

BOUNDARIES AND THE MAKING OF STRANGERS: THE ETHIOPIAN CONSTITUTION AND THE POLITICS OF DIFFERENCE

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Abstract

Law can play the role of either transforming strangers into co-participants in a common project or make strangers out of neighbors. This could manifest in various processes: in the way law defines the relevant communities indicating as to who belongs and who does not; in the manner it draws boundaries (both physical and conceptual); in the way it defines the relationship between the individual and a collectivity, etc. In the process of defining boundaries, the law constitutes what issues or relationships are important and what the appropriate disposition or attitude towards them should be. Even more importantly, the law often constitutes who we are and how we should view our interlocutors: whether we should view them as co-participants in a common project or think of them as outsiders or even as existential threats. This essay will pursue this general thesis by using the Federal Constitution of Ethiopia as an example. The claim is that this basic document has transformed neighbors into strangers both in the way it has drawn boundaries (physical and conceptual) and in how it has inclined Ethiopian citizens to view themselves and one another. The Constitution could, of course, be structured to realize the opposite possibility of law, its potential to transform strangers into co-participants in a common project; its capacity to minimize the sacrifices and violence of boundaries (both physical and non-physical) without sacrificing their advantages altogether. The dignity of equal

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citizenship at all levels of governmental structures is one such integrative mechanism.

Key-terms: *Ethiopian Constitution; ethnic federalism; constitutional identity; ethnonationalism; equal citizenship*

Introduction

There is a view of law that is prominent in the legal academy. Referred to as the *instrumentalist* view, it conceives of law as an instrument for pursuing (and achieving) an independently ascertained or established interests or values. The law is a means to an end.¹ It is a means of doing. Under this account, the law is not implicated in the way the end is defined or even in the identity of the actors or participants in pursuit of that end. This, I have argued elsewhere, is an incomplete view of law.² In this essay, I argue that the law is not just an instrument of pursuing independently set or established values and interests (a means of doing). It often constitutes those very interests, directly or indirectly. Even more importantly, it shapes the nature and character of the actors pursuing those interests. That is, the law has a constitutive, not just regulative, dimension to it. It is not just a means of doing; it is also a

¹ See Brian Z. Tamanaha, *Law as a Means to an End: Threat to the Rule of Law* (Cambridge University Press, 2006). See also Adrian Vermuele, Book Review: 'Instrumentalism' (reviewing Brian Z. Tamanaha's, *Law as a Means to an End*) (2007) 120 Harv. L. Rev. 2113. As Vermuele notes, there are varieties of instrumentalism, but for our purpose here the collective label will be sufficient.

² See Adeno Addis, 'Imagining the International Community: The Constitutive Dimension of Universal Jurisdiction' (2009) 31 Hum. Rts. Q. 129, 132; Adeno Addis, 'Law as a Process of Communication: Reisman Meets Habermas', in Mahnouch Arsajani, et al. (eds), *Looking to the Future: Essays in International Law in Honor of W. Michael Reisman* (Martinus Nijhoff Publishers, 2011) 33, 35; Adeno Addis, 'Economic Sanctions and the Problem of Evil' (2003) 25 Hum. Rts. Q. 573; Adeno Addis, 'Role Models and the Politics of Recognition' (1996) 144 U. Pa. L. Rev. 1377.

means of being.³ Lest I be misunderstood, the claim here is not that law is the only (or even the most dominant) means of being. There are, of course, many other factors and processes that go on to define who we are. Rather, the claim here is simply that we should never neglect the fact that the law does contribute, often significantly and decisively, to how we view and understand ourselves as agents and how we position ourselves in relation to others.

I shall explore this constitutive role of law by using the current Ethiopian Constitution as an example. The claim is that the Constitution made strangers out of neighbors, imagined pure (authentic) communities out of a country of hybridity, transformed co-participants in a common project (citizens) into competitors for domination, inclining participants to view competitors as constant existential threats. Of course, there were linguistic and ethnic groups prior to the adoption of the Constitution. No one denies that the country is richly endowed with diverse cultures. But what the Constitution did was essentialize those groups, organizing and mobilizing them in a way that transformed the differences into hard

³ See Adeno Addis, *Imagining the International Community*, *ibid*, 132; Joseph Raz, 'Can There be a Theory of Law?', in Martin P. Golding & William A. Edmundson (eds), *Blackwell Guide to the Philosophy of Law and Legal Theory* 324, 333 (Blackwell publishing, 2005) ("In large measure what we study when we study the nature of law is the nature of our own self-understanding.") Law, for Raz, is constitutive of who we are. It is a means of being not just a means of doing. But cf. Ronald Dworkin, *Justice in Robs* (Belknap Press, 2006) 229. Dworkin asserts, somewhat too quickly that the law has no such constitutive role. ("[I]f we want to study our own self-consciousness we would do much better to turn to fiction, politics, biography depth psychology, and social sciences. We reflect on the character of law to know what we must do not what we are.") In this dispute, I take Raz's side. Law cannot be understood exclusively in instrumental terms, as a means of doing. What we must, or need to, do is to a large extent suggested by who we are or who we think we are. See also Axel Honneth, 'Beyond the Law: A Response to William Schuerman' (2017) 24 *Constellations* 126, 128 (Honneth argues that modern legal systems are "a constitutive sphere of action within our societies, insofar as they provide a state-sanctioned form of mutual recognition... [or misrecognition].")

parameters (thick identities) and often the primary means through which individuals and groups assess not only the issues before them but one another as well. An important purpose of constitutions is to soften hard parameters over time. The Ethiopian Constitution went in a different direction. As a matter of law, it entrenched and even hardened those parameters.

What is imagined or constituted can, of course, be unimagined, or constituted differently.⁴ A separate project I am working on will attempt to show how that could be done in relation to the Ethiopian Constitution. This (the current) essay is mainly concerned with the issue of how the Constitutions transformed differences into hard parameters by essentializing groups and differences. In the subsequent essay, entitled “The Making of a People,” I shall explore how the rich diversity that defines Ethiopia could be accommodated in the contexts of an integrative constitutional order where the dignity of equal citizenship is real and where citizens view themselves as co-participants in a common project rather than as competitors for domination.

⁴ Benedict Anderson in his classic work, *Imagined Communities*, argued that “all communities larger than primordial villages of face-to-face contact (and perhaps even these) are imagined.” The reason why he says that they are imagined is because members will never know fellow-members, meet them or even hear of them, and “yet in the minds of each lives the image of their communion.” Benedict Anderson, *Imagined Communities: Reflection on the Origin and Spread of Nationalism* (2d edn, Verso, 1991)

6. To say that communities are imagined is not to say that they are false. Communities are distinguished not on the basis of the falsity or genuineness of a community, but rather “by the style in which they are imagined.” The style in which the Ethiopian Constitution imagined communities is in the form of nations with all of the historical connotations and difficulties of the term. That process of imagining has had significant impact on how groups viewed one another, as members or strangers.

1. The Ethiopian Constitution and the Making of Strangers

1.1. Boundaries

The world is full of boundaries—both physical and social. Boundaries “form indispensable protection against violation and violence”⁵ but the divisions those boundaries sustain “also carry cruelty and violence.” Put another way, boundaries supply the conditions for identity and agency, “but they also close off possibilities of being that might otherwise flourish.”⁶ Boundaries are preconditions for freedom, but they can also be sources of competition, conflict, and domination.

Although boundaries are drawn in all sorts of ways and by all sorts of means, many boundaries that organize and regulate our lives are drawn by law, whether the boundaries are physical, social, or conceptual. The Ethiopian Constitution has drawn such boundaries which have had enormous impact on the nature of the relationship among citizens and the nature and condition of the political community within which they live. Those boundaries, I claim, have, as a formal matter, transformed a people into peoples, a nation into a form of a united nations, neighbors into strangers, and a country of hybridity into ill-defined nations and nationalities some of whom view each other as strangers or even constant threats to their own survival.

1.2. We “the People” v. We “the Nations, Nationalities and Peoples” (The Conceptual Boundary)

1. Constitutional Identity

A constitution is the basic or fundamental law of the state. It is basic or fundamental in two senses. First, it is the source of all other laws within

⁵ Connolly, *The Ethos of Pluralization* (Univ. of Minnesota Press, 1995) 163.

⁶ *Ibid.*

a particular political community. Other laws within that community that are inconsistent with it will be preempted. Constitutions are at the head of a hierarchy of laws.⁷

Constitutions are fundamental in yet another sense. They define the basic structure of the political community—whether the political community should organize itself as a parliamentary or presidential republic, whether to have a federal or unitary state, etc. It establishes the institutions and system of government. This is foundationalism in the *institutional* sense. Even more importantly, however, a constitution is fundamental in that it seeks to define the nature and character (the identity) of the political community.⁸ It attempt to create a coherent narrative of selfhood or peoplehood. We might refer to this as *identitarian* foundationalism.⁹ As I have argued elsewhere¹⁰, the story a constitution narrates about the political community might be true or false, but the act of making it an official story enables the narrative to take hold as factual and even primordial. That is what narratives do. They constitute that which they claim to be describing.

⁷ For an example of a supremacy clause, see Article 9 of the Ethiopian Constitution which provides that the “Constitution is the supreme law of the land. Any law ... which contravenes this Constitution shall be of no effect.” See also Article VI of the U.S. Constitution which has a more robust notion of supremacy.

⁸ Martin Loughlin, *Against Constitutionalism* (Harvard University Press, 2022) 112-113 (arguing that constitutions serve a symbolic or collective political identity). Jonathan Gould, ‘Puzzles of Progressive Constitutionalism’ (2022) 135 *Harvard Law Review* 2054, 2074 (“Under constitutionalism, a constitution shapes not only the structures of government but also national identity.”); Gary Jeffery Jacobsohn, *Constitutional Identity* (Harvard University Press, 2010); Michael Rosenfeld, *The Identity of the Constitutional Subject: Selfhood, Citizenship, Culture, and Community* (Routledge, 2010).

⁹ For a description of the notion of identitarianism in the contexts of inter-tribunal dialogue, see Adeno Addis and Jonathan Remy Nash, ‘Identitarian Anxieties and the Nature of Inter-Tribunal Deliberations’ (2009) 9 *Chicago University J. Int’l L.* 613.

¹⁰ Adeno Addis, ‘Constitutional Preambles and Narratives of Peoplehood’ (2018) 12 *ICL* 125.

Quite often it is constitutional preambles that attempt, albeit briefly, to define the basic identity of the political community (the people, nations, citizens, etc.) which is supposed to have ordained and established the document itself. The paradox, of course, is that the document often constitutes the very people or the nations which are said to be the sources of authority for the document.¹¹

2. From Citizens to Strangers

Whatever system of government constitutions set up and however differently they might distribute power (vertically or horizontally), generally constitutions have one common purpose. They are meant to forge and develop a political community that enables members to see each other as co-participants in a common project. Constitutions are supposed to bind people together, not to set them apart. They are meant to constitute the demos, the people—a sustainable political community.

Often, constitutions announce in their preambles who the sovereign is who has adopted and granted the constitution or on whose behalf the constitution was adopted. Almost all national constitutions which have preambles (and most do) begin with “we the people [of country x]” or its variations such as “the people of [country x]” as the ultimate sovereign which have ordained and established the constitution. The reference is to one people [singular] either as a descriptive or (more likely) as a normative matter.¹²

¹¹ To see how scholars attempt to resolve this paradox, see Adeno Addis, *ibid.*

¹² By “normative” here I mean to refer to the common aspiration of constituting a people that binds citizens together and the commitment to the norms that would further that aspiration. See, *ibid.* When the Constitutions of India and Nigeria, countries defined by

The Ethiopian Constitution is the only national constitution¹³ in force in the world today that refers to “peoples” [plural] and “nations” as the source of the Constitution and in whom all sovereignty reside, as Article 8 provides.¹⁴ The Constitution fragmented (or sorted) a people into peoples and a nation into nations and in the process transformed the nation-state from a country of citizens (at least aspirationally¹⁵) into “a nation of nations,” as one author put it.¹⁶ Under this construct, as a constitutional matter Ethiopians are sovereign not as undifferentiated Ethiopian citizens but as members of the various nations, nationalities, and peoples. Ethiopians are not linked to one another directly as citizens or as members of a people (singular). Their link is mediated through their membership to the various nations¹⁷ to which they are

diverse ethnic and religious groups, begin with “we, the people” the declarations can reasonably be understood to be normative assertions.

¹³ See Adeno Addis, ‘The Making of Strangers: Reflections on the Ethiopian Constitution’ (2022) 38 *Journal of Developing Societies* 421; Adeno Addis, ‘From a Nation of Citizens to a Nation of Nations: National Citizenship without Depth’ (2021) 14 *International Journal of Ethiopian Studies* 141; Adeno Addis, ‘The Making of Strangers: The Ethiopian Constitution as a Suicide Pact, Ethiopia Insight’ (September 18, 2020).

¹⁴ Bosnia-Herzegovina is the only other country that refers to “peoples”. However, even then there is a difference between the Bosnian and the Ethiopian approach. Bosnia-Herzegovina’s Constitution refers to the undifferentiated “citizens of Bosnia-Herzegovina” as having a say in ordaining and establishing the document. No such thing in the Ethiopian Constitution.

¹⁵ Of course, to say that the country was, as a structural matter, a nation of citizens is not to claim that there was in fact equal citizenship. Far from it. Citizens were unequal along many metrics. But as an institutional matter, the aspiration was to work towards the dignity of equal citizenship. On the other hand, it is in the very nature of things that a country divided into nations will be unable to provide equal citizenship across the land for the idea of a nation is that there are insiders and outsiders, indigenes and non-indigenes, for important governance and ownership purposes.

¹⁶ Fasil Nahum, *Constitution for a Nation of Nations: The Ethiopian Prospect* (The Red Sea Press, 1997).

¹⁷ For purposes of efficiency, I shall use “nations” to refer to all three categories that are said to be units of sovereignty under the Federal Constitution: nations, nationalities and peoples. After all, the Constitution itself treats them as if they refer to the same thing. See Article 39(5).

said to belong. That identity, not Ethiopian citizenship, becomes the prism through which individuals see and evaluate not only the issues before them but one another as well. Put simply, under the current Ethiopian constitutional arrangement, Ethiopian citizenship plays a secondary (derivative) role. Membership to the ethnonation is primary and thick.¹⁸ As I shall indicate later, some of the regional states' constitutions appear to have been drafted under that assumption.

Even though the Ethiopian Constitution is alone among national constitutions in using the plural “peoples,”¹⁹ there is another basic law that uses that term as part of its opening phrase. That document is the United Nations Charter (Charter), the constitution of the United Nations. Its preamble begins with the phrase “we the peoples.”²⁰ The term “peoples” here refers to countries. The Charter was establishing an organization, a forum, for independent states, not a federal or an even confederal system. It seems, therefore, unsurprising that the nations and peoples which are organized as regional states under the Ethiopian constitutional arrangement seem to act as if they were mini-countries with their own “nationals” negotiating for the best interest of their nation which, according to the Federal Constitution, can transform themselves into fully independent countries if they so

¹⁸ See Adeno Addis, ‘The Unbearable Thinness of national Citizenship in a Country Organized as a “Nation of Nations”: The Case of Ethiopia’ in Abadir M. Ibrahim and Kokebe Wolde (eds), *Between Failure and Redemption: The Future of the Ethiopian Social Contract* (Northwestern Roberta Buffett Institute for Global Affairs and Northwestern University Libraries, 2022) 191.

¹⁹ Even Switzerland starts with “we the Swiss people”. The preamble begins: “We, the Swiss People and Cantons...” see, Federal Constitution of the Swiss Confederation, 1999.

²⁰ UN Charter’s Preamble opens thusly: “We the Peoples of the United Nations...” See the UN Charter, 1945.

wished.²¹ Even more directly, some of these mini-countries view one another as existential threats.

So, while almost all national constitutions are designed to transform strangers into co-participants in a common project, the Ethiopian Constitution turned a people into peoples, a nation into a form of a united nations, and neighbors into strangers (even if they have lived together for generations) on the account that they belonged to different nations, nationalities or peoples. Rather than being a document for integrative association, the Constitution has ended up being a document for a dissociation order. From the very beginning of the document--the preamble--the Constitution sets out to sort people into different nations, nationalities, and peoples and to make those identities, not Ethiopian citizenship, as the most important or salient legal and political identities. The constitution created formal conceptual boundaries that recognized categories exclusive of other categories. One is either a member of this nation or that nationality. In a country of hybridity, exclusivity reigns supreme in the constitutional setup.

1.3. From Conceptual to Physical Boundaries: Article 47 and the Never-Ending Search for the Authentic (Pure) Community

The conceptual boundaries that sorted citizens into members of ill-defined nations, nationalities and peoples²² were firmed-up with physical boundaries. The Constitution created ethnically or linguistically organized regional states as the constituent parts of the

²¹ See, Article 39 (1).

²² Article 39 attempts to define these terms. However, not only is the definition somewhat vague ("a common psychological make-up?"), but apparently the same definition applies to all three terms—nations, nationalities and peoples. Why the three terms are listed separately when they apparently mean the same thing is rather unclear.

federation (some might say confederation). The physical boundaries formalized and entrenched the conceptual and social boundaries of nations, nationalities, and peoples. They turned cultural and linguistic differences into hard parameters.

Article 47 established nine regional states most of which were named after the dominant ethnic or linguistic group of the regional state.²³ In some cases, the regional state is specifically referred to as the state of that people making it unmistakably clear as to who the primary stakeholders are. Thus, for example, the Harari regional state is referred to as “the State of the Harari People” and the Gambela regional state as the “State of the Gambela Peoples.”

These constitutionally defined and entrenched identities have had enormous symbolic, substantive, and practical consequences on the nature of the relationship among Ethiopian citizens. First, the naming of a region after a particular ethnic or linguistic group symbolically excludes Ethiopian citizens who happen to belong to other ethnic or linguistic groups, even though those individuals might have lived in the region for generations. Their membership to a different ethnic or linguistic group becomes a mark of alienage.

Second, this linguistic and symbolic exclusion is, in fact, accompanied by substantive exclusion or disenfranchisement. Several constitutions of the regional states, apparently relying on what they believe to be authority granted to them by the Federal Constitution,²⁴ have adopted provisions which specifically make distinctions between members of

²³ In some cases, it is a minority ethnic or linguistic group after which the state is named and by which the state is said to be owned. Hararis make up only 9 percent of the population of the state in the State of the Harari People.

²⁴ Preamble, Article 8, Article 39(5) and Article 52(2)(b).

the particular nation (ethnic or linguistic group) after which the state is named and other Ethiopians--between indigenes and non-indigenes, primary stakeholders and others. Again, take as an example the Constitution of the State of the Harari People. The Constitution codifies the view that significant sovereign authority is reserved for ethnic Hararis. It, for example, provides that membership to the upper house of the state's parliament is to be restricted to ethnic Hararis.²⁵ The Constitution of Benishangul-Gumuz takes it even further. Article 2 declares that "ownership of the state remains" in five, apparently indigenous, ethnic groups listed therein. Other Ethiopians who happen to reside within the state are not to be regarded as proper owners of the State regardless of how long or for how many generations they might have resided in the state. Those who are not consider indigenes do not enjoy equal sovereign and ownership authority. Under the Constitution of Benishangul-Gumuz, therefore, Ethiopian citizens are not one another's equal. There are indigenes and settlers, primary stakeholders and people with less than ownership stakes, members of the relevant nations and non-members, etc.

The Constitution of the Oromia Regional State also endorses the distinction between insiders and outsiders, members of the nation and non-members, albeit less directly. Thus, the preamble begins "We the People of the Oromo Nation," not "We the People of the Oromia Regional State" as the people who have ordained and established the Constitution as a manifestation of their right to self-determination. Given how a "nation" is defined in the Federal Constitution, the reference to the "Oromo nation" cannot be said to be inclusive of non-Oromo Ethiopians in the regional state as entitled to the same measure of self-determination as members of the Oromo nation. Indeed, Article

²⁵ See Constitution of the State of the Harari People, Articles 48 and 49.

14 of the Constitution of the Oromia Regional State makes that clear. It is “the people of the Oromo nation” who are entitled to a “full measure of self-government.”

As these regional state constitutions indicate, there is grading among Ethiopian citizens. The many internal displacements and mass killings within the various regional states are premised on and inspired by the proposition that the victims are not proper members of the particular “nation.” They did not belong.²⁶ Their ethnic and linguistic affiliations are viewed as markers of alienage. The story of alienage and displacement is a story that is far too common across many parts of the country. Sorting people into “us” and “them” has become a constitutional and political culture.²⁷

²⁶ During the identity-based killings and displacements that took place in Shashemene following the murder of Hachalu Hundessa, many non-Oromos were told, as they were murdered or displaced, that they did not belong there even though they were born there and had lived their entire lives in the area. One resident put it this way: “I was born and raised in Shashemene, it is the only place I know. But to the rioters I was suddenly an outsider who did not belong here.” S. Getachew & G. York, ‘Ethiopia’s Latest Violence Exposes Ethnic Fault Lines, Threatening the Country’s Democratic Dreams,’ *Wardheer News*. Retrieved from <https://wardheernews.com/ethiopias-latest-violence-exposes-ethnic-fault-lines-threatening-the-countrys-democratic-dreams/>. Not to belong means not to be regarded as part of the “nation.”

²⁷ Some argue that it is not the Constitution but only the manner in which it has been enforced (or not) that has led us to our current predicament where citizens see fellow citizens who happen to be members of other ethnic or linguistic groups as strangers who did not belong to this or that “nation.” It is true that malevolent or incompetent leaders have misused the Constitution to achieve ends inconsistent with the constitutional mandate or even ignored parts of the Constitution which were meant to constrain the reach of government. After all, the Constitution includes every conceivable human right taken wholesale from international human rights documents. Yet, those constitutional rights did not seem to have made much difference in how successive government acted towards their citizens in the last three decades. However, it would be a mistake to attribute the constitutional failure to lack of enforcement alone. Even if fully and faithfully enforced, a constitution that divides people into mutually exclusive groups called nations, where some Ethiopians are members of the nation and

Despite the Federal Constitution's claim of the pre-existence of distinct "nations" which are supposed to have adopted the document as a measure of their self-determination, the fact is that these "nations, nationalities and peoples" are to a large degree the creation of the document itself and those of ethno-political entrepreneurs. The Preamble, Article 8, Article 39, Article 47 and Article 52 have constituted the several nations by the very fact of asserting their existence. That is what narratives do; they constitute the very thing they claim to be describing. The assertion of the pre-existence of distinct nations might be normative claims disguised as a description of historical facts. The Constitution transformed a country of hybridity into a nation of distinct and mutually exclusive nations. It turned the historical into the primordial and the normative into the factual. The consequence has been that ethnic identity has become the primary means through which issues and disputes are evaluated and one's very attitude towards fellow Ethiopians determined. It is not, therefore, the existence of diversity that haunts Ethiopia, but rather how that diversity has been organized and shaped by the Constitution. The Constitution froze and indeed hardened certain identities as hard parameters.

Article 47 gave a geographic dimension to the politics of difference. Not only did it establish ethnations (nine of them at the start), but it also provided for a process for creating more physical boundaries to usher in more "nations" into regional states. Two more regional states have been added to the federation pursuant to the right provided for in Article 47 that "nations, nationalities and peoples" within existing

others not, where some are primary stakeholders and others with a lesser degree of ownership and sovereign authority, cannot but lead to the rather common controversy as to who properly belongs to this or that nation. It is primarily the nature and structure of the Constitution that has led the country to where it finds itself—fractured—where intergroup trust is in short supply.

states may establish their own state “at any time.”²⁸ And more groups are demanding that they be given their own ethnic state as well.²⁹ The Constitution continues to sort people in the name of searching for the elusive authentic community. As I have argued elsewhere, the search for the ever more pure community in a country of hybridity is like carving a crystal. The size gets smaller, but the same structure will be reproduced at that smaller level. There are likely to be minority “nations” within the new structure with their own members, their own interests, and with the same intensity to assert their identities. The same issues and questions will emerge, albeit in a smaller unit.

The paradox of the politics of difference is that in the name of “liberating nations” it has ushered in an era of exclusion and oppression of minorities within those nations. The idea that one can work through the challenges of diversity through a process of creating more ethnonational states in a country of 80 or so ethnic or linguistic groups is rather puzzling. Rather than getting a handle on the challenges of diversity, continual sorting of people into nations will risk what the noted German social theorist Jurgen Habermas calls “blood purification rituals” exposing “new minorities to new waves of repression”³⁰ and perhaps even ethnic cleansing.³¹ The challenges of diversity do not disappear because more nations are created to get to the authentic community. There is no such thing. We turn diversity from a challenge into a rich resource not by running away from it but by creating diverse communities whose members view one another as equals and engaged in a common project. In a diverse country such as

²⁸ Article 47(2).

²⁹ The Wolayetas and the Gurages are two good examples.

³⁰ Jurgen Habermas, *The Inclusion of the Other: Studies in Political Theory* (The MIT Press, 1996) 142.

³¹ *Ibid.* 219.

Ethiopia, the way to develop the culture of living with difference is to start cultivating the condition for diverse communities, not by chasing the elusive authentic nation.

1.4. Article 39: From Separation to Divorce (The Drawing of the Ultimate Boundary)

While Article 47 transformed a nation of citizens into a nation of nations both as a conceptual and physical (geographic) matter, Article 39 took it further. It recognized the “unconditional” rights of these nations to complete the process and establish themselves as full-fledged countries if they so wished. “Every Nation, Nationality and People in Ethiopia has an unconditional right to self-determination, including secession,” declares Article 39.³² Political divorce would be realized if “the demand” for secession were “supported by a [simple] majority” of the residents of the particular regional state.³³ The Ethiopian Constitution created nations some of which view themselves as “countries in waiting.” The Preamble, Article 8 and Article 47 created nations and Article 39(4) provided for the process through which those nations become nation-states.

Viewed this way, the Constitution constructed structures that, in stages, would turn citizens into strangers to one another, culminating in the ultimate manifestation of estrangement: political divorce. Ethiopia is almost alone in the world to have entrenched the right of secession or political divorce in its constitution.³⁴

³² Art 39(1).

³³ Art 39 (4).

³⁴ See Tom Ginsburg & Mila Vertseeg, ‘From Catalonia to California: Secession in Constitutional Law’ (2019) 70 *Alabama Law Review* 923-985. The entrenchment of the right of secession in national constitutions is a rare event. Article 113 of St. Kitts and Nevis and Article 74 of Uzbekistan Constitutions provide for secession, the former to

Article 39 by its very existence supplies the language of law to those who seek to use the right to divorce as leverage to extract resources or power. A “people” or a “nation” (to be more precise, the elite) may find it useful to threaten, either explicitly or impliedly, to secede if it does not get its way on matters of resources or power allocation, even if its demands are unjustified.³⁵ We have seen this scenario play out in Ethiopia in the last few years. As more nations and nationalities seek, may “demand,” and attain legal recognition as regional states, the occasions for more, and more intensified, politics of difference will likely increase.

A fully ethnicized political structure with the right of secession to the constituent parts of the federation at any time for any purpose will continue to be a disincentive for a collective life and an integrative process. The process of open and sincere deliberation about fair terms of cooperation, essential for collective life, will be the casualty of the entrenched right of political divorce and the politics of difference generally.

ensure that the Island of Nevis was willing to join the federation after independence from Great Britain and the latter to allow only one republic (Karakalpakstan) to leave. France adopted a secession provision in 1959 (repealed in 1995) to allow states to leave the French Community, the constitutional organization set up in 1958 between France and its remaining African colonies. Art 4 of the Liechtenstein’s 1921 Constitution provided for the secession of communes. In 2005 Sudan adopted a provision (Article 219) in its constitution so as to allow the secession of South Sudan as part of the settlement ending the long conflict. As it is clear, the issues that these countries faced were very different from those that Ethiopia faced and still faces. They were dealing with either a one-off issue (the case of South Sudan) or as a condition of merger between islands (the case of Nevis) or to deal with the circumstances of colonial possessions (France), etc.

³⁵ Cass Sunstein, ‘Constitutionalism and Secession’ (1991) 58 University of Chicago Law Review 633.

Article 39 does not just create a process for dissociation, but it creates the attitude and disposition of the interlocutors as well. It inclines members of the various nations to view one another as strangers locked in constant struggle for resources and power, not as engaged in a common project. The Constitution established the identity of groups and, even more importantly, it shaped the attitude of members of the various groups towards one another. It created social boundaries to go along with the physical and conceptual boundaries it entrenched.

The Constitution entrenches Article 39 in a manner that makes it almost impossible to amend. The politics of difference protected under Article 39 gets full protection under Article 105's amendment process. Not only do the House of Representatives and the House of the Federation need to approve a proposed amendment to Chapter Three, in which Article 39 is placed, by two-thirds majority each, but "all State Councils" must concur as well.³⁶ The odds of getting unanimity among the states are very long and are getting even longer as more "peoples" (or is it "nations and nationalities"?!) invoke their right under Article 47 to establish their own ethnostates. Interestingly, the amendment process in Articles 104 & 105 is itself to be amended through the same procedure required for amending Article 39: there has to be an affirmative vote from all regional states.³⁷ Such is the double entrenchment of the politics of difference.

Nothing is more dangerous to the idea of a stable and democratic national political community than a majority that is continually frustrated by a small minority veto such that the basic document will

³⁶ Article 105 (1).

³⁷ See, Art 105(1).

be unable to respond to the urgent needs of the national political community.³⁸

To say that constitutionalizing secession has a corrosive effect on the national body politic (a position I hold) is very different from maintaining that as a matter of political morality there are never any circumstances that would justify exit from a union, even if secession is not entrenched as a constitutional right. That is a different issue altogether. It might be that there are circumstances when a group has been, and continues to be, dominated in a morally arbitrary way such that political divorce is the only remedy available and ought to be permitted, whether or not the right is a constitutional right.³⁹

1.5. Language and Boundaries

The minimum requirement for a diverse society to exist as a stable political community is that members of the various groups be willing and able to communicate with one another. Political communities can sustain themselves over a long period of time only if there is shared understanding among members. There cannot be such understanding if people cannot communicate with one another and have access to some of the same forums of political and social debates or conversations.⁴⁰

³⁸ Thus, for example, the State Council of Benishangul-Gumuz regional state with less than 800,000 residents can veto a proposed amendment regarding any aspect of Chapter III or the amendment process itself even if the rest of the country (over 100 million people) is in agreement to amend.

³⁹ See, Allen Buchanan, 'Toward a Theory of Secession' (1991) 101 *Ethics* 322.

⁴⁰ See Adeno Addis, 'Cultural Integrity and Political Unity: The Question of Language in Multilingual States' (2001) 33 *Arizona State Law J.* 719; Adeno Addis, 'Deliberative Democracy in Fractured Societies' (2009) 16 *Indiana Journal of Global Legal Studies* 59.

The Federal Constitution provides that every nation, nationality, and people “has the right to speak, to write and to develop its own language.”⁴¹ At first glance, this provision, just like the ones I have examined in the preceding pages, appears to create a boundary that risks transforming neighbors into strangers, but that view is not necessarily accurate. Language is not just a means of communication but an important cultural resource. It is often the means by which members of the linguistic group attach meaning and give structure to their cultural activities and rituals. The preservation of a language is important not just to the group of which it is the language, but for the entire national community as well. The cultural heritage of one group enriches the entire cultural pool within the country. In that sense, the heritage becomes a heritage for all. The right of a group to speak and write in its language will ensure the survival and flourishing of the language and the general culture to which the language often gives access.⁴² Article 5(3) of the Constitution also gives members of the federation the authority to choose “their respective working languages.” Several states have chosen the language of the ethnic or linguistic group after which the state is named as the working language of governmental institutions.⁴³ This won’t necessarily be fatal to the idea of a united and stable Ethiopia to the extent that there is a common language or common (national) languages⁴⁴ through which citizens can engage one another across the land. But if there is no common national language, the rich linguistic diversity of the political community could be used not as a celebration of diverse cultures, but as a way of erecting

⁴¹ Art 39(2).

⁴² See, Adeno Addis, *Deliberative Democracy in Fractured Societies* (n 40).

⁴³ The Oromia, Somali, and Tigray regional states are good examples.

⁴⁴ Whether or not the country can adopt more than one national language is a question of resources. For a country such as Ethiopia, my hunch is it will probably be financially prohibitive and administratively chaotic to have more than two (perhaps three) national languages.

boundaries among citizens and group of citizens such that citizens would be inclined to view one another as strangers rather than as people engaged in a common project. Nothing signals more, and more strongly, that people are strangers to one another than their inability to comprehend each other.

It is true that the Constitution has adopted Amharic as “the working language of the Federal Government,”⁴⁵ but that does not ensure that the vast majority of people who do not aspire to work in the federal bureaucracy or have little opportunity to do so will have developed the linguistic capacity or skills to engage with one another. In the long term, the impact of not having a national language or national languages might be that linguistic groups increasingly become strangers to one another.

At a minimum, therefore, a national political community must adopt a policy that requires that children across the land be taught a national language or languages to ensure that citizens develop the minimum linguistic capacity to communicate and share the same forums of political and social debates and to feel that they indeed engage in a common project.

The cultivation of linguistic diversity coupled with the adoption of a national language would turn what would otherwise be a marker of difference and alienage (a hard parameter) into a celebration of cultural richness.

⁴⁵ Art 5(2).

2. Boundaries and the Trust Deficit

One of the most important social commodities (social capital⁴⁶) in social and political life is trust. No society can function well for long if its members do not have a sufficient degree of trust both in relation to co-members and the institutions within and through which decisions respecting public life are made. Well-designed constitutions structure government and governmental institutions with the view of creating the conditions for building trust both among members and towards public institutions. Trust towards institutions is vital if decisions and policies are to have legitimacy among and acceptance by citizens.

There is of course a view in political theory that runs from Thomas Jefferson⁴⁷ to Jeremy Bentham⁴⁸, and Russel Hardin⁴⁹ that views constitutional design as premised primarily on distrust of government and with view of constraining governmental institutions. Bentham, for example, made distrust central to his constitutional design.⁵⁰ It is true that constitutions are generally designed with the purpose of making

⁴⁶ I use the phrase in the way that James Coleman used it. Coleman distinguished among three kinds of capital: physical, human and social. He appropriated the notion of social capital to import the economist's principle of rational action for use in the analysis of social systems, as a means of understanding the social structure of relationships among people. James Coleman, *The Foundations of Social Theory* (Belknap Press, 1990) 300-21. See, also James Coleman, 'Social Capital in the Creation of Human Capital' (1988) 94 Am. J. Sociology S95-S120.

⁴⁷ Thomas Jefferson, 'Resolutions Relative to the Alien and Sedition Acts' in Philip Kurland and Ralph Lerner (eds), *The Founders' Constitution*, vol.1 (University of Chicago Press, 1987), vol. 1, 292-3 ([F]ree government is founded in jealousy, and not in confidence, it is jealousy and not confidence which prescribes limited constitutions, to bind down those whom we are obliged to trust with power.”).

⁴⁸ Jeremy Bentham, *The Works of Jeremy Bentham* (John Bowering ed., William Tait, 1838-43).

⁴⁹ Russel Hardin, 'Liberal Distrust' (2002) 10 European Rev. 73.

⁵⁰ Jeremy Bentham, (n 48), volume ix, 6. (“[E]very good political institution is founded upon [a system of distrust]”, for “whom ought we to distrust, if not those to whom is committed great authority, with great temptations to abuse it?”)

government accountable within the governmental structure itself—power centers checking and restraining other power centers (separation of powers and federalism are good examples)—and ultimate to the people themselves, the ultimate sovereign. However, such arrangement is meant not so much to manifest distrust as a constant attitude, but rather to ensure that the mechanisms of checks and balances and an open process will build trust among citizens such that decisions of public and governmental institutions will be accepted as legitimate. A constitutional system that is designed with distrust as its foundational principle will be unable to cultivate a political community that will endure.

However feasible the value of distrust as an organizing principle in terms of citizens' attitude towards their governments it may be, it is entirely destructive to design a constitution that entrenches distrust or has the functional consequence of entrenching (institutionalizing) distrust among members of the political community (citizens). If citizens are institutionally organized in such a manner that they view other members as strangers (or even threats to their very existence) rather than as participants in a common project, the viability of that political community will be in doubt.

Trust among citizens, “the belief in the goodwill of the other,”⁵¹ that others are co-participants in a common project and will not take advantage of one as if one were a stranger or an existential threat, is the sort of attitude necessary for a compromise essential for a collective life. The process of open and sincere deliberation about fair terms of cooperation, essential for collective life, will be the casualty of the hard parameter of ethnonational identity that the Ethiopian Constitution

⁵¹ Adam Seligman, *The Problem of Trust* (Princeton University Press, 1997) 43.

has entrenched and champions. Trust as a constitutional value creates a bridge among strangers.

The Ethiopian Constitution created boundaries, not bridges. The Constitution created both physical and social boundaries that fundamentalized (made more salient) differences among ethnic and linguistic groups. Politics then became a competition for domination. The distrust one observes among the various ethnic groups is not a natural phenomenon. It has been cultivated and entrenched through law, primarily through the Constitution itself. The Constitution did not merely classify people as belonging to different nations and nationalities, but it also shaped the disposition and attitude of members of those nations and nationalities towards one another. Those identities became the primary framework through which issues are perceived and analyzed and co-members appraised. Lines are then drawn sharply (both within a regional state and across regional states) and the question then becomes which group wins and which loses, not what is fair and equitable. Decisions taken under such conditions or in such circumstances are unlikely to enjoy sufficiently wide legitimacy. Philip Pettit is entirely correct when he observed that “Only by guarding against enforced vulnerability can a society facilitate the voluntary assumption of vulnerability—that is associated with trust.”⁵²

Studies have shown that distrust is not inherent in the mere existence of diversity.⁵³ It is how that diversity is organized and managed that

⁵² Philip Pettit, ‘The Cunning of Trust’ (1995) 24 *Philosophy and Public Affairs* 202, 224.

⁵³ Eric M. Uslaner, ‘Does Diversity Drive Down Trust?’ in Per Selle and Sanjeev Prakash (eds) *Civil Society, the State and Social Capital: Theory, Evidence and Policy*, (Routledge, 2008). See, also Barbara Walter, *How Civil Wars Start and How to Stop Them* (Penguin Books, 2022). Walter’s study shows that one of the most highly predictive factors of a civil war and instability in relation to a state is whether that state

shapes the attitudes of members of those diverse groups, whether they view others as strangers or even existential threats or as members of one national community.

3. The Trust Deficit and the Challenge of Building a Democratic Culture

A fully ethnicized political and constitutional culture overlaid with a constitutionalized right to secession will have difficulty building a democratic culture. First, such an arrangement, as I have explained above, cannot guarantee equal citizenship across the land to the extent that citizens are classified as members of a “nation” (indigene) or not (settler or alien). Under those circumstances, trust among citizens and trust towards institutions increasingly fades. When citizens do not believe that they are equal participants both as originators and addressees of the law,⁵⁴ including the basic document, it becomes very difficult to build a democratic culture and the condition for a deliberative process about fair terms of cooperation.

Second, one of the tragic consequences of ethnic federalism of the Ethiopian version has been that the politics of difference has defined not only public life and public institutions but private life and civic associations as well. This has seriously diminished the possibilities or the odds of the emergence of strong civic associations across ethnic lines as checks on governments at all levels. The trust deficit is a problem in all aspects of life.

has started to organize itself primarily or exclusively around ethnic, racial or religious identities.

⁵⁴ For the notion that citizens are both the authors and addressees of the law, see, Jurgen Habermas, *Between Facts and Norms: Contribution to a Discourse Theory of Law and Democracy* 415 (William Rheg trans., MIT Press, 1996), See also *Ibid.* 449.

Third, since the constitutional arrangement appears to be one of a dissociation order, one that encourages the politics of difference, the country will continue to be defined by conflict and instability. Conflicts about borders or boundaries will continue to be sources of disputes. An adjustment of internal borders that might not have been remarkable in another context becomes highly charged, even existential, when the adjustment is made in the context of a country made up of nations which have the right to secede if they so desired. In this circumstance, the adjustment becomes an attack on, or a diminishment of, the nationhood of the ethnostate. In a country of “we the nations,” “we the people” will continue to have difficulty entrenching a democratic culture.

4. The Dignity of Citizenship: Transforming Hard Parameters into Soft Ones

A constitution is an expression of a political community’s desire to establish a mode of politics for collective life. That is, the normative underpinning of a well-designed and well-structured constitutional order is an integrative process of association. The Ethiopian Constitution seems to have adopted a model of a dissociation constitutional order—a process of developing strangers among citizens in stages. In this, the document stands almost alone among national constitutions currently in force. Under such a constitutional order, the long-term viability of Ethiopia as a coherent political community, let alone a prosperous and democratic one, will, in my view, continue to be at serious risk.

If Ethiopians of different ethnic and linguistic groups are to see themselves as one another’s equals and engaged in a common project, the basic document has to enshrine and *make practical* the dignity of

equal citizenship, not the politics of difference. Equal citizenship is a vital integrative mechanism. As Jurgen Habermas notes, “the moral promise of equal respect for everybody” that the notion of human dignity signals “is supposed to be cashed out” in the social and legal currency of equal citizenship, where citizens are recognized by all other citizens as “subjects of equal actionable rights.”⁵⁵

As I have argued elsewhere⁵⁶, it is in the very nature of things that a country organized as a nation of nations rather than a nation of citizens will be unable to provide equal citizenship across the land. The various regional states’ constitutions and the political practices that have accompanied them amply illustrate the point. The ethno-federalist arrangement in Ethiopia will continue to encourage ethnic entrepreneurs to construct and sharpen differences (real or imagined) for the purpose of attaining and holding on to power. That will not be conducive to establishing stability, let alone a democratic process or culture.

To foster the dignity of equal citizenship, the conceptual and physical boundaries that have fundamentalized differences, transforming identities into hard parameters, must be reassessed. To say that national citizenship is one vital means of integrative association and to argue that a well-designed constitution is one of integrative association is not, as often misunderstood, to argue against accommodation. As I have outlined in an earlier article⁵⁷ that integration and accommodation are not opposed normative commitments but in fact

⁵⁵ Habermas, ‘Human Dignity and the Realistic Utopia of Human Rights’ (2010) 41 *Metaphilosophy* 470, 472.

⁵⁶ Adeno Addis, ‘From a Nation of Citizens to a Nation of Nations: National Citizenship without Depth’ (2022) 14 *International Journal of Ethiopian Studies* 141.

⁵⁷ Adeno Addis, *Deliberative Democracy in Fractured Societies* (n 40).

two sides of the same coin. An integrative order will better accommodate minorities more than the current dissociation order under which minorities within some nations have been subjected to discriminatory and exclusionary policies on the account that they did not belong in the nation. In the name of pluralizing power, the Constitution fundamentalized the notion of ethnonationhood. Consolidating the idea of a “nation” at the regional level is, at times, pursued by ethnic entrepreneurs through a process of creating the “ethnic Other” as the negation.

Conclusion

I have explored in this essay what I believe to be the major constitutionally entrenched boundaries—conceptual, social and physical—that have turned soft differences into hard parameters, consequently turning Ethiopian citizens into strangers to one another. The normative underpinnings of a well-designed and well-structured constitutional order is an integrative order of association. Constitutions are meant to bind citizens together so that those citizens view themselves as engaged in a common project and as one another’s equal. The Ethiopian Constitution seems to do exactly the opposite. It seems to have adopted a dissociation model, unique among national constitutions currently in force.

The long-term viability of Ethiopia as a coherent political community, let alone a prosperous one, under such a constitutional order is, in my view, at serious risk. It is time that there is a broad and inclusive conversation⁵⁸

⁵⁸ The importance of wide and inclusive conversation in the constitution-making process is highlighted by the overwhelming defeat (in a referendum) of Chile’s draft constitution in 2022. See Eloise Barry, ‘Why Chileans Voters Rejected a New, Progressive Constitution’, *TIME* (September 5, 2022). One of the reasons for the defeat apparently was that a significant constituency (conservatives) felt excluded from the process and campaigned against the approval of the draft. A document drafted and

about the constitutional way forward, about a constitutional arrangement that will strike the appropriate balance between honoring the country's diversity and forging a strong and durable Ethiopian identity.

approved through a flawed and exclusionary process will have difficulty garnering legitimacy among those it is meant to bind. It will lack what social theorists refer to as sociological legitimacy. Another reason for the defeat of Chile's draft constitution is attributed to the fact that it was unwieldy long (388 articles) and confusing. This is generally a problem with constitutions of developing countries, for they attempt to turn every issue into a constitutional issue and to resolve it as such. However, not every issue can or should be resolved constitutionally. Some issues can best be resolved in the political and legislative process later when conditions become conducive to tackling them. The development of a political and constitutional culture as well as the emergence of trust among various groups and among citizens might lessen the intensity of the division in relation to a particular issue over time making resolution of the issue much easier. For a very interesting example of how some very divisive issues were fruitfully deferred in the constitution-making process in Israel, see Hanna Lerner, *Making Constitutions in Deeply Divided Societies* (Cambridge University Press, 2011). Lerner also explores the process of constitution-making in India and the notion of what she calls "constructive ambiguity"; *Ibid.* 109-151. I have made similar argument in earlier works. See, Adeno Addis, *Deliberative Democracy in Fractured Societies* (n 40); Adeno Addis, 'Individualism, Communitarianism and the Rights of Ethnic Minorities' (1999) 67(3) *Notre Dame Law Rev.* 674-676.

