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*Full Length Research Paper*

# **Re-examining the philosophy of constitutionalism and Governance in the Gadaa Republic of the Oromo People in the Horn of Africa**

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**Constitution and government are the different faces of the same coin in any political ideology; since a constitution is an instrument through which a government governs its citizens. However, a constitution may be either a democratic one; or an undemocratic one. Accordingly, the legitimacy of a constitution is based on its making process, contents, and practices in a certain state. Thus, if its making process is participatory; if it consists of fundamental human rights and democratic principles in its contents; as well as, if it is implemented practically by the government; a constitution is a legitimate constitution, if not it is an illegitimate one. Consequently, this paper seeks to re-examine the extent of constitutionalism in the Gadaa Republic of the Oromo people. Its main objective is to assess the prevailing opportunities and challenges in the constitution-making process, contents, and practices of the Gadaa Constitution to ensure constitutionalism. To achieve its purpose, this study has employed a qualitative methodology which includes a review of related literature, and analyses of legal documents. The findings of this study have pointed out that in the Gadaa Republic of the Oromo, the sovereign political power vests in the hands of the people, and the rule of law is well respected in the Gadaa Republic of the Oromo people. Consequently, the principles of constitutionalism are well recognized in the Gadaa Republic. Hence, this paper has recommended that it is better to mold these Gadaa oriented principles to the status of the modern constitutional principles in Ethiopia.**

**Key words:** Constitutionalism, constitution, Gadaa, Oromo.

## **INTRODUCTION**

Constitution and constitutionalism are almost common terms in modern constitutional and democratic governance systems; though each term may be defined in multiple ways as per the partisan interests who define magnificent systems of governance, which is very similar to the contemporary constitutional governance system of

the democratic republics of this world. In the Gadaa Republic, the concepts of a constitution (unwritten constitution) and constitutionalism (limited government and sovereignty of the people) have known in or before them. However, talking about the concepts of constitutional governance and constitutionalism in the

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sixteenth century is an astonishing one. The Oromo people have been governing themselves through the sixteenth century. However, the concept of constitutionalism has nurtured after the Second World War even in the western democracies.

At this juncture, highlighting the concept of constitution and constitutionalism has paramount importance before delving into clarifying and comparing the Gadaa-based constitution and constitutionalism with modern constitutionalism. Accordingly, this paper has strived a lot to re-examine the origin and evolution of these concepts in the Gadaa Republic in their traditional aspects through comparing with the modern concepts of constitution and constitutionalism. Accordingly, the Constitution is not only a purely legal document; but it consists of political elements in itself. Hence, the constitution contains principles, objectives, values, and guidelines on very important national matters and interests like political, social, and economic objectives. Moreover, it gives directions on the country's foreign policy, election system, language policy, religion policy, matters of human and democratic rights, and system of governments, fiscal matters, and others. Generally, a constitution serves as a framework for government organs, limits the power of governments, ensures rule of law and democracy, guarantees rights and freedoms for citizens, forges unity among diversities, develops human dignity and values which call for sustainable development.

On the other hand 'Constitutionalism' deals with all about controlling, limiting, and restraining the power of the State; hence, it is a legal limitation on government. 'Constitutionalism is the idea, often associated with the political theories of John Locke (Peter, 1988), and the founders of the American Republic, that government can and should be legally limited in its powers, and that its authority or legitimacy depends on its observing these limitations' (Smith and Zalta, 2008). This means the government must act as per the contents of the constitution which is already made. Also, constitutionalism enshrines respect for human worth and dignity as its central principle. To protect that value, citizens must have a right to political participation, and their government must be hedged in by substantive limits on what it can do, even when perfectly mirroring the popular will. Broadly, constitutionalism can be viewed as a principle that limits the exercise of power through the instrumentality of a constitution that serves as a constraint (Murphy, 1988).

Generally speaking, a constitution is a set of laws and rules set up the machinery of the government of a State and which defines and determines the relations between the different institutions and areas of government, the executive, the legislature and the judiciary, the central, the regional and the local governments (Pylee, 2012). A constitution is a source, the jurisprudential fountain-head from which other laws must flow, succinctly, and harmoniously (Ibid). However, constitutionalism is the issue of linking the constitutional text with its practices.

Accordingly, a country may have a 'constitution' but not necessarily 'constitutionalism' (Jain, 1994). Therefore, constitutionalism is all about practicing or implementing the contents of the constitution as it is provided in the constitutional text by the government.

Hence, this paper has examined the extent to which the Gadaa-based principles fulfil the principles of constitutionalism and democratic governance. Additionally, the making process of Gadaa-based laws has been seriously assessed to check whether it is compatible with the modern and legitimate way of making a constitution in a democratic world or not. Furthermore, this Article has tackled a lot to critically investigate the extent to which the Gadaa system is favorable to accommodate the principles of constitutionalism. Moreover, it has pointed out the reasons why Gadaa principles have never developed to the status of modern constitutionalism or constitutional governance. Finally, it provides some important recommendations on how Gadaa principles will be molded to the status of modern constitutionalism in the Ethiopian federation.

## LITERATURE REVIEW

The concepts of constitution and constitutionalism are considered in various literature; so, it is not a new idea. Several studies have been conducted in these important areas. Similarly, many scholars have done a lot to show the democratic aspects of the Gadaa system in their scholarly works. Among these scholars, Asmarom (2006), Asafa (2012), Dirribi (2011), Mohammed (1994), Martial De Salviac (1901), and others have revealed Gadaa as an indigenous African-based democracy. However, this paper differs from the previously conducted Gadaa-oriented study, and the modern studies on constitutionalism, since it claims that the Gadaa system consists of constitutionalism principles. Moreover, this study examines the concept of constitutionalism as a governance ideology in African traditions, particularly in the Gadaa Republic of the Oromo people. Therefore, this study tries to explore the mechanisms in which the Oromo people ensure these principles of constitutionalism while practicing their Gadaa system for centuries. In Western democracies, the idea of constitutional governance and constitutionalism has become a political agenda after the Second World War. Also, Post Second World War constitutions can be categorized into three types based on their legitimacy/acceptance from their nations as follows (Tommaso, 2015):

**Garantiste Constitutions:** These are constitutions proper, congruent with the 19<sup>th</sup>-century consensus, which limit arbitrary government power and ensure limited government.

**Nominal Constitutions:** These constitutions are "fully

applied and activated,” but they perform no limiting function vis-a-vis the government because they merely formalize “the existing location of political power for the exclusive benefit of the actual power holders.”

**Façade Constitutions:** These take on the appearance of a true constitution, but “what makes them untrue is that they are disregarded.”

Accordingly, the concept of constitutionalism in its modern sense is linked to ‘*Garantiste*’ constitution; whilst the other two (*Nominal* and *Façade* constitutions) have no relation with the notion of constitutionalism.

In the modern State belonging to the western legal system, the power of the government is effectively limited through the mediation of particular principles of law, traditions, and institutional mechanisms (Sajó, 1999). The model of governance in such a State is based upon the principles of State governed by law (rule of law), democracy, and human rights (European Commission for Democracy through Law (Venice Commission) Report on the Rule of Law, 2013). Traditionally, the principles of State governed by law and human rights are included in the concept of constitutionalism (Carzou, 2013). Hence, ‘constitutionalism is a sufficiently complex model of State governance, demanding not only a declaration of the respective values and principles in the texts of the constitution but also their practical implementation (Ibid, 431).’ Constitutionalism is also the tendency to promote the impact of Constitutional law on all law branches within the State and beyond (Ibid).

Throughout centuries, jurists and politicians believe that the evolution of constitutionalism has become an inalienable and significant heritage of Western legal traditions. Nevertheless, the notion of constitutionalism and the constitution itself has got its recognition broadly after the Second World War even in western countries. For instance, in Eastern Europe, and parts of Asia, the constitutional foundation began in 1989 when communism collapsed in the region (Ibid). At about the same time, Latin American States moved away from authoritarian forms of government, and South Africa moved away from apartheid towards constitutional democracy recently.

However, in Gadaa democracy, the tenets of constitutional governance and constitutionalism like respecting human dignity, limited duration of political power, the right to asylum, election, accountability of officials, and others started during the sixteenth century (Makoo Bili Laws, Article 13, 41, 55). Hence, this paper claims that the origin of constitutionalism and constitutional government originated here in the horn of Africa by the Oromo people before the Westerners molded and nurtured the principles of constitutionalism and constitutional governance in its modern parlance. Several scholars concluded that Gadaa is a very complex social structure created and practiced by the Oromo people in their previously conducted researches. Among

these scholars and researchers, some of their findings of the Gadaa system are reviewed hereunder. Asmarom (2006), who has studied the Gadaa system for a long period, articulates it as follows: ‘Gadaa is a system of generational classes that succeeded each other every eight years in assuming political, military, judicial, legislative and ritual responsibilities’ (Legesse, 2006: 1). Moreover, according to him ‘Gadaa system is an elaborate, well-constructed system for distributing power among all the generational segments of society’ (Ibid, 20). Furthermore, Legesse explains that: “Oromo democracy is one of those remarkable creations of the human mind that evolved into a full-fledged system of government” (Ibid. 50). It contains genuine African solutions for some of the problems that democracies everywhere have faced (Ibid).

According to Legesse, “Gadaa has three interrelated meanings: it is the grade during which a class of people assumes politico- ritual leadership, a period of eight years during which elected officials take power from the previous ones, and the institution of Oromo society” (Legesse, 2006). Asafa concludes in his works that “Long before democracy and social equality was the norm in Europe and North America, the design of Gadaa as a social and political institution worked to prevent exploitation and political domination in Oromo society” (Asafa, 2012:126). Consequently, under the Gadaa system, Oromo society enjoyed relative peace, stability, sustainable prosperity, and political sovereignty (Ibid).

According to Dirribi (2011:279), “The law of Gadaa of the Oromo cannot break or collapse by any means after it has been made; which means, “Tumeen Seera! Hinjigu, hin dhangala’u; seera Gadaa Oromooti.” Martial De Salviac (1901:229), says that “we would not have trouble to understand that the Oromo, who do not know how to write have laws all so valuables as that of English”. He precisely compares the system of the unwritten constitution [not codified constitution in a single text] of England with the Oral Gadaa System of the Oromo and concludes that both are similar. This shows the extent of Gadaa democracy though it is oral principles/unwritten.

Lambert (1990: 111) points out that the “Gadaa system was more than a merely socio-political system; it was all a shrine for Matcha’s traditional view of the world and their moral values.” Apart from upholding the Gadaa laws, the Gadaa set in power had to perform many rituals to ensure the country’s well-being: fertility of the people and animals, good harvest (especially through the rain), and mutual peace which they considered as a condition for Waaqa’s /God/sky) blessing (Ibid). Hence, according to Lambert, Gadaa comprises all the aspects of Oromo people; it was a very general study conducted by him in western Oromia more focused on religious affairs. Therefore, the uniqueness of this study is that the perception of limiting the power of government or constitutionalism has been embedded in the custom and traditions of the Oromo people as per Gadaa

constitutionalism; whereas, the modern notion of western constitutionalism ensured after disastrous wars had taken place and caused the immeasurable loss of life in human history. Accordingly, this study is different from the previously conducted researches in two ways. Firstly, it argues that the birthplace of constitutionalism and constitutional governance was here in the horn of Africa in the Oromo Gadaa Republic. Hence, the thesis that concludes the western legal system as the only source of constitutionalism and constitutional governance is today questionable or must be re-examined as this study claims. Secondly, previous studies conducted on the Gadaa system have focused on its origin, structure, its religious aspect; generally concluded that Gadaa is a traditional system that deals with all the affairs of the Oromo people including their culture, politics, religion, economy, and social affairs. But this study places emphasis on the governance aspects of the Gadaa Republic; how leaders'/government officials' powers were traditionally limited.

#### **MATERIALS AND METHODS**

This study has employed mainly a library-based with documented facts on the Gadaa system, constitutionalism, and rule of law. Additionally, it has analyzed the laws and principles in the Gadaa system; review the existing literature on the Gadaa governance system and other related sources. Accordingly, it follows explorative research; and documentary methods. Hence, this study explores how one can utilize the principles of the Gadaa system as modern constitutional principles. It re-examines the extent to which the traditional principles in the Gadaa Republic are compatible with the modern principles of constitutionalism. Additionally, it strives to explore how the Oromo people have limited the powers of their leaders in their traditional system/Gadaa Republic. To fulfil these objectives; it reviews various literature written on the Gadaa system, principles of constitutional governance, and constitutionalism.

For this reason, its methodology is a qualitative one. Hence, various related literature, written or previously conducted studies on the Gadaa system, as well as, on constitutionalism and constitutional governance has critically been analyzed. Moreover, the principles of the Gadaa system have been compared with the modern principles of constitutionalism to show the prevailing and possible challenges and opportunities to develop the Gadaa constitutionalism in Ethiopia in particular, and in Africa in general.

#### **RESULTS AND DISCUSSION**

Hereinabove, the concept of constitution and constitutionalism in its modern sense is already elaborated. Accordingly, one can deduce that constitution is a text/document which is just written at one time, like the USA Constitution, or evolved through time in case it is an unwritten one, like UK Constitution. Truly speaking, constitutionalism is not simply a text or a document; however, it is a culture that develops/evolves through a long period. So, the culture of making or enacting a constitution is an event or component of

constitutionalism. Thus, striving for codifying the constitution, State structure and its power in a certain text itself legitimately indicate one sense of constitutionalism.

Accordingly, the elements of modern constitutionalism have been analyzed and compared with the traditional tenets of the classical Gadaa system. This discussion puts its emphasis on the philosophy of state/government formation, the making process of basic laws, and other vital principles related to constitutionalism. Consequently, this study would like to re-examine and discuss this part in dividing into five sections; namely, State formation, Basic Laws/Constitution-Making Process, Contents of the Basic Laws, and Practices/Implementation of the Basic Laws, as well as, the challenges of Gadaa system in general sections to assess the extent of Constitutionalism and legitimate governance in the Oromo Gadaa Republic.

#### **Theory of formation of state/polity**

In political history, polities may be formed in three different manners (Elazar, 1985). The first one is the hierarchical model. In this form of the government system, everything is imposed from above, including the constitution itself (Ibid). The subjects/citizens' interest in all aspects are not considered; hence, the ruler made all their laws to suppress the nation for their interest. For instance, States formed through conquest, dictatorship, and Monarchical government are categorized under this model.

The second form of polities' formation is through evolution in an organic model (Ibid). Hence, some States were evolved organically out of more limited forms of human organization and which over time concretize power centers that govern their peripheries (Ibid). Polities founded and organized on the organic model seemingly grow naturally, and as they develop, the more powerful or otherwise talented leaders form a political elite at the polity's center that rules over the vast majority in the polity, who are relegated to the peripheries (Ibid). The constitutions of the organically created States are enacted through evolution from the traditional body of accepted rules and customary practices (Ibid). The apotheosis of this model is Westminster-style parliamentarianism with the parliament sovereign (Ibid).

Furthermore, some States are founded by design through covenant or compute in which power is shared through a matrix of centers formed by the government of the whole, based on federal principles (Ibid). The covenantal model is different from the above ways of State formation. Since, under the covenantal model of polities formation, at least two States, one is the federal State and the other is the regional State must bargain between themselves on all political, social, and economic aspects of the nation's living in that polity (George, 2008). This covenantal model of State formation is all about the federation or federal way of organizing a polity in a

certain country. Hence, federations are originated from particular bargains on various issues related to political and socio-economic aspects of the public at large, which struck at a particular time and designed to serve for generations (Assefa, 2006). In these bargaining between the federal and sub-units on some issues, a written and supreme constitution necessitates mandatorily (Ibid).

From these three political theories of polities formation discussed herein above, the Oromo Gadaa Republic shares the characteristics of the second (Organic Model) and mainly the third (Covenantal Model). Similarly in the Gadaa Republic of the Oromo, each clan or pair of clans of Oromo possessed religious and political centers (Odaa) where assemblies take place for religious or political purposes. However, even though each clan possesses Odaa of their own, all of them have the blessing of the 'Abba Mudaa' (Ritual and cultural leader) at one center altogether. Accordingly, there was one Abba Mudaa at one center at a time to bless all the Oromo clans' rules in different regions who were autonomously administered themselves with the binding general Gadaa system. Hence, the Oromo have had Abba Mudaa which unifies them and they have been administering themselves autonomously in other aspects. Thus, the researcher strongly claims that there are the concepts of shared rules and self-rule in the Gadaa system like in the modern covenantal Constitutions of federations.

Consequently, the process of State/polity formation in the Gadaa Republic was very democratic. In the Gadaa oriented governance system, the Oromo people have governed themselves through democratically and directly elected Abba Gadaas [Gadaa Fathers]. Hence, no monarchical, and no dictatorial governance system in the Gadaa system; since the Gadaa rules prohibit such acts. Thus, the principle of constitutionalism is well respected in the formation of government in the Gadaa Republic.

### **Law-Making Process: In Modern Governments Vs. in the Gadaa Republic of the Oromo**

Making Basic Laws/constitution is the most important event in the political life of a country. A constitutional moment is a revolutionary event (Regassa, 2010). It is a moment of constitutional festivity and it is a moment of negotiating national identity too (Ibid). Unfortunately, very few nations are blessed with constitutional moments even in the modern government system. In the making process, the makers of a constitution are confronted with various, complicated, and competing interests from different groups. For the defeated party, it is a moment of frustration, desperate, criticism, conflict, extremist, etc. Hence, making a constitution is verily a difficult task. If the making process of a constitution is inclusive, broad-based, and participatory, it makes that constitution more legitimate. Not only restricted to the making process but also the legitimacy of a constitution can be evaluated by

its content and practical application in the post-making process.

Accordingly, the making process of any constitution may be categorized as either democratic or not in modern republics. Hence, many scholars categorized constitutional making into two basic approaches; namely, the traditional and the new approaches (Tefatsion, 2008). According to the traditional approach, a constitution is an act of completion. It is perceived as a contract, negotiated by appropriate representatives, concluded, signed, and observed (Viven, 2003). The issues are deemed settled with presumed finality and conclusiveness (Ibid). The new constitutionalism approach on the other hand is an approach centering on participatory constitutional making or conversational constitutionalism (Paul, 2006). It is perceived as a continuing conversation between the elites of a given society and the population (Louis, 2007). It is carried on by all the stakeholders and is open to new entrants and issues (Ibid). It aims to fashion and provide a workable formula that will be sustainable rather than assuredly stable. (Ibid) This approach (new constitutionalism) is more sensible especially considering the essential nature or function of the constitution (Ibid). Therefore, various principles of the legitimate way of making a Basic Laws or Constitution for a certain state includes the following, as per the modern principles of constitutionalism.

**The principles of inclusivity:** This means that the participation of all the people or the groups in which they are represented should be ensured. The people should take part in the process and influence the contents of the constitution (Tefatsion, 2008). If we read Article 25 of the International Covenant on Civil and Political Rights [ICCPR], it provides that "every citizen shall have the right and the opportunity", among others, "to take part in the conduct of public affairs, directly or through freely chosen representatives".

**Political parties:** "The role of political parties depends on the history of the country or polity concerned. The phrase "political parties" here refers to organizations whether labeled parties or not established for political purposes including that of contesting for or sharing state power. Hence, "Fronts" are parties. The history of South Africa was such that the role of political parties in the constitution-making process was considerable" (Ibid).

**The principle of openness/transparency:** This means that the process is such that it is possible and open for the public to make their inputs. No impediments are blocking them from being heard and making their contributions. This is of crucial importance for legitimacy: It is when the people feel that they could make their contributions that they would consider the final document as legitimate, in fact as their own (Ibid). Since any basic law or constitution can be neither value-neutral nor

agenda-free; its making process must be all-inclusive, participatory/give chances for all, and transparent or open to all interested parties and the public at large. This may determine its legitimacy or recognition in front of its nation.

Consequently, when compared with these constitutional and legitimate ways of making basic laws in modern Republics, the making process of important and basic principles in the Gadaa Republic was unbelievable. Accordingly, the making process of basic laws/constitution in the Gadaa Republic has seriously fulfilled all the modern principles of a legitimate way of making the constitution discussed herein above.

In their culture, the Oromo people believe that law is not something sent from God to be kept forever; but it is something that is made and if necessary, changed, based on the need of the people (Dirribi, 2011:196). The concept that says the law is there naturally and it cannot be changed is not as such known among the Oromo (Ibid). Even the Oromo believe that the law should be made by considering the situation and per human needs (Ibid). On this issue, Asmarom (2006) states:

*One of the most interesting aspects of the Oromo tradition is that laws are treated as a product of human deliberation, not a gift of God or heroic ancestors. There is little in Oromo thought that suggests that laws are natural and, therefore, immutable. There is even less evidence that suggests that the laws are supernatural and, therefore, beyond discussion. On the contrary, they say that all their laws were created by men and can thus be changed by men"*

Accordingly, the Oromo people are well-known for making laws by themselves and executing it (Dirribi, 2011). It is said that the Gadaa laws of Booranaa people were made by Gadaa under the leadership of Gadaawoo Galgaloo; the Gadaa laws of Tuulamaa were made by the Gadaa under the leadership of Caangaree Korboo (Ibid). The Gadaa under the leadership of Makoo Bili made the Gadaa Laws of Maccaa (Ibid). The Oromo people give great respect to laws. The Oromo believe that law is more valuable than one's child, which means the Oromo people sacrifice their children for the observance of rule of law (Ibid).

Furthermore, the Oromo makes laws in a way that satisfies at least the majority of the people. In the law-making process, the Hayyuus, Abbaa Gadaas, the Raagaas, and Ayyaantuus and the people at large participate. (Dirribi, 2011) The Oromo employ the peaceful process of discussion in legislating laws (Ibid). The legislation will become law only if it is declared and accepted by the people (Ibid). According to the Gadaa laws, anybody can oppose the draft-law by saying "damman qabe; korman qabe;fardaan qabe; tuni tuni sirri miti"; and this means that this law is not correct (Ibid).

Moreover, in the legislation of laws, no one would be

silenced, but they are expected to talk based on the seniority of age (Ibid). When the people discuss and accept the laws made through such procedures, the Abbaa Gadaa slaughter a bull and touch that blood with his bokkuu and says, "Tumeen Seera! Hinjigu, hin dhangala'u; seera Gadaa Oromooti." (Ibid); which means the law has been made; it does not collapse; it does not break; it is the law of Gadaa of the Oromo. From this moment onwards, these laws will rule the country (Yilma, 1959). For the Oromo, no position of superiority puts a man beyond control or criticism from his fellows (Donald, 1974: 140). The Oromo people believe that "it is we who are judges, it is we who make the law, and it is we, the people, who obey it and the Gumii will disagree with anybody that breaks the law" (Dirribi, 2011: 320).

*In the words of De Salviac: The Abba Bokku announces Serri bu'e! Laws have fallen. The people object saying, "The law, the law, we want the law! The Abba Bokku then announces Seeri ba'e! The laws have risen again (Asmarom, Cited in Dirribi, 2011: 209).*

This cultural tradition indicates that the people view the laws as being their own, not something imposed on them by a superior force such as God or an elite class, or a group of learned men. Therefore, the law-making process is all-inclusive, participatory, gives chances to contest and enough transparency, even far well than the modern constitutional way of legislation. When compared with the constitutional way of legislating laws in the modern era, the Gadaa brand of law-making is truly legitimate and fulfils all the criteria of enacting laws in the world of constitutionalism. Consequently, it is possible to conclude that, in the Gadaa Republic, the process of making basic laws for the nation is in line with the principles of constitutionalism, and consistent with modern western democratic processes.

## **Contents of the basic laws**

### ***The philosophy of human rights: In the Gadaa Republic versus Modern Governance***

The principle of Human Rights are recognized and broadly incorporated under International Human Rights Instruments and National Constitutions after the Second World War. As per modern democratic Constitutions, Human rights and freedoms, emanating from the nature of mankind are inviolable and inalienable (*FDRE Constitution*, Article 10). The same promises have been incorporated and adopted in various International Human Rights treaties and declarations like the Universal Declaration of Human Rights [UDHR], the International Covenant on Civil and Political Rights [ICCPR], the International Covenant on Economic, Social and Cultural Rights [ICESCR], and others to avert gross human right

violations throughout the world.

These human rights and fundamental freedoms are, therefore, not given by the State or authorities, but pre-exist their legal recognition by the State or the authorities. Because of the universal nature of human beings, Human Rights are endowed with certain universal rights which are natural, inalienable, and inviolable. Consequently, these human rights include the right to life, the prohibition against inhuman treatment, freedom of movement, the right to be free from torture, the right to food, shelter, and clothing, the right to equality, the right to have health and clean environment, and others (FDRE Constitution, Chapter Three); UDHR, ICCPR, ICESCR).

The Oromo philosophy, according to the Gadaa Republic gives a very high place for fulfillment, protection, and respect for Human Rights in a very significant manner. Accordingly, the Gadaa system is a well-crafted and nurtured traditional system of governance that protects human rights, ensures democratic governance, rule of law, and constitutionalism. Long before the invention of all these concepts of human rights and democratic governance, and earlier than their incorporation in the well-known Human Rights Declarations and Covenants such as UDHR, ICCPR, ICESCR, CRC, and others, in human history; the Gadaa system recognizes, enforces, and fulfils all these concepts of human rights and constitutionalism.

Very surprisingly, in the 16<sup>th</sup> century, when human beings were hunted, made a slave, and sold like properties, the Oromo people were committed to the protection of human rights (Makoo Bilii Laws, Article 13, 41, 55). According to various evidences, Makoo Bilii laws which are parts of the Gadaa system of the Maccaa Oromo were enacted in 1580s (Dirribi, 2011). These laws protect females, children, refugees, and ensure equal protection and equal subjection of laws, adoption, accountability, and transparency of the highest authorities (Dirribi, 2011).

Moreover, among the Oromo people, not only human rights, but the rights of dogs are legally respected. That is why the Borana people say, "Seerri muummee seera saree"; and the Tulama also says, "Huru dheeroo akka seeri, huru gabaabo akka seeri." They mean dogs and cats. Having a dog is not compulsory but if you have it, feeding it is obligatory (Ibid.). Asmarom (2006) also argues that:

*Galma Liban said that the law does not the only disciple the highest, it also protects the lowest. By way of illustration, he suggested that the dog is one of the lowest creatures in Borana: nevertheless, some laws protect him from harm. Borana says that "Seerri muummee seer-saree" (P.201).*

Furthermore, Balambaras Jabessa Ejjeta (who was born in 1909 in Horroo-Guduruu) had written the following human rights protection in Oromo:

*The Oromo is considered an already born child as a human being; all human beings have humanitarian dignity; A child of a nation is just like one's own; and the problem of the wife is the problem of the husband, any cattle have dignity (Dirribi, 2011: 279).*

As a result, the Oromo people have created and been utilizing this Gadaa system which respects and exercises human rights not only for mankind but also for animals. Thus, it is possible to claim that Gadaa respects and enforces the principles of the sanctity of human rights even better than the modern written and codified constitution of western democracies, and thereby ensures constitutionalism in the modern sense. Some principles are discussed here-under.

### ***The principles of sovereignty of the people***

The concept of sovereignty in Political Science has many definitions; however, usually, sovereignty is defined in one of these two ways (Merriam, 1900). The first definition applies to supreme public power, which has the right and, in theory, the capacity to impose its authority in the last instance, and the second definition refers to the holder of legitimate power, who is recognized to have authority (Ibid.) When national sovereignty is discussed, the first definition applies, and it refers in particular to independence, understood as the freedom of a collective entity to act (Ibid.) When popular sovereignty is discussed, the second definition applies, and sovereignty is associated with power and legitimacy (Ibid). Therefore, the sovereignty of the people means "all the sovereign power vests in the hand of the people and their sovereign power is expressed in the Basic laws / Constitution" (e.g. see FDRE Constitution, Article 8(1, 2)). Their sovereignty shall be expressed through their representatives elected following this Constitution and through their direct democratic participation (Ibid, Article 8(3)).

In the same vein, the Oromo Gadaa system consists of smart principles that guarantee the principle of sovereignty of the people. The Oromo believe or have had a premise which claims that the law stands above all men.

According to Asmerom, as explained herein above, "one of the most interesting aspects of Oromo tradition is that, "laws are treated as a product of human deliberation, not a gift of God or heroic ancestors". The Oromo say that all their laws were created by men and can thus be changed by men" (Asmarom, 2006). So, the makers (legislative assembly) or the representatives of the people at large are sovereign to make and unmake the laws on behalf of the people. Again Dirribi (2011) writes the following which points out precisely the sovereignty of the people:

*In Oromo democratic culture, the supreme power is not in*



*the hands of those well-respected individuals (elders) knowing law making. It is also not in the hands of electoral committees, the 'Ayyaantuus', who get power through inheritance. The ultimate power holder is again not in the hand of 'Abba Duulaa' who gives military leadership for the armies; or those who are in the stage of kuusaa (qondaalaa) and gives military service in an organized way. All these have nothing to do with the ultimate power. The Abba Gadaa who are administering the country have no such authority. However, the supreme authority belongs to the people's Gumii (Assembly) the representatives of the people."* (Dirribi, 2011: 321)

Thus, the sovereign power is vested in the hands of the people, and the people are also considered as sovereign in the Gadaa system of the Oromo, similar to modern constitutions. Additionally, the supremacy of a constitution/basic law is also recognized in the Gadaa system, as analyzed here-under.

### ***The supremacy of the constitution/basic laws***

The supremacy principle shows that the decisions of the people which are expressed and embodied in the basic laws are immutable and cannot be violated by any force, law, or body. No actions of bodies of representative democracy (the legislature, the executive, the judiciary, and their officials) may override the decisions of all the people as inscribed in the constitution. According to the supremacy principle, the Constitution is the supreme law of the land; any law, customary practice, or a decision of an organ of State or a public official which contravenes this Constitution shall be of no effect (FDRE Constitution, Article 9). The Supremacy principle in the Gadaa Republic is more genuine than the modern Constitution in guaranteeing the supremacy of Constitution / Core Gadaa Principles. The premise that laws stand above all men is the foundation of Oromo's Gadaa administration laws (Dirribi, 2011).

Consequently, the Oromo people have recognized the principle of supremacy of basic laws in their Gadaa Republic. Thus, this is one key element of constitutionalism in the modern context. Furthermore, the principles of transparency and accountability are also recognized in the Oromo Gadaa system, as assessed here-under.

### ***Accountability and transparency of Government Officials/leaders***

As per the Gadaa Republic, all are answerable to the law. The Oromo people are accustomed to govern by the law made by the people (Ibid). Concerning this practice, Asmarom (2006: 200) writes the following: "The Abba

Gadaa himself is subjected to the same punishment as all other Borana if he violates laws, same laws, and same punishments. That is the evidence that shows us that law is above everybody including the Abba Gadaa."

According to modern constitutional governance, the conduct of affairs of government shall be transparent; as well, any public official or elected representative is accountable for any failure in official duties (FDRE Constitution, Article 12). This accountability of public officials is both political and legal. Transparency for instance has to be measured against clear standards and requirements to be placed in detailed legislation; and similarly, accountability may be ensured by putting in place clear duties and responsibilities for the appointed and elected officials in various laws that pertain to their areas of operation, and by penal legislation in case of violations (Getachew, 2012). Both the elected and appointed government officials cannot escape from responsibility under democratic leadership. This responsibility is both legal and political. If the representatives of the people do not fulfil their duty in favor of the people of the constituency who elect them, they will punish them with their cards upon election; so the right to elect is one guarantee to ensure accountability. In addition to this, any government officials are subjected to legal punishment and court trial according to the law if they commit a crime.

Verily, the Gadaa system embodied the principles of transparency and accountability excellently. The major principles in Gadaa Laws are not only protecting the rights of the weak but also controlling and limiting the highest authorities (Dirribi, 2011). According to the law of accountability of the Gadaa system, any authority that goes beyond his legitimate power shall be accused. Moreover, the concepts of privilege and veto power of the western democracies are not recognized in the Oromo Gadaa Republic as well.

In Oromo, all are answerable to the laws. Even though Abba Gadaa cannot be assassinated, he can be removed from his office if he abuses his power according to Borana Oromo. Hence, after dismissal from power, now he can be punished just like other individuals; therefore, the only privilege of Abba Gadaa is that he is immune to capital punishment. (Ibid) Under the Gadaa Republic, the General Assembly serves this purpose (assessing the performance of leaders' in the first half of the term office); it may endorse the presidents' continuation or uproot a leader before completion of his term (Sima, 2015: 22). Unlike the presidents and premiers across sub-Saharan African countries, who hang onto power for an unlimited period, the single term office principle under the Gadaa leadership reveals an incredible value of democracy. All this evidence of accountability shows how the Gadaa Republic ensures the principles of limited government (Constitutionalism) in the dark ages, during the sixteenth century where slavery was rampant here and there in Africa and other parts of the world. Even today,

the Constitutions of most States do not put a limitation on the term of office of the top executive like Prime Ministers and Presidents. For instance, the 1995 FDRE Constitution of Ethiopia does not specify how many times a Prime Minister can be re-elected is not precisely specified; whilst in the Gadaa system, no one can be re-elected as Abba Gadaa for the second time under any condition. Moreover, the principle of Separation of power is also recognized in the Gadaa Republic as analyzed here-under.

### ***The principle of separation of powers***

In a modern democratic constitution, especially in the federation, power may be separated horizontally between the federal and regional States. This is a vertical division of power between the federal and State in a federation that is named as a division of power. Whereas the division or sharing of power among the three wings of governments (Legislature, Executive, and Judiciary) is considered as separation of powers, the main objective behind the principles of separation and division of powers is to protect the people against capricious tyrannical and whimsical powers of the State (Tej, 1996:2). For instance, the Federal Democratic Republic of Ethiopia comprises the Federal Government and the State members (FDRE Constitution, Article 50(1)). The Federal Government and the States shall have legislative, executive, and judicial powers (Ibid, Article 50(2)).

The Gadaa Republic also recognizes the principles of separation of powers. The Gadaa is entitled to powers to govern the country and defend it from enemies (Dirribi, 2011). For instance, the Kuusaa (qondaalaa) has the rights and responsibilities of attacking the enemy upon request (Ibid). The Gumii (Assembly) has the powers of changing laws, advising and guiding the Gadaa, or uprooting and making other elections (Ibid) The Ayyaantuus (Abba Muda) also has the powers to decide Election Day, to bless the authorities like the ya'aas, jiila, Gumii, and Abba Gadaas. (Ibid) All groups work in cooperation and they do not have the super-ordinate and subordinate powers complexities (Ibid.).

However, unlike the division of powers between the federal and the States, the Gadaa System of the division of powers follows generation and age-group-based power division (Sima, 2015). It is the type of division of powers in which every citizen involves actively in the political and legal affairs of his / her country (Ibid). Hence, the Gadaa Republic ensures the separation and division of powers even far better than modern democratic constitutions. Since the division of powers is across generations, it has great value in creating an egalitarian society. It is an all-inclusive political system in which all age-groups shoulder responsibilities. On the other hand, the extent to which these contents of basic laws in the Gadaa Republic are evaluated in the following manner:

### **Practicing/implementing the content of this basic laws/constitution**

The constitution will become a big bull without a horn if not practiced or implemented. Accordingly, if a constitution is practiced and enforced by the government in its day-to-day decision-making processes and actions, at the same time, if the public at large believe that the guaranteed constitutional rights in the constitutional text are enforced without violation by the government or by any other organs, we can say that there is constitutionalism under such system. If what is written in the constitution is respected, we call such a constitution as '*Grantiste* constitution'. However, if what is written in the text is not enforced or is violated by the government itself, there is no constitutionalism under such a system; the public at large cannot accept such a constitution as well. We call such a constitution '*Nominal* or *Faced* Constitution', i.e. a constitution in the name; which is the sign of undemocratic governance or dictatorship.

Hence, legitimacy and entrenchment of constitutionalism can be the most important factors to enhance the quality of constitutional practices. Accordingly, the above constitutional principles must be seriously considered to have sound constitutional practices. If the core principles discussed above are appropriately implemented, that constitution / basic laws get recognition and acceptance from the public at large. Therefore, the legitimacy of a constitution is rooted in the moral, legal, and sociological foundation (Richard, 2005). As Belgin argues, "the legitimacy of a constitution requires a genuine social acceptance, where the relevant public reveres and honors both political intention and expression behind the constitution and legal forms and foundational institutions instituted by the constitution (Belgin, 2007). Consequently, constitutional legitimacy is ensured if the contents are continuously applied both by the government and the concerned organ/people with at most commitment in all aspects.

In the Gadaa Republic, the commitment to implement or practice the basic principles of the Gadaa system is very high. All persons, including Abba Gadaa himself, are subject to law, and all laws are only enacted as per the interest of all the people. All basic Gadaa principles are considered as a covenant among the Oromo people since all are evolved from their values, custom, traditions, and beliefs in a long period.

A critical study of the Gadaa system reveals that it fulfils the three main elements, 'consenting, promising and agreeing', of a covenantal Constitution of the modern democratic federation like USA, Germany, India, Canada, and others, because, all the Oromo people give their consent to enact, to implement and to enforce Gadaa principles, and exercise the practices of self-administration for thousands of years. They (each clan) have agreed to administer themselves autonomously and also agreed to have some common center and rules that

govern the affairs of all the Oromo people at once like 'Abbaa Mudaa'. Additionally, in the Gadaa Republic, political power (governmental authority) is transferred from one party to the other through a peaceful procedure known as 'Baallii' timely; without any form of extension. Accordingly, in the Gadaa Republic, seizing political power longer than the time it is expected to be transferred (eight years) is abnormal (Dirribi, 2011). It is believed that if one does not transfer authority (Baallii), he may face punishment from God (Ibid), whilst the nearest monarchies and kings existing at that time claim that they must rule forever as the authority is given to them from God. Hence, the Oromo people have their Gadaa Republic as a guarantee or promise for administering themselves through shared-rule and self-rule very similar to modern covenantal/federal system of governance without any suspicions about the violation of their private and collective rights. Hence, the question of the legitimacy of the government, the basic laws, and its implementation is absolute, and the Oromo people believe and trust in their laws and their leaders without any suspicions. Nevertheless, several challenges have challenged the Gadaa Republics in multiple ways for centuries. Some of the main challenges to the Gadaa system have been analyzed hereunder briefly.

### **The challenges of Gadaa Republic**

The challenges include foreign aggression, lack of own written literature, historical challenges, legal challenges, educational challenges, and others. The main challenges to the Gadaa system of governance were alien forces or colonizers who suppressed these values of Gadaa for centuries. The campaigns of alien forces targeted all affairs of the Oromo people: their religion (Waqeffanna), socio-political institution (Gadaa), economy, politics, and all values of oromumma, in general, to eliminate the Oromo identity and thereby destroy their property. The project to destroy the Oromo values was undertaken both forcefully and peacefully for a long period. Mesfin (1972) says this about the Oromo:

*It was really during the time of Tewodros that Oromo supremacy was weakened. It was Menelik who systematically assimilated them and making them share power in government, and through intermarriage at the time of Menelik, the Oromo movement as a nomadic destructive and purposeless had ceased completely. (p 17).*

This gives a clue for us that the Oromo culture and values were destroyed by foreign invasions and wars in the past. Furthermore, the lack of own literature was also another challenge to the development of the Gadaa Republic. Therefore, the lack of written literature until the introduction of 'Qubee' (Oromo Alphabet) had been the

greatest challenge to the Gadaa system. All Oromo philosophy and Principles/laws were oral. The Oromo Alphabet was adapted from the Latin alphabet around 1970s (Dirribi, 2011). This was a serious barrier and one main reason since the Gadaa principles had not supported written documents or it not possible to codify them in the olden ages. Though the Oromo are brilliant in creating an amazing governance system (Gadaa), follow monotheistic religion (Waqeffanna), and invent a calendar; in the area of the wisdom of writing and literature, it was a regrettable history.

On the other hand, from history itself, it is known that the history of the Oromo people in general and the Gadaa system, in particular, is written not by the Oromo themselves at the earliest time. The Habesha, Europeans, and the Arabs were writing the history of the Oromo (Dirribi, 2011). Therefore, the majority of these alien writers reflected their hatred and tried to despise the Oromo history and culture (Ibid.).

The Habesha writers (historians) like Abba Bahire have strived a lot to harm the psychology of the Oromo people and thereby destroyed their culture and religion. He said the Oromo people are cruel and inhuman in his book entitled as the history of the Oromo. Moreover, Mesfin (1972) says, "The Oromo military force has no other objective than destroying" (p.17). Furthermore, Getachew (2002:104) argues that the Oromo people were ignorant and destroyed the Habesha's civilization by invading civilized Habesha people." The European writers have affected and blurred the history of the Oromo system, particularly the Gadaa system, though some European writers like Martial De Salviac, Antoine D'Abbadie, and others have strived a lot to write the true history of the Oromo people.

For instance, the Portuguese like the Habesha, and hate the Oromo people in the past; as they did not know the Oromo or Oromo language. However, they got distorted information and facts about the Oromo from the Habesha people (Dirribi, 2011). Moreover, even though Arabs came to Africa for trade and religious purposes, they wrote the history of the Oromo negatively like some of the Europeans. For instance, the Portuguese like the Habesha, and hate the Oromo people in the past; as they did not know the Oromo or Oromo language. However, they got distorted information and facts about the Oromo from the Habesha people (Dirribi, 2011). Moreover, even though Arabs came to Africa for trade and religious purposes, they wrote the history of the Oromo negatively like some of the Europeans.

Moreover, historically, the Oromo people have resisted the colonizers for centuries and protected themselves and their lands. However, since the 19<sup>th</sup> century, they have been crushed by their enemies (Ibid.). After being captured by their enemies through war, their history and culture have been violated and seriously destroyed. (Ibid). As a result, continuously the history of the Oromo people suffered disturbances and cracks for centuries.

Consequently, the Oromo people have been suffering symbolic and cultural segregations within the Ethiopian Empire. For instance, Mohammed (1994) argues that:

*The new Ethiopian ruling class, typified by Emperor Menelik... found it necessary and profitable to deny/rate the Oromo people, their culture, and their history in all ways great and small. This ruling class especially perceived the danger of the larger Oromo population to its empire. Consequently, the ruling class systematically depicted the Oromo as people without history and belittled their way of life and their religious and political institutions. (p. 13).*

Thus, history affects the development of the Gadaa system negatively, and also, it has an immense effect on the current status of the Gadaa system. Furthermore, in the history of Ethiopia until the flourishing of federalism in Ethiopia in 1991, the Gadaa system is prohibited or banned by the laws at different times. Starting from Menelik II (1889) up to the introduction of the federal democratic state structure which was established under the 1995 FDRE Constitution, the Gadaa system was banned by the Government laws. Hence, utilizing and promoting the Gadaa system was unthinkable during Monarchies and the Military regime (Derg) in Ethiopia.

Even today under the federal system of Ethiopia, it is too difficult to promote and harness Gadaa principles in molding and enacting Regional State Constitution and Federal Constitution. Since both the 1995 FDRE Constitution and the Oromia Regional State Revised Constitution of 2001 have not accommodated the principles of the Gadaa system at all. Of course, the FDRE (1995) Constitution incorporates Articles that give home for utilizing the traditional governance system. For instance, Article 34(5) says, "This Constitution shall not preclude the adjudication of disputes relating to personal and family laws under religious or customary laws, with the consent of the parties to the dispute. Particulars shall be determined by law."

Furthermore, the same Constitution says, "Every Nation, Nationality, and People in Ethiopia has the right to speak, to write and to develop its language; to express, to develop and to promote its culture; and to preserve its history" (Ibid. Article 39 (2)). Moreover, it claims that government shall have the duty to support, based on equality, the growth and enrichment of cultures and traditions that are compatible with fundamental rights, human dignity, democratic norms, and ideals (FDRE Constitution, Article 91(1)).

Additionally, at the regional level of Oromia, the Gadaa system is only recognized as a traditional ritual ceremony. The 2001 regional State Constitution of Oromia and its amendments have not considered Gadaa principles. This regional Constitution is the direct replica of the federal Constitution (FDRE Constitution of 1995). Also, this regional Constitution is subordinate to the federal

Constitution (FDRE Constitution, Article 9). Accordingly, the regional State Constitution of Oromia is modeled in line with the FDRE Constitution. Hence, this is a serious legal challenge as the Gadaa principles are not recognized, at least at the regional State level of Oromia.

Finally, the Educational policy or Curriculum of Ethiopia does not accommodate satisfactorily the principles of the Gadaa system, neither at the federal level nor the regional level of Oromia in its curriculum both primary and higher education levels. A critical examination of the Ethiopian education curriculum points out that the Principles of the Gadaa system are only rarely highlighted or touched in courses like History and Civics. Rather than accommodating these Golden principles, the educational courses contain the history of Ethiopian monarchies like Tewodros, Yohannes, Menelik, Hailesellase, and others. No center promotes, gives training, and conducts researches about the Gadaa system in detail. Hence, this may be considered as a serious challenge, since without educating the present generation, and conducting further studies about the Gadaa system comprehensively and in a detailed manner, it is very difficult to infuse these Gadaa principles into modern Constitutional governance.

## CONCLUSION AND RECOMMENDATIONS

State and people have been claiming for centuries, and continue to claim to have a constitutional government; in other words, constitutionalism, since the creation of States in political history. Among this making and remaking the constitution is the big way to constitutionalism and constitutional governance. Of course, at this stage (making-process) the legitimacy of a constitution or some principles must be checked. Accordingly, whether during the making-process a system / a constitution takes into consideration the interest of the people at large or whether the people give their consent to have such a constitution/system must be checked to determine the legitimacy of a constitution.

Additionally, consent is the source of the legitimacy of a constitution /system. So, legality or legal validity indicates the appropriateness of measures within the framework of existing law or the legal system. Additionally, the extent to which governments/leaders are committed to enforce, fulfil and protect the contents of a constitution or system/tradition is also a critical criterion to examine the prevalence of constitutionalism in a nation. That is why the researcher is interested in re-examining the philosophy of Constitutionalism in the Gadaa Republic. Consequently, Gadaa is like a hidden treasure that has never been disclosed to Westerners and the world at large, although it contains all the golden principles of Constitutionalism. For instance, the principles of human rights, the principles of sovereignty of the people, the supremacy of the basic laws, accountability of government

officials, separation of powers, conservation of natural resources, and even wild and domestic animals.

Accordingly, in its making-process, it is too difficult to recall exactly when and where the Gadaa system started. However, it is established that the Oromo people have been utilizing the Gadaa system as a traditional mechanism to ensure social justice for centuries. Also, it has been developed and has evolved from the cumulative experiences gained from experiments, practices, customs, and lessons of many generations of the Oromo society in a very long period. Hence, in its evolution, Gadaa is very legitimate as it evolved from the values, customs, and traditions of the Oromo people; even better than the current constitution making-process.

On the other hand, the contents of Gadaa Republic are full with significant principles which give protection for even the unborn children, animal, foreigners/refugees, war prisoners, women, and natures, in general. To sum up, this study concludes that the Gadaa system is a covenant for the Oromo people and the principle of constitutionalism is considerably recognized. Since all the Oromo people participate in their law-making processes at different levels and different age grades. Since all the Oromo people, in all age-groups will give their consent to select or elect their representatives/leaders. Since the people put limitations on the powers of elected representatives through the principles of Gadaa administration and as a nation, the Oromo people have the Gadaa system as a guarantee to make their leaders accountable and transparent both legally and politically in their day-to-day official decisions; and more importantly, since all the Oromo people and their leaders are highly committed to the enforcement, fulfillment, and protection of all the tenets of Gadaa Republic.

The study, therefore, recommends that all concerned parties in general, and all Oromo scholars and people in particular, should strive a lot to re-examine the Oromo philosophy towards the principles of constitutionalism in their modern governance system at national and international levels. Finally, the study recommends potential scholars and researchers to conduct further studies on the Gadaa system; and thereby redeeming classical Gadaa Democracy in all aspects.

## CONFLICT OF INTERESTS

The author has not declared any conflict of interests.

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