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Bereket Habte Selassie

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ARTICLES

Democracy and the Role of Parliament Under the Eritrean Constitution

Bereket Habte Selassie[†]

Eritrea's constitutional moment stretched out for three years, from April 1994 to May 1997.[1] The Eritrean experience of constitution-making was marked by large-scale and intense public participation in village and town meetings at which most of the main issues were raised and debated. Among the issues raised by the public, none was more vigorously debated than the question of government power and how it impinges on the rights of the people.[2] The problem of power and how different societies, at different times, have dealt with it is always a fascinating subject to contemplate; it becomes a crucial matter when one is engaged in creating the Constitution by which such power will be regulated. In Eritrea the people followed the process with great interest every step of the way, until the Constitution was ratified on May 23,

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[†] William E. Leuchtenburg Professor of African Studies, The University of North Carolina at Chapel Hill. LL.B. 1956, University of London; Ph.D. 1967, University of London. Dr. Selassie, a native of Eritrea, served as chairman of the Eritrean Constitutional Commission from 1994 to 1997. He has also served in several Ethiopian government positions prior to the war for Eritrean independence, including Judge of the Federal Supreme Court from 1958-62 and Attorney General from 1962-64. His books include *The Executive in African Governments* (1974), *Conflict and Intervention in the Horn of Africa* (1980), and *Eritrea and the United Nations* (1988).

[1] By constitutional moment, I mean the meeting point between a nation's past, present, and future, the time when all the principal constitutional issues are—or should be—confronted and debated: the basic principles of governance, the rights and duties of citizens, and the powers and responsibilities of government.

[2] *See* CONSTITUTIONAL COMMISSION OF ERITREA, CONSTITUTIONAL PROPOSALS FOR PUBLIC DEBATE 18-27 (1995) [hereinafter CCE: PROPOSALS]. Many other issues were raised and debated, including the structure of the government, electoral system, political pluralism, and religion and the state. *See id.*

1997.[3]

The focus of this Article is the role of Parliament in a democratic system of government, in the abstract as well as under the Eritrean Constitution. Parliament is a critical institution and is conceived as such under the Eritrean Constitution. The Eritrean Parliament is designed to ensure the healthy political development of the new nation. The Eritrean Constitutional Commission laid particular emphasis on this point throughout the constitution-making process, and I stressed it in my final address to the Council of the Commission upon the submission of the draft Constitution.[4]

This Article offers a summary of the contemporary discourse on the meaning of democracy in a larger historical context in Part I.[5] Part II outlines the modern history of Parliament as a representative institution in relation to the concept of democracy, by reference to its evolution in Europe.[6] Part III discusses electoral systems in general,[7] while Part IV discusses the composition and function of Eritrea's Parliament.[8] In Part V the role of Parliament and parliamentary process under the Eritrean Constitution is examined.[9] Finally, Part VI concludes by assessing the prospect of parliamentary democracy and the corresponding challenges facing the Eritrean Parliament.[10]

I. The Meaning of Democracy

An important part of the contemporary discourse on the meaning of democracy concerns the criteria applied to evaluate democracy or progress to democratic transition, as the case may be, particularly in countries of the "South" or developing

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[3] *See generally* Bereket Habte Selassie, *Creating a Constitution for Eritrea*, J. DEMOCRACY, Apr. 1998, at 164 (outlining the creation of the Eritrean Constitution and the presentation of the draft to the public for debate).

[4] *See Report of the Chairman of the Constitutional Commission to the Council of the Commission*, at 3, June 22, 1996 (on file with author).

[5] *See infra* notes 11-37 and accompanying text.

[6] *See infra* notes 38-55 and accompanying text.

[7] *See infra* notes 56-90 and accompanying text.

[8] *See infra* notes 91-162 and accompanying text.

[9] *See infra* notes 163-90 and accompanying text.

[10] *See infra* notes 191-201 and accompanying text.

countries. The debate on the meaning of democracy has focused essentially on its substance—its source and purpose—on the one hand, and its procedure on the other.[11] The classical approach defined democracy in terms of its source and purpose, with the will of the people as source and the common good as purpose.[12] However, according to the prevailing school of thought in modern times, the central feature of democracy is procedural; it concerns the selection of leaders through competitive elections by the people.[13] The pioneer of this approach in modern times is Joseph Schumpeter.[14] Schumpeter advanced an alternative to the classical approach, which he called the democratic method.[15] He defined this as the "institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote."[16]

The essence of democracy is thus reduced to method. This "methodism," or proceduralism, may be characterized as the movement away from the normative toward the pragmatic conception of democracy.[17] According to this conception of democracy, a political system today would be democratic, "to the extent that its most powerful collective decision makers are selected through fair, honest, and periodic elections in which candidates freely compete for votes and in which virtually all the adult population is eligible to vote."[18]

Two critical elements are posited in this definition: popular participation and the competition of candidates representing different interests or ideologies.[19] An additional element, which

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[11] *See* SAMUEL HUNTINGTON, THE THIRD WAVE: DEMOCRATIZATION IN THE LATE TWENTIETH CENTURY 6 (1991).

[12] *See* JOSEPH SCHUMPETER, CAPITALISM, SOCIALISM, AND DEMOCRACY 269 (2d ed. 1947).

[13] *See id.*

[14] *See* HUNTINGTON, *supra* note 11, at 6.

[15] *See* SCHUMPETER, *supra* note 12, at 269.

[16] HUNTINGTON, *supra* note 11, at 6.

[17] *See id.* at 7; *see also* Larry Diamond, *Is the Third Wave Over?*, J. DEMOCRACY, July 1996, at 20 (elaborating on the minimalist approach to democracy).

[18] HUNTINGTON, *supra* note 11, at 7.

[19] *See id.* at 6.

marks the latest phase of the on-going debate, is highlighted in the writings of Robert Dahl.[20] Dahl has developed the concept of "polyarchy,"[21] in which he underscores the importance of freedom of speech and press for meaningful pluralist politics.[22] Dahl's point is that without these "civil freedoms," the elements of participation and competition will be negated, in that people may not be able to express their political preferences in a meaningful way.[23]

Implicit in this concept of electoral democracy is the conviction that popular participation and competition are crucial components of democratic government, whether it is parliamentary or presidential in character.[24] But questions remain. Does this minimalist (procedural) conception embrace other critical requirements for a meaningful democratic government? Do elections constitute the only core element of democracy?

To the extent that Parliament, as a representative institution, is the primary national institution accountable to the citizens of a country, election to this institution is a crucial part of democracy. It is, in theory, the principal mediator in the dialectic of the governors and the governed. There is an inherent tension in that dialectic even in the best of circumstances, and the citizens' representatives are—or should be—the first line of defense for the protection of the rights of the constituents. Electoral laws and politics can thus be regarded as prerequisites of democratic (parliamentary) government. But once elected, Parliament has constitutional responsibilities that do not end with the conclusion of an election; in short, election is a means to an end. The end—the function of Parliament—constitutes, or reflects, the substantive aspect of democracy. The procedural imperative, though essential, must be analyzed in relation to the role of Parliament in the totality of a constitutional order.

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[20] *See* ROBERT DAHL, POLYARCHY: PARTICIPATION AND OPPOSITION (1971).

[21] Dahl defines polyarchies as "regimes that have been substantially popularized and liberalized, that is, highly inclusive and extensively open to public contestation." *Id.* at 8.

[22] *See id.*

[23] *See id.* at 1-8.

[24] *See id.* at 5-6; HUNTINGTON, *supra* note 11, at 6-7.

Moreover, when considering whether parliamentary or electoral politics, per se, meet all the requirements of democracy, it must be borne in mind that government does not function in a vacuum. The overall historical context—the economic condition, the social milieu and cultural heritage of the country, as well as the political environment—combine to influence the outcome of the democratic process. There is also the role of leadership. In the dynamic interaction of theory and practice, of principle and politics, the role of leadership is critical in any historical context. A wise and able leadership ensures optimal public participation in all political matters and should be at pains to guarantee the rule of law and see to it that social justice is secured to the best of the nation's ability. In all such endeavors, good leadership is expected to look beyond temporary advantages and into the future.[25]

At this point, some of the basic questions raised by the public during the extensive public consultation in Eritrea's constitution-making process of 1994-1997 may be of interest. As already noted, the role of government under the rule of law was one of the most frequently raised and debated topics.[26] The principal concerns that most people voiced during those debates may be characterized as: (1) government accountability and transparency; (2) the need for multiparties to secure accountability and transparency; and (3) economic policy and social justice.[27] The first two issues are in line with the minimalist conception of democracy and constitutional government. They have been answered by Eritrea's Constitution, under which they are guaranteed.[28] The third issue is not covered under the current conception of democracy. This conception, therefore, falls short of being an adequate criterion for judging the democratic record of

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[25] A point worth stressing is the distinction between wisdom and ability; the two do not necessarily go together. *See* Arthur Schlesinger, Jr., *On Leadership, in* INTRODUCTION TO HAILE SELASSIE 7, 7-11 (Askale Negash ed. 1989). Schlesinger writes: "[T]he idea of leadership affirms the capacity of individual to move, inspire, and mobilize masses of people so that they act together in pursuit of an end." *Id.* at 7.

[26] *See* CCE: PROPOSALS, *supra* note 2, at 18-27.

[27] *See id.*

[28] *See* ERI. CONST. art. 7.

a country.[29]

Underscoring the primacy of social justice and the economic development that must underpin it, Eritrea's governing party, the People's Front for Democracy and Justice (PFDJ), considers rapid economic growth to be a prerequisite for democracy.[30] The improvement of living conditions for the greater mass of the population is an overriding priority for the PFDJ, and it has expressed serious doubts as to whether a multiparty system would achieve that goal at the present.[31] The PFDJ leadership is fearful that a multiparty system might adversely affect the goal of rapid growth, as well as the stability required for such growth and for good governance in general.[32] The implication is that it may be quite a while before the country will have multiple parties, and that, consequently, Parliament would be solely or predominantly composed of members of the governing party for the foreseeable future. Given Eritrea's historical circumstances, the logic of PFDJ's policy of rapid economic growth as a priority is irresistible. However, even assuming that a multiparty system is an obstacle to rapid economic growth in the short run, one would nonetheless need a quantum leap of faith to believe that a single-party regime will bring about prosperity.[33]

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[29] When "donor" government spokespersons preach democracy to "Third World" governments, invariably imposing it as a condition for economic assistance, they have such a minimalist conception in mind. It is often expressed as if it is a commodity exchange. For instance, in 1991, Mr. Herman Cohen, former Assistant Secretary of State for African Affairs admonished the Ethiopian and Eritrean leaders after the fall of the Mengistu government to adopt democracy. "No democracy, no aid," he said. The author was a member of the Eritrean People's Liberation Front at this time, and was informed of Cohen's admonition by a member of the delegation to a May 1991 London meeting. Cohen brokered a settlement for a peaceful transfer of power from the government of the Dergue to the victorious guerrilla forces. The Author's source remains anonymous at his request.

[30] *See* CHARTER OF THE POPULAR FRONT FOR DEMOCRACY AND JUSTICE OF ERITREA 9 (1992) (on file with author).

[31] *See* President Isaias Afwerki, Democracy in Africa: An African View, Address at the Walton Park Conference, West Sussex, U.K. (Sept. 8, 1997).

[32] *See id.*

[33] *See* DAHL, *supra* note 20, at 30-31. Dahl points out that the argument for the necessity of a single-party regime fails because "one cannot logically defend the single party as an expression of 'natural' consensus and also argue that it is required in order to build national solidarity out of tribal diversity and disharmony." *Id.* at 31.

It is hard to ignore the cautionary tales of the corruption and waste of African single-party regimes over the past thirty years.[34] Most of them started out with promises of future prosperity, based on the false assumption that a short-term sacrifice—an exchange, so to speak, of bread for liberty—would eventually pay ample dividends through economic prosperity and social progress.[35] But bread and liberty are not, and should never be, mutually exclusive, and democracy and development should go hand in hand. In any case, Africa's recent history has shown that the "short-term" proved to be too long, and the promised goods were not delivered.[36] This leads to a necessary caveat: whatever the circumstances that may extenuate the postponement of multiple parties, there must be a time frame within which a single-party system must give way to a multiparty system.

The better approach to this subject is to think of democratic politics and development, or democratization, in dynamic terms, as a sort of work in progress, rather than as a settled matter.[37] This is not to say that there are no fundamental principles governing the subject. There are such principles and, in the section that follows, I attempt to state these and place them in historical perspective. However, it cannot be overstressed that, once in place, governments can misuse or abuse their power. Therefore, principles and mechanisms of control should be put in place and their operation watched with vigilance in order to hold governments accountable. A vigorous Parliament is one such mechanism.

But what if the members of Parliament all belong to, and are beholden to, the governing party, in the absence of other contending parties? Are there other effective mechanisms that can make up for the absence of a parliamentary check on governmental

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[34] *See* M. Crawford Young, *Africa: An Interim Balance Sheet*, J. DEMOCRACY, July 1996, at 53, *passim*.

[35] *See id.* at 54-55.

[36] *See id.* at 65-67.

[37] Various theories have been advanced and variables suggested to explain democratization. *See* HUNTINGTON, *supra* note 11, at 37-38. Huntington lists 27 variables that have been said to contribute to democracy and democratization. *See id.* Prominent among these are economic development and a dynamic middle class (bourgeoisie) that is the active ingredient of development. *See id.*

power? Different countries may provide different answers to this question. But one thing is certain: traditional institutions cannot effectively perform the required function of control. Hence, the need arises for new, constitutionally guaranteed principles and mechanisms of accountability.

II. Parliament and the Democratic Idea

As demonstrated in the previous section, democracy is not solely about elections. In this section, the development of the democratic idea in modern times is traced in relation to representative government by reference to its advent in Europe, its modern birth place.

Ours is the age of democracy. This should perhaps be qualified by adding the adjective "representative" to democracy. Only a few extremists now dispute the fact that democracy is the most desirable political system; even autocratic rulers pay lip service to it.[38] It has taken over two hundred years of philosophical discourse and political struggle for the democratic idea to gain universal acceptance.[39] But, as noted above, it is a malleable concept, subject to different interpretations to advance different ends. It is also facing challenges, as low election turnouts demonstrate.[40]

In modern times, democracy's essential features were defined by the philosophical discourse of eighteenth century France and its application in what would become the United States of America.[41]

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[38] *See* DAHL, *supra* note 20, at 5. Dahl observes that "[o]nly a handful of countries have failed to grant at least a ritualistic vote to their citizens and to hold at least nominal elections." *Id.*

[39] *See* HUNTINGTON, *supra* note 11, at 13-30.

[40] *See* Fernando Henrique Cardoso, *In Praise of the Art of Politics*, J. DEMOCRACY, July 1996, at 7, 8. Cardoso, a former academic and current president of Brazil, writes:

> The need to inject new life into representative democracy has become manifest in every country that has adopted this political system. It must contend with growing lack of interest in politics, low voter turnout, and even more seriously, hostility toward professional politicians that has reached the point where "opposing mainstream politicians" has become a winning electoral strategy.

Id.

[41] "The concept of democracy as a form of government goes back to the Greek philosophers." HUNTINGTON, *supra* note 11, at 5. Its modern origin can be traced to the "revolutionary upheavals in Western society at the end of the eighteenth century." *Id.* at

Before the explosion of the revolutionary discourse of late eighteenth century France and early nineteenth century Europe, the word "democracy" was generally used to designate an obsolete type of political system.[42]

Definitions of democracy as "a form of government in which offices are distributed by lot" appeared even in the works of Montesquieu and Rousseau.[43] Montesquieu explains this in terms of fairness and motivation.[44] Rousseau repeats these formulations, adding that only suffrage by lot does no harm to equality.[45]

It seems unlikely that either of these great thinkers could have imagined that democracy, thus defined, would be applicable to the modern world. It was an ideal type that would work, as Rousseau noted, "if there were a nation of gods."[46] The historical significance of their writings lies in the revolutionary implication of the concept of democracy. The revolutionary implication of the idea of democracy in modern times lies in the process of

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5-6.

[42] *See* Pierre Rosanvallon, *The History of the Word Democracy in France*, J. DEMOCRACY, June 1997, at 140, 140. Rosanvallon has confirmed this conclusion on the basis of a study of pre-revolutionary France's dictionaries. *See id* at 140-41.

[43] *Id.* at 141. Charles Louis de Secondat, Baron de la Brède et de Montesquieu (1689-1755) was a French historian and jurist who first wrote systematically about democracy and its application to modern government. *See generally* David Wallace Carrithers, *Introduction* to MONTESQUIEU, THE SPIRIT OF LAWS 3 (1949) (tracing Montesquieu's life and work). Jean-Jacques Rousseau (1712-1778) was one of the most influential eighteenth century philosophers whose writings, notably *Du Contrat Social*, influenced the French Revolution and the course of democratic movements of subsequent centuries. *See* Christopher Betts, *Introduction* to ROUSSEAU, DISCOURSE ON POLITICAL ECONOMY AND THE SOCIAL CONTRACT xi (1994) (tracing Rousseau's life and work). According to Rosanvallon, authoritative works like Montesquieu's *L'Esprit des Lois* and Rousseau's *Du Contrat Social* rescued the idea of democracy from its association with the archaic and advanced it to represent the twin principles of self-government and legitimacy. *See* Rosanvallon, *supra* note 42, at 141. Montesquieu notes that it is "a fundamental law in democracies that the people should have the sole power to enact laws." *Id.* (quoting MONTESQUIEU, THE SPIRIT OF THE LAWS bk. 2, ch. 2, para. 27 (1949)).

[44] *See id.* at 142. "Suffrage by lot is natural to democracy. . . . [S]uffrage by lot is a method of electing that offends no one, but animates each citizen with the pleasing hope of serving his country." *Id.* (quoting MONTESQUIEU, ESPRIT DES LOIS, bk. 2, ch. 2, paras. 18-19 (1748)).

[45] *See id.* at 142.

[46] JEAN-JACQUES ROUSSEAU, DISCOURSE ON POLITICAL ECONOMY AND THE SOCIAL CONTRACT 102 (1994).

institution building from the popular base.[47] It was revolutionary in that it implied, and eventually led to, the destruction of the old feudal order and its replacement by elected representatives. The concept of democracy eventually yielded to that of popular sovereignty. Popular sovereignty, in turn, yielded to representative government.

As an expression of democracy, representative government became irresistible in modern nation states.[48] As nations grew in size—larger than the city-states of ancient Athens, or the traditional village community—and the technicalities of the modern polity became more complex, representative government seemed to be the only solution.[49] The resurgence of democracy in the post-Industrial Revolution period was connected with a phase of political struggle in which the people played a central part.[50] Democracy and representative government, hitherto viewed as technically distinct, now became one in tracing power to a popular base, resting on the people's sovereignty.[51] It is generally agreed that the rapid economic development of nineteenth century Europe, with industrialization as the driving engine, was one of the primary causes of democratization, with the emergence of the bourgeoisie as the ascendant class and urbanization as the concomitant development of industrialization.[52] The individualism of the earlier, pastoral society was replaced by solidarity implicit in the defense of the collective interest of the working class.[53] This

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[47] *See* HUNTINGTON, *supra* note 11, at 109.

[48] *See id.* at 31-108 (explaining waves of democratization).

[49] *See id.*

[50] *See* DAHL, *supra* note 20, at 23-24.

[51] *See* SALVO MASTELLONE, A HISTORY OF DEMOCRACY IN EUROPE 61, 76 (1995). Alexis de Tocqueville, in his 1835 examination of the newly formed United States of America, called this synthesis "democratic liberty," where "all the citizens form the people, and the people nominate those who make the law." *Id.* at 61. Shortly thereafter, Giuseppe Mazzini, an Italian exile writing for the English newspaper *People's Journal*, began to advocate "a representative democracy with members elected by the people, characterized by the association of labour and capital, aimed at human and social progress." *Id.* at 76.

[52] *See* HUNTINGTON, *supra* note 11, at 39.

[53] *See* MASTELLONE, *supra* note 51, at 64-69, 131-37 (tracing the development of democratic unions and discussing political structures in modern society).

socio-economic development provided a solid political base for democracy.

Representative democracy is a more complex form of self-government by the people than the more direct form of self-government associated with the Athenian *polis*. The modern state brought many such communities together, making representative government an imperative.[54] This fact necessitated the adoption of a mechanism for electing people's representatives at the national level, in accordance with the requirements of the times.[55] Electoral systems provide that mechanism.

III. Democracy and Electoral Systems

An electoral system constitutes the meeting point between popular sovereignty and representative government.[56] It deals with how the citizens' voting rights—the primary expression of their sovereignty—are translated into parliamentary seats.[57] In these parliamentary seats resides legislative power, with its associated powers of control of the purse and of monitoring the Executive.

Elections express the principle of government by the consent of the governed and should therefore be designed and organized in a way that will enable the governed to choose the best available candidates to represent them.[58] An electoral system must be designed, in other words, in such a way as to enable every citizen to participate freely and fully in the election of representatives. The Constitutional Commission of Eritrea included in its Issues Papers a study of this subject and identified four general purposes that must be served by elections:

1. reflection of the main opinions of the electorate;
2. establishment of majority rule;
3. election of suitable representatives; and

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[54] *See id.* at 131-37.

[55] *See id.*

[56] *See* ANDREW REEVE & ALAN WARE, ELECTORAL SYSTEMS: A COMPARATIVE AND THEORETICAL INTRODUCTION 69-70 (1992).

[57] *See id.*

[58] *See* DAVID M. FARRELL, COMPARING ELECTORAL SYSTEMS 2 (1997).

4. formation of robust and stable government.[59]

Implicit in these general purposes is that the elections should take place at regular intervals and for specified terms of office. In Eritrea the five-year term of office is specified in the Constitution, whereas details on the time of elections, as well as other details, are left to future legislation.[60] The fixed term of office, or mandate, enables citizens to review the performance of their elected representatives and to pass judgment at the next election either by re-electing them or terminating their mandate and choosing other candidates. Election time has thus juridical as well as political significance. For electors and candidates alike, it is a day of judgment on which the quality of representative government depends.

A. Electoral Systems

There are different types of electoral systems reflecting varied national political and demographic factors. Most typically, however, they may be divided into two broad categories: the majority system and the proportional representation (PR) system.[61]

1. The Majority System

In the majority system, also known as "first-past-the-post," one candidate is elected by a relative majority, that is, the person obtaining the most votes from among competing candidates is declared elected.[62] Experience in many countries over the years has shown that this system failed to fulfill the purposes listed above, particularly in terms of reflecting the views or interests of the true majority of electing citizens.[63] The following example of voting results of four candidates participating in a majority system election illustrates this problem.

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[59] CONSTITUTIONAL COMMISSION OF ERITREA (CCE), ISSUE PAPER NO. 1, PT. 2: ELECTORAL SYSTEMS § A (on file with author).

[60] *See* ERI. CONST. art. 30(2), art. 31(5).

[61] *See* FARRELL, *supra* note 58, at 5.

[62] *See id.* at 12-13.

[63] *See id.* at 6-11, 143.

Candidates	Votes Obtained
A	7,000
B	4,000
C	3,500
D	2,500

The majority voting system fails to represent majority views, in that Candidate A would be declared elected with a vote of 7000, whereas the combined vote for Candidates B, C and D is 10,000. Given a second chance, it is conceivable that the voters might prefer Candidate B or C.

A study of the election history of several countries shows that attempts have been made to remedy this inherent weakness of the system.[64] One solution is to provide for additional ballots in order to give people an opportunity to re-cast their votes in favor of one or the other of the candidates who received fewer votes on the first count.[65] The second-ballot system allows voters a chance to recast their votes in light of the results of the first ballot.[66] While this second vote does help to identify the true majority choice, it does not alleviate another problem of majority systems.[67] It does not improve the representation of minority groups.[68] Both majority systems lead to underrepresentation of smaller parties or groups within parties.[69] The alternative is Proportional Representation.

2. *Proportional Representation*

Proportional representation has been advanced as a better electoral formula, particularly for countries with multiethnic composition, as is the case in most African countries.[70] The principal argument in favor of PR is that it protects minorities by

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[64] *See id.* at 40-50.

[65] *See id.* at 40-41.

[66] *See id.* at 41.

[67] *See id.* at 58.

[68] *See id.*

[69] *See id.* at 37, 58.

[70] *See id.* at 61.

facilitating their representation in national politics.[71] Studies conducted recently on Southern African elections purport to demonstrate the superiority of PR.[72] These studies of five African democracies show that the use of a majority system in Africa "freezes the party system to such a degree that the alteration of parties in government and opposition is not perceived as a likely or natural occurrence."[73]

The comparative advantage of PR over the majority system should be analyzed in relation to party politics. Proportional representation is party-based, whereas majoritarian systems are candidate-based.[74] The primary consideration is that parties obtain seats in the Parliament in proportion to their support in the electorate.[75] This is more possible under PR system than under the majority system.[76] The simplest system of proportional representation divides the number of seats in a constituency according to the total votes cast in an election so that each party obtains a share of seats in proportion to the votes it obtains at the polls.[77] For example, in a constituency where 150,000 votes are cast and the constituency is entitled to five seats in Parliament, each party will be entitled to one seat for every 30,000 votes it gets at the polls. Different variations of this formula have been used in an attempt to secure more equitable representation.[78] Opinions differ as to the value of PR; some critics even argue that it is not suitable to some societies.[79]

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[71] *See id.* at 84.

[72] *See Debate: PR and Southern Africa*: Joel D. Barkan, *Election in Agrarian Societies*, and Andrew Reynolds, *The Case for Proportionality*, J. DEMOCRACY, Oct. 1995, at 106, 118-22.

[73] Reynolds, *supra* note 72, at 107.

[74] *See* FARRELL, *supra* note 58, at 59.

[75] *See id.* at 60.

[76] *See id.*

[77] *See id.*

[78] *See id.* at 59.

[79] *See* Barkan, *supra* note 72, at 106. Barkan maintains that proportional representation does not result in a more fair representation of the population where the majority of the people are agrarian, and that PR results in an unfortunate lack of linkage between the representatives and their constituencies. *See id.* at 107. This lack of linkage, he asserts, "greatly reduces the prospects for the consolidation of democratic

The principal criticism of PR is that it weakens the link between the individual members of Parliament and their constituencies.[80] This prevents the development of what has been called the "vertical" dimension of democracy—the representational relationship between the political elite and the "ordinary people" with a common political interest—and reduces the prospects for the consolidation of democratic rule.[81]

B. The Electoral System in Eritrea

These arguments, among others, will no doubt be considered and weighed carefully when the Eritrean Parliament debates the bill on electoral laws. A committee on electoral laws had begun its work when the war broke out between Ethiopia and Eritrea.[82] The Constitutional Commission left the choice of electoral system to be determined by legislation.[83] It nonetheless debated the issue at length.[84] In the course of the debate, it was pointed out that PR assumes the existence of several parties, which is not the case in Eritrea at the moment. Future legislation can adjust the rules to reflect changing needs and demands, including the need to enable proper representation for small parties.

In this respect, the question of ethnic minorities is relevant. In the event that the awaited legislation on political parties prohibits the formation of political parties on religious and ethnic bases, as it is likely to do, ensuring equitable ethnic representation becomes a relevant issue. In the Eritrean context, the governing party, starting from its formation in the early 1970s, practiced an inclusive national politics in which all the ethnic groups were

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rule." *Id.*

[80] *See* FARRELL, *supra* note 58, at 84-85.

[81] *See id.*

[82] The Committee is chaired by the former President of the National Union of Eritrean Women and was originally expected to prepare the electoral law by the middle of 1998. There was also a widely held public belief that the same committee would prepare a draft law on the registration of political parities.

[83] *See* ERI. CONST. art. 30(2). The Constitution provides that the National Assembly shall enact an electoral law "which shall ensure the representation and participation of the Eritrean people." *Id.* This was the recommendation in the Commission's Proposal. *See* CCE: PROPOSALS, *supra* note 2, at 28.

[84] *See* CCE: PROPOSALS, *supra* note 2, at 28.

encouraged to, and did, join. This policy has continued after independence as one of the basic principles of the PFDJ, as evidenced by the few consultation meetings that the Constitutional Commission held with top PFDJ leaders, as well as speeches of the Chairman and other leaders.[85]

In the future deliberations of the Parliament, the principal objective should be fair and equitable representation of the whole population in the nation's legislative body. Whatever the system chosen, it must be capable of ensuring such fair and adequate representation.

C. The Electoral Commission

The Constitution provides for the establishment of an Electoral Commission.[86] The Constitution is fastidious about the operational independence of the Electoral Commission, as the integrity of the electoral process must be scrupulously maintained. It provides that the Commission must operate independently, without any interference, in order to "ensure that free and fair elections are held."[87] The Commission is empowered to manage the implementation of the elections, "decide on issues raised in the course of the electoral process[,] and formulate and implement civic educational programmes relating to elections and other democratic procedures."[88] The Electoral Commissioners are appointed by the President; the National Assembly must approve them.[89] Details on the powers, duties, and organization of the electoral commission are to be determined by laws enacted by the National Assembly.[90]

IV. Composition and Function of the Eritrean Parliament

The Eritrean Parliament consists of a single-chamber National

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[85] *See* President Isaias Afwerki, Speech to the First Party Conference (Aug. 1995) (emphasizing the need to deepen and maintain the national, rather than parochial, consciousness) (transcript on file with author).

[86] *See* ERI. CONST. art. 58(1).

[87] *Id.*

[88] *Id.*

[89] *See id.* art. 58(2).

[90] *See id.* art. 58(3).

Assembly.[91] It is composed of representatives of the people elected by secret ballot by all citizens who are qualified to vote.[92] All Eritrean citizens eighteen years of age or older have the right to vote.[93] The qualifications and election of members of Parliament and the conditions for vacating their seats are determined by legislation issued by Parliament.[94] Members of Parliament (MPs), though elected from particular electoral districts, are representatives of the Eritrean people as a whole. In carrying out their duties as MPs, "they are governed by the objectives and principles of the Constitution, the interest of the people and the country and their conscience."[95]

Parliamentary mandate lasts for a term of five years from the day of the first session held following a general election.[96] Parliament may, by a vote of at least two-thirds of all members, extend its term for a period not exceeding six months.[97] This may only occur in exceptional situations, such as where there exists a state of war or another state of emergency which would prevent a normal election from being held.[98]

Three topics of the preceding discussion need elaboration: the single-chamber nature of the Eritrean Parliament; universal, direct and secret suffrage; and the national character of the MP's duties.

A. Single Chamber Assembly

What led Eritrean constitution-makers to choose a single-chamber Parliament instead of a two-chamber Parliament? This question was one of the twenty-three issues with which the Constitutional Commission grappled at the start of its work and was, accordingly, a subject of research. The team that researched the subject submitted a report with a divided opinion: a majority

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[91] *See id.* art. 31.

[92] *See id.* art. 31(2), (3).

[93] *See id.* art. 30(1).

[94] *See id.* art. 31(6).

[95] *Id.* art. 31(4).

[96] *See id.* art. 31(5).

[97] *See id.*

[98] *See id.* art. 27. Article 27 defines a state of emergency as required for the extension of a Parliamentary term. *See id.*

proposing a single-chamber Parliament and a minority view arguing in favor of a two-chamber Parliament.[99]

The arguments advanced in support of a two-chamber Parliament espoused three principal advantages: (a) it ensures wider representation of a nation, especially one with a multiethnic composition; (b) it can guarantee the creation of better laws and policies because it ensures more deliberation and an ampler time-frame; and (c) it can help in the resolution of tension that may arise out of controversies between the Executive and Legislative branches.[100] The proponents of this minority view recognized two drawbacks of a two-chamber Parliament: that it may involve delays and greater expense. Nonetheless, they cogently argued that the benefits outweigh these disadvantages.[101]

The majority view argued that a single-chamber Parliament was advantageous because: (a) it better reflects the sovereignty of the people and enacts laws without undue concern over the special interests in society, whether based on ethnicity or class; (b) it is speedy; and (c) it is less costly.[102] The supporters of the majority view were aware of the drawbacks of potential haste and tension that might arise between the Executive and Legislative branches but argued that the advantages outweigh the drawbacks and that constitutional provisions can be devised to overcome them.[103] This group further argued that a nation like Eritrea requires a dynamic leadership, one that reflects unified representation of the people in one chamber, even in the context of a future multiparty system.[104] Whatever merit the two-chamber system may have in other situations, the historical and socio-political circumstances of Eritrea create a risk that a two-party chamber may constitutionalize divisions that have been resolved, most recently in a thirty-year armed struggle against a common enemy. The "objective" conditions of a country must determine the type of

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[99] *See* BEREKET HABTE SELASSIE, REPORT OF THE CHAIRMAN OF THE CONSTITUTIONAL COMMISSION (1995) (on file with author).

[100] *See id.*

[101] *See id.*

[102] *See id.*

[103] *See id.*

[104] *See id.*

system constitution-makers adopt.

The Commission accepted these arguments and decided to adopt a single-chamber Parliament.[105] In making such a choice, the Commission added a further point: whatever groups in society might have merited representation in a second chamber can be accommodated through the careful crafting of electoral laws and procedures.[106] In this respect, the Commission considered, but ultimately rejected, the practice followed in some countries, whereby the head of State appoints to the Parliament members of certain social groups, such as elders, chieftains, or professional people.[107] In the considered opinion of the Commission, such people can and should be encouraged to enter Parliament through the electoral process.[108]

B. Universal Suffrage

A detailed discussion of universal suffrage is unnecessary beyond stressing its constitutional significance as a cornerstone in the edifice of parliamentary democracy.[109] Voting must be universal; every adult citizen qualified to vote must have the right to vote. Further, the vote must be direct and secret.

Universal adult suffrage historically marks the triumph of the common people over a prior system of suffrage that was limited to the privileged classes.[110] In England, known as the home of modern parliamentary government, the common people did not win this right until the British Parliament passed the Reform Act of 1832, and even then, the right was limited for several more decades by the requirement of property ownership.[111] Moreover, the suffragette movement battled until almost 1920 to win the right for women to vote in England, and even later in some European

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[105] *See* ERI. CONST. art. 31.

[106] *See* SELASSIE, *supra* note 99.

[107] *See id.*

[108] *See id.*

[109] *See* ROBERT RIENOW, INTRODUCTION TO GOVERNMENT 322-25 (2d ed. rev. 1960).

[110] *See id.* 320-22, 324-25.

[111] *See id.* at 321.

countries.[112]

The requirement of direct voting should be distinguished from indirect voting. Indirect voting is exercised through community or clan leaders or through elected members of local assemblies.[113] In other words, citizens do not directly elect their representatives but "vote only for persons who in turn select the representatives."[114] Indirect voting is a rare political phenomenon today.[115] Direct voting, by contrast, involves the election of candidates for political office by the voters themselves, without the intervention of an intermediary body.[116]

The secrecy principle ensures that the elector votes in an enclosed space out of public view.[117] This essential requirement enables citizens to exercise the right to vote without fear or pressure of any kind.[118] The electoral laws must make provisions to facilitate this requirement, as well as other requirements, in order to ensure a free and fair election. The practice of having election observers witness the electoral process also helps in such an endeavor.

In the Constitution of Eritrea, the principles of democracy and people's sovereignty are clearly defined. The Constitution provides that in the State of Eritrea "sovereign power is vested in the people, and shall be exercised pursuant to the provisions of this Constitution."[119] Additionally, the equal participation of citizens "in all areas of human endeavor" is guaranteed.[120]

The Constitution requires Members of Parliament to discharge their duties by thinking of themselves first and foremost as

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[112] *See* REEVE & WARE, *supra* note 56, at 52; RIENOW, *supra* note 109, at 331-32.

[113] *See* RIENOW, *supra* note 109, at 333.

[114] *Id.*

[115] *See id.*

[116] *See id.*

[117] *See id.*

[118] *See id.* at 333-34.

[119] ERI. CONST. art. 1(3).

[120] *Id.* art. 7(1). Article 7 requires the State to create the necessary conditions and institutions to realize the democratic idea. *See id.* Electoral and voting laws further the realization of the democratic idea by enabling citizens to exercise their sovereign power through duly elected representatives. *See* FARRELL, *supra* note 58, at 5.

representatives of the whole nation.[121] This does not mean that they fail to consider their constituencies; on the contrary, they must also represent the views and interests of their constituents and maintain regular contact with them.[122] The Constitution enjoins members of Parliament to "maintain the high honor of their office and to conduct themselves as humble servants of the people."[123]

C. Powers and Duties of Parliament

The members of the National Assembly collectively constitute the Legislature. Following their election, and by virtue of their election, the representatives of the people are collectively invested with governmental authority. The members of the Legislature who are elected directly by the people collectively embody the democratic idea of representative government. This democratic idea must then be translated into legislative power.

The powers of the Legislature may be divided into four main categories: (1) legislation; (2) oversight of executive or administrative matters; (3) hearing citizen complaints; and (4) approval of appointments.

1. Legislation

The National Assembly must be bound by the principles enumerated in the Constitution and is bound by duty to strive to fulfill the objectives stated therein.[124] According to the Constitution, it has the power "to enact laws and pass resolutions for the peace, stability, development and social justice of Eritrea."[125] Parliament (the National Assembly) is the sole legislative authority of the State and any matters that are legislative in nature must come from Parliament or by delegation from Parliament.[126] Such delegation must itself come under the

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[121] *See* ERI. CONST. art. 38(1).

[122] *See id.*

[123] *Id.*

[124] *See id.* art. 32(2).

[125] *Id.* art. 32(1)(a).

[126] *See id.* art. 32(1)(b).

authority of law passed by Parliament.[127] The Constitution states: "[u]nless authorized pursuant to the provisions of this Constitution and law enacted by the National Assembly, no person or organization shall have the power to make decisions having the force of law."[128]

This being the principle, it must, nonetheless, be noted that the Executive branch of government impinges on the legislative power of Parliament in two respects. First, it has the power of initiative and the near-monopoly of expertise in researching and preparing draft bills, which it then presents to Parliament for its deliberation and enactment.[129] Secondly, the Executive may impinge upon the Legislature through delegated legislation.[130]

The comparatively greater resources at the command of the Executive branch give it an advantage in the preparation and submission of draft legislation. In Eritrea, there is an overwhelming advantage in favor of the Executive branch.[131] In terms of constitutional principle, Parliament can reject all drafts prepared by the Executive.[132] In practice, this rarely occurs for both political and pragmatic reasons. A government in a parliamentary system enjoys a majority of votes in Parliament on which it can rely to ensure the passage of draft laws that it submits. The party in power can almost always rely on its members. In some instances, such as those involving moral issues, like abortion, capital punishment, or other human rights issues, members may "vote their consciences." In these situations the party whips, who enforce party discipline in Parliament, normally release members from the obligation to "toe the line."[133]

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[127] *See id.*

[128] *Id.*

[129] *See id.* art. 42(15).

[130] *See id.* art. 32(7).

[131] Shortage of trained human resources is one of the major constraints in the country's development efforts. Literacy stands at 20% at the present. *See* CHRIS PROUTY & EUGENE ROSENFELD, HISTORICAL DICTIONARY OF ETHIOPIA AND ERITREA xix (2d ed. 1994). The constraint affects not only the relative shortage of experts to research for and advise Parliament but also the membership of Parliament itself. Parliament may not include college graduates for many years to come.

[132] *See* ERI. CONST. art. 32(1)(b).

[133] *See* RIENOW, *supra* note 109, at 248-49.

In the Constitution of Eritrea, the areas of legislation under which only Parliament has authority include approval of the national budget and enactment of tax law,[134] ratification of international agreements,[135] approval of government borrowing,[136] and approval of state of peace, war, or national emergency.[137] The Constitution contains an "omnibus" clause that gives power to Parliament to pass laws or resolution "for the peace, stability, development and social justice of Eritrea."[138] Theoretically, Parliament can take initiative, or cause initiative to be taken, to research, study, and pass laws concerning the matters of national stability, development, and good governance. Almost any subject can be covered by these topics. In practice, however, the Executive branch of the government will most often take the initiative.

The Executive may also encroach upon the power of the Legislature to make law through delegation of power.[139] Major legislation passed by Parliament often contains an enabling clause, under which Parliament delegates its legislative authority to a Minister or another member of the Executive. In the hierarchy of the law, the higher law, starting with the Constitution, contains basic principles or major policy issues that lay down the framework of powers and duties or rights and obligations. The provisions become more detailed lower in the hierarchy, from the minute details on organization of municipal government, for example, to the circulars or guidelines that a Minister issues for his employees to follow. It is in the establishment of these details that the Executive, in effect, makes law.

2. *Parliamentary Oversight and Audience of Citizens' Complaints*

The Constitution gives power to Parliament "to oversee the

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[134] *See* ERI. CONST. art. 32(3).

[135] *See id.* art. 32(4).

[136] *See id.* art. 32(5).

[137] *See id.* art. 32(6).

[138] *Id.* art. 32(1)(a).

[139] *See id.* art 32(7).

execution of laws"[140] and "to enact all such laws and pass all such resolutions and to undertake all such measures as are necessary and to establish such standing or *ad hoc* committees as it deems appropriate for discharging its constitutional responsibilities."[141] The power of Parliament to oversee the work of the Executive rests on the principle of popular sovereignty, which Parliament represents by virtue of its election by the people.[142] The electoral process involves, as previously noted, investiture of legislative authority collectively on those who are elected to represent the people.[143] It also involves a legitimizing process under which the voting public transfers power to Parliament based on the public's sovereignty. This legitimization extends to the initiation, monitoring, and control of government policy.

There is thus an organic link between the various categories under which Parliament seeks to exercise its power. Hence, the combined treatment of two topics, oversight of executive and administrative matters and the hearing of citizens' complaints, appears under this sub-section. The initial impetus that sets the machinery of inquiry, monitoring, or control in motion may come from an individual member of Parliament or a committee of Parliament, or it may be based on the complaints of citizens either as affected individuals or groups or as concerned citizens.[144] This process, and the parliamentary power on which it is based, makes for a healthy interaction between government and citizens. Through its power of oversight, normally exercised through parliamentary committees, the Legislature activates the principle of government accountability, thus accomplishing two basic and related purposes: keeping the members of the Executive branch "on a leash" and addressing citizens' grievances.[145]

How this task is performed is a question related to the matter of parliamentary process, discussed in the next section.[146]

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[140] *Id.*

[141] *Id.* art. 32(12).

[142] *See* RIENOW, *supra* note 109, at 218-19.

[143] *See supra* notes 59-79 and accompanying text.

[144] *See* RIENOW, *supra* note 109, at 218-19.

[145] *See* ERI. CONST. art. 32(8)-(12).

[146] *See infra* notes 163-90 and accompanying text.

However, it should be noted that there are several ways in which citizens' grievances may be aired and addressed.[147] There may be a variety of public forums organized in pursuance of the citizens' rights of freedom of association, opinion and conscience, notably the right to use the press and other media to those ends.[148] Experience has shown that practices develop, and that those practices may become constitutional conventions under which rights are exercised and are balanced by responsibilities.[149] It takes time before such conventions become an accepted part of the constitutional process and the parliamentary immunity of members of the Legislature plays a crucial role in the development, nurturing, and maintenance of such conventions, which give life and force to the text of the Constitution.[150]

3. Approval of Appointments

The power of appointment is one of the powers reserved to the Executive branch, notably to the President.[151] There are certain offices of the state, however, that are regarded as so important that the appointment of people to fill them requires parliamentary approval. The Constitution of Eritrea has singled out the following office holders to be subject to such Parliamentary approval: all Ministers, all Commissioners, Auditor-General, Governor of the Bank, and Chief Justice.[152]

Article 42(7) of the Constitution adds to the offices listed above the following: "and any other person or persons who are required by any other provisions of this Constitution or other laws to be appointed by the President."[153] Justices of the Supreme Court are such persons; their appointment is dependent upon the proposal of the Judicial Service Commission, which is then submitted to the National Assembly by the President.[154]

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147 *See* ERI. CONST. arts. 6, 32(12).

148 *See id.* arts. 6(2), 7(7), 19.

149 *See* STEPHEN D. TANSEY, POLITICS: THE BASICS 166-67 (1995).

150 *See id.*

151 *See* ERI. CONST. art. 42(7)-(11).

152 *See id.* art. 42(7).

153 *Id.*

154 *See id.* art. 42(8).

Additionally, it should be noted that the appointment of judges of the lower courts does not require parliamentary approval,[155] nor do the appointments of ambassadors and other diplomatic representatives,[156] and high ranking members of the Armed and Security Forces.[157]

The scope of the constitutionally required parliamentary approval of the appointment of office-holders varies from country to country. In some jurisdictions it involves all diplomatic appointments at the ambassadorial level, high court judges, and junior ministers. This is the case in the United States, for instance, which includes the appointment of all federal judges.[158] In other systems, such as that in France, parliamentary approval is limited to cabinet ministers, who are judged collectively as members of the government of the day.[159] The parliamentary "judgment" is rendered, not so much on the basis of the individual minister's merit, as on the program or general policy submitted by the Prime Minister and his cabinet.[160] The same is true in Britain and other parliamentary systems.[161]

Parliamentary approval of presidential appointment of office-holders under the Eritrean constitutional system, which is a compromise system uniquely combining aspects of the presidential and parliamentary systems, is appropriately limited to those listed above.[162] All are high positions of crucial importance to the nation, covering various aspects of its life. The Ministers collectively represent extensive authority. The approval of this appointment is the "first line of defense" in Parliament's role in the system of checks and balances. The case of the Commissioners is similar to that of Ministers; although they are

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[155] *See id.* art. 42(9).

[156] *See id.* art. 42(10).

[157] *See id.* art. 42(11).

[158] *See* U.S. CONST. art. II, § 2, cl. 2.

[159] *See* GILBERT ABCARIAN & GEORGE S. MASANNAT, CONTEMPORARY POLITICAL SYSTEMS 220-21 (1970).

[160] *See* FR. CONST. tit. IV, art. 23; VINCENT WRIGHT, THE CONSTITUTION AND POLITICS OF FRANCE 134-36 (1989).

[161] *See* ABCARIAN & MASANNAT, *supra* note 159, at 214-17.

[162] *See supra* notes 152-54 and accompanying text.

not members of the Cabinet, they perform functions that are as important as ministerial functions. To take the example of the Commissioner of Elections, he or she is, as was previously noted, the repository of the trust of the nation in election matters and is entrusted with guaranteeing the integrity of the electoral process. Such an office-holder must necessarily be appointed with the approval of Parliament. The same is true with the Auditor-General, the Governor of the National Bank, and the Chief Justice and Justices of the Supreme Court.

V. Parliamentary Process

Parliamentary life is defined by parliamentary process. The process itself is measured by rules of procedure governing the internal institutions that comprise Parliament and the dynamics of their operation, as well as their relationship with the Executive branch of government. As declared by the Eritrean Constitution, Parliament may pass laws or resolutions and "undertake all such measures as are necessary and to establish such standing or *ad hoc* committees as it deems appropriate for discharging its constitutional responsibilities."[163] The committees that Parliament creates, and the rules on procedure that it lays down, are designed to enable it to discharge its constitutional responsibility and to exercise its powers.[164] The Constitution provides the basis for the accomplishment of these tasks and for the resolution of any potential conflicts that may arise in Parliament's performance of its duties or the exercise of its power.[165]

A. Parliamentary Rules of Procedure

The Constitution lays down, in broad outline, the rules under which the National Assembly (Parliament) is required to have regular sessions and is authorized to determine the timing and duration of its regular sessions.[166] The National Assembly issues "rules and regulations concerning its operations and tasks and the organisation of the standing and *ad hoc* committees and its

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[163] ERI. CONST. art. 32(12).

[164] *See* CCE: PROPOSALS, *supra* note 2, at 20-22 (1995).

[165] *See infra* notes 166-90 and accompanying text.

[166] *See* ERI. CONST. art. 36(1).

Secretariat, as well as the rules governing the code of conduct of its members and transparency of its operations."[167]

Voting procedure is so important that it is made the subject of a constitutional provision. The Constitution provides as follows: "Except as otherwise prescribed by this Constitution, any question proposed for decision of the National Assembly shall be determined by a majority vote of those present and voting, and in case of a tie of votes, the Chairperson may exercise a casting vote."[168] The exceptions to the voting procedure referred to in this provision should be noted.[169]

But first, a word of explanation of the phrase "a majority of those present and voting" is in order. This is sometimes called a simple, or relative, majority. It must be distinguished from the absolute majority that is required by the Constitution, for example, for the election of the President.[170] The rule of the Constitution, then, is that unless otherwise provided, all questions in Parliament are determined by a relative majority, that is, by majority vote of those present and voting.[171] The question may arise: How many of the members of Parliament must be present before matters can be debated and/or submitted for voting? Is there an irreducible minimum, and, if so, how is it determined? What if only 20 out of 120 members are present? Or even 30 or 40? What are the criteria for determining a minimum? These are among the questions that Parliament itself will answer in its internal rules and regulations.

An exception to the relative majority rule is, as noted before, the absolute majority rule, which requires the presence of all members. Parliament may add more issues to the rank of those to be determined by an absolute majority.[172] Another exception is where a higher proportion of vote is required constitutionally, as in the case of amending the Constitution.[173] Different constitutions

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[167] *Id.* art. 36(5).

[168] *Id.* art. 36(4).

[169] *See infra* notes 172-78 and accompanying text.

[170] *See* ERI. CONST. art. 41(1).

[171] *See id.* art. 36(4).

[172] *See id.* arts. 32(12), 41(1).

[173] *See id.* art. 59(2).

require different percentages for this purpose.

The Constitution of Eritrea lays down a two-step procedure for constitutional amendment following a proposal tabled for such an amendment.[174] The initial proposal for amendment of any provision of the Constitution may be tabled by the President or fifty percent of all members of the National Assembly.[175] The amendment proposal will then be debated by all the members of the National Assembly, and if seventy-five percent of all the members vote in favor of the amendment, the matter will be put on record and await final disposal by Parliament the following year.[176] A one-year period must elapse before the matter can be taken up again.[177] In the event that, a year later, eighty percent of all the members accept the amendment passed the previous year, then the amendment will pass and on the effective date become a part of the Constitution.[178]

Parliament may be convened for an emergency meeting at the request of the President, its Chairman, or one-third of all members.[179] The most common emergency meeting would likely be one in which the President convenes Parliament in accordance with Article 27 of the Constitution of Eritrea.[180] Very rarely, the Chairperson or members may request such a meeting, particularly in the event of political crises facing the nation in which the President is either unable or unwilling to call a meeting.[181]

Another point relating to parliamentary rules of procedure concerns the approval of a draft law passed by Parliament. The Constitution's provision is simple: "Any draft law approved by the National Assembly shall be transmitted to the President who, within thirty days of its receipt, shall sign and have it published in

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[174] *See id.* art. 59.

[175] *See id.* art. 59(1).

[176] *See id.* art. 59(2)(a).

[177] *See id.* art. 59(2)(b).

[178] *See id.* art. 59(2).

[179] *See id.* art. 36(2).

[180] *See id.* art. 27; EDWARD MCWHINNEY, CONSTITUTION-MAKING: PRINCIPLES, PROCESS, PRACTICE 81-85 (1981) (discussing the concept of constitutional emergency).

[181] *See* ERI. CONST. art. 32(12).

the Official Gazette."[182] During the research and subsequent discussion phases of the Constitutional Commission's work, the question of the approval of draft laws was among many that were hotly debated. It was debated in relation to the larger question: What form of government would be suitable for Eritrea?

The approval procedure of a draft law and related rules in presidential systems is different from that under parliamentary systems. In a presidential system with a strict separation of powers, the president may reject a parliamentary draft law.[183] Rules must be devised constitutionally for the resolution of such conflict, if and when it occurs. Under the U.S. Constitution, a presidential veto of a draft law passed by Congress (Parliament) will "kill" the draft unless Congress overrides the veto by a two-thirds majority.[184]

In single-chamber parliamentary systems, all that is required is a majority of votes in the chamber supporting the party in power.[185] This may be complicated where, in a Parliament elected under proportional representation, there are a number of parties whose total votes may outnumber those of the principal party.[186] Moreover, in a two-chamber Parliament, the process may be further complicated in the event of a split in the votes that may necessitate a joint session of both chambers to settle the split.[187]

In Eritrea, which is a parliamentary system with an executive President, a draft law passed by Parliament cannot be questioned or returned for review but must be published as law.[188] This is a constitutional requirement.[189] However, in the vast majority of cases, it is the Executive that proposes laws to be enacted by the Legislature.[190]

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[182] *Id.* art. 33.

[183] *See* MCWHINNEY, *supra* note 180, at 69.

[184] *See* U.S. CONST. art. I, § 7, cl. 2.

[185] *See* FARRELL, *supra* note 58, at 161-68.

[186] *See id.* at 59-60.

[187] *See id.* at 39-58.

[188] *See* ERI. CONST. art. 33.

[189] *See id.*

[190] *See supra* notes 129, 131-38 and accompanying text.

VI. Conclusion

This Article began with a brief discussion of the idea of democracy as a source of representative government. Parliamentary government, per se, does not a democracy make, although it provides the basic institutional muscle to establish democracy at the national level. The role of Parliament in Eritrea is a yet uncharted terrain. The transitional National Assembly that has been functioning since the country's independence is not a full-fledged Parliament. Its latest version is comprised of the entire membership of the Central Council of the governing party, PFDJ, and elected members of the country's regional assemblies. No independent study has been attempted regarding its performance, there has been no publication of the minutes of its proceedings, and there is no public attendance of its meetings. This may be explained in terms of its provenance: it emerged out of the history of the PFDJ in Eritrea's war of liberation. A critical feature of the function of the PFDJ's Central Committee, the Central Council's predecessor, was secrecy and discipline, essential requirements for the prosecution of the war.

These and related points have been raised and extensively debated in the context of the need for government accountability and transparency. The Eritrean people have earned a place under the democratic sun, both in terms of their recent history and traditions of village self-government. But, as was previously noted, Eritrea's venture into constitutional government may be marked, for a few years, by the operation of a single dominant party. There will nonetheless be expectations—or even demands—for multiparty democracy. Much will depend on the operation of a number of factors, prominent among which is the performance of the Eritrean economy. If the economy's performance is satisfactory, providing optimal employment and other benefits to the people, it could induce a degree of complacency, postponing demands for multiparty representation.

As for Parliament, the enormous power vested in it by the Constitution should enable it to play a crucial role in the political health and development of the country. This has naturally raised great expectations for democracy. A responsible Parliament will appreciate the significance of its responsibility, even in the short

run, particularly in the absence of official opposition parties. This will be particularly important as Parliament endeavors to act as guardian of civil freedoms, while cooperating with the Executive branch in promoting the country's economic growth and social progress.

The first test of the present Parliament will be the development of electoral laws and laws regarding political parties. Additionally, the law on the freedom of the press is still the subject of controversy, at least among the budding private newspapers and their reading public. Beyond these immediate tasks, Parliament will face enormous challenges as a representative and lawmaking institution. These challenges may be summed up under three categories: (1) government and the rule of law; (2) the challenges facing democracy; and (3) development, social justice, and human rights.

A. Government and the Rule of Law

That the rule of law, or the principle of legality, as it is known under European civil law systems, anchors constitutional government is beyond dispute. A good government is one that rules according to the law, not according to the whims or caprice of those who are in power. The underlying principle of the rule of law is simple: it guarantees certainty of rights, equal justice under the law, and freedom from arbitrary treatment of citizens. It thus provides the conditions for obedience of the law and ensures the peace and stability that goes with it.

That is how it works in theory, at least. In practice, governments have been known, throughout history, to ignore the rule of law and establish, or perpetuate, arbitrary personal rule. It is an important aspect of democratic transition in modern times that arbitrary rule is rare and, where it exists, it is on the defensive. Arbitrary rulers almost always use patriotic terms to justify their rule, reminding one of Samuel Johnson's famous line: "Patriotism is the last refuge of scoundrels."[191]

One of the tasks of Parliament will be to guard against any arbitrary acts or tendencies of the Executive branch or any one of

[191] JAMES BOSWELL, LIFE OF JOHNSON (Apr. 7, 1775) (1791).

its agencies in the conduct of government business. The principles or criteria for judging such acts or tendencies are contained in the Constitution and should be elaborated under laws issued by Parliament.[192] As an Eritrean elder put it at a village meeting during the constitution-making process: "The government needs a strong hand to be able to govern, but it must be harnessed by the *lugam* of the law."[193] The elder's point about the need for a strong government is well taken. The Constitutional Commission of Eritrea gave due emphasis to the need for a vigorous government administration but underscored the need for such a government to abide by the rule of law, to be accountable and transparent in its work.[194] The primary responsibility for ensuring these safeguards lies with Parliament.

B. The Challenges Facing Democracy

Winston Churchill said of democracy that "it is the worst form of government, except for all those other forms that have been tried from time to time."[195] Democracy requires constant vigilance and struggle. In the dynamics of the exercise of governmental power, a country's leadership has the responsibility to offer a vision and define policies and programs to actualize such vision. When engaged in such exercise in a democratic context, or when following democratic procedures, a leadership may face problems or constraints. In short, it may face seemingly insuperable challenges. It is the task of lawyers and political scientists and of all concerned citizens to monitor and evaluate the manner in which a leadership responds to such challenges. It is the business of Parliament to do so on a daily basis.

When a challenge becomes acute, it might be tempting for a leadership to follow the line of least resistance—to suspend democratic procedures and impose emergency measures in the name of national unity and stability. To avoid such an occurrence,

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[192] *See* ERI. CONST. art. 7.

[193] Village Elder, Public Discussion at Ad'Tekelezan (Summer 1996). *Lugam* means the bridle that guides horses or mules. Here it is used as a metaphor for control and accountability.

[194] *See* CCE: PROPOSALS, *supra* note 2, at 10.

[195] JAMES C. HUMES, THE WIT AND WISDOM OF WINSTON CHURCHILL 28 (1994).

the Constitution provides for the type of situations when a state of emergency may be declared with the approval of Parliament.[196]

C. Development, Social Justice, and Human Rights

The people and Parliament of Eritrea need to maintain a clear understanding of the meaning of development as a basis for ensuring social justice and human rights. Very simply stated, a definition of development as the source of, or condition for, human well-being, should include having more, doing more, knowing more, and being more.

1. Having, Doing, and Knowing More

When a country experiences economic growth, government should make sure that the benefits of such growth are equitably distributed. Without equitable distribution, growth will only benefit the privileged few. But without growth there is a slim chance of equitable distribution. The need for the quantitative element of development—having more—is thus an imperative of development. This necessarily involves increased activity in various sectors of the economy. This requires doing more. Knowing more implies, among other things, education and raising the cultural level of the population in general. The Constitution enjoins the State to create and promote "conditions conducive for developing a national culture capable of expressing national identity, unity and progress of the Eritrean people."[197]

2. Being More

This category is difficult to explain; it reflects existential issues, including quality of life and spiritual matters. It is vitally linked to social justice and human rights in all its varieties as conceived and articulated in various international legal instruments, such as the Universal Declaration of Human Rights of 1948 and the 1966 international covenants.[198]

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[196] *See* ERI. CONST. art. 27.

[197] *Id.* art. 9(1).

[198] *See International Covenant on Economic, Social, and Cultural Rights*, at 8, Dec. 16, 1966, 993 U.N.T.S. 3, U.N. Doc. ST/HR/1/Rev.5, U.N. Sales No. E.94.XIV.1 (1994); *International Covenant on Civil and Political Rights*, at 20, Dec. 16, 1966, 99

Many nations are also required by their constitutions to observe and protect human rights and to promote social justice. The Eritrean Constitution is no exception in this respect.[199] It cannot be overstated, however, that the institutions of the State, including Parliament, cannot fulfill their obligations under the Constitution in the protection of human rights and promotion of social justice without attending to the development imperative as defined above. The State of Eritrea is required by the Constitution to strive for the provision of social justice.[200] It is also required to bring about a balanced and sustainable development throughout the country and to "use all available means to enable all citizens to improve their livelihood in a sustainable manner, through their participation."[201]

Parliament shares responsibility with the two other branches of government in fulfilling the requirements of the Constitution and other laws, including the development imperative, as outlined above, the provision of social justice and the protection of human rights. Parliament is, of course, only as good as its members. There should be no place in Parliament for those who are not inspired by the spirit of public service. The nature of its work demands men and women of quality: principled, intelligent, energetic, resilient, tenacious, and tough. The faint hearted need not apply.

U.N.T.S. 171, U.N. Doc. ST/HR/1/Rev.5, U.N. Sales No. E.94.XIV.1 (1994). "All people have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development." *International Covenant on Economic, Social, and Cultural Rights, supra*, Art. I, at 8.

[199] *See* ERI. CONST. art. 14-29. These articles are contained in the longest chapter of the Constitution, Chapter 3, which deals with human rights.

[200] The Constitution provides: "The State shall strive to create opportunities to ensure the fulfillment of citizens' rights to social justice and economic development and to fulfill their material and spiritual needs." ERI. CONST. art. 8(1).

[201] ERI. CONST. art. 8(2).