

Resurrecting the Tenets of Rule of Law in the Classical Gadaa Democracy in the Ethiopian Federation[#]

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Abstract

The objective of this Article is to evaluate whether or not the tenets of rule law in classical Gadaa democracy can be utilized in the present Ethiopian multinational federation. Across the world, rule of law has been recognized as a symbol of good governance; and the antithesis of arbitrary rule in modern democracies. Many constitutions in the present world incorporate the elements of rule of law either directly or indirectly in their contents. The 1995 FDRE Constitution has recognized rule of law as a stepping-stone to building a political community to ensure lasting peace, guaranteeing a democratic order, and advancing economic and social development. Nevertheless, the elements of rule of law have transplanted from the western democracies in Ethiopia in particular and in Africa in general. But this Article has put its emphasis on exploring the compatibilities of the tenets of rule of law in the classical Gadaa democracy with the modern principles of rule of law and constitutionalism. Additionally, it has analyzed the extent to which the Gadaa brand of rule of law is consistent with the present multinational federal-based state structure in Ethiopia and beyond. The findings of this Article have pointed out that the principles of rule of law embedded in the classical Gadaa democracy are compatible with the modern principles of rule of law.

Keywords: Constitutionalism, Federalism, Gadaa, Rule of Law

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1. Introduction

In Gadaa system, the law is more valuable than one's own child; accordingly, the Oromo people are committed enough to sacrifice their own children for the observance of rule of law.¹

The term rule of law is a common legal and political value to give legitimation a certain government in the modern globalized world. Thus, the doctrine of rule of law is not defined within a single statement; since it contains both legal and political elements. For instance, the definition given for the rule of law may depend on political ideologies, legal and political customs, level of development; and geographical location/geopolitics. Hence, scholars may define the term rule of law based on various criteria like ideologies, capitalism versus socialism; the Western and Eastern World legal customs; North-South scenario categories; or the level of development; that means, developed and developing world. Therefore, every person who defines the term rule of law has defined it as per their partisan interest.

Nevertheless, a consensus is reached to comprehend the idea of rule of law in the contemporary world. Accordingly, rule of law is related to the notion of limited government; though, the nature of limitations on the government varies with the society, culture, political and economic arrangements; the need for limitations on the government shall never be obsolete, where and when rule of law is respected.² Additionally, rule of law is recognized worldwide as an essential component and precondition of good governance and sustainable development in modern jurisprudence.³

Thus, rule of law refers to a principle of governance in which 'all persons, institutions (both public and private) and the government itself are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards.⁴ It requires measures that ensure adherence to the principles of supremacy of law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.⁵

¹ Dirribi Demissie Bokku, *Oromo Wisdom in Black Civilization*, (Finfine Printing & Publishing S.C., April 2011, Ethiopia):278.

² Brian Z. Tamanaha, *On the Rule of Law: History, Politics and Theory* (Cambridge: Cambridge University Press, 2004): 101.

³ Adriaan Bedner, *An elementary Approach to the Rule of Law*, *Hague Journal on the Rule of Law*, 2 (2010):48.

⁴ Report of the Secretary-General on the rule of law and transitional justice in conflict and post-conflict societies (S/2004/616), para. 6.

⁵ *Ibid.*

Tamaha puts it concisely that the notion of rule of law is just one aspect of a larger socio-political complex and what matter is not one piece on its own but how it all comes together.⁶ Thus, the implications that can be derived from these values of rule of law include the notion of limited and constitutional government; the principle of legality; and the avoidance of arbitrary administration.⁷ Generally, in the present civilized world, the notion of rule of law manifests itself in the perspectives of the legal context, democratic governance, and human rights. In a legal context, the doctrine of rule of law comprises various principles, like, the principle of equality before the law, avoidance of arbitrary laws, the generality of laws, predictability of laws, the non-retrospective effect of laws, rationality of law, and others. Rule of law may reveal itself in the principles of a democratic governance system in several manners. For instance, universal and periodic elections, limitations on political powers and the term of political office, and accountability and transparency of government officials. Furthermore, the principles of rule of law also manifest themselves in human rights perspectives. Accordingly, prohibitions against inhuman treatment, the right to life, the right to privacy, the right to liberty, the right of accused persons, and the like are related to the principles of rule of law.

However, the purpose of this Article is to assess the extent to which the Classical Gadaa Democracy is compatible with the modern principle of rule of law. It clarifies the modern principles of rule of law to compare them with the Gadaa-based principles of rule of law. Additionally, it has the objective to analyze the extent to which the Classical Gadaa brand of rule of law is consistent with the present multinational federal-oriented state structure in Ethiopia. Several research findings have pointed out that Gadaa governance accommodates the principles of modern democracy in its traditional platforms.⁸ But, specifically, this Article puts its emphasis on the notion of rule of law in Gadaa governance system; the power of their leaders (Abbaa Gadaas)⁹; they had the culture of practicing accountability and transparency of the government

⁶ Brian Z. Tamanaha, *The History and Elements of The Rule of Law*, Singapore Journal of Legal Studies [2012] 232–247:236.

⁷ Ibid.

⁸ See, Asmarom Legesse, *Oromo Democracy: An Indigenous African Political System*, (Trenton, NJ: Red Sea Press, paperback. ISBN 1-56902-139-2, 2006). Asafa Jalata (2012), *Gadaa (Oromo Democracy): An Example of Classical African Civilization* (*The Journal of Pan African Studies*, Vol.5, No.1, March 2012, **University** of Tennessee, Knoxville; From the Selected Works of Asafa Jalata). Dirribi Demissie Bokku, *Oromo Wisdom in Black Civilization*, Finfine Printing & Publishing S.C., April 2011, Ethiopia; and others.

⁹ The single term office principle under the Gadaa leadership reveals an incredible value of democracy and rule of law; accordingly, the single term office in Gadaa Governance is eight years only; without the practice of re-election.

officials¹⁰; and they had the culture of legislating laws legitimately.¹¹ From various literature and research conducted on Gadaa system; well-known scholars like Asmerom Legese, Asafa Jalata, Mohammed Hassan, Diribi Demise, and others pointed out that Gadaa system consists of a well-crafted and nurtured traditional system of governance that protects human rights and ensures democratic governance in oral/unwritten forms.

Gadaa system had recognized the principles of human rights; far before the invention of all these concepts of human rights and democratic administrations and earlier than their incorporation in the famous International Human Rights Declarations and Covenants. For instance, in the 16th century, when human beings were hunted, made a slave, and sold like property, the Oromo people had been committed to the protection of human rights.¹² Gadaa laws protect females, children, and refugees, and ensure equal protection and equal subjection of laws, adoption, accountability, and transparency of the highest authorities.¹³ Unfortunately, these golden principles of rule of law embedded in the classical Gadaa governance system were neither utilized as a source nor accommodated in the contents of both the regional and federal constitutions of present-day Ethiopia. For this reason, the critical problem we have had in Ethiopia is that the government fails to implement the transplanted elements of rule of law and other con-

¹⁰ In Gadaa governace, the Oromo had the culture of “*Buqqisuu*” or literally uprooting, which means, impeachment in case the leaders/Abba Gadaas abusive their power during in their office term. Hence, there is both political and legal accountability in Gadaa Democracy. Under Gadaa system, 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.

¹¹ In all types of Basic Law-Making Process, legislation will become a law only if it declared and accepted by people at large in Gadaa System. According to the Gadaa making of law procedures, anybody can oppose the draft law by saying “*damman qabe; kormaan qabe; fardaan qabe; tuni, tuni sirrii miti*”; which means, this law is not correct. In this opposing the declared law, no one would be silenced; but they are expected to talk based on the seniority of age.

¹² Makoo Bilii Laws of 1580, (Article 13, 41, 55) deemed enacted in 16th Century. In the history of the Oromo people; there were great law makers. Accordingly, it is said that the Gadaa Laws, of Boorana people were made by Gadaa under the leadership of *Gadawoo Galgalo*; the Gadaa Laws of Tuulama were made by the Gadaa under the leadership of *Cangaree koorbo*; and the Gadaa under the leadership of *Makoo Bilii* made the Gadaa laws of Maccaa. Hence, according to many scholars and Oromo oral traditions; *Makoo Bilii* was a traditional Great Law Maker in Macca Oromo. Some scholars also considered Makoo Bilii as Abba Gadaa, Abba Seeraa or Abba Duulaa. While others elders and scholars believed *Makoo Bilii* as a Great Prophet in Macca Oromo. Accordingly, Makoo Bilii was declared oral laws which contains more than sixty-four (64) Law Articles; for instance, on the area of human rights, family protection, Relationship with other People living around the Oromo, the right to seek asylum, safety and health related laws, criminal punishment and others. Now days, the laws of Makoo Bilii are converted into written forms and available in various literatures and documents. For example, refer the following sources. See Dirribi Demissie Bokku, *Oromo Wisdom in Black Civilization*, (Finfine Printing & Publishing S.C., April 2011, Ethiopia):278; Alessandro Triulzi, *The Saga of Makkoo Bilii: a Theme in Mac'a Oromoo History*, *Paideuma: Mitteilungen zur Kulturkunde*, Bd. 36, Afrika-Studien II (1990): 319-327; Published by: Frobenius Institute.

¹³ Ibid.

stitutional principles continuously. Hence, Ethiopia has neither implemented the imported principles of rule of law nor utilized its traditions to nurture the principles of rule of law in the context of Ethiopian traditional governance systems, like the classical Gadaa democracy.

Therefore, this Article has examined the reasons why the drafters of Ethiopia's constitution had opted for transplanting the elements of rule of law, almost, all in all from the western democracies during the constitutional-making process. Moreover, it has evaluated why the already transplanted principles of rule of law have failed to ensure lasting peace and guarantee a democratic order in the present Ethiopian federation satisfactorily. Eventually, given, the value of laws and lawmakers in Gadaa system, this Article argues that resurrecting the tenets of rule of law in classical Gadaa governance can be utilized as a stepping stone to entrench the modern principles of rule of law in present federalist Ethiopia.

2. The Tenets of Rule of Law in Classical Gadaa Democracy: General Overview

Gadaa system is a very critical and complex system that shows the totality of the Oromo civilization since ancient times. Therefore, Gadaa system encompasses the overall cultural, historical, political, legal, philosophical, religious, linguistic, and geographical foundations of the Oromo society.¹⁴ To this date, no one knows when and how Gadaa system emerged; but it has been proven through various studies that it existed as a full-fledged system at the beginning of the sixteen century.¹⁵ During the beginning of the sixteen century, the Oromo were under a single Gadaa system/administration.¹⁶

Gadaa has three interconnected meanings: "it is the grade 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."¹⁷ Using the philosophy of the classical Gadaa democracy; the Oromo prevented the power not to fall into the hands of war chiefs and despots and thereby ensures the prevalence of rule of law for centuries under the Gadaa-based governance system.¹⁸ The Oromo achieve this goal by establishing a "system of checks and

¹⁴ Asafa Jalata (2012), Gadaa (Oromo Democracy): An Example of Classical African Civilization (*The Journal of Pan African Studies*, Vol.5, No.1, March 2012, **University** of Tennessee, Knoxville; From the Selected Works of Asafa Jalata):130.

¹⁵ Baissa, Lemmu, *The Oromo Gadaa System of Government: An Indigenous African Democracy*, edited by Asafa Jalata, *State Crises, Globalisation and National Movements in Northeast Africa*, (New York: Routledge, 2004), 101-121.

¹⁶ Ibid.

¹⁷ Legesse, Asmarom. 2006 [2000]. *Oromo Democracy: An Indigenous African Political System*, (Lawrenceville, NJ: The Red Sea Press):2

¹⁸ Ibid.

balances that is at least as complex as the systems we find in Western democracies.”¹⁹ Accordingly, the Gadaa system “organized the Oromo people in all-encompassing democratic republic even before the few European pilgrims arrived from England on the North American and only later built a democracy.”²⁰

Consequently, numerous tenets of rule of law are embedded in the classical Gadaa democracy in oral forms which we can mold to the present principles of rule of law in the Ethiopian legal system. In the Gadaa system, several social values strengthen the principles of rule of law. For example, values such as *Safuu* (morality/law), *sirna* (order), *Wal-dhageetti* (tolerance), *elaa fi elamee* (mutual understanding); *baallii dabarsuu* (transfer of power); *hangafa fi quxisuu* (seniority), *ulfina* (respect for one another) and other values which uphold the current principles of rule of law are recognized in the Gadaa system deeply. Moreover, the principles of checks and balances are recognized in classical Gadaa democracy in its traditional and oral forms. Hence, there is a periodic transfer of power within eight years; there is also a division of power, among the legislative, executive, and judicial branches of Gadaa administration; as well as, there is vertical sharing of power between the higher and lower Gadaa based administrative organs. Thus, these divisions and sharing of powers both in vertical and horizontal ways in Gadaa-based governance averts arbitrary administrations and has a great contribution to strengthening the prevalence of rule of law in practices.

Furthermore, Gadaa system has a great place for the protection and enforcement of human rights in its values, long ago, before the recognition of modern human rights documents. Gadaa recognizes the right of human beings, children, women, refugees, the natural environments like rivers, ponds, forests, and wild animals. For instance, the Oromo women respect their rights through the *Siiqqee* institution.²¹ The *Siiqqee* represents motherhood and people respect and revere a woman because *Waaqa* (God) made her be respected and revered in the Gadaa values; hence, interference with a woman’s rights is regarded as violating *seera Waaqa* and *safuu* (violating natural/human rights of a woman, as well as, the moral rules) as per the classical Gadaa democracy. The Gadaa respects the rights of the children, especially children from zero up to eight years (0-8 years children), and have great respect for the whole society not only their family in the Gadaa democracy. Their names are called *Dabballee* (children from age 0-8 years) and they have the right to get milk and food from any person/house; are free from any

¹⁹ Holcomb, Bonnie K. “Akka Gadaatti: The Unfolding of Oromo Nationalism-Keynote Remarks,” *Proceedings of the 1991 Conference on Oromia*, University of Toronto, Canada, 3-4 August, 1-10.

²⁰ Ibid, 4.

²¹ Kumsa, Kuwee. The *Siiqqee* Institution of Oromo Women, *The Journal of Oromo Studies* 4 (1 & 2):127

physical punishments pursuant to the Gadaa rules. The Gadaa respects the rights of refugees and the right to seek asylum through a system of *Koluu Galuu* (seeking asylum).²² Thus, all these principles assessed hereinabove point out that the classical Gadaa democracy has incorporated and recognized various principles which are related and consistent with the modern principles of rule of law.

3. The Statement of the Problem

Traditions, customary rules, and ritual practices have had great roles in molding present-day civilization in general and democracy in particular in this world.²³ Especially, Westerners have been developing their current concepts of democracy, constitutionalism, and rule of law from their traditions. For instance, England has derived its legal system from their traditions since ancient times. Japan, China, and India have now reached their current civilization by making the basic traditions and cultures they received from their forefathers (*Hindu, Shinto, and Mahiberata*) be kept, even at the time they were receiving Islam, Christianity, and other ideologies, especially, democracy and other free believes. They are not here through undermining the cultures and traditions of their forefathers.

However, Africa as a whole including Ethiopia has not been successful in utilizing its traditions and culture to mold its political, economic, legal, and religious system like the Westerners and the Easterners. Adding insult to injury, Africans as a continent, including Ethiopia, have been unable to rectify their past historical distorted history in all aspects even in the current civilized world. They remained followers in all aspects or they imitate either the Westerners or the Easterners. The problem is that Africans of which Ethiopia is a part had transplanted everything including their legal, political, economic, and religious ideologies from other places elsewhere outside Africa. For instance, the scenario of Capitalism versus Communism (Western and Eastern Ideology), Franco-phone versus Anglo-phone (Colonialism Case), Civil Law versus Common Law (Legal Tradition Model), Christianity and Islam (Christian and Islam World) had transplanted or imported from the Western or Eastern countries. The critical problems in these transplantsations were that Africans had dropped out their own traditions, cultures, governance

²² Makoo Bilii Laws of 1580, (Article 13, 41, 55).

²³ Since 15 June 1215; English Great Charter (Magna Carta); England has been evolving her customary or common laws at the level of the most legitimate Unwritten Constitution in the world in modern time. Therefore, it is her common or Unwritten Constitution and laws which made up the strength of England in history).

system, and religion totally. They had neither nurtured their own traditions nor utilized them with the imported system parallelly.

Similarly, many political scientists believe that the origin of rule of law in particular, and other related concepts like democracy, human rights, and constitutionalism was in Western countries. These concepts are considered as the western political culture; therefore, many pieces of literature and scholars believe that these concepts are totally un-African, as well as, un-Ethiopian. The assumption is that the source of democracy in general and the evolution of rule of law, in particular, is outside Africa. Africa has considered a continent where tribal, scattered, traditional, and undemocratic cultures of administrations were rampant; and everything they have been practicing in the modern world as rule of law has been transplanted from the Western democracies at different times entirely. Unfortunately, the prevailing practices also prove this position in many ways.

The 1995 FDRE Constitution aims to build a political community founded on the rule of law; and substantiate the enforcement of this notion with full respect for individual and people's fundamental freedoms and rights.²⁴ Nevertheless, the drafters of the 1995 Ethiopian Constitution haven't utilized the classical tenets of rule of law embedded in Classical Gadaa Democracy during the making process of this Constitution. The entire element of rule of law and other constitutional principles were fetched from outside; rather than searched from indigenous governance like Gadaa system. Hence, the reasons behind disregarding the classical tenets of rule of law in Gadaa governance irrespective of its compatibility with the modern principles of rule of law and democratic governance have remained an anomaly.

On the other hand, the already transplanted principles of rule of law from the Western Countries to build a political community; as well as, to ensure a lasting peace, guarantee a democratic order, and advance economic and social development has remained under question in Ethiopia till this date. Consequently, this Article argues that resurrecting the tenets of rule of law in Classical Gadaa Democracy will have paramount importance in entrenching the culture of rule of law in the present Ethiopian multinational federation.

4. The objective of the Study

The general objective of this paper is to evaluate the compatibility of the tenets of rule of law in Classical Gadaa Democracy with the modern principles of rule of law. Specifically, it has

²⁴ FDRE Constitution of the Federal Democratic Republic of Ethiopia, [Proclamation No. 1/1995. Federal Negarit Gazeta. 1st Year, No. 1., Addis Ababa, 1995]; Preamble Paragraph 1 and 2; Chapter Three of same Constitution.

the objective of excavating the tenets of rule of law in Classical Gadaa Democracy. It analyses the extent to which the Gadaa brand of rule of law is consistent with the present multinational federal-oriented state structure in Ethiopia. Additionally, it examines whether or not, the Gadaa-based rule of law has been accommodated in the contents of the Ethiopian constitution. Moreover, it assesses the extent to which the transplanted principles of rule of law are successful to ensure its laudable goals under the current Ethiopian Constitution. Eventually, it evaluates the extent to which resurrecting the classical principle of rule of law in Gadaa Democracy is possible to nurture the modern principles of rule of law from it in the current Ethiopian legal system.

5. Materials and Methods

This study has employed legal research methods to fulfill its objectives. Accordingly, it has utilized both '*black-letter methods*' and '*law in context methods*.' This '*black-letter method*', focuses heavily, if not exclusively, upon the law itself; here, doctrinal legal research methods; which include a review of related literature, legal and document analyses, comparing principles, case analysis, and theories have been utilized. On the other hand, this study has utilized '*Law in context methods*'; here, the law itself becomes a problem or a cause of social problems; thus, this may be related to evaluating the non-law cases like culture, customs, history, politics, economy, social and others with laws.

Consequently, this study has employed mainly a library-based with documented facts on the Gadaa system, rule of law, and constitutionalism. Continuously, it has analyzed the principles of rule of law both in the modern governance system and in Classical Gadaa Democracy using the legal research methods mentioned hereinabove. Accordingly, in this study, various related literature is written or previously conducted studies on the Gadaa system, as well as, on the rule of law, constitutionalism, and democracy have critically analyzed. Moreover, the tenets of rule of law in Classical Gadaa Democracy have been excavated and compared with the modern principles of rule of law. In doing so, this study has pointed out the prevailing challenges and opportunities in resurrecting the classical tenets of rule of law to nurture it as a modern principle of rule of law in present federalist Ethiopia.

Hence, this study follows explorative research; observations, personal experiences (the researcher is experienced in conducting Gadaa-related research); and documentary methods. Thus, it has explored how one can utilize the principles of the Gadaa system as a modern con-

stitutional principle. It has evaluated the compatibility of traditional rule of law in Gadaa system with the modern notion of rule of law in Ethiopia. Additionally, it has strived a lot, to explore the place and the value of laws in Gadaa-oriented governance. To fulfill these objectives; it has reviewed various literature written on: Classical Gadaa Democracy, the principles of rule of law; the principle of constitutional governance; and the tenets of modern constitutionalism. For this reason, its method is a qualitative one.

6. Result and Discussion

As clarified hereinabove, the notion of rule of law can be better understood by assessing its core elements. Hereunder, the interwoven building blocks of rule of law in modern democracy have been analyzed and compared with the tenets of rule of law embedded in Classical Gadaa Democracy. The consistencies of the classical principles of rule of law in Gadaa-oriented governance have been discussed and aligned with the modern principles of rule of law. Accordingly, the essential yardsticks of rule of law; namely, the notion of limited government, the principles of legality, and the principles of rule of law, not a rule of man have been analyzed and compared. Additionally, the classical tenets of rule of law in Gadaa governance system have been evaluated and checked for reliabilities with the fundamental principles of modern human and democratic rights in the following manner.

6.1 The Principle of Limited Government

The broadest understanding of the rule of law is that the sovereign, the state, and its officials, are limited by the law.²⁵ In a nutshell, a limited government is a type of government in which all its governmental power is limited by law/constitution. This means the way in which a certain government is established (come into power), the manner in which it is exercising its governmental power, and finally, its duration in power is also limited by time. Accordingly, a limited government can attain governmental power only and only by the will of its citizen through a political process known as an election.²⁶ Hence, a fair and free election is the most important element of limited government. Additionally, after being elected and seizing political power a

²⁵ Brian Z. Tamanaha, *The History and Elements of The Rule of Law*, Cited at Note 6.

²⁶ See Article 8, 38 and 73 of the 1995 FDRE Constitution: cumulatively, these three constitutional provisions show that power of government shall be assumed through political election only.

certain government must be accountable and transparent in conducting its official duties.²⁷ Furthermore, the office duration of a certain government as an institution or as a leader must be restricted by specified time/years if it's a limited government.²⁸ Based on these concepts, the classical principles of limited government entrenched in Gadaa governance system has evaluated for compatibility in the following manner.

i) Holding Political Power in Gadaa Democracy

In the history of world politics, the source of political power varies depending on the time and political culture of a certain state. Thus, the system of holding political powers has been manifesting in numerous ways; such as a monarchical model of holding political power (hereditary politics); a military way of holding political power (military dictatorship); and holding political power through election (democratic government system). Generally, political power can be held either through democratic means or undemocratic means in modern global politics. Accordingly, the concept of limited government and the prevalence of rule of law can be guaranteed and practiced in a democratic government system only. Therefore, a democratic and legitimate way of holding political power in modern democratic republics is through an election that guarantees the free expression of the will of the people. Thus, to come into political power under the guise of rule of law, a certain group/political party shall prove that it is controlled the political power through a democratic and legitimate election only.

In Gadaa governance, political power is neither given from above (God) nor inherited from families/ancestors. The Oromo culture never knows political power as a hereditary lineage; as well as, it hasn't recognized holding political power through force or illegal means. Therefore, the only way of holding political power in Gadaa Democracy is through election as per the interest and consent of the people at large. Unlike Western democracy, which depends on election only for holding political powers; Gadaa system rather educates and trains the prospective leaders for forty years prior to allowing them to the election.²⁹ Even the concept of political election in its legitimate manner is a recent history in world politics; almost it appeared and

²⁷ Under the 1995 FDRE Constitution; the principle of accountability and transparency (both political and legal responsibility) as per Article 12; and the principles of 'Vote of No Confidence' by the House of People's Representatives, under Article 55(17 & 18) are clearly recognized.

²⁸ See Article 58 (3);70(4) & 72: Article 58(3): "The House of Peoples' Representatives shall be elected for a term of five years. Elections for a new House shall be concluded one month prior to the expire of the House's term. "Article 70 (4): "The term of office of the President shall be six years. No person shall be elected President for more than two terms." Article 72 – The Prime Minister shall be elected for five years; this Constitution hasn't limited for how many term offices can a certain Prime Minister shall be re-elected.

²⁹ To be elected as government official (Abba Gadaa), a certain Oromo shall attain the age of forty (40) years. To hold political power, a certain Oromo shall pass through in five Gadaa Grade, which are divided into eight years each. Accordingly, [0-8]-Daballee; [8-16 years]-Foollee; [16-24 years]-Qundaala; [24-32]-Kuusaa; [32-40years]-Raabaa Doorii.

was practiced in the post-Second World War. Nevertheless, the Oromo people had been practicing election since time immemorial. No one can precisely trace the time when the Oromo people started electing ‘*Abbaa Gadaas*’ as their leaders; whereas, the modern form of the democratic and constitutional election was started in the post-1945 (in the post-Second World War).

ii) Conduct and Accountability of a Government

Electing a certain political party to hold political power is not an end by itself, it is a means to an end for a certain nation. For this reason, if the method of holding political power by a certain ruling government is legitimate pursuant to the spirit of rule of law (limited government); the next step is checking the manner of practicing its power with the same notion. The elected government shoulders multiple duties; commonly, the elected or appointed government officials shall be responsible for their actions, inactions and decisions both politically and legally.³⁰ Obviously, the accountability and transparency of government officials have remained theoretical in Africa. Similarly, making government officials responsible for their actions and inactions has remained a theoretical rhetoric in the Ethiopian political culture. Historically, the Ethiopian legal tradition and political history have not favored the culture of rule of law and accountabilities. The popular legal and political conception is that governments can and should do whatever they can to stay in power and benefit from their power.³¹ The old Ethiopian adage “*semay ayitarus nigus ayikeses*” (roughly “you cannot plough the sky nor sue government”), and “*sishom yalbela sishar yikochewal*” (roughly “if you don’t benefit (personally) when in power, you will regret it when out of power”) capture popular conceptions of law and political power.³² In short, historically in Ethiopia, the historical and social conception is that government officials are immune from accountabilities in all affairs.

Nevertheless, in Gadaa governance system, any authority that goes beyond his legitimate power shall be accused. For instance, when more than 5/9 of Gadaa leaders are incapable or weak the people do not have confidence in them or do not trust them; the *Gumii* (Gadaa Assembly) removes all Gadaa leaders from power.³³ This ceremony is called ‘*Buqqisuu*’ (Removing from the Gadaa Position) and replaces them with collusion leaders formed from three parties/grades. That is three persons from *Raabaa grade*, three persons from *Yuuba second grade*,

³⁰ See the 1995 FDRE Constitution Article, 12 and 55 (17 &18) as an example.

³¹ Abebe, Adem, ‘Rule by law in Ethiopia: Rendering constitutional limits on government power nonsensical’, *CGHR Working Paper 1*, Cambridge: University of Cambridge Centre of Governance and Human Rights, (April 2012):10.

³² Ibid.

³³ Dirribi Demissie Bokku, Oromo Wisdom in Black Civilization, Cited at note 1:258.

and three persons from *Yuuba third grade*.³⁴ This collusion government is called ‘*Gadaa Kontomaa*’, which means the last option.³⁵

Hence, the backward tradition that says, “*Samay ayitaresim Nigus ayikasasim*” which means, “As it is impossible to plough the sky, the king cannot also be accused” has no place in Oromo Gadaa system. In Gadaa system, all are answerable to the laws for their actions, inactions, and decisions including the active ‘*Abbaa Gadaas*’.³⁶ Therefore, the Gadaa Democracy recognizes the principles of limited government and thereby practices the principles of rule of law genuinely.

iii) Limited Term of Political Office in Gadaa Democracy

The utmost democratic symbol in Gadaa system is that elections and changes of leaders shall be conducted every eight years. Thus, the term office of the Gadaa leaders shall be eight years. Any person shall be elected as leader/*Abbaa Gadaa* for a single terms office in Gadaa governance system. Unlike the presidents and premiers across sub-Saharan African countries, where they stay in power for an unlimited period of time, the single-term office principle under the Gadaa leadership reveals an incredible value of limited government and rule of law. Additionally, the Oromo has a genuine custom of transferring authority (*Baallii*) timely. In Oromo seizing power longer than the time it is expected to be transferred is abnormal (unconstitutional).³⁷ It is believed that if one doesn’t transfer authority (*Baallii*), he may phase punishment from God, whilst the nearest monarchies and kings existing at that time claimed that they shall rule forever as the authority is given to them by God.

In short, the Classical Gadaa Democracy has recognized all the three elements of limited government by law genuinely; namely, the legitimate way of holding government power (through election); accountability of all government officials including *Abbaa Gaddas* for their actions, inactions, and decisions without any exceptions; as well as, the political term office of the elected government official is limited to a single office duration/term, that is, eight years. Consequently, the principle of limited government as one sect of rule of law is fully respected in Gadaa governance system.

6.2 The Principle of Formal Legality in Gadaa Democracy

³⁴ Ibid.

³⁵ Ibid.

³⁶ Ibid.

³⁷ Ibid, 278.

The second element of rule of law next to the principle of limited government is the principle of formal legality.³⁸The principle of formal legality claims that laws must be set forth in advance, they must be general, they must be publicly stated, they must be applied to every one according to their terms, and they cannot demand the impossible.³⁹In modern constitutional governance, a legal system that lacks these qualities cannot constitute a system of rules that bind officials and citizens. Above all else, formal legality provides predictability through law.⁴⁰As Hayek put it succinctly, the rule of law makes ‘it possible to foresee with fair certainty how the authority will use its coercive powers in given circumstances and plan one’s individual affairs on the basis of this knowledge.’⁴¹Generally, formal legality enhances liberty of actions or individual autonomy, because people are advised of their permissible range of free action. It is attributed to the enhancement of predictability, certainty, and security.

Equally, the principle of formal legality is recognized in Gadaa governance system in a comprehensive manner. The term law is unique for the Oromo people in their Gadaa governance system. According to the Oromo, ‘*Law is more valuable than one’s own child*’.⁴²The Oromo people sacrifice their own children for the observance of rule of law.⁴³ As a result, ‘law’ is a vital instrument to ensure social justice; and where there is no rule of law, it is unlikely for citizens to exercise freedom, equally benefited from resources, and consequently maintain sustainable peace as per the Gadaa system.⁴⁴

Therefore, the Oromo people are known for making laws by themselves and executing them in a very formal way. In Gadaa governance system, laws are made as per the pre-sated procedures, so it is impossible to enact laws arbitrarily. Laws are publicly stated, and in all types of making processes, legislation will become law only if it is declared and accepted by the people at large.⁴⁵Even during the law-making process, anybody can oppose the draft law by saying “*damman qabe; kormaan qabe;fardaan qabe; tuni, tuni sirrii miti*”; which means, this law is not correct.⁴⁶In opposing the proposed law, no one would be silenced; but they are expected to talk based on their seniority of age.⁴⁷After it has been made in this democratic/legitimate way; the

³⁸ Brian Z. Tamanaha, *The History and Elements of The Rule of Law*, Cited at Note 6:240.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Friedrich A. Hayek, *The Road to Serfdom* (Chicago: University of Chicago Press, 1994):80.

⁴² Dirribi Demissie Bokku, *Oromo Wisdom in Black Civilization*, Cited at note 1.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid., 279

⁴⁶ Ibid.

⁴⁷ Ibid.

law of Gadaa of the Oromo cannot be broken or collapsed by any means; which means, “*Tu-meen Seera! Hinjigu, hin dhangala’u; seera Gadaa Oromooti.*”⁴⁸In Gadaa system, the enacted laws must be applied to every one according to their terms, and they cannot demand the impossible.⁴⁹At the frontispiece of the Oromo legislation, one can read these two fundamental adages, which must serve as a lighthouse for all the codes and as the guide for all legislators.⁵⁰ “1stAbban Hera Umaa Waaqa” i.e. “The Author of Laws of all Creatures that is God” “2nd Serri Waaqa Seera Biya Immoa i.e., the Commandment of God Rule over the National Legislation.”⁵¹ These two maxims precisely explained hereinabove by Martial De Selviac show the extraordinary wisdom of categorizing laws in the Oromo Gadaa system as Natural Laws which are immutable and not changeable and manmade laws or positive laws which can be changeable from time to time since the 16th century. This is exactly similar to the modern category of laws as natural laws like human rights which are emanating from the nature of mankind and Positive laws which are made by the parliament or given by the government, like democratic rights.

To sum up, the principle of formal legality has been accommodated in the Classical Gadaa Democracy. For instance, the law is enacted in a legitimate way (or not arbitrarily imposed by the government); the law is predictable, certain, general, and equally applicable to all persons in Gadaa governance. The Gadaa-oriented laws are rational, driven by the interest of the public, shall not command the impossible, amendable, and shall be declared publicly. Furthermore, the law protects the autonomy and liberty of an individual and a group of people in Gadaa governance system.

6.3 The Principle of Rule of Law; Not Rule of Man in Gadaa Democracy

The principle of rule of law, not a rule of man is commonly used by different names in modern legal literature; namely, ‘the rule of law, not man’; ‘a government of laws, not men’; ‘law is a reason, man is passion’; ‘law is objective, man is subjective.’⁵²The inspiration underlying this idea is that to live under the rule of law is not to be subject to the unpredictable vagaries of other individuals; whether monarchs, judges, government officials, or fellow citizens.⁵³It is to

⁴⁸ Ibid.

⁴⁹ Father Martial De Selviac, *An Ancient People in the State of Menelil, The Oromo, Great African Nation*, (Paris, 1901):229

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² Brian Z. Tamanaha, *The History and Elements of The Rule of Law*, Cited at Note 6:243.

⁵³ Ibid.

be shielded from the familiar human weaknesses of bias, passion, prejudice, error, ignorance, or whim.⁵⁴ In modern constitutional republics, although, the rule of law not man's ideal applies to all government officials. But, as law interpreting organ of a government, judges have special preserve in enforcing the principle of rule of law, not the rule of man. It is believed that a judge must be unbiased, neutral between the parties, free of passion, prejudice, and arbitrariness, and loyal to the law alone to ensure the principle of rule of law, not the rule of man. To enforce the principle of rule of law, not the rule of man; there must be a well-developed legal tradition, well-educated and well-trained legal professionals, an independent judiciary, and public confidence in the justice machinery in a certain nation.

The principle of rule of law, not the rule of man has been recognized in Classical Gadaa Democracy nicely. The Gadaa system is an egalitarian democratic governance system that has been practiced among the Oromo people since the 16th century. In Gadaa Oromo, every being and everything have a rule; that is why the Borana states that there are laws for everything, even for the dog.⁵⁵ The Oromo culture has no place for arbitrariness, bias, prejudice, and ignorance in adjudicating and resolving all affairs of problems and disagreements both among the Oromo and the non-Oromo. The Oromo people upbringing their children by teaching and training them the fundamental principles that telling the truth, respecting nature, being trustworthy, standing for the right thing, respecting the laws/safuu, and protecting the environment.

Additionally, in Gadaa system, the Oromo had developed '*Safuu*' the principle of deep moral honor and accountability as one core of rule of law. '*Safuu*' Oromo, therefore, is an expectation that people must rise above self-interest and act in the public interest with wisdom and courage in the interest of rule of law not the rule of man. Therefore, the law should be interpreted and utilized in the interest of justice and truth; not be subjected to the unpredictable vagaries of other individuals during the interpretation and adjudication of cases.

6.4 The Place of Fundamental Human and Democratic Rights in Gadaa Democracy

In addition to the assessed elements of rule of law hereinabove; International Human and Democratic Rights Principles are also considered as one element of rule of law in the present constitutional governance system. The principles of human rights and principles of democratic

⁵⁴ Aristotle, *Politics*, ed. by Stephen Everson (1988), (Cambridge: Cambridge University Press, 1988) vol. 3:78.

⁵⁵ Asmarom Legesse (2006), *The Oromo Democracy; An Indigenous African Political System*", (Red Sea Press Inc., 2006):201.

governance as elements of rule of law in Classical Gadaa Democracy have been analyzed as follows:

i) The Concept of Human Rights in Gadaa Democracy

The Oromo people started to utilize Gadaa-oriented democratic governance during the 16th century when human beings were hunted and sold like animals throughout the land of Africa. In its contents, the Gadaa Basic Laws have recognized the concept of human rights, far before their inventions in the Western Democracies and earlier than their incorporations under the well-known International Human Rights Covenants and Declarations; like UDHR, ICCPR, ICESCR, CRC, CEDAW, and others.⁵⁶ Nevertheless, in the 16th century, when human beings were hunted, made a slave, and sold like property; the Oromo people had been committed to the protection of human rights.⁵⁷

Gadaa Laws incorporate the basic principles of fundamental human rights which protect every aspect of living and non-living things. In its contents, it protects human beings, animals, wild-life, plants, rivers, ponds, hills, grasslands, and any aspects of nature. In Gadaa governance, the protection of human rights like the rights of children, women, refugees, war prisoners, and others is a culture for the Oromo; not only recognized and evolved after the Second World War like in the case of Western democracies. The Laws of Gadaa recognize that “an already born child is a human being”; all human beings have humanitarian dignity; a child of the nation is just like one’s own; the problem of the wife is the problem of the husband”⁵⁸ The Oromo extends the notion of human rights to the non-humans (to both living things and non-living things). Consequently, in Gadaa laws/*Safuu*, the concept of human rights had been respected and aligned with the harmonious relationships among human beings, between human beings and animals, between human beings and the natural environment, and between God and human beings. Thus, the laws of Gadaa protect fundamental human rights in their classical form since time immemorial unconditionally.

ii) Democratic Principles as a foundation of the Rule of Law in the Classical Gadaa System

Of course, rule of law itself is one essential element of the democratic principle in the modern democratic governance system. But, in this paper, some basic democratic principles embedded

⁵⁶These international Human Rights Declarations, Covenants and Treaties were enacted after the Second World War (in post 1945). They were developed as a response to the atrocities and sorrow those happened to the world people at the time.

⁵⁷ Makoo Bilii Laws of 1580, (Article 13, 41, 55) deemed enacted in 16th century. As it is commented before, it is very important to give more information about these laws and where they can be accessed. For example, where do you get them? Why didn’t you cite it properly?

⁵⁸ Jabessa Ejeta, *Ye Oromo Biher Bahilna Acir Tarik*, Finfinfine:69, [As cited in Dirribi Demissie Bokku, *Oromo Wisdom in Black Civilization*, Cited at note 1): 280]

in Classical Gadaa Democracy have been evaluated with its modern counterparts for checking consistencies. Accordingly, the pillars of modern democratic principles incorporated in the text of a certain legitimate Constitution have been analyzed in the following manner:

The sovereignty of the People

In its contents, the Gadaa laws incorporate and recognize the sovereignty of the people. In Gadaa Democracy, the sovereign power vests in the hands of the people not in the hands of leaders. For instance, Dirribi has briefly pointed out how the sovereignty of the people had accommodated in the Gadaa Democracy as follows:

In Oromo democratic culture, the supreme power is not in the hands of those well-respected individuals (elders) having the knowledge of 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 Gada who are administering the country has no such authority. However, the supreme authority belongs to the people's Gumii (Assembly) the representatives of the people."⁵⁹

Consequently, the sovereign power vests in the hand of the people, and the people are also considered sovereign in the Gadaa system of the Oromo similar to the modern constitution.

Supremacy of the Constitution

Supremacy of the Constitution is the other core principle of democracy in the modern constitutional governance system. It is also considered an essential symbol for the prevalence of rule of law in a certain country. Similarly, the traditional Gadaa laws have incorporated the principles of supremacy of the Constitution in its classical platform. Concerning this principle, Asmerom has witnessed in the following manner:

*"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 Gada."*⁶⁰

Separation of Power

Unlike the division of powers between the federal and the states, or separation of powers among the three wings of government in modern jurisprudence; the Gadaa-based division of power

⁵⁹Dirribi Demissie Bokku, Oromo Wisdom in Black Civilization, Cited at note 1.

⁶⁰Asmerom Legesse, Oromo Democracy, cited at note 8.

follows generation and age-group-based power division. It is the type of division of power in which every citizen involves actively in the political and legal affairs of their country. The Gadaa is entitled to powers to govern the country and defend it from the enemy.⁶¹For instance, the Kuusaa (Qondaalaa) has the right and responsibility of attacking the enemy upon request.⁶² The Gumii (Assembly) has the powers of changing laws, advising and guiding the Gadaa, or uprooting and make other elections.⁶³The Ayyaantuus (Abba Mudaa) also have the power to decide Election Day and to bless the authorities like the ya'aas, jiila, Gumii, and Abba Gadas.⁶⁴All groups work in cooperation and they do not have superiority and inferiority complexities.⁶⁵Therefore, the principle of separation of power is also recognized under the Gadaa laws.

7. Conclusion and Recommendation

The Classical Gadaa Democracy of the Oromo people is a well-crafted and nurtured traditional system of governance. In Gadaa governance system, a government is limited by law. That means, the mechanism of holding political power; the manner of utilizing political power; as well as, the term of office of any appointed or elected officials are restricted under the basic laws. In Gadaa Democracy, a legitimate election remains the only source holding political power. The elected leaders (*Abbaa Gadaas*) shall lead their people as per the laws of Gadaa only for a single term office which is eight years. Acting beyond the power given or abusing the power or weakness in conducting the imposed duties under the Gadaa governance system shall lead to dismissal from the governmental power through a process of '*buqqisuu*' (uprooting or impeachment).

The culture of the law-making process is all-inclusive and participatory in Gadaa Democracy. In practice, the Oromo people are committed to enforcing, protecting, and fulfilling each and every principle of Gadaa laws after it has been enacted. Even, the Oromo are ready to sacrifice their own children rather than violating the Gadaa principles. The Gadaa laws are formal and rational; therefore, Gadaa laws are enacted in a general manner, declared publicly, set forth in advance, do not command the impossible, and are never imposed against the interest of the

⁶¹Dirribi Demissie Bokku, Oromo Wisdom in Black Civilization, cited at note 1.

⁶²Ibid, 337.

⁶³ Ibid.

⁶⁴Ibid.

⁶⁵Ibid.

people at large. The Gadaa laws are applicable to all people equally; thus, there is no discrimination and arbitrariness in enforcing and interpreting these Gadaa laws. Gadaa laws protect the liberty and autonomy of individuals and groups.

Additionally, the fundamental principles of modern human rights and democratic rights are accommodated in the contents of basic Gadaa laws. The Gadaa brands of human rights protect both the rights of human beings and non-human beings. The traditional principles of human rights in Gadaa system have been implemented under the value of '*Safuu*'. Therefore, the *Safuu* of human rights *in* the Classical Gadaa System maintains; coexistence and harmony among all people; maintains a good relationship between humans and animals; maintains a good relationship between humans and the natural environment; and maintains a good relationship between God and man. Likewise, Gadaa laws recognize the basic principles of democratic governance, like the sovereignty of the people, the supremacy of the constitution, the separation of powers, and the participatory decision-making process.

In conclusion, the tenets of rule of law including the principles of limited government, formal legality of the law, and rule of law not the rule of men have high value in the Gadaa governance system. The fundamental principle of human rights and democratic rights are also recognized in the contents of Gadaa-based laws extensively.

To conclude, this Article recommends that resurrecting, collecting, and codifying the scattered tenets of classical rule of law in Gadaa system must be conducted by all concerned bodies; especially by the Oromo scholars, the regional government of Oromia, the federal government, and other concerned organs. Then, it recommends that the government shall utilize the Classical Gadaa brand of rule of law with the modern principle of rule of law parallelly. Eventually, this Article recommends potential scholars and researchers conduct further studies on the overall aspects of Gadaa governance system with the intention of upgrading it to the zeal of modern rule of law, constitutionalism, and democratic principles.