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Party System and Pluralistic Federalism in Ethiopia

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**A Dissertation Submitted to the Center for Federalism and Governance Studies,
College of Law and Governance Studies, Addis Ababa University, in Fulfilment of
the Requirements for the Degree of Doctor of Philosophy (PhD) in Federalism and
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Addis Ababa, Ethiopia**

DECLARATION

I hereby declare that this thesis, entitled: Party System and Pluralistic Federalism in Ethiopia has been composed entirely by myself and has not been submitted for any other degree or qualification. The work complies with the regulations of the University and meets the accepted standards with respect to originality and quality and all sources of information have been specifically acknowledged.

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Abstract

The study delves into the intricate relationship between party system and Ethiopia's federal constitutional system. Employing an interpretative case study design, the research leverages theoretical and empirical frameworks to provide a nuanced analysis of the Ethiopian case within its unique contextual setting. Notably, the aim is not to generate or test generalizable propositions, but rather to offer an in-depth understanding of this case. The study framework encompasses the historical experiences of pluralistic federations, acknowledging the diverse outcomes that range from success to failure. Since World War II, the number of federations has grown significantly, reaching approximately 44 by the early 1990s. However, this period also witnessed the dissolution of 27 of these federations, all of which shared characteristics of multiethnicity or pluri-nationality and a lack of robust democratic systems. Concurrently, other states acceded to the remaining 17 federations, including Ethiopia. While the recent recognition of federalism's inherent link to democratic principles is a positive development, the historical failures of undemocratic federations offer a stark reminder: federalism requires a democratic foundation for its effective functioning. This attests to the proposition that the Ethiopian ethnic federal formula could not flourish without multiparty democracy. Since the inauguration of the ethnic federal system in 1995, six national elections have been conducted in which the practice of multiparty system has come under question. Therefore, the main purpose of the study is to investigate the practice of multiparty democracy, with a competitive multiparty system and democratic elections at its centre, in light of the ethnic federal constitutional order. It finds that the lack of multiparty politics, mainly multiparty-multilevel representation, has blocked the legitimacy and effectiveness of the federal constitutional in three ways (with which the chapters of the study and its research question are structured). The first is the overwhelming dominance of the drafting, the public discussion, and the ratification of the Federal Constitution by the EPRDF has precipitated the legitimacy gap of at least the federal system in procedural (the deficit of multiparty deliberative constitution-making and constitutional imposition) as well as substantive aspects (a politicised constitution from the Marxist-Leninist-inspired revolutionary-democratic articulations of the EPRDF). The second is that the structures of the federal system and their operations have been dependent on the political interests of the non-competitive and centralised dominant party, the EPRDF, at the expense of the democratic representativeness of the federal institutions of self-rule and-rule. Lastly, the system of constitutional review and amendment has been ossified and devoid of meaningful dynamism under the de facto one-party rule. In sum, the study underlines the federal malfunction of the one dominant-party system in Ethiopia. It has implications for the recent political developments in terms of juxtaposing the politics, structure, and functioning of the Prosperity Party (PP) with the objectives, principles, and development of the ethnic federal constitutional map. The way incumbents interact, which involves the debate on the broad-based integrative advantage of multiethnic congressional hegemonic parties in containing ethnic rivalry and fragmentation, with the federal system has far-reaching impacts on the stability of the Ethiopian polity that has seen spates of ethnic-based tensions and violence. How the tottering democracy performance of the country improves towards multiparty opening in such a way that sets easily with the contentious ethnic politics is a notable topic for further research.

Keywords: Constitution-making Ethnic federalism, Ethiopia, party system, EPRDF, Ethiopian Constitution, Ethiopian federalism, democracy

List of Acronyms and Abbreviations

| | |
|----------|--|
| AEUP | All Ethiopia Unity Party |
| AICP | Indian National Congress Party |
| ANC | African National Congress |
| ANDM | Amhara National Democratic Movement |
| AV | Alternative Vote |
| BGPDUF | Benishangul-Gumuz Peoples' Democratic Unity |
| BP | Blue Party |
| CUD | Coalition for Unity and Democratic |
| CUDP | Coalition for Unity and Democratic Party |
| ECSJ | Ethiopian Citizens for Social Justice (EZEMA, in Amharic) |
| EDFU | Ethiopian Democratic Forces Union |
| EDP | Ethiopian Democratic Party |
| EDU | Ethiopian Democratic Union |
| EPRDF | Ethiopian Peoples' Revolutionary Democratic Party |
| FPTP | First-Past-the Post |
| ICG | International Crisis Group |
| IDEA | International Institute for Democracy and Electoral Assistance |
| LPR | List-Proportional Representation |
| MoPFA | Ministry of Pastoralists and Federal Affairs |
| NEBE | National Electoral Board of Ethiopian |
| NNPs | Nations, Nationalities and Peoples |
| OFC | Oromo Federalist Congress |
| OFDM | Oromo Federalist Democratic Movement |
| OPDO | Oromo People Democratic Organization |
| PP | Prosperity Party |
| SEPDM | Southern Ethiopia Peoples Democratic Movement |
| ESD-SCUP | Ethiopian Social Democracy-Southern Coalition Unity Party |
| STV | Single-Transferable Vote |
| SNTV | Single-non-Transferable Vote |
| TPLF | Tigray People's Liberation Front |

CHAPTER ONE

Introduction

1.1. Background

The world's polities exhibit a kaleidoscope of political structures, processes, legal systems, and institutional frameworks. Among them, roughly 15 per cent have chosen to operate under federal constitutional order. Federalism, federal system, and federation are terms employed to mean the processes, trends, principles, and structures in some states' organisation (Ehrlich, 1984, p. 360). Federations, according to the pioneering work of Preston King (1982), are polities built upon a specific set of constitutional principles, those principles themselves arising from the core tenets and institutional prescriptions inherent to the concept of federalism. In essence, the unique contours of federalism as a doctrine dictate the key elements that comprise these constitutional principles, and these principles, in turn, shape the very architecture and operation of federations.

Pluralistic federalism underscores the application of federal constitutional principles with the purpose of diversity recognition and accommodation. Differing from the territorial organization of power in such territorial models of federalism as the USA, Germany, Austria, Mexico, and Brazil; pluralistic federal system aligns federal constitutional system with the rights, identities, and interests of identity groups, assumed to be distinct from each other. Ethnic, linguistic, religious, or national groups secure, directly or indirectly through federal units, representation in the federal shared-rule and become the loci of federal constitutional autonomy in the form of territorial and community, or both. As a constitutional order, both the self and shared-rule dimensions of pluralistic federal system mean distinguishable specific constitutional characters. Studies of federal systems have shown that pluralistic federal orders share, more or less, five basic constitutional characteristics (Linz, Stepan, and Yadav, 2011, p. 263-271). They are (a) the political recognition of ethnic or national pluralism as a plural *demoi*, (b) self-governing identity groups, (c) minority participation and protection, (d) the conversion of plurality at a federation level into multiple federal-unit level majorities, and (e) entrenched constitutional diversity that is important to embrace consensual political and institutional arrangements.

How democracy relates to the above constitutional features of pluralistic federalism is an important point attaining the growing interest of scholars in the areas of democracy, constitution, and federalism. The group rights orientation in the constitutional design of pluralistic federalism does

not necessarily entail an essential rejection of democratic rights. Individual democratic rights can be reconciled with the politics of identity accommodation, which is an eminent theoretical formulation advancing the congruence between pluralistic federalism and liberalism, as a theoretical strand of multiculturalism (Kymlicka, 2002, p. 327-377). A considerable amount of literature on ethnic and multinational federalism has indicated that, owing to the compounded layers of power structure, federal system is capable of maintaining identity group rights as well as individual liberty and equality. As a result, in pluralistic federations, Kincaid (2010, p. 299-340), doubting Schmitt's (2000, p. 40) remark that "federalism seems to be creeping insidiously onto the democratization agenda" claims that democratization and federalism go in tandem. This interplay is much more pronounced in the impacts of multiparty democracy on the stability and effectiveness of multiethnic and multinational federal orders. That is the analytical contour of the dissertation that goes about the meaning of multiparty democracy and its implications for the success and failure of pluralistic federal polities.

Multiparty system and inclusive elections are the core parts of electoral democracy. There are multitudes of democratic models and theories, not forgetting the contentious conceptions of democracy across the ideological spectrum. Though highly flexible and an object of discursive discourses; democracy implies certain principles, institutions, and practices indispensable to its normative values and semantic meanings (Cunningham, 2002, p. 11). In meeting these values and meanings, electoral democracy is procedural democracy that places the highest significance on the competitive and inclusive exercise of democratic rights. Even if electoral democracy, Copped and Gering (2011) wrote, differs from the civil liberty, egalitarian, liberal, pluralist, and majoritarian models of democracy in the prioritization of political values and processes; they converge on the significance of competitive party system and democratic elections to the legitimacy of political systems in terms of making available channels of competitive and inclusive political participation, accountability, protection for civil liberties, and power check-and-balance. Through these channels, discourse on the legitimacy of a pluralistic federal system brings party systems and elections into the spotlight.

It can be said that the normative explanation of multiparty system and democratic elections in the context of a pluralistic federal system poses challenges to the Iberian (Burgess, 2011) conception that as long as federalism is not a political ideology, it can be applied within various political

systems, regardless of their democratic status. Leaving that for further studies, the three points establish the explanation.

First, multiparty system can enhance deliberative federal constitutional designing. In mature and stable pluralistic federations, political parties were the chief actors in the federal constitutional designing process. The origins of these federations had elements of multiparty negotiations among various parties representing different identity groups and political interests. As indicated later, Belgium, Canada and Switzerland are examples of pluralistic federations having multiparty origins. Five, three and twelve political parties participated in the making of the federal constitutional choice of Switzerland, Canada, and Belgium, respectively. The Indian Constituent Assembly that adopted the 1950 Constitution also had multiparty representation that might balance the dominance of the Indian National Congress (INC) in the constitutional drafting and adoption activities (Telford, 1999). The active participation of parties, both segmental and federation-wide, enshrined the initial legitimacy of such federations. That is quite different from the cases of defunct pluralistic federations, which were almost the results of the constitutional imposition of a concentrated political force hardly representative of the politics of distinct identity groups. Such dictatorial practice avoids a consciously deliberative federal design among the constituent ethnic groups of a federation.

The blanket adoption of the colonial federal legacy of Malaysia after its independence, the UN-sponsored Ethio-Eritrean federation, and the communist parties' top-down federal declarations in Yugoslavia, Czechoslovakia, and the USSR had precipitated the detachment of their federal choices from inclusive political forums among ethnic groups. The monolithic federal choice of a hegemonic and one-party system undermines the possibility of political parties with alternative federal goals to catalyse the meaningful deliberation of contending voices in the process of federal choice and institutional designing. It does not only circumscribe the 'original legitimacy' of a federal system but also the effectiveness of its implementation later. Tsegaye (2010) captures the problem of a closed federal origin as he argues that if the designing process of a constitution is flawed, its content is hardly treasured.

Second, multiparty system and democratic elections institutional representativeness in the federal self and shared-rule. In a multiethnic federation, for instance, multilevel multiparty competition deepens the ethnic representativeness of the federal structure. The idea of "the best of the big and the best of the small" is manifested in the electoral gains of segmental ethnic and federation-wide

political parties that defend and promote layers of ethnic and multiethnic interests. This strengthens the rights of ethnic groups to exercise the constitutional division of power by electing parties they believe will safeguard their self-rule and multilevel participation. In other words, the democratic right of changing who is in power through the ballot box compels the accountability of political parties to act as per the interests of ethnic groups, or their electoral constituencies in general.

There are many regional and federation-wide parties in the pluralistic democratic federations. In addition to the decentralization of the federation-wide big parties, the proliferation of provincial parties in India and regional parties in Spain, Belgium, and Canada has augmented (indicated in the next chapter) the representativeness of the federal and provincial governments vis-à-vis the distinct ethnic groups and communities. The contribution of the segmental parties of Quebecoise to the Canadian federal constitutional development in expanding its accommodative setting is widely recognized. Similarly, parties in the autonomous regions of the Basque Country and Catalonia have asserted the federal self-rule of the regions and their representativeness to take the lead in the articulation of the purported distinctive political discourses of the Basque people and the Catalans. It shows how the multiparty system of a given democratic pluri-national federal order can reflect what Livingston (1952, p, 87) calls "the federal quality of the society". This also calls in the federal roles of federation-wide political parties such as the Spanish Socialist and Popular parties, the Swiss Labour and Conservative parties, the South African ANC (African National Congress), and the Indian Congress Party (ICP). Such parties have shown the possibility that multiethnic, multinational parties, or party coalitions, can be the only candidates to advance the shared interests and identities of ethnic and national groups consisting in pluralistic federal states.

The records of fragile and defunct pluralistic federations have proven the challenges of installing representative institutions and effectively operating federal autonomy without democratic elections and multiparty system. The lack of multiparty system had the consequence of fusing the edifice of a federal system with the organs of a dominant party. A power monopoly under the rule of a single party or despotic leadership was the common denominator of the failed communist federations. The comparison between the USSR, Yugoslavia, and Czechoslovakia and that of Kincaid's (2010) 'non-liberal' federations such as Russia, Nigeria, Malaysia, and Pakistan shows that the organs of the communist parties of the former were by far too partisan to embrace representative pluralism than the latter. Both the political orientation and the organizational platforms of one-party regimes are

disallowing of inclusively representative federal functioning with the costs of non-accommodating institutions on the legitimacy and effective implementation of a federal system.

Moreover, unrestrained partisan interest compromised the federal constitutional self-rule of the federal-units of the USSR and Yugoslavia. In these federations, the significance of federalism to forge institutional pluralism was rendered almost meaningless as the centralized vanguard political parties crowded out alternative political options from the legislative and executive matrix of the formal power. Not neglecting the veracity of the self-proclaimed federal status, it is enough to have a glimpse at the lists of the failed federations included in the work of Kavalski and Zolkos (2008). One of the challenges of such federations was the ineptness of the political system to enforce the federal dispersal of power. They did not set up a political system strategically expedient to build and maintain effective socio-economic, political, and institutional diversity. Democratic elections and multiparty system could have curbed that, if open politics had not been ideologically possible. An electoral transfer of power among different federation-wide and federal-unit level parties would have strengthened the capacity of ethnic groups to exercise their constitutional jurisdiction with less policy, institutional, and resource dependency on the centre. However, the impossibility of running alternative regional, ethnic, and federation-wide parties in the failed communist federations was reinforcing the heavy-handed involvement of the ruling parties in the affairs of the Republics of Yugoslavia and Russia.

Thirdly, multiparty system, as it spurs not only the practice of constitutional disputes under presumably independent constitutional umpire and also broad-based federal constitutional amendment, fosters the federal principle of constitutional supremacy. There is a general assumption that the democratic principle of division of power sustains the supremacy of a federal constitutional order. In a federal order, the engagement of competing parties in orders of government means at least two things. One is the check-and-balance among the legislative and the executive; and the independence of the judiciary. The second is varied parties could assume the offices of the federal and sub-national governments. In both cases, the enforcement of the constitutional division of authority gains a heightened political sensitivity in such a way that has implications of the process as well as dynamics of federal constitutional supremacy, either in the form of constitutional review or amendment. The basic premise lies in the idea that the division of power among the branches of the government limits power and this is the essence of federalism. Both the division and separation of

power are "constitutional restraints of the state power," say Cameron and Falleti (2005, p. 246). This enables parties representing national or ethnic groups, or their collectives, to involve in defending the constitutional rights and security of these groups using mechanisms of constitutional adjudication and amendment.

In the context where alternative and effective political parties are in the offices of the federal layers of government, constitutional amendment and review mechanisms are less likely to show unilateralism. The far-reaching hands of the executive can be controlled not to dictate the constitutional adjudication process, even in the settings party symmetry between the federal and provincial governments. For instance, opposition parties may legally challenge an executive-dominated inter-governmental relations to observe federal constitutional allocation of power and functions. When it comes to party-asymmetry, the exercise of non-centralized constitutional jurisdictions by different parties has the potential to check the constitutionality of laws than in the case of federal-party symmetry where the same political party leads the orders of the governments. Besides, the federal character of inclusive constitutional amendment steps would invite a serious constitutional debate among parties. Thus, through multilevel multiparty competitions and representations, constitutional review and amendment processes engages multiple and diversified actors and, perfunctorily, competing interests.

Comparing the experiences of failed and unstable federations with the stable and effective ones, multiparty systems have incentivized the federal constitutional supremacy of the latter where the norm of constitutionalism has proven stable. The concentration of power in the offices of a single or dominant party was the main reason for such variations. In defunct federations, the constitutional arbitration organs were not credible enough to act as vibrant constitutional protectors if constitutional disputes were present at all. The constitutional courts and amendment decisions of Yugoslavia, the USSR, and Czechoslovakia were dependent on the communist parties that were exercising much control over the state and society. The constitutions were under the self-serving constitutional interpretation of communist parties such as the Communist League of Yugoslavia (Kavalski and Zolkos, 2008). Such practices, precluding the frustration of the federal-units with federal constitutional order, hindered the effectiveness of the federal principle of constitutional supremacy in the failed communist federations. The experiences of these federations are not comparable to the long-flourishing pluralistic federations of India, Canada, and Switzerland. Along

the same line, the entrenchment of the federal constitutional system in the fragile federations of Russia, Pakistan, Nigeria, Malaysia and so on has remained far behind that of Spain, Belgium and South Africa because of the gap they have in democracy consolidation, generally, and multiparty system in specific.

The one-party systems of failed multiethnic federations had the consequence of bracketing the federal functions of the ruling parties with specific ethnic identities and interests. It fermented the sense of alienation by ethnic groups not seen in the upper hierarchies of the 'vanguard' communist party of Yugoslavia (Kavalski and Zolkos, 2008). It is tantamount to the dialectical relationship between ethnic dominance and inter-ethnic alienation. In addition to the alleged domination of the Serbs in the communist party of the Yugoslavian Federation, the ban on alternative parties was suppressing ethnic groups such as Croats and Bosnians from organizing political parties that would have brought their claims to the process of federal negotiation before escalating into ethnic-based violence. Inductively, the curtailment of the right to political party organization and competitive elections prohibits purportedly alienated ethnic groups from seeking political solutions.

The suppression of ethno-national demands within a single dominant party could exacerbate the instability of an ethnic federal system with the consequence of a federal system failure accompanied by noxious ethnic conflicts. The parties of the defunct pluralistic federations had tended to invoke either, or both, of the extraordinary power or the extra-legal prowess of the central government against the constitutional jurisdiction of ethnic federal-units to subdue ethnic grievance only to precipitate a much deeper conflict risking the territorial and political integrity of these federations. Telford (1999, p. 443) calls such extreme involvements of the central government in the affairs of federal-units "Hobbesian federalism" in the sense that it is only a discrete containment of ethnonational demands within the political infrastructures of a hegemonic party. Making the comparison between the failed communist federations and India, Telford (Ibid) emphasized the late 1970s institutional crises in the Indian federal system and the perils of the centralized regulations of ethnic-based conflicts attached to these crises within the dominant party. This confirms the idea that the federal failure of Yugoslavia and Pakistan, in terms of the secession of Bangladesh in 1971, was preceded by institutional ambiguities at the level of federal constitutional system.

Kavalski and Zolkos (2008, p. 62) say that "the assertion that defunct federalisms have not constituted an end in themselves captures the impression that their functioning was tentative and

provisional...suggests the absence of structural stability and relative predictability for the political life to unfold.” Political demands related to federal diversity accommodations seem to outgrow the power locus of non-competitive hegemonic political parties. The interpretation of identity-focused claims as the nemesis of the federal constitutional order by the Muslim League and its regional "affiliates" had propelled the further narrowing of federal devolution in late 1960s Pakistan (Adeney, 2007, p. 137-163). This did not help the failure of the Pakistani federation and its bloody dismemberment. The unilateral control of the federal system by a single party with a self-imposed political mission was incompatible with the constitutional objective of diversity accommodation.

Summarizing the discussion, multiparty democracy is vital to the legitimacy of pluralistic federal constitutional system. It provides alternative federal political options to the public and the necessary federal deliberation among ethnic, national, or pan-federation parties. The implications of multiparty system for the principle of federal constitutional supremacy emerge from the significance of multilevel and multiparty competitions as well as representation in fostering power check-and-balance and the federal separation of power when various parties with varied federal political programs come into play within and across federal and sub-national governments. Ultimately, it has the potential to institute legitimate and non-monolithic federal governance, which is conducive to the development of the constitutional pluralism of multiethnic and multinational federal systems.

1.2. The Statement of the Problem

Political mobilizations and contentions questioning the accommodative character of the Ethiopian state have traces. Most significantly, in the reign of Emperor Haile-Selassie, ethno-nationalism transformed from its embryonic stage into an active political platform encompassing concerns of socio-economic justice and the politics of identity. The emergence of the Eritrean centrifugal nationalism and the current of ethno-nationalism in terms of self-determination by the Marxist-inspired Ethiopian Student Movement (ESM) had been witnessed before the end of the monarchic rule of Emperor Haile-Selassie. It continued that, as Aregawi Berhe (2008, p. 2) indicated, there was an upsurge of ethno-nationalism despite the 1974 regime change. The famous term “nationality question” adopted by the ESM in the late 1960s continued to gain momentum and keep confounding the military regime of the Derge that claimed Marxism would mitigate the multifaceted demands of society, including the right to self-determination. No sooner had the politics of identity become a framework for much of the struggles for a just order than the failure of the Derge regime to carry out

a far-sighted political response to the ethno-national protests and armed rebellions. The sentiment of "bombarded identity", as termed by Clapham (2000), in Eritrean nationalism suggested how the response of the government was conflict-adding and counterproductive.

Following the collapse of Derge in 1991, Ethiopia, aiming at questions of ethnic equality and diversity in nation-building, entered into a new form of state structure based on 'ethnic federalism'. The 1995 Constitution of the Federal Democratic Republic of Ethiopia (FDRE) capitalized, but was not limited to, on the Charter of the Transitional Government that lasted for about four years (July 1991-August 1995) in terms of recognizing the collective rights of ethnic groups, constitutionally "nations, nationalities, and peoples". Leaving what constitutes and differentiates these triplet nomenclatures from each other aside, the Constitution, beginning from its preamble and at various articles such as 8, 39, 47, and 88 declares that sovereignty resides in the nations, nationalities and peoples (NNPs) and the very Constitution itself is the expression of this sovereignty. Their sovereignty is implied by the consensual origin of the federal constitutional order in exercising their right to self-determination to forge a common economic and political community under the federation. The right to self-determination refers to self-administration, promoting own language, culture and history; *equitable* representation in the Regional and Federal Governments; and the right to secession (FDRE Constitution, Art. 39).

The 1995 Constitution of FDRE conforms to the basic features of a pluralistic federal system. Chapter Two points out that identity-based self-rule, shared-rule, and constitutional security are the basics of a pluralistic federation which subsume various institutional designs such as minority protection and power-sharing. Based on that, the ethnic origin of political sovereignty, constitutional diversity, the constitutional division of power, the multidimensional rights of ethnic groups, the broad ethnic composition of the House of the Federation (HoF) which is vested with the power to interpret the constitution, and the consensual tendency of the constitutional amendment procedure are the chief indicators of the pluralistic federal character of Ethiopia.

When it comes to the issues of multiparty democracy, the Federal Constitution (Art. 54 (1) and 60)) recognizes, for the first time in the history of Ethiopia, free, fair, and periodic elections as the only tool to assume the state power. It says under Article 38 (1) that every Ethiopian national without discrimination has the right to vote and to be elected in elections that should be held by secret ballot. Citizens also have the right to association (Art. 31) and to form or join political parties (Art. 38 (2)).

Concerning the electoral system, as per the Constitution (Art. 54(2)), it is the plurality one. In addition, since 1995 elections to the federal and State legislatures have shown concurrencies. Finally, electoral legislation and administration are the exclusive powers of the Federal Government (Ibid., Art. 51 (15)). In such constitutional and legal settings, elections have taken place, *contested* and boycotted by political parties.

Between 1995 and 2020, or until the formation of the Prosperity Party (PP), five national parliamentary and regional elections were conducted every five years. The meaningful participation and competitiveness of political parties in these elections were unstable, at best, and growing dismal, at worst. The multiparty constitutional system was extremely ineffective except for the unique episode of the 2005 General Election that was marred with post-electoral conflicts and the subsequent re-closure of the political space, precluding the rescindment of competitive elections in the years to come. Except for the ruling EPRDF, the electoral success of other political parties witnessed fluctuations within a very limited range. The dominant position of EPRDF and its allies to the extent of securing, in 2010, 96.8 per cent and, in 2015, 100 per cent of the seats in HoPRs was in sharp contrast to the growing number of legally registered parties, totalling 66 parties in 2017, including 46 ethnic, 15 federation-wide, and 5 fronts and coalitions of parties (Adane Tilahun, Interview, Addis Ababa, 2017). Some used the oxymoron term ‘electoral authoritarianism’ referring to a *de facto* one-party system in Ethiopia.

In such countries as Ethiopia which have a very fragile acquaintance with the democratic form of government, the role of political parties in the liberalization of the political system is not to be underestimated. Sartori (1976), one of the well-acclaimed scholars in the area of party system, said that, in emerging democracies, the incremental process of democratic consolidation depends much on the party system. Because of that, multiparty system is important to bring about the democratic legitimacy of the Ethiopian political system that governs the operation of the federal constitutional system. In this process, political parties have major roles.

Beyme (1985, p. 13) classified the main functions of parties into four: identification of goals, articulations and aggregations of interests, public mobilizations and socialization, elite recruitment, and establishing and leading the government. They, besides nurturing political leadership and assuming the power of the government, signal the functions of political parties in Ethiopia to articulate alternative political goals and to align themselves with politically salient social

differentiations, notably ethnicity. Due to these functions, they engage in deliberations and negotiations made on the federal constitutional arrangement and in the systems of constitutional interpretation and amendment as well. Multiparty system and democratic elections augment the qualities of the parties' engagement to foster legitimacy and effectiveness in the federal constitutional design.

However, as implied earlier, until roughly 2019, the Ethiopian party system had three aspects: the constitutional structure of multiparty system, the dominance of EPRDF in non-competitive elections, and the formation of weak yet many political parties. That echoed the assessments of Polity IV, Freedom House, and EIU-Democracy Index. Before the 2015 election, Polity IV put Ethiopia in the category of 'closed-autocracy' which has more dictatorial features than democratic ones (Polity IV, Report, 2014). Similarly, in 2015, the EIU-Democracy Index and Freedom House rated the democratic performance of the country as 'totalitarian', below the categories of 'flawed democracy' and 'hybrid regime', and as 'not-free', respectively (EIU, 2015; Freedom House, Report, 2015).

Therefore, the deficits of the multiparty system and the overwhelming dominance of EPRDF had implications for the legitimacy and effectiveness of the federal constitutional system and its operation. The purpose of the study is to address that in light of federal constitutional deliberation, federal representativeness, and federal constitutional supremacy.

1.3. Research Questions

The study investigates the following three major questions:

- a. How did the party system of Ethiopia in the first half of the 1990s determine multiparty deliberative federal constitutional making?
- b. How has the party system affected the representativeness of the Ethiopian federal system?
- c. How has the party system affected the principle of federal constitutional legitimacy?

1.4. Objectives of the Study

The study has the following general and specific objectives

1.4.1. General Objective

The overall objective of the study is to investigate the impact of party system on the making and operational legitimacy of the Ethiopian ethnic federal constitutional order.

1.4.2. Specific Objectives

The study seeks to:

- a. To point out the nature and dynamics of party system in the making period of the Federal Constitution of Ethiopia and its meaning to the deliberative origin of the federal choice of the Constitution.
- b. To assess the party system of Ethiopia from the vantage point of federal representativeness.
- c. To elaborate on the effects of the Ethiopian party system on the federal principle of constitutional supremacy.

1.5. Methodology

The study has devised a 'case-study' research design to deal with questions of descriptive, exploratory, and explanatory natures. The design helps to investigate, taking into account its contextual settings, the multiparty democratic performance of Ethiopia against the making and implementation legitimacy of the federal constitutional arrangement. It is the benefit of case-study design to be deductive without relegating specificity. In his purposive classification of research designs, Yin (2003, p. 12) states that "a case study is an empirical inquiry that investigates a contemporary phenomenon within its real-life context, especially when the boundaries between phenomenon and context are not clearly evident." Applying that, there are some unique phenomena and events in the gamut of circumstances affecting the ways specific federal and party systems are articulated and animated. Specific political, historical, socioeconomic, and other pertinent factors such as constitutional and institutional setups are worth heeding to the reliability of the study in deducting the theoretical and conceptual frameworks of multinational and multiethnic federal democracy into the Ethiopian case.

The study uses data gathered from primary and secondary sources. There are two sources for the collection of the required primary data. As the main target is to collect qualitative and, rarely, quantitative data, structured interviews are the tool used to get descriptive evidence and explanatory viewpoints from the primary data sources. The National Electoral Board of Ethiopia (NEBE), EPRDF, and three opposition political parties which had relatively more visibility on various media platforms and in soliciting public political protests and mobilizations are the sources of primary data for the study. The latter are the Ethiopian Democratic Party (EDP), the All Ethiopian Unity Party (AEUP), and Oromo Federalist Congress (OFC). The selected parties are representatives of the main

political differences parties have on the existing federal system of Ethiopia. It helps capture the broader picture of the politics of federalism. The number of parties, visible compared to others, also allows for a thorough and detailed analysis of each party, in terms of making it easier to gather qualitative information and draw conclusions on the political program of the parties *vis-à-vis* the design and operation of the federal formula of the 1995 Constitution.

Official documents, reports, research, periodicals, and literature about the Ethiopian federal system, constitution, political system, party system, and elections are the secondary sources of data for the study. It also includes the programs, regulations, and policy documents of parties, namely: Ethiopian Federalist Democratic Forum (*Medrek*, in Amharic), Coalition for Unity and Democracy Party (CUDP), Ethiopian Democratic Party (EDP), EPRDF, OFC, and AEUP.

For research trustworthiness and reliability, the dissertation has used three mechanisms. Data triangulation is the first one. Second, the informants are presented with the study to give their feedback as far as possible. Lastly, a clear reference to the informants is made in the discussion.

1.6. Limitations, Scope, and Structure of the Study

The study has its limitations for both methodological and practical reasons. Its emphasis more on the nature of the Ethiopian party system at the federal level than on sub-national and local scales is the first limitation. It, nevertheless, has the methodological advantage of focusing on the systemic characterization of the democratic face of the federal system, as a whole, and that has much interdependence with the local and regional political dynamics of the federation. There is an assumption that federalism, owing to the cardinal principle of constitutional accommodation, does not eschew the relevance of regional and communal issues to the centre. The Federal Government of Ethiopia is not insulated from the political realities of the States and the city administrations. Moreover, collecting data at the local level regarding electoral competitions and political parties is too challenging for the meagre resources of the study. The other limitation of the study has resulted from the research design it employs. As it uses the kind of case study design known as 'interpretive', its capacity, compared to comparative study design, for generalizability to other cases is limited (Lijphart, 2008, p. 245-267). The study aims to shed light on a particular case- the Ethiopian party and the federal system. It uses relevant theoretical and empirical frameworks primarily to interpret the case, not to challenge their trustworthiness, reformulate them, or construct new ones. This connotes some limitations on the theoretical contributions of the dissertations. What is more, the

time scope of the study before the recent political developments, witnessed roughly since 2018, could limit the explanatory strength of the findings to treat recent changes. Resource shortage and the instabilities of Ethiopia were the other challenges to broaden the sources of the primary data and to keep pace with the rapidly changing political developments in the country.

The study has seven chapters. Following this introductory chapter, Chapter Two is devoted to elaborating pluralistic federalism and party system. It gives integrated analyses of them from the exhaustive review of the works of established and emerging academics on the subject matter and by drawing on lessons from various pluralistic federations with different party system backgrounds and progressions. Belgium, India, Canada, Switzerland, Spain, South Africa, Yugoslavia, and Czechoslovakia are some of them. Following that, Chapter Three concentrates on Ethiopian federalism and the party system. The pluralistic character of the federal constitutional design is the first part of the chapter, whereas the dynamics in the party system along with the trend in political party formation make up the second part.

Chapter Four, Five, and Six deal with the specific research questions of the study. The designing process of the Federal Constitution and the condition of multiparty deliberation in it are central to the discussions in Chapter Four. It treats the transitional political setting after the collapse of the Derge regime and its repercussions on the legitimacy of the federal system. Chapter Five takes the study of the party system from the making of the federal choice to its implementation, in light of the representativeness of the federal design and operation. The interaction between the party system and federal constitutional supremacy in the anal of the Ethiopian federalism falls under Chapter Six. Chapter Seven presents the findings, conclusions, lessons, and remarks of the study. The chapter clarifies what the recent political changes have to do with the multiparty democratization of the federal system in point in conjunction with relevant challenges, prospects, and uncertainties signalled by the ongoing political development of the country.

CHAPTER TWO

Pluralistic Federal System and Party System

2.1. Introduction

The chapter approaches the subject of why multiparty democracy does matter to a pluralistic federal system and systematically elaborates on that to produce coherent analytical spotlights for the study. In the dense theoretical and empirical subjects of democracy, multiparty democracy is considered the only realistic mechanism in the modern age that underlines the purpose of multiparty system to the value of political legitimacy (Diamond, 1997). Samuel Huntington (1991, p. 6) indicated three basic elements of democracy: the source of authority for the government, the purpose it serves, and the procedure in constituting the government. This understanding of democracy points to the multifaceted contributions of multiparty politics and democratic elections to anchor the establishment and functioning legitimacy of the federal layers of government with inclusive as well as competitive participation and representation.

In this chapter, the argument of the study has the claim that the purposes of multiparty and democratic elections for the legitimacy of a pluralistic federal constitutional system arise from that competing political parties can be effective instruments of meaningful representation and participation of ethnic, linguistic, regional, national, and cross-segmental interests in the making, practice, and re/negotiations of federal constitutions. Contrasting to cases of one-party-originated and-dominated pluralistic federations, the participation of multiple, alternative, and effective political parties in the constitutional writing moments of some pluralistic federal states such as Belgium, Canada, and Switzerland has facilitated the making, also known as the 'original', legitimacy of the federal constitutional dispensations. In pluralistic federal democracies, multiparty system has also nurtured the constitutional system of diversity accommodation and power division. Therefore, the chapter makes its arguments based on such theoretical and empirical frameworks.

This chapter has three interrelated parts: core constitutional features of pluralistic federal system; multiparty democracy, and the implications multiparty system to the designing and implementation, or effectiveness, legitimacy of pluralistic federal constitutional system. Intermediating issues come in the later section of the third part.

2.2. Pluralistic Federal System

The study defines ‘pluralistic federal system’ as a federal constitutional order devised to the heterogeneity as well as the mutuality of ‘plural societies’. In this context, ‘plural society’, means, according to Rabushka and Sheplse (1972, p. 8-9)¹, the co-existence of distinct identity groups who have shared elements, such as common history and values. The distinctions among the identity groups are assumed to have salience on the system of how the Rawlsian (1971) ‘primary social goods’, roughly recognition, and ‘secondary social goods’, socio-economic values are morphed in the society. To deal with the balancing of these goods, pluralistic federal system aims to provide national, ethnic or linguistic groups with constitutional mechanisms of recognition and accommodation. Unlike territorial federalism adopted in such federations as the USA, German, Argentina, and Brazil, pluralistic federalism implies an identity-based federal constitutional system, commonly identified as multiethnic or multinational (Kincaid, 2005, p. 78).

The study, thus, uses the term pluralistic federal/federalism/federation/s interchangeably with ethnic/multiethnic/multinational federal/federalism/federation/s, depending on the issue under discussion. That converges with the description of Burgess (2012, p. 19) that federations like Canada, Belgium, Switzerland, Malaysia and India are widely regarded as multinational (or ‘pluri-national’ that:

whose principal *raison d’être* is to accommodate strong political identities based upon cultural-ideological differences and divisions...understood to be ethnic or

¹ The authors, in attributing ‘plural societies’, concurring with others (Smith, 1965), put that in a plural society, different peoples live together, predicting on cross-cutting interests, identities, and interactions that keep them from parting, like social gules among ethnic groups. In addition, Rabushka and Sheplse (1972, p. 9) use the principle of salience to determine whether the integrative or distinctive characteristics of identity groups are more defining to the power-organisation of plural societies. For instance, the post-colonial ethnic competitions and rivalries, they contend, had been by far more indicative of the salience of distinct ethnic identities than the common colonial experiences and liberation struggles to the pitfalls of democratisation in Africa and Asia. The case of democratic performance in Switzerland, as a challenge to the correlation of democratic instability and ethnic rivalry in plural societies of having ethnic groups with parities of influences, is treated with some qualified approaches touching on the cantonal federal arrangement in the concluding part of the book (Ibid.).

multinational and sometimes multiethnic but today is increasingly referred to as pluri-national.

Multiethnic and multinational federal systems connect the politics of ethnic, linguistic and national diversity with the fundamental principles of federal system. The latter refers to the constitutional formations of orders of government, division of power, institutional structures of self-rule and shared-rule, and federal constitutional supremacy (McGarry and O’Leary, 2003, p. 2). These principles are to set the constitutional self-rule and representation of the constituent identity groups, or federal-units, of pluralistic federations.

In the following sections of the chapter, the constitutional characteristics of federal self-rule and shared-rule in the multiethnic and multinational federal system are elaborated together with the purpose of federal constitutional supremacy.

2.2.1. Self-rule

The principle of self-rule in federal system has relationship with how federations originated. Beyond economics and security, the federal origins of pluralistic federations have rationale of diversity recognition and accommodation. They evolved either through the federative process of previously autonomous political units inhabited by particular identity groups or through the federalization of power devolution from the dominant centre hitherto to the newly established federal-units demarcated, theoretically, along the territorial distributions of distinct identity groups. In both processes, notwithstanding the practice of non-territorial communal autonomy, the constitutional division of power vests the concerned identity groups with federal self-rule. This self-rule empowers identity groups to form permanent constitutional power bases. However, the scope of their constitutional powers is not boundless. It is usually the function of the ambitions of the identity groups and the process of federal bargain. In ethnic federal system, though ethnic political mobilization is expectedly important to assert further the federal autonomy of ethnic groups, the mismatch between the actual constitutional jurisdiction of the ethnic groups and what they would like it to be emerge due to the possibility of concessions and compromises in the making and remaking the federal constitutional design. Requejo (2005, p. 61) has claimed that multinational federations should have constitutional systems that reflect both the “defensive personality” and the participatory aspects of self-determination with the outcome of “different constitutional results following negotiations with the other members of a federation”.

Therefore, in a pluralistic federal design, the constitutional rationale of diversity recognition and accommodations keeps the federal autonomy of identity groups as far as the inexhaustible federal negotiations allow.

Nevertheless, by taking the minimum scope of federal autonomy that ethno-federal territories secure from the process of federal concessions and compromises, the constellation of powers under their jurisdictions falls into two wide categories, not mutually exclusive (Norman, 2006).

The first is those socio-cultural rights typically related to giving a legal foundation to the identity markers of groups. It infers the right to use, develop, and promote own language, religion and public rituals, to administer social and cultural institutions, civil matters and so on. With some reservations related to human rights and gender equality, the integration of customary laws and traditional practices into the formal operations of the government is also part of the check-board of legal systems in pluralistic federal order (Lijphart, 2003). That depicts the constitutionalization of socio-cultural identities into the institutional systems of the government. Duchacek (1985) states that, because of the relevance of identity markers to the politics of heterogeneous societies, the constitutional recognition of socio-cultural diversities is the minimum requirement for the legitimacy of a given pluralistic federal constitutional choice. Most scholars like Kymlicka (2003) claim that a culture-blind state is the least practical thing.

The second category of federal autonomy refers to the political and institutional powers of identity groups. This jurisdiction has numerous areas of application in the legislative, executive, judicial, and fiscal powers of federal-units. These areas are important to the interests of the constituent ethnic groups of multiethnic federations in terms of complementing their socio-cultural rights with the political capital and administrative setups of the self-rule. Kincaid (2010, p. 320) captured the point that:

Because powers are both shared and divided in a federal democracy, there are also multiple forums of justice anchored in multiple forums of consent, and many rules of justice can vary justly among those forums according to socioeconomic and cultural conditions, as well as public preferences.

Thus, pluralistic federalism gives a matrix of compounded government that fits into the diverse preferences of federated ethnic groups rather than the mere compartmentalization of power in the territorial model of federalism (Elazar, 1984).

Furthermore, the above two categories of the federal autonomy of the component identity groups of a pluralistic federal system drive their particularity and depth from the concepts and principles of federal asymmetry², embedded autonomy, subsidiarity, and self-determination. The furthering of the constitutional power of identity groups has contributed to the consolidation of the federal systems of Belgium, India, Canada, Spain, and Switzerland (Gagnon and Tully, 2001). These federations have not merely institutionalized the federal self-rule but they do it asymmetrically. Spain which has accorded special fiscal autonomy and socio-economic rights to Basque and Catalonia as part of its democratic transition beginning in the mid-1970s is an example.

The right of Quebec to use the Napoleonic Code and the French language in its jurisdiction in Canada since 1967, the special communal status of Walloons and Flanders in Brussels, and the prerogatives of Kashmir and other minority-inhabited states and territories in India also provide additional cases of federal asymmetry (Linz, Stepan and Yadav, 2011, p. 263). These examples fetch that the federal modality of diversity accommodation could bring with it an asymmetric form of constitutional division of power which takes into account the “distinctiveness” of specific identity groups, especially minorities. Concerning minority accommodation, it is also appropriate to spotlight the possibility that, in pluralistic federations, identity-based federal autonomy could have the trickle-down effect of reaching federal-units level minorities which might lack the prerogatives of constitutional asymmetry. The constitutional accommodation of diversity at the level of local government in India, Swiss, South Africa, and Belgium gives an embedded form of federal autonomy to the interests of intra-regional minorities (Watts, 2008). For the overarching goal of diversity recognition, a pluralistic federal system tends to transcend the dual version of power dispersal mostly found in the constitutional design of territorial federalism.

In addition, in pluralistic federal system, the constitutional autonomy of identity groups gains a deeper meaning with its association with the right of self-determination. Self-determination, in its moderate interpretation in terms of self-rule, is palpable to the doctrine of federalism while the radical interpretation of it as a political independence, secession, is highly unorthodox,

² ‘Federal asymmetry’ refers to a situation in a federal system where different constituent units (such as states or provinces) possess varying degrees of autonomy or have different powers and responsibilities. This can result from historical, cultural, economic, or political factors that lead to some regions having more self-governing capabilities than others (see Watts, 1999).

especially since the end of the communist federations. Despite that, there are still views that consider the right to secession as an integral part of a federal constitutional system. For Buchanan (1995, p. 21–22), secession, or the "threat thereof," is the only guarantee of federal-units to check the most powerful federal institutions so that "absent the secession prospect, the federal government may, by overstepping its constitutionally assigned limits, extract surplus value from the citizenry almost at will, because there would exist no effective means of escape." Empirically, however, the right to secession has not gained any constitutionality across federations, with a few exceptions: Ethiopia, Saint Kitts and Nevis, and Canada, some have the view that the constitutional interpretation of the Canadian Supreme Court in 1998 has not explicitly ruled out the right to secession (Norman, 2006). The inclusion of external self-determination in federal constitutional system has remained at most a point of disagreement in the study of federalism, much less in the empirical examples of federations. Nevertheless, the main point here is to indicate that constitutional self-rule in multiethnic and/or multinational federal systems has multidimensional features: socio-cultural identity, institutional autonomy, power asymmetry, cascade of autonomy for minorities, and the various aspects of the rights to self-determination.

2.2.2. Federal Shared-rule

Pluralistic federal system entrenches the political and institutional visibility of identity groups so that the constitutional recognition of heterogeneity becomes the defining element of its constitutional vision, state nomenclature, flag, national anthem, language policy, and institutional structures. Capitalizing on Yonatan's (2008) illumination of diversity recognitions and accommodation, representation stretches from symbolic inclusion to creating structural accommodation for distinct identity groups. In an ethnic-based federal polity, the composition and operations of the legislatures and executives, inter-governmental relations, and, as discussed later, the consensual character of the process of constitutional amendment are linked with the constitutional politics of ethnic diversity accommodation.

The representation of identity groups and their meaningful participation in the shared offices of a pluralistic federation is quite critical. In that regard, federal second house is the basic repository of representation. From the perspective of diversity accommodation, the upper houses of multiethnic and multinational federations have the purpose, among others, of empowering

identity groups to safeguard their constitutional powers and to participate jointly in the works of the common government. Its constitutional capacity to check the power of the lower house could be an absolute veto (Switzerland), a case-dependent veto (Belgium), or a suspensive vote (India and Spain) (Watts, 2008, p. 148–152).

How distinct identity groups are represented in the upper houses of pluralistic federations follows two patterns. The first is the conventional representation of federal-units, as a *sine qua non* of representing identity groups. It has been illustrated in the compositions of the Indian Rajya Sabha, the Swiss Council of States, and the Senate of Canada. According to Article 80 of the Indian 1950 Constitution, 238 of the 250 members of the Rajya Sabha are the representatives of the States and Union Territories, indirectly elected by the legislative assembly of each state, using Single Transferable Vote (STV), and by the legislatures or the Council of Ministers of the Union Territories. Hence, two things are reckoned as enabling factors for identity groups to have representation in the Rajya Sabha. The first is the delineation of the federal-units along linguistic cleavages, which leads to the formation of ethnically defined State Assemblies and Councils. Secondly, the STV electoral system encourages the election of representatives from intra-federal-unit level ethnic minorities. STV, as IDEA (2005) elaborates, has the comparative advantage to combine the vote-seat correspondence of the proportionality system of election with the vote-pooling process of the preferential system of vote.

Moreover, still within the first pattern of federal-unit representation, the representation of the Cantons in the Swiss Council of States by direct public vote allows the inclusion of the French, Italian, Romansch, and German communities. In composing the Senate, Canada follows a clustered representation of Provinces along the four regions of Western, Maritime, Quebec, and Ontario together with the representation of the Newfoundland and three territories. This could not threaten the participation of the French and aboriginal communities in the Senate, except that the dominant role of the federal government in the nomination of the senators has remained questionable in terms of establishing the legitimacy of representativeness. That is why one of the objectives of the Meech Lake Accord (1987) was to engage provinces in selecting senators (*The Canadian Encyclopaedia*, 2022; Watts, 2008, p. 151).

The second pattern, less common than the first one, is the simultaneous representation of federal-units and identity groups directly in the second chambers of pluralistic federations such as

Belgium and Spain. The Flemish, French, and German Community Councils have the constitutional mandate to elect 21 members of the Belgian Senate; the remaining senators are elected directly by provincial referendum and by the federal government, 40 and 10, respectively (Fabre, 2009). The Senate of Spain shares similarities with Belgium. The appointments of 50 and 200 representatives by the Legislative Councils of the 17 Autonomous Regions and by the 51 Provinces, respectively, is a sort of compounded representation since the latter, the Provinces, are under the latter (Watts, 2008, p. 148–152). The linguistic and ethnic representativeness of the Canadian and Spanish senates predicated on the availability of alternative channels of representation for identity groups. Given the reality of overlapping between these channels, as six of the Autonomous Regions of Spain coincide with 6 provinces, Flanders to the Flemish, Wallonia to the French, and Germans in Brussels, identity groups have unhindered access to the upper houses of the federation in question. Moreover, the employment of proportional elections at a provincial level for the 200 senators of Spain and for the 40 senators of Belgium is likely to encourage the representation of sub-national minorities (Ibid).

On the allocation of the seats of federal upper houses, though there are no established theoretical challenges on the representation of identity groups and/or federal-units, there are some criticisms related to apportionment. They point to the democratic quest to translate individual equality into equal group representation. For example, comparing the Swiss equality of representation within the categories of Full and Half-Cantons with the weighted proportional representation of India, Spain, and Belgium, finding a democratic rationale for the apportionment of seats that can take individual equality or group/federal federal-unit equality seriously is a subject of argument in the study of comparative federalism. It is especially appealing when federal-units with huge population asymmetry have equal seats or when constitutionally equal federal-units have such a glaring gap of number of seat, as the Indian case attests to that Manipur and Nagaland have only one seat each, whereas Uttar Pradesh has 31 seats (Indian Constitution, Fourth Schedule). The lack of uniformity among federations in the compositions of their second chambers connotes the criticism of being inconsistent with the principle of democratic representation.

In approaching the democratic issue of equal representation in federal system, some emphasise the importance of balancing individual equality and federal-unit parity, while others prefer to take into account another factor to determine the merit of equal representation for federal-units.

The symmetry of the federal constitutional division of power is an important factor. Equal representation is a major point of disagreement, especially where there is an asymmetry of power division. Linz, Stepan, and Yadav (2011, p. 266) have the view that equal representation by itself could be objectionable for majorities:

It is further complicated when the multinational constitutional asymmetry...is allowing a set of preferential treatment to a certain national group (Catalonia, Quebec, Wallonia, Kashmir) ... getting some units' special autonomy while ensuring an equal representation is so quite problematic.

Outside the legislative organs of the government, the representation and participation of identity groups in the federal executive has no constitutional uniformity among multiethnic and multinational federations. Lijphart (2008) indicates that it has become more of a norm than a constitutional requirement for the executive to confirm the inclusiveness of its composition. The collegial executive of the Swiss is one of the exceptional cases on that matter (Linz, Stepan, and Yadav, 2011). Related to how the executive could be inclusive, it should not be taken for granted that parliamentarianism always gives rise to an inclusive government. For example, in Canada, “parliament and cabinet are merely a smallish part of the greater process of group interaction, better called ‘elite accommodation’,” says Thorburn (1978, p. 724). Even though such kinds of elitist criticisms might be relevant for any institutionalized process, it needs to be stressed that the parliamentary system of government seems more common in successful pluralistic federations than the presidential one. The main reason is the predicament of creating a shared and accountable executive in the presidential system *vis-à-vis* observing the inclusive representation of identity groups by the lawmakers.

Furthermore, both the federal constitutional autonomy and representation of the constituent identity groups of pluralistic federations have relationships with the principle of federal constitutional supremacy. The federal orders of government are not without constitutional methods of protecting the constitutional system of power allocation. They are vested with the power to invoke constitutional challenges against each other. The challenges, not undermining the roles of political negotiations and inter-governmental relations, are resolved by constitutional reviewing organs, considered independent (Watts, 2008). In federal system, taking the Ethiopian House of Federation (HoF) exceptionally as a non-standard legislative body, the principle of parliamentary sovereignty which allows the legislature to exercise the power of constitutional

review is absent. It is commonly the mandate of the judiciary, regular courts, or special courts known as constitutional courts. Pluralistic federations, as discussed later in this chapter and more in Chapter Six, follow that, with some exceptions such as applying popular referendums in Switzerland for federal laws and, again, the constitutional interpretation power of the Ethiopian HoF. The independence of the judiciary is invaluable in safeguarding the constitutional jurisdictions and entitlements of identity groups constituting a pluralistic federal system. In the same vein, depending on the extent to which it is effective, the rigidity of federal constitutional amendment system has the utility of protecting the constitutional positions and interests of identity groups from unilateral constitutional modifications.

As a final point, the constitutional characteristics of pluralistic federal system are germane to the politics of legitimacy in pluralistic federations which is dovetailed with how principles of federal constitutional supremacy, constitutional autonomy and federal representation have interacted with the identity, interests and rights of the relevant distinct identity groups. In addition, as *consensual* constitutional designing is a relative phenomenon to explain the constitutional making of federations, it is also an essential part of dealing with the foundational legitimacy of federal constitutional dispensations. Therefore, what determines the making as well as the operational legitimacy of a pluralistic federal system is a big concern on which the study finds the implications of multiparty democracy.

2.3. Party System: From the Perspective of Electoral Democracy

In the discussions of applied democracy, the term ‘electoral democracy’, referring to inclusive elections and a competitive party system, is a commonplace. Robert Dahl (1998) stated that the right to equal participation, liberty, accountability, competitive politics, and effective government are the chief ingredients of a democratic political system. Contributing in the best way to the subject of procedural democracy, Dahl (Ibid) has grouped the essentials of a modern democratic political system into two categories. The first consists of criteria for democratic processes: effective participation, voting equality, enlightened understanding of alternative proposals, public control of agenda, and adult inclusion. The second is the institutional setting of democracy: elected officials, free, fair and periodic elections, freedom of expression, availability of alternative sources of information, associational autonomy, and inclusive citizenship. Electoral democracy has a matchless role in setting the context of political openness, equality,

and competition for the processes and institutional settings of procedural democracy (Sartori, 1976).

Democratic elections are essential for the practice of electoral democracy. “Elections belong to the people,” says Marloe (2008, p. 1), and, of course, to individual citizens. That creates the interface between democratic elections and political rights. At the public level, democratic elections enhance the sovereignty of the people, as a collective entity, to express its “will” in electing and controlling those who exercise the power of the government and to choose, directly or indirectly, its own social, economic, political, and cultural objectives and policies. It has conceptual insights relatable to the much-amorphous yet revered principle of people's right to self-determination, as a source of legitimacy. At the individual level, elections sustain the democratic foundation of citizenship in terms of the right to participate in public and government affairs. Conversely, democratically elected governments, in line with Dahl's *On Democracy* (1989), are also conducive to the protection of individual democratic rights and liberties. Hence, some of the leading international bills of rights, such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), have contributed to the ascendance of election to become not only the political right of the people but also a part of committing to the protection and promotion of human rights. UDHR (Art. 21) states that the will of the people should be the source of authority for the government. ICCPR (Art. 25) explicitly requires that every citizen, notwithstanding some reasonable restrictions, without discrimination of any kind related to gender, race, religion, property, language, or gender, should have the right to vote and be elected in periodic and genuine elections, universal and conducted by secret ballot.

Therefore, the expansive interface between democracy and elections challenges the mere procedural conception of multiparty democracy as a necessary but not a sufficient prerequisite for a democratic rule. That has contributed to the elasticity of the procedures and preconditions of a democratic election and the difficulty of coming up with a standardized description of what it must look like.

The existing descriptions of a democratic election have two main parts. The first calls in the political atmosphere in which elections are conducted. It includes the rule of law, judiciary independence, separation of power, and the protection of civil and political rights. The second is

about the specific preconditions of a competitive election, such as free and open media, universal suffrage, equal vote and secret ballot, the right to compete in elections, the right to form or join political parties, equal right to campaign, credible electoral administration, ways of resolving electoral disputes, and so on. The Inter-Parliamentary Union, through Goodwin-Gill (2006, p. 113), has developed the components of a free and fair election in such a manner that integrates the systemic and technical features of multiparty democracy. They are electoral system and law, constituency delimitation, election management, the right to vote, voter registration and information, civic education, candidates and political parties, monitoring the balloting process and the result, and complaint and dispute resolution techniques. The funding and electoral campaign of candidates based on the right to media access and coverage together with the protection of human rights are also as important as choosing electoral systems with the objectives of inclusive representation and effective government.

Coming to political parties, they have relationships with the values of democracy. Democracy often starts with popular sovereignty. Conversely, however, popular sovereignty would be less appealing to be democratic without political equality and liberty, which are the necessary preconditions for the expression of the “will” of the people (Post, 2006, p. 25). In expressing this “will”, political parties are the key components of the modern political system founded on the republican value democracy. The modern political system is unthinkable without parties (King, 1986). In pre-modern political systems, political parties were unknown because political authority was absolute and advocating for different political ideals and institutions through parties would come into conflict with the supposed solid allegiance of the public, unanimously, to the political establishment and its leaders. Under an absolute monarchy, the divine or secular base of the monarchy as the supreme embodiment of a given polity renders the purpose of party organization pointless (Boix, 2007, p. 500-503). It goes in line with the proposition that the emergence of parties went in tandem with the ascendance of democracy against various forms of traditional absolute rules (Kean, 1989). In the 19th century, the predominance of parties was the result of political conflicts between traditional elites and the cumulatively growing new political forces championing the republican values of limited and accountable government.

The purposes of political parties vary according to party system. The understanding of party systems helps to discern how parties influence policy-making, governance, and the democratic

quality of the very political space they operate by determining the level of political pluralism, the nature of political alliances, and the dynamics of electoral competition (Sartori, 1976). In other words, party system refers to the totality of legal and political arrangements affecting the number, objectives, organizations, interactions, and operations of political parties (Boix, 2007). This suggests the maximalist approach of party system, which focuses not only on party-size but also on the issues of party-centralization and party-nationalisation (Erdmann, 1997, p. 54–56). Party-centralization and party-nationalization imply the degree to which the power structure of a given party is centralized and how its constituency is wide in terms of national, sub-national, and local scales, respectively.

Focusing on party-size, it is the principal base for the categorization of party systems in the forms of one-party, two-party and multiparty systems. However, there are sub-qualifications and overlaps within and among these forms. The one-dominant-party system, like the Japanese Liberal Party, and the two-dominant-party system, similar to the USA, considered substantively multiparty, show the complexity of classifying party systems.

In a single-party system, only one political party is legally allowed to hold power. This type of system is typically found in authoritarian regimes where political pluralism is restricted. The ruling party controls all aspects of political life, and opposition parties, if they exist, have no real chance of gaining power. Examples of countries with single-party systems include China and North Korea (Duverger, 1954). In the context of the dominant-party system, multiple parties could exist and compete in elections, but one party consistently dominates the political landscape, often securing the majority of votes for parliamentary and presidential votes, depending on the form of government, over an extended time. This kind of competitive yet dominant party system is associated with democratic and semi-democratic states. Examples include Japan's Liberal Democratic Party, which dominated Japanese politics for much of the post-World War II era, and the upper hand position of the recently challenged, African National Congress in South Africa since the end of apartheid (Pempel, 1990). The two-party system underpins the dominance of two major political parties, which alternate in power. Though other parties could be functional, they have highly restricted political bases and electoral success (Ware, 1996).

Multiparty system aligns with the ideal of democracy better to gauge the legitimacy of political units, their institutional structures, and the way of acquiring and exercising public power (Hadenius, 1997). Nevertheless, the operational definition of multiparty system signifies competitive election, the number of political parties active in the government, and the condition of power transfer, or sharing, among parties within a given time (Cole, 2011, p. 54–55). This confirms Bellamy's (2007) assertion that multiparty system has the purpose of restraining absolutism, as differentiations concerning what and how the governments should do are the springboards of parties (Covington, Lindsay, and Smith, 1997, p. 268–270). Moreover, similar to what Dahl (1989) calls enlightened public policy-making and the plurality of power structures, the existence of effective and contending parties strengthens the protection of civil liberty, accountability, and informed decision-making. In general, multiparty system cultivates a legitimate political system within the bounds of the rule of law (Kuenzi and Lambright, 2005). How that is relevant in the context of pluralistic federal polities is an interesting topic.

2.4. The Implications of Multiparty System for Pluralistic Federal System

Watts put his impression on the history of enduring and stable federations that “federation and liberal democratic processes seem to have converged and reinforced each other.” (2010, p. 326). This convergence has taken place in no other arena of modern political system than in the party system. Telford (1999, p. 300) says that party system, “albeit non-constitutional”, is one of the institutions of federalism. Similar explanations on the federal meaning of party system have consisted in the discussions of what implications electoral democracy has for federal system legitimacy. Like the seminal work of Burgess and Gagnon (2010), the recently growing elaborations of federal democracy have underpinned the legitimacy of a given federal constitutional system with the political legitimacy of its origin and operation. Despite some nuances, according to Thornhill (mentioned by Hoffman, 2007, p. 92), the sociological notion of ‘legitimacy’ as “agreed norms and facts” and its institutional implications as “shared procedures” underlines that the political understanding of ‘legitimacy’ imparts “a law or rule to which subjects have consented” in a sense that it limits the power of those who make and enforce the rules. Consent and the rule of law are the sources of political legitimacy. The shared norm and institution aspects of legitimacy echo ‘federal covenant’, widely written by Elazar (1987). ‘Federal covenant’ associates the legitimacy of a pluralistic federal system with deliberative

constitutional design, representation, and the effectiveness of federal constitutional supremacy to restrain power to defend and expand the constitutional division of power and the rights of the relevant identity groups (Scharpf, 1995). Based on that, the implications of multiparty politics are discussed in the following parts of the chapter.

2.4.1. Deliberative Federal Constitutional Choice

Constitutions are as dissimilar as their designing processes. The challenge lies in the diverse participatory processes shaping constitutions, often producing entrenched outcomes, making it difficult to identify universal precepts for constitutional writing that guarantee legitimacy across all contexts.³ Tackling this complexity, the power system of polities is helpful in narrowing down the normative elements of federal constitution-making. It suggests the overarching characteristics of constitutional design across different polities. Daniel Elazar (1997, p. 240–250) distinguishes the federal, or ‘matrix’, model of polity from the ‘hierarchical’ and ‘circle’ models with the existence of composite political power system in the former where the democratic principle of popular sovereignty is shared in a ‘conscious’ constitutional design, as a pact among equals. In his earlier thought, Elazar (1987, p. 157–158) indicated that “written constitution is a product of federalism, invented as a political artefact to make possible the constitution or reconstitution of polities on a federal basis through regularized processes of constitutional choice.” Unlike ‘hierarchical and ‘circle polities, the covenantal notion of federalism signifies the incompatibilities of federal constitutional writing with top-bottom and centre-periphery power relations (Elazar, 1997, p. 240–250).

Besides, perspectives in literature of constitution-making are evolving to the ‘conscious’ attributes of federal constitutional negotiation. Brandt and Gluck (2015, p. 4) grasp the gradual change in the purpose of constitution-making from an instrument of power consolidation to a

³ Murray (2017, p. 11) sorted the legitimacy of a constitution into four broad perspectives. The first is ‘legal legitimacy’, which means “how the constitution is adopted in a manner set out in an earlier constitution, for instance.” The second is ‘conceptual legitimacy’, addressing the democratic foundation of constitutions to acknowledge the principle of popular sovereignty. ‘Sociological legitimacy’ is the third one, implying that “constitution is recognized as having authority, the public have ‘bought into’ it.” The last, fourth perspective, is the ‘functional legitimacy’ of constitutions and their effectiveness in practice.

basic forum for power negotiations. Constitutionally, political negotiations have resonances with the varying origins of federal system. In ‘holding-together’ federal constitutional writing, which aspires to accommodate ethno-national identities and political demands, the issues of, Bisarya and Gluck (2020, p. 385) wrote, “who writes and how and when sub-national boundaries are delineated” are such critical points that can pre-emptively diminish the legitimacy of the federal constitutional choice. That touches upon how the prospective ethnic federal-units are represented and negotiate the constitutional division of power in constitutional conventions, constituent assemblies, or constituent legislatures entrusted to write new constitutions. Restructuring states based on a federal model of granting rights and autonomy to identity groups derives its legitimacy from constitution-making processes that facilitate comprehensive negotiations between the groups. For ‘coming-together’ federal formations, constitutional power negotiations among identity groups, or their polities, are the hallmark of federal-origin legitimacy. The pre-federal autonomy of federal-units and/or identity groups reinforces the significance of constitutional negotiations.

Hart (2010, p. 20) writes that constitution-making engages different political experiences and visions to the extent that it may seem both “just” and “less controlled.” It embodies “constitutional moments” as periods of “high popular mobilization and enhanced deliberation” to produce the best possible mutually agreed constitutional document (Jackson, 2008, p. 1250–1251). As constitution-making is the combination of political and legal processes, challenging the view of constitutional writing as more of the setting of the frameworks of democratic governance by elites than as a standard area of exercising democracy, the reinforcing emergence of the legal right of participation and the normative political value of democratic participation in the making process of constitutions necessitates the complex environment of constitutional crafting, choices, and negotiations involving political actors, legal experts, and public participation (Hart, 2010, p. 20–21).

Determining how political parties participate in developing pluralistic federal constitutions that address the competing interests and relationships of ethnic, religious, linguistic, or national groups leads to various forms of involvement. According to Widner (2008), drafting, public discussion, deliberation, adoption, and endorsement, or ratification, are the integral phases of constitution-making. It omits the constitutional incubation phase, what Banting and Simeon

(1985) call the “idea-generating stage,” which is characterized by the transitional task of setting the constitutional designing process and, in some cases, similar to the South African Interim Constitutional Principles, the basic guiding principles of constitutions. Though, in some cases, constitutional drafting and ratification may be undertaken by specialists and direct public votes, political parties can remain highly relevant in other stages of constructing a federal constitutional order. Yet, the depth of divisions and conflicts in some divided societies and the compelling nature of constitutional compromise could appeal to the direct involvement of parties in the drafting and ratification of some pluralistic federal constitutions.

The making processes of the constitutions of mature multiethnic and multinational federations, in contrast to the defunct ones, have the characters of multiparty politics. Switzerland, Canada, Belgium, and India are frequently cited examples. In the making of the 1848 Swiss Constitution, there were about five active political parties represented in the National Council. They were Radical Left (RL) with 79 (58%) of the total 111 seats of the National Council; Liberal Centre (LC) with 11 seats (16.9%); Catholic Right (CR) with 10 (16.6%); Evangelical Right (ER) and Democratic Left (DL) with 5 and 6 seats, respectively (Swiss Electoral Resource, 2019).

In the case of Canada, before the 1867 Federal Act, the 1863 electoral results for the House of Commons implied multiparty deliberations over the upcoming federal structure. Political parties under the Liberal, Conservative, and Reformer categories brought varying provincial interests to the House in which they had 66, 35, and 27 seats, respectively (*Wikipedia*, List of Elections in the Province of Canada, 2018). Belgium, compared to Canada and Switzerland, had already a mature multiparty system before the formal constitutional adoption of the federal system in 1993. Following the 1991 national election, the Chamber of Representatives that adopted the Federal Constitution had a larger number of parties than Switzerland and Canada had in 1848 and 1867, respectively. Evidence shows that not less than 12 parties were part of the Chamber. Christian Democratic and Flemish Party (CDFP), Socialist Party (SP), Party for Freedom and Progress (PFP), and Liberal Reformist Party (LRP) were some of the parties that had, in their sequences, 19.5, 15, 11.5, and 9.4 per cent of the Chamber’s 212 seats, currently reduced to 150 (*Inter-Parliamentary Union: Belgium, House of Representatives*, 2018).

The post-colonial federal choice of India is another example. Despite the dominance of the India National Congress (INC), the three-year-old constitutional designing process saw some other

political parties in the Constituent Assembly, an organ mandated to establish and monitor the Constitutional Drafting Commission. Of the 316 seats in the Assembly, INC secured 208, and the remaining seats were distributed among the All-India Muslim League (AIML), 72, and other parties (Telford, 1999, p. 112-126). The formative years of the Indian federal union were marked by significant religious tensions, which likely led to various forms of inter-party bargaining and compromise within the constitution-making process, ultimately shaping the ethno-linguistic character of the federal system.

It was one of the weaknesses of the failed federations to undertake the making processes of their federal constitutional designs under the dominance of exclusive and/or foreign political actors, which is not conducive to generate bottom-up political pluralism. Their federal origins were weighed by a concentrated political force hardly representative of the underlying socio-political diversities. The UN-initiated federation of Ethiopia and Eritrea, the colonial federal legacy of Malaysia, and the communist federations of the USSR, Yugoslavia, and Czechoslovakia are the showcases of federal constitutional imposition by international actors, foreign powers, and dominant parties of having centralized leadership structures and ideological stringencies (Kavalski and Zolkos 2008). In terms of broader constitutional legitimacy, a politicized constitution, as Elazar (1987) classified it as a 'revolutionary manifesto' constitution, grafted from the political program and ideology of an exclusively dominant and strictly ideological party is hardly possible under a multiparty constitutional designing. With the ideological pre-commitment of the 'vanguard parties' of the defunct communist federations the democratic essence of the right of nationalities to self-determination was practically ineffective.

Tsegaye Regassa (2010, p. 94) says, "it is important to note that if the process is flawed, the content is hardly looked into... 'the baby is thrown with the bathwater'." The 1936 and 1977 constitutions of the Soviet Union were, following the study of Blount, Elkins, and Ginsburg (2009, p. 209), purely premeditated by the communist party's view of industrial modernization and farfetched from the touted "nationality question" and self-determination. For they had been closely identified with the ruling communist party and its increasingly falling Marxist ideology, they could not outlast the Cold War, "In East Timor, a single political party dominated the constitution making... lacked legitimacy. When violence erupted a short time after the

constitution's adoption, many key actors and groups called for the document to be replaced," said Brandt and Gluck (2015, p. 14).

The above empirical comparisons of multiparty constitution making resonate with the theory of 'deliberative democracy'. The theory underlines consensus decision-making as a broader source of legitimacy than majoritarian rule. Fishkin and Luskin (2005) develop the elements of deliberative democracy that can be simplified into five: diversity, informed participation, balanced arguments, conscientiousness, and substantive rationality. As they are the procedural requirements of consensus, multiparty constitution-making nurtures them into the designing processes of a pluralistic federal system. The following four assumptions establish the justification for that.

First, the participation of political parties in the constitution-making process can ensure the interests of various identity groups, especially minorities, and it leads to the comprehensiveness of representing the forces of diversity and unity. Sunstein (mentioned in Norman, 2006: 151) suggests that one of the principal purposes of a constitution is to protect not the rule of the majority but the democracy's internal morality of equality and freedom, from which the interests of the minority are not separable. In the first post-Franco 1977 election of Spain, the election of ethnic minority parties from Basque and Catalonia enabled an inclusive federal house that could establish a "36-member Constitutional Affairs Commission and a seven-member working group to draft a constitution. These seven members came to be known as the "Fathers of the Constitution" and were chosen to represent the wide and deeply divided political spectrum within the Spanish Parliament," says Urra (2014, p. 331). The participation of political parties coupled with public consultation expands the political base of founding constitutions. Hart (2010, p. 21), praising the magnitude of 2 million public responses to the constitutional assembly of South Africa, raises the question of why the people should be "bound to respect" constitutions made without their moral judgment and participation. Taking that seriously, Widner (Elkins and Ginsburg, 2009, p. 214), after investigating the making cases of about 194 constitutions, finds a correlation between representative constitutional deliberation and post-constitutional ratification instabilities that violence decreased in 42 per cent of the cases and new conflicts did not also emerge in 35 cases.

Second, in an open political setting, the organizational functioning and the programmatic articulation of parties enable them to engage in constitutional deliberations with factual claims since they have to freely and openly convince others to be competitive. From their constituencies, the competitive nature of multiparty democracy forces minority parties to bring practical constitutional choices to the table of constitutional designing. That serves the purpose of the “downstream constraints” of constitution-making in terms of checking the exclusive constitutional preferences of the dominant elites. Despite Canada being a liberal democracy, Jackson (2008, p. 1276) underlines the necessity of paying attention to factual claims of minorities having meanings on the legitimacy of pluralistic federal constitutional choice in the context of the Canadian Charter of Rights and Freedoms of 1982 that “adopting a binding instrument so plainly opposed by the vote of substantial numbers of a major minority group [Quebec] is a risky proposition.”

Third, the competitive interaction of parties is an asset for advancing balanced constitutional choices. The gains of multiparty representation for the Spanish Constitution of 1978, wrote Urra (2014, p. 317), “to find a balance between those who favoured a centralised unitary system and those who supported a decentralised and pluralist system based on the recognition of the diversity of identities,” provided a reason to be positive about the promise of multiparty constitutional compromise. In cases where public participation is “susceptible to manipulation by authoritarians in Democrats’ clothing,” Brandt and Gluck (2015, p. 17) say, multiparty negotiations have the resources to rebalance the effects. Representing competing constitutional options by parties representing various identity groups and political preferences encourages a compromised federal system. Jackson (2008, p. 1304) confirms Arato’s (2005) insight that “a constitution-making process with enhanced democratic legitimacy ‘cannot be achieved by the imposition of concrete models,’ and urging a focus ‘on a plurality of principles that can be publicly used to legitimate a given process of constitution-making,’ including legal continuity, a ‘plurality of democratic channels, consensus, (partial) empirical translations of a veil of ignorance and reflexivity’.”

Fourthly, the autonomy and vitality of competitive political parties are ingredients of multiparty deliberative pluralistic federal constitutional designing. The effectiveness of parties representing the political diversity and unity of multiethnic and multinational societies puts constraints on the

possibilities of hierarchical positions, coercions and undue pressures while facilitating open, continuous and substantive inter-party negotiations on matters such as regional minority rights, unity, majoritarian democracy, official language, and ethno-territorial organizations of federal-units. In the doctrine of federalism, a constitutional imposition as witnessed in the failed federations of one-party regimes is antithetical to the never-ending deliberative attributes of federal constitutional legitimacy. Attesting to Elazar's (mentioned in Burgess, 2006, p. 107) words of wisdom, "federalism is a continuing seminar in governance", the notion of 'autonomous agency' in deliberative democracy enables parties to maintain the continuity of the covenantal precepts of federal legitimacy. It is assuring and re-assuring the "will to federate", regardless of the 'organic' and 'mechanical' backgrounds of federations, evolved from social and elite interactions, and agreed on constitutional options, respectively (Fabre, 2009, p. 4).

In the final analysis, Blount, Elkins, and Ginsburg (2009, p. 204) observe that democratic constitutional designing "can help generate democratic outcomes." In setting off constitutional impositions, multiparty constitution-making generates the constitutional consensus and durability of multiethnic and multinational federal systems. Claiming consensus is the major aim of constitution-making. Brandt and Gluck (2015, p. 20) pointed out that "constitutional negotiators in South Africa used the concept of sufficient consensus; in practice, this meant support from the two main parties and a critical mass of the smaller parties." The durability comes from the advantage of multiparty balanced constitutional arguments in limiting the identification of constitutions with the ideology and specific interests of a dominant group during the period of writing them. The theoretical and practical legitimacy of highly politicized constitutions is too contentious to be "the living document" of generations. Jackson (2008, p. 1294) argues that "constitutions negotiated by elite representatives of groups whether in a special assembly or convention or a representative parliamentary body may prove sufficiently durable to move towards constitutionalism" even to the extent of without the additional criterion of public ratifications.

2.4.2. Federal Representativeness

While a pluralistic federal system's legitimacy rests upon its foundational constitutional principles, the enduring viability of such a system hinges on the representative character of its structures in effectively translating those principles into the lived realities of diverse groups

within the polity. The constitutional organisation of federal-units in terms of distinctive ethnic identities and the formation of a shared federal government make together the case for the very close relationship between federal diversity accommodation and representative institutions. In that regard, based on the values of democratic accountability and inclusiveness attached to the model of political representation generated, as Rehfeld (2006) claims, from democratic elections and multiparty system, electoral democracy advances the self-rule and shared-rule structures of pluralistic federal constitutional design for the following three rationales:

First, multiparty representations in the federal orders of government generate a political space for the institutional autonomy of identity groups in exercising their constitutional powers and functions. Within a multiparty system, the inherent diversity of political actors virtually guarantees that at least one component unit of a federation will be governed by a party distinct from the federal-level ruling party or its coalition. That may be rewarding for the autonomy of that federal-unit “to formulate and adjust policy without the intervention of the central party,” says Thorlakson (2001, p. 7). Federal-party asymmetry paves the way for the policy-plurality notion of federal constitutional diversity. Norman (2006, p. 84) claims that Neumann’s “best of the big, best of the small” suggests one of the most enduring justifications of federalism in combining the benefits of small community participation and federal union. In other words, it curtails the possibility of *de facto* power centralization in the offices of the federal government *via* the structures of a single dominant party.

Therefore, the power dispersal implication of federal-party asymmetry is relevant to the distinct identity groups of multiethnic and multinational federations to “own” the federal self-rule and to have constitutionally defined and case-specific *sovereignty*. The chief aspect of federal system is the multiplicity of functioning “sovereign” political units (Elazar, 1997, p. 237–251). Myerson’s (2006) idea of diversity accommodation that needs not only an equal treatment of differences but also the differential treatment of similar interests conveys the message that the democratic “owning” of federal constitutional jurisdiction highlights the *demos* conception of autonomy in pluralistic federalism.

In addition, as an alternative to federal-party asymmetry, the practice of regional disaggregation and autonomous organizations among federation-wide parties in case they are faced with effective segmental ethnic parties hints at the mutual alignment that could exist between

multiparty multilevel competitions and the federal constitutional de-monopoly of public policy-making power. That is highly minimizing the centralizing political and institutional capacity of a party or coalition of parties, assuming the power of the federal government, and that could lead to cooperative federal interactions that do not jeopardize the constitutional rights of identity groups. In their investigations of multiparty elections in Basque (1980), Andalucía (1981), and Galicia (1982), Linz and Montero (1997, p. 27) propose that “one factor that may be significant in federal states is that a governing party at the centre is faced with opportunities to be punished whenever there are regional parliamentary elections, creating a momentum for the opposition. This was particularly important in the case of Spain.” In Spain, the incremental devolution of power has been closely related to the electoral performances of segmental parties sponsoring ethnic interests, from policy promises made before elections to policy advocacy in the legislature and even to policy enactment in the government (Birnie, 2007, p. 116).

Secondly, multiparty system aids in the democratic representation of federal-unit level minority groups. According to Reilly (2001, p. 4), political parties build up around politically salient cleavages such as ethnicity and formulate these cleavages into defensible political purposes. Keeping electoral systems and the depth of identity cleavages constant, tighter electoral competitions among parties of the dominant identity groups are likely to induce political campaigns and candidate recruitment appealing to minorities. The other possibility is that minorities directly elect and be represented through segmental co-identity-based minority parties. Armingeon (2003, p. 15) states:

The Swiss People's Party is traditionally the party of Protestant farmers and the middle classes, while the Radicals represent the bourgeoisie, the Christian Democrats speak for Catholic segments of the population, and the Social Democrats defend, in political terms, the interests of the workers... Switzerland has so many parties because it is a socially and culturally mixed society.

Cantonal minorities can elect parties not favoured by cantonal majorities. Indeed, the proportional electoral system is a reinforcing factor in that. Ethnic minority parties are instrumental in entrenching the constitutional protection of ethnic minorities (Requejo, 2001). Without them, even the promise of a ‘federal laboratory’ to foresee innovative federal governance is hardly effective.

The third rationale focuses on the shared-rule structures of pluralistic federations. Multiparty federal houses are more likely to deliver inclusive legislative and policy outputs and to push for the participation of different identity groups in the federal executive. The election of different parties in the lower house of Switzerland has enabled the “magic formula” of the Federal Council to stay effective with the representation of party representatives from linguistic communities, though it has been criticized for producing the cartel of four parties since its introduction in 1959. Especially the establishment of a coalition-based government representing various ethnic and linguistic groups, save the critique of how inclusive a 'minimum winning coalition' could be, has much to say about the role of a multiparty system in the representativeness of federal shared-rule where the majority rule is not a reliable source of legitimacy (Ucarlar, 2009: 14). Similar to the process of federal constitution-making, as discussed earlier, deliberative democracy is also more relevant to the accommodative foundation of federal shared-rule than self-rule. Norman (2006, p. 146) articulates that deliberative-democracy is "giving real weight to the views, ideas, concerns, and discourse styles of the disadvantaged, especially minorities...while the idea of federal autonomy is that it is essentially a form of exit."

The experiences of democratic pluralistic federations underscore the federal representativeness purpose of multiparty system. Despite debates on the democratic legitimacy of the Canadian Senate, the electoral representation of alternative parties in the lower house, the House of Commons, is well known. Currently, in addition to some minor parties, four major political parties, namely: Conservative, Liberal, National Democratic Party, and Bloc Quebecois, have seats in the House of Commons (*Canada Guide*, Past Canadian Federal Election Results, 2019). The impacts of the Bloc Quebecois to expand the federal autonomy of Quebec and to promote the politics of “distinctive community” in the Canadian federal order are associated with its democratic credentials from competitive elections. Like Party Québec, the electoral success of the Saskatchewan Party at sub-national level, since 2018, has implicated the increasing assertiveness of the constitutional powers of Saskatchewan (*Canada Guide*, Provincial Premiers, 2019).

Belgium and India are the other pluralistic federations with multiparty democracy. It was reported that, following the 2014 federal election, at least 14 political parties shared the lower

house of Belgium, without a majority party (Parties and Elections in Europe, *Belgium*, 2019). According to the same source, some of the segmental parties such as the New Flemish Alliance, Open Flemish Liberals and Democrats, Flemish Greens, and Flemish Interest, have expanded the representativeness of the federal government to embody political plurality within the Flemish community regarding separatism, nationalism, and conservatism. It is a clear sign that the evolution of the Belgian federal system has been marked by the ascending electoral competitiveness of segmental parties to induce constitutional re/negotiations over communal self-rule, federal-unit structure, and mechanisms of linguistic diversity accommodation. A notable consequence of the Belgian political system's regionalization since the late 1980s, as identified by Armingeon (2003, p. 13), was the emergence of regional parties, with Social Democrats and Christian Democrats experiencing significant growth at the sub-national level. The regionalization of the parties and the availability of federation-wide parties were to solicit multi-coloured representations and democratic accountability for the federal structures of Belgium. In India, there were seven federation-wide and 49 state-wide parties in the federal and state legislatures (*Blog Media*, 2018). Voting among political parties, the distinct ethnic groups are more likely to “own” the institutions of the states and the Federal territories, as they could also achieve segmental accountability within the Union Government. At least, multiparty competitions can facilitate the articulation of alternative federal political agendas, and that is helpful to the entrenchment of federalism in the mainstream politics of India.

In contrast to Belgium, Spain, India, Switzerland, and Canada, the centralization of the constitutional allocation of powers is one of the common syndromes of federal systems lacking multiparty democracy. In Myanmar, the military's significant control over the government undermines federalism at the risks of widespread unrest and instability (Holliday, 2010). The former USSR and Yugoslavia are well-known historical examples of failed pluralistic federations ruled by the one-party system of the communist regimes. Though there were claims of intra-party criticism and collective leadership within the communist parties, they could not produce the type of consensus that is necessary for the representativeness of the federal institutions vis-à-vis ethno-national diversity. It is imperative to differentiate “consensus” from forced consent, as Duchacek (1985, p. 38) pointed out, to be aware of “deliberations” resulting from the acts of manipulation and suppression under one-party systems.

2.4.3. Federal Constitutional Supremacy

The fixture of multiparty democracy in the enterprise of federal constitutional supremacy resonates with the constitutional purposes of multiparty political system. According to Mark Tushnet (2011, p. 50–60), constitutional evolutions are more likely to emerge from the actions of political actors and parties than from intervention by courts, as constitutions shape political agendas. The implications of multiparty system on the effectiveness of federal constitutional review and amendments are varied. They arise from the overall institutional and political environments created by multiparty competition, multiparty representation, federal-party-asymmetry, and the electoral transfer of power. In a pluralistic federal setting, multiparty lawmakers stimulate the constitutional accountability of the executives concerning the constitutional powers and privileges of identity groups. That means the meaning of power check-and-balance and separation of power for the protection of the federal system of power dispersal. Cameron and Falletti (2005, p. 245-246) note the interdependence between the separation of power and the federal division of powers in setting limits on how power should be exercised. The inclusiveness, professional competency, and independence of the regular judiciary are vital in cases where they have the power of constitutional interpretation and constitutional courts have relationships with multiparty legislatures and electoral transfers of power between parties. Depending on the rules, various parties participate in the nomination and appointment of members of supreme and constitutional courts. Furthermore, under competitive elections, the potential for alternating power between parties reduces the likelihood of entrenched partisan influence in the composition, function, and decisions of constitutional interpreting authorities.

The proportional recruitment of chief justices from federal-units for the Supreme Court of Canada, for the Federal Tribunal of Switzerland, which decides on the constitutionality of cantonal laws, and for the Constitutional Court of Belgium is worthy of mentioning. Watts (2008, p. 160) justified the federal value of that kind of recruitment by saying that it had been significant to the representation of “Quebec with its civil law tradition” in Canada, to the applications of the three official languages of Switzerland, and to enforce, in Belgium, “the strict legal requirements laid down for linguistic balance in the membership of the Court of Arbitration.” That signals the significance of multiparty federal and regional parliaments to ensure inclusive recruitment in the constitutional interpreting organs of pluralistic federations.

Further still, the possibility of multiparty democratic elections leading to the ascendance of different, even opposing, parties into the offices of the federal-units and federal governments foresees the norm of inter-governmental constitutional challenge. To take an example, in India, federal-party-asymmetry has triggered the practice of constitutional challenges among states ruled by segmental ethnic parties against the constitutionality of federal laws and decisions (Telford, 1999).

Multiparty systems, through mechanisms like inter-party negotiation and broader public engagement, can contribute to the effectiveness and perceived legitimacy of federal constitutional amendments. Electoral contests between ethnic, regional, and federation-wide parties or party coalitions have both positive and negative implications. On the one hand, they underpin the inclusiveness of constitutional amendment procedures in federal constitutional system with the participation of contending parties in serious constitutional debates. On the other hand, party competitions and federal-party-asymmetry are likely to invoke constitutional amendment initiatives aligned with the political programs and visions of specific parties. The initiatives are sources of constitutional dynamism for a federal constitution to be progressively functioning across issues and generations. However, multiparty democracy must also find ways to prevent arbitrary and unilateral constitutional modifications while embracing constitutional flexibility and inclusive renegotiations. Unilateral constitutional amendments by either the federal government or federal-units go against the *modus vivendi* of a written federal constitution (Watts, 2008).

Therefore, multiparty legislatures act as a safeguard against unilateral constitutional amendments, promoting greater consensus and compromise in the process of constitutional change. Burgess and Gagnon (2010, p. 8) provide their observation that the one-party communist federations did not place constitutional restraints on the power of the communist parties. The autonomy of ethnic or territorial federal-units had no guarantee in the face of the sweeping dominance of the communist parties. “Totalitarian and authoritarian rulers at the centre can ignore or modify, without consulting the people or freely elected representatives of the people, the rules granting those powers,” Linz (2004, p. 20). That shows the attenuation of constitutionalism in political systems with serious gaps in the realms of multiparty politics to the extent that, to Watts (2010, p. 326), “USSR, Yugoslavia, and Czechoslovakia cannot be

classified federations since they do not in operation represent examples of constitutionally dispersed authority."

Constitutionalism and the principle of federal constitutional supremacy have a significant impact on the operational legitimacy of such a pluralistic federal system as a multiethnic federal polity. In a multiethnic federation, violating the constitutional arrangements of ethnic diversity accommodation is much more likely to affect, or be perceived to affect, the nature of ethnic power configuration and inter-ethnic relations. This impact is greater than what inter-governmental legal clashes could lead to in a territorial administrative federal system. The permeability, sporadic nature, and pervasiveness of ethnicity and ethnic conflicts, identified by Horowitz (1985), amplifies the critical role of constitutional supremacy in the overall stability of a multiethnic federal system. As contending political claims among ethnic groups give rise to a multiethnic federal constitutional order, methods and institutions of constitutional review and amendment need to embrace the multiethnic federal constitutional values and rules. The rigidity of the federal constitutional amendment is as invaluable as the power of the federal tiers of government in raising cases of constitutional interpretations to expand the legitimacy of constitutional diversity. The multicultural model of constitutional diversity by James Tully, as mentioned by Graham and Hoffman (2006, p. 350–365), reflects that the monolithic depiction of the state is not suitable to commend diversity-inspired constitutional design. In the logic of legitimacy, every constitution aspires to the values and traditions of constitutionalism (Burgess, 2006). Since it is relevant in defining the legal roles of federal-units and federal government in constitutional review and amendment mechanisms, the principle of federal constitutional supremacy also has the purpose of constitutionalism, which sets constraints on what political power could do.

2.4.4. The Dynamics of Multiparty Representation in Pluralistic Federal System

The implications of democratic elections and multiparty representation, as indicated earlier, for the legitimate foundation and consolidation of pluralistic federal system call in a host of issues indicating the interactions between competitive multiparty democracy and that of *Staatsvolk*, the number and the relative size of ethnic federal-units, referring to the confrontational intensity of dyadic federations, the majority-minority divide, socio-economic symmetry, the security of irredentism channelled through domestic political parties etc. (Horowitz, 1985; O’Leary, 2001;

Watts, 2008, p. 178–188). This entails the predicaments of democratic pluralistic federations. For the study at hand, issues close to the rules of multiparty representation, deliberation, and political parties are emphasized in terms of electoral system, political party structure and discipline, segmental political parties, and cleavage and political values.

2.4.4.1. Electoral System

The implications of multiparty competition and democratic elections for the representative legitimacy of the structures of a pluralistic federal system need to be clarified, specifically regarding the electoral system. It has multifaceted connections to the quality and effects of democratic representation. Considering some electoral systems tend to be rewarding to some positions on public issues while blocking others (Sartori, 1968, p. 98), the question is: what type of electoral system is favourable to the broader representation of the identity groups of a given pluralistic federal polity? According to the Institute for Democracy and Electoral Assistance (IDEA), *Handbook of Electoral System Design* (2005), there are not less than fourteen types of specific electoral systems across the world. Chattopadhyay (un, p. 15) states that if an electoral system fits the aspects of diversity, it has the potential to ensure inclusive representation. Academic literature has shown the divergence of views on the suitability of different electoral systems to such divided societies as found in multiethnic federations.

Some democratic pluralistic federal systems, like Switzerland and Belgium, have implemented a proportional system of election since 1918 (Armingeon, 2003). This system encourages a more expansive representation of the forces of unity and diversity compared to majoritarian systems, including Alternative Voting (AV). Norris (2002, p. 210) outlines four reasons why this system is effective in doing so, and these reasons are mutually reinforcing. They are the proportionality between votes and seats, the parliamentary inclusion of small parties, the inclusion of minority parties in the parliament, and minority political participation and support. Minority groups could vote for segmental minority parties to be represented in the federal orders of the government. In the majority electoral system, “voters’ dilemma”, “manufacturing majority”, and Duverger’s (1964) ‘law of median voter’ are oft-cited to grasp the tendency of party accumulation and interest-aggregation to narrow the number of competitive political parties at the expense of minority representation. “Voters’ dilemma” refers to the strategy of electorates not to waste their

votes by choosing small and new parties under the majoritarian system of election, where the winner-takes-all is the rule (IDEA, 2005).

Assuming identity voting behaviour in a multiethnic federation, the majority system of election is more likely to lead to the malapportionment of the representative institutions of the federation, for it exaggerates the “majority bonus” in the writings of Moser and Scheiner (2007) and Dahl (1998) at the expense of shrinking the representation of minority ethnic groups. It alludes to the idea that democratic elections do not always warrant the legitimacy of inclusiveness. It could result in “majority tyranny” or “regional fiefdom” in such a way that construes the changelessness of who constitutes the political minority and majority, where there are deep socio-cultural, economic, and political cleavages among the relevant groups. This has been the major reason for opposing the FPTP rule of election in Canada because “it excludes minorities from fair representation. As a rule, under FPTP, parties put up the most broadly acceptable candidate in a particular district to avoid alienating the majority of electors,” says IDEA (2005, p. 43). Consequentially, the number of effective parties is relatively high in those states employing the proportional system. Lijphart (cited in Norris, 1997, p. 10–11) pointed out that, in the mid-1990s, there were 4, 3.9, and 3 effective parties in the lower houses of 53 ‘established democracies’ with proportional, mixed or semi-proportional, and majoritarian systems of election, respectively.

However, the very relationship between party-size and multiparty system is not a trustworthy indicator of multiparty democracy. “Extremist” parties hostile to the value of democracy itself could be elected to parliament and form government if multiparty system is mistaken for representing any political party (Lijphart, 2008, p. 53). The participation of many political parties is not identical to a better party system, as mature democracies have less than six effective parties (Ibid., p. 5). Despite that, in a pluralistic federal design, both divisive and extreme unitarist parties de-escalate with the constitutional balancing of unity and diversity along the spectrum of constitutional centralization or decentralization. Hector (2000) assumes that federal constitutional accommodation contains secessionism by receding the political ambition of exclusive *sovereignty*. There is no point in rejecting the proportional electoral system for the mere reason that it can embolden ultra-unionist and ultra-separatist parties that are hostile to a multiethnic or multinational federal constitutional order.

Belgium, Switzerland, and Spain use the List Proportional Representation (LPR) system, which has resulted in their lower houses being more representative. These federations often have coalition-based governments at the federal level (UNESCO, 2006). As indicated previously, segmental parties exclusively representing Flemish and Walloon have become integral parts of the Belgian government; the same goes for Spain, though there is a wide gap among parties representing specific identity groups such as Basque, Catalan, Valencia, and so on in their parliamentary seats compared to federation-wide political parties (Moser and Scheiner, 2007). That is why, in delivering representative parliaments and inclusive executives, the proportional system of election has contributed much to the de-escalation of centrifugalism in Catalonia and Wallonia (Watts, 2008, p. 144). It is important to note that coalition governments are not limited to federations that use the proportional electoral system. They are also practised in countries such as India and Canada, which use the plurality system.

Some arguments suggest that the majority system of election can guarantee the representation of certain groups in a diverse federation, such as ethnic, linguistic, or national groups. In such federations, the territorial distributions of the constituent identity groups tend to favour the identification of electoral districts with most of these groups. India is an example of a federation employing the plurality system for the federal lower house (Watts, 2008, p. 148–152). Birnir (2007, p. 92) observed that the plurality system has been more effective in producing representation in India than in the UK because of the geographical concentration of ethnic groups and the presence of many ethnic parties. In addition, reserved quotas of seats, exclusive voter rolls and/or candidacy, and adjusted electoral districts could be implemented to ensure the representation of regional minorities (Dahl, 1998; IDEA, 2005), even under the majority system.

O'Flynn (2010) argues that Alternative Vote (AV), Single-Transferable-Vote (STV), and List-Proportional System (LPR) are integrationist electoral systems. They balance the benefits of majority systems in establishing a unified and broad-based government with the claims of proportional systems to widen the representative base of the government. Benjamin Reilly (2001, p. 291) gives evidence that AV had shown some successes in Papua New Guinea between 1964 and 1975. It aligns with the notion of fostering conciliatory politics, a concept extensively explored by Donald Horowitz (2003). The SNTV, pointed out by Maley and Reilly (2000), is a mechanism for reducing the disproportional effect of the majority system of election on minority

parties. It would create competition among candidates of a party since there are only a few seats and one voter cannot elect more than one candidate. For STV, it qualifies the proportionality of electoral system in which preferential votes are to allocate seats using an apportionment formula, while AV awards a seat to a candidate who wins the majority of votes in the preferential order. STV is used in Ireland, Malta, Northern Ireland for local election and European Parliament elections, and for senate election in Australia and gained credits from John McGarry and Brendan O'Leary (2006). However, the feasibility and sustainability of STV and AV need assessments against the depth of the political cleavages among identity groups that could converge along the orders of preferential votes.

In critically divided societies, Lijphart (1985) argues, LPR is more reliable than AV and STV to foster inclusive democracy. It guarantees the segmental representation of identity groups at the federal levels of government before requiring them to work together which depends on the processes of agreements and trade-offs. However, Horowitz (2002, p. 20–22) contends the workability of the proportional system in bringing segmental ethnic political parties closer if there are: wide inter-ethnic cleavages, elite entrepreneurship based on perennial ethnic identities, and counter-elitism made on the grounds of “sell-out” and “co-option”. He (Ibid) maintains that AV is more dependable in establishing the government from parties with cross-cutting ethnic appeals than relying on small parties to form a joint government, which could be highly fragile. In AV, the requirement of broad-based vote-pooling pushes parties towards inclusive electoral campaigns.

Besides, AV, STV, and SNTV, according to Reilly, constitute what he calls the ‘politics of centripetalism’ (Reilly, 2002, p. 159), characterized by three features: electoral incentives for parties to make inclusive campaigns, arenas of bargaining, and the development of centrist, aggregative and multiethnic political parties and party coalitions. Their implications for a pluralistic federal system in terms of inducing political parties to make inclusive campaigns when they compete for federal and regional legislatures. Since a purely homogenous federal-unit is far from a reality, regional minorities gain political advantage and representation from preferential and non-majoritarian electoral systems, much more so in multi-member-district STV and SNTV. Yet, there is little evidence of pluralistic federations applying AV, STV and SNTV to

show clearly how they advance federal inclusiveness and stability. Australia is the only case to mention for AV as the post-conflict federation of Afghanistan is for SNTV (IDEA, 2005).

The dominant systems of elections among federations, as a whole, are FPTP, LPR, and Mixed Representation, in their orders (Figure 1). For that reason, though the advantage of multiparty democracy to the representativeness of the institutional setups of pluralistic federations is not immune from the impacts of electoral systems, shreds of evidence show that there is no best electoral system for all. The plurality system of India has been as effective as the proportional system of Switzerland. Plus, coalition governments of varied identity groups and parties have been established in both India and Switzerland. Such convergence among electoral systems is to the view that the outcomes of electoral systems are mediated by the territorial distribution of identity groups, electoral district size (i.e., voter magnitude), the number of contested seats in a district (i.e., district magnitude), the vote threshold, and so on. Therefore, in appraising systems of election vis-à-vis federal system representativeness and stability, the specific circumstances of each federation need to be considered.

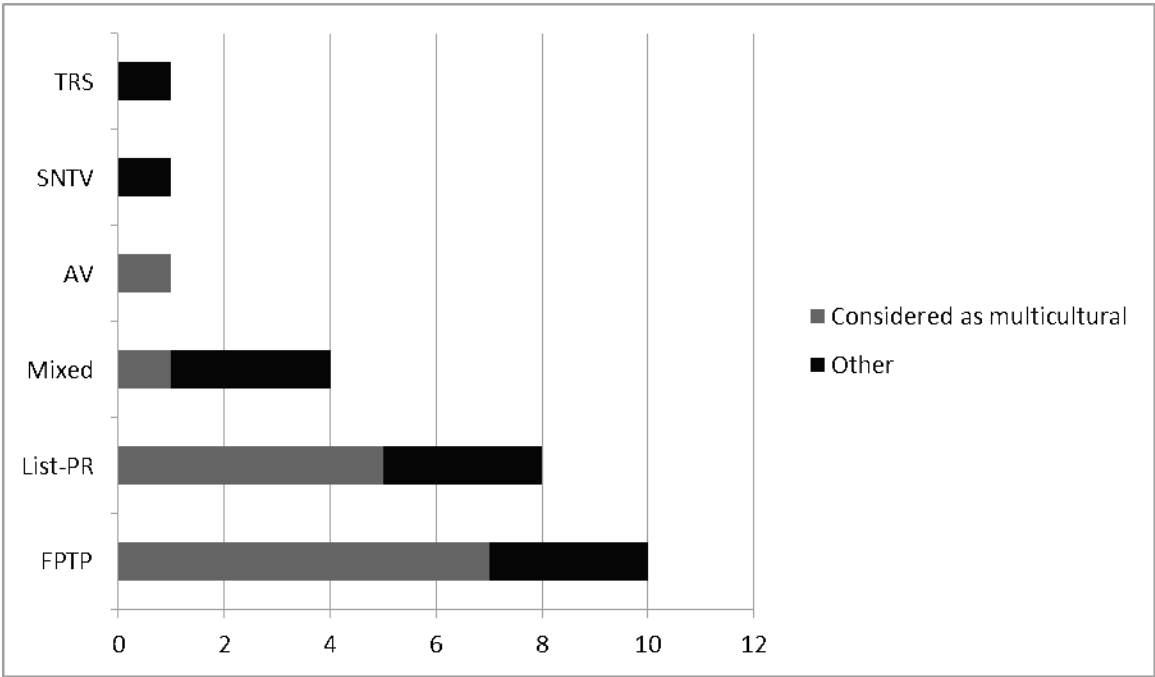


Figure 1: Electoral Systems Distributions in Federal States (Excluding Democratic Republic of Congo and UAE). (Source: Adopted from the data of IDEA, 2005)

2.4.4.2. Political Parties: Structure and Party-discipline

In pluralistic federal democracies, political parties significantly influence the formal practice of diversity recognition and accommodation. The structures and the functioning mechanisms of parties have the varieties of organizational charts and procedures of party-discipline which have meanings to the constitutional self-rule and representation of the constituent identity groups of pluralistic federations. Telford (1999, p. 300) states that more often than not, dominant majority parties with non-federal structures compromise federal pluralism at the expense of minority ethno-linguistic groups' constitutional rights and representations. Ultra-unitary parties, with much support from majority ethnic groups, tend to show a monolithic party structure to the extent that it is not palatable to federal power matrix. Therefore, the structures of federation-wide parties determine their compatibility with the constitutional characters of pluralistic federal states, and that comes in many forms.

In some pluralistic federations, federation-wide parties establish regionally tailored and/or separate organisational structures. In others, they have constituent regional parties endowed with organisational as well as political autonomy, within common ideological and political visions (see **Figure 2** on the distinction of truncated, split, confederal, integrated, and unitary party arrangements). Drawing on the conceptual framework of Scharpf (1995), this analysis posits that the observed heterogeneity of political parties in federal systems can be attributed to the interplay of two distinct logics: the 'logic of organisation' and the 'logic of competition'. In 'dual federalism', there are no competitive incentives for parties to establish integrated federal-level structures other than advancing provincial party autonomy tuned to the compartmented division of constitutional power. However, in 'joint federalism', has the 'logic of organisation' for cooperative federal-level party integration. That emphasises the demand to coordinate the overlapping nature of the constitutional power division (Ibid., p. 31–33). The system of federal power allocations affects the modalities of party organisations in terms of flexibility or coordination to achieve policy efficiencies and win multiparty multilevel competitions. In the final analysis, thus, in approaching the federal features of party organisations, the constitutional system of division of power is a factor at play.

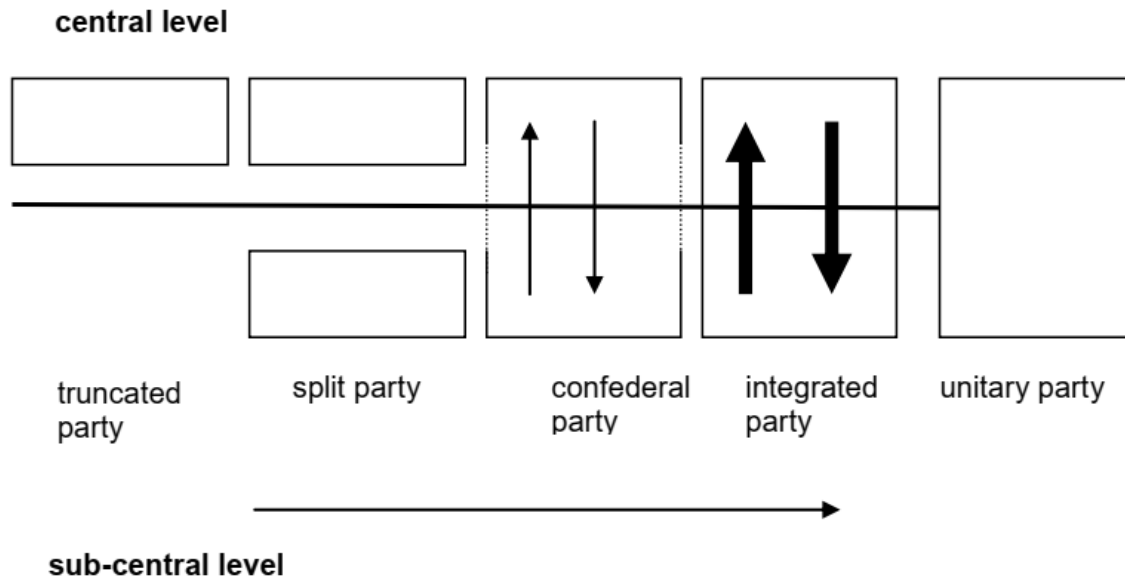


Figure 2: Vertical Linkages between Central and Sub-Central Party Organizations: The Truncated Party, and the Continuum between Split and Integrated Parties (Source: Thorlakson, 2001, p. 5) .

The Spanish Socialist Party (SSP), an integrated federal party, recognised the specific demands of Catalonia, formally allowed its Catalonian organisation to be autonomous (Telford, 1999, p. 300–308). In Switzerland, the federal and cantonal party systems are so different and autonomous that they articulate their programmes without jeopardising the federal character of the Swiss Constitution. Owing to the confederal political culture and history, except for the social democrats, the Swiss party system has a confederal platform that cantonal parties are autonomous and have a strong influence on their federal level umbrella parties (Thorlakson, 2001, p. 14). Others add that the political culture of consensus democracy accompanied by the plebiscitary constitutional amendment mechanism encourages the close cooperation of cantonal autonomous parties (Burgess, 2006). The structures of the parties and the federal constitutional design of Switzerland have compatibility. In Belgium, too, federation-wide parties have dissolved themselves into parties that are almost equivalent to full-fledged regionalist parties in Flemish, Walloon, and Brussels (Lecours, nd). Similarly, the Canadian party system is so asymmetrical that the two major Liberal and Conservative parties have highly autonomous provincial organisations (Post, 2015). The asymmetry refers to the heterogeneity of parties in the federal and provincial governments so that parties in the provinces are not the replica of the

centre (Watts, 2008, p. 114). That allows parties to accommodate regional diversities and, even, conflicts (Telford, 1999, p. 300). The accommodation can level up the representativeness of the federal layers of government to exercise, in a bottom-up way, the constitutional division of power and to set mechanisms of constitutional supremacy in motion, as a tool for the constitutional security of identity groups which are the building- blocks of pluralistic federations.

The other point is the issue of party-discipline and the constitutional setup of pluralistic federal polities. Party-coherence has the rationales of party-solidarity in the government and dominance against political oppositions (Friedman, 1999, p. 101–103). According to these interests, it delineates the scope of discretion individual members of a political party can (Nanada, 2006). The extent to which the members of a party in the government decide independently of party affiliation and resolutions is the basic feature of party-discipline in installing party-loyalty. That is why it has connections with the representativeness and constitutional effectiveness a federation. Party-discipline poses challenges on the effective enforcement of the federal constitutional dispersal of powers (Cameron and Falleti, 2005, p. 246). Vertically, in an obligatory party-loyalty, the bottom-up accountability of representatives in the federal and sub-national governments gives way to partisan politics not articulated with the concerns of the component identity groups of a pluralistic federation. Horizontally, in times when federal and/or federal-unit governments are under majority parties with tight party-discipline, the principle of federal constitutional supremacy is vulnerable to the influences of the power nuclei of the parties, which is commonly coincides with the executive structure of government.

Given the empirical record that liberal political parties have much weaker party-discipline than parties on the left side of the ideological spectrum, the far-reaching impacts of tight party-discipline on pluralistic federal system are some of the lessons drawn from the experiences of the defunct communist federations. In these federations, wrote Kavalski and Zolkos (2008), the subordination of the federal structures and their operations to the ideological commitment of the communist parties, known by their stringent party-discipline, was common. As an example, in the Communist Federation of Yugoslavia (CFY), there was the parallel organisation of the Republics, Provinces, and Communes and the functional structures of the communist party into the League of the Communists, the Socialist Alliance, Trade Unions, the Economic Chambers,

and Enterprises, which was coterminous with the centralization of the federation by the League of the Communists (Dunn, 1975, p. 137–140).

Furthermore, the practice of party-discipline in the different systems of government and its implications for the federal constitutional systems is interesting. In the parliamentary system, the reliance of the government on the parliamentarian majority votes encourages stable party-discipline (Watts, 2008, p. 114–115). It is relevant to pluralistic parliamentary federations such as India, Belgium, Canada, and Spain. Switzerland has been able to soften party-discipline using innovative parliamentary system. Telford (1999) states that the Swiss party-discipline is weak due to four reasons: The Federal Council does not need a vote-of-confidence from the Federal Assembly, direct democracy diminishes legislative alliances, de-personalized politics and the non-existence of dominant political figures, and there is fewer interest in cantonal block-voting since Cantons have adequate self-rule. The Swiss case deviates from the provincial block-voting procedure in Canada, which requires reliable party-discipline. Nevertheless, the Canadian party-discipline is by far less centralising than India's. The Union of India is a centralized democratic pluralistic federation, compared to Belgium, Spain, Canada, and Switzerland (Douglas and Singh, 2003).

2.4.4.3. Segmental Political Parties

As the structure and decision-making mechanisms of federation-wide political parties are important to the pluralistic federal constitutional system of diversity accommodation, segmental political parties also have their own impacts on the stability of pluralistic federations. In a multiethnic federal arrangement, though multiparty system backs up the representation of ethnic political parties to safeguard the constitutional rights and the political interests of ethnic groups, there are sceptical views on the roles of such parties. The free-functioning of ethnic parties and their democratic elections in self-rule and shared-rule structures of federations could provide them with the incentive to instil extremely destabilising centrifugal demands. In some multiethnic federations, the electoral dominance of extreme ethnic minority parties in their co-ethnic federal-units has indulged the tendency to call for secessionist referenda, as the most common norm to claim international recognition (McGarry and O'Leary, 2003, p. 13–14).

Multiethnic federal system entrenches the experience of exclusive policymaking and rivalry interactions among ethnic groups, especially when ultra-centrifugal ethnic parties are in full control of ethnic federal-units (Brancati, 2006, p. 650–652). The emergence of parties with extreme ethnic fervour undermined the efforts of the federal government of Yugoslavia to introduce collective reforms vital to the continuity of the federation. In the later years of Yugoslavia, the current of ethnic assertiveness was so forceful to be contained (Hector, 2000). In further detail, Watts (2008, p. 17–18), taking the example of Czechoslovakia, says that disagreements in coalition governments consisting of parties of hostile ethnic groups are escalating the instability already rooted in the relationships of ethnic federal-units.

Nevertheless, from the track records of federations such as Canada, Spain, Belgium, and Switzerland, it is possible to understand the positive roles of ethnic and/or federal-unit level political parties in entrenching the constitutional system of diversity accommodation. They, depleting the political drive separatism, have contributed to the stable operations of the mentioned federations.

2.4.4.4. Cleavages and Political Values

Political values as well as the depth of cleavages in pluralistic federations shape the extent to which multiparty system could be a source of instability and what Norman (2006) calls ‘federal-failure’. It is part of the broader debate about democracy in divided societies. In balancing inclusiveness and stability, the existence of overarching and cross-cutting identities receives a normative assessment. It has the potential to expand the political appeal of parties competing in democratic elections and represented in the government. The political currency of overarching collective attachment among distinct identity groups is the social resource of citizenship. According to Aalen (2006, p. 45), “people should have loyalty to the ideas of both an overall citizenship and the narrower indigenship.” A multiparty system linked with overarching attachments and civic-nationalism is not only helps diffuse selectively defined primordial political disaggregation but also encourages the casting of multiparty pluralism into integrated and broader-based political alternatives. McGarry and O’Leary (2003, p. 14) talk about the crises of multiparty system in Nigeria and Czechoslovakia and the inability of the one-party system of Yugoslavia to address the deteriorating legitimacy of the federal system, which had origins from the failure, or the vacuum, of collective identification and “no democratic mechanisms for

developing them.” Citizenship generates political values for the stability of democratically functioning multiethnic and multinational federations.

The normative implications of multiparty politics for pluralistic federal constitutional choice should not be taken for granted independently of those political values affecting the constitutional preferences as well as the behaviours of political parties and, for Kymlicka (1995 a, p. 285), the quality of citizenship. Competing ethnic and multiethnic parties need to embrace the values of diversity accommodation and concession against deadlock and fragmentation (Norman, 2006). The aversion to each other’s constitutional interests diminishes the possibility of striking a ‘covenantal’ federal design that pools the fragmented interests of political parties into a constitutional concession. Even in the post-constitution-making period, the practice of showdown and reluctance in a democratic pluralistic federal system is perilous (O’Flynn, 2010, p. 280). Linz (1997, p. 31) succinctly states that “democratic federalism, unless the elites make a deliberate effort to use it in an integrative manner, has inherently disintegrative tendencies.” As a shared responsibility, commitment to the federal constitutional system of autonomy, interdependence, and joint participation has the purpose of advancing constitutional diversity, yet with an integrative common constitutional responsibility among federal partners.

However, the practicality of shared federal commitment *vis-à-vis* competitive party system aligned with ethnic, linguistic, religious, or national, differences is a matter of frequent remarks. It could be challenging for ethnic-based segmental political parties operating at federal-unit level to collaborate with federation-wide parties, and *vice versa*. Ethnic parties, if they are working with multiethnic parties, might be subsumed in the wider federal politics to the degree that their segmental peculiarity appears to be fading (Jeffery, 2010, p. 9–10). That is one of the grounds for intra-ethnic party accusations and outbidding in the direction of uncompromising ethnic politics. This engenders the daunting case for a segmental party to achieve electoral competitiveness within its core-ethnic constituencies while meaningfully cooperating with other parties from other ethnic constituencies. As a solution, to be considered in the eyes of others as a credible federal partner, Baubock (2000, p. 366) suggests parties nurture a balance of legitimacy within and outside their core ethnic bases. Switzerland and Spain have provided pieces of evidence of shared federal commitment among segmental and cross-ethnic political parties.

Institutions and constitutions have impacts on the political values and behaviours of parties. Despite going through its full revisions in 1874 and 1999, the Swiss Constitution aspires to reconcile and accommodate both the cantons of the victorious radicals and the overpowered conservatives (Dardanelli, 2010, p. 144). It encourages parties to join each other in the shared federal institutions while reflecting constitutional pluralism in their agendas and organisational structures. In Spain, the democratic transition in the 1980s prompted the application of federal principles as part of the drive to champion inclusive democracy (Moreno, 2010). The political aspiration of Spanish nationalism in the post-authoritarian period made compromises to accommodate minorities. This laid the groundwork for the further concessions made among parties representing all sides. As a result, the incremental power devolution *via* party bargains and inter-governmental dialogues has strengthened the claim that segmental political parties are the fulcrum to pressure the Spanish government to dispense some areas of home rule to Basque, Catalonia, and Valencia from time to time (Alonso, 2008). So, it is fair to suggest that parties in a pluralistic federal system could “make compatible national oppositions,” Moreno (2010, p. 163).

2.5. Conclusion

The effectiveness of multiparty democracy in legitimising a pluralistic federal system involves the federal constitutional framework. This framework needs to define the division of powers and design institutions that acknowledge and address the concerns of the relevant identity groups. As federal shared-rule emphasises the participation of the component identity groups in the joint structures of multiethnic and national federations such as the upper houses, self-rule provides for institutional and political spaces for their presumably distinctive socio-cultural identities and organisational autonomy. The legislative, executive, and judicial jurisdictions of federal- units are conducive, among others, to the direct engagement of ethnic, linguistic, and national groups in the decision-making processes of official language designation as well as in the making and enforcement of cultural, educational, and historical laws and policies. Here, there are two points of variation among pluralistic federations. The first is the asymmetry of self-rule in some federations, such as India, Spain, and Canada, while Belgium and Switzerland have the symmetry of power allocation among the Provinces and Cantons, respectively. Secondly, in some federations, the federal autonomy and the participation of the identity groups in the federal shared-rule also have communal routes. The *non-territorial federal structure*, also known

as *personal federalism*, implies the constitutional dispersal of power to distinct identity groups, regardless of the territorial boundaries of federal-units. Identity groups, as a group, have communal jurisdictions and channels of direct representation in the federal centres of Belgium and Spain. Moreover, in federal constitutional system in general, the rigidity of federal constitutional amendment mechanism and the non-availability of the principle of parliamentary sovereignty protect the federal autonomy and the rights of identity groups constituting a pluralistic federation from unilateral constitutional amendments and interpretations.

The implications of multiparty democracy on the legitimacy of a given pluralistic federal system are multipronged. As the legitimacy of any constitutional order is the function of its designing process and implementation, it is trustworthy to see multiparty politics and democratic elections through the lenses of constitutional design and effectiveness. The comparative analyses of pluralistic federations have revealed the significance of multiparty party system to the formative and operational legitimacy of multiethnic and multinational federations, while one-party system and non-competitive one-dominant-party system have opposite impacts. For this variation, there are three broad reasons.

First, multiparty politics aids inclusive, open, and meaningful constitutional deliberations in the making stage of a federal constitutional choice. The participation of parties representing various segmental and cross-segmental interests in the drafting and ratification processes of multiethnic and multinational federal constitutional designs delivers the “original” legitimacy of the federal choice.

Secondly, democratic elections and multiparty competitions nourish the representativeness of the structures of multiethnic and multinational federations. Representativeness in this case implies bottom-up accountability, inclusive representation in the self and shared-rule aspects of federal governance. Multiparty competitions whereby ethnic groups elect their representatives into the structures of ethnic federal territories contribute to ethnic groups internalising, or “owning”, constitutional self-rule. The competitions promote multiparty representation in the structures of the federal-units and the condition of party disaggregation between the orders of the government. Both multiparty representation and party disaggregation can serve the political autonomy of ethnic federal territories to formulate and implement laws and policies that fall under their constitutional autonomy. That is critical to the legitimacy of the federal operation in

meeting the accommodative objective of the federal constitution. Multiparty system also contributes to the representative legitimacy of the shared-rule setup of a pluralistic federal constitutional dispensation. It allows the distinct identity groups to have the opportunity to elect parties they see as committed to fulfilling their interests in the federal government. As a by-product, it is also understandable that democratically elected parties have the political currency to initiate and partake in federal constitutional and political negotiations in service of their constituencies. Multiparty-driven representation nurtures the sharedness of the joint institutions of federations.

Lastly, in third place, multiparty system has the potential to entrench federal constitutional supremacy and maintain the covenantal conception of federal consensus among the component identity groups of pluralistic federations. Federal-party-symmetry and viable power check-and-balance are the derivatives of the democratic competitions and representation of diverse political parties across the federal orders of government. When different parties are in power in the federal-units and federal centre, the resulting inter-governmental constitutional challenges could serve well the purposes of a robust constitutional reviewing practice. Likewise, the check-and-balance augments the protection of the constitutional division of powers from the influence of the executives. For the constitutional amendment dimension of federal constitutional supremacy, multiparty system curbs the possibilities of unilateral constitutional modifications, as it avoided constitutional imposition in the formative periods of mature and stable federations.

Despite its overall positive impacts, however, multiparty democracy has no uniform procedures and dynamics in all democratic pluralistic federations mainly because of electoral systems, political values and culture, and the nature of political parties in their organizations and functions. Keeping them constant, however, the experiences of mature and stable pluralistic federations have indicated the legitimization purpose of multiparty system in light of deliberative federal constitutional choices, representative federal self-rule and shared-rule, and constitutional supremacy. The participations of contending political parties in the constitutional making processes of Belgium, Canada, India, Spain, and Switzerland anchor the “original” legitimacy of the federal constitutional choices, as a matter of procedural justice. They have also maintained multiparty representation in the actual operations of the federal systems in point. That has catalysed the democratic representativeness of the institutions of sub-national and federal

governments. Still more, the presence of diverse political parties in federal structures contributes to a more active culture of inter-governmental constitutional challenges and robust mechanisms for resolving such disputes. The study takes such arguments made in this chapter into account for the federal constitutional foundation and experience of Ethiopia.

CHAPTER THREE

The Ethiopian Federal System and Party System

3.1. Introduction

The Federal Democratic Republic of Ethiopia (FDRE) is one of those federations inaugurated after the end of the Cold War when the agenda of democratisation was on the back of political transitions in most African states. It was not unexpected to witness the simultaneity of ethnic federalization and a modicum of multiparty democratisation following the end of the Marxist military regime of Derge and the ascendance of armed ethnic forces to power. Discussions in this chapter elaborate on how far the constitutional choice of the federalization process met the features of pluralistic federalism (indicated in the preceding chapter) and to what extent multiparty politics has come to fruition. Hence, the chapter consists of two parts. The first looks into the federal system of Ethiopia in terms of what factors the federal-units are delineated by and how wide the scope of the constitutional self-rule they have to fit in the constitutional self-rule of NNPs. Related to that, the constitutional system of representation in the federal shared-rule is as critical as the mechanisms of federal constitutional supremacy. Both are very useful in entrenching the constitutional rights of identity groups and the federal system of power distribution. The second part concentrates on the democratisation performance of Ethiopia. It subsumes the pattern in the formation of political parties and the praxis of multiparty competition.

3.2. The Federal System: Background and Structure

The origin and structure of the Ethiopian federal system have interdependence in transpiring the notion that the federal system is the structural response to the politics of diversity accommodation and autonomy. Are there necessary preconditions for this response? What features did they have in the early 1990s period of federalization? These questions are vital to the discussion of the Ethiopian federal origin and its constitutional design. In his explanation of applying the federal option to deal with ethnic diversity and conflict, Ronald Watts (2010, 325–346) gives a list of preconditions. It encompasses ethnic territorial distributions, the depth of cleavages in the social and political orientations of ethnic groups, inter-ethnic historical relationships, the number of ethnic groups and the relative size of ethnic majority and minority, and interest and commitment towards federal political and constitutional order. In the context of

Ethiopia, there are territory concentrations among ethnic groups along with a considerable degree of multiethnic rural and urban areas. Similarly, the number of ethnic groups and their relative population size do not lead to the systematic predicaments of a dyadic federal design and unalterable majority formation (Yohannes, 2024).

What is more relevant to the political background of the federal arrangement of Ethiopia are the conditions of ethnic historical and political relations and cleavages. The monarchical period of Haile Selassie had the experience of ethnic-based uprisings, movements, and political activities, especially after the dissolution of the Ethio-Eritrea federation in 1962 (Gebru, 1996). The termination of the charter-based federation is a point of debate to date in terms of legitimacy (Tekeste, 1997). It was associated with the emergence of secessionist armed forces in Eritrea. Then, ethno-nationalism, under the banner of self-determination, accumulated its strength and expanded into other parts of the country, mainly, Tigray.

After the end of monarchical rule with the 1974 revolution, the ways the military regime responded to ethno-national demands and rebellions took two phases, with no clear cut in-between, the first being military force, as it did to all other opponents. The militarist approach, without any mechanism of political containment, had the backfiring consequences of legitimising ethno-national fronts and organisations as champions of justice (Merera, 2003). In other words, the regime exacerbated the problem it had sought to avert. The second phase was to make some autonomous territories: Eritrea, Tigray, Ogaden, Assab, and Dire Dawa (Kinfe, 2001). However, their autonomy was a façade in practice as the political system was under the one-party system of Workers' Party of Ethiopia (WPE) which followed the socialist doctrine of the 'unity of the state power' (Negede, 2004, p. 101). Ultimately, "the question of nationality" in some parts of Ethiopia was in full swing. Ethno-national forces were at the frontlines of the armed struggle that altered the military regime of the Derge, officially the People's Democratic Republic of Ethiopia (PDRE).

Following the downfall of the military regime in 1991, the Transitional Government of Ethiopia (July 22, 1991–August 27, 1995) was established. The adoption of the Federal Constitution in

December 1994 marked the beginning of the multiethnic federal constitutional system.⁴ The right of NNPs to self-determination, as the “consented” and “equal” federative members of FDRE, is the heart of the federal system that is instrumental to “one economic and political community” (FDRE Constitution, Preamble). The Constitution opens with “we, the nations, nationalities, and peoples of Ethiopia” and accords these identity groups *sovereign* powers to the level that makes the very constitution itself an expression of that sovereignty, stipulated as the right to self-determination up to and including secession (Preamble, Art. 8 and 39). It implies that ethno-national mobilisations and discourses hinged on the famous “nationality question”, which was familiar at least to the elites (Bahru, 2014: 187–221), is the salient background of the federal restructuring to “rectify” ethno-national structural and direct conflicts through the consensual re-

⁴ The first yet weighty issue that comes up frequently in the discussion of the current Ethiopian federal design is its labelling. The nomenclature of the federal design has remained contentious among academics and practitioners, as some prefer the term multinational to 'multiethnic, while others incline towards the latter. That is believed to suggest the variety of interpretations around the definition of the relevant identity groups in Ethiopia and the nature of politics focusing on these groups. Because of that, the dissertation uses 'ethnic', or multiethnic, for three reasons. One, it has been adopted by the majority of academic works dealing with the Ethiopian federal system and identity politics and that facilitates the dissertation not going out of its scope in searching for the best nomenclature that could go unchallenged. Second, there are wide discrepancies and variations among the identity groups in question in terms of their number, degree of internal homogeneity and integrity, scope of political demands, and political mobilization. For example, though not free from arguments too, it has been observed that some groups, such as Oromo, Tigrain, and Somali, are identified as 'nations' (See Ezekiel Gebissa, 2014; and the book *Constitution for a Nation of Nations* by Fasil Nahum, 1997). Relying on that, however, to adopt the 'multinational' prefix for the Ethiopian federal system begs the question of generalizability to the remaining identity groups. On that point, the unqualified constitutional terminologies 'nations, nationalities, and peoples' do not help the inconsistency in identifying which groups are under 'nations' or “nationalities”. Third, it is methodologically safer to use 'ethnic' than 'nation' to describe the Ethiopian federal system in its entirety. The fluidity of ethnicity is often inferred from the distinctive features of a 'nation' that serve the identity-based elements of nationalism. It is because of that that the term 'ethno-nationalism' seems appealing to contain the limitation of analytical fluidity that emerged from the fluidity that ethnicity could take the form of 'nationalism' and vice versa, depending on the underlying realities of identity groups and the way these realities are put in political, historical, and social perspectives. It gives prudence to note the underlying historical, ideological, and political backgrounds shaping the differences in the nomenclature of the Ethiopian federal design (See Alem Habtu, 2004) and how the school of instrumentalists perceives the transformation of 'ethnicity' into 'nationalism' together with the primordialists emphasis on the ethnic core of 'nationalism' (See Govers and Vermeulen, 1996). In sum, referring to the totality of the constituent identity groups of FDRE, the 'ethnic' or 'multiethnic' label of the federal constitutional order is less discriminatory than the term 'multinational'; and its elasticity has the potential to expandability to accommodate the “nationhood” view of some groups.

definition of the state in terms of the right to self-determination (Ezekiel, 2014). This has strong linkages with the pluralistic federal characters of the Ethiopian federal structure outlined in the following three respects: self-rule, shared-rule, and constitutional supremacy.

3.2.1. Federal Self-rule

Ethnic identity is the essential principle of the Ethiopian federal organisation. Until 2019, the federation had nine states and the federal capital Addis Ababa (FDRE Constitution, Art. 47 and 49).⁵ As per the Constitution (Art. 46), language, identity, consent, and settlement pattern are the criteria for the formation and demarcation of the states. The Constitution (Art. 39) defines “nations, nationalities, and peoples” as groups of people “who have or share a large measure of a common culture or similar customs, mutual intelligibility of language, belief in a common or related identity, a common psychological makeup, and who inhabit an identifiable, predominantly contiguous territory.” Juxtaposing the criteria for the delimitation of the territorial tracts of the states with the constitutional attribution of NNPs, there is incongruity. The possibility of forming highly compartmentalised ethnic federal-units sits uneasily with the lack of objectivity in the fluidity of identity distinctiveness and common psychological makeup among every NNP and the social reality of not being able to attach every geographical location with a distinct ethnic group. The ethnic structure of the federal organisation has practical limitations emanating from the distributions of ethnic groups and from assigning sharp ethnic distinctions which can be applicable everywhere in the federation. As a result, based on their ethnic compositions, it is possible to categorise the states of the Ethiopian federation into two groups: those consisting of absolute majority ethnic groups, namely: Afar, Tigray, Amhara, Oromia, and Somali; Sidama and those conglomerates of various ethnic groups, where no ethnic group is dominant. The former Southern Nations, Nationalities, and Peoples State (since 2019, desegregated into Sidama, South Western, Central Ethiopian Peoples, and Southern Ethiopia states), Benishangul-Gumuz, Gambella, and Harari fall under the latter group.

The concept of federal symmetry raises some questions about the federal-unit organisation of FDRE. They rest on the assumption that a multiethnic federal system transforms large-scale

⁵ In 2019, the number of states reached 11 with the formation of the tenth Sidama State in late 2019 and the other one, the South Western Peoples State, in the second half of 2021 (DW, 2019, December 23). It went on very recently, in the second half of 2023, as the new Central Ethiopian Peoples State emerged.

ethnic heterogeneity into small-scale ethnic homogeneity by having the federal constitutional capacity of self-rule. That means the ethnic diversity at the federation level is to diminish profoundly in the component units of a multiethnic federation. In the Ethiopian case, it conveys the message that the federal-units need to be ethnically more homogenous than the federation. The federation-level ethnic population share is to widen in the demographic contents of the states. As the largest ethnic group that makes up about 35 per cent of the whole population of Ethiopia is Oromo (**Table 1**), it automatically sets the majority thresholds of the states. The minimum share of the largest ethnic group in each of the pre-2019 nine states has to be at least 35 per cent. Based on **Table 1**, Benishangul-Gumuz and the former SNNPs significantly fall below that of the largest ethnic groups in these states, Berta and Sidama, which constitute, respectively, only 25 and 19 per cent of their populations. On the contrary, Tigray and the Somali States are at the top of the list, showing a high level of ethnic homogeneity, 97 per cent. In between, the Amhara, Oromia, and Afar have a dominant ethnic group ranging from 88 to 90 per cent of the population within their territories.

The unique case that meets the minimum threshold of the federation-level majority yet falls short of scoring the simple majority of 50⁺ is Gambella, wherein the Nuer, the largest group, is 46 per cent. Though it seems not satisfactory to the strict sense of carving out an ethnic federal territory in such a way that a distinct ethnic group is promoted to take the lion's share of the population of a federal-unit, the Effective Number of Ethnic Groups (ENEG) in Ethiopia, which is almost 3 (*See Table 1*), is not translated into the compositions of some states. Leaving aside the outlier case of empowering the Harari ethnic group in the State of Harari, where it is close to only 10 per cent, therefore, the newly re-organised SNNPs, Benishangul-Gumuz, and Gambella are all without ethnic majorities, below the federation-wide ethnic majority threshold.

Nevertheless, the collective average proportion of both the absolute and relative majority ethnic groups of all nine states was about 69 per cent, the range is between 97 and 25 per cent (**Table 1**). Based on this collectively weighted measurement of the majority, the Ethiopian federal structure meets the notion of federal asymmetry. It has formed more federal-unit level ethnic majorities than what the diversity of the federation at large depicts. Thus, some relatively federation-level ethnic minorities have transformed into state-level majorities in conformity with the idea that the federal constitutional option in the context of plural societies is apt to be

favourable to minorities (Coll, 2006, p. 15). However, compared to other pluralistic federations like Switzerland and Belgium, Ethiopia is at the lower rung of the federal-asymmetry (Juan, Linz, and Yadav, 2011). This is due to the level of ethnic heterogeneity typically found in Gambella, the former SNNPs, and Benishangul-Gumuz.

| States | State-Level Major Ethnic Groups and Shares | | Federation-Level Major Ethnic Groups and Their Shares | |
|---|--|-----------------------------|---|---------------------------|
| | Afar | Afar | 90 per cent | Oromo |
| Tigray | Tigraian | 97 per cent | Amhara | 27 per cent |
| Amhara | Amhara | 91 per cent | Somali | 6.2 per cent |
| Oromia | Oromo | 88 per cent | Tigraian | 6.1 per cent |
| Somali | Somali | 97 per cent | Sidama | 4 per cent |
| Benishangul-Gumuz | Berta | 25 per cent | Gurage | 2.5 per cent |
| Southern Nations, Nationalities and Peoples (SNNPs) | Sidama | 19 per cent | Wolayita | 2.3 per cent |
| Gambella | Nuer | 46 per cent | Hadiya | 1.7 per cent |
| Harari | Oromo | 56 per cent | Afar | 1.7 per cent |
| | | Average= 69 per cent | | ENEG= Well above 2 |

Table 1: Federal-Unit Symmetry in Ethiopia (Source: Data from CSA, 2007). $ENEG = 1/HHI$. $HHI = (P^2)$. ENEG stands for Effective Number of Ethnic Groups and HHI for Herfindahl- Hirschman Index. P is the percentage share of each ethnic group. As HHI is between 0 (ideal diversity) and 1 (ideal homogeneity), in the Ethiopia case it is almost 0.5828 due to the inclusion of only the top ten populous ethnic groups in the calculation. For further on ENEG, see O, Leary (2001). N.B: the recently established Sidama State increases the 69 average ethnic majority compositions of the states of the Ethiopian federation.

Following how the states are structured in FDRE, the other important issue is to see the scope of power they have in the Constitution. The constitutional allocation of powers and functions is dualistic in that it is between the Federal Government and the states. The power of the latter can be classified as exclusive, concurrent, and residual. Designating their working languages, enacting state constitutions, formulating and implementing state-wide economic, social, and developmental policies and plans, levying and collecting those taxes assigned to them, enacting and enforcing laws on the state civil service, and establishing the police force are the explicitly listed exclusive powers of the states (FDRE Constitution, Art. 52). Regarding revenue, taxation on the income of state employees, farmers, maritime transport services within their territories, private enterprises, land usufructuary rights and some others are the exclusive fiscal jurisdictions of the states (Ibid., Art. 97).

Apart from delegating the jurisdictions of the Federal Higher and First-instance Courts to the State Supreme and Higher Courts in their orders, the Federal Constitution has a dual judiciary structure, meaning that each order of the government has its own First-instance, Higher, and Supreme courts (FDRE Constitution, Art. 78). Though the delegation is labelled as the “concurrent jurisdictions of courts” in the Constitution (Art. 80), the HoPRs decides by two-thirds of majority votes on establishing Federal Higher and First-instance Courts in “some parts of the country” is the reading of Article 78 (2) of the Constitution. The parallel organisation of the judiciary is reinforced further by the Constitution, in Article 80 (1-2), which states that the supreme courts of the states and that of the Federal Government are the highest judicial organs on state and federal matters, respectively.

The concurrent powers of the states and the Federal Government are scattered in the Constitution. Article 98 says that they jointly levy and collect profit, sales, excise, and personal income taxes from joint enterprises, companies and stakeholders, large-scale mining and so on. Related to that, the executive involvement of the states to administer land and natural resources based on federal law and enacting penal laws on matters that are not specifically covered by federal penal law can be considered elements of shared responsibilities in the Constitution (Art. 52 (2, d) and Art. 55(5)). In addition, the states have the responsibility to meet policy frameworks set by the Federal Government (Ibid., Art. 51(3)). Furthermore, the federal and state governments are also entrusted with the responsibility to respect and enforce the Federal Constitution itself (Art. 52(1)), keeping in mind the argument of whether it is an extroversion of the responsibilities of the states or not.

Finally, those powers and functions not given exclusively either to the Federal Government or the states, nor are shared by them, are reserved to the states, according to Article 51(1) of the Constitution. However, on the decision as to which level of government would be entitled to new tax bases, the Constitution at Article 99 reads it is to be resolved by the two-thirds majorities of the joint session of the House of the Federation (HoF) and HoPRs. In general, depending on their practical capacity and political assertiveness, residual jurisdictions could serve the states as a way of expanding their exclusive powers.

To add one more point, Article 47(4) of the Constitution declares that all states have equal rights and power. It deviates, as earlier indicated in Chapter 2, from the constitutional systems of other

multiethnic, multilingual, or multinational federations, such as Canada, Belgium, and India, which have asymmetry of power for distinct minority groups. The asymmetry can enhance the equality and freedom of minorities. One of the reasons for limiting the federal autonomy of minorities is not the reluctance of the minorities to join others; it is rather the reactions of the dominants to the federal idea of power de-monopolisation (Kymlicka, 2006, p. 36). Kymlicka, in the same source, explains that the reaction against the minorities' appeal to autonomy is often a cause for bias in discriminating them from equal participation. Nevertheless, in the Ethiopian federal system, the constitutional structure of federal-units, and the division of power create overlaps between the constitutional rights of NNPs and the federal self-rule of the States.

3.2.2. Federal Shared-rule

The shared-rule features of pluralistic federations such as Ethiopia point to the representation and the participation of identity groups in the joint federal structures. The constitutional mechanism of where and in what ways ethnic groups are inclusively represented in the ethnic federal system is as critical as examining the constitutional self-administration rights of ethnic groups. Inclusive representation means the translation of diversity recognition into meaningful institutional participation. In the recognition of linguistic pluralism, the Constitution, as indicated in the Preamble and Chapter One, goes beyond the symbolic expressions of ethnic diversity in the official nomenclature, flag, and anthem. This magnifies the accommodative aim of the federal shared-rule to advance the constitutional rights of ethnic groups to self-determination in the form of the right to *equitable* representation in the state and the federal governments (Ibid., Art. 39(3)). In addition, the parliamentary system of the Ethiopian federal orders of governments demands inclusive legislatures since the power of the lawmakers in the parliamentary system *vis-à-vis* the executive helps to assert an ethnically inclusive government (Thorburn, 1978).

At the federal level, the House of the Peoples' Representatives (HoPRs) and the House of the Federation (HoF), together with the executive, are important shared-rule institutions of high significance. Even though the members of the lower house, HoPRs, are the representatives of the citizenry in general, it is worth mentioning that there are at least 20, out of 550, seats reserved for ethnic minorities (FDRE Constitution, Art. 54 (3)). On the executive branch, the Constitution has no clear guide on the ethnic composition of the federal government except concerning the army: “[t]he composition of the national armed forces shall reflect the equitable representation of the

Nations, Nationalities, and Peoples of Ethiopia,” FDRE Constitution (Art. 87 (1)). In that regard, the Transitional Period Charter (Art. 9(b)) has been explicit in demanding that the head of the state, the prime minister, the vice chairman, and the secretary of the Council of Representatives (CoRs) be elected from different nationalities.

When it comes to the representation of ethnic groups in the Federal Government, the Constitution is clear on the composition of the HoF. The Constitution (Art. 53) establishes the HoF and its structure supports the characteristics of being a federation⁶, as Assefa Fiseha (2008, p. 239) puts it, “it is also suggested that second chambers reflecting the entrenched representation of the states distinguish federations from other polities.” That is why the HoF deserves special emphasis. In the HoF, each ethnic group has at least one representative and one additional representative for each additional one million populations (FDRE Constitution, Art. 61(2)). Explaining the ground as to why ethnic groups, not directly the states, are represented in the HoF, Aalen (2002, p. 8) indicates that the making of the Ethiopian Constitution was bargained among ethnic groups and their political parties. The bargaining ethnic political elites were unwilling to compose the HoF by the federal-units (The Minutes of the Constituent Assembly, Vol. 5, 1994). This is a typical instance of rational choice theory in political science. In this theory, political institutions are greatly shaped by the interests of political actors, whether established or in control of them (Pincion and Teson, 2006).

If the composition of the HoF is calculated in terms of a state-based balance of representation, the disparity among the states becomes high. The former state of the SNNPs, which housed more than 45 ethnic groups, secured as many representatives as 60 times the Harari State (**Table 2**) and almost five times the mean state representative, which was 13 before 2019. In addition, some states, such as Amhara and Oromia have relatively many seats in the House. Assessing the impact of over-representation in the HoF is less likely to give a conclusive result due to the combined effect of proportionality and the conspicuous case of the former SNNPs State.

⁶ The only exceptions are Venezuela, where in 1999 the new constitution reformulated the bicameral legislature into a unicameral National Assembly: the UAE, Comoros, Micronesia, and St. Kitts and Nevis. See Watts, R. (2008). *Comparing Federal Systems*. 3rd ed., London: Institute of Inter-Governmental Relations, p. 52.

It follows that the composition of HoF has mixed features. Those states that have relatively less ethnic heterogeneity and population size are the ones with low representation in HoF. Somali, Harari, Tigray, and Afar are disadvantageous because they have relatively low population sizes and ethnic heterogeneity. The former SNNPs, which had about 22 per cent of the total federation-wide population (CSA, 2007), excluding Addis Ababa and Dire-Dawa, secured little more than 50 per cent of the total seats of the HoF (i.e., 61 out of 120). The compatibility between the representational disparities of the states in the HoF and the constitutional power symmetry among these states (Art. 47, sub-article 4 of the Federal Constitution) can be a topic of debate. The constitutional designs of some pluralistic federations, such as India, provide empirical references to that debate. India has proportional representations of federal-units alongside the asymmetric federal division of power. It has the advantage of balancing the prerogatives of ethnic minorities through federal power asymmetry with the democratic concerns of the majority groups to secure proportional representation (Linz, Stepan, and Yadav, 2011, p. 266). Nevertheless, ethnic minority-wise, the over-representation of such a state as the former SNNPs, which was the conglomeration of many ethnic groups, has the effect of creating a counter-balance between the more ethnically diverse states comprising federation-wide relative ethnic minorities and the populous states. Such representation of ethnic minorities has the purpose of instilling deliberative democracy, which is more about inclusion than autonomy (Norman, 2006, p. 146), in the jurisdictions of the HoF.

In addition, representation in the HoF can be approached through the democratic principle of individual equality. Stepan's (1999) term 'demo-constraining' is very helpful. It refers to the democratic deficit in the interdependency between the over-representation of the less populous federal-units and the under-representation of the more populous federal-units. In the HoF, as **Table 2** shows, an individual citizen in Gambella is represented 18, 13, and 15 times the one from Oromia, Amhara, and Somali, respectively. Based on similar comparisons along individual equality, the worst-represented states are Oromia, Amhara, and Somalia, while the best represented are Gambella, Benishangul-Gumuz, and Harari (**Table 2**). It determines the degree of malapportionment in HoF by measuring the proportionality between the seat and the population shares of the states. The Gini index of representation, developed from the work of Samuels and Snyder (2001), reflects well the HoF's malapportionment. They adopt the index as $|S_i - V_i|$, where S_i stands for the seat share of each federal-unit and V_i for the population share of

each federal-unit in a federation. Applying that, the number of seats that the Amhara State has in the HoF is behind 9 per cent of its population share in Ethiopia, as Oromia is by 20 per cent and Somali by 30 per cent (**Table 2**). As **Table 2** shows, before 2019, the percentage of malapportionment in the HoF was 69 per cent or 0.34 Gini index of representation. Hence, HoF was more malapportioned than the upper houses of Spain, India, and Belgium but equal to Canada’s and better than the upper houses of Switzerland and Australia (Linz, Stepan, and Yadav, p. 2011). At this point, one caveat is that, except for India, the rest of the said federations have a symmetric way of granting equal, or almost equal, shares of seats to their constituent units (Watts, 2008). This renders them more susceptible to malapportionment unless the federal-units have parity of population size.

| States | Population | Population Share (in Percent) | Seat Share in HoF | Seat Share in HoF (in Percent) | Population-Seat Ratio (in Thousands) |
|-------------------|--------------------|-------------------------------|-------------------|--------------------------------|--------------------------------------|
| Tigray | 4,314,456 | 5.8 | 6 | 5 | 719 |
| Afar | 1,411,092 | 1.9 | 2 | 1.6 | 706 |
| Amhara | 17,214,056 | 23.3 | 17 | 14 | 1013 |
| Oromia | 27,158,147 | 36.7 | 20 | 16.6 | 1358 |
| Benishangul-Gumuz | 670,847 | 0.9 | 5 | 4. | 134 |
| Somali | 4,439,147 | 6 | 4 | 3 | 1110 |
| SNNPs | 15,042,531 | 20.4 | 61 | 50.8 | 247 |
| Gambella | 306,916 | 0.4 | 4 | 3 | 77 |
| Harari | 183,344 | 0.2 | 1 | 0.8 | 183 |
| Total | 70, 837,430 | | 120 | | |

Table 2: Representation Ratio in the House of the Federation (Source: Drawn from the data of HoF, 2008 and CSA, 2007).

3.2.3. Federal Constitutional Supremacy

In Ethiopia, the principle of federal constitutional supremacy, the effectiveness of the federal order in general, and the constitutional rights of NNPs, in particular, are inseparable because of three main interrelated reasons. First, in Article 9(1), the Federal Constitution declares its supremacy: “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.” Reinforcing that, both the Federal Government and the states have the responsibility to protect and defend the Constitution (Art. 51 (1) and 52(2)).

Secondly, intra-and inter-governmental constitutional disputes allow ethnic groups to challenge the constitutionality of the laws and decisions. The power of the HoF, composed of ethnic groups' representatives, is crucial to the protection of the constitutional division of power and the rights of ethnic groups. It has constitutional mandates to decide on constitutional disputes (Art. 62, 83, and 84). This made is vital to defend the constitutional dispersal of power. Fundamentally, there are political and academic debates over the merits of the HoF's authority to interpret the Constitution.

In ratifying the Constitution, it was justified that, since it is composed of the representatives of ethnic groups in whom the *sovereign* power resides, the power of constitutional interpretation had to be the exclusive jurisdiction of the HoF (Minutes, 1987, Vol. 5, p. 4–19). Though it can be said that the HoF shows an inclusive composition of ethnic groups, about 76 ethnic groups (FGACO, 2015), the criticisms levelled at its constitutional adjudication power arise from its neutrality and competency. Besides, the impacts of the centralised authority of the HoF in the areas of constitutional review on the judicial capacity of the courts have remained questionable. The insulation of the power of the executive from the courts could engender a heavy-handed government out of the judiciary's reach. This, as discussed in Chapter 6, has much to do with the effective operation of the federal constitutional system. Nevertheless, the existence of a constitutional umpiring process involving the federal orders of the government by itself has some merits for the supremacy of the Federal Constitution. The equal standing of the Federal and State laws at the HoF (FDRE Constitution, Art. 62 (1)) fits in the concept of co-ordinance in which no order of the government is subordinate to the other. Proclamation 251/2001 (Art. 2(2)) has defined what constitutes “any Federal or State law” to subsume international agreements, executive regulations, and decisions. For some scholars (Sawer, 1969, 55–60), it is one of the defining features of a federal design to embolden the quality of provincial laws as opposed to the unitary view of them as “by-laws” that can be challenged by a court. Moreover, in times of conflicting laws, the lack of the ‘federal paramountcy clause’ in the Ethiopian Constitution has a similar repercussion on the legal status of the laws of the states by equally subjecting them and the federal laws to the same constitutional review process and authority.

Thirdly, the constitutional amendment procedure avoids unilateral constitutional modifications by either the Federal Government or the states (Art. 104 and 105). The power of the states to

initiate and vote on constitutional amendments implies the decisive position of ethnic groups in the process of constitutional development. That enshrines constitutional security from exclusive constitutional modifications affecting, directly or indirectly, the federal self-rule, representation, and the right of ethnic groups to secede. The requirement of constitutional unanimity to bring any amendment to the third chapter of the Federal constitution wherein the self-determination rights of NNPs are cited confirms the inextricable interdependency between constitutional rigidity and constitutional supremacy to underpin the principal constitutional framework of the Ethiopian federal system in with ethnic consensus. Yet, the political legitimacy of the federal constitutional supremacy, the federal constitutional choice, and its operation are not independent of the political setting of the federation in which the party system has much influence.

3.3. The Party System

The Ethiopian Federal Constitution, providing for multiparty competition, allows multiparty politics with the recognition of civil liberties and political rights such as the right to establish or join political parties, the right to vote and to be elected, and the freedom of expression, assembly and demonstration (Art. 29, 30, 31, and 38). The Constitution expresses that elections are the only way to hold the power of the government, and a party or a coalition of parties that has the majority seats in the HoPRs establishes the federal government (Art. 9, sub-article 3). In addition, the constitutional authority of the National Electoral Board to conduct free and fair elections means a constitutionally sanctioned electoral management body. Various acts, such as the recently replaced Party Registration (Proc. 573/2008) and Electoral Law (Proc. 532/2007), delivered the detailed legal frameworks of multiparty competitions and democratic elections.⁷

Hence, it is important to ask how the legal frameworks of multiparty structures have directed the practice of the party system in Ethiopia. That makes it necessary to apply the attributive definitions of the party system. Chhibber and Kollman (1998) have one of these definitions, which constitutes the effective number of parties, level of party-nationalisation, and party-polarisation. The effective number of parties consists of the magnitude of competitive parties and their representation in the government, including power transfer. Party-nationalisation and party-

⁷ *The Ethiopian Electoral, Political Parties Registration, and Election's Code of Conduct Proclamation No. 1162/2019* recently replaced both proclamations.

polarisation⁸ deal with the scale of competition among parties in terms of local, regional, and national elections and the programmatic differentiation of parties, respectively. In this way, the following sections of the chapter examine the Ethiopian political parties and the practice of multiparty system.

3.3.1. Political Parties in Ethiopia

The famous philosopher of conservatism Edmund Burke (cited by Sartori, 1976, p. 8) has a much-quoted definition that “a party is a body of men united, for promoting by their joint endeavours the national interest, upon some particular principle in which they are all agreed.” Parties design their interests and operational principles in different manners to win regional, local, or federation-wide elections. That defines the disparities of parties along the level of party-nationalisation in their programmatic scope and how they are polarised in addressing particular agendas. The parties have variations in terms of the level of party-nationalisation and differentiation. It is very clear in the manner in which the parties organised themselves in the context of the ethnic federal system, using the parameters of ethnic and multiethnic coalitions and/or federation-wide parties.

3.3.1.1. Ethnic Political Parties

Much of the terrain of party formation in FDRE has the chrome of ethnic political parties. That, for Horowitz (1985, p. 292), is “the first propensity of a divided society.” In the 2005 election, Wondwosen (2008, p. 292) identified that ethnic-based parties held 384 seats (73 per cent) of the HoPRs while the non-ethnic segmental parties won 142 seats (27 per cent). This number missed the point that two of the strongest members of the Ethiopian Democratic Forces Union (EDFU) were ethnic parties, the Oromo National Congress (OFC) and the Southern Ethiopia Peoples’ Democratic Coalitions (SEPDEC). Therefore, the share of the non-ethnic segmental parties dropped from 142 to 109, possibly the total seats of the Coalition for Unity and Democracy (CUD) (NEBE, 2006). Hence, it is naive not to think that such a wide rift in parliamentary seat

⁸ In the study of political parties, ‘party-polarisation’ refers to the extent to which political parties adopt increasingly distinct and ideologically extreme positions, leading to a significant ideological distance between them, which often reduces political compromise and increases political conflicts (*see* Carsey, M., Horowitz, M. and Layman, C., 2006).

numbers among parties could not have any relationship with the growing number of ethnic political parties. At the end of 2017, 46 ethnic parties, five party coalitions in the form of fronts, and 15 countrywide parties (Adane Tilahun, Interview, Addis Ababa, 2017; NEBE, 2018).⁹ That is quite different from the experience of the surge of ideological parties in the aftermath of the 1974 revolution, though almost all, except parties like EDU, had the same Marxist ideology. The demise of the ideological parties in the late second half of the 1970s was accompanied by the rise of ethno-nationalist armed rebel organisations, “liberation fronts” claiming they were the socialist prescription of ‘national democratic parties’ (NDPs).

The definition of ethnic parties by Horowitz (1985, p. 291) emphasises exclusive ethnic programmatic outlines and electoral appeals if multiparty elections are in place. It points to the post-1991 Ethiopia in which ethnic parties have made the identities and interests of the ethnic groups from which they drive the majority, if not all, of their support the centre of the programs they have to carry out political activities. In most cases, the ethnic bases of the parties have converged to the territorial structures of the federal system so that they are limited to those states where their co-ethnic groups are the majorities or constitutionally privileged. That conforms with the labelling of ethnic parties as “regional parties.” Regarding the distribution of ethnic and regional parties, the data from the 2015 election (**Table** Error! Reference source not found. elow) signalled not only where the parties were based but also the style of their proliferation vis-à-vis the ethnic heterogeneity of the states. There were 17 ethnic parties in the recently dismembered SNNPs State, followed by Oromia (8).¹⁰ The number of ethnic parties had no strong correlation with the ethnic diversity of the states. Save the clearest case of the old SNNPs, the reality of more ethnic parties in Oromia than in the relatively more heterogeneous states of Benishangul-Gumuz, Harari, and Gambella was to defy the assumption that the more ethnic diversity exists, the more ethnic parties emerge.

⁹ Later, 53 parties completed the registration process for the postponed 2020 parliamentary and regional council elections (NEBE, 2021).

¹⁰ It was before the separation of the Sidama Zone from SNNPs State to establish its own Sidama State in the late 2019.

| States | Ethnic Political Parties |
|-------------------|--|
| Afar | <ul style="list-style-type: none"> - Afar National Democratic Party (1999) - Argoba People’s Democratic Party - Argoba Nationality Democratic Movement (1999) |
| Tigray | <ul style="list-style-type: none"> - Tigray People’s Liberation Front (in EPRDF) (1975) - Union of Tigrians for Democracy and Sovereignty (in Medrek) |
| Amhara | <ul style="list-style-type: none"> - Amhara National Democratic Movement (in EPRDF) (1981) - All Amhara People’s Organization (1992) - Agew Democratic Party |
| Oromia | <ul style="list-style-type: none"> - Oromo Federalist Congress (in Medrek) - Oromo People’s Democratic Organization (EPRDF) - All Oromo People’s Democratic Party - Oromo Abo Liberation Front - Oromo National Congress (1998) - Geda System Advancement Party - Oromo Liberation Unity Front - Oromo Liberation National Party (in EJDFF) |
| Somali | <ul style="list-style-type: none"> - Ethiopian Somali People’s Democratic Party - Somali Democratic Alliance Forces |
| Benishangul-Gumuz | <ul style="list-style-type: none"> - Benishangul-Gumuz People’s Democratic Party - Gumuz People’s Democratic Movement |
| SNNPs | <ul style="list-style-type: none"> - Southern Ethiopia Peoples ‘Democratic Movement(EPRDF) - Ethiopian Social Democracy- Southern Coalition Unity Party (in Medrek) - Unity of Southern Ethiopian Democratic Forces (in EJDFF) - Gamo-Gofa People’s Democratic Unity (In EJDFF) - Sidama-Hadicho People Democratic Organization - Sidama Liberation Movement (in Medrek) - Gedeo People Democratic Organization - Bench People Democratic Organization - Welene Peoples’ Democratic Movement - Dilwabi Peoples’ Democratic Movement - Denta Dubamo Kichinchila Peoples’ Party - Tigriworgi Nationality Democratic Organization - Dube and Degeni Nationality Democratic party - Wolayta People Democratic Front - Donga People Democratic Organization - Kembata People’s Congress - Gamo Democratic Union (in EJDFF) |
| Gambella | <ul style="list-style-type: none"> - Gambella People’s Unity Democratic Movement |
| Harari | <ul style="list-style-type: none"> - Harari National League - Oromo People’s Democratic Organization (EPRDF) |

Table 3: Ethnic Parties in the states (Source: Compiled from NEBE, 2016) ¹¹

¹¹ Currently, in mid-2024, 23 “national” (4 with temporary accreditation) and 49 (8 with temporary accreditation) regional parties are registered by the NEBE (see NEBE, political parties, at <https://nebe.org.et/sites/default/files/Accrediated%20Political%20Party%20Lists.pdf>)

Consequently, the pattern of ethnic party organisations in the states rendered the causal relation between the head counts of ethnic groups and ethnic party formations too weak to depict the level of party-nationalisation across the states. It is relevant as to why some ethnic parties were more segmental than others. Including parties constituting in EPRDF, ethnic parties showed variations in the degree of their ethnic exclusiveness, depending on the ethnic compositions of the states where they were operating, the process of party registration, and electoral candidacy. Unlike those from Tigray, Amhara, Oromia, Afar, Harari and Somali, ethnic parties in former SNNPs, Benishangul-Gumuz, and Gambella states have multiethnic programs and compositions yet exclude the “non-native” ethnic groups.¹² They were multiethnic but segmental. The degree of ethnic heterogeneity across the states and the interest in assuming the constitutional powers of the states were most likely the significant factors determining the scale of ethnic exclusivity among the parties in point. For example, the Ethiopian Social Democracy-Southern Coalition Unity Party (ESD-SCUP) and the Unity of Southern Ethiopian Democratic Forces (USED) were the coming together of different ethnic parties from the former SNNPs State (**Table 5**).

In addition to describing how ethnic political parties were exclusive and organised across the Ethiopian federation, the other important point is to explore why ethnic parties have dominated the post-military period. Four basic reasons have received the attention of scholars.

The first takes the level of socio-economic development in Ethiopia into consideration. It makes the case that, as a predominantly agrarian and multiethnic society, the political opening of post-1991 has allowed the unfolding of ethnic politics. The democratisation process has provided for ethnic political articulation, which is the equivalent expression of ethnic-based political opening. Alemseged Abbay (2011, p. 178) said, “in an attempt to sow the seeds of democracy, the TPLF started accommodating ethnic political leaders by allowing them to join the political process...a genuinely democratic state cannot abandon the process of accommodation.” Ethnicity as the only available politically salient social division has attracted competing political elites. Class-based party formation was seen as a premature engagement since Ethiopia has no structural economic

¹² For an extensive description and classifications of sub-national ethnic minorities in the Ethiopian federation see Beza Dessalegn (2016) *Minorities in Ethiopia*.

polarisation. This directs to Horowitz's (2000) proposition that politics in ethnically segmented and non-industrialised societies is mainly about ethnicity, not about policies and ideologies.

However, criticisms made about the structural analysis of ethnic party proliferation are also perceptible. Ethnic parties exist in industrialised countries, and so do they in developing countries such as Ethiopia. This calls into question the impacts of the ethnic federal system and the prevailing political calculations of contemporary political elites. The institutional setup of the ethnic federal design and the responses of political actors to it have been emphasised to show the flaring up of the ethnic modality of party organisations.

According to the theory of institutionalism, Bevir (2007, p. 373) wrote, political actors respond to institutional incentives. In line with that, political and legal settings constitute the second reason for the proliferation of ethnic parties in Ethiopia. The constitutional system, specific laws, institutions, policies, and dominant political practices are much more rewarding to the surge of ethnic party organizations. From the texts and spirits of the Federal Constitution, it is easily understandable that ethnic groups are the self-originating source of power. Ethnic self-determination is almost the supreme value of the Constitution in guiding the authoritative allocation of economic and political resources. The weight that ethnicity has gained in drawing the boundaries of the constituent units of the federation, defining the compositions of key institutions such as the HoF, shaping the federal executive, describing the composition of the army, and in the politics of appraising public policies is self-evident that it has almost become the *modus vivendi* and *operandi* of the post-Derge political system.

Specifically, in the areas of public policy, the political-economic model of the 'developmental state' and the ethnic political emphasis of EPRDF contributed to the emergence of many ethnic party organizations. The EPRDF, as a front of four ethnic parties, had a role-model influence on the proliferation of ethnic political parties. It established the precedence that ethnic politics and party mobilisations could seize the state apparatus (Adane Tilahun, Interview, Addis Ababa, 2017). The controlling of the state by ethnic elites, much more the alleged Tigraians' dominance in the EPRDF, accelerated the ethnic bid. Loukeris (2005) had the idea that, though radical ethno-nationalists had welcomed the ethnic federal system, they saw it as the other version of the same Abyssinian domination by Tigraian. Besides, the "developmental state policy encouraged further the overwhelming control of major economic resources, employment, and public services

by EPRDF, as a state-capture. “EPRDF is positioning itself to perpetuate its hegemony. The fact that the EPRDF, together with its allies, now controls 96.6 per cent of the electoral votes confirms this belief [state capture],” Alemante Gebreselassie (1992, p. 221). This dominance contributed to the multiplication of other ethnic parties aiming at accessing state resources and facilitating the economic advantages of their ethnic constituencies.

Additionally, the recently replaced *Political Parties Registration Proclamation 573/2008* was conducive to establishing an ethnic party rather than a multiethnic and/or countrywide one. It ordered that the founding members of the latter should be at least 1500, from at least four of the then nine states and the city administrations of Addis Ababa and Dire-Dawa. Moreover, it was impossible to recruit more than 40 and below 15 per cent of the founding members from a single state (Proc. 573/2008, 5(1)). When compared with the requirement to establish a regional party, these criteria favoured ethnic parties, almost regional by default. With 750 founding members—more than 60 per cent from a region—it was possible to establish a regional party (Ibid., 6(1)). Without judging the necessity of more stringent criteria for the establishment of a countrywide party, the main point here is the relative ease of founding an ethnic party.¹³

Continuing the discussion of ethnic party proliferation in FDRE, the third reason is opposition ‘party fragmentation’¹⁴ and polarization. The limitations of ethnic parties in terms of willingness, commitment, and skills to work in consortium with other parties were pointed out by Abis Makuria, EDP Central Committee member (Interview, Addis Ababa, 2017). Out of 46 registered ethnic parties, 11 were members of various fronts of parties (Table 5). The lack of interest in forging common party organisations and the commitment to sustain them by ethnic parties could be understood as a rational choice. Anticipating the risk of losing the support of their co-ethnic members when they are involved in inter-party coalitions and fronts, the fragmentation of the parties seems to produce a party system in which shared parties across ethnic groups become less common.

¹³ According to the new Proclamation No. 1162/2019, Articles 64 and 65, the criteria have become even more demanding as they require 10, 000 and 4, 000 founding members’ signatures for “nation-wide” and “regional” political parties, respectively.

¹⁴ It presented to indicate the inabilities of the Ethiopian opposition parties to consolidate and form broader political coalitions. In conventional sense, however, ‘party fragmentation’ refers to a situation in which political power is dispersed among a large number of political parties, leading to a divided and often unstable political landscape. This can result in difficulties forming cohesive government coalitions and passing legislation, as no single party has a clear majority (see Laakso and Taagepera, 1979).

In addition, the risk of losing core-ethnic supporters and the ambition to tap the population asymmetry of ethnic groups are relevant as to why some of parties of majority ethnic groups could be less motivated in party aggregations. Merera Gudina (2004, p. 25) stated that, in Ethiopia, the long-established political practice of the rule of the minority had been still intact. Any democratisation process should first address the demand of the Oromo, the largest ethnic group, was the centrepiece of his argument. “The minority is ruling, and the Oromo is the ruled,” said Tiruneh Gemta, the Secretary of OFC (Interview, Addis Ababa, 2017). Strengthening that, the constitutional dispersal of power and power-sharing at the federal centre is promising to the parties of the larger ethnic groups to assume the power of the states and to secure adequate positions in the Federal Government without risking their core-ethnic support with the accusations of “co-opted” or “sell-out”, cooperating and coupling with other multiethnic and federation-wide parties. Consequently, the proliferation of discrete ethnic parties has become one of the defining trends of the Ethiopian party system.

Banerejee and Pande (2007, p. 2) expound that, in the context of active and persistent inter-ethnic party competitions, ethnic parties representing exclusively the largest ethnic groups have electoral advantages. The democratic message of the Oromo Federalist Congress (OFC, 2012) one-man-one-vote made the case for ethnic majorities to have a positive assessment of majoritarian democracy. The expectation that ethnic majority parties are vulnerable to splits that could lead to the emergence of multiethnic parties has been rare in Ethiopia. When ethnic parties faced with internal factionalism, it has been the dominant pattern to come up with new ethnic parties rather than establishing or joining cross-ethnic parties. The division in the Oromo National Congress (ONC) gave rise to the Oromo People’s Congress (OPC) in 2007 and the division in TPLF to *Arena* Tigray (Tiruneh Gemta, Interview, Addis Ababa, 2017; Gebru Asrat, 2014). There are a few exceptions, such as the divisions in the All Amhara People’s Organisation, which resulted in the emergence of both the Ethiopia Democratic Party-Medihin (EDP-Medihin) in 2000 and All Ethiopian Unity Organization, in 2003 (AEUO, Program, 2003). In general, the rewarding effects of ethnic-based voting for the majority ethnic parties and divisions within ethnic parties have bearings on the burgeoning size of segmental ethnic parties.

The fourth reason for the proliferation of ethnic parties in FDRE calls for the gradual widening of the ethnic political cleavages. Not limited to the ethnic essence of the party system, the

leaning of the political environment towards ethnic diversity has been held as the main culprit for much of the political instabilities and tensions in the country (Desta Bizuayehu, Interview, Addis Ababa, 2018). That has resulted in the symmetry between ethnic divisions and party-polarisations since the introduction of the ethnic federal system. Contrary to the first structural reason stemming from socio-economic development, some thought that the ever-increasing number of ethnic parties was not primarily because of the democratic opening initiatives of the early 1990s but rather due to ethnic rivalries, tensions, and conflicts. Besides of EPRDF's authoritarian nature, ICG (2009, p. i) said that the rise of ethnic parties was neither because of democratisation nor the inclusion of opposing parties but "the result of a continuous polarisation of national politics that has sharpened tensions between and within parties and ethnic groups since the mid-1990s."

3.3.1.2. Multiethnic Coalitions, Fronts and Federation-wide Parties

As there are ethnic parties in Ethiopia, so are there multiethnic party coalitions and federation-wide parties. The imprecision of the latter comes in determining the degree to which countrywide parties are as federation-wide as they appear to be. The legal framework that prescribed the level of party-nationalisation informed which parties were federation-wide and which were not. The replaced Proclamation 573/2008 (Art. 1 (8–10)) delineated two categories of parties: regional and countrywide; these parties could ally each other in the form of fronts and coalitions. The difference between the two, in line with the same proclamation, lies in their durability and depth of unity. A front is the permanent association of parties under a common party symbol, program, and bylaw while maintaining their structural independence, party programs, and membership regulation. A coalition, on the other hand, is the temporary alliance of parties for specific purposes (Ibid.). Accordingly, not all coalitions and fronts are federation-wide parties since the mere pooling of, for example, two ethnic parties operating does not produce a countrywide party. Therefore, the way parties are established individually and the right to form fronts and coalitions among themselves underline the complex amalgam of parties in FDRE.

In 2015, there were five fronts of political parties: United Ethiopian Democratic Forces (UEDF), Ethiopian Federal Democratic Unity Forum, Ethiopian Justice and Democratic Forces Front (EJDFF), Unity of Southern Ethiopian Democratic Forces (USEDFF), and EPRDF (Table 5).

Regarding these parties, there are four important observations. First, the constituent parties of the fronts varied between two and four. Secondly, while EPRDF, USEDF, UEDF, and the Forum were fully composed of ethnic parties, EJDFF was the only one with a countrywide party member, EDU. Thirdly, in terms of regional distribution, USEDF had drawn all of its members from former SNNPs; EPRDF and the Forum from four states; and UEDF from two states. Fourthly, some parties within the fronts were also fronts by themselves. ESD-SCUP and USEDF consist of parties from the former SNNPs, and UEDF is the front of ESD-SCUP and OFC. Embedded coalitions and fronts were one of the characteristics of parties in the recently dissolved SNNPs State. The ethnic heterogeneity of the State and the predominance of ethnic minorities could be the major causes of the multilevel alliances of the parties at the state and federal levels.

| Party Fronts and Coalitions | Member Parties |
|--|--|
| 1. Ethiopian People's Revolutionary Democratic Front (EPRDF) | Tigray Peoples Liberation Front (TPLF) |
| | Amhara National Democratic Movement (ANDM) |
| | Oromo People's Democratic Organization (OPDO) |
| | Southern Ethiopia Peoples' Democratic Movement |
| 2. Ethiopia Federal Democratic Unity Forum (Forum or <i>Medrek</i>) | Ethiopian Social Democracy-Southern Coalition Unity Party (SED-SCUP) |
| | Oromo Federalist Congress (OFC) |
| | Union of Tigrians for Democracy and Sovereignty (UTDS) |
| | Sidama Liberation Movement (SLM) |
| 3. Ethiopia Justice and Democratic Forces Front (EJDFF) | Ethiopian Democratic Union (EDU) |
| | Unity of Southern Ethiopian Democratic Forces (USEDF) |
| | Oromia Liberation National Party (OLNP) |
| 4. Unity of Southern Ethiopian Democratic Forces (USEDF) | Wolayta People's Democratic Front (WPDF) |
| | Gamo Democratic Union (GDU) |
| | Gamo-Gofa Peoples Democratic Union (GPDU) |
| 5. United Ethiopian Democratic Forces (UEDF) | Ethiopian Social Democracy-Southern Coalition Unity Party (ESD-SCUP) |
| | Oromo Federalist Congress (OFC) |

Table 4: Party Coalition and Fronts (Source: NEBE, 2016).

Focusing on countrywide unified parties, there were about 15 in the same year, 2015. The only countrywide party that made up a front was EDU. Most of these parties could be said to reflect the liberal political articulation in the sense that the significance of individual rights has received more emphasis than group rights, with their implications for land and economic policies (below **Table 5**). However, the communitarian aspects of consensus-based democracy and economic redistribution were part of the programs of some parties, such as the EDP and CUDP.

| Party | Official Ideology |
|--|---|
| 1. All Ethiopian Unity Party (AAUP) | Liberal |
| 2. Ethiopian Peace and Democratic Party (EPDP) | --- |
| 3. Ethiopian Democratic Party (EDP) | Liberal (with consensual and social democracy elements) |
| 4. Ethiopia Democratic Union (EDU) | --- |
| 5. All Ethiopian Democratic Party (AEDP) | --- |
| 6. Ethiopian National Unity Party (ENUP) | --- |
| 7. All Ethiopian National Movement (AENM) | --- |
| 8. Coalition for Unity and Democratic Party (CUDP) | Liberal (with social democracy elements) |
| 9. Ethiopian Democratic Unity Movement (EDUM) | --- |
| 10. Ethiopian Raie Party (ERP) | Liberal |
| 11. Blue Party | Liberal |
| 12. New Generation Party (NGP) | |
| 13. Unity For Democracy and Justice Party (UDJP) | Liberal |
| 14. Ethiopian Addis Miraf Party (EAMP) | --- |
| 15. Ethiopian's Unity Democratic Organization (EUDO) | --- |

Table 5: Countrywide Parties, 2015 (Source: NEBE, 2016)

3.3.2. The Practice of Multiparty System in Ethiopia

Similar to the proliferation of ethnic parties and the volatilities of inter-party coalitions, the dominance of the Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) was the basic feature of the Ethiopian party system for more than a quarter of a century. It dominated elections, governments, and political agenda settings. Parallel to the overwhelming electoral dominance, EPRDF has established successive governments since 1995. In the 2015 election, the deterioration of the multiparty constitutional arrangement reached the extent that EPRDF and its "affiliates" secured all the seats in the HoPRs and State Councils (Table 6). However, "the opposition parties of Medrek, Blue Party (BP), All Ethiopia Unity Party (AEUP), Ethiopian Raey Party (EEP), and the Ethiopian Democratic Party (EDP) all rejected the results of the 2015 election," *Africa Journalism* (2015).

| | Parties | Seats |
|-----------------------------|--|-------|
| | Ethiopian Peoples' Revolutionary Democratic Front (EPRDF) | 500 |
| EPRDF Affiliates | Ethiopian Somali People's Democratic Party (ESPDP) | 24 |
| | Benishangul-Gumuz Peoples' Democratic Unity Party(BGPDUP) | 9 |
| | Afar National Democratic Party (ANDP) | 8 |
| | Gambella People's Unity Democratic Movement (GPUDM) | 3 |
| | Harari National League (HNL) | 1 |
| | Argoba People's Democratic Organization (APDO) | 1 |
| | Total= 546 | |

Table 6: The Party Composition of the HoPRs, 2015 (Source: NEBE, 2016)

The downward spiral of the electoral gains of opposition parties was accompanied by the increasingly all-powerful control of EPRDF and its “affiliates” to the level where the opposition politics had no representative in the legislature. This created the practice of a non-competitive one-dominant-party system. The floundering of the EPRDF on the issue of multiparty democracy came along with the articulation of democratic principles in its program. The program, for Gebru Asrat (2015), reasoning that individualism cannot produce adequate space for ethnic group rights, rejected ‘neo-liberalism’ with an implicit reluctance to embrace a multiparty system. That was against the views that liberalism, since it is about resisting imposition (Kymlicka, 2002), can accommodate ethnic diversity. “Liberal politics comes from its explicit recognition of difference. This difference is not based on some minor issues, but in fact on most substantive issues,” Birhanu Nega (2010, p. 18). EPRDF’s hierarchical approach to individual and group rights had a democratic ambivalence. Tiruneh Gemta (Interview, Addis Ababa, 2017), from OFC, alleged that the EPRDF, convinced individual rights are neo-liberal principles, sacrificed them to ethnic group right only to compromise both.

Besides criticising multiparty democracy as a corollary of rejecting liberal democracy, EPRDF asserted democracy as a matter of national survival, development, and peace, though with changes in prioritising them at times. Peace took primacy between 1991 and 2001, mainly due to the instabilities of the transitional period and the conflict with neighbouring Eritrea (Abbink and Haggmann, 2011, p. 558). After that, democratisation had been on top of its agenda until 2005 for various reasons, mainly pressures from Western countries and international organisations, initiatives from the top leadership of the EPRDF, and an understated assessment of competitive opposition parties (EUEOM, 2005, p. 8; EPRDF, 2015, p. 34; Birhanu Nega, 2006). However, in the 2005 election, faced with the unexpectedly high performance of the opposition parties such as the CUD and UEDF, EPRDF revoked the democratic initiative and came up with the priority of socio-economic development and transformation. This shift in policy hierarchy seemed to be in line with the view that the party valued economic-performance-legitimacy much more than democratisation.

Therefore, the democratic disposition of the Constitution and the program of the EPRDF diverged from each other, though it was said that the EPRDF had “controlled” the constitution-making. For the fragility of multiparty democracy in the early 1990s, Joireman (1997, p. 401)

alluded to the political development of the country rather than the self-serving interest of the EPRDF, saying that “revaluing” the lost meaning of democratic election in the military regime of Derge was needed, but there had been the absence of democratic institutions and political culture. That was the opinion that EPRDF had the objective of a democratic Ethiopia, but the country had not yet prepared for that. Practically, however, the contradictions of the democratic principles of the Constitution and EPRDF’s politics proved the statement of democracy as a matter of national survival by the latter as a rhetorical façade to its hegemonic interest. Young (1997, p. 211) states that “in spite of the readily reference of the EPRDF leadership to democratic jargon”, the party displayed democratic apathy in the operations of every level of government. With the tendency towards authoritarianism, as an autonomous yet powerful political entity, the party arrested the consolidation of democratic institutions by indulging in the paternalistic mode of elitism among ethnic elites (ICG, 2009, p. 5). The monopoly of the formal power of the government by the centralised elites of EPRDF strongly severed the viability and roles of opposition parties to outline the rules of the game for the processes of democratisation.

3.4. Conclusion

The chapter has dealt with the Ethiopian federal system and the nature and practice of the party system. The federal order, as a multiethnic federal constitutional option, was preceded by identity-driven political conflicts that had the effect of altering the regime. The change of the Derge regime was not only about the shifting of state-society relations but also the radical transformation of the structures of state power along a multiethnic federative process. The right of ethnic groups to self-determination is the overarching rule of the federal constitutional order. That subsumes self-administration, socio-cultural and historical rights, multilevel representation, and secession.

The federal design of the 1995 Constitution includes the division of power and responsibilities between the Federal Government and the constituent units through which federation-level relative minorities, not all of them, have transformed into federal-unit level majorities. In terms of equality, the lack of consistency in structuring the states has spawned an asymmetric establishment, comparing those states with more or less homogenous ethnic demography and those without absolute majority ethnic groups. Nevertheless, before 2019, the average degree of homogeneity across the states was 69 per cent. This has enabled the federation to meet the

principle of federation-unit asymmetry since there is no ethnic group close to that, at the federation level.

In comparison with some pluralistic federations such as Belgium, India, Canada, and Spain, the right of secession, the mechanism of constitutional interpretation, and the power symmetry of the states are the peculiar aspects of the Ethiopian ethnic federal dispensation. Apart from the high level of state-wise malapportionment (69 per cent or 0.34 Gini Index) and its politicised nature, the accountability, professionalism, and vibrancy of the HoF call into question the meaning of its constitutional interpretation power for the federal constitutional development of Ethiopia. Related to that, how the Ethiopian federal system could show constitutional dynamism with the constitutional requirement of the majority votes of all the State Councils to amend the vital parts of the federal system, as they found in Chapter Three of the Constitution, without undermining the constitutional security of ethnic groups is also a pondering matter.

Turning to the party system, the post-1991 Ethiopian political system has been identified with the growing number of political parties, mostly ethnic, and the dominance of the EPRDF, recently *transformed* into the Prosperity Party (PP). The driving factors for the growing number of ethnic parties include the introduction of the ethnic federal system, the party registration law, the potentially rewarding effect of ethnic mobilisation due to the rise of ethnic consciousness, and the long incumbency of the EPRDF, as a role model to other parties. In the Constitution, ethnic groups are the self-originating units of constitutional power. The law of party registration under the replaced Proclamation 573/2008 had the requirement of 750 founding signatures to legally register a regional party. That, compared to the criterion of 1500 signatures for a countrywide party, was encouraging for the emergence of more regional parties than multiethnic federation-level parties. The regional parties are commonly ethnic-based, with some variations in the scope of their ethnic exclusivity or particularity. EPRDF's ethnic-based structures and the essentials of ethnic politics in its 'revolutionary-democracy' together with the adoption of the 'developmental state' model that ensured the extensive participation of the EPRDF-led state in the economy set the precedent rule of power politics that magnifies the political and economic returns of ethnic party formations and mobilizations.

The dominance of EPRDF was highly consequential in spawning the gap of multiparty competition in the party system. EPRDF long controlled the government with a variety of

methods of avoiding free, fair, and democratic elections. Since the end of the military regime, the fixture of multiparty democracy in Ethiopia has been in a balance between a narrow opening and a sharp dwindling. Apart from studies made on the causes of the low multiparty performance and its repercussions on the political development of the country, the specific ways in which the deficit of multiparty system has affected the ethnic federal system have not received that much attention. The next chapter shows how the condition of multiparty politics in the Transitional Period of Ethiopia still has bearings on the making legitimacy of the federal constitutional dispensation.

CHAPTER FOUR

Multiparty Deliberative Constitution-Making and the Federal Choice of Ethiopia

4.1. Introduction

The chapter, relating multiparty deliberation with the transitional task of constitutional writing, addresses the subject of deliberative democracy in the formation of the Ethiopian federal constitutional design. Designing, adoption, and ratification are the most conventional phases of constitution-making to go about the multiparty federal origin. Presumably, the opening of multiparty politics at the end of the Derge regime was an important step in bringing political consensus into the writing process of the coming federal constitutional design. Ottaway (1995, p. 70) sees that despite the violent political change in 1991, like the socialist direction of the 1974 Revolution, which led to a power vacuum and “democratisation from the top”, it ushered in the legality of political parties to openly organise and compete with each other. How that could be reliable to think of multiparty deliberation in the federalizing, or federative¹⁵ process and its meaning to the legitimacy of the federal system takes the centre of the discussions in this chapter. The organisation of the discussions falls into two intertwined parts. In the first part, the designing, adoption, and ratification stages and procedures of the Constitution are measured against multiparty deliberative democracy. Based on that, the procedural as well as substantive legitimacy of the federal constitutional design follows in the second part.

4.2. The Multiparty Deliberation in the Making of the Federal Constitution

Several scholarly contributions have debated and put points of reservation on the political legitimacy of the ethnic federal choice of Ethiopia. As the 1995 Federal Constitution is touted for political maturity and historical resoluteness to directly address the ‘nationality question’, Brietzke (1995, p. 19) suspected the farsightedness of the drafters of the Constitution, for they had no control over the effects of their constitutional choice that aligned federalism with ethnic self-determination, and arrived at his conclusion, “Ethiopia seems poised for...[a] bigger constitutional leap into a murkier realm, into an ethicised attempt at democratization. I will argue that there are grounds for a guarded optimism over Ethiopia.” It is an observation that the right to

¹⁵ Endreas Eshete (2003) prefers the term ‘federative’ to ‘federalizing’ in order to underline the centrality of a coming-together federal origin, out of the categorical autonomy and sovereignty of “nations and nationalities”, in the 1995 Federal Constitution.

self-determination in the Federal Constitution is so expansive that it would frustrate democratic transition and consolidation with *less* mutable ethnic-based political divisions and confrontations. Such understandings suggest the importance of looking into the legitimacy of the ethnic federal design from the perspectives of democracy, individual rights, and stability. In addition, as the conceptual and empirical frameworks of Chapter Two inform, the constitutional making process has implications for the legitimacy of the federal arrangement. Modern federal systems originated from multiparty deliberations have the foundational legitimacy to accommodate and endure political changes, compared to those federal orders implied as the constitutional impositions of one-party and no-party systems (*See* the seminal comparative works of Kavalski and Zolkos, 2008, for failed federations; and Burgess and Gagnon, 2011, for mature and durable multinational federal democracies). Accordingly, the condition of multiparty deliberation in the making of the 1995 Constitution of Ethiopia reveals additional insights into the legitimacy of the ethnic federal choice.

Ensuring multiparty deliberation in the constitution-making moments against the odds of power disequilibrium in the post-conflict setting has implications for the consensual legitimacy of the federal constitutional design. That is based on two premises inferred from the discussions in Chapter 2. First, deliberative democracy is the necessary condition for the consensual origins of federal constitutions. The *Consociational Cradle of Federalism* by Duchacek (1985) shows, if anything, the modicum of minority-veto at least in the foundations of federations. Second, multiparty deliberation can generate deliberative democracy. In constitution-making, the deliberative democratic quality of multiparty deliberation is the function of four points. The comprehensiveness of multiparty representation in processes of constitutional drafting, adoption, and ratification, depending on specific designs of constitution-making that could also include the stage of constitutional ‘idea-generating’, identified by Banting and Simeon (1985), is the first point. The second point, which is the prudential role of parties, requires the effective participation of parties in the making of constitutions. The third one is the autonomy of political parties to press for their constitutional choice. Autonomy in this context underlines the freedom of political parties to participate equally in the ventures of constitutional choice. Fourthly, the availability of fair mechanisms for deep and extensive constitutional debates is all but the core of deliberative democratic constitutional writing. Presumably, the competitive inclinations as well

as the organised approaches of political parties make it meaningful to undertake meaningful constitutional debates and negotiations.

Reiterating the empirical discussions of the second chapter, the experiences of mature and stable pluralistic federations reveal that multiparty constitutional deliberations have anchored the founding constitutional legitimacy of these federations with the consensual character of deliberative democracy. In addition to the first generation of pluralistic federations like Switzerland and Canada, multiparty representation and deliberation in the making of the constitutions of the latter generations of federations, similar to Belgium and Spain, have lessons for the issue at hand. Compared with one-party-dominated federal constitutional design, they have a history of constitution-making that has the least ramifications of federal constitutional imposition and ideological particularity, which is the feature of constitutions known as, borrowing Elazar's (1987) term, 'revolutionary manifestos'. Likewise, in South Africa, the multiparty sources of the 1992 Interim Constitutional Principles as the 'constitutional idea-generating stage' together with the freely elected multiparty Constituent Assembly to adopt the 1996 Constitution are worthy of note.

Therefore, the investigation of multiparty constitutional deliberation in the making of the Ethiopian Constitution in light of deliberative democratic legitimacy involves inclusive multiparty representation, effective party participation, party autonomy or agency, and multiparty balanced constitutional debates.

The constitution-making moments of Ethiopia in the first half of the 1990s marked a major shift in power relations precipitated by a combination of political and armed conflicts. Immediately, about one month into the end of the Marxist regime of the People's Democratic Republic of Ethiopia (PDRE), the armed victorious group, the EPRDF, proclaimed a national assembly named the Peace and Democracy Conference (July 1–5, 1991). This assembly promulgated the Transitional Charter, which served as an *interregnum* document that, according to Brietzke (1995, p. 20), "forecasted" the features and the making stages of the Federal Constitution. Because of that, it is logical to consider the place of multiparty deliberation, starting from the Peace and Democracy Conference to the ratification of the forthcoming constitution.

The Peace and Democracy Conference needed to embody the necessary political pluralism for the political transition of the country into a democratic multiethnic federal constitutional order. Specifically, the inclusive representation of various political parties and their equal participation in drawing the contour of the transitional process magnified the purpose of the Conference in setting the stage for a deliberative federal constitutional choice. It was a fact that 19 political parties had seats in the Conference (Table 7). Ottaway (1995, p. 32) traced the information that EPRDF (TPLF, OPDO, ANDM, and EDOU), OLF, and 20 other small parties participated in the Conference.¹⁶ Five multiethnic and/or national parties and 14 ethnic parties had the status of participation, and four of them had the role of observation (Table 7). At face value, that could be applauded for seeding political pluralism. However, the quantitative confirmation of multiparty politics in the Conference in terms of party-size is misleading.

¹⁶ Ottaway (1995) might add the three entities, excluding EPLF, with the observer statutes: The Independent Committee for a Peaceful Democratic Transition in Ethiopia, the Alliance for Democratic Council Committee (ADOC), and the All Ethiopian Islamic Democratic Movement (AEIDM).

| Party Participants | Remarks |
|--|---|
| Ethiopian Peoples' Revolutionary Democratic Front (EPRDF). | Four parties Under EPRDF Tigray People's Liberation Front (TPLF) Oromo People's Democratic Organization (OPDO) Amhara National Democratic Movement (ANDM) Ethiopian Democratic Officers Union (EDOU) |
| Oromo Liberation Front (OLF) | |
| Afar Liberation Front (ALF) | |
| Benishangul People's Liberation Movement (BPLM) | |
| Gambella People's Liberation Movement (GPLM) | |
| Gurage People's Democratic Front (GPDF) | |
| Sidama People's Liberation Movement (SPLM) | |
| Islamic Front for the Liberation of Oromo (IFLO) | |
| Oromo Abo Liberation Front (OALF) | |
| Oromo People's Liberation Front (OPLF) | |
| Hadiya National Democratic Organization (HNDO) | |
| Wolayita People's Democratic Front (HPDF) | |
| Western Somali Liberation Front (WSLF) | |
| Isa and Gurgora Liberation Front (IGLF) | |
| <i>Horiyale</i> | |
| Ethiopian Democratic Union (EDU) | |
| Ethiopian National Democratic Organization (ENDO) | |
| Ethiopian Democratic Coalition (EDC) | |
| Ethiopian Democratic Alliance Group (EDAG) | |
| Non-party participants (Social groups, Ethnic Groups and Individuals) | |
| Hadere, Kambata and Omotic Peoples | |
| Trade Unions | |
| Addis Ababa University | |
| Observers | |
| Gurage People's Democratic Front (GPDF) | Also a participant |
| Ethiopian Democratic Union (EDU)* | Also a participant |
| Addis Ababa University* | Also a participant |
| Ethiopian National Democratic Organization (ENDO)* | Also a participant |
| Eritrean People's Liberation Front (EPLF)** | Also qualified to participate in the discussion of the Conference on issues relevant to Eritrea |
| Ethiopian Orthodox Church | |
| Ethiopian Catholic Church | |
| Islamic Elders | |
| Mekane-Eyeseus Church | |
| Independent Committee for a Peaceful Democratic Transition in Ethiopia | |
| Alliance for Democratic Council Committee (ADOC) | |
| Horn of Africa Forum (AFP) | |
| All Ethiopian Islamic Democratic Movement (AEIDM) | |

Table 7: The Composition of Peace and Democracy Conference (Source: Data Derived from the Archives of NEBE, 1994).

The expectation of a multiparty transitional opening from the Peace and Democracy Conference was compromised. Teguadda Alebachew (2011, p. 38) states that EPRDF had the upper hand: to decide on the allocation of the seats of the Conference, which were 85 without counting the additional four vacant seats reserved for parties; and to manoeuvre on the inclusion and exclusion of parties applied to attend the Conference. Lyons (1996, p. 123) believed that “EPRDF convened a National Conference to which it invited representatives from over 20 political movements. Some of these were small ethnic parties, newly organized under EPRDF tutelage, led by urban elites with weak ties to the countryside.” This is a showcase that the front, EPRDF, was not only consolidating its position further but also manipulating the inclusiveness of the Conference by screening the inclusion of other parties. The participating parties were shrewdly enlisted by the EPRDF (Kassahun Birhanu, 2003, p. 119).

Consequently, the democratic currency of the Peace and Democracy Conference was jeopardised in terms of instilling legitimacy into the adoption of the Transitional Charter as a predecessor to the Federal Constitution. Teguadda Alebachew (2011, p. 53) says, “the Conference was which EPRDF unilaterally determined the right to political participation of the Ethiopian people... where all other participants acted as guests.” That goes to the extent of eschewing the potential role of the Conference to realise the purposes of inclusive political dialogues in the making of the Transitional Charter. Alemante Gebreselassie (1992) and Lyons (1996) describe that the Transitional Charter was already pre-fixed by EPRDF, with some engagement from OLF’s side, before the inauguration of the Conference. Avoiding the appeals of party inclusiveness, the Conference omitted the necessity of an initial power balance to undertake effective political negotiations for the democratic transition of Ethiopia. It rather compounded the power system of the status quo, and Ottaway (1995, p. 72) wrote that “the so-called process of democratisation started in the absence of any real contending power to that of the dominant group.” That infers the heavy influence of the EPRDF on the essence and the designing mechanisms of the Federal Constitution.

The Transitional Charter, under Part 4, gives the powers of drafting and ratifying the new constitution to the Constitutional Drafting Commission and the Constituent Assembly, in their order. Articles 10 and 11 express that CoRs, equivalent to the legislative organ of the Transitional Government, had the mandate to establish the Commission and to adopt the draft

version of the constitution, written by the same Commission, before reaching public discussion. Thus, to continue the task of examining the condition of multiparty deliberation in the process of writing the Federal Constitution, the following three points are critical.

The first is the multiparty features of the Constitutional Commission and the CoRs. In August 1992, CoRs ordained *Proclamation No. 24/1992* to form the Commission by pointing out its specific powers and responsibilities related to constitutional drafting, public awareness, and public participation (Art. 5). Its membership size and composition were identified in the Proclamation (Art. 7) that 29 individuals were to constitute the Commission and to organise themselves into the General Assembly, Executive Committee, and other committees. It is worth mentioning that 14 of the 29 members of the Constitutional Drafting Commission were from 14 political parties, seven from those parties within the CoRs and the other seven from outside the CoRs (Ibid., Art. 2), whereas the remaining 15 were from professional associations and interest groups.¹⁷ In terms of representativeness, Kifle Wodajo, the Chairperson of the Commission, said that the inclusion of parties and interest groups outside CoRs was imperative to make up the representativeness gap of CoRs (mentioned in Teguadda Alebachew, 2011, p. 60–61). Indicating such pieces of evidence of party inclusions in the Commission and the CoRs, since the parties attending the Peace and Democracy Conference were also included in the latter (Ottaway, 1995, p. 70), there are claims that the drafting and the adoption of the Federal Constitution allowed multiparty deliberation (Addisalem, 2003).

However, the Constitutional Drafting Commission and the CoRs were under the strong influence of the EPRDF. The majority of the seats in CoRs, including chairing, were under EPRDF (Assefa Fiseha 2008, p. 63). The combination of the victor's position of EPRDF, its number of representatives in the CoRs (36%), 32 of 87, and securing the alliance of others, notably the Oromo Liberation Front (OLF), which had the second most seats, 12 (14%), until it withdrew

¹⁷ Teachers' Association (2), Women Representatives (3), Health Professional Association (2), Trade Unions (3), Chamber of Commerce (3), and Lawyers Association (2). Parties from the Council of Representatives: Ethiopia Democratic Union (1), Ethiopian People's Democratic Movement (1), Ethiopian National Democratic Organization (1), Oromo People's Democratic Organization (1), Harari National League (1), Keffa People's Democratic Unity Organization (1), and Isa and Gurgora Liberation Front (1). Parties from outside the Council of Representatives: Southern Ethiopia People's Union (1), Southern Ethiopian People's Democratic Front (1), Ethiopian National Unity Party (1), Forum 84 Organization (1), Ethiopian Islamic Movement (1), Moa-Anbessa (1), and Ethiopian Democratic Movement League (1). See Teguadda Alebachew (2011, p. 60–61).

from it in May 1992, wrote Birhanu Balcha (2007, p. 81–82), was an openly enabling environment for EPRDF to sturdily enforce its constitutional choice. With EPRDF and its minor satellite parties, the CoRs adopted the draft version of the new constitution on May 3, 1994, presented and drafted by the Constitutional Drafting Commission, also boycotted by opposition parties, as per the data of Brietzke (1995, p. 22–25).

Secondly, regarding the essence and procedures of public constitutional discussions, debates point out the unbalanced roles of political parties in shaping the directions of the discussions and the views of the participants. That focuses on the manoeuvred tendency of the discussions to lead to justifying the federal constitutional design, including the much-contested topics such as the right to self-determination up to and including secession, rather than presenting alternative perspectives on constitutional democracy and constitutional systems. The Commission construed, claims Teguadda Alebachew (2011, p. 64), that “the participants in all Regions had supported the right to secession,” though the Commission itself forwarded the issue to CoRs for it had been divided over this right. Related to that, the public exchange of views on the draft constitution was under the supervision of local government structures that were being directed by the EPRDF because of the local and regional elections of June 1992.

The 1992 elections were boycotted by “major” five opposition parties¹⁸, and the turnout was too low (Brietzke, 1995, p. 21). The causes of the withdrawal of the opposition were a combination of political disagreements and the repressive acts of the EPRDF. Doubts on the projection of the transitional process and whether it would lead to an extensive degree of constitutional self-determination for the Oromo were the main cause of the OLF’s withdrawal from the elections and its dismissal from the CoRs (Cohen, 1995, p. 155). Lyons (1996, p. 128) gave his account that on June 17, 1992, OLF declared its non-participation in the upcoming elections held on June 21 of the same year after it, along with 17 other parties, had petitioned the CoRs asking for the postponement of the elections. Harassments and intimidations by EPRDF against opposition

¹⁸ According to Brietzke (1995, p. 21), the opposition parties were: Agew People's Democratic Union, All Amhara People's Organization (AAPO), Coalition of Ethiopian Democratic Forces (COEDF), Council of Alternative Forces for Peace and Democracy (CAFPDE), Ethiopian Democratic Action Group, the Ethiopian Democratic Union Party (EDUP), Ethiopian Democratic Party-Medhin (EDP-Medhin), Ethiopian National Union Party (ENUP), Ethiopian People's Revolutionary Party (EPRP), Gurage People's Liberation Front (GPLF), Islamic Front for the Liberation of Oromo (IFLO), Oromo Liberation Front (OLF), Somali Liberation Front, and Southern Ethiopia People's Democratic Coalition (SEPDC). The last one, SEPDC, is also known simply as the Southern Democratic Coalition.

candidates, not limited to OLF, who would have run for the elections otherwise had provoked and exacerbated the electoral boycotting of the parties. The influences of EPRDF's militia on the members of opposition parties and the partiality of the institutions of the Transitional Government of Ethiopia (TGE) and the National Electoral Commission (NEC) were extensively reported (Ibid., p. 127–118).

The result was, as described by Cohen (1995, p. 155), “an overwhelming election victory for the EPRDF and extensive criticism of the election process by external observers and opposition party spokesmen.” It meant 1,108 out of the 1,147 seats of the Councils of Regional Governments, according to Lyons (1996, p. 128). That was degrading to the participation of political actors and citizens outside EPRDF and its “affiliates”, in the constitutional discussions. Furthermore, only a small portion of the public, estimated between 5 and 30 per cent of the population, was part of the constitutional conferences and discussions, even though the Minute of the Commission (cited by Teguadda Alebachew, 2011, p. 63) claimed that it was about 13 million citizens. Adding to the practice of informal pressures, as mentioned by Tsegaye Regassa (2010), in CoRs in the process of adopting the draft constitution, the deliberative feature of the constitution-making process was highly questionable.

Thirdly, in light of inter-party federal constitutional debates, the dominance of EPRDF and its influence on small parties with the parallel withdrawal of the relatively popular parties, in addition to OLF's withdrawal since 1992, such as the Southern Coalition and All Amhara People's Organization (AAPO) from the June 5, 1994 election for the Constituent Assembly, lent EPRDF an overwhelming position in the ratification phase of the new constitution (Brietzke, 1995). The dominance of the EPRDF in that election had been a work in progress, though some efforts were made by the opposition forces to readjust the terms and process of transitional politics in general and the making of the new constitution. Lyons (1996, p. 121) described the effectors of the divided, weak, and “irresponsible” oppositions to challenge, coerce, and threaten using such mechanisms as forming coalitions, conveying conferences in Paris and Addis Ababa, electoral withdrawal, and calling for mediation by the United States were “no match for the EPRDF's intricate mechanisms of control”.

Eventually, on December 9, 1994, in session since October 3, the Assembly effortlessly ratified one of the two versions of the draft constitution, both unanimously adopted by the CoRs, which

affirmed the right of self-determination for ethnic groups and the public ownership of land. The lack of multiparty competition for the election of the Constituent Assembly coupled with the First-Past-the-Post electoral system (*Proclamation No. 64/1993*), which was less likely to induce the necessary degree of representativeness for such a highly critical issue as adopting a constitution for a pluralistic society, enabled the EPRDF to control the floor of the Assembly to steer the ratification of the Federal Constitution, without the participation of vocal opposition parties. In the words of An-Na'im (mentioned by Brietzke, 1995, p. 22), "the 1994 elections show that "the EPRDF has managed to exclude...those parties which carry real political weight, and sought to camouflage this by involving minor parties with little or no political support." It had 464 (85%) of the 547 seats in the Assembly (Table 8), for Lyons (1996, p. 130), it was 484, while Brietzke (1995, p. 21) put that at 487 (89%). Moreover, the other face of the election was the rate of turnout that 13 million out of the estimated 23 million eligible voters, or about 57 per cent, cast their votes (Lyons, 1996, p. 130). The turnout could tell how competitive the election was and the extent of public participation in the discussion phase of the draft constitution. What was certain was the low level of competitiveness witnessed in the election. The following lines show the incompetency of the 1994 election to spur deliberative multiparty constitutional federal design in Ethiopia:

A-Bu-Gi-Da, an Ethiopian non-governmental organization, stated that 'the level of competitiveness and inclusiveness ... was low', and for this reason found it 'doubtful whether the elected members of the Assembly would satisfactorily represent the range of Ethiopian opinions on the constitution'. Here therefore was another opportunity missed by both the TGE and the opposition to broaden the base of the transition through competitive elections. according to Lyons. (1996, p. 130).

The outstanding issue in the above three points was the comparative power of EPRDF to pre-emptively avoid the development of other constitutional options than the kind of federal model envisioned in the Transitional Charter within the institutions of the transitional government, as contending constitutional design proposals would call for fair, inclusive, and democratic constitution-making deliberations. Gradually, in the expression of Ottaway (1995, p. 73), the whole process of democratisation in the transition period was too formalistic and a "failure" in which "the Ethiopian government was more narrowly based and had less legitimacy in 1994 than in 1991." Lyons (1996, p. 121) addressed that the EPRDF's military commanding power, organisational and leadership centralization, and "control of the agenda and rules of competition"

were important to push “the transition around new ethnically defined regions, a constitution that emphasised self-determination, and a series of largely uncontested elections.” The author, Lyons (Ibid., p. 125), made an additional explanation that the delineation of the regional administrations, based on Proclamation 7/1992, along ethno-linguistic identities and the subsequent elections in 1992 and 1994 under constituencies organised within the regional administrations were encouraging ethnic divisions to harden. That set the stage for the adoption of ethnic federalism in the new constitution.

| No. | Parties Under EPRDF | Seats in Constituent Assembly |
|-----|---|-------------------------------|
| 1 | Tigray People's Liberation Front (TPLF) | 37 |
| 2 | Amhara National Democratic Movement (ANDM) | 134 |
| 3 | Oromo People's Democratic Organization (OPDO) | 179 |
| 4 | Afar People's Democratic Organization (APDO) | 2 |
| 5 | Gurage People's Revolutionary Democratic Movement (GPRDM) | 12 |
| 6 | Hadiya People's Democratic Organization (HPDO) | 8 |
| 7 | Kembata People's Democratic Organization (KPDO) | 5 |
| 8 | Tembaro People's Democratic Organization (TPDO) | 1 |
| 9 | Alaba People's Democratic Organization (APDO) | 2 |
| 10 | Yem People's Democratic Front (YPDF) | 1 |
| 11 | Keficho People's Revolutionary Democratic Organization (KPRDO) | 6 |
| 12 | Bench People's Revolutionary Democratic Organization (BPRDO) | 2 |
| 13 | Shekicho People's Democratic Movement (SPDM) | 2 |
| 14 | Sidama People's Democratic Organization (SPDO) | 19 |
| 15 | Wolayita People's Democratic Organization (WPDO) | 13 |
| 16 | Gedio People's Revolutionary Democratic Organization (GPRDO) | 6 |
| 17 | Konso People's Revolutionary Democratic Organization (KPRDO) | 1 |
| 18 | Gamo and Gofa People's Democratic Organization (GGPDO) | 13 |
| 19 | Kore People's Revolutionary Democratic Organization (KPRDO) | 1 |
| 20 | Dawro People's Democratic Organization (DPDO) | 4 |
| 21 | Gambella People's Liberation Party (GPLF) | 2 |
| 22 | Ethiopian People's Revolutionary Democratic Front (EPRDF) | 13 |
| | Total | 464 |
| | Percentage | 85.5 |
| No | Non-EPRDF | |
| 1 | Afar Liberation Front (ALF) | 6 |
| 2 | Argoba National Unity Organization (ANUO) | 1 |
| 3 | Gumuz People's Liberation Movement (GPLM) | 2 |
| 4 | Benishagul People's Liberation Movement (BPLM) | 4 |
| 5 | Kebena National Democratic Movement (KNDM) | 1 |
| 6 | Mareko People's Democratic Movement (MPDM) | 1 |
| 7 | Silte, Azernet Berberie, Aletto Werero, Meskan Melga, Wolene Gedebano People's Democratic Movement (SAMWGPDM) | 3 |
| 8 | Burji People's Democratic Organization (BPDO) | 1 |
| 9 | South Omo Peoples' Democratic Organization (SOPDO) | 7 |
| 10 | Dizi People's Democratic Organization (DPDO) | 1 |
| 11 | Meane People's Revolutionary Democratic Organization (MPRDO) | 2 |
| 12 | Harari National League (HNL) | 1 |
| 13 | Gamo Democratic Union (GDU) | 1 |
| 14 | Ethiopian Somali Democratic League (ESDL) | 13 |
| 15 | Western Somali Democratic Party (WSDP) | 2 |
| 16 | Independent | 34 |
| | Total | 79 |
| | Percentage | 14.5 |

Table 8: The Composition of the 1994 Constituent Assembly (Source: The Archives of NEBE, 1994).

Summarising the making of the Federal Constitution of Ethiopia, it was hardly passed through multiparty constitutional deliberation. The deficit of comprehensive representation in its drafting, adoption, and ratification processes could not deliver accommodative forums for multiparty reflection on the federal choice. Within the scope of its semi-multiparty composition, the actual multiparty quality of the Constitutional Drafting Commission was highly dubious for reasons mentioned before, such as party boycotting, a lack of clear and open selection criteria for the 14 party representatives, and the alleged intervention of the EPRDF through affiliated legal experts and “satellite” parties. The EPRDF-dominated CoRs adopted the Constitution. In the 1992 elections, it became obvious that “after a brief honeymoon, EPRDF had no intention of sharing power,” says Brietzke (1995, p. 22). The representation of various parties in the CoRs had declined steeply and ended with the monopoly of the local, regional, and central government structures by the EPRDF and its allies. Lyons (1996, p. 121) judged that “what had begun with a noisy diversity of views among a broad array of political organisations ended quietly with the clear hegemony of the EPRDF.” In the same way, owing to the competitive election conducted in June 1994, the overwhelming position of the front, EPRDF, in the constituent assembly rendered the ratification process narrowly representative of the diversity of public opinion on the political future of the country. The far-reaching control of the constitution-making by the EPRDF was reported even in the activities of public constitutional consultation. The 1992 election enabled it to control the structure of the local government, which was close to the direct participation of the public in the constitutional discussions conducted in Kebeles.

The other element of multiparty deliberative democracy missed in the constitutional writing period was the gap in informed participation. Neither all parties within EPRDF had the parity of “articulations” nor did other parties formally outside of EPRDF make organised and meaningful participation within the Constitutional Drafting Commission, CoRs, and the Constituent Assembly. The latter group of parties was new, less organised, and had blurred and narrow social bases to counterbalance EPRDF if they had the intention to do so, to begin with. Concerning the public constitutional discussion, the nature of informed participation was compromised by questions raised about the knowledge-based participation of the rank-and-file of EPRDF.

As a result, the gaps in the party diversity and effective participation components of multiparty deliberative democracy along the drafting, public discussion, adoption, and ratification stages of

the 1995 federal Constitution had blocked the prospect of the party-autonomy and balanced argument components of multiparty deliberative democracy. EPRDF's disenchantment of alternative views to its 'revolutionary-democracy' on the grounds of "chauvinist", "anti-development" and so on had the outcome of suppressing the autonomy of political parties participating in the making of the Constitution. That was even worsening within the EPRDF, as its party-discipline, criticism, and democratic-centralism were anything but the forces of inner-party political freedom. Countervailing constitutional arguments were also under the threat of the once-dominant party system. Public constitutional discussions were the channels of public persuasion by senior EPRDF cadres. Here, the leading nature of the discussion was also a subject of concern for some. It continued that the adoption as well as the ratification of the Constitution without serious debate culminated in the failure of multiparty constitution-making. According to the conception of deliberative-democracy in the making of a multicultural constitution, elaborated by Valadez (2000), alternative and effective parties were not the engines of the Ethiopian ethnic federal design in terms of committing to public common goods, mutual understandings, identifying a set of shared political rules, and embracing the need to give weight to the different constitutional proposals of cultural identities in the constitution-making activities. Its impact on the legitimacy of the ethnic federal constitutional order follows.

4.3. The Deficit of Multiparty Constitution-Making and the Legitimacy of the Federal Choice

Chapter Two has pointed out conceptual and empirical frameworks deep-crossing the politics of multiparty and federal constitutional legitimacy. One of them is the role of multiparty deliberation in setting off the phenomenon of federal constitutional imposition. A multiparty-driven pluralistic federal constitutional system, owing to inter-party consensus on the necessity of the federal option and its constitutional structures, can have principal institutional and political resources to manage major constitutional crises that are shaped by the political cleavages of distinctive linguistic, ethnic, or national groups. The constitutional legitimacy crises of some of the failed multiethnic federal orders had roots in the legitimacy of the constitutional designing process under a concentrated party system and political force. They clashed with the need to open up accommodative constitution-making for an accommodative federal system. Thus, for the legitimacy of a federal constitutional option, the primary advantage of multiparty deliberation

rests on its incompatibility with the practice of constitutional imposition. In multiethnic federal options, that has to do with inclusively reflecting upon the complex social, economic, and political factors affecting the development of federal systems. Watts (2010, p. 325–346) puts together lists of preconditions for the application of a multiethnic federal constitutional design: the territorial distribution of ethnic groups, the depth of cleavages in their social and political orientations, historical relationships among them, federal consent, federal commitment, and so on. It follows that political parties could constrain the top-down assessments of such preconditions while crafting the contents of federal constitutions, provided that the question of who wrote constitutions rather than their contents might significantly determine the legitimacy of multiethnic federal constitutions.

The underperformance of multiparty deliberation in making the Ethiopian Federal Constitution has compromised the legitimacy of the federal choice, which could eventually deteriorate to the level of a major constitutional crisis. The blocked, or highly flawed, procedural legitimacy in designing the Constitution has strong resonances with those political cleavages directly related to the consensual foundation of the ethnic federal design. As indicated before, the structure and functioning of the Constitutional Drafting Commission and the CoRs, the public constitutional discussions and the electoral composition of the Constituent Assembly were increasingly becoming detached from the politics of multiparty to the degree that “the new constitution was ‘produced by one organization and its partners. It lost legitimacy even before it was ratified,’” said Mohammed Hassen (cited by Teguadda Alebachew, 2011, p. 69). More specifically, the EPRDF’s monopoly, almost so, in the steps of the constitutional writing process has often been implicated in the legitimacy gap of the federal design, to transform from a “higher law” to “our law.” It is, as shown in the next part of the chapter, on the grounds of a top-down exclusive federal choice, procedurally, and of constitutional politicisation, substantively.

4.3.1. Exclusive Federal Constitutional Choice

The absence of multiparty deliberation in the constitutional making process affected the legitimacy of the federal constitutional system by impeding the contributions of alternative ethnic and cross-ethnic and/or multiethnic parties outside EPRDF to carry out *serious* and inclusive constitutional dialogues. In inter-ethnic negotiations, the disengagements of relatively effective and popular ethnic political parties such as OLF and AAPO from the making of the

Constitution could go to the extent that the ethnic federal choice was not as much the “self-made” of ethnic groups as it claims. There were some criticisms of OLF related to democratisation and showing moderation to alternative political choices, considering itself the only representative for the Oromo and threatening the wellbeing of ethnic minorities in the Oromia Region (Lyons, 1996, p. 127). Despite that, if OLF had participated in the constitutional designing process, it would have expanded the making legitimacy of the federal constitutional order since Merera Gudina (2003, p. 96) argues that the makers of the Federal Constitution “lacks a popular mandate in the eyes of the Oromo people.” Similarly, Cohen (1995, p. 155) points out that “the All Amhara People's Organization (AAPO), a growing opposition party, withdrew from the election process, substantially reducing Amhara participation.”

The electoral non-participation of OLF and AAPO since 1992 had expunged the possible alternative federal articulations from Oromo and Amhara, provided that they make up not less than two-thirds of the Ethiopian population and, like so many other ethnic groups, they did not consider their co-ethnic parties in the EPRDF had the credibility of “representativeness” to undertake legitimate inter-ethnic federal constitutional negotiations (Hovde, 1994). Though the federal constitutional arrangement recognises the right of self-determination for NNPs, its ‘original legitimacy’ was compromised by the controlling meaning of EPRDF. Vaughan (2003, p. 219) claimed that “many educated Oromos were also angered at OLF’s decision to withdraw from the government—a disappointment which has left many feeling ‘unrepresented’ and ‘excluded’.”

Furthermore, the legitimacy of the federal constitutional dispensation has come under challenge due to the upper-hand roles of ethnic parties, with the EPRDF at the frontline, in the making of the Federal Constitution. It refers to the exclusion of multiethnic and/or cross-ethnic parties from delivering a federal constitutional order that could strike an equilibrium between ethnic diversity and unity. That reflected the history of the change of power balance between ethno-nationalist forces and the “unionists” with the shattering of the apparatus of the *ancien regime* (Transitional Charter, Preamble), which was a *fait accompli* for ethnic parties to rein, uncompromisingly, the course of the constitutional writing. Alemante Gebreselassie (2015, p. 22) reads that the Federal Constitution was the handcraft of the “leaders of self-styled liberation movements during a

period of extreme weakness of the Ethiopian state and in the absence of countervailing forces that could champion, or speak for, Ethiopian unity and sovereignty.”

Besides, the political interest of the EPRDF was indicated in changing the power balance towards the ascendance of ethnic forces in directing the federal constitutional designing process towards ethnic self-determination. It was significant to crowd out “cross-ethnic” parties, like the Coalition of Ethiopian Democratic Forces (COEDF) and the Council of Alternative Forces for Peace and Democracy (CAFPD), from the formal processes of constitutional making. EPRDF, in a self-serving manner, exploited the Marxist-Leninist practice of forging discrete, yet centralised, political parties across ethnic groups. For the TPLF, asserting central hegemony had conflicted with its ethnic size base (Aaron, 2002, p. 18). As a solution, it had already at hand ‘revolutionary-democracy’ through which it would form an umbrella organisation, EPRDF, to bring in various ethnic groups (Turton, 2005, p. 90). This contributed to the overwhelming proliferation of ethnic political parties as a way of transforming the military victory of the EPRDF into political dominance. Aaron (2002, p. 13) pointed out that the process of democratisation based on ethnicity “had unleashed the energies of ethnic elites, within and outside [Ethiopia], who sought to restructure the state to gain access to its power with the ultimate goal of acquiring, commanding, and controlling its material and social resources.”

As a result, the ethnic federal system, under the auspice of the EPRDF, echoed the interests of ethnic elites to exclusively write, says Ehrlich (1999, p. 56), “their own vision” of the Ethiopian state and to control political power and resources. Such observations reject the comparative lessons of such pluralistic federations as Belgium and Switzerland for the adoption of ethnic federalism in Ethiopia. Compared to Ethiopia, these federations have: strong political parties with cross-cutting agendas and supports across identity groups; non-majoritarian power-sharing constitutional systems; the capacity to afford the economic cost of diversity; and a small number of linguistic and ethnic identity groups (EDP, 2009, p. 8–11). In Ethiopia, however, Lidetu Ayalew (2011, p. 13) states, “since most political parties have organized themselves along ethno-linguistic lines, the political competition has become unhealthy with an undue focus on identity over actual issues.” Therefore, the dominance of EPRDF, not lessons from mature, thriving, fragile, and defunct pluralistic federations, in the constitutional making process brought the procedural legitimacy gap of a top-down federal constitutional choice.

4.3.2. 'Politicised' Federal Constitutional Choice

The procedural factors of constitution-making legitimacy influence the substantive legitimacy of constitutions. Legitimacy in the making and the contents of a given constitution could be interdependent. The top-down making of the 1995 Constitution of the FDRE is relevant to the ideological and political legitimacy of the ethnic federal design. The weak participation and exclusions of competing and effective political parties in the constitutional writing venture allowed EPRDF to confer its federal politics with a full-fledged constitutional expression. That has provoked the backlash effects of constitutional politicisation against the legitimacy of the federal order because its close identification with the EPRDF can be too partisan to endure the contested political landscape of Ethiopia.

The 'politicised' nature of the federal constitutional order is no clearer than its convergence with the 'revolutionary- democracy' of EPRDF (2006) at least on five basic points: the "dispersal" of sovereignty among ethnic groups, the right of ethnic groups to self-determination up to and including secession, the consensual origin of the federal system among ethnic groups, the ethnic inequality background of the federal origin, and the goal of building a common economic and political community. On the right of NNPs to self-determination, Gebru Asrat (Gebru Asrat, 2014, p. 121–123) confirmed that the federal system and the program of the EPRDF were impossible to tell apart. That hints at the post-war expectation that the new constitution would favour the politics of the victorious. Without credible multiparty dialogues, claimed ICG (2009), the EPRDF had quickly institutionalised the policy of ethnic self-determination. As a result, ideological criticism of the legitimacy of ethnic federal dispensation follows.

Nevertheless, it needs to be clear that there are also views explaining the legitimacy of the ethnic federal system owing to the political program of the EPRDF. For the proponents of EPRDF's 'revolutionary-democracy', it delivered a legitimate federal constitutional option that has addressed the 'question of nationalities'. In pre-federal Ethiopia, the question had already affected the course of Ethiopian politics since the early 1960s (Bahru Zewde, 2014, p. 187–221).

The monarchic system that was ruling the country until the 1974 Revolution had encounters with ethnic-based social and political movements, most notably following the end of the Ethio-Eritrea federation in 1962 (Gebru Tareke, 1996; Bahru Zewde, 2014). Although the democratic

substance in the process that led to the end of the chartered Ethio-Eritrean federation has seen debates (Tekeste Negash, 1997), it has at least the clue, confirming the study of McCulloch and Susnjic (2008, p. 115–118), on the significance of political accord to the legitimacy of federal origin, operation, and dissolution. In the subsequent period of the Derge regime (1974-1991), ethno-nationalism accumulated strength under the banner of self-determination. To further explain the issue, the ways the Derge regime responded to the political interests of ethno-nationalism had two phases with no clear line in between.

The first is the employment of an overt military force, as it did to the other opponents which were not programmatically related to any segmental ethnic politics such as the Ethiopian People's Revolutionary Party (EPRP). However, the militarist approach of the government had the backfiring consequences of legitimising the causes of ethno-national fronts and organisations as champions of justice while delegitimising the heavy-handed assaults of the government (Merera Gudina, 2003). It exacerbated the problem it had sought to avert. The second phase was the making of some autonomous territories: Eritrea, Tigray, Ogaden, Assab, and Dire-Dawa (Kinfe Abraham, 2001). This attempt, however, failed in practice to address ethno-national political demands because the military regime was not conducive to exercising a modicum of political autonomy anywhere in PDRE (People's Democratic Republic of Ethiopia). The regime was under not only the one-party system of WPE (Workers' Party of Ethiopia) but also followed the socialist doctrine of 'the unity of the state power' (Negede Gobeze, 2004, p. 101). Eventually, beyond seriously challenging the continuity of the Derge political system regime, the impacts of ethno-nationalism had been growing to the extent of threatening the territorial integrity and stability of Ethiopia.

Therefore, the ethnic federal system of the 1995 Constitution has been touted as the most desirable and practical choice left for the stability and continuity of the Ethiopian state through settling the historical grievances of ethnic inequality as well as the violent disintegration of Ethiopia (EPRDF, Program, 2006). Ali Mazrui (quoted by Brietzke, 1995, p. 27) says that "Ethiopia had already disintegrated when ethnic groups began plausibly to demand self-determination from Mengistu's regime. Mazrui thus argues that the key question is whether Ethiopia should, like the Soviet Union, create a Commonwealth of Independent States." Such propositions revealed the interdependence of legitimacy between the federal system and the

political program of the EPRDF. That went to the exaggerated positive assessment of the federal system in practice (Meles Zenawi Leadership Academy, 2017, p. 63–81). Adhering to the inextricability of democratisation and the rights of ethnic groups, the EPRDF had the conviction that the ethnic federal formula was a reliable path to development and security. Desta Bizuayehu (Interview, Addis Ababa, 2018) repeated that with the empirical analysis that the self-rule jurisdictions of the states or ethnic groups in the areas of budget and resource administration had contributed to the double-digit economic growth of the federation since 2003.

However, the rationales that the political and institutional weaknesses of the Ethiopian state to accommodate and resolve ethnic diversity and conflicts necessitated the federal choice maintained by the ‘EPRDF’s ‘revolutionary- democracy’ have met with counterarguments. For example, on establishing the states along ethnic distinctions, “Samuel Huntington argues that a drawing of state boundaries on ethnic lines in Ethiopia ‘supplements what is unavoidable with what is undesirable’,” Brietzke (1995, p. 27). That may indicate the general diagnosis of the self-ruling dimension of the federal order in light of stability and unity. Without discarding the fact that historical resentments and debates related to inter-ethnic relations and their political interpretations have persisted to these days (Ezekiel, 2014), the transplantation of the ‘nationality thesis’ of the EPRDF to the federal constitutional design has the effect of politicising the legitimacy of the federal system. Tsegaye Regassa’s (2010) explanation of the sources and contents of constitutions, the complete overlapping between its federal elements and the EPRDF’s conception of federalism, as a post-conflict triumphant actor, has led to the depiction of the Constitution as a borrowed/transplanted yet an experience-driven politicised document. In that regard, ideological questions about the ethnic federal order have been common. They are reflected in the following two major interrelated explanations.

The first is the ideological argument that the right to self-determination in the Ethiopian federal system is the brainchild of the Marxist-Leninist ‘theory of nationality, which poses challenges to the democratic principles of individual rights, equality, and constitutionalism. The predetermination pushes aside individual rights and freedoms from identity definition and political choices, so it could disown individual citizens for who they are (EDP, 2003, Vol. 2, p. 60). The right to self-determination is a subject of controversy in terms of individual identity, constricting the relevance of citizenship within ethnicity and language because of the structural

urge for the ethnic categorization of individual citizens and territories. Mentioning the claims of Seltie and Kemant to be distinct from the people of Gurage and Amhara, respectively, Alemante Gebreselassie (2015, p. 25) says, "citizens who might not have been aware of their ethnicity will regroup under its banners purporting to be a different people."

The attenuation of individual rights in ethnically organised federal territories has a connection with the protection of ethnic minorities. Frequently, the ethnic federal system has received criticism on the rights of federal-unit level ethnic minorities, mainly for the limitations of the states in enforcing the constitutional rights of individual citizens. When the formal structures of the federal-units are placed under the "sovereignty" of ethnic groups, they might be exclusive to the demands of "others" not identified with the relevant ethnic groups. In addition to basic human rights, it involves a host of concerns regarding the participation of ethnic regional minorities in the affairs of the government. Alemante Gebreselassie (Ibid., p. 28–34) has the opinion that the monolithic ethnic formation of federal-units in Ethiopia has the risks of minority discrimination, exclusive representation and participation, and jeopardising basic human rights such as freedom of movement; and compromise, in line with Kymlicka's (1995 b) observation, the value of constitutionalism that protects individual and minority rights against the arbitrary power of government and politically dominant groups.

Furthermore, on constitutionalism, the Marxist-Leninist strand of the constitutional self-determination rights of ethnic groups, as sovereign entities, has linkages to the establishment of an ethnically composed second house, HoF, with the power of constitutional interpretation (elaborated in Chapter Six). It is deleterious to the conventional function of the judiciary to decide on constitutional reviews and disputes. That has similarities to the Presidium of the Soviet in the USSR and the Standing Committee of the National People's Congress of China, both have the mandate to interpret the relevant constitutions, adopted in 1977 and 1982, respectively, under the heavy influence of single-party executives (Alemante Gebreselassie, 2015, p. 3–14). The inner circle of the dominant parties of the communist rules may be too powerful to be checked with constitutional ruling organs. They could go to the extent of demarcating the territories of federal-units behind closed doors. This happened in the Ethiopian case where most of the boundaries of the federal-units were drawn by the executive members of the EPRDF before the

enactment of the Federal Constitution in the transitional period, and these territorial arrangements have provoked conflicts to date (Ibid., p. 35).

The second explanation is that the constitutional inclusion of the Marxist-Leninist notion of the right to self-determination, including secession, has a backfiring consequence on the collective values of sovereignty, unity, and the protection and maintenance of collective interest and peace rather than the purported assumption of enhancing solidarity and unity. The autonomy of the ethnic groups is taken as the basis for the continuation of the Ethiopian federation in such a way that they have unconditional autonomy to invoke the constitutional right of external self-determination, or secession. For that reason, the constitutional predisposition of independence and, again, the right to leave the federation constitute, theoretically, a treaty-based federal system that is usually reflected in the structural design of coming-together federal systems (Maimire, 2003, p. 91; Elazar, 1987, Ch. 2). Defunct federations with similar constitutional federal setups, such as the USSR and Yugoslavia, have been mentioned as important reference cases. According to Alemante Gebreselassie (2015, p. 27), Meles Zenawi, the Chairman of the Council of Representatives and EPRDF and the President of the Transitional Government of Ethiopia, said, “we have said that citizens have the right to freely associate, freely hold and express any opinion and so on. What is the reason that we do not do the same for the right to form an independent state [sic]? In the former Soviet Union, they did have this right written in the constitution.”

Leaving aside overt remarks on the political position of EPRDF *vis-à-vis* national integration, there is an understanding that EPRDF made the wrong assessment in asserting the unity of NNPs as a derivative from the logic that the constitutional guarantee of self-determination anchors a stable form of unity that originated from the “will to union”. Whether that could build integrated interests and shared sentiments among the Ethiopian ethnic units is a subject of political philosophy with contending ideas on the possibility of building and keeping unity among peoples through legally sanctioned self-determination, regardless of the social capitals of trust and solidarity. The ambition of the constitutional right of secession to build the trust of identity groups by indulging polarised ethno-nationalist discourses could backfire on the value of trust and solidarity. Alemante Gebreselassie (Ibid., p. 28) rejects the idea that the right of self-determination in the FDRE Constitution could reflexively work for the unity of Ethiopia, alleging “the iron discipline of communist parties and the principle of democratic-centralism

were not strong enough to overcome the emotional force of ethnic nationalism”, showing the miscalculation in the EPRDF, a party even less ideological and more ethnicised than its counterparts in the defunct communist federations.

The prominent disapproval shared among the detractors of the federal design "can have hideous consequences decades hence, as we see in the ex-Soviet Union" is the opinion of Brietzke (1995, p. 27). The durability of ethnic-based self-determination, as a public good having desirable consequences in a highly heterogeneous society, is the subject of cautious opinions. In the same vein, Birhanu Nega (Imbylta, 1992, p. 26) noted:

The right of self-determination up to and including secession was considered the most important measure of one’s democratic conviction...secession is always considered the ultimate goal of nationalist movements prohibits good faith negotiations...on matters concerning the collective good.

Alemante Gebreselassie also (2015, p. 25–26) says that even the “most sophisticated federal system—the United States”—did not avoid separatist wars, let alone the “marriage of federalism and ethnicity” where ethnicity is institutionalised in such a way that it “simply fuels the ambitions of nationalist leaders who will be satisfied with nothing short of their own nation-state...This is particularly to be the case during adverse times or when the country faces a crisis.”

Thus, the politicised foundation of the Ethiopian federal design based on the ideology of the EPRDF has familiarity with the experiences of some of the failed federations. The Communist Federation of Yugoslavia is a good example of how the monopoly of the federal choice by the Leagues of Communists of Yugoslavia (LCY) impaired its legitimacy. Identified monolithically with the LYC’s version of communism, the federal constitutional order of Yugoslavia was ideologically exclusive and subjected to inconsistencies that emerged from within the LYC on the Marxist characterization of the federal structures such as the autonomy of the Republics and the right of self-determination, let alone developing a collective non-ideological “Yugoslav” identity (McCulloch and Susnjic, 2008, p. 123–125). Ultimately, the federation of Yugoslavia started and violently ended with a single party. Similarly, the stability and durability of the Marxist-Leninist-inspired tenets will shape the dynamics of the Ethiopian federal design, including its sustainability.

4.4. Conclusion

Multiparty constitutional deliberations put restraints on the upshots of power-imbalance in eroding the ‘original legitimacy’ of constitutions in the making. That, notably in a post-conflict environment, attaches the making legitimacy of constitutions to averting the risk of exclusively attending to the interests of the dominant actors, considered “victors”. In the Ethiopian case, the upper-hand role of the EPRDF in writing the 1995 Federal Constitution had the effect of arresting the contributions of multiparty deliberative constitution-making to the legitimacy of the federal system. In the Transitional Period, the wall-to-wall termination of the *ancien regime* and the exclusions and withdrawals of other contending forces translated the military power of the EPRDF into an overwhelming political power. The constitutional drafting, adoption, public discussion, and ratification processes were short of the consensual politics of democratic transitions, given the simultaneity of constitutional federalization and democratisation.

Ottaway (1995) described that Ethiopia, in 1994, was less democratic and open than it had been in 1991. That deficit had its own manifestations in the constitution-making process. The chapter has elaborated on the dominance and influences of EPRDF in the Peace and Democracy Conference, Council of Representatives (CoRs), Constitutional Drafting Commission, public constitutional discussion, and in the Constituent Assembly. Rejecting the inclusion of opposition parties in the constitutional writing period while “creating facts on the ground, such as new regional administrations and parties, that encouraged groups and institutions with an interest in defending the status quo” was the tactfulness of the EPRDF to pursue the ethnic constitutional choice (Lyons 1996, p. 128). The one-party-dominated constitutional making process has contributed to the contested legitimacy of the federal choice, procedurally and substantively.

Procedurally, the exclusions and withdrawals of competing parties with diverse political interests and constituencies from the making of the Constitution carried with them the syndrome of constitutional imposition, a gap in the ‘origin’ legitimacy of the federal constitutional designing (Hovde, 1994). In terms of the covenantal articulation of federalism, a balanced constitutional deliberation between ethnic and centripetal political forces, or parties, was absent. Substantively, EPRDF’s position in the constitutional moments facilitated the extensive convergence between the ethnic federal design and its ‘revolutionary-democracy’ at the perils of a politicised constitutional document framed along the Marxist-Leninist ‘theory of nationality’. With its

exclusive making and politicised foundation, the federalization process missed what Valadez (2001) says about ‘deliberative democracy’, the “commitment to the common good, the promotion of mutual understanding in political discourses, the recognition of all political voices, and the identification of collectively binding policies that take the needs and interests of everyone into account.” Thus, political demands for constitutional negotiations and remaking, chiefly involving the ethnic federal system, have increasingly become irresistible in today’s post-EPRDF Ethiopia, which is plugged into ethnic conflicts and bloody armed rebellions.

CHAPTER FIVE

Party System and Federal Representativeness in Ethiopia

5.1. Introduction

The chapter addresses the implications of party system on the representativeness of Ethiopia's federal structure and operation. The implications share, as discussed in Chapter Two, the view that 'representativeness' maintains the values of accountability and broad-based representation.¹⁹ In pluralistic federal democracies, multiparty democracy serves the values of accountability and broad-based representation as multiparty competitions and bottom-up democratic rights channel heterogeneity and responsiveness into political institutions. There are two important assumptions here. First, the federal constitutional division of jurisdictions has incentives for political parties to engage in multilevel multiparty competitions (Chandler and Chandler, 1987). Myerson (2006) also emphasised that constitutionally ensured division of power and shared participation encourage parties to effectively contest in layers of elections, at least at federation and federal-unit scales. Second, in democratic federations, federation-wide parties exist in the form of unified parties and party coalitions, as do effective federal-unit level political parties (Andre, 2014, p. 92). They present a complex set of segmental and cross-segmental ideological, regional, ethnic, and national interests, or in general, around the existing politically salient cleavages (Reilly, 2001, p. 4; Burner, 2007, p. 116). With the opportunity to be elected to the federal structures of self-rule and shared-rule, they embody the agency of compounded representation, envisioned from the pluralistic federal constitutional predispositions of diversity and unity. The above two factors install linkages among the *formal*, *substantive*, *descriptive*, and *symbolic* forms of representation, as formulated by Pitkin (1967)²⁰. These linkages consolidate the formal

¹⁹ See the self-determination quality of representativeness in Lijphart's (2003) discussion of what accountable representation implies in the consociational 'grand-coalition'.

²⁰ Hanna Pitkin's (1967) seminal work on the concept of representation provides a detailed framework for understanding different dimensions of political representation. 'Formal representation' focuses on the mechanisms through which representatives are selected and empowered, such as elections, legal authorization, and accountability structures (Ibid., p. 38-39). 'Substantive representation' emphasizes the effectiveness with which representatives advocate for and advance the policy preferences and needs of those they represent (Ibid., p. 209-210). For the case of 'descriptive representation', the concern is the extent to which representatives resemble their constituents in terms of characteristics such as race, gender, socio-economic status, and other demographic attributes. It underscores the importance of representatives sharing similar experiences and identities with the people they represent

authorisation and accountability of representatives in the federal tiers of government with the substantive representation' that implies the legitimacy of policy outcomes.

In all directions, party system has implications for federal representativeness as a more comprehensive form of representation, stressing accountability and minority inclusion. The chapter studies the Ethiopian party system from the perspective of federal representativeness. Along the institutional settings of the federal self-rule and shared-rule, including interactions among the orders of the governments, it integrates the ways the EPRDF-dominated party system affected the representativeness of the federal system with what the opening of the party system has to do with it. In so doing, the chapter has three parts: representative self-rule, representative shared-rule, and minority representation.

5.2. The Party System and Representative Federal Self-rule

Until recently, the proliferation of political parties, mostly ethnic-based, and the dominance of the EPRDF have been the hallmarks of the party system of post-1991 Ethiopia. Lyons (1996, p. 142) succinctly describes, "The Ethiopian transition began with a broadly inclusive national conference and ended, four years and three elections later, with a single-party-dominant political system." In the consecutive six elections, EPRDF had unmatched gains at the federal and state legislatures. The gains were much sweeping, much more the seats the "affiliate" parties added to them. Be what the internal weakness of opposition parties may be (elaborated in Chapter Seven), since the first post-military regime regional and local elections in June 1992, conducted as per the multiparty rule of the Transitional Charter, EPRDF was frequently accused of vote-buying, vote-fraud, harassing, intimidating and arresting the candidates of opposition parties, and provoking violence in the processes of election campaigns and vote casting. To take an example, on the democratic credibility of the 2015 election and EPRDF's total win, one of the leaders of the opposition AEUP complained, "it is a move by the party, EPRDF, against democracy and multiparty system... Even God himself could not win 100 per cent if he were a candidate. After

(Ibid., p. 60-80). The last one, 'symbolic representation', advances the symbolic and expressive aspects of representation, as ways in which representatives stand for and embody the values, identity, and aspirations of their constituents (Ibid., p. 100-111).

the formation of the government in October 2015, the people upraised in November. How did that come?” (Adane Tilahun, Interview, Addis Ababa, 2017).

Therefore, without forgetting the very question of the democratic quality of representation under the *de facto* one-party system of Ethiopia, assessing the party system *vis-à-vis* the representativeness of the federal self-rule needs to analyse the bottom-up accountability of the federal self-rule.

In the EPRDF-dominated party system, the assessment of bottom-up accountability in the structures of the federal self-rule needs to take the interaction between the EPRDF and the constitutional division of powers into consideration. How this long time, about a quarter century, interaction affected the political autonomy of the states to exercise their constitutional jurisdictions in such a way accountable to the constituent ethnic groups of the federation, “nations, nationalities, and peoples”, is the core point. The Federal Constitution (Art. 50, 51, 52, and 55) indicates the division of power between the Federal Government and the states and the right of “nations, nationalities, and peoples” (Art. 39). They are so interdependent that the division of power is enabling ethnic groups to exercise self-government, as the Constitution (Art. 39, sub-article 3) recognises it as part of the right to self-determination. The instrumental rationale of the constitutional dispersal of power to the self-administration of ethnic groups, the “sovereign” bricks of the federation, allows the term ‘federal self-rule’ to correlate with the self-government autonomy of ethnic groups. In expanding, protecting, or even contracting the edifices of the federal self-rule to *freely* defend and advance the contextual demands of ethnic groups, the program and the functioning mechanism of the EPRDF were vital. They gave the direction to which the party took the constitutional capacity of the states in terms of reconciling the politics of party loyalty with public accountability.

Ideologically, EPRDF’s ‘revolutionary-democracy’ had the characteristics of Marxism-Leninism. As ‘democratic-centralism’ is well known in the history and theory of Marxism, it found its application in the EPRDF, too (Gebru Asrat, 2014). In the study of comparative party politics, the internal power configurations of parties are so varied that, often but not always²¹, liberal parties are more decentralised than the leftist ones. The formers tend to house diverse opinions

²¹ Social democratic parties can exhibit high levels of decentralization, as local and regional branches often possess significant autonomy in policy-making and organizational matters (Kitschelt, 1994, p. 31)

both within and across their apparatus, whereas the usual drive of the leftist to fundamental socio-economic transformation induces the vigilance to exert internal party-coherence. Democratic-centralism, party-discipline, and criticism are the three common elements of party regulations adopted by parties on the left side of the political spectrum. In a technical sense, party centralism is the broader procedure of fixing the unifying objectives of party-discipline, criticism, and self-criticism. As it is basic in the organisation of Marxist and workers' parties, it underlies elected top party officials, the superiority of the majority's decision over the minorities', party-discipline, and criticism (Nanda, 2006, p. 147). Elections and debates are the alleged democratic processes that provide for the legitimacy of democratic-centralism. The centralisation could avoid the possibility of party fragmentation by supporting a hierarchical power matrix whereby the lower organs of a party have the responsibility to enforce the decisions of the ranks, commonly the executive and politburo. Similarly, democratic-centralism had the centralising effects of installing strong party-discipline and top-down leadership within the EPRDF, as a composite entity, and in the member parties.

The Central Committees of the member parties established the Council of EPRDF (180 members) which had the delegation of the Congress of EPRDF to elect its Central Committee (72), the chairperson, and the vice-chairperson. The chairpersons led both EPRDF's Central and Executive committees (36). The latter was composed of the Executive Committees of the member parties, as *the Statute of EPRDF* (2006) included such details of the party. Despite the formal power of the Congress and the Council, the dominance of the Executive and the Central committees on the decisions and operations of the party was obvious. In explaining that, the weight of centralization in the democratic-centralism functioning principle of 'revolutionary 'revolutionary-democracy' gained emphasis.

Consequently, party-centralism in the EPRDF was detrimental to the institutions of the states' to represent accountably the arrays of interests in their territorial jurisdictions. Before that, nevertheless, it is worthy of noting points of view highlighting the expediencies of party-centralization in the EPRDF to the federal system. They have stressed the realistic purpose of federal-party symmetry in the managed yet effective operation of the multiethnic federal constitutional arrangement. The similarity and affiliations among the ruling parties of the Federal Government and the states could provide the latter with the opportunity to exercise their

constitutional powers, coinciding with having their interests observed in the federal shared institutions, with less intervention or more cooperation from the former. Within EPRDF, as illuminated in the next part of this chapter, the political loyalty across the incumbents of the federal levels of government might contribute to reducing, or submerging, inter-governmental conflicts and constitutional disputes. Hence, it was argued that the centralization of EPRDF, in fitting in the broader constitutional and political responsibilities of the Federal Government, had elements of ‘cooperative federalism’. However, the level of coordinance between the federal and state governments was too unbalanced to claim that the democratic-centralism of the EPRDF served the purpose of cooperative federalism than compromising the representativeness of the states to exercise their political, institutional, and policy-making powers. Vaughan (2003, p. 216) reads that “a federal system works only when it is designed by the people and their representatives and implemented with their freely expressed consent.” The effects of the centralised operation of the EPRDF on the federal self-rule began with the process of political agenda setting.

Although political changes have determined the timing of the Ethiopian federal system’s development towards further centralization, the top-down nature of political decisions and legislative outputs from the federal government to the states persists. For instance, in the aftermath of the Ethio-Eritrea war, the brief moment of the 2001 fragmentation in the core constituent party of the EPRDF, the TPLF, had ramifications on the internal stability of the other parties and their relations (Medhane Tadesse and Young, 2005). The intra-and inter-party divisions in the front necessitated the active intervention of the centre, the federal executive in the states to contain further divisions inside its member parties. The deep involvement of the organs of the EPRDF, through the agenda of rent-seeking, in the process of re-ordering the regional incumbent parties had the minimum powers of the states, like electing their presidents, quite subordinated to the decisions of its Central Committee (Gebru Asrat, 2014). Let alone in times of political crises, the centralization of political agenda setting at the top levels of the EPRDF was the defining character of the Ethiopian federation (Aalen, 2002, p. 103–105).

The party-centralization endangered the political and organisational representativeness of the states to own the constitutional dispersal of power. It had the consequence of making the states ordinary actors in policy enforcement. For that reason, in SNNPs, EPRDF was criticised “for not

really allowing the development of structures to support self-determination”, and more fundamentally, in Oromia, the implementation of the ethnic federal system was viewed as being carried out by a “faked ethnic party, whose errors are based not on misunderstanding of the local cultures and conditions but on the wilful prioritisation of non-Oromo interests,” Vaughan (2003, p. 221). Teguadda Alebachew (2011, p. 49) put further that, “OPDO appears to lack not only legitimacy to represent the Oromo peoples but also educational and political skill both to articulate the interests of the people and to run a transparent and accountable administration in the region.” The experiences of the SNNPs and Oromia were not unique from the rest of the states, except for what Aalen (2002) said about the symmetrical relations between the Federal Government and Tigray and, to some degree, Amhara states.

Moreover, the centralization of the federal operation by the Federal Government generated a federal executive-led intergovernmental relationship that was not well configured with the accountability of the federal self-rule to the representative organs of the government. Mostly, intergovernmental interactions were facilitated by the Ministry of Pastoralists and Federal Affairs (MoPFA), under a separate mainstreaming unit known as the Inter-governmental Relations Directorate (IGRD). However, due to over-reliance on the concentrated interactions of the regional and federal executives, there were limitations in constructing clear legal frameworks and predictability in the process of inter-governmental relations. Intending to meet these limitations, the MoPFA declared that, since 2015, it was developing a comprehensive inter-governmental policy framework that would be important to achieve consistency and institutional guidance building collaborative and mutually advantageous interactions between governments (FGACO, 2015). Replacing the leading involvement of the executives in the process of inter-governmental relations with the active participation of the lawmakers of the states seemed to make no big difference. The legislature, for Endreas Eshete and Samuel Assefa (2018, p. 44), is “by and large a rubber stamp for the decisions of the ruling party and the executive.”

In sum, to nurture representative federal self-rule, the federal autonomy of the states lacked effects in the highly centralised and ‘dominating’ EPRDF, said Tiruneh Gemta (Interview, Addis Ababa, 2017), for him EPRDF was ‘a dominating’, not a ‘dominant’, party that never faced competitive multiparty elections. Christophe van der Beken, in *The Challenge of Reform within Ethiopia’s Constitutional Order*, made the general observation that EPRDF’s centralist approach

had blocked the fragmenting effects of the constitutional right of ethnic self-determination, but in doing so, it eroded the legitimacy of the ethnic federal constitutional system. This created a paradox between the alleged integrative roles of EPRDF and the unpacking of ethnic self-determination demands as the centralization of EPRDF weakened. Aalen (2002) says that though the Ethiopian federal experience has not faced the demand for secession, ethnic tensions and conflicts are still active because of the EPRDF's paradoxical relationship with the federal system. In another way, the EPRDF's centralization fed ethnic mobilisations and conflicts side by side. The vicious circle of conflicts over the constitutional recognition of ethnic rights and over-enjoying these rights could lead to more fundamental and extreme political demands insatiable within the existing radical version of pluralistic federalism.

5.3. The Party system and Representative Federal Shared-rule

An important piece of evaluating representativeness in Ethiopia's ethnic federal system is seeing how effectively its shared institutions accommodate ethnic groups. As EPRDF was structurally the sum of its member parties and had no direct membership of individuals, Desta Bizuayehu (Interview, Addis Ababa, 2018) indicated that states and/or ethnic groups, through the channels of the member parties, had a decisive say in the establishment, leadership, and composition of the institutions of the Federal Government. Such observations need to measure the broad-based representativeness of EPRDF against the theory of consociationalism, which puts equal weight on mechanisms of power distribution and balance in the shared institutions of pluralistic societies. Did EPRDF embody what Lijphart calls 'grand-coalition' or was it just a highly centralised coalition in which the coalition is more important than its parts?

According to Lijphart (2007), the 'grand-coalition' is the locus of power-sharing among proportionally represented and autonomous communities through accountable representatives who follow the principle of minority-veto. Based on that, there were some consociational elements in EPRDF. As it was composed of ethnic, or state-level, segmental parties, having the constitutional right of self-determination, or federal self-rule, this makes an element of consociationalism in the party, EPRDF. In addition, the equal representation of the member parties, as Desta Bizuayehu (Interview, Addis Ababa, 2018) confirmed, in the organs of EPRDF, most importantly in the Congress, Council and Executive Committee resonated with the proportional prescription of consociationalism. As Lijphart (2007) indicates the inadequacy of

the proportional system of representation where there is a high degree of disparity among the relevant distinct communities, it is rather imperative to extend it to the level of equal representation, as long as the aim is minority protection. Though TPLF had the smallest ethnic base and OPDO had the largest, each of the four parties, including ANDM and SEPDM, had equally 9 and 45 seats in the EPRDF Executive and Council committees, respectively. That would have been conducive to exercise an inclusive decision-making procedure, as an extension of minority veto, if there had been the rule of unanimity in the decision-making procedures of the party. The rule was the simple majority of 50⁺ (EPRDF, 2006, Art. 7 (2)). That, combined with democratic-centralism, was limiting the ability of a member party to check the decision of the majority in front. Because of that, the collective leadership claim of the EPRDF was questionable in entrenching the representativeness of the federal shared-rule.

Furthermore, party-discipline and the organisational culture of secrecy in the EPRDF compromised the value of representativeness in the functions of the Federal Government (Tiruneh Gemta, Interview, Addis Ababa, 2017). The bylaws and structure of the front, accompanied by the parliamentary system of the government, reinforced its strong party-discipline. Responsibility assignments and evaluations were purely top-down, while the mechanism of reporting was bottom-up (EPRDF, 2006). The norm of secrecy was also an additional factor in limiting inner-party accountability (Abis Makuria, Interview, Addis Ababa, 2017). “Elite-power cartels” and “power hijacks” are the syndromes of unaccountable power exercised by elites working in a common structure detached from the public. The formation of the structure called EPRDF Parliamentarians, as indicated in the *EPRDF Statute* (Ibid.), further hardened party-discipline in the federal legislature. The change in procedure of the HoPRs in 2005 to require the votes of the majority to present any motion to the house is also worthy of mention (ICG, 2009, p. 11).

Observing the nature of relations between EPRDF and its component and “affiliate” parties was relevant to the distribution and balance of power in the shared institutions of the Federal Government. Even though the member parties had symmetrical representations in the basic organs of the front, their political representativeness was a subject of debate. The main reason, as indicated by many internationally recognised commentators similar to IDEA (2007, p. 36), alluded to the dominance of the TPLF. Aalen (2002, p. 88) confirmed that by interviewing a

senior member of the Central Committee of the TPLF, who believed that it was natural that the TPLF was the strongest political force because it had many senior cadres and experienced fighters and that its leader, Meles Zenawi, was also a national leader. That put a question mark on the representativeness of the other member parties of the EPRDF and its allies. One of the leaders of OFC concluded that the democratic principle of majority rule and minority rights held EPRDF's minority rule accountable (Tiruneh Gemta, Interview, Addis Ababa, 2017). He also added that, under a democratic context, minorities form or join multiparty coalitions to protect their rights in the representative institutions of the government rather than ruling as exclusively as the TPLF had done. Tiruneh Gemta (Ibid.) states that if OPDO stopped its satellite role to the TPLF, his party, OFC, would be willing to form a party union with it.

Besides, power balance concerning the “affiliate” parties: Afar National Democratic Party (ANDP), Ethiopian Somali People's Democratic Party (ESPDP), Benishangul-Gumuz People's Democratic Unity Front (BGPDUF), Gambella People's Democratic Front (GPDF), and Harari National League (HNL) should be factored in when dealing with the representativeness of the Federal Government. It was widely recognised that the EPRDF had backed the establishment and consolidation of these parties. Like the constituent parties of the EPRDF, they were the leading parties of governments in their respective states. In Harari State, says Desta Bizuayehu (Interview, Addis Ababa, 2018), the position of HNL was challenged by the empowerment of OPDO as a party member of EPRDF, which also shared the seats of the State Council with HNL. In explaining their subservient relationship with the EPRDF, the question was why the “affiliate” parties did not join the EPRDF, given their close interactions. Was that because of their political unwillingness or inability to adopt ‘revolutionary-democracy’ and ‘democratic-centralism?’ Alternatively, because of EPRDF's programmatic stance on what political expediencies would it have; or are there other reasons? On this point, Aalen also interviewed one official of the EPRDF, who answered that the EPRDF was a revolutionary-democratic party that applied strict criteria for any membership application by any party. Because of the influence of Islam, the criterion of gender equality was a barrier to Somali and Afar parties joining the EPRDF (Aalen, 2002, p. 83). It asserts more the significance of the fixed programmatic approach of EPRDF than those assumptions that cast more weight on the implications of adding new parties to the internal politics of EPRDF. Consequentially, the imbalance of power between the EPRDF and the “affiliate” parties could be interpreted as the peripheralization of some states and ethnic groups.

As a closing remark, taking the rule of simple majority, party-discipline, and power imbalance in the EPRDF together they pointed to the concentration of the power of the Federal Government in the organisational nucleus of the party and the executive. Such level of power concentration in the shared-federal institution is more or less characteristic of the federal practice of centralised one-party regimes. The following lines have much to say:

One-party regimes that had come to power through free elections and/or that had yielded power because of the ballot box were all but impossible to find. Far more pervasive were regimes built around an inherent skepticism toward power-sharing...most shared the sentiments of Thomas Carlyle toward democracy: 'I do not believe in the collective wisdom of individual ignorance'. Giliomee and Simkins (1999, p. Vi).

Finally, despite some strategic dissimilarities among political parties, the opening of multiparty competitions in Ethiopia enables them to fill the gap of federal representativeness. Besides the reasons mentioned in Chapter Four, ethnic grievances, the eminence of ethnicity as a politically salient social cleavage, the post-military ethnic political modelling, the dominance of the constituent ethnic parties of the EPRDF, and the aspiration to be the “credible” representatives of ethnic groups are the other grounds for the proliferation of ethnic parties. There are ethnic *essentialist* parties that see the right to ethnic self-determination as profound as the values of democracy and justice (EPRDF, Program, 2006). OFC, to take an example, believes that establishing democratic rule and achieving fair representation and self-administration for Oromo are inseparable. It claims that, before and after 1991, the Oromo people have been denied their socio-cultural and political rights to effectively exercise constitutional autonomy and be meaningfully represented in the federal edifices (OFC, 2012, p. 1). The party supports that by referring to the contradiction between the relative numerical advantage of Oromo and the natural resources of Oromia and the political representation and prowess of Oromo in the Ethiopian state.

On the other hand, they are *instrumentalist* ethnic parties such as AAPO. These parties argue about the significance of democracy and national unity to adequately address ethnic-based demands (AEUP, 2003). That underlines the necessity of protecting individual rights to balance the possibly discriminatory and divisive effects of ethnic-based group rights. As to the reason why AAPO organised itself along ethnicity, after all, there is an assertion that takes the rights of ethnic groups, the touchstone of the federal system, as tactically unavoidable to the

democratisation of Ethiopia, given the ascendance of ethnicity in defining the nature of political power. All Ethiopian Unity Party (AEUP) (2002, p. 8) declares that AAPO, as an ethnic party, has accomplished its tactical aim of exposing that ethnicity is a dangerous political subject.

Hence, in both ‘essentialist’ and ‘instrumentalist’ cases, the subtlety of differences among ethnic parties in connecting and prioritising democratisation and ethnic self-determination becomes apparent. It could be for that reason that some ethnic parties are more willing to work with countrywide parties and multiethnic coalitions than others (Adane Tilahun, Interview, Addis Ababa, 2017). This goes with the idea that “ethnic parties want to harden and mobilise their ethnic bases with exclusive and often polarizing appeals,” Gunther and Diamond (2000, p. 23).

Under multiparty system, ethnic federalism encourages the disaggregation of parties along ethnic federal territories. Ethnic parties appeal to be directly relevant to the internalisation of the rights of self-determination, in general, and specifically the federal self-rule of ethnic identity groups. In the first place, under the context of ethnic federalism, the attachment of ethnic parties to ethnic groups comes from the proposition that the more ethnic provinces are vested with autonomy, the stronger the incentive is to establish ethnic parties (Chandler and Chandler, 1987). Reflexive to that, it is convincing that the innate tendency of identity-based, than ideological, propagation by ethnic parties tends to make them closer to ethnic groups to strengthen the ethnic identifications of the formal setups of the federal structures. The popular criticism of some ethnic parties, including the incumbent ones, is the lack of credibility (Aalen, 2002, p. 85).

In Ethiopia, the linkage between democratic representation and ethnicity is indicated in the Federal Constitution (Article 8(3)), which states that “[t]he sovereignty of nations, nationalities, and peoples shall be expressed through their representatives.” The democratic representation of ethnic parties across the federal orders of institutions has the prospect of gauging the very ethnic foundation of the Ethiopian federal system. With the necessary political opening, ethnic groups would define the course of their own self-administration, federal negotiations, and inter-ethnic relations using ethnic parties. It conveys the overall idea that the practical application of the constitutional multiparty system of the FDRE is much more meaningful to the representative legitimacy of the federal structure.

In addition to ethnic parties, the electoral successes of multiethnic and federation-wide parties, or their coalitions, are important to the multi-dimensional representativeness of the federal structures. There are two justifications. First, cross-ethnic parties would be an integrative factor among ethnic groups, compared with ethnic political parties. The degree of moderation and sometimes the inclusion of minority members and leaders from various ethnic groups among ethnic parties determines the magnitude of their ethnic segmental support gained from their principal ethnic constituencies and, of course, how quickly they lose that support (Horowitz, 1985, p. 291). They are less willing to compromise the core ethnic support base. This partly explains the common predicament of ethnic parties to transform into multiethnic parties. The Federal Government and the states may become less vulnerable to segmented legitimacy and ethnic “fiefdoms” when parties represented in the governments are poised to take on the role of political glue to curb the purported divisive effect of combining effective ethnic parties with the ethnic federal design of Ethiopia. The long-term projection of ethnic parties has been a subject of suspicion following their rampant introduction with the rise of ethno-nationalism in Eastern Europe, where ethnicity outlived the very states in which it had been fermented. In the short run, ethnic parties could bring favours for their particular ethnic groups, but, in the long term, “they work against any integrative multicultural model and national cohesion, causing social, political, and identity interferences,” Atanasov and Naumovska (2012, p. 1). The formation of corresponding and exclusive political parties is “the first propensity of a divided society,” says Horowitz (1985, p. 292), though “it is not an iron law.”

The second justification lies in the comparative advantages of multiethnic fronts and countrywide parties in directing the systemic operation of the Federal Government. Assessing the relative powers of the HoPRs and the HoF, the jurisdiction of the former, as well as the focus of parties to have seats in it, is rewarding to multiethnic coalitions and federation-wide parties with the opportunity to lead the overarching functions of the Federal Government. Here, the method of appointing the members of the HoF through the State Councils and its relatively weaker legislative power than the HoPRs has little impact on inducing the aggregation of political parties at the federation level. The HoF is at the lower level of facilitating party-aggregation across the component states of the federation. It rather induces parties to go for the State Councils if they are convinced that the political role of the HoF and its constitutional adjudication power is critical. However, when it comes to HoPRs, where the highest authority of

the Federal Government resides (FDRE Constitution, Art. 50 (3)), it could encourage cross-ethnic and multiethnic parties, fronts, and their coalitions to establish the federal executive by filling the required simple majority seats (Ibid., Art. 56 and 73(2)). A single ethnic party cannot draw that majority of seats alone unless it enters into a pre-election coalition or a permanent front with other parties, whether ethnic or multiethnic.

5.4. Multiparty Democracy and Minority Representation

The representativeness of the federal system to regional ethnic minorities has remained a critical subject to the democratic legitimacy and stability of the Ethiopian federal system. Since broad-based representation is the precondition of accountability representation, the place of regional ethnic minorities in the federal order is more complex and specific than examining representativeness in terms of accountability in the federal self-rule and shared-rule in general. Only six of the States, currently 12, house absolute majority ethnic groups. The remaining are without ethnic *staatsvolk*, an ethnic group comprising 50⁺ per cent of the population. In both clusters of the states, there are ethnic minorities who are defined against those who constitute the majority. They are exclusively formed from either the absolute majority ethnic groups or the amalgamations of “indigenous” ethnic groups, usually known as “natives.” Almost all state constitutions mark out who, as the sovereign source of powers, is the majority. With this background, the effect of multiparty democracy on the representation of sub-national minorities could be similar to the syndrome that IDEA (2005) calls “majoritarian chiefdoms.” It is the function of three mutually non-exclusive issues.

The first is that the deficit of multiparty competition has the effect of curtailing the possibility that political parties can join legislatures through the votes of regional ethnic minorities. No political parties other than the members and allies of the EPRDF, also identified with the ethnic majorities or the “native” ethnic groups of the states, were meaningfully represented in the State Councils to defend the interests and rights of minorities. That means the *de facto* one-party system arrested the emergence of effective pro-regional ethnic minority parties. The absence of viable ethnic minority parties to such a degree is quite different from the records of those democratic multiethnic federations dealt with under Chapter 2. Let alone electoral competitions in which ethnic minorities have tie-breaking votes, intra-ethnic majority competitive elections have been extremely rare to begin with.

The second issue is the representation of regional ethnic minorities within the ethnic parties constituted in and affiliated with the EPRDF. Segmental majority ethnic party dominance has continued as the iron law of power in the states of the federation (*See* Table 9). In Benishangul-Gumuz, SNNPs, and Gambella, political aggregations based on “nativity” produced the incumbent majoritarian parties of the “indigenous” ethnic groups. These parties were the Benishangul-Gumuz Peoples’ Democratic Party (BGPDP), the Gambella Peoples’ Democratic Unity Movement (GPUDM), and the Southern Ethiopian Peoples’ Democratic Movement (SEPDM). Whereas, in those states with a dominant single ethnic group, the ruling parties were programmatically uni-ethnic- Amhara National Democratic Movement (ANDM), the Oromo People’s Democratic Organization (OPDO), the Afar National Democratic Party (ANDP), the Ethiopian Somali People’s Democratic Party (ESPDP), and the Tigray People’s Liberation Front (TPLF). Such majority ethnic party governments can encourage the consolidation of the interests of the majority ethnic groups of the states, depending on political cohesions in the parties. On the flip side, however, it could also be detrimental to the responsiveness of the federal system to the demands of ethnic minorities. The federal principle of power dispersal should reach the state level. It needs to limit the degree of ethnic exclusivity in the institutions of the states dominated by ethnic parties that are not vulnerable to multiparty electoral challenges wherein the votes of regional ethnic minorities are non-expendable.

| States | State Council Seats | Party | Seats |
|---------------------|---------------------|---|-------|
| | | Tigray | 152 |
| Afar | 96 | Afar National Democratic Party (ANDP) | 93 |
| | | Argoba People’s Democratic Organization (ANDP) | 3 |
| Amhara | 294 | Amhara National Democratic Movement (ANDM-EPRDF) | 294 |
| Oromia | 537 | Oromo People’s Democratic Organization (OPDO/EPRDF) | 537 |
| Somali | 273 | Ethiopian Somali People’s Democratic Party (ESPDP) | 273 |
| Benishangu l- Gumuz | 99 | Benishangul-Gumuz People’s Democratic Party (BGPDP) | 99 |
| SNNPs | 348 | Southern Ethiopian People’s Democratic Movement (SEPDM-EPRDF) | 348 |
| Gambella | 155 | Gambella Peoples’ Democratic Unity Movement (GPUDM) | |
| Harari | 36 | Oromo People’s Democratic Organization (OPDO/EPRDF) | 18 |
| | | The Harari National League (HNL) | 18 |

Table 9: The Party Composition of the State Councils, 2015 (Source: NEBE, 2016).

The third issue is the quality of the electoral system to elicit the representation of regional ethnic minorities. Electoral systems shape the outcome of any election by giving a competitive edge to some while diminishing the returns of others (Lijphart, 1990; Rae, 1967). Horowitz (1985, p. 628) maintains that:

Electoral systems have a huge role in fostering or retarding ethnic conflict by shaping constituencies, the electoral principle, the number of members per constituency, and the structure of the ballot, which have a potential impact on ethnic alignments, ethnic electoral appeals, multi-ethnic coalitions, the growth of extremist parties, and policy outcomes.

Proclamation No. 532/2007, Art. 2 (1(1(a))), declared that the territory of the federation should be divided into permanent constituencies that might be re-arranged per census results, taking the Woredas as the base and without affecting the boundaries of the states. It also reads that a candidate who receives more votes than the other candidates within each of the constituencies should be declared the winner (Art. 25). The great number of ethnic groups are geographically compacted, so they constitute the majorities of most of the Woredas.

It is possible to have context-tailored electoral safeguards for minorities within the plurality system of election. An intentional demarcation of districts in favour of minorities, designating a quota of seats, legally requiring competing parties to nominate one or more of their candidates from a minority, and an exclusive enlisting of the members of a minority group as the only valid voters in some districts in which they have historical and/or identity-related rights are some of the safeguards. The reservation of at least 20 seats in the HoPRs (FDRE Constitution Art. 54(3)) is an example of protecting ethnic minorities in the majoritarian electoral system. The secretary of the opposition AEUP believed that it was possible to ensure the representation of geographically concentrated minorities under the existing FPTP system of election (Adane Tilahun, Interview, Addis Ababa, 2017). Based on that, following the 2015 election, they had about 22 of the 447 seats in the HoPRs (Wondimu Golla, Interview, Addis Ababa, 2017). Although there are many more minority ethnic groups, according to Wondimu Golla (Interview, Addis Ababa, 2017), Deputy Head of the Office of NEBE, the reasons for selecting only 22 of them were territorial compactness and population size. It connotes the selective allocation of the constitutionally reserved quota of seats, even among the territorially concentrated ethnic minorities.

However, compared to the territorially concentrated ethnic minorities, the plurality system of election for the HoPRs and the State Councils puts the dispersed minorities in the precarious position of electoral disfranchisement. Nominating candidates viewed as representative of these minorities might be a matter of less expediency for the dominant ethnic parties. Nor has the democratic right of the dispersed minorities not to support the parties of the dominant ethnic groups in the Woredas affected the result of elections. They prefer ethnic cross-cutting parties, but “such parties have a lower chance of electoral success owing to the ethnic bases of the states. Such persons should respect the identity and the interests of the majority nationalities. It is about respecting the constitution,” said Wondimu Golla (Interview, Addis Ababa, 2017). In both ways, the gap in minority representation is perpetuated.

In the context of highly diversified constituencies with no absolute majority ethnic groups, a seat won by the plurality of votes could create a representational imbalance among minorities. For Dahl (1998), this refers to 'manufacturing majority' in which an artificial majority comes out as the sole representative of the relevant voters. The votes of many ethnic groups that collectively constitute the majority of the voters might be wastefully distributed among multiple. In Dire-Dawa, for instance, in the first parliamentary election of 1995, the Somali National Democratic League (SNDL) became the winner of all two seats of the HoPRs (NEBE, 1995). Since 2002, however, OPDO and ESPDP have shared these seats and that could partially reflect the demographic composition of the city, where Oromo and Somali were 47 and 24 per cent of the population, as per CSA (2007). In the single-member districts of the plurality system, when minority ethnic groups cast their votes so strategically as to avoid vote wasting, that could downplay the party preferences of the other ethnic minority groups of Dire-Dawa, such as Amhara, which is 20 per cent of the population.

In democratic elections, the concern about minority representation with the plurality method of election became clearer in the 2005 election than in the preceding elections. To date, only the 2005 election has been acclaimed as a breakthrough in its competitiveness and participation (EUOM, 2005). In terms of the proportional conversion of votes, the winner, EPRDF, gained 50 per cent of the votes and 60 per cent of the seats (327) of HoPRs; CUD with 22 per cent of the votes won 24 per cent of the seats, and UEDF had 10 per cent of the seats from 9 per cent of the votes. The plurality system, wasting the votes of other parties and candidates, exaggerated the

votes of these parties to win seats disproportionately. Moreover, the rate of the disproportion itself showed a significant gap between the EPRDF and the other two parties. The 10 per cent malapportionment of EPRDF had more bonus votes than what CUD (2%) and UEDF (1%) accumulated. One of the reasons was the capacity of the EPRDF to field its candidates all over the electoral constituencies and add up its vote share to CUD and UEDF, which had a concentration of strength in Addis Ababa, Amhara, and Oromia and, to some extent, in SNNPs. If the election had been conducted using proportional representation, the result would have been more representative of minority groups at different levels of voter-magnitude: federation-wide and state-wide (Table 10 and Table 11). EPRDF would have only 274, CUD 123, and UEDF only 47 by reducing the seats of EPRDF by 53 and UEDF's by 1 while adding up the CUD's by 14. The vacant 40 seats would have been filled by the other parties, which had a reasonable number of ethnic minority votes enough to constitute the minimum threshold of representation, and, with that, the party composition of HoPRs in not less than 74 seats could have been different.

| Parties | Vote | Seat in FPTP | Seat in PR (HareQuota) | Seat Change |
|---------|--------------|--------------|------------------------|-------------|
| EPRDF | 10, 260, 413 | 327 | 274 | -53 |
| CUD | 4, 594, 668 | 109 | 123 | +14 |
| UEDF | 1, 741, 670 | 52 | 47 | -5 |
| OFDM | 454, 435 | 11 | 12 | +1 |

Table 10: Federation-wide Calculation of Proportionality for the 2005 Parliamentary Election (Source: Abraha, 2008).

| States | Parties | Vote Distribution | Seat in FPTP | Seat in PR | Seat Change |
|-------------|---------|-------------------|--------------|------------|-------------|
| Addis Ababa | EPRDF | 137, 385 | 0 | 3 | +3 |
| | CUD | 694, 557 | 23 | 17 | -6 |
| Oromia | EPRDF | 4, 135, 117 | 109 | 105 | -4 |
| | CUD | 871, 733 | 16 | 22 | +6 |
| | UEDF | 1, 264, 126 | 40 | 32 | -8 |
| | OFDM | 449, 128 | 11 | 11 | 0 |
| Amhara | EPRDF | 2, 706, 699 | 87 | 75 | -13 |
| | CUD | 2, 116, 031 | 50 | 59 | +9 |
| | UEDF | 79, 527 | 0 | 2 | +2 |
| Tigray | EPRDF | 1, 425, 932 | 38 | 38 | 0 |
| | CUD | 24, 733 | 0 | 0 | 0 |
| | UEDF | 2, 336 | 0 | 0 | 0 |
| SNNPs | EPRDF | 1, 813, 501 | 92 | 70 | -22 |
| | CUD | 789, 865 | 18 | 30 | -12 |
| | UEDF | 366, 105 | 12 | 14 | +2 |
| | SLM | 139, 752 | 0 | 5 | +5 |

Table 11: State-wide Calculation of Proportionality for the 2005 Parliamentary Election (Source: Abraha, 2008).

Therefore, in addition to creating a pattern of power concentration in the federal set-up, applying the FPTP in a multiethnic constituency is likely to give skewed electoral results that are not reflective of the size of regional ethnic minorities, and that can be divisive to ethnic relations unless the increasing number of ethnic parties makes a unifying appeal. As studies indicate, this could be achieved even by the other variants of the same plurality system, such as Alternative Voting (AV), Two–Round Voting (TV) and Block Voting.

5.5. Conclusion

The Ethiopian party system has shown flaws in accommodative federal exercise due to the undermined positions of alternative political parties and the centralised character of the EPRDF. “Setting up a multiparty politics” yet “employing exclusionary politics that stifles the genuine empowerment of ethnic communities,” states Beza Desalegn (2018, p. 2), was the weak spot of ethnic federalism under the EPRDF. Even though EPRDF covered, election-wise, constituencies located in the territories of more than 60 ethnic groups, which is about 90 per cent of the population, it malfunctioned by constricting political pluralism. The right of ethnic groups to self-determination requires bottom-up democratic participation and representation as a matter of “self”. Kassahun Birhanu (2003, p. 119) said that Stalinist vanguardism in the EPRDF resulted in the disconnection of the democratic essence of ethnic self-determination and the federal dispersal of responsibility from multiparty democracy.

Persuasions that the centralization of EPRDF had the merits of building a solid inter-ethnic bridge and a shared federal commitment are not convincing. With the deficits of consensual procedures and internal power symmetry, the EPRDF had the limitation of concentrated power to nurture the representative legitimacy of the federal orders of governments. Federal constitutionalism needs and results in a mixed government with non-concentrated powers (Sartori, 1976, p. 12). For example, Christophe (2018) correlates the problem of its democratic-centralism and the public protests, which began in 2015, with the politics of top-down in which basic decisions were imposed by the most powerful circles of the EPRDF. Overall, the chapter has emphasised the incompatibility between the default one-party system, which also had a power nucleus, and the representativeness of the federal self-and shared-rules. The implications of the party system and the plurality system of election on the representations of territorially concentrated and dispersed regional ethnic minority groups have three aspects: the absence of

effective ethnic minority parties, the low-level political relevance of sub-national ethnic minorities to the ethnic majority parties, and the consequence of the FPTP system on the representation of ethnic diversity in general and, more directly, on the democratic inclusion of geographically dispersed ethnic minorities.

CHAPTER SIX

Party System and Federal Constitutional Supremacy in Ethiopia

6.1. Introduction

The chapter examines the Ethiopian party system (elaborated in Chapter Three) in light of the federal principle of constitutional supremacy and concurrent constitutional interpretation and amendment. In federal states, political parties play their parts in the dynamics of federal constitutional systems, as federalism influences their programs, structures, and functioning, and vice versa (Filippov, Ordeshook, and Shvetsova, 2004). Different party systems have dissimilar implications for the political and institutional dimensions of federal constitutional supremacy. As Chapter Two shows, multiparty system has proved indispensable in entrenching the values of independence, inclusiveness, competency, and dynamism in the system of federal constitutional adjudication and amendment. In that manner, it serves the protection of the federal constitutional allocations of jurisdictions and the discrete modification and rigidity of federal constitutions, ‘perfecting the imperfections of a constitution’. The reasons are linked with the meanings of multiparty power check-and-balance, electoral transfer of power, and multiparty legislatures to the composition and functioning of political and judiciary organs of constitutional interpretation and amendment.

Therefore, the chapter studies the party system of Ethiopia in terms of the interpretation and amendment mechanisms of the Federal Constitution. It is organised into two sub-topics. The first deals with the effects of the *de facto* one-party system on the practice of constitutional interpretation. The second topic focuses on the impacts of the same party system on the agenda of constitutional amendment. Besides, in both topics, the possible outcomes of multiparty democracy on the effectiveness and legitimacy of the federal constitutional order are part of the discussions.

6.2. The Constitutional Interpretation System and the Party System

Examining the impacts of the EPRDF-dominated party system on the constitutional interpretation mechanism requires an analysis of the latter. In that regard, the constitutional interpretation power of the House of the Federation (HoF) is the key factor in the analysis that

leads to the ways the party system has affected the institutional and political dimensions of constitutional adjudication against the backdrop of entrenching the federal constitutional order.

6.2.1. The Constitutional Interpretation Power of HoF

The constitutional interpretation power of the House of the Federation (HoF) is one of the unique features of the 1995 Federal Constitution of Ethiopia (Art. 62 and 83). For the sake of a structured discussion pinned to the federal system, the scope of the HoF's mandate to interpret the Constitution can be divided into two arenas. The first is to review the constitutionality of laws. The Constitution, Article 84(2), reads:

Where any Federal or State law is contested as being unconstitutional and such a dispute is submitted to it by any court or interested party, the Council [the Council of Constitutional Inquiry] shall consider the matter and submit it to the House of the Federation for a final decision.

The expression what “Federal or State law” means gets clarification with Proclamation No. 798/2013 (Art. 3(1)), which replaced the former Proclamation No. 250/2001, that “when the unconstitutionality of any law, customary practice, or decision of a government organ or decision of government official is submitted in writing to the Council, it shall consider the matter.”

The expansion of the constitutional review mandate of the HoF to such a level that it can behold routine regulations and decisions in the veil of public administration is crucial to the deepening of constitutional effectiveness. The supremacy clause of the Constitution stipulates, “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” (Art. 9(1)). The centralised power of the HoF to deal effectively with multitudes of decisions and regulations in the administrative structures of the government may have its limitations. Nevertheless, the overarching guiding quality of the Federal Constitution could gain strength with the expansive constitutional watchdog roles of the House, the HoF.

Moreover, unlike the subordinate status of federal-unit laws in the constitutional review systems of some federations, the symmetry of constitutional accountability between the laws of the Federal Government and the states is a typical constitutional character tuned to the precept of federal co-ordinance which is further consolidated by the non-existence of the ‘federal

paramountcy' clause in the Federal Constitution. The cases of Germany, where the judiciary and the Constitutional Court review the bills of the *Landers* and the federal government, respectively, and the Swiss method of different channels of constitutional review for the federal and cantonal laws have, argued Geoffrey Sawer (1969, p. 156), a low level of federal co-ordinance. That has a wide difference from the centralised and unshared power of the Ethiopian HoF.

The second arena of the constitutional interpretation power of the HoF is adjudicating intergovernmental constitutional disputes. It needs to be noted that Proclamation 789/2013 (Art. 2) empowers the city administrations of Dire-Dawa and Addis Ababa as parties to intergovernmental constitutional disputes. Given that cases of intergovernmental constitutional disputes could be political or fall into the grey areas of the constitutional power division, they might be less justiciable through the courts. For such cases, the Council of Constitutional Inquiry (CCI) Rules of Procedure (1996) and Proclamation 798/2013 see the remedy of constitutional interpretation. Proclamation 798/2013 (Art. 3(c)) underlines that “constitutional interpretation on any unjusticiable matter may be submitted to the Council [CCI] by one-third or more members of the federal or state councils or by federal or state executive organs.” This deepens the scope of the authority of the HoF to decide on matters involving political debates on the Federal Constitution.

6.2.2. The Implication of the Party System to the Constitutional Interpretation System

The symmetry of status between the States and the Federal Government of Ethiopia in filing their constitutional disagreements and conflicts to the HoF is not a sufficient condition for the effectiveness of the principle of federal constitutional supremacy in the system of constitutional interpretation. Establishing a locus of constitutional decisions, like HoF, in the federal setting of constitutionally distributed power stresses the stakes of independent, legitimate, and rigorous constitutional umpiring organs and procedures. Tsegaye Regassa (2010, p. 98) writes that “the degree of autonomy, political-neutrality, and the effectiveness of such institutions as constitutional interpreter...depend on (and contribute to) the extent to which the constitution has an exerted legitimacy...as opposed to that which is merely asserted.” That underscores the extent to which organs of constitutional review are effective in exerting the practical legitimacy of federal constitutional orders. In that regard, the party system has much to do with it.

The inhibition of accommodative institutional functioning, as in the case of a one-party system, is not permissive to the neutrality and vibrancy of constitutional interpreting bodies to safeguard the constitutional allocation of jurisdictions. As discussed in Chapter Two, defunct pluralistic federations witnessed the negative effects of non-competitive party systems on the protection of their multiethnic and multinational federal constitutional formulations. The one-party systems, *de facto* and *de jure*, blocked the emergence of effective constitutional umpiring institutions that could put restraints on the centralising power of the government in these federations and advance federal constitutional pluralism. It is a reflection of the wider problem of constitutionalism in non-competitive party systems (Rosenfield, 1994). Under such party systems, the institutional dependency and the political monolithic nature of bodies of constitutional interpretation in their composition, structure, and functioning render constitutions too ineffective to control the government (Magolowondo, Vliet, and Wahi, 2012, p. 12), as in the paradox of “constitutions without constitutionalism.” How that was relevant to the Ethiopian experience of constitutional interpretation under the EPRDF-dominated party system follows.

It was considered that EPRDF’s centralism, party-discipline, and state-party fusion had negative effects on the practice of constitutional interpretation, in terms of political dependence, political exclusiveness, and a low level of professionalism. Aalen (2002, p. 86), concurring with that, said that the domination, centralization, and blurred division of the party and the state led at least to an ineffective constitutional division of power. The following three inter-woven factors elaborate on that.

First, the effectiveness of the EPRDF-dominated constitutional interpreter, HoF, to entrench the supremacy of the federal constitutional system was highly vulnerable to the exclusive partisan interests of the EPRDF. It means the HoF and other relevant bodies in the processes of initiating constitutional disputes were captured by the politics of the EPRDF, which had the blurring of party-state separation. Asnake (2011, p. 684) saw that party-state separation had gradually been lost so that the political opposition's claim of the abuse of the state structure, power, and resources by the ruling EPRDF against the democratic principles of equal participation and competitive politics had credence. The massive intervention of the party was frequently reported and identified by the opposition parties and external observers that EPRDF overtly employed the government to shore up its political support while crowding out the opposition from social

structures and the activities of government to such an extent that it was abusing the distribution of humanitarian aid (HRW, 2010, p. 24–25). The program and the overall approach of the EPRDF towards politics and economy did not demarcate the boundary between party advancement and leading the government. This power knot attests to the prevailing view that EPRDF and the laws, institutions, and authorities of the state are inseparable (Aalen 2002, p. 84–85). For example, it was common to see the same group of people from the Executive and Central Committees of the party form the executive branch of the government and even have seats in the constitutional reviewer, HoF.

Thus, the capture of the state institutions by the EPRDF was not conducive to the effective interpretation of the federal constitutional system in serving the principle of federal constitutional supremacy. Asked about the partisan nature of the State Councils and the HoPRs, AEUP's Adane Tilahun (Interview, Addis Ababa, 2017) replied, “have you ever heard any voice of opposition in these assemblies, even for the sake of brainstorming?” That is the reflection of state-party interpenetration in Ethiopia. There was no reason to believe that HoF was uniquely unaffected by the fusion of EPRDF and the institutions of the government (Aalen, 2002). This seeming omnipotent and omnipresent prowess of the party was the outcome of what Bobbio (1989, p. 106) spoke about a party system, as a source of government's life, that “influences the formal constitution to the point of changing its structure.” Turton (2005, p. 94) put that in FDRE, the “blurring of party and the state carries with it the threat that could, in the long run, undermine the federal system since it negates the federal division of powers.”

In addition, the overwhelming control of the State Councils by the EPRDF and its “affiliates” was not imperative for the HoF to effectively interpret the federal constitutional system. The members of the HoF are the representatives of ethnic groups elected by the State Councils or, if the Councils decide so, by direct public vote (FDRE Constitution Art. 61(1 and 3)). In both methods, the *de facto* one-party system had the implications that members of the HoF were elected either from the EPRDF-dominated State Councils or from elections without the qualities of multiparty competition. In establishing a constitutional reviewer outside the judiciary, the rationales of the HoF's broad-based ethnic congressional representation and democratic accountability to fend off the limitations of elitism and unresponsiveness from the processes of interpreting the constitution of NNPs were hardly reconcilable with the representational

monopoly of the EPRDF in the State Councils and, as a result, in the HoF. Minase (1996, p. 54-55) well summarised that the HoF is neither a judicial body nor a political body to restrain the government.

Nevertheless, it can be said that multiparty representation in the State Councils can replicate itself into a multiparty HoF, which improves the prowess of the latter to check federal and regional executive decisions and legislation against the federal constitutional division of power and responsibilities. As multiparty politics furnishes the groups with the consolidation of power check-and-balance in the governments of the states, the influence of a single party incumbent in the constitutional adjudication mandate of the HoF faces restraints. As a result, if it were not for the party system, the members of the HoF would not succumb to the partisan interests of the EPRDF to, as Hirschl (2000, p. 102) said, balance the relationship between hegemonic political positions and legality.

Second, the long *de facto* one-party rule of the EPRDF engendered the absence of the practice of inter-governmental constitutional disputes, let alone measuring them against the principle of federal constitutional supremacy. In line with Proclamation 798/2013, Article 3 (two (c)), and the FDRE Constitution, Article 83 (1) and 62 (6), inter-governmental is constitutional. Until the fall of 2017, according to Mustefa Nassar (2018, p. 28), 2700 cases seeking constitutional interpretation had been presented to the HoF and CCI, and only 43 of them were given constitutional interpretation. After about a year, “63 out of 3,309 cases... have been examined by the Council and referred to the House for its final ruling,” says Merhatsidk Mekonnen in *The Reporter* (January 5, 2019). Among the 43 cases mentioned earlier by Mustefa Nassar (2018, p. 28), 24 laws and decisions of the government were found unconstitutional, partially or completely (Belachew Girma, 2018, p. 67). In general, close to 90 per cent of the total cases were about property rights and land ownership (Mustefa Nassar, 2018, p. 28). Not limited to the specific cases of constitutional disputes about the objective, design, and operation of the federal system, the form of party-federal symmetry and centralization created by the EPRDF left the HoF unacquainted with a single case of intra- and inter-governmental constitutional conflict presented by the federal and state legislatures and their executives.

Especially, as the executives were also the top leaders of EPRDF and its member parties, legislators in the HoPRs and State Councils seemed to have low, if any, incentives from the party

to safeguard the federal constitutional division of power and the rights of ethnic groups from the influence of the federal and state cabinets. Nor were state executives capable enough to check power concentration in the federal cabinet, for they were accountable for the party-discipline exerted within the Executive and Central Committees. The prime minister and his/her cabinet did not encounter any constitutional dispute or appeal from the HoPRs and the states encroaching upon the powers and responsibilities of the states and/or the rights of NNPs. Of course, that might be dependent on the stature of a given prime minister in the EPRDF, though as per Article 74 of the Constitution, he or she has the overall responsibility to enforce and respect the same Constitution, potentially empowering by itself. The core decision-making organs in the front pre-empted constitutional disputes, and even if they did happen, the party would contain them not take the legal routes. In simplistic terms, the unchallenged one-party dominance in the federation and, to make things worse, its centralised functioning left no room for the practice of an effective constitutional adjudication system related to the federal constitutional allocations powers and functions, which are intertwined with the right of ethnic groups to self-determination. Boundary and identity-related conflicts among the states and ethnic groups and such issues as the constitutional contentions over the postponement of the 2020 election and the Tigray regional election could have been peacefully addressed within due process of law if there had been an adequate level of experience in dealing with inter-governmental constitutional disputes.

The last, third factor, is the repercussions of the party system on the HoF's ability to make far-sighted and professional constitutional decisions by engaging diverse political views, ideologies, and information, as a matter of what is required for a prudent constitutional review. Related to that, the impact of not having alternative parties in the HoF and HoPRs on electing the members of the CCI was understandable because political affiliations could outweigh legal professionalism and long-term constitutional insights. The place of professionalism in the political ambition and the governance method of the EPRDF hinted at the limitation in choosing at least the legal experts of the CCI based on the constitutional criteria of meritocracy and public morality (more elaborated in 6.2.4).

6.2.3. The Beginning of a New Experience? The Case of Administrative Boundary and Identity Issues Commission

The disputes between the Federal Government and the Government of Tigray State on the constitutionality of the currently repealed Proclamation No. 1101/2019 perhaps proved the absence of experience in inter-governmental constitutional adjudication. The block opposition of the TPLF's parliamentarians in HoPRs to the Proclamation and its rejection by the Tigray State Council, on the grounds of constitutionality and the federal constitutional system, was an example of how the inner centralization of the EPRDF, as a front, had kept inter-governmental constitutional tensions and disputes at bay, let alone ensuring the values of independence, professionalism, and vibrancy in the constitutional adjudication function of HoF.

The preamble of Proclamation No. 1101/2019, Administrative Boundary and Identity Issues Commission Establishment, enacted by HoPRs, claimed that because 'administrative boundary' is the cause of conflicts among NNPs, which risk serious instabilities, it should be resolved through professionalism, normality, and peaceful means. Besides that, sustainably meeting the demands of identity determination and self-government raised in the regions warranted the establishment of the Commission. The Proclamation, in Article 2(1), incorporated these demands into a generalised definition of 'administrative boundary' consisting of identity issues, self-administration, administrative boundary demarcations, and other similar matters related to boundaries. One of the most notable functions of the Commission was to "submit issues to the House of Federation if [they] that are identified by the study of the Commission are related to "self-administration, administrative boundary and identity question," Proclamation 1101/2019, Article 5 (4). The Tigray State asserts the constitutionality of the Proclamation for two inter-penetrated major reasons.

The first was how the power of the Commission to submit issues of self-administration, identity, and administrative boundary directly to the HoF was compatible with the constitutional power of the states or ethnic groups to deal with such issues first-hand, as much as possible, and if that fails, with the power of the HoF to directly intervene. Shortly, the federal administrative principle of federal subsidiary, the right to self-determination, the dual system of power division, and the inter-state conflict resolution mechanism in the Ethiopian Constitution came forward in the arguments of the Tigray Government. In the area of inter-state boundary disputes, as a topic

of administrative boundary, the Constitution, in Article 48 (1 and 2), requires the states to resolve their disputes through agreement; if not, the HoF decides based on the will and the settlement partner of the relevant peoples. On the questions of identity status determination and self-administration within the states, the Constitution (Art. 52(2(a))) leaves the internal administrative arrangements to the decision of the states with some guidelines such as democracy, self-administration, and the rule of law. In the rare precedents, similar to the *Silte* case, the constitutional interpretations of the HoF have given priority to the responsibility of the states to address quests for identity status determination and self-rule. Therefore, one of the constitutional challenges of the Commission is articulated in the constitutional prerogatives of the states and/or NNPs.

The other, second, was on the relational position of the Commission to HoPRs and executive *vis-à-vis* the constitutional power of the HoF. As per Article 5 (7–10) of the Proclamation, the Commission had the role of providing input to policies, strategies, and plans made by the government concerning administrative boundary and identity questions and managing conflicts thereof. Such roles gained clarity on the recommendatory engagement of the Commission. It is possible to sort out that the Commission was responsible for giving three kinds of recommendations. The first was the reactive one, to give recommendations to the HoF and the Prime Minister on those administrative boundary disputes to which the Commission was assigned to investigate by the HoF, HoPRs, and the Federal Government (Proclamation No. 1101/2019, Art. 5 (4)). The other was to identify and analyse conflicts related to administrative boundaries and self-determination, identify their causes, and give recommendations to the public, the executive, HoPRs, and HoF (Ibid., Art. 4). Finally, it had the responsibility to recommend constitutional, efficient, and transparent directions on the making and alteration of administrative boundary decisions to the Prime Minister, HoF, and HoPRs (Ibid., Art. 5 (3)). These responsibilities also included giving timely recommendations on resolving administrative boundaries, self-administrations, and identity-related controversies before they went violent. Overall, the advisory function of the Commission was made available to the Prime Minister, HoF, and HoPRs, except that the latter was not referred to in some instances as described above.

So, the problem was related to the constitutional rationale(s) for giving recommendations to the Prime Minister, HoF, and HoPRs, while, by Proclamation No. 251/2001 and FDRE Constitution

62 (3), the HoF has the power to “decide, in accordance with the Constitution, on issues relating to the rights of NNPs to self-determination, including the right to secession”. Since identity determination, boundary, and self-administration are the prominent areas of dispute among the states, in line with Proclamation No. 251/2001, Art. 4, the HoF still has the power to “strive to find solutions to disputes or misunderstandings that may arise between states.” Though Proclamation No. 1101/2019 (Art. 5) vowed not to jeopardise the constitutional powers of the HoF and the states, it did not give a well-versed constitutional reason(s) to allow the HoPRs to adopt the very proclamation itself. A host of concerns emerge from that. Does the HoPRs have the constitutional power to enact legislation on the issue of self-determination and identity? Is it not the constitutional power of the HoF? Alternatively, since the HoF has no legislative power to make laws, did it prepare and send the Proclamation in point to the HoPRs? If it was so, why was the Commission accountable to the Prime Minister, who also nominated the Chairperson and the Deputy Chairperson of the Commission, as indicated in Articles 3(2) and 7(3) of the same Proclamation?

Therefore, sharing the above points, Proclamation No. 1101/2019 faced the rejection of the Tigray State (Tigray State Council, 5th Term, 14th Session, Resolution No. 03/2011) and the resultant constitutional appeal to the HoF, inferring to the FDRE Constitution, Article 62(1) and 83(1), and Proclamation No. 251/2001 (Art. 23 and 32). Tigray State claimed that the Proclamation has violated the powers of constitutionally established institutions, mainly the HoF and the state structures, and the “multinational” constitutional order in general. Since it was a new and serious instance in the federal constitutional experience of FDRE, it deserves emphasis.

Mentioning the supremacy clause of the Federal Constitution, Article 9 (1), which says any law, customary practice, or decision of any government office or public authority that contradicts the Constitution is void, the Tigray State Council (Tigray State Council, 5th Term, 14th Session, Resolution No. /2011, p. 2) asserted that Proclamation No. 1101/2019 had no legal effects. It was further strengthened with the view that any organ of the government, at any level, has the responsibility to respect and protect the Constitution (FDRE Constitution, Art. 13 (1)); and states have the responsibility to establish and administer the system that best advances self-administration, democratic order, and the rule of law and to defend and protect the same constitution (Ibid., 52 (2)). Moreover, the utilisation of the term “administrative boundary” in the

Proclamation rather than the constitutional expression of “state boundary” and the violation of the constitutional division of power among the executive, the HoF, and the HoPRs were illuminated to show the constitutional deficits of the Proclamations, though it maintained that “The Commission undertakes the work independently and impartially,” Proclamation 1101/2019 (Art. 14).

The Council of Tigray (Resolution No. 03/2011, p. 3) implied the necessity of self-motivated identity-based demands as part of the constitutional power of self-determination and the appropriateness of exhausting state-level options, and, if need be, to apply to the HoF. It cites the following part on the *Consolidation of the House of the Federation and the Definition of its Powers and Responsibilities*:

The House [the House of the Federation] shall have the power to decide on issues relating to the rights of nations, nationalities, and peoples to self-determination. Any Nation, Nationality, or People who believe that its self-identities are denied, its right of self-administration is infringed, promotion of its culture, language and history are not respected, in general, its rights enshrined in the constitution are not respected or, violated for any reason, may present its application to the House through the proper channel. (Proclamation No. 251/2001, Art. 19, sub-article 1).

By providing similar examples such as arresting former government officials accused of human rights violations and corruption, some argued that the disagreements between the Federal Government and the Tigray State on the Administrative Boundary and Identity Issues Commission signalled a constitutional crisis between the federal order of the government (Assefa Alemu, February 20, 2019). This had some threads with the parliamentary debate made on the Proclamation, 1101/2019, that members of TPLF in the HoPRs strongly opposed the Commission believed that there is “something with hidden intentions behind” that necessitated its establishment by encroaching upon the power of the HoF, whereas the other members of EPRDF, notably the Oromo Democratic Party (ODP) and Amhara Democratic Party, formerly OPDO and ANDM, respectively, argued that the Commission would fulfil the implementation of the Constitution by providing scientific and professional recommendations to the HoF (Yonas Abiye, *The Reporter*, December 22, 2018).

What the study wants to show is the correlation between party de-concentration and constitutional disputes. The intra-party fracture in the EPRDF invited the emergence of some constitutional arguments among regional and federal governments. If that was because of

internal discords in the EPRDF, a full-fledged multiparty system would bring with it a series of inter-governmental constitutional disputes. That could be advantageous to the meaningful activation of the existing mechanisms of inter-governmental constitutional disputes, regardless of whether it could spell constitutional crises that can be detrimental to the supremacy of the Federal Constitution. There are issues, as Chapter Seven confirms, that determine the kinds of effects that multiparty politics could have on the supremacy and stability of the Ethiopian federal constitutional order. Among them, party-polarisation, social and political cleavages, political culture, and electoral systems are significant.

In line with the above discussions, what multiparty system could have done and could do in the future in the constitutional evolution of the Ethiopian federal arrangement follows in the next section of the chapter.

6.1.4. The Meaning of Multiparty System to the Interpretation System of the Federal Constitution

The opening of multiparty democracy in the Ethiopian federal structure has three implications. The first is the representation of different parties in the federal orders of governments. Second, it becomes possible for those parties opposing or not allied to a party or a group of parties leading the Federal Government, to assume power at least in one of the states. The third is the expectation that, in competitive elections among parties, peaceful alternations of incumbent parties are possible. These three points are favourable to the system of power check-and-balance, the channelling of federal-party asymmetry towards constitutional supremacy contrary to power concentration within a single party, and the associated docility in terms of triggering intergovernmental constitutional challenges. Consequently, along with expanding the institutional independence of the HoF, both multiparty-driven check-and-balance and federal-party asymmetry are valuable to the Ethiopian constitutional interpretation process, at least in the following highly interlaced and institutional-focused ways:

First, multiparty State Councils and HoPRs promote the value of constitutional supremacy as they inculcate the norm of challenging the constitutionality of federal and state-level laws, regulations, and decisions and limiting the influence of the executive. The ability of opposition parties in multiparty legislatures to dispute laws passed by the majority parties of the states and

Federal Government against the federal constitution is as decisive as restraining the dominance of the executive in the web of intergovernmental interactions. Hence, multiparty State and federal law-making organs must integrate the democratic principles of constitutionalism and the federal principle of constitutional supremacy if the Ethiopian federal dispensation is to gain political legitimacy and constitutional effectiveness.

Burgess (2006) indicates that the political legitimacy of a federation that constitutes a multi-segmented society is dependent on the values and traditions of constitutionalism. Both at intra-government and inter-governmental levels, the representation of contending parties serves the much weighty yet extensively adaptable value of constitutionalism that implies the power of the government should be limited, legally defined, accountable, and have a system of power check-and-balance, as Hillarie Barnett's (2000, p. 358) describes. Legislatures, through invoking constitutional reviews and disputes, will become forceful in asserting the federal system in general and the constitutional allocation of power in particular. The possibility that the HoF is also composed of multiple parties is an additional advantage to the process of maintaining the federal constitutional arrangement using the conduits of multiparty State Councils and the federal parliament.

Relatedly, as a by-product of constitutionalism, the emergence of contending or autonomous political parties in the federal order of governments leads to a more competitive federal operation than what is called 'coercive federalism' where the power among the federal and unit governments is highly unbalanced and the latter are extensively and overly dependent on the capacity and decisions of the former. For that reason, multiparty system makes the system of constitutional interpretation an open avenue for the clarification and improvement of the Ethiopian federal order. In other words, it will induce the norm of constitutional disputes and constitutionally informed and predictable IGR that are encouraging the maturity of the federal design to show dynamism, arising out of the institutionalisation of political diversity in the structures of the federation.

Secondly, multiparty system makes the HoF inclusive of diverse political views, which would enable it to make inclusive constitutional settlements based on a wide range of information, data, and knowledge. It, the HoF, needs to be institutionally suited and competent to deliver prudent constitutional adjudications (Yonatan, 2005, p. 68–70). The competency of the House to deliver

far-sighted and dynamic constitutional decisions within the ambit of single-party politics may be curbed with the introduction of multiparty politics into it. As an organ of constitutional adjudication, the HoF's decision on a constitutional dispute is not doubtful of having an extensive impact. For that reason, according to Ibrahim (2002: 85), the inclusion of alternative political parties will enable it to pass constitutional decisions based on the best available information, evidence, and understanding.

Moreover, multiparty is desirable for multiparty parties to fetch a consensual constitutional review and adjudication operation from the HoF, which is helpful to expand the competency of delivering a broad-based constitutional ruling beyond the rule of the majority. In a dominant-party system, the adoption of the majoritarian rule, as per the FDRE Constitution (Art. 59 (1)), by the HoF to resolve constitutional disputes has the potential to further degrade its proficiency to deal with such a complex and magnitudinous work of constitutional interpretation. A multiparty HoF is more likely to contain the formation of a single-party majority in the HoF that has the sweeping majority to settle constitutional disputes. Ethiopian Democratic Party (EDP) observes the problem of legitimacy in majoritarian constitutional adjudication for the practical example that a dominant political party, like EPRDF, would unilaterally dictate the constitutional development of the federation. EDP, thus, prefers consensus, or what it also calls 'bargaining democracy' in the operation of HoF to nourish an inclusively defined federal legitimacy (EDP, 2003, Vol. 1, p. 15). Multiparty representation in the HoF elevates the gravity of inclusive constitutional decisions to define and redefine the meaning of the Federal Constitution of Ethiopia.

In third place, multiparty system nurtures competency in the Council of Constitutional Inquiry (CCI). Art. 62(2) of the Federal Constitution provides that "the House of the Federation shall organize the Council of Constitutional Inquiry." As mentioned at the beginning of the chapter, the function of the Council of the Constitutional Inquiry (CCI) is to consider the necessity of undertaking a constitutional interpretation to settle cases of constitutional disputes and the constitutionality of laws, and when it finds it necessary to do the interpretation, it sends the cases, with its recommendation, to the HoF, as stipulated in Article 84(3). It needs to be clear that the recommendation of the CCI is not binding on the decision of the HoF, though its legal proficiency gives at least a critical input to that decision.

Regarding the composition of the 11 members of the CCI, its president and vice president are the president and vice president of the Federal Supreme Court, respectively. That means the former is indirectly elected by the federal prime minister with his or her appointment of the latter (FDRE Constitution, Art. 74(7)). For the rest of the members of the CCI, six legal experts are appointed by the president of the republic, upon the recommendation of the HoPRs, and the HoF designates the remaining three members, from among its members, in line with Article 82(2) of the Constitution. Here, the party system affects the party structures of the federal parliaments in a way that is relevant to the selection of the CCI members.

With the overwhelming seat share of the EPRDF, the lack of multiparty inclusion in the HoPRs and HoF compromised the selection of the legal expert members of the CCI based on the constitutional requirements (EDP, Vol. 2, p. 31). The requirements state that the experts “shall have proven professional competence and high moral standing.” It is possible to make the hypothesis that the meaningful representation of diverse political parties in HoPRs can have an impact on defending legal professionalism and ethics in selecting the legal experts in question against the monopoly of selecting them by a single party having undisputed control over the HoPRs. It has the advantage of circumventing the influence of a concentrated partisan interest in appointing the other members, including the president and the vice president. The power of the prime minister to elect the presidents of the Federal Supreme Court will be challenged on the grounds of political independence and professional adeptness. All told, allowing room to emphasise the competency and the ethical depositions of those who are elected into it, representative multiparty federal houses pose hindrances to the alleged, wrote Belachew Girma (2018, p. 66), the intervention of party politics in composing the CCI. Since almost all of the majority recommendations of the CCI have been accepted by the HoF except in the case of the rights to run for office in Benishangul-Gumuz State in 2003 (Ibid., p. 66), it confirms the significance of the CCI in the process of constitutional interpretation. That is why multiparty politics can advance the professional dimension of constitutional interpretation, as it has impacts on assigning the members of the CCI.

The above three points, given the records of the EPRDF, reveal that the practice of constitutional interpretation takes different forms with the opening and deepening of multiparty democracy. The impacts of multiparty system are predicated on the institutional and political derivatives of

multiparty HoPRs, HoF, and State Councils to stimulate, ordain, and provide for power check-and-balance and party-federal asymmetry. That suggests multiparty representations and shifts of power among parties at the federal levels of government would entail even a constitutional amendment on the exclusive authority of the HoF to undertake constitutional reviews and adjudications. It depends, of course, on what constitutional stipulations political parties demand for constitutional reforms.

Most opposition political parties have presented constitutional options that hand over the constitutional interpretation of HoF to a newly established constitutional court mandated or to the exiting Federal Supreme Court. For example, as the Forum (Medrek) and Blue Party (BP) concurred with that, the Ethiopian Democratic Party (EDP) assured the repeal of the constitutional interpretation authority of the HoF and forged a constitutional court instead (EDP, 2003, Vol. 2, p. 31). Nine judges are to sit in that court, and they are to be nominated by the lower house, the upper house (the “Senate,” to the party’s word), and the federal executive, each of whom is to nominate three judges. The main criticism EDP had of the current constitutional system was the thinning of separation of power by the potentially conflicting functions of the HoF to decide on: the self-determination rights of NNPs, civil matters deserving federation-wide enactments, joint revenue and subsidy divisions, and, at the same time, to conduct constitutional adjudication on these decisions (FDRE Constitution, Art. 62 and 81). It could involve reviewing the constitutionality of its own decisions. As a result, taking into account the political mistrust of the judiciary branch as a small group of elites not “unaccountable” or “insensitive” to ethnic-based demands (Assefa, 2007), the suggestions of alternative political parties to establish a special court composed of legal professionals elected through public participation would be an experiment to improve the mechanism of constitutional interpretation. This could help achieve objective constitutional development without sacrificing the value of inclusively framed constitutional dynamism (Yonatan, 2005). The quest for the participation of competitive parties in democratic elections persists in democratically testing and putting into effect the options of political parties regarding how the Ethiopian federal constitutional order should be interpreted and what institution is better equipped to do so. As a last remark, it should also be questioned how the HoF could legitimately address constitutional complaints from ethnic groups while also having the mandate to resolve problems related to these rights (Belachew Girma, 2018, p. 67).

6.3. The Constitutional Amendment System and the Party System

The dynamism of the Ethiopian Federal Constitution, like its designing process and enforcement, determines its legitimacy as an enduring, supreme, and relevant document across times and generations. For that reason, the development of the Constitution to address emerging as well as unsettled contentions and conflicts over the ethnic federal arrangement has a strong resonance with the mechanism of constitutional amendment. It emphasises how the system of amending the Constitution maintains the equilibrium between the principles of constitutional dynamism and federal constitutional supremacy, which connotes the constitutional rigidity of federal polities. The equilibrium, in line with the discussion of Chapter Two, has fetched the balanced legitimacy of flexibility and entrenchment into the constitutional evolutions of mature and pluralistic federations. In that regard, given the meaningfulness of practice in the discourse of legitimacy, the party systems of federations have implications for the actual exercise of constitutional amendment rules.

In federal states, party system affects the quality of striking a balance between constitutional responsiveness and constitutional stability. The possibility of open, competitive, deliberative, and negotiated constitutional amendment proposals and ratifications in the multiparty democracies of Belgium, Canada, India, Switzerland and so on has facilitated the progressive consolidation of their pluralistic federal options. That stands in sharp contrast to the self-servingly unpredictable and skewed constitutional amendment experiences of the one-party systems of the defunct multiethnic communist federations and those failed and fragile federations with multiparty façades. Accordingly, the next parts of the chapter elaborate on the constitutional amendment mechanism of Ethiopia and treat how far the party system has advanced federal constitutional supremacy through this mechanism.

6.3.1. The Constitutional Amendment Mechanism

The amendment system of the Ethiopian Constitution gives no exemption to any specific or substantive elements of the Constitution. It has neither explicit nor implied amendment limitations that can project, in the words of Zelalem Eshete (2016), the “political self-defence” of the federal constitutional system. For example, the so-called “eternity clause” of the US Constitution, Article V, protects the amendment of the states’ equal representation in the Senate,

unless they agree to that, and the German Basic Law rejects any amendment on human dignity, rights, the federal constitutional choice and alike (Ibid., p. 8). Such constitutional amendment limitations outline the scope of constitutional rigidity and continuity preserved outside the possible consequences of constitutional amendment systems in some federations. That appears to clash with the reformist intuition of constitutional amendment towards a ‘living document’, opposite to the conservatism implications of constitutional interpretation. However, rigid constitutional modification processes could serve the purpose of constitutional conservatism too. That is why, in effect, the rigidity feature of the Federal Constitution is often associated with an indirect form of amendment limitation.

As the Federal Constitution of Ethiopia is the supreme reference to the authority of the states and the Federal Government, there are multiple players in the process of initiating and approving constitutional amendments. Any amendment proposal should be supported by the two-thirds vote of either the HoPRs or HoF, or by the majority vote of one-third of State Councils (Art. 104). Following that, amendment initiatives take one of the routes (Art. 105). The first applies to proposals for amending the third chapter of the Constitution, which covers fundamental rights and freedoms, and to the very articles of amendment initiation and approval. The majority votes of all the State Councils and the two-thirds majority votes of the HoF and HoPRs, separately, are required. The second route is through all the remaining provisions of the Constitution. In this case, the consent of the HoF and HoPRs, in their joint session, in two-thirds majority votes together with the majority votes of two-thirds of the State Councils is compulsory. Comparing the two routes of the amendment system, the rigidity bestowed on Chapter Three of the Constitution means the co-ordinance of the federal and state governments in modifying the constitutional system of rights. It also underlines that human, political, and civil rights, along with the right of NNPs to self-determination, are fundamental to the order of the Constitution (Adem Kassie, 2011; The Minutes of the Constituent Assembly, Vol. 5, 1994).

The amendment procedures of the Federal Constitution have the fixture of federal consensus. Unanimity in amending 35 out of the total 106 articles of the Constitution, which is also the quality of defining the constitutional order, implies a consensus-driven federal constitutional supremacy. The legislature of a given state has the veto-power to deter the rest of the federation from amending the Constitution. For example, the State of Harari, which has only 0.2 per cent of

the population of the federation, as calculated by CSA (2007), can vote against a constitutional amendment proposal accepted by all the other states with the two-thirds majority votes of the HoF and HoPRs. That fits in with the proposition that some aspects of ‘consensus democracy’ can be applied in federal constitutional amendment mechanisms guaranteeing the voting power of all levels of government (*see* the extent of ‘minority -veto’ in the theory of consociationalism, as extensively explained by Lijphart, 2008).

The co-ordinance of the federal orders of the government in the constitutional amendment has bearings on the open-ended nature of constitutional adaptability in terms of balancing constitutional rigidity and flexibility, even if it has no fixed point of reference. The unanimity to amend the third chapter and Articles 104 and 105 of the Constitution could block the adaptable legitimacy of federal constitutional arrangements from time to time. Nevertheless, it is equally important that amendment flexibility, especially on the federal structure and division of power in the Constitution, could diminish the covenantal quality of the federal system, as the preamble and the policy principles of the same constitution point out. In the latter, the government is required to respect the self-rule and “identity of nations, nationalities, and peoples,” Article 88 (1-2).

Therefore, the mechanism of constitutional amendment in the FDRE’s Constitution needs to maintain the delicate balance of constitutional entrenchment and development. Similar to constitutional interpretation, the impact of party system in shaping the direction of constitutional amendments *vis-à-vis* flexibility and rigidity is also relevant here.

6.3.2. The Implications of the Party System to the Constitutional Amendment System

The EPRDF-dominated party system affected the practice of both the systems of constitutional amendment and interpretation. In particular, its impacts on the practice of constitutional amendment have been explained from the perspectives of the EPRDF’s interests and the functioning of centralism and party-discipline in it. Zelalem Eshete (2016, p. 5) states, “party system is a significant factor. Strong party-discipline and a norm of inter-party pacts and coalitions may render a majority support requirement to be attained without difficulty.” The

monopoly of the institutions of the government and the political space under EPRDF had implications for the amendment mechanisms of the Federal Constitution.

The unrestrained dominance of the EPRDF was more likely to jeopardise the purpose of constitutional rigidity and dynamism. The consensual purpose of the rigidity of the Federal Constitution could have lost its meaning if any constitutional amendment had been made under the EPRDF-led government. The extent of centralization in the party was not conducive to consensual constitutional reforms through open, participatory, and *serious* deliberations. It was more likely that the powerful organs of the EPRDF could impose constitutional amendment initiations and approvals on the state and federal legislatures that were labelled as the “rubber stumps” of the executive. On the flip side, constitutional dynamism was also hardly possible. Centralization and state-party fusion in the EPRDF were considered barriers to the responsive development of the federal constitutional dispensation. Initiating any constitutional modification by the required one-thirds of the State Councils or by the two-thirds majority votes of the HoF and HoPRs, if the upper echelon of the EPRDF did not see any political incentives in it. It goes with the idea that “the interests of the current political elites strongly affect the potential for and direction of [constitutional] reform. Balancing their specific short-term interests and... long-term national interest,” Magolowondo, Vliet and Wahi (2012, p. 12) said, is the persistent challenge of constitutional changes and re-writings. That alludes to the assessment that the progressive development of the Federal Constitution was not in the interests of the centralising elites of the EPRDF. To substantiate the practice of constitutional amendment in the incumbency of the EPRDF, there are no standard and adequate cases of constitutional amendments to date.

Some have made points about the relevance of the specific decisions and legislation of the Federal Government to the actual operation of the system of constitutional amendment. Among them, the unilateral modification of the constitutional concurrent power of taxation by the legislation of the Federal Government in 1997 is notable. It is indicated in the Constitution, Article 98, that the federal and state governments have shared taxation power on dividends gained from shareholdings, taxes levied by enterprises jointly owned by them, on large-scale mining, and petroleum and gas (HoPRs, 1997). The 1997 legislation has thus delimited the constitutional position of the states to only share the revenue from taxes (Zelalem Eshete, 2015). The other case, as indicated by the document of the HoPRs (2005), is the decision of both the

HoPRs and HoF in 2005 to postpone the ten-year periodic population census against the clear stipulation of the Constitution (Art. 103 (5)).

In sum, the cases of 1997 and 2005 were initiated by the federal executive and ratified by the federal houses. The executive has no constitutional power to initiate any constitutional amendment proposal, nor were the majority votes of the two-thirds of the State Councils to approve amendments to Article 98 and 103 of the Constitution secured. That “substantially contravened” the procedural requirements of the Constitution (Zelalem Eshete, 2015, p. 20).

6.3.3. The Meaning of Multiparty System to the Constitutional Amendment System

Multiparty system enhances accountable and inclusive constitutional amendments. Magolowondo, Vliet, and Wahiu (2012, p. 12), citing the words of Justice Ismail Mahomed that “a constitution is nothing less than a “mirror reflecting the national soul”, believe that “a constitution forges common political and institutional identities for society.” Despite the question of who constitutes the “national soul” in such a pluralistic federation as Ethiopia, the amendment of the federal constitutional system might not be out of the reach of the dominant political force at a certain point in time, which is much exacerbated in the one-dominant-party system. Multiparty representation and electoral transfer of power are triggering reforming the Ethiopian federal constitutional setup within the institutions of the government, and that activates the amendment procedures of the Constitution in a more transparent and accountable manner to reflect the “national soul” through broad-based inter-party constitutional negotiations and alliances. In these negotiations and alliances, ethnic minority parties could have the critical voices of deadlock breaking among parties standing to the interests of relatively major ethnic groups.

Moreover, inter-party constitutional amendment negotiations help the stability and durability of the federal system. It is best understood with Donald Lutz's (1994) concept of ‘constitutional amendment rate’. It is the proportionality between the number of amendments made to a constitution and its age, as an index of how frequently it has been re-negotiated and would possibly risk its replacement. In Ethiopia, political parties could negotiate on the federal constitutional design before it sees its complete replacement or slips into serious constitutional crises with fatal consequences for society.

Besides inter-party federal negotiations and constitutional durability, multiparty participation contributes to measure the extent to which the federal constitutional dispensation is democratically defensible and amendable. Most political parties have programs incorporating themes of constitutional amendment in the federal system. Multiparty democracy facilitates public dialogue and democratic choices on these themes. It can rectify or reinforce the criticism of federal constitutional imposition in the making of the Constitution. The amendment proposals of political parties encompass such matters as the ethno-linguistic federal territorial structure, the right to self-determination up to and including secession, the constitutional powers of the HoF, official working language designation, and the rights of regional ethnic minorities. They can be classified into ethnic and mixed federal constitutional options (*see* Table 12).

6.3.3.1. Ethnic Federal Option

The ethnic federal option subsumes the programs of almost all ethnic political parties and their coalitions. The latter, as per the lists of parties in Chapter Three, refer to EPRDF, UEDF, USEDF, Ethiopian Federal Democratic Unity Forum²², and EJDFF. The federal goal of EJDFF might be questionable due to the membership of the Ethiopian Democratic Union (EDU). Historically, EDU was attached to a political commitment towards centripetal politics (Vestal, 1999, p. 39). The programs of political parties under the ethnic federal option are by far more compatible with the ethnic federal system than the mixed ones. Within that, except for the ruling EPRDF and its “affiliates”, they have some constitutional proposals and complaints about the implementation of the federal system.

For instance, the Ethiopian Federal Democratic Unity Forum and the Oromo Federalist Congress (OFC) supported the ethnic federal design with some differences. The Forum recommended a clear constitutional guarantee of self-administration at the Kebele, Woreda, and Zone levels for the socio-economic and political rights of regional ethnic minority groups (Forum, 2011, p. 22–24).²³ It also differed from the Federal Constitution in pledging to add another official working language, based on the number of speakers, to the Federal Government and in subtracting the power of constitutional interpretation from the constitutional mandates of

²² Also known as Forum, or Medrek (in Amharic).

²³ The Forum pledges to constitute every zone through free and fair elections (Forum, 2011, p. 24).

the HoF, which would be modified into a legislative second house (Ibid., p. 22–24).²⁴ That means the exclusive powers of the HoPRs included in Article 55 of the Constitution are to be shared with the HoF. The federal design drawn by the Oromo Federalist Congress (OFC) [4¹ promotes the autonomy and proportional representation of ethnic groups (OFC, 2012, p. 5). Its program demands that Affan-Oromo be added to the official working language of the federal centre to which the party prescribes the presidential system of government. Except for such constitutional proposals, both the Forum and OFC have maintained the legitimacy of the ethnic federal design.

The right of self-determination contributes, Brietzke (1995, p. 27), to limit the problem of “indefinitely divisible” sovereignty, as per the Constitution (Art. 8) that “sovereignty resides in “nations, nationalities and peoples.” Sovereignty presupposes the existence of “self” for which it seeks to stand for, though the practical predicaments are inevitable in the blanket constitutional definition of “nations, nationalities, and peoples” to effectively decide who is not entitled to claim the right to self-determination.²⁵ As the predecessor of OFC, ONC (Oromo National Congress) was established in 1996 to seek the middle ground between secession and submission, implying the “premature ambition of OLF and the weakness of OPDO,” says Merera Gudina (2004, p. 28).

6.3.3.2. Mixed Federal Option

The second federal option provided by the Ethiopian political parties makes the case for a more fundamental overhaul of the federal design. This option deserves more emphasis, for it reflects the contested nature of the existing ethnic federal system. The programs as well as the manifestos of the relevant parties have shown that ethnicity should not be taken as the only standard for the federal organisation of Ethiopia. The Blue Party (BP), Ethiopian Democratic Party (EDP), All Ethiopian Unity Party (AEUP), and Coalition for Unity and Democracy Party (CUDP) were the showcases of the mixed federal option.

²⁴ The party aspires to uphold the federal bicameral house where the HoF should be directly elected by ethnic groups (Forum, 2011, p. 23–24).

²⁵ OFC, one of the member parties of the Forum, acknowledges that the Ethiopian people have a shared history of hardships and struggles against foreign invaders (OFC, 2012, p. 2).

The Blue Party (BP) and the All Ethiopian Unity Party (AEUP) claimed that the boundary demarcation among the federal constituent units should be based on topography, population settlement pattern, development and administration conveniences, language, custom, historical ties, social interactions, and the will of the people (BP, 2014, p. 7; AEUP, 2003, p. 10). This has very little similarity with Article 46(2) of the Constitution, which states that “the states shall be delimited based on the settlement patterns, language, identity, and consent of the peoples concerned.” EDP followed the criteria used by BP and AEUP, but administrative efficiency and development needs took the lead. This could lead to the creation of federal provinces, with the consequences of institutional redundancy and economic costs. Nevertheless, the party claimed that too many states are better than too large for two reasons: the current States are distant from the local community, and the intermediaries, or zones, are under unelected officials and political cadres. EDP was inclined to have the provisions of public services close to the people by giving Woredas and Kebeles more power while abolishing zones (EDP, 2003, Vol. 2, p. 20). However, it has its own predicaments, too.

The mixed federal-unit demarcation needs a detailed analysis of structural and contingent contexts. Alemante Gebreselassie (2015, p. 31), taking Nigeria as an instance, argued that to improve the condition of unity and big clashes among major ethnic groups, it is important to redraw the territorial organisation of the Ethiopian federal system by rejecting the first order pre-eminence of ethnic identity overpopulation and territorial size, natural resource distribution, history and so on. These kinds of suggestions base themselves on the possibility that federation-wide ethnic majorities would be distributed in more than one federal-units and ethnic minorities could capitalise on cross-cutting identities to forge ties with sections of the ethnic majorities (Yonatan Fesseha, 2018). Without compromising ethnic diversity accommodation, it has the prospects of reducing inter-federal-unit conflicts, controlling the vulnerability of ethnic minorities in federal-units with ethnic majorities, and even damping ethnic conflicts within ethnically heterogeneous federal-units (Horowitz, 1993). However, these prospects are not universal. In Ethiopia, their feasibility depends on the degree of ethnic cleavage, ethnic territorial distributions, historical relations among ethnic groups, the condition of inter-ethnic outbidding, and the salience of cross-ethnic political agendas to the political elites.

In addition, parties under the mixed federal option tend to maintain the existing constitutional design on the subject of language designation. BP (2014) made clear that Amharic should be the national language, and if the need to add another language arises, a referendum would be the procedure. For the federal-units, each must decide their own official language through provincial referenda (Ibid., p. 7). This deviates, in three respects, from the FDRE Constitution, in which Amharic is the working language of the Federal Government and the members of the federation may determine their working languages (Art. 5 (2 and 3)). First, the Constitution designates Amharic as the official working language of the Federal Government and has no procedure to add another language. Second, it is silent about the national language. Lastly, the Constitution does not rule on the mechanisms the states must follow in choosing their official languages. In line with that, the Ethiopian Democratic Party (EDP, 2009, p. 8) program reads that federal-units should choose their own official languages.

Moreover, EDP said that all languages spoken among what it called nations and nationalities should be equally respected and promoted. However, it underscored the necessity of having a *lingua franca* for social, economic, scientific, and technological development (Ibid.). Thus, EDP's decision, like the Forum (2009), to limit the issue of language only in terms of official working language diverged from national language choice in the program of BP. However, the stipulation that official languages should be school subjects was shared by EDP and BP (Abis Makuria, Interview, Addis Ababa, 2017). Dealing with the House of the Federation (HoF), apart from EDP's suggestion to include professionals, both BP and EDP underlined the significance of establishing a legislative upper house where federal-units are equally represented (Blue Party, 2014, p. 7-9 and EDP, 2009, p. 28). Accordingly, the constitutional interpretation power of the HoF is to redirect it to a constitutional court.

Finally, the EDP emphasised the constitutional mechanisms of inter-governmental interactions to fill the gap in the Federal Constitution. Proposing the need to have an explicit constitutional channel of inter-governmental relations was the imperative aspect of the program of the party, EDP. The observation that the federal executive, contrary to Article 50 (5 and 8) of the Federal Constitution, had violated the autonomy of the states, especially the developing ones, led the party to propose the constitutional means of inter-governmental relations. It said that the executives of the states were handpicked by the Federal Government, and their Councils were

rubber stumps to the extent that they, against the specific conditions and demands of the states, ratified similar constitutions having only different titular names (EDP, 2003, Vol. 2, p. 25). The membership of the presidents of the states in the politburo of EPRDF or their dependency on the so-called “advisors” was additional evidence EDP had to show how the coordinate nature of federalism had been depleted in FDRE (Ibid., p. 26).

| Areas | | Parties | | | | |
|--|--------------------|---------------------------------------|---|--|----------------------------------|------------------------------------|
| | | Forum | EDP | BP | AEUO | CUDP |
| Federal Option | | Yes | Yes | Yes | Yes | Yes |
| Federal Structure | | Ethnic | Mixed and Symmetrical | Mixed | Mixed (referendum in some cases) | Mixed |
| Constitutional Provision on IGR | | Yes | Yes | Yes | Yes | |
| Upper House | Power | Equal (Veto) | Equal (Veto) | Equal (veto) | Equal | Equal |
| | Composition | Directly Elected | Directly elected and Equal representative | Directly elected and Equal representatives | | Directly elected |
| Secession | | No | No | No | No | |
| Language | | Amharic and another (population size) | One or more (lingua franca) | Amharic and another (based on Referendum) | | One (The lower house can add more) |
| Constitutional Ruling | | Constitutional Court | Constitutional court | Constitutional court | Court | |
| System of Government | | Parliamentary (two-term limit) | Parliamentary | Presidential | Presidential | Presidential |
| Military Composition | | Ethnic Diversity and Meritocracy | Ethnic Diversity and Meritocracy | Meritocracy | Ethnic Diversity and Meritocracy | Ethnic Diversity and Meritocracy |

Table 12: Political Parties’ Programs Related to the Ethiopian Federal System (Source: Adopted from the Programs and Policy Documents of Parties).

As Table 12 shows, the divides between the ethnic and mixed federal programs of the parties reflect the contested components of the federal system: federal-unit demarcation, federal second house, constitutional interpretation, official language, and the right to self-determination. Resolving them through *genuine* deliberative processes determines the direction in which the Ethiopian federal constitutional system is heading in terms of resolving the gap of deliberative politics in its making process. As Ottaway (1995, p. 71) wrote, “the spirit of the democratic transition, however, was missing completely. Democratisation became a purely formal exercise.”

It needs to be clear that some amendment proposals envisioned by some political parties appear more as constitutional changes than amendments, as they focus on the very foundation of the federal constitutional system, such as the right to secession (Art. 39), the divisions of power, and the Preamble of the Constitution. In the aftermath of ethnically informed conflicts in the State of Somali, for example, the opposition All Ethiopian Unity Party (AEUP), criticising it would cost many more lives and the disintegration of the country, asked the government to amend the Constitution, specifically Article 39 (Ashenafi, *The Reporter*, August 11, 2018). Such party positions featured the EPRDF's accusation that some opposition parties used the 2005 parliamentary elections to dismantle the federal constitutional order. In fact, according to Zelalem Eshete (2016, p. 15), the complete re-writing of the Constitution, alleging its "birth defect", was campaigned by parties such as Unity for Democracy and Justice (UDJ) and United Ethiopian Democratic Party (UEDP). As a result, multiparty constitutional amendments have a wide range of meanings for the dynamics of the federal system.

6.4. Conclusion

The one-dominant-party system, regardless of whether it was open to multiparty competition or not, has ramifications for the principle of federal constitutional supremacy. The absence of multiparty representations in the federal and state legislatures and the level of centralism and party-state inseparability in the EPRDF were the most prominent characteristics of the party system. They had repercussions on the practice of constitutional interpretation and amendment in the direction of consolidating the dynamic entrenchment of the federal constitutional system. Under the politically monolithic federal layers of institutions, the system of constitutional interpretation lacked the significance to entrench the federal constitutional allocation of powers and/or the rights of ethnic groups. There was no modicum of multiparty representation in these institutions to safeguard the federal system through intra- and inter-governmental constitutional disputes. Likewise, the norm of such constitutional challenges involving the compatibility of laws and decisions with the federal constitutional design was also less likely to emerge in the centralised operation of the federal system under the concentrated decision-making structure of EPRDF.

In general, the chapter has shown the malfunction of the party system to embrace power-check-and-balance and effectively restrain the power of the government with the federal constitutional

setup. That also harmed the values of independence, responsiveness, and competency in the constitutional interpretation mandate of the HoF.

Regarding the constitutional amendment, the one-hegemonic party system had two repercussions. The first was the dependency of the federal constitutional dynamism on the political interests of the EPRDF. This dynamism is more appealing in the context of the divisions of political parties over the federal constitutional order and its specific institutional designs. Constitutional negotiations on the contentious features of the ethnic federal system are important to keep the Constitution as a 'living document', as Zelalem Eshete (2016, p. 4) said, "a healing principle that would allow a constitution to stand a test of time." The party system had the effect of avoiding multiparty constitutional negotiations on the Federal Constitution and pre-empting the momentum of constitutional reform agendas in multiparty competitions and democratic elections.

The second repercussion is the downsizing of the formal processes for amending the Federal Constitution. The Federal Government's adoption of the legislation on the concurrent power of taxation in 1997 and its decision in 2005 to delay the constitutional schedule of the national census have been disapproved as "unconstitutional" constitutional amendments. Under EPRDF, the principle of federal constitutional supremacy met with a low level of constitutionalism resulting from the narrow democratic space of *de facto* one-party rule. It follows that the dynamics of the constitutional amendment to accommodate contesting positions on the federal order have linkages with reforms in the party system. Endreas Eshete and Samuel Assefa (2018, p. 45) argued that if the recent opening of multiparty system aligned with ethnic federalism, some states would be led by parties not aligned with a dominant party in the federal centre.

CHAPTER SEVEN

Findings, Conclusion, Lessons and Remarks

7.1. Introduction

The dissertation has dealt with the implications of party system for the political legitimacy of the Ethiopian pluralistic federal constitutional arrangement and operation. The experiences of mature and consolidated federations such as Canada, India, Belgium, Spain, and Switzerland, on the one hand, and the track of defunct and fragile pluralistic federations such as the USSR, Yugoslavia, Czechoslovakia, Pakistan, and, importantly, before 1971, Serbia-Montenegro, etc., on the other hand, have practical lessons to draw on for the study. These lessons show in what aspects and ways the party system affects the legitimacy of a pluralistic federal constitutional system. Multiparty politics in the constitutional designing and operation of mature federations has greatly contributed to establishing and maintaining political legitimacy in their pluralistic federal constitutional orders. It has offered adequate institutional and political spaces for constitutionally conserved political diversity. That was a very rare thing in the cases of the defunct one-party federations; and it is still relevant to explain why the lack of a working multiparty system has impacted the stability and consolidation of federal systems that originated from and run under an overwhelming power concentration, in the varied form of hegemonic and dominant party systems. Such comparative knowledge of the party systems of pluralistic federations in combination with the democratic theories of polyarchy, consociationalism, and deliberation has shaped the contour of the study in its investigation of the Ethiopian federation experience.

As shown in Chapter 2, the relevance of party system to the legitimacy of multiethnic and multinational federal systems revolves around the pursuit of accommodative constitutional designing and practice for an accommodative federal constitutional order geared to give institutional and political responses to politically salient identity cleavages. Taking that seriously, unlike the syndromes of federal constitutional impositions, top-down representation and centralism, and constitutional ineffectiveness in one-party systems, multiparty system is appealing to the legitimacy of pluralistic federal arrangements in three broad ways: constitutional deliberation, federal representativeness, and constitutional supremacy. These are important to organise the research questions of the study that, in turn, have guided the structure as well as the objectives of the same.

Thus, the study consists of three research questions aiming to investigate the post-1991 Ethiopian party system *vis-à-vis* deliberative federal constitutional designing, federal representativeness, and federal constitutional supremacy. The questions, in their order, are the major themes of Chapter Four, Five, and Six. The findings of these three chapters serve as the major input to present integrated conclusions on the foundational and operational legitimacy of the existing federal constitutional arrangement. Based on the conclusions, lessons contributing to the growing theoretical and comparative study of federalism and democracy are articulated in the chapter. Given the inevitability of particularity in every case study, the wider contribution of the study should not be taken in the form of a highly generalizable proposition much far beyond the exposition of the Ethiopian federal system. In completing that exposition as much as possible, remarks about challenges, changes, and prospects that fall within the scope of multiparty democratisation and its interdependence with the federal system are also treated. Structurally, thus, this chapter is tailored into four sections: summary of findings, conclusion, lessons, and remarks.

7.2. The Findings of the Study

The dissertation has opened with the research question of multiparty deliberation in the designing process of the Federal Constitution. Chapter Four has made the case that the dominance of the EPRDF throughout the Transitional Period, roughly from mid-1991 to mid-1995, had the effect of significantly impeding multiparty deliberation in the writing of the ethnic federal constitutional arrangement. The EPRDF was avoiding multiparty constitutional dialogue while making facts on the ground that would make the ethnic federal system more appealing to the emerging political forces and elites, which were already ethnic-oriented. Apart from its sheer dominance in the security apparatus and the political institutions of the state, the flaring of ethnic mobilisations and ethnic parties in the context of the newly structured ethnic-based regions, accompanied by the precedence of the ethnically influenced regional and local elections of 1992 from public constitutional discussions and from the 1994 election of the Constituent Assembly, all add up to the *fait accompli* of the ethnic self-determination-based federal constitutional choice of the EPRDF. Multiparty deliberation was missed to see the seed of ‘original legitimacy’ in how the ethnic federal system became the constitutional reality of Ethiopia.

The deficit of multiparty politics in the making of the 1995 Federal Constitution has invited arguments questioning the legitimacy of the ethnic federal formula. Discourses about constitutional imposition and politicised constitutions have given the essence of the arguments. They reflect the frictions between federal constitutional imposition and the procedural fairness quality of ‘federal covenant’, and that of the tension between a politicised federal constitutional origin and the pluralistic lynchpin of federal constitutional bargains and negotiations. The Ethiopian federal option, regardless of its content, was formulated in a top-bottom manner. The exclusion of some ethnic parties considered more popular than the member parties of the EPRDF in the making of the constitution was detrimental to the procedural legitimacy of the federal constitutional choice. All Amhara People’s Organization (AAPO) and OLF (Oromo Liberation Front) are good examples of such ethnic parties purported to have more political legitimacy to defend and assert the interests of Amhara and Oromo than the Amhara National Democratic Movement (ANDM) and Oromo People’s Democratic Organization (OPDO), respectively. Assuming AAPO and OLF were relevant to the top two majority ethnic groups constituting about two-thirds of the Ethiopian population, their non-participation in the constitutional designing procedures is not without resonances of constitutional imposition.

Moreover, substantively, the exclusion and under-representation of ideological and multiethnic parties in the constitutional designing steps have contributed to the criticism of the ethnic federal system as exclusively imposed by ethnic elites and parties considered, formally and politically, under the auspices of the EPRDF or its politics, which is farmed along the thesis of ‘national-oppression’ that puts ethnic, or national, relations as the single most fundamental political contradiction in modern Ethiopia. The weakening of pan-Ethiopian political forces with the dismantling of the *ancien regime* and the incentives of EPRDF's 'revolutionary-democracy' to the intrinsic pursuit of ethnic politics had left the constitutional making venture under the monopoly of ethnic forces, without countervailing actors. What is known as “unionist” in the political vocabulary of Ethiopia has echoed that the ethnic federal system resulted from the absence of federal constitutional bargaining between the politics of unity and diversity. This has catapulted ideas on the downsides of the rights of ethnic self-determination, secession, and ethnic federal territories in terms of the historical and social realities of Ethiopia as well as the values of unity and peace.

Regarding a politicised constitution, the study underlines the transplantation of the distinguishing ideology of the EPRDF into the ethnic federal system of the Ethiopian Constitution. The federal dispensation has the ideological makeup of the Marxist-Leninist theory of the 'nationality question' from which EPRDF developed its 'revolutionary-democracy' to reconcile, says Donald Levin (2003), its interest in central hegemony with the autonomy of ethnic groups. In this theory, originally 'nations' and, as later included, 'nationalities' are vested with the republican aspiration of self-management. It has a very close intimacy with the right of ethnic groups in the Federal Constitution to self-determination up to and including secession, to exercise constitutional sovereignty, and to assume the power of constitutional interpretation through the HoF. It leads to say that EPRDF channelled the Marxist-Leninist 'theory of nationality' into the organisational outline of the existing ethnic federal system in the form of ethnic-based corporatism. EPRDF's monopoly of constitutional making in the early 1990s produced a highly politicised federal order fashioned from its ideological particularism.

As a result, from ideological and historical perspectives, the legitimacy of the ethnic federal arrangement has seen basic challenges. The assessments that ethnic self-determination, including secession, has serious clashes with individual rights, equality, and democratic constitutionalism form a major ideological question on the liberal democratic legitimacy of the Ethiopian federal system. From a historical perspective, the dismemberments of such pluralistic federations with the same ideological background as the Marxist-Leninist theory of the 'nationality question', such as the USSR, Yugoslavia, and Czechoslovakia, and the accompanied conflicts challenge the transmitted legitimacy of the Ethiopian federal constitutional order. Given that these failed communist federations also had one-party-controlled federal constitutional origins, how the EPRDF interpreted their experiences is a remarkable topic for further study.

The other research question of the study, under Chapter 5, focuses on the implications of the Ethiopian party system on the representativeness of the federal structures. Even though the Federal Constitution allows multiparty democracy, it has been more or less completely ineffective. That means three points: a low level of multiparty competition, no electoral transfer of power, and the overwhelming dominance of the EPRDF in the government and the public space. Convincingly, it showed the continuity of the Transitional Period long after the introduction of the new constitution in early 1995. Such organisations as Polity IV, Freedom

House, and the EIU-Democracy Index, in 2015 and 2016, placed Ethiopia in the categories of 'closed autocracy', 'totalitarian', and 'not-free', respectively. That has implications for the representativeness of the federal structures of power.

Since the introduction of the federal system, the lack of multiparty system has suppressed the democratic expression of the constitutional rights of ethnic groups, the self-rule of the states, the shared quality of the federal level of government, and the relevance of political pluralism to the federal goal of diversity accommodation. Party-centralization, under EPRDF, had rendered the apparatuses of the states the extended policy implementation hands of the Federal Government. They had limited political space to "own" the constitutional division of power. That would have been moderated if multiparty representation had been the reality of the federal orders of the government. The kernel point is the contribution of multiparty system to broad-based and accountable representation. It is not only advantageous to the democratic representation of regional minorities through alternative political parties, but also to the ethnic majorities to exercise meaningful accountability on how their constitutional self-rule should be, or should not be, effected and to influence the inclusiveness of the shared federal government. In addition, multiparty HoPRs could have also checked the concentration of the power of the Federal Government in the power nucleus of the EPRDF. The underperformance of multiparty system in Ethiopia had sacrificed the vertical representativeness of the institutions of the federal order for the discipline and internal power system of the dominant party that was envisioned as assuming the role of a 'vanguard party'. In sum, the gap in multiparty representation constrained the representativeness of the federal layers of government to the legitimate consolidation of the federal dispersal of power.

The last research question sees the Ethiopian party system from the perspective of federal constitutional supremacy, under Chapter Six. EPRDF was criticised for limiting the practice of inter- and intra-governmental constitutional disputes and undermining the values of independence, professionalism, and inclusiveness in the task of constitutional adjudication by HoF and CCI constitutional mandates. That had the implications of hindering the development of a vibrant and prudent constitutional adjudication system. The self-assigned role of a 'vanguard party' by EPRDF and the condition of party-centralism and state-party fusion in its functioning were important factors. They had blocked the merits of multiparty federal parliament and State

Councils and the effectiveness of power check-and-balance in the process of constitutional interpretation. It is also worthy of considering the potential advantages of multiparty State Councils to the constitutional interpretation power of the HoF.

The inclusion of representatives from competing parties within the HoF fosters a more farsighted and politically legitimate approach to its power of constitutional interpretation. A diverse HoF is also likely to encourage professionalism and inclusiveness in the process of selecting the three members of the CCI. Likewise, multiparty HoPRs mean the reduction of the influence of a single political party in choosing the six legal experts of the CCI and in approving the nominees of the Prime Minister for the President and the Vice-President of the Federal Supreme Court, as by that they are the Chairman and the Vice-Chairman of the CCI, respectively.

Therefore, in a general sense, the monolithic political representation of the non-competitive one-dominant party system has been identified as a critical factor undermining the system of power checks-and-balances. That has arguably stifled the emergence of intergovernmental constitutional disputes and, consequently, limited the practice of constitutional adjudication. The study has discussed the very rare, if any, case of inter-governmental constitutional challenge. Tigray State challenged the constitutionality of the Federal Proclamation No. 1101/2019, establishing the *Administrative Boundary and Identity Issues Commission*. That was the rippling effect of the dissolution of the EPRDF and its reconfiguration into the Prosperity Party (PP) and the opposing relations of the ruling parties of Tigray, the TPLF, and the PP. It showed the impacts of party disaggregation and federal-party symmetry in stimulating the practice of constitutional adjudication towards entrenching the supremacy of the federal conventional order.

As the other element of federal constitutional supremacy is the issue of constitutional amendment, Chapter Six has studied the meaning of the Ethiopian party system concerning the process of constitutional amendment, though, like the case of constitutional interpretation, with the problem of directly related empirical examples. Unconstitutional constitutional amendments and political violence with the dangers of unilateral constitutional amendments and changes are less likely to occur under competitive party system. There were instances of unilateral federal constitutional amendments in 1997 and 2005 on the shared power of taxation (Art. 98) and on the periodic census (Art. 103), in their orders. Evidence indicates that the HoPRs and HoF, both

under EPRDF, approved the amendments, precluding the constitutional requirements of public discussion and the votes of the State Councils. If it had not been for the EPRDF's monopoly of the government, such unilateral constitutional amendments could have been less feasible.

7.3. Conclusion

The making and operation of the Ethiopian federal constitutional design under the power monopoly of EPRDF undermined the designing, textual, and practical legitimacy of the federal system. Two interdependent analyses are in point.

The first explains that the deficit of democratisation in the post-1991 period has blocked the flourishing of a multiparty political environment to the process of federal constitutional bargaining among equals. The non-participation of contending political parties in the federal constitutional making is against the politics of federal accommodation, at the risk of imposing a federal constitution having the ideological distinctiveness of the dominant political actor. It connotes the consequences of a political transition that does not produce a reliable democratic opening to a legitimate federal constitutional origin.

The other analysis, the second one, focuses on the federal malfunctioning of EPRDF itself. The organisational structure and the *modus operandi* of the party had the features of centralism, party-state inseparability, inner-party power imbalance, the sub-ordinance of the "affiliate" parties, the culture of party secrecy, and the ideological self-prescription of vanguardism. They suppressed the federal self-rule and the joint quality of the federal shared-rule as well as the practice of federal constitutional supremacy. The overall effects of the Ethiopian party system on the federal system were the functions of multiparty deficit and the EPRDF's ideology, structure, and functioning. Both degraded the 'original', or the making, and the 'derivative' legitimacy of the ethnic federal formula, even though its pluralistic characters have the messages of political disaggregation and power de-monopolisation.

In conclusion, the implications of the EPRDF-dominated party system on the making and operation legitimacy of the Ethiopian federal constitutional arrangement have the following four features.

- a. The power-imbalance in the transitional task of constitutional designing enabled EPRDF to "faithfully" translate, said ICG (2009), its 'revolutionary-democracy' into the federal

constitutional dispensation. Political pluralism, as an expression of political choices with varying constitutional proposals, was missed in the federative, or federalization, process of Ethiopia.

- b. The merits of multiparty representation for the representative legitimacy of the federal orders of institutions were seriously undermined. The study emphasises the concept of 'representativeness' in terms of broad-based representation and accountability, as a bottom-up exercise of representation. That arrested not only the consolidation of the federal self-rule but also the development of systems of protection for regional ethnic minorities and power disaggregation in the federal shared-rule. The accountability of the institutions of the States to the specific interests of the constituent ethnic groups could not overcome the centralising structure and decision-making style of EPRDF wherein the federal executive overlapped with the power nucleus of the front, EPRDF. The weakness of accountable representation, in conjunction with the deficit of multiparty competitions and representations, contributed to the political and institutional exclusion and vulnerability of federal-unit level ethnic minorities.
- c. The unchallenged dominance of EPRDF in the HoF and the legislatures of the Federal Government and the States had the impact of jeopardising the practice of federal constitutional supremacy. The lack of constitutional constraints on the executive-led federal operation was catalysed by the ossification of the constitutional means of constitutional interpretation. Moreover, the dynamic development of the federal constitutional design became dependent on the political will and interests of EPRDF, to the extent of relying on the vote of the federal legislature to make laws and decisions which have the weight of constitutional amendments, notably related to Article 98 and 103 of the Constitution.
- d. There was incompatibility between the federal constitutional diversity and the hegemonic ideological articulation and centralism of EPRDF. Power accumulation in the Executive Committee of EPRDF was one of the examples of the incompatibility which engendered the super-ordinance of the Federal Government over the states (Aalen, 2002). It was eroding the concept of collective collegial leadership the party claimed to practice in its top-level and strategic decision-making.

From a comparative perspective, the above conclusions resonate with the legitimacy crises of defunct multiethnic/national federations that were under the clutches of the one-party systems of the communist regimes. Zolkos (2008) clarifies that with the following three points.

First, the federal constitutional designing processes of the defunct federations were under the exclusive leadership of the communist parties. Second, the institutions of these federations were politically too monolithic to accommodate the political diversity implications of multiethnic and pluri-national federalism. They aimed at reinforcing the political and ideological hegemony of the ruling parties to which even the constitutional right of self-determination, the foundation of the pluralistic federations of Marxist-Leninist origin, was subservient. Third, the power of the communist parties had very low, if any at all, acquaintance with the principle of federal constitutional supremacy. Expectedly, constitutional review mechanisms were ineffective in constraining the communist parties and the government they established not to encroach on the constitutional division of power and the federal shared-rule. The three points, hence, precipitated the fragility of the federations with the weakening of the ‘vanguard parties’ due to domestic, regional, and global forces, including, in some cases, the death of the “great leaders”, similar to Joseph Tito in the Socialist Federation of Yugoslavia. Gradually, the federations were without legitimate and effective mechanisms for meeting the growing hostile nationalisms. Similarly, changes affecting EPRDF were not without effects on the legitimacy discourse of the current form of the ethnic federal constitutional choice. How the political program of the “successor” of EPRDF, the Prosperity Party (PP), would deal with the trend of ethno-national discords while delinking itself from the ‘revolutionary-democracy’ and the ‘democratic-centralism’ of EPRDF has not yet crystallised into clear propositions, indicated in the remark section of the chapter.

Multiparty democratisation has the advantage of rectifying the effects of the EPRDF-dominated party system on the legitimacy of the federal constitutional system and its operation. It has been witnessed that federal design and practice have taken the central stage in the debates and electoral campaigns of political parties, as they emphasise and de-emphasise the common good values of ethnic politics. Some of the parties included in the study, such as the All Ethiopian Unity Party (AEUP), criticised the legitimacy of the ethnic foundation of the federal structure. Programmatically, it preferred a mixed federal design that considers administrative, developmental, historical, and social factors in delimiting federal-units. Whereas, parties like the

Oromo Federalist Congress (OFC) have advocated for the full enforcement of the ethnic federal arrangement of the Constitution. In both cases, the parties put forward alternative views of how federalism needs to be applied in the Ethiopian context. Multiparty politics brings these views to the processes of constitutional deliberations and negotiations engaging the protagonists and detractors of the ethnic federal design. Such processes are vital to opening up inclusive constitutional bargains constituting the forces of ethno-national centrifugalism and centripetalism. The bargain is important to trade off local, regional, and national interests in anchoring federal constitutional diversity with political pluralism, wherein a single entity or the federal centre has no the authority and capacity to resolve all the political conflicts over the federal constitutional order.

7.4. Lessons

Watts (2008) says that the complete picture of federal systems cannot be grasped without a full explanation of their constitutional design, federal operation, and political system. Party system is relevant to that because it affects the political system in which the process of federal constitutional making and enforcement is underway. Having studied the Ethiopian party system in light of the federal constitutional system, the following four lessons have been identified to have analytical significance beyond the Ethiopian case, especially to analyse the place of party system in the making of a pluralistic federal constitution for post-conflict multiethnic and multinational societies.

First, the making legitimacy of a federal constitution is impacted by the relative power of the actors in the process. The Ethiopian experience of the Transitional Period alludes to the fact that political changes caused by armed conflict are ill-assorted to deliberative federal constitutional making. They are disposed to present post-conflict power asymmetry to constitution-making. The enmity of the contending actors and the factuality of who is on the losing or winning side in the waning of conflicts barely generate accommodating transitional contexts. That implies political deliberations between the countervailing forces of unity and diversity suffer from the unequal command of violence, wherein the winning force, the victor, monopolises the transitional enterprise of constitutional writing. However, unresolved political conflicts over constitutions could submerge only to resurface later with greater intensity and, maybe, animosity.

Hence, inclusive and open political solutions in post-conflict pluralistic societies are necessary for the foundational legitimacy of constitutions aiming to respond to the causes and dynamics of identity-driven conflicts. The intransigence of the conflicting actors in Ethiopia to search for political solutions and the decimation of the apparatus of the state with the downfall of the Derge regime, plus the enmity of the EPRDF to its critics, notably under the camp of “unionist”, created unbalanced representation and participation in the making of the Federal Constitution. That has consequences for the legitimacy of the ethnic federal dispensation in terms of its particularistic ideological identification with EPRDF and federal constitutional imposition.

Second, there is an assumption that dominant parties, in general, have the quality of bridging the political cleavages of pluralistic societies. Some dominant parties, especially those not operating in a competitive multiparty environment, are too deeply inflexible to accommodate political differences, much less the constitutionally maintained diversity of pluralistic federalism. As an example, the gap in diversity accommodation in the EPRDF-led federal structures is worthy of noting. The ideology of EPRDF was mentioned as the chief reason for not admitting the membership applications of its “affiliate” parties from Afar, Somali, Benishangul-Gumuz, Gambella, and Harari states. Besides, its top-down leadership character spawned an elitist and centralised party structure. That was not only irreconcilable with the depiction of the party as a ‘mass-party’ but also with the federal constitutional dispersal of power. The repression of opposition parties, rather than crowding out opposition politics through pragmatically elastic politics and broad-based social base, was the character of a non-competitive hegemonic party similar to the EPRDF.

The dissertation underlines the incompatibility between the non-competitive one-party system and the Ethiopian federalism. In one-party system, says Bobbio (1989, p. 106), that:

Where no matter what the formal constitution says, gives rise to a form of government in which the greatest power is concentrated in the committee of the party (and its secretary) to the detriment of all the collegial and popular organs provided for in the constitution.

The above lines of Bobbio reinforce McEldowney’s (2013) recommendation that the African National Congress (ANC) needs to transform from an aggregate force of liberation into a disaggregated arena of accommodation.

Thirdly, the influence of a dominant party system on the principle of federal constitutional supremacy is eminent where those political institutions led by the party have the power of constitutional review. In FDRE, the political dependence and incompetency of the HoF to entrench the federal constitutional system have been widely mentioned to show the downside of the federal constitutional interpretation without multiparty democracy. That has elements of convergence with the fragility of federal constitutionalism in the failed communist federations and in the democratically problematic ‘de-federalization’ of Russia, in the early presidency of Vladimir Putin (Khan, 2002).

The last, fourth, lesson of the study points to the overall significance of democratisation for the legitimacy and stability of federal system. The instability of the ethnic federations of Iraq, Myanmar, Nigeria, and Bosnia-Herzegovina has been associated with democratisation failure (Chandler, 2000; Haddad, 2014; Holliday, 2010; Krause, 2011). Democratisation, primarily, reopens the opportunity for federal constitutional re-negotiations. Secondly, a democratically tested federal order exerts political legitimacy, as part of democratic consolidation and institutionalization. In a democratic federal order, political actors show commitment to the consolidation of the federal system, and this commitment influences the mainstream politics. The contentious nature of the Ethiopian ethnic federal arrangement would have been maturely addressed in the form of well-articulated constitutional options if democratisation had been on the right track.

The legitimacy predicament of a federal constitutional dispensation devoid of political opening is an important lesson drawn from the anal of the Ethiopian federal system that a dictatorial political system is so incongruous with federal constitutional order. Burgess and Gagnon (2010, p. 1) stated that the federal claims of some states, such as the former Soviet Union and Yugoslavia, should be seriously questioned, for they were under “centralised, authoritarian single-party dictatorships.” Authoritarianism, obliterating the rights of political organisation and equal participation, involves power centralization and limits the representativeness of a federal system. In a pluralistic federal polity, the sense of alienation by some ethnic groups from the central government due to the perception, or reality, that a federation-wide dominant party has an exclusive segmental attachment to one or more ethnic groups has the consequences of legitimacy crises and instability. It is fair to say that democratic federations have never experienced

dissolutions since they already have the political resources and legitimacy to resolve political crises threatening the sustainability of their federal constitutional systems.

7.5. Remarks

The completeness of the scope of the dissertation makes it necessary to see the implications of the recent political development that could entail substantial shifts to the Ethiopian federalism. In line with the discussions and conclusions of the study, the discourse on the political legitimacy of the federal system is hardly isolated from the political environment in which the federal system is designed and exercised. That makes it important to see the recent political changes through the lens of democratisation, which opens up the process of liberalisation to envision changes in the party system. The liberalisation of the party system consists of the dynamics of the opposition and the incumbent. The capacity of the former to wrestle with the latter nurtures the effectiveness of competing political parties, which is further augmented by revamps and adaptations made by the incumbent. That is the basic assumption behind the interdependence between political liberalisation and multiparty politics.

Thus, concerning Ethiopia, the implications of the recent political developments purportedly enshrining elements of liberalisation in the federal system need to be reviewed in terms of affecting the party system, both the opposition and the incumbent, to solicit the legitimacy of the federal constitutional system. In doing so, the following parts of this chapter give remarks on the liberalisation attributes of the recent reforms and the challenges of opposition consolidation to bring about multiparty politics, as part of liberalisation, to the federal constitutional order, and on the federal character of the Prosperity Party (PP). Finally, the outcome of the plurality system of election in light of federal representativeness comes into the discussion. The representational utility of the FPTP electoral system has received the attention of political parties since the 2015 election, in which the complete dominance of EPRDF and its “affiliates” in the HoPRs and State Councils took its height while public protests against the government had already fermented.

7.5.1. Political Reforms

The agenda of democratisation has been one of the most critical issues shaping the processes of political support and protests formed around the political performance of the government in effecting the multiparty setup of the 1995 Federal Constitution. There have been strong

criticisms of the failure of competitive politics in the successive elections conducted since 1995. This failure is central to the characterization of the EPRDF's rule as 'electoral authoritarianism' or 'hybrid regime', referring to limited political participation and the machination of elections for illiberal, including dictatorial, political ends. With this background, massive public protests and conflicts, mostly ethnic-based, led to changes at least in the leadership of EPRDF and the government and some reforms in the direction of political opening. What these reforms are and how they would lay the groundwork for the multiparty democratisation of the federal order constitute is worthy of discussing.

7.5.1.1. Reforms

The recent political developments are said to ease some of the barriers to exercise competitive multiparty system in Ethiopia. Many political authors agree that restrictive laws on media (Proclamation 590/2008) and civil society (Proclamation 621/2009), together with the participation of the EPRDF in major economic activities, deterred multiparty competition (Asnake Kefale, 2011, p. 692–694). In addition to the much-alleged influence of EPRDF on the National Electoral Board of Ethiopia (NEBE), the anti-terror law of Proclamation 652/2009 and the party-state blend exacerbated the condition of 'electoral authoritarianism' with the consequence of the dissolution of relatively visible opposition parties, which often led to the imprisonment of key opposition political figures. It was in contradiction of the constitutional limit of power. Mulugeta Aregawi (*The Reporter*, October 6, 2016) raised a fundamental issue on the government's accusation of opposing parties and political figures of violating the federal Constitution:

I don't have any evidence that suggests EPRDF is really committed to the Constitution which the party itself took the lead to draft... any constitution is devised to check the power of a government. It is the first and most important job of a constitution. So, where is the limit of the power of government in Ethiopia?

Even before the complete crowding out of the opposition parties in the 2015 election, Ethiopia had been one of the most insecure countries for opposition politics in the East African standard (UNECA, 2006).

Consequently, the legal and political reforms related to political parties, anti-terrorism, civil society and non-governmental organisations, electoral management body, the entry of exiled

opposition parties and media, the release of political opponents from prisons and so on have the promise of resetting the rule of the political game towards a competitive multiparty system. The reforms, Endreas Eshete and Samuel Assefa (2018, p. 42) wrote, are “signs of a turn to a more open and freer political space”. They have the potential to undo the repressive political system shaped by the leftist ideology of EPRDF and its inherently violent armed struggle origin. As a result, alternative political parties would be active players in opening and engaging in federal constitutional deliberation and negotiation, as that is to level up the representativeness of the federal structure and the effectiveness of the rules of constitutional interpretation and amendment.

However, the promise of multiparty democratisation is not free from significant doubts. It has become common to hear the opposition political parties complaining the government of the Prosperity Party (PP) is not living up to its vow of democratizing Ethiopia. The postponement of the 2020 election through constitutional interpretation, precluding multiparty deliberation, was the major launching pad for the opposition of many political parties and contending political actors. As a requirement of a democratic change, the opposition has claimed that the PP-led government has curtailed the cry for a genuine national dialogue to sort out mutually agreed-upon transitional political rules of game and to loosen of the hurdles of electoral competitions. Parties, notably the Oromo Liberation Front (OLF) and the Oromo Federalist Congress, have announced that the actions of the government have made the initiatives of political liberalisation high-sounding but vacuous rhetoric. They boycotted the latest General Election, which had been postponed from 2020 to 2021. The election neither followed a national deliberation nor had uncontested democratic credentials.

Taken together, as political opposition and protests could degenerate into armed rebellions and terrorism, the concerns of the opposition parties in Ethiopia need to be taken seriously. The way the reform addresses the dilemma of the rule of law and the politics of liberalisation would determine the evolution of the Ethiopian federal system, for the experiences of defunct and thriving multiethnic federations have shown ethnic conflicts are threats to the legitimacy and durability of ethnic federal system. In today’s Ethiopia, there must be rules for the process of democratization. To unravel what these rules consist of, heeding the voices of the opposition is essential. To counterbalance the incumbent and to manage the change within the confines of the

law and multiparty dialogues the consolidation of opposition parties is necessary. The opening of the political space and the waning of EPRDF's centralism, Christophe (2018) argued, needed to be accompanied by the rule of law which is important to avoid instability and further conflicts resulting from abrupt political redirections.

7.5.1.2. Opposition Consolidation and Democratization

The volatility of the Ethiopian opposition political parties has been a challenge to the consolidation of alternative parties that could keep the recent political reforms on the track of democratic transition. The low level of party-institutionalisation defines the volatility. Pane Bianco (mentioned in Anderson and LaPalombara, 1992, p. 400) figured out that the development of a political party has three stages: "genesis, institutionalization, and maturity." The second stage, institutionalisation, is critical to the electoral performance of parties. Programmatic articulation, autonomy, structural and functional consistency, efficiency and effectiveness, responsiveness, behavioural predictability, and the like are the components of party-institutionalisation. "An institutionalised party system, thus, is a system in which 'there is stability in who the main parties are and in how they behave'," to use Carbone's (2006, p. 27) expression of what the renowned experts of comparative political science Mainwaring and Scully said about party-institutionalisation. Instabilities in the programs and political functioning of parties opposing EPRDF had been criticised as a lack of party-institutionalisation in such a manner that EPRDF had very few encounters with opposition party-driven resistances. Lyons (2019, p. 11) gave the idea that "understanding the limitations on political opposition is essential to comprehending how the ruling party [EPRDF] operates as a strong authoritarian party." Aalen (2002) and Negaso Gidada (2015) identify sectarianism, power schism, and weak internal-party democracy as the dominant setbacks of opposition consolidation to mobilise the public and secure political concessions from authoritarian rule. They have brought about personalised leadership, ineffective campaigns, low political activism, and unpredictability in the Ethiopian opposition parties.

The institutional volatility of the opposition parties may be attributable to the practices of electoral boycotting and inter-election passivity. They have boycotted elections since the 1992 election that aimed to prove the TGE's (Transitional Government of Ethiopia) commitment to democratic rule and to form popularly endorsed local and regional leaders (Cohen, 1995, p. 162).

The parties elected to the Constituent Assembly in 1994 were the members of the EPRDF and its “affiliates” (see Chapter 4). The same was true for the first parliamentary and regional elections of 1995. The limited participation of the opposition parties was seen in 2000 when 12 of them and an independent candidate secured 18 seats in the HoPRs. In addition, the records of the majority of these parties conform to IDEAL’s (2007, p. 25) observation that East Africa is a region where opposition parties become moribund after elections, except for the visibility of some of their core leadership members. This gives rise to the unsuccessful electoral mobilisations of the public by the parties, as electoral boycotting aggravates the problem of party- institutionalisation for electorally unsuccessful parties that are prone to fragmentation.

In addition to institutionalisation, the other limitation of opposition consolidation points to the discords of political parties. Between 1991 and 2015, there were about ten party coalitions at the national level.²⁶ The Forum and EDJFF were the only functional of these coalitions in 2018. Ethnic-driven divisions were one of the chief factors impeding the process of party-aggregation and sustainability (Mesfin, 2015, p. 30). The inability or reluctance of opposition parties to form multiethnic coalitions resulted in the dearth of strong party alliances due to ethnic parochialism and organisational volatility (IDEA, 2007, p. 36). That had the impact of depleting the unity of opposition parties to counterbalance the EPRDF and its multiparty avoidance. Birhanu Nega (2010), the leader of Patriotic Ginbot-7 Movement, currently unionised into the Ethiopian Citizens for Social Justice (ECSJ), summarised why EPRDF had stayed in power in such a conflict-prone region as the Horn of Africa. He used four variables: economic performance, weak opposition challenges, ethnic division, and Western interest in the Horn of Africa. Leaving aside the variables of economic performance and Western influence, ethnic political discords were promoted by the EPRDF, and the opposition was extremely echoing that division, at the perils of counterproductively weakening itself (Ibid., p. 17). That relates to the growing political salience of ethnicity since the ethnic federal dispensation.

²⁶ COEDF, 1991; Joint Political Forum, 1992; SEPDC, 1993; CAFPDE, 1994; Coalition of Ethiopian Opposition Political Organization (CEOPO), 1998; United Ethiopian Democratic Forces (UEDF), 2003; Joint Action for Democracy in Ethiopia (JADE), 2005; CUD, 2005; Alliance for Democracy (AFD), 2006; Ethiopian Democratic Justice Forces Front (EDJFF), 2009; and Ethiopian Federal Democratic Forum-Medrek, 2009. Currently, AEUO and the Blue Party have agreed to a memorandum of understanding to begin the process of unification.

Therefore, the question of how political parties in Ethiopia could converge on the politics of ethnicity that has gained its knowledge system with divisive political jargon and perspectives, according to Maimire Mennasemay (2003), is a daunting point. Tiruneh Gemta (Interview, Addis Ababa, 2017) summarised that the divisions of parties on self-determination and federalism were the major factors for opposition division. In his words, Tiruneh (Ibid.) said, “there are some parties that are averse to hearing the issues of ethnicity at all. We do not support the unitarian approach, even in a democratic context.” In this context, the ethnic identification of the Ethiopian parties has received more attention than the political programs they have (Lidetu, 2011). The parties, in turn, easily exploit ethnic sentiments to secure votes, without giving weight to the ramifications of inter-ethnic distrusts and conflicts. Expressing his fear of the hyperbolic impact of the ethnic political cleavage, Negaso (2015, p. 1) claimed that the frequent clashes and heated controversies of political elites on the question of nationality along the camps of “unionist”, “federalist”, and “secessionists” are a foreboding of collective tragedy.

The opposition parties have been quick to reject the current government for being too Tigray, yet they have provided no credible multi-ethnic alternative... lead to an endless cycle of ethnic conflict that will bring down not only the party in power but also the prospects for democracy in the country as a whole. Joireman (1997, p. 407).

Thus, federalism, as a constitutional process (Ward and Ward, 2009, p. 51), demands a democratic political setup and practices. That necessitates appraising the ethnically, almost, polarised Ethiopian parties. Dowd and Driessen (2008) have the opinion that, in an ethnic-dominated party system similar to Ethiopia, a party is identified in terms of whom it represents rather than what policy it has. Based on the works of Rustow (1970) and Hadenius (1992, p. 112), the democratisation experiences of democracies have shown that national unity, like the breakdown of authoritarian structures, and early democratic elections, is an integral element to the success of democratization. That implies ultra-ethnic pre-commitment would be blocking cross-ethnic dialogues and unity to define and play with the necessary rules of the political game for the political transition of Ethiopia into a democratic federal system. The blockage has the cost of inviting military dictatorship and one-party system, including a non-competitive one-party-dominated system, with the rationale of avoiding social fragmentation and institutional impotency (Rabushka and Sheplse, 1972; Law, 2005). It is clear from the theoretical and empirical elaborations of the study in Chapter Two that dictatorships and one-party systems, in

de jure and *de facto*, are ill-suited to the making and operational legitimacy of federal constitutional system, much less to pluralistic federalism. so, multiparty democratisation is pivotal to the democratic legitimacy of the multiethnic federal system in Ethiopia.

7.5.2. Incumbency Reform: From EPRDF to Prosperity Party

Like opposition consolidation and institutionalisation, the federal quality of the incumbent is also relevant to understanding what the recent political developments form the standing point of the multiethnic federalism. The dissolution of EPRDF into a unified party, Prosperity Party (PP), which also admitted to the “affiliate” parties of EPRDF, was concluded in the second half of 2019. The Prosperity Party (PP) has claimed it has come up with a political program that has meaningful divergences from EPRDF’s. It is oriented to the pragmatic discourse of reconciling political polarisations formed around ideologies and ethnic politics (Prosperity Party, Party Program, 2019, p. 4). PP has emphasised the obsolescence of EPRDF’s ‘revolutionary-democracy’ in the changing domestic and international realities. In terms of legitimacy, it also criticises the political expedience of ‘revolutionary-democracy’ for its rigid social categorization, which alienated an insignificant part of society from political participation and rights (Ibid., p. 3). As a result, the necessity of a pragmatically defined consensual democracy for the healthy functioning of a multinational federal democratic Ethiopia is reiterated in the main political documents of the PP. How the party realises that requires further investigations into its structure, rules, and decision-making processes.

To begin with federal constitutional diversity accommodation, PP has recognised the official languages of the states as the official languages of the party and continues to order its regional party organisations to add at least one official language to their respective state-level official languages (Prosperity Party, Bylaw, 2019, Article 5). Regarding party structure, PP claims that it is both integrative and inclusive due to the unification of the former member parties of EPRDF into a single multiethnic party and the inclusion of EPRDF’s “affiliate” parties into that multiethnic coalition (Ibid., Article 14 (2) and 8(2)). Such integrative appraisals of the party structure are also made from the perspective of curbing the purported lack of unity among parties in its predecessor, EPRDF (Prosperity Party, Party Program, 2019, p. 4). The national and regional structures of the PP are beholden to the federal structure of the Constitution (Prosperity Party Bylaw, 2019). Specifically, the multilayer assemblies and conferences of the party are to

reflect population size and minority representation (Ibid., Article 8 (22)). This may be an important asset to the accommodation of regional minority ethnic groups without neglecting relevant issues such as voting mechanisms. In PP, as much as possible, decisions are to be made on a consensual basis; if not, a majority vote, starting from a simple majority, applies (Ibid., Article 8(2)).

Besides, the degree of power de/centralization in PP has effects on the federal function of the party. That emphasises the interaction between the degree of party power-concentration and federal self-rule for the major argument that in such unified federation-wide parties as PP, the leading subject of concern is how they give space to the independent decision-making capacity of their sub-national party organisations and branches. Does PP have elements of centralization? Alternatively, is it a consociational coalition or a sort of what Donald Horowitz says about a broad-based conciliatory majoritarian? The matter is the identification of the party, as discussed in the latter part of Chapter Two, in terms of the classifications of parties in federal systems as truncated, split, non-federal, integrated, and unitary (Thorlakson, 2001).

Though the Regional Assemblies of the PP have the mandate to establish and control their central committees, the role of the National Central Committee of the party in the activities of the latter should be closely studied. Likewise, several parallel organisational interdependences in the national and regional structures of the party have meanings for the operation of the federal constitutional dispersal of power, provided that individual members should enforce the decisions of the party (Ibid., Article 8 (2, 4-6)).

The centralised feature of PP is already a matter of debate as to its commitment to the ethnic federal constitutional arrangement. Associated with that, what implications does the inclusion of the “affiliate” parties of the EPRDF into PP have for the federal autonomy and participation of the relevant states in the federal shared-rule is to be worked out ahead. Equally significant, the recent political reforms require concomitant adjustments such as party-state separation, peacebuilding, and constitutionalism, “which would make for a more or less robust federal arrangement,” Endreas Eshete and Samuel Assefa (2018, p. 45). Given the culture of a dominant personality figure in the Ethiopian political parties, the concentration of decision-making in the upper echelon of PP, mainly in the office of its president, is the other variable that needs to be considered. The inseparability of the state and the ruling party could indulge presidential prowess

in the office of the Prime Minister of the Federal Government, and that has upshots for the federal autonomy of the states and the joint quality of the federal shared-rule.

7.5.3. Electoral System

There have been contentions among political actors over how the plurality system of election, the FPTP, has affected the representativeness of the federal and state legislatures of Ethiopia. The plurality system could be hailed for the emergence of a stable and coherent party system and government but its interplay with broad-based representation and minority protection is questionable. The winner-takes-all rule in the FPTP has the potential for “manufacturing of majority”, which does not constitute the majority of the total vote distributed among candidates or political parties and the entrenched exclusion of identity groups in the contexts of severely divided voters.

Thus, reforming the FPTP is “something overdue” in Ethiopia, says Solomon Gosu (*The Reporter*, October 22, 2016). It works against the political stability of the Ethiopian federal system. If ethnic groups or political parties believe that they are not *properly* represented in the government, they might be prone to nurture and back political actions and mobilisations outside the legal system. Birnir (2007, p. 160–161) expressed that if a group was without representation in the government and never had “its policy objectives met, group members’ incentive to participate in electoral politics is eliminated” and, then, prone to adopt different ways of asserting, ranging from protest to violence. In the 2015 election, “nearly four million people have voted for the opposition but failed to secure a seat in the HoPRs,” Salih (2018, p. 24). This vote suppression hints at politically unrepresented public interests. In addition, within the limited range of multiparty experiences available, the impact of the plurality system of election in exacerbating inter-party mistrust among competing parties was also very visible in the 2005 election, in which 299 constituencies were subjected to complaints of electoral irregularity and vote fraud. CUD, EPRDF, and UEDF contested the electoral results of 139, 50, and 98 constituencies, respectively (Abraha, 2008). The mistrust of contending parties coupled with political interests excluded from representation pose challenges to the legitimacy of the federal layers of the government and induce political protests and violence.

As an opportunity, in 2018, the ruling party and 15 opposition parties deliberated to amend the FPTP electoral system. They agreed to change it to Mixed-Parallel Representation in which an additional 20 percent of the seats in the HoPRs are to be filled with proportionality. For EDP, a participant party in the deliberation, the choice of the mixed system would balance the predicaments of a pure plurality system with proportionality and *vice versa* (Abis Makuria, Interview, Addis Ababa, 2017). Beyond the general recommendation of the proportional system, the fragility of competitive elections in the post-1991 political order undermines the effort to take lessons and develop other alternative electoral systems such as AV, STV, and SNTV. With these systems, how the Federal Government, the city administrations of Addis Ababa and Dire Dawa, and multiethnic states could advance ethnic accommodation through *condorcet* winners and cross-cutting candidates has important hypothetical insights. In comparing electoral systems, besides broad-based representation, the culture of compromise is valuable. Oertel (2004, p. 5) made a point just a year before the most competitive and unpredictable 2005 election that “a political culture engrained in a hierarchical authority within parties has considerable implications for the democratisation process in Ethiopia as efforts towards forging coalitions among political opposition parties, for instance, have in many cases failed.” The inability of opposition politics to find a coherent alternative politics to win the plurality of votes further strengthens the advantage of the incumbent to use state resources and power which has been one of the factors that engendered the single-party-dominated multiethnic federation.

Considering all, therefore, the dissertation has made the argument that the EPRDF-dominated party system and the fragility of multiparty democracy have areas of incompatibility with the federal constitutional system. Among them, the constriction of multiparty representation and participation in the making of the Federal Constitution and the walling of the edifices of the federal orders of the government off the opposition politics were prominent. They spawned salient political cleavages on the consensual origin of the ethnic federal constitutional design and the representative legitimacy of the structures of federal self-rule and shared-rule. The party system also prevented the practice of constitutionalism, so that federal constitutional supremacy lacked effectiveness. Such issues addressed in the study remain useful to make sense of the recent political developments, whether they are in the direction of democratic constitutionalism.

In the end, it is important to illuminate the limited scope of analysis stemming from using only the variable of party system to understand the complex subject of democratic transition in such developing states as Ethiopia, where the development of democracy is contested in terms of socioeconomics structures, culture, media, civil and political rights, judiciary independence, politicised military, etc. Moreover, the very limited experience of competitive democracy seriously challenges the degree of certainty needed to formulate unqualified imperative propositions on the significance of a multiparty system to the pluralistic federal system, for competitive politics could engender political crises, instigating ethnic-based conflicts and instabilities. The contentious nature of the legitimacy of the Ethiopian multiethnic federal system and the widening of political cleavages along ethno-nationalism suggest the predicament of competitive democracy. What is democratically legitimate and optimistic for one or more ethnic groups could be illegitimate and non-appealing for others.

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Tiruneh Gemta, Executive Committee Member, Oromo Federalist Congress (OFC), Interview June 2017, Addis Ababa.

Wondimu Golla, Deputy Head of the Office of the National Electoral Board of Ethiopia (NEBE), Interview, June 2017, Addis Ababa.

Appendices

Appendix A: Interview Guide for National Electoral Board of Ethiopia

1. Do you think the current electoral system has enabled ethnic groups (nations, nationalities and peoples) to be represented in the House of People's Representatives (HoPR) and in the State Councils?
2. Do you think the current electoral system has enabled ethnic groups to exercise self-administration?
3. Does the current electoral system, including related laws and directives, provide more incentives to regional parties or to countrywide parties?
4. What are the reasons for the plurality system has not been able to produce few and big political parties in the FDRE except the incumbent EPRDF and some other fronts?
5. How could the electoral system affect regional minorities under a situation in which majority ethnic parties have completely controlled the Regional Councils? What are the possible remedies in that regard?
6. Can running regional and federal elections at the same time result in a handful of parties, even one, to dominate both the Regional Councils and the HoPR? Moreover, what the implication that would have on the federal division of power?
7. Has the plurality system encouraged ethnic moderation or ethnic radicalization among ethnic parties of same ethnic group?
8. It is believed that under the plurality system ethnic parties have little, if any, interest to compete outside their core-ethnic support base. So, how do you asses unless they joining federal coalitions the possibility that some minority ethnic groups would be permanently excluded out of the majority party that establishes regional and federal governments?
9. As Per Pro. 532/2007, the constituencies are permanent, Woreda-based and confined within the boundaries of the regions. What would be the fate of those dispersed minorities which are not large enough to constitute a Woreda, if mostly ethnic political parties are the only available options? What is the rationale of respecting the territory of States for the federal elections?
10. How the electoral system could ensure the right of representation for ethnic minorities in major towns? On the way, do you see the possibility of a minority ethnic party becomes a winning party at the expense of others whose vote is highly split? This question assumes there are inter-ethnic competitions in heterogeneous constituencies.

11. In general, is the current electoral system is well suited to the federal system in terms of inclusive representation, ethnic harmony, and effective government and minority rights?
12. What would be the positive and negative effect of the plurality system of elections in dealing with extreme political parties? Does it reduce or potentially helping their electoral success?
13. As option, there are certain advantages related to inclusive representation under the proportional system. However, there are also criticisms on for it could execrable ethnic divisions and spell unstable government. Thus, do you agree that the application of proportionality in Ethiopia may have such effects?
14. How do you evaluate the suggestions that in order to boost the representativeness of the current first-past –the post (FPTP) system increasing the numbers of candidates in each constituency and reducing the voter-magnitude of each constituency?

Appendix B: Interview Guide for Political Parties

1. When was the party established? Its structure and the main constituency-concentrations of the party, in terms of states?
2. What is the position of your party with reference to federalism? What do you think are the main problems of the current federal system? What solutions do you propose as alternative?
3. How do you deal with ethnic-based group rights and other political ideals such as democracy, individual freedom and equality? Are these group rights preconditions to democracy or they are parts of it?
4. How your party, as a countrywide party, is organized in terms of decentralization and accommodating diverse viewpoints within?
5. Currently, there are 46 ethnics and 15 countrywide parties. Why the number of the ethnic parties is so high?
6. Besides of history, has the long incumbency of EPRDF the impact of promoting ethnic-based party formation? In relation to that, do you accept the view that according to EPRDF the issue of ethnic equality has received structural solution?
7. Do the ethnic parties have the role of protecting the constitutional power of ethnic groups and the constitute units of the federation?

8. Ethnic and inter-state tensions and conflicts have been witnessed sometimes, what role can ethnic parties, outside of the ruling ones, have in assessing the peaceful resolution of such tensions and conflicts?
9. What unique contributions have ethnic parties to the federal system.
10. Do you think that ethnic parties would result in ethnic tension and conflicts in addition to endangering a static politics obsessed with primordial identities than responding to new issues?
11. What are the areas of political differences among ethnic political parties?
12. Has there ever been ethnic voting behaviour in the post-1991 Ethiopia?
13. How do you assess the impact of EPRDF's overwhelming electoral gains in light of the federal system? How do you see the idea that EPRDF's dominance is serving the stability of the country as it has served as the main channel of communication and working together among ethnic groups?
14. How are the working procedure of the State Councils and the HoPRs conducive to minority parties?
15. How do you see the degree of party-polarisation among and within ethnic parties and countrywide parties?
16. If you choose the middle ground, on what agenda do you compete with OPDO?