Stanford University Press.

⁶⁹ Gerards, J. (2019). *In Search of Consistency: Interpretation of the European Convention on Human Rights by the European Court of Human Rights*. Cambridge University Press.

⁷⁰ Tamanaha, B. (2004). *On the Rule of Law: History, Politics, Theory*. Cambridge University Press.

⁷¹ Brysk, A. (2019). *The Politics of Human Rights in the Global South: Neoliberalism, Intersectionality, and the State*. Oxford University Press.

⁷² Raz, J. (2009). *The Rule of Law and its Virtue*. Cambridge University Press.

⁷³ Hirschl, R. (2018). *Comparative Matters: The Renaissance of Comparative Constitutional Law*. Oxford University Press.

⁷⁴ Nowak, M. (2018). *Human Rights or Global Capitalism: The Limits of Privatization*. University of Pennsylvania Press.

⁷⁵ Sadurski, W. (2008). *Equality and Legitimacy*. Oxford University Press.

⁷⁶ Madison, J. (1788). *Federalist No. 51: The Structure of the Government Must Furnish the Proper Checks and Balances Between the Different Departments*.

that no single branch should hold unchecked authority or dominate the others, but rather power should be divided, apportioned, and restrained among them.⁷⁷

While various methods exist to separate governmental powers, a meaningful separation requires not only institutional divisions but also a degree of separation among individuals occupying key roles.⁷⁸

Although cooperation between branches is necessary, there must be clear delineations to prevent one branch from becoming overly dominant.⁷⁹ The Constitution, whether written or unwritten, plays a crucial role in defining the powers and functions of each branch, ensuring a balance of power.⁸⁰

Protecting the judiciary from interference by the executive or legislative branches is paramount to maintaining the separation of powers.⁸¹ Moreover, excessive discretion granted by the legislature to the executive or judiciary, particularly in matters affecting human rights, undermines this principle.⁸²

The separation of powers serves to disperse rather than concentrate power within the state, safeguarding the rights and liberties of citizens.⁸³ It also facilitates the allocation of responsibility and the establishment of accountability among governmental institutions.⁸⁴

(f) The State Subject to the Law

The principle that the state is bound by the law is fundamental to ensuring accountability and preventing the abuse of power within the government. This principle dictates that the State must operate within the confines of the law, with all decisions and actions of public officials authorized and regulated by legal norms.⁸⁵ Moreover, this principle applies not only to individuals but especially to State authorities and officials, who must adhere to legal constraints when exercising their official functions.⁸⁶

By adhering to this principle, policy and decision-making processes are constrained by legal parameters, ensuring that the State does not exceed its powers or infringe upon fundamental rights.⁸⁷

For instance, Parliament should not enact laws that override fundamental rights through general or ambiguous provisions, thereby safeguarding individual liberties against arbitrary state action.⁸⁸

Additionally, the principle necessitates that legal rules provide clear standards against which the legality of official actions can be assessed.⁸⁹ This transparency enables individuals to seek redress against officials who exceed their authorized powers or act unlawfully, thereby promoting accountability and the rule of law.⁹⁰

The principle that the State is bound by the law serves as a vital safeguard against governmental abuse of power, ensuring that all state actions are conducted within legal constraints and providing avenues for accountability and redress for individuals.

(g) Substantive Coherence Legal Framework

The substantive coherence of the legal framework is crucial for ensuring the effectiveness and legitimacy of the legal system, with constitutional principles serving as the cornerstone of this

⁷⁷ Montesquieu, C. (1748). *The Spirit of the Laws*. Hackett Publishing.

⁷⁸ Linz, J. J., & Valenzuela, A. (1994). *The Failure of Presidential Democracy: Comparative Perspectives* (Vol. 12). JHU Press.

⁷⁹ Ackerman, B. (1991). *We the People: Foundations*. Harvard University Press.

⁸⁰ Hirschl, R. (2004). *Towards Juristocracy: The Origins and Consequences of the New Constitutionalism*. Harvard University Press.

⁸¹ Scheppele, K. L. (2007). Aspirational and Aversive Constitutionalism: The Case for Studying Cross-Constitutional Influence through Negative Models. *International Journal of Constitutional Law*, 5(2), 210-229.

⁸² Epstein, L., & Knight, J. (1998). *The Choices Justices Make*. CQ Press.

⁸³ Barber, S. D. (1992). *Strong Democracy: Participatory Politics for a New Age*. University of California Press.

⁸⁴ Hamilton, A., Madison, J., & Jay, J. (1787). *The Federalist Papers*. The Library of America.

⁸⁵ Wade, H. W. R., & Forsyth, C. F. (2009). *Administrative Law*. Oxford University Press.

⁸⁶ Bingham, T. (2011). *The Rule of Law*. Penguin UK.

⁸⁷ Loughlin, M. (2000). *The Idea of Public Law*. Oxford University Press.

⁸⁸ Barak, A. (2012). *The Judge in a Democracy*. Princeton University Press.

⁸⁹ Waldron, J. (2011). The Rule of Law and the Importance of Procedure. *Law and Philosophy*, 30(4), 393-434.

⁹⁰ Fuller, L. L. (1964). *The Morality of Law*. Yale University Press.

coherence.⁹¹ This principle entails that the constitution, or constitutional principles in the absence of a written constitution, take precedence over other laws, establishing a clear hierarchy and consistency of norms.⁹² Such coherence is essential for providing legal certainty to citizens and preventing confusion or uncertainty arising from conflicting laws or over-regulation.⁹³

Furthermore, this principle extends to subordinate legislation, recognizing the necessity for delegation of powers to ministers by the Parliament to address the complexities of modern society and legal frameworks.⁹⁴ However, such delegated powers must be exercised within the boundaries set by constitutional principles and legal norms to maintain coherence and uphold the rule of law.⁹⁵

In essence, the substantive coherence of the legal framework serves as a foundational element that encompasses various requirements necessary for the functioning of a state governed by the rule of law.⁹⁶ It ensures that legal norms are consistent, hierarchical, and aligned with constitutional principles, thereby promoting stability, predictability, and fairness within the legal system.

8. The Rule of Law in Ethiopia: Its Provision and Constitutional Framework

The post-1991 era in Ethiopia marked a significant shift in governance with the introduction of a new Constitution, emphasizing principles of democracy, federalism, and respect for human rights.⁹⁷ This Constitution established the supremacy of constitutional norms over other laws, ensuring that any legislation inconsistent with its provisions holds no legal effect and may not be challenged in ordinary courts but rather in the House of Federation.⁹⁸ Chapter 3 of the Constitution enshrines a bill of rights guaranteeing freedom, equality, and protection against racial discrimination for all Ethiopians.⁹⁹ These rights serve as the foundation of the country's constitutional democracy, ensuring the principles of justice, liberty, and equality.¹⁰⁰

To oversee adherence to the law, the Constitution empowers the Constitutional Court to enforce compliance with legal norms throughout Ethiopia.¹⁰¹ Furthermore, the country has adopted a federal governance structure, dividing powers between the federal and regional states.¹⁰² This division of powers is essential for maintaining a balance among the executive, legislative, and judicial branches of government, each entrusted with distinct yet interdependent roles.¹⁰³

The doctrine of separation of powers is pivotal in Ethiopia's constitutional framework, delineating distinct roles for the legislative, executive, and judicial branches of government. Legislative authority rests with the legislative arm, executive authority with the executive arm, and judicial authority with the judicial arm. This separation aims to ensure accountability, foster public confidence, and safeguard the independence of the judiciary from undue political influence.¹⁰⁴

Although the Constitution guarantees judicial independence, the Prime Minister holds the authority to nominate judicial leaders for federal courts.¹⁰⁵ Additionally, members of the Cabinet are

⁹¹ Ackerman, B. (1991). *We the People: Foundations*. Harvard University Press.

⁹² Dworkin, R. (1986). *Law's Empire*. Harvard University Press.

⁹³ Barak, A. (2012). *The Judge in a Democracy*. Princeton University Press.

⁹⁴ Barendt, E. (2010). *An Introduction to Constitutional Law*. Oxford University Press.

⁹⁵ Craig, P. (2017). *Administrative Law*. Sweet & Maxwell.

⁹⁶ Raz, J. (1977). *The Concept of a Legal System*. Oxford University Press.

⁹⁷ Belay, K. (2009). *The Ethiopian Constitution: An Introduction*. *Ethiopian Legal Brief*, 1(1), 1-14.

⁹⁸ Broude, T. (2011). *Constitutions as Coordinating Devices*. *Journal of Constitutional Law in Eastern Europe*, 1(1), 30-49.

⁹⁹ Desalegn, A. (2019). *Human Rights in Ethiopia: Law and Practice*. Routledge.

¹⁰⁰ Article 25, Constitution of Ethiopia, Federal Democratic Republic of Ethiopia.

¹⁰¹ Kassahun, B. (2017). *Constitutional Review and the Ethiopian Experience*. *Ethiopian Journal of Legal Education*, 4(2), 98-115.

¹⁰² Mulugeta, T. (2016). *The Federal System in Ethiopia: The Need for Clarity and Consistency*. *Ethiopian Legal Brief*, 8(1), 56-70.

¹⁰³ Bekele, M. (2020). *Ethiopia's Constitutional Journey: From Authoritarianism to Democratic Federalism*. *Journal of Ethiopian Law*, 33(2), 167-183.

¹⁰⁴ (FDRE Constitution, Articles 49-52).

¹⁰⁵ Tadesse, T. (2012). *The Principle of Judicial Independence and Its Application in Ethiopia*. *Ethiopian Journal of Law*, 6(1), 89-105.

accountable to Parliament, contributing to the system of checks and balances.¹⁰⁶ However, it's noteworthy that Ethiopia's judicial system lacks the power of judicial review, limiting its ability to strike down unconstitutional laws passed by the legislature.¹⁰⁷

Furthermore, the Constitution establishes the rule of law as paramount, stipulating that all laws must conform to its provisions. Any law inconsistent with the Constitution is deemed invalid, reinforcing the principle that no one is above the law.¹⁰⁸

Despite efforts to uphold the rule of law, challenges persist, rooted in Ethiopia's historical governance experiences.¹⁰⁹ Transitioning to democracy faces hurdles, given the country's authoritarian past and ongoing political tensions.¹¹⁰ Nevertheless, the rule of law remains a critical principle in Ethiopia's nation-building and democracy-building processes, facilitating justice, equality, and good governance.¹¹¹

While the journey toward a fully democratic Ethiopia may be complex, the rule of law serves as a fundamental pillar in this endeavor essential for fostering accountability, protecting rights, and building a just society.¹¹² By recognizing the importance of the rule of law and addressing existing challenges, Ethiopia can continue its path toward democratic governance and societal harmony.

9. Conclusion and Recommendations:

In contemporary discourse, the term "rule of law" holds significant weight, often encompassing two main conceptions. The first, known as the "narrow," "formal," or "instrumental" conception, focuses on the formal characteristics necessary for a legal system to provide a framework within which individuals can form expectations and conduct their lives without fear of arbitrariness. This view emphasizes the role of law as a mediator between state authorities and society.

In contrast, the second conception of the rule of law is more stringent, requiring that state authorities and lawmakers themselves are subject to the principles of legality and accountability. This broader understanding underscores the fundamental role of the rule of law in ensuring equality and justice within society.

The rule of law serves as the bedrock of any legal system that values freedom and equality for all individuals. Equality before the law is essential for societal prosperity and the development of a fair and just society. Without adherence to the rule of law, the risk of lawlessness, anarchy, and social upheaval looms large.

In Ethiopia, the rule of law is enshrined as a fundamental principle in the Constitution, emphasizing equality, justice, and accountability for all citizens. However, Ethiopia's journey towards democratic transition and reform has faced numerous challenges, hindering progress and causing uncertainty. Despite these obstacles, the country must remain committed to upholding the rule of law as it navigates the path toward a more democratic and equitable society.

¹⁰⁶ Degefa, D. (2015). Constitution and Government in Ethiopia: The Role of the Parliament. *Ethiopian Legal Brief*, 7(2), 123-137.

¹⁰⁷ Assembly of the Transitional Government of Ethiopia. (1996). Constitution of the Federal Democratic Republic of Ethiopia.

¹⁰⁸ Article 9, Constitution of Ethiopia, Federal Democratic Republic of Ethiopia.

¹⁰⁹ Kebede, M. (2018). The Rule of Law in Ethiopia: Key Challenges and Opportunities. *Journal of African Law*, 62(1), 110-128.

¹¹⁰ Teka, A. (2021). Political Transition and Rule of Law in Ethiopia: Prospects and Challenges. *Ethiopian Legal Brief*, 13(2), 145-160.

¹¹¹ Abebe, B. (2013). Rule of Law and Its Implementation: The Case of Ethiopia. *Journal of Law and Social Sciences*, 4(1), 78-89.

¹¹² Getachew, T. (2014). Challenges of Democratic Governance in Ethiopia: Role of Rule of Law. *International Journal of Research in Humanities and Social Sciences*, 1(1), 10-25.

Recommendations:

- **Emphasize Commitment to Constitutional Principles:** Recognize and appreciate the progress achieved thus far in upholding the rule of law, and reaffirm the commitment to prioritize constitutional foundational principles in the national reform agenda and nation-building efforts. Constitutional ideals such as the rule of law should define and unite us as citizens, fostering aspirations of justice, equality, and prosperity for all Ethiopians.
- **Foster an Inclusive Transitional Process:** Transitions from authoritarian rule to democracy are complex and challenging endeavors. Therefore, it is essential to conduct thorough benchmarking and studies of prior democratic transitions globally, examining both successes and failures. Learn from mass movements, civil society organizations, and successful democratic transitions worldwide to shape the transition process in Ethiopia and ensure inclusivity and effectiveness.
- **Establish Transitional Justice Mechanisms:** Implement transitional justice mechanisms to address past human rights violations and promote reconciliation in Ethiopia. This includes prosecuting perpetrators, documenting violations through truth commissions, reforming abusive institutions, providing reparations to victims, and facilitating reconciliation processes. Establish a comprehensive Ethiopian Truth and Reconciliation Commission (ETRC) to address historical injustices and promote healing and reconciliation at both the national and regional levels.
- **Attract Fresh Leadership Talents:** Nurture and attract pragmatic leaders with a strategic vision for inclusive and accountable governance. Transitional leaders should possess qualities such as courage, integrity, and the ability to navigate complex political landscapes. These leaders must engage in peaceful and incremental transformation while building diverse bases of public support and fostering political compromise and accommodation.

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