RATIONAL GOVERNMENT

THE HAZARDS OF UNTEMPERED POLITICAL POWER AND THE REMEDIAL STRATEGIES FOR UGANDA

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Dedication

I dedicate this book to KALYANGO RAI. May you grow up to become a renowned intellectual, maestro, genius, and an aficionado in your generation!

Acknowledgements

My scholarly interest in governance came in a rather incidental way. It developed during my first year as an undergraduate student at Nkumba University during which I was exposed to theoretical knowledge in political science and public administration. This work is a juxtaposition of political philosophy, political science, public administration, and democracy and constitutionalism with specific reference to Uganda. During the course of writing this book, I benefited from the following people I wish to acknowledge.

First, special thanks to my mentor, George Mugisha Barenzi, the Dean of the School of Social Sciences of Nkumba University for introducing me to studies in Government and Politics in Uganda, Comparative Public Administration, International Law, and Administrative Law in Uganda, and for writing this book's foreword. Second, I benefited immensely from Anne Abaho, not only for introducing me to the realm of political thought, but also for her incisive first critical review of the book. Your efforts, ma'am, afforded me a rare opportunity to remove from this work parochial perspectives, and most importantly, you challenged me to conceptualise the appropriate definition of politics, which I did as will be seen in chapter five. Third, I benefited from Eunice Akullo, who introduced me to studies in Politics and Administration in Africa, Third World Politics, Ethics in International Relations, and Comparative Political Systems. I owe you, ma'am. Fourth, I thank Dr. Yunus Lubega Butanaziba. Your lectures in political economy provided the bedrock for some of the arguments in this book. Fifth, I thank Dr. Asiimwe Solomon Muchwa for his lectures in Constitutionalism and Democracy,

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Last but not least, I thank the 'citizens' of the 'Marko Nation': Olive Nasirumbi, Rita Nasirumbi, Mark Odenyo, Gertrude Anyango, Joel Odenyo, Betty Taaka, Dorothy Taaka, Faith Nekesa, Irene Ntono, Elizabeth Nafula, and O'Brian. Special thanks to Capt. Elly Odenyo for the assistance rendered towards the publication of the book. I consider myself blessed to be a part of your family. To my mother, Teopista Nasike, "thank you".

Usage of terms

Within the meaning of this book, **"man"**, unless expressly stated otherwise, applies to both male and female. Subsequently, "he", "him", "himself", "his", or any other word expressing masculinity, are in this book used in respect of both male and female sexes.

"Rational" or "rationality" should be understood in the context of self-interest, unless otherwise expressly stated.

"The good life" is a form of life that is characteristic of wealth, prosperity, and assimilated things. Throughout the book, "the good life" is interchangeably used with happiness.

Unless otherwise indicated, a **"good State"**, **"civil State"**, **"functional State"**, or **"civilised society"**, whenever used in this book means a society that has a government that creates an environment in which the people enjoy security, public order, liberty, and in which they pursue and attain happiness.

"The Constitution" in this book unless otherwise explained refers to the 1995 Constitution of Uganda, which is the supreme legal document in the land. It is to be differentiated from "constitution" which means the way something is composed. Where other supreme legal documents are referred to in the book, prefixes are used to differentiate them from the one of Uganda of 1995. For instance, in reference to the American supreme law, the prefix "U.S." or "American" is used, that is to say, "the U.S. Constitution "or "the American Constitution".

“Political constitution” is used to refer to a political order or architecture. It should be differentiated from “Constitution” or “constitutions”, which refer to documents or supreme laws that define such political order.

“The executive” is employed in this book to refer to the individual in the structure of government who executes the law rather than an institution of government. It is used in synonym with the noun “president”.

“Executive arm” or “Executive branch” is used to refer to an institution, which is supervised by a president or “the executive”

List of abbreviations

CA:	Constituent Assembly
CHOGM:	Commonwealth Heads of Government Meeting
CMS:	Church Missionary Society
DP:	Democratic Party
FDC:	Forum for Democratic Change
FEDEMU:	Federal Democratic Movement of Uganda
FRONASA:	Front for National Salvation
GAVI:	Global Alliance for Vaccines and Immunizations
HRW:	Human RigGhts Watch
IBEAC:	Imperial British East African Company
IGG:	Inspector General of Government
IGP:	Inspector General of Police
IMF:	International Monetary Fund
JSC:	Judicial Service Commission
KCC Act:	Kampala Capital City Act
KY:	Kabaka Yekka
NRA:	National Resistance Army
NRC:	National Resistance Council
NRM:	National Resistance Movement
NSSF:	National Social Security Fund
TPDF:	Tanzania People's Defence Forces
UCB:	Uganda Commercial Bank
U.K.	United Kingdom
UNLA:	Uganda National Liberation Army
UPC:	Uganda People's Congress
U.S.	United States

Foreword

The thrust of this book: "Rational Government-the hazards of untempered political power and the remedial strategies for Uganda", is premised on seeking innovation to the predicament that many nascent democracies especially in Africa are faced with. Barasa places due consideration in giving a comprehensive appreciation of the Ugandan political landscape, right from the philosophical underpinnings of a functional government to the contextual and environmental reality of the contemporary Ugandan settings with its inherent strengths and weaknesses. He also offers panacea to redress the excesses.

In offering the philosophical context of government and politics as espoused by Thomas Hobbes, Robert Filmer, John Locke, and Jean-Jacques Rousseau, through to the determination of a nation's self-interest and the attendant conflict of purpose that leads to rationalisation and, therefore, the determination of the true State, Barasa lends credence to the test about the illusions of selflessness and the attendant political expediencies of given governments.

He ably highlights the disorders derived from this political expediency, selfishness and "branded" or "contextual" patriotism. Barasa proceeds to weave the spectre of contradictions that have had a moderating influence on Uganda's politics since independence to date, including: gravy-train tendencies of the incumbency; patron-client relations; gerrymandering; industrial blindness; powerless gate keeping; leadership by charisma rather than legally bound rationality; suffocation of institutionalism; the ever constant and looming threat of the military to resolve political impasse; constitutional applications conditioned to suit the government

of the day rather than the Ugandan state; nepotism, corruption, sectarianism and the vagaries of too much democracy on the State rather than democratisation within the State.

Barasa opines therapy to these contradictions that among other solutions, call for the environmental re-alignment of relations in the trinity of government; ebbing out of the "imperial presidency"; a need for an elected and accountable judiciary; a more defined functional role for the vice-president, speaker of parliament, chief justice, leader of the opposition in parliament; the prospects for a bi-cameral legislative assembly; a justification for electoral zoning; matching the voters' academic qualifications with those for the candidate that they have to choose; introduction of a clearly defined bipartisan Electoral Commission as opposed to the current seemingly non-partisan or independent Electoral Commission whereas not; reintroduction of presidential term.

Barasa's book gives a fresh outlook at the way the Ugandan society should be managed. In scholarly terms, his views give adequate tickling for debate among academicians, lawmakers and the general populace, given to improvising for reform for the future better management of Ugandan Society.

George Mugisha Barenzi,
DEAN, SCHOOL OF SOCIAL SCIENCES,
NKUMBA UNIVERSITY, ENTEBBE-UGANDA

Preface

If any man gives his only pair of trousers to another in exchange for nothing of value, or in exchange for a less valuable thing, or with no hope of attaining something of greater value in the future, that man is irrational. If an industrialist sells his product at a price that is lower than the cost he incurred to produce it, or if a merchant sells merchandise at the price he procured it, or at a lower price without a conscious calculation of later gain, that man is of subnormal intelligence.

Such people do not exist really. Not even those who start or work with charity, non-profit or voluntary organisations can claim to be free of selfish drives. By doing charity work, they gain materially or otherwise. For example, they may earn praise, which is an immaterial gain for doing what others consider noble or magnanimous, or a living, such as a wage or a salary, which is a material gain. Further, even those who give alms to the needy do not do it out of mere magnanimity, but because they desire to earn a place and a reward in paradise in the afterlife.

There is always some selfish calculation consciously or subconsciously for every action man takes. Stated otherwise and succinctly, each man is a rational being in that he knows idiosyncratically what is best for him. This best interest is self-interest. A rational man acts only if he perceives or sees personal profit from the action. Thus, self-interest is the only stimulant of man's deeds whether good or bad. However, because 'bad' and 'good' are qualitative and, therefore, subjective facts that can be assessed variously by various people, thereby becoming subjects that inspire disagreement, it is important to define them here. In the context of this book, a

'good' deed is that which profits other people as a consequence of a person's pursuit of his selfish, best, or rational interests. Vice versa, a 'bad' deed is that which hurts others as a consequence of a person's pursuit of his interests.

Although man may sometimes act in ways that benefit others as he pursues his interests, he is nonetheless more inclined to hurt them. Therefore, people need to be regulated so that, while they pursue their private interests they act in ways that benefit, or at least, in ways that do not hurt others. In view of this, the need for binding rules and coercive force that keep man's injurious behaviour in check is sacred and unalterable. Governments exist to do just that, that is, to moderate, regulate, or temper people's behaviours in order to construct orderly and secure societies for their inhabitants.

However, like men who run them, governments too are rational entities in that they have their interests that may be disparate from those of the people. Thus, in the pursuit of their interests, governments may satisfy the interests of the public, or they may abstain from satisfying them, depending on what yields their interests. If they satisfy public interests, it is not because governments are benevolent or magnanimous, but because doing so is in their best interest. Vice versa, if they abstain from satisfying the interests of the people, they also intend to achieve the same end. Thus, the satisfaction or dissatisfaction of the interests of the people is the means and the attainment of the interests of a government is the end.

Sometimes, governments may fail to satisfy the interests of the people not because they do not want, but simply because they may misjudge them. Whereas a government in the pursuit of its own interest may be desirous of satisfying the interests of the people, it may fail because there is no scientific formula for determining them. As such,

governments in trying to act in accord with the interests of the people usually imagine them remotely and by conjecture. Since a government may not know with mathematical precision the pressing interests of the public, it is likely in its imagination to confuse public interests with those of the government. Therefore, public policies are usually private interests of those in power, but confused as public interests.

The confusion of a government's interests with those of the public potentially puts it and the people on a collision course because imagined public interests are unlikely to bear satisfactory results, which may in turn drive the people to challenge their government for not acting in accord with their real interests. However, as has been noted already, sometimes governments deliberately rather than erroneously, abstain from satisfying the interests of the people if that serves their interests better.

It follows and goes without saying that, as a rational man is predisposed to hurt others in the pursuit of his interests, a rational government, too, is capable of hurting the people in the pursuit of the interests of those in power. Thus, the central argument in this book is that: governments being rational (because they are run by inherently selfish men), they also need to be sufficiently moderated or tempered so that they do not abuse power, but use it in ways that benefit, or at least in ways that do not while they pursue their interests hurt their publics.

Abstract

The arguments in this book derive from the risks of putting up with an untempered government. In this connection, Chapter One deals with philosophical views regarding the type of government that is necessary for the construction of a well organised, orderly, or civilised society in which the people are free and can pursue and obtain happiness. Specifically, the Chapter contains a discussion on Thomas Hobbes' and Robert Filmer's intellectual defences and prescriptions for an absolute, unlimited, and untempered exercise of governmental power. It also delves into John Locke and Rousseau's theses on the need to moderate or to temper governmental power.

Chapter Two deals with self-interest and explains why it is man's seminal condition for rational action. In the Chapter, it is argued that rationality is a relative fact that guides people's actions variably, and that if not moderated, it may lead a government to act in its own interest in lieu of the interest of the public. In this Chapter, it is further contended that self-interest is generated by love. It is also argued in the Chapter that selflessness is a flagrant fallacy.

Chapter Three is dedicated to the historical illustrations of the disorders, misdeeds, and the ramifications of untempered governments that have obtained in Uganda since independence.

In Chapter Four, various constructions of politics are rejected on the premise that they may have been responsible for the misapplication of politics in Uganda, including; the popularly held conception that is imputed to Idi Amin that 'politics is a dirty game', and Museveni's idea that politics is the science of managing a society, among other conceptions.

In Chapter Five, the non-cynical and sound concept of politics is explained, that is to say, the view of this book that politics is "any activity that leads to the moderation of all actors within a State for the general public good."

Chapter Six is dedicated to the corruption discourse; and contrary to the conventional view, it is argued in the Chapter that corruption in government is extant because officials who engage in it are not only patriotic, but also rational people who love themselves, understandably, more than they love others, and not because they are less patriotic as conventional wisdom holds. In the Chapter, it is argued that patriotism is first, the love for self then the love for others and not the other way round. The thesis that theft of public funds leads to economic development if the funds are invested in the economy is rejected. In the alternative, it is explained that such analysis is non-pragmatic and may lead to economic collapse and State failure. Further, it is argued in the Chapter that nepotism, which is a form of corruption undercuts effective accountability, and finally in the Chapter, the idea that corruption in Uganda persists because of a deficiency of political will is rejected.

Chapter Seven is about the concept of patriotism and its general benefit to a State. It is argued in the Chapter that a patriotic person is selfish and the idea that Uganda's 'liberators' who resisted Amin, Obote, and Lutwa's 'bad governance' did so out of selflessness, is countered. In the alternative, it is explained that their principal motivation was their self-interest and that the resulting benefits Ugandans enjoy are just incidental. In the Chapter, it is also shown that a patriotic person can be one who supports a government or one who resists it, depending on whether such resistance or support causes the attainment of the public good generally.

In Chapter Eight, the idea of sovereignty, its historical development, and mutation over time is explained and traced. In this context, the classical sovereignty, which was claimed by tyrannical kings and their divine right to rule without limit, is discussed. The Chapter traces how that changed and how kings lost the right to rule absolutely. It also contains a discussion on how parliament claimed the sovereignty from kings, and how the people ended up being the sovereign.

In Chapter Nine, the author discusses the idea of civil-military relations in which he shows why the military, despite being more powerful than civil institutions must be subservient to civil authority. The Chapter contains an explanation of why the military should not be represented in parliament or serving military officers appointed to head civil institutions, and why the army should not be used to stop peaceful demonstrations.

Chapter Ten is about the philosophical theories of separation of powers and checks and balances. It deals with the logic of separating the functions and powers of government, the dangers that attend the separation, and the correctional purpose of checks and balances.

Chapter Eleven is dedicated to the executive arm of government. It is shown in the Chapter that the executive in Uganda exercises intrusive power, which makes him a tyrant. The role of party caucusing in creating an imperial president or a dictatorial executive is discussed. It is also explained that it is undemocratic for a vice president to be senior to a speaker of parliament and a chief justice in the hierarchical order. In the Chapter, the concept of presidential immunity, which derives from the doctrine of sovereign immunity, although internationally practiced, is intellectually challenged.

Chapter Twelve is dedicated to the presidential term limits debate. The arguments for and against term limits are

considered, and a conclusion is held that term limits are necessary in some societies in which electoral democracy is crudely applied.

In Chapter Thirteen, it is explained that the judiciary in Uganda lacks judicial legitimacy, is unaccountable, and unindependent. It is argued in the Chapter that judicial officers do not derive their power from the people, although Article 126 of the Constitution assumes so. The chapter calls for a popular election of judges in order to enable the judiciary to legitimately exercise judicial power, and to be accountable to the people and independent of the executive.

In Chapter Fourteen, it is explained that the legislature is by normative and structural weakness, not independent. Specifically, it is argued that a combination of party caucus and the unicameral structure of the legislature in Uganda is responsible for its weakness, and recommendations to that effect are furnished. A case is made for internal checks and balances within the legislature.

Chapter Twelve is dedicated to the discourse on electoral democracy in Uganda. In the Chapter, the dogma of universal adult suffrage is contested, and its ruinous effect on governance in emerging democracies and civilising states like Uganda is explained. In the Chapter, the appointment of persons to the Electoral Commission by the executive is contested. The possibility of having an 'independent' commission is also contested in this Chapter. In the alternative, it is shown that it is possible to have a "balanced" electoral body. It is also argued that it is possible and necessary for an incumbent president to resign before seeking re-election as a way of ensuring fair elections.

CHAPTER ONE

The philosophy of a good State

Political philosophers have theorised the trajectory of a good State from man's individualism in the "state of nature" to his political state or the state of civil life.[1] They reasoned the trajectory severally, at disparate times, and held different conclusions concerning the best form of political architecture that can best construct a good State. However, from Hobbes to Jean Jacques Rousseau, there is a compelling reason to believe that they all concurred that politics is not only deterministic or a consequence of savage, inevitable events, but also an indispensable reality that is necessary for the sustenance of humanity and the enjoyment of the good life. Their philosophical disparity lay in the question of whether the construction of a good society requires an almighty government that exercises unquestionable power and control over the people, or a limited one that acts within the limits and dictates of the rules of law and the public good as the people define it.

This Chapter lays the foundation for the discourse on whether an omnipotent government can be trusted to enable

[1] The state of nature was a hypothetical condition that existed before the idea of a government was conceptualised. It was characterised by anarchy and lawlessness. The state of nature was in other words a state of primitiveness. Vice versa, a civil state exists where a society organises itself under a government, which prescribes laws and ensures good order. A civil state in other words, is a state where barbarism and primitiveness are not tolerated.

the enjoyment of the good life, that is to say, whether such a government is more predisposed to work in the interest of the people, or in its own interest. As such, this Chapter explores Thomas Hobbes and Robert Filmer's deductive, a priori ideas on how much power a government ought to possess and exercise for a society to be orderly in order to facilitate the pursuit of happiness. The Chapter also explores similar considerations by John Locke and Jean Jacques Rousseau.

Thomas Hobbes' Philosophy

Thomas Hobbes penned his famous philosophical piece, "Leviathan" in 1651 in defence of the absolute power of monarchs. His work and contribution to political thought is in relationship with his rendition of how best a civil, orderly, and functional society can be constructed. For him, an orderly and functional society is one in which people enjoy security and protection that is due from an almighty ruler who necessarily excels in power above the people, and with their 'consent' exercises it without any limitations. Hobbes' defence of an almighty government with the 'consent' of the people was premised on the inherent evil nature of man and the chaos that obtained in the state of nature.

Hobbes explained that in the state of nature, men were equal, free, and independent because all possessed strength and rationality, which made each person to think that he had an equal chance against another; and thus bred pride, intransigence, and insubordination (Martinich, 1992, p. 49). All being equal, free, and independent, every one acted as he pleased. The state of nature was one in which mistrust and fear reigned because all possessed the right to offensive and defensive attack. At once, as man was prompted to launch an

attack, he was wary that he was also a target of a similar strike. As such, men in the state of nature were invariantly in a state of war of all against all. A state of war in Hobbes' construction was broader than actual belligerent combat. A state of war entailed both actual fighting and an orientation towards war. Hobbes in his own verbatim explained thus:

> *"For war consisteth not in battle only, or the act of fighting; but in tract of time, wherein the will to contend by battle is sufficiently known;... so the nature of war, consisteth not in actual fighting, but in the known disposition thereunto, during all the time there is no assurance to the contrary."* cited in (Martinich, 1992, p. 50)

Without denying the existence of evil men in the state of nature, whom he said were 'so constituted that they were naturally pugnacious' (Forsyth, 2005, p. 41), Hobbes' explained that the constant state of war that obtained could not be attributed to them alone, but to all people, evil or not. The state of war was constant because of the environment that obtained in which there was no government and no law to restrain the behaviour of men, which in turn forced each of them to a mental orientation and readiness for war, and to material belligerence to ensure their survival own their own.

Actual war, in the Hobbesian context, occurred when two or more independent and free persons with conflicting wills came into close contact. The untempered conflicting wills that stemmed from freedom, independence and equality of all human beings emboldened each man to claim the 'natural right' to independently judge for himself what was good, and incidentally, to employ the natural right to defend such

judgment. As such, a person adopted a posture of war if in a given situation his original right and capacity to decide what was good, desirable, or reasonable for him came into fundamental conflict with another person's identical right and capacity (Martinich, 1992).

The right of every individual to act as he willed was akin to the situation in the jungle, that is to say, the survival of the fittest, and anarchy. This state of events in Hobbes' analysis opened Pandora's Box, which resulted in an unrestrained loss of life that threatened to wipe out the human species and poured tremendous fright upon humankind. A case like this one was to set men in the state of nature in motion to act rationally to avert an odious situation, in which they were all likely to be obliterated by the ramifications of lawlessness and anarchy. Thus, they consented to submit to a governor, ruler, or government and in effect to give up their natural rights in exchange for security.

Hobbes' omnipotent government

Hobbes saw man's equality, freedom, and independence on the one hand, and the absence of a powerful central arbiter on the other, as the drivers of disorder and dysfunction in the state of nature. Thus, according to Hobbes, the search for tranquillity impelled men in the state of nature to consent to the rule of an unlimited, absolute, untempered, and almighty ruler, that is, a leviathan. The word "Leviathan" was not Hobbes' own construction, but rather a loanword, which is employed in the Bible to refer to a humongous creature (Job 3:8; Job 41; Psalms 74:14). Being gigantic, powerful, and preponderant among creatures, 'Leviathan' was Hobbes' most appropriate term to use in reference to an omnipotent ruler.

Why Hobbes did choose to employ the term 'Leviathan' in his discourse may be inferred from his verbatim hereunder:

> *"Hitherto, I have set forth the nature of man, whose pride and other passions have compelled him to submit himself to government: together with the great power of his governor, whom I compared to the Leviathan, taking that comparison out of the last two verses of the one-and fortieth of Job; where God having set forth the great power of the Leviathan, calleth him king of the proud."* cited in (Martinich, 1992, p. 48)

The last two verses of Job's Chapter 41 are 33 and 34. Job, in 41:33 describes the leviathan in the following manner: "Nothing on earth is its equal, no other creature so fearless." In 41:34, Job describes the leviathan thus: "Of all creatures, it is the proudest. It is the king of beasts."

It is conspicuous judging from the foregoing quotation, that Hobbes' relation of the leviathan to an absolute monarch derived from man's proclivity to be proud, self-seeking, inconsiderate, intransigent, and assimilated traits, and the adverse ramifications of the described traits. In this context, whereas in the biblical usage "leviathan" was king of proud creatures, the Hobbesian "leviathan" was used to refer to a human king of proud men. However, the two leviathans were assimilated in the respect that both the biblical and Hobbesian leviathans exercised domineering power and over-lordship over their subjects. Therefore, on the basis that both the king of proud beasts and the king of proud men had a functional and characteristic convergence, it was perfect for Hobbes to

borrow and use the term "leviathan" in reference to a human king.

Hobbes' on the 'social contract'

The consent to be ruled by an almighty ruler, in the Hobbesian logic, was a 'social contract'. Hobbes did not suggest that the social contract was between the people in the state of nature and the ruler, but among the people themselves. Hobbes, in the alternative supposed that the leviathan was not a party to the contract and, therefore, not its subject but its enforcer. The monarch, sovereign, king or leviathan, however referred to, as the enforcer of the social contract was necessarily above the terms of the contract, and reserved the right to determine what was good for each man.

To subject the king to the contract was to bind him to the requirement to forfeit the right to determine what was good and reasonable for the public good. Without that right, the king was equal with the people and equally powerless to enforce the social contract. The corollary would be a slide back to the state of anarchy. To obviate a relapse into the state of war, the king had to be an absolute sovereign, wielding unobjectionable power to determine what was good and reasonable, to prescribe rules of law absolutely, and enforce them tyrannically when necessary.

The king was the source of law rather than its subject. For Hobbes, therefore, it was necessary for security's sake and for the tenacity of civil order, to have an authority that was a more powerful actor. The king was not to be an agent of the people or their servant because such would make him amenable to the dictates and whims of the people, in lieu of necessity and reason. The king as an agent of men could not

institute order and security, and would have impeded the construction of an orderly society or a functional State. Thus, for Hobbes, a functional state necessitated the existence of an absolute sovereign, a supreme majesty, an omnipotent ruler that was unlimited by laws or pacts, and to whom absolute obedience was due from the people in exchange for their security and good order.

John Locke's Philosophy

John Locke took a dissenting and an interesting intellectual view of how to construct a functional State. His works, that is, the two treatises on civil government, are philosophical responses to Robert Filmer's "*Patriarcha"*, published in 1680, and Thomas Hobbes' "*Leviathan"* described already, both of which were apologies for the English Monarchy and its omnipotent power over the people.

Filmer's thesis lay emphasis on the supposition that people are naturally born unfree and unequal, and that rulers are equally and naturally over them, since they are directly descended from the first Man, Adam, who was given dominion over all creation by the biblical God (Cohen, 2001). The dominion referred to is traceable to the biblical text hereunder:

> *"... be fruitful and multiply and fill the earth and subdue it and have dominion over the fish of the sea and over the fowl of the air and over every living thing that moves upon the earth."* (Genesis 1:28)

For Filmer, societal order or civility demands that only one individual wields and exercises absolute power and dominion

over others, who must be subservient to the preponderant individual. As such, God transferred the right of dominion to Adam, who also in turn and for the continuance of order on earth, bequeathed it to kings in their realms. Therefore, for Filmer, men are born unfree because they are naturally under the dominion of their king.

However, Filmer has one interesting exception to his logic of inequality: as all men are born unfree and unequal in relation to kings, all kings everywhere are born free and equal in relation to another. This sort of intellectual value defended the sovereignty of kings both within and without their realms of jurisdiction. Filmer apologised for a government with supreme authority over its people in much the same way as a father has dominion over his children, or a master over his slaves and a husband over a wife, that is, a patriarchal order by supernatural predetermination, which he thought was necessary for the construction of an orderly society (Cohen, 2001).

Filmer's right-wing position on civil or political order supplied the impetus for Locke to challenge the status quo, to breach its intellectual defences, and to provide a framework for the construction of a leftist version of political order, that is to say, one in which a ruler is not absolute or omnipotent. However, as already stated, Filmer was not the only apologist to supply Locke with the incentive. Hobbes' thesis, too, was in the same league, and Locke confronted them both.

Locke could not subscribe to Filmer's allegation that men are born unequal and unfree, or that rulers are equally and naturally over them. By inference, such a conception leads to the indefensible subjection of the people and is a raw material for disorder, since it may result in violent revolutions. In response to Filmer's views on the Adamic hereditary

legitimacy of kings, or the lack of it, Locke argued that; were the hereditary concept defensible, only one ruler in the world would possess the legitimate right at a time to rule and the rest exposed as impostors (Cohen, 2001). However, for Locke, since kings were numerous and 'equal', the Adamic hereditary legitimacy of kings was an allegation that lacked logical foundation (Cohen, 2001).

Additionally, Locke argued that the transfer of power from God to king was an ideal situation that only existed in Filmer's fantasies, not in reality. In real life situations, the transfer was from man to man. For Locke, since actual descent was from man to man (father to son transfer of power), it was a weak hereditary system, incapable of providing the stability that the descent from God to man (God to king transfer of power) principle does (Cohen, 2001). Further, since the hereditary system in practice was flawed and inept to provide order and stability, in Locke's assessment, kings had no legitimacy to claim, and no right to exercise absolute and unlimited over-lordship over the people. In essence, Locke was the first person to philosophically reject the theory of the "divine right of kings" that was used as a defence by rulers to exercise tyranny over the people.

Locke on the state of nature

Locke also visited Hobbes' thesis on the state of nature, and concurred with him that the state of nature engendered lawlessness, and that all men are born equal, but nonetheless differed with him in many respects, including the character of the state of nature and the state of war, and on freedom and anarchy. Locke also differed with Hobbes on how those suppositions led to the idea of a government and on the

nature of the government itself, that is to say, he rejected the absolute type that was advocated by Hobbes. Although Locke also admitted to the existence of anarchy in the state of nature, it was not absolute as Hobbes posited. For Locke, 'the sacred and unalterable law of self-preservation' precluded total anarchy from subsisting in the state of nature. Regarding the absence of total anarchy, Locke exposited thus:

> *"The state of nature has a law of nature to govern it, which obliges everyone: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty or possessions"* cited in (Cohen, 2001, p. 69).

The law of self-preservation in Locke's analysis finds fortitude in the idea that human beings are rationally capacitated, that is to say, that they possess the capacity to reason that they all have one omnipotent creator who alone is to be yielded to,[2] and therefore that attacking an equal and free man bore retaliatory ramifications. Since men were rational, they did not desire to be hurt back if a person retaliated, and in the interest to preserve themselves from harm, they did not seek to hurt others.

Thus, contrary to the postulation by Hobbes that man in the state of nature was in a constant state of war due to equality, freedom, and independence that were claimed by all,

[2] According to Locke's philosophy, a king was not above other men, but equal with them because all men are creatures of one creator. This is in contrast to Hobbes' theory in which he said that a king was not equal with men but preponderant.

men in the state of nature in Locke's analysis were not in an invariant state of war because the law of nature, that is, reason or common sense, restrained them from having a mental orientation towards war. Therefore, for Locke, a state of war existed only occasionally, when a person violated the law of nature and sought to control another, and the one attacked exercised his natural right to fight back in order to regain his freedom.

The retaliatory response, however, reasoned Locke, was not to be done with the intention to annihilate the aggressor and transgressor, but to undo the original wrong and to deter similar actions in future. In this breath, Locke noted that:

> *"It follows that, in the state of nature, no one may interfere with another's liberties – 'we are born free, as we are born rational' – but if once one transgresses another's rights or property, then, be warned, everybody has a right to 'punish the transgressors of that law to such a degree, as may hinder its violation'. But this punishment must still be 'proportionate', only just in as much as it serves to undo the original harm, or to prevent future occurrences."* cited in (Cohen, 2001, p. 70)

The central disparity between Locke and Hobbes on the idea of the state of nature is that on the one hand, Hobbes rationalised that man in the state of nature sought to attack another because he feared that the other was predisposed to destroy him if he did not destroy him first. Locke on the other hand theorised that the law of nature proscribed man from attacking another because of the freedom of the other to punish

him if he did. Thus, whereas Hobbes explained that a state of war was constant in the state of nature because it consisted of both actual war and an orientation towards war, a state in which Hobbes insisted all men were, Locke explained that a state of war happened occasionally and that men did not have an orientation towards war because the law of self-preservation prevented them.

Locke on man's freedom and self-governance

Thus, the freedom of man was Locke's main concern in his theory. The theory of the freedom of man was that man was free to act in all ways as he pleased. However, he was not free to prevent the freedom of others because they also possessed the same freedom. Thus, man in Locke's analysis was free to do whatever he desired, but that freedom was subject to the law of self-preservation, that is, the common sense that hurting another person bore hurtful ramifications to the aggressor.

Man, therefore, in the Lockean theory, possessed the power to legislate, that is to say, to determine what was lawful and to act accordingly, although such a function was to be done within the limits of a superior law or the natural law that has been discussed, that is, the law of self-preservation (Vile, 1998). Man also possessed the power to execute the natural law by punishing those who broke it. Thus, the legislative and executive functions existed in the state of nature. However, men lacked the capacity to exercise them effectively. When for instance, a stronger person breached the law of nature and hurt a weaker one, it was impractical for the weaker one to enforce the law. Therefore, people in the state of nature needed a

government to carry out the functions on their behalf (Vile, 1998).

However, the government was necessary insofar as it restricted itself to preserving the freedoms and liberties of the people through legislating, executing the law, and adjudicating according to the law—all in an effort to prevent or punish those who disturb the peace and freedom of others. If, however, it strayed from that mandate, the people had no need of it. Therefore, his theorisation of the state of nature, which runs in sharp contrast to that of Hobbes, was calculated to lay an intellectual foundation for his defence of the freedom of the people from the arbitrary and absolute power of rulers. He reasoned that in a civil society there exists a sort of 'social contract' between rulers and the people, based on the consent of the people. Locke on the consent of the people to be ruled stated that:

> *"Men being, as has been said, by nature, all free and equal and independent, no one can be...subjected to the political power of another, without his own consent..."* cited in (Cohen, 2001)

Locke's understanding of consent, however, was different from that of Hobbes. While the consent of the people to a ruler in the Hobbesian logic results in the people giving up all their liberty, independence, and rights to an almighty ruler in exchange for security and order, consent in Locke's analysis results in the people delegating their power of legislation, execution, and adjudication to a ruler. The people in the Lockean logic do not surrender their freedom, liberty, or independence to a ruler, but in delegating their power of legislation, execution, and adjudication, they

mandate a ruler to promote and protect their inherent liberties, freedoms, and rights.

Locke on a limited government and the rule of law

As has been expressed, Locke acknowledged that in the state of nature anarchy was not totally absent, and on that basis a government was indeed necessary to create peaceful and orderly relations. The nature of the government that Locke prescribed was, however, different from the one that Hobbes did. For Locke, because man is born free, he possesses an inherent right to stay free from another equal and fellow free man, and since governors are as human as any other man, a government need not have power than is necessary to deter one man from hurting another or punishing him for injuring another. This is also the extent of the legislative, executive, and judicial powers of government. By the same token, it is not the purpose of any government or ruler to expropriate the liberty of the people.

Locke's view of man's freedom outside the state of nature, that is to say, in a civil society was that he was free to act in all ways in accord with his volition, except where a rule common to everyone in a society and made by the legislative power erected in it, prohibits such action (Cohen, 2001). In other words, in a civil society, the people's freedom cannot be restricted at the whims or caprice, or by decrees promulgated by leviathans, dictators, or absolute rulers. Thus, the people have an inalienable right to be free from the absolute and arbitrary power of rulers.

For Locke, a society in which a person or group of persons exercises absolute and arbitrary power over others (such as in Hobbes' civil state) is not a civil society at all. Vice

versa, it is effectively a state of nature because some people (leviathans) indefensibly seek to take away from others the natural freedom, and unravel the natural equality and independence of all men. Thus, in the Lockean theory, a civil society must have a government, but such a government must be limited in that it should not exercise absolute power over the people.

In order to preserve the freedom of the people, a civil society must be ordered by certain rules of law by which everyone plays, which must be promulgated by parliaments constituted by the people, and by which adjudication is done. For Locke, therefore, the best political architecture that leads to the construction of a civil society is one which guarantees the liberty of the people, which can only occur when there is the rule of law and a division of the functions and powers of government. The necessity of a separated and legally limited government was posited in Locke's verbatim hereunder:

> *"Whoever has the legislative or supreme power of any commonwealth, is bound to govern by established standing laws, promulgated and made known to the people, and not by extemporary decrees; by indifferent and upright judges, who are to decide controversies by these laws; and to employ the force of community at home, only in the execution of such laws... And all this to be directed to no other end, but the peace, safety, and public good of the people."* cited in (Cohen, 2001, p. 74)

Locke on the sovereignty of the people

Failing the foregoing prescriptive conditions for the construction of a functional State, Locke advocated the people's right to depose a government in self-defence if it offends their inherent right to freedom. In this vein, Locke suggested that:

> *"If a king 'sets himself against the body of the commonwealth, whereof he is head, and shall, with intolerable ill usage, cruelly tyrannise over the whole, or a considerable part of the people; in this case the people have a right to resist and defend themselves..."* cited in (Cohen, 2001, p. 75)

By suggesting that the people have an inherent right to fight and depose a tyrannical government or ruler, Locke intended to show that the people, not the rulers were sovereign. The sovereignty of the people emanate from their inalienable heritage of freedom and the consent to be ruled. If the people do not like a ruler, they reserve the right to depose him. Essentially, for Locke, a functional State is only possible if the people wield such power over rulers. In consonance with the idea of popular sovereignty, and on the question of who determines whether a government or ruler is good or bad, Locke argued that: *'*...the people shall be judge...' and that 'the only further appeal lies in Heaven' (Cohen, 2001).

Jean Jacques Rousseau's philosophy

Jean Jacques Rousseau broke free from the philosophical yoke that gripped Hobbes, and to some extent, Locke, whose views and exposition of man's state of nature

were somewhat grim. Unlike for instance, Hobbes who pejoratively held the state of nature to be anarchic, disorderly, and insecure, Rousseau held it to be the opposite cheering it as Dunn (2002, p. 6) has reported: "*...he could argue that if modern individuals appeared corrupt, unequal, and enslaved, it is society— not human nature—that is to blame."*

Although Rousseau also, like Locke, concurred with Hobbes that men in the state of nature were equal and free, he hypothesised that they lived generally dormant and solitary lives, and since they lived in solitude they had little need for others. By inference, they felt some need for each other, although such need was short and instinctive, for instance, to satisfy the sexual urge. However, they did not form lasting bonds (Dunn, 2002). In the state of nature, men too were independent, believed Rousseau, as did Hobbes and Locke, but their independence, unlike Hobbes, who rationalised that it led to chaos, it in Rousseau's philosophy, created an environment where there was no need of aggression toward one another (Dunn, 2002). Moreover, men in Rousseau's state of nature were also neither very moral nor very rational. That is, as Dunn (2002) has paraphrased Rousseau at page 5;

> *"Though they did have an instinct for pity for the suffering of others along with a ''survival instinct'' of their own, they were for the most part untouched by morality. Neither love nor friendship nor family nor thought nor speech impinged upon their primitive solitude."*

In Rousseau's conception of the state of nature, man lived in simplicity; and as such, he lived in harmony with nature. That man's rational capacity was dormant; he did not

seek to make himself better. There was a balance between man's needs and his desires, in that, he did not seek to utilise more than he needed; thus, he did not seek to disrupt nature in the name of development. However, Rousseau's state of nature is an ideal that should not be idolised.

In fact, he used the intellectual conjecture only as a base to construct his arguments against the corruption, inequality, injustice, oppression, servitude, and despotism that had heaped on the society of his time (Dunn, 2002). His version of the state of nature was neither rosy nor calamitous, although it was better than the societal life of his time. In this context, Rousseau did not suggest a reversion to the primitive and dormant state of nature, but a rousing of the moral and rational capacities of men that were dormant in man's state of nature (Dunn, 2002). Rousseau's hope was that the moral and rational endowments would discard indifference and arouse cooperation for good communitarian life and subsequently, good individual life (Dunn, 2002).

Rousseau on social life

For Rousseau, with time, people progressed from the independent and solitary life in the state of nature, and started occasional collaboration with one another. This practice, in Rousseau's thesis, set the ground for the appearance of family units with the attendant patriarchal authority, but no private property ownership yet (Dunn, 2002). However, life at this early social stage was not bad because private poverty issues that bore exploitation, subjugation, and despotism, were not yet in sight. As (Dunn, 2002, p. 6) has reworded Rousseau:

> *"Husbands and wives, parents and children dwelled together under one roof, experiencing the ''sweetest*

sentiments'' known to human beings, ''conjugal and paternal love.'' Each family resembled a ''little society'' in which members were united by mutual affection and liberty. There was commerce among the different families; human faculties, social rituals, and a sense of morality evolved somewhat, all contributing to ''the happiest and most durable epoch'' in human history, an interim period ''between the indolence of the primitive state and the petulant activity of egoism.''

Even so, this "honeymoon" of life was not bound to exist infinitely. There, theorised Rousseau, emerged a stage after the social bliss described above, when society plunged into corruption, avarice, and egoism, which marked the genesis of the bad social life. This stage was set in motion when it dawned on people that it was possible for them to improve their lives if they employed their rational endowment. Subsequently, a new intellectual energy was unleashed, destroying the simplicity and harmony that had reigned in the state of nature between one's needs and one's desires (Dunn, 2002).

The increased rational activity of people guided them to understand that effectiveness and efficiency, as well as specialised skills were necessary for improving output for the betterment of their lives. Thus, as Dunn (2002) has paraphrased Rousseau, 'the novel concept of division of labour also took hold, robbing people of their self-sufficiency.' Nonetheless, this was the beginning of social division. Soon, the rational burst led to improvement in agriculture and manufacturing, as well as the pursuit of and competition for

private property. Put together, this led to inequality and greed as (Dunn, 2002, pp. 6-7) has cited Rousseau:

> *"...new technological advances, such as agriculture and metallurgy, were introduced, accompanied by the notion of private property. People competed for property, increasing their wealth at the expense of others. Production started to surpass people's needs, feeding a new hunger for superfluous, ''luxury'' goods. Equality was vanquished by ambition and greed."*

For Rousseau, as people acquired wealth and property, a person's relative economic position became more important than his absolute economic status. Stated otherwise, people did not seek to acquire wealth just to satisfy their appetites. Instead, they sought more property and wealth to distinguish themselves from their peers and neighbours and to assert their own preponderance over their peers and neighbours. This path of comparison, of course led to fierce and unbridled competition and the exclusion of the "have-nots by the "haves". However, it also led to hypocrisy as Dunn (2002, p. 7) has stated:

> *"Rousseau incisively remarked that the cost to individuals of these new desires for prestige was alienation from themselves. For they viewed their accomplishments, their worth, and themselves through the appraising eyes of their rivals, experiencing their lives through their judgmental gaze, belonging less to themselves than to others. To earn the regard of others, it became more*

important to appear than to be. One tried to satisfy one's ego while robbing oneself of authenticity and equality—as well as of the compassion one had felt for others in the state of nature."

For Rousseau, a combination of the emergence of inequality that was sired by the pursuit of wealth and private property, social division that was engendered by the division of labour, and the exclusion of the poor by the rich, which all occurred when man progressed from the state of nature—caused exploitation, dislocation, violence and disorder as Guéhenno (1966, 1:128ff) reworded Rousseau**:**

"The usurpations of the rich, the pillagings of the poor, the unbridled passions of all, by stifling the cries of natural compassion, and the still feeble voice of justice, rendered men avaricious, wicked, and ambitious."

Man at this stage was in earnest in a state of war, into which all men were sucked. In his thesis, Rousseau was both convergent with and divergent from Thomas Hobbes.

The state wherein man is at war with his kind, and where such a state behoves an arbiter as was theorised by both, makes Rousseau and Hobbes convergent. However, they are in divergence with regard to when the state of war occurs. For Hobbes, a state of war occurred during the state of nature, and it constantly obtained. For Rousseau on the contrary, a state of war did not occur during the state of nature, but at the stage of social development. Nonetheless, Locke also converges with Hobbes and Rousseau on the existence of a state of war, except that in Locke's thesis, the state of war occurred when a person

offended the natural law of self-preservation and impinged on another man's freedom and the victim retaliated to punish the aggressor for the breach.[3]

Rousseau on the pseudo-social contract

Rousseau's state of war spared no one. Violence and war affected the rich and the powerful much more than it did the poor because the rich had more to lose in terms of their amassed fortune. Thus, the rich, contended Rousseau, proposed a unity of the rich and the poor—a sort of 'social contract'. In the pact, the poor were assured order, peace, security, and justice (Dunn, 2002). However, the contract was a fraud, and was designed to pacify the poor, and subsequently to entrench the rich in a commanding position. Thus, the poor acceded to the dishonest design of the rich, incognisant that by doing so they aided the consolidation and institutionalisation of not only the economic, but also the political power of the rich.

Because of the pact, the wealthy and powerful did not only deprive the poor economically; they also expropriated all political power from them (Dunn, 2002). The people were fully enslaved by their promise of obedience to their ruler, by their own ambition and vanity, by their inauthentic desires for luxury as well as their need for the admiration of others (Dunn, 2002). In the process, because they were desirous of maintaining their vantage economic and political positions, the wealthy morphed into hereditary rulers.

Moreover, they became despotic and almighty, wielding and exercising unlimited power over the poor to conserve the status quo. At that stage, the political relationship was no longer merely between the powerful and the weak, but

[3] See, "Locke on the state of nature" in this Chapter.

between master and slave. Vanquished and scattered, there was no social action, no concerted effort, and life was not only solitary, but also brutish and nasty (Dunn, 2002). Because people's unhappiness was at its nadir, Rousseau, like Locke, was prescriptive of deposing the despots that were responsible for their misery. He recommended insurrection against despots as below:

> *''The insurrection, which ends in the death or deposition of a sultan, is as juridical an act as any by which the day before he disposed of the lives and fortunes of his subjects. Force alone upheld him, force alone overturns him.''* cited in (Dunn, 2002, p. 8)

The deposition of a despotic government was necessary to overwrite the pseudo-contract, under which alienation, social and economic deprivation and despotism were legalised, and to create a veritable social contract.

Rousseau on the real social contract

A real social contract, which was able to preserve the freedom of the people was not impossible. This, according to Rousseau, was because human nature is malleable; it can from evil gyrate back to morality. Stated otherwise, Rousseau believed that a man's moral and rational faculties could be nurtured, educated, and guided, so that his full humanity can blossom (Dunn, 2002). In spite of the fact that Rousseau's society made people unequal and unfree, made them victims of their limitless desires for superficial pleasures and superfluous knowledge, and reduced them to slaves of the powerful, it was possible to re-conceive and restructure social relations and

political institutions on a radically different basis (Dunn, 2002). Thus, a new political constitution or social contract was made after abrogating the first one in which the ordinary people were duped.

The new social contract was simple; it was an agreement of the people, between the people, and for the people. It was not between the rich and the poor, the powerful and the weak, leader and follower, or ruler and slave. Rather, it was, as stated already above, between the common people themselves, who agreed to act cohesively as a community with shared duties and rights. This is because they learned that no one could promote or protect their interests but themselves. Under the new political constitution, the people agreed to sacrifice the private good for the shared good because the pursuit of the private good had ensnared them. The major benefit was escaping oppression, alienation, inequality and despotism, and the ramifications that attend them, which the people suffered in Rousseau's social life because of misapplying their rational endowment when they pursued private property and wealth.

In the Rousseauan political constitution, therefore, the people had the duty to protect and defend, as well as the right to enjoy their sacrosanct freedom because no ruler or government could guarantee its enjoyment. Like Locke and Hobbes did, Rousseau and Hobbes also diverged on what happens to the freedom of the people when they agree to a social contract.

For Hobbes, in order to escape the state of perpetual war that existed in the brutish state of nature, the people entered into a contract, by which they signed away their freedom and all their rights to an absolute sovereign who would police them in exchange for life, security, and order

(Dunn, 2002). By contrast, Locke disagreed with Hobbes on the absoluteness of a ruler. He also contended that freedom was fundamental, God-given, and therefore inviolable, and that any person had the right to resist aggression, whether the aggressor was an ordinary person, or a ruler, in self-defence in order to regain his freedom.

For Rousseau, a social contract, which granted unlimited power to a ruler to treat the people as he willed, was void and invalid, whether it was born out consent or not (Dunn, 2002). Nullity and invalidity of a social contract, in Rousseau's thesis, occur once a ruler tinkers with the people's freedom. For Rousseau, like for Locke, violating the freedom of the people is the 'red line' against rulers. The people may give up property, he reasoned, but they may not consent to give up life or freedom because they are essential elements of their humanity (Dunn, 2002). Rousseau held that consent alone does not legitimise a government. A ruler cannot hide behind the cloak of consent to violate the people's inherent right to life and liberty.

Locke also held the same view. Although he believed that a government can exercise its power over the people only if they consent, Locke did not mean that the people should consent to be oppressed. Instead, he was unequivocal in stating that if a government oppresses the people, they reserve the right to depose it. The consent of the people to be governed that Locke referred to was the act of delegating the legislative, executive, and adjudicative functions and attendant powers of the people, to a government, which must use them in the interest of conserving the people's inherent liberty.

Additionally, like Locke, Rousseau's genuine and only real political constitution is that in which the people retain their sovereignty. Their sovereignty, like their freedom is

inalienable, and they may not transfer it to anyone else or submit to the will of any other (Dunn, 2002). In Rousseau's political constitution, the people bind themselves to a contract, but they do not subject themselves to any authority except that of their own *collective will*—their ''general will''. This general will is not necessarily the will of the majority, as we understand it in democracy because the majority may be wrong, but the will either of the majority or the minority, whichever is for the common good of all (Dunn, 2002).

Rousseau's ideas of patriotism, freedom, the sovereignty of the people, and the general will, as well as Locke's freedom and self-defence, were arrived at because rulers employed raw power to oppress the people, in lieu of using the same to promote liberty, and the outcomes of such were socially disruptive. For Rousseau, like for Locke, the construction of a good State entails upholding the people's freedom and their sovereignty. Thus, if a government is to be profitable to the people, it must operate in accordance with the people's rational good. Otherwise, the government is useless and should be shown the exit by any means.

CHAPTER TWO

Self-interest and political power

Man in a civil State is duty-bound to respect and observe the interests of others and the public interest of all, as he pursues his private interests. In a civil State, whether a monarchy or a republic, laws are made to protect and preserve such public interest, at least in theory. However, rulers being human beings are also not immunised against the selfish nature. Thus, whether or not a ruler promotes the public good or hurts it, he is motivated by self-interest. This Chapter unpacks the mystery of self-interest, which conditions the behaviour of all men.

Batamuliza on self-interest

Self-interest is an interesting, but grossly confounding subject. Jackie Batamuliza, an erstwhile classmate of mine at university, once asked me to explain why man is selfish. Instantaneously, I wanted to offer an answer, which obviously lacked depth and reason, but as I pondered, she asked me not to tell her that self-interest is "a natural thing." Subsequently, she conditioned the naturalistic explanation with proof of a body hormone that controls selfishness, for an answer in that direction to be admissible. I was disarmed because I had yet to hear such a biological explanation. At that moment, we had to switch topics away from the inquiry into why human beings are self-interested because I realised that she wanted a compelling philosophical explanation that I could not offer instantaneously. It took me a couple of weeks to figure out one.

My labours to clinch a cogent rationalisation was bolstered by the fact that at that time, I was making a philosophical inquiry into why politics is a messy affair in Uganda and Africa, the very reasons for which I was impassioned to write this book. In the process, I discovered that personal expediencies of political actors were at the pivot of the mess. At this stage, I was in agreement with Batamuliza concerning the reality of selfishness abounding in man. Our only point of departure was its causation. For Batamuliza, human beings are selfish because of their apprehension and uncertainty of the future. In her view, because man lacks the faculty and competence to forecast and predict the actions of another in the future, he cannot be motivated to help in the present. That because he is uncertain of his consideration and goodness towards another being reciprocated, man is prompted by scepticism to withhold from and deprive others of what they may need or want.

Why people are selfish

Batamuliza was not wrong in her thesis; however, there is a more comprehensive explanation that is provided in the following pages. The subject of self-interest is wider and more enduring than we even care to know, yet it continues to bear adverse ramifications. It threatened to wipe out the human race in the Hobbesian state of nature as much as it did in Rousseau's society, and does today. Individuals, groups of people, organisations and governments, do not feud and duel without cause. There is something to gain and something to lose, and yet that something is usually attached to a person, group of people, organisation, or government in conflict. That "thing", whatever it may be, is attached to "self".

The fact that man is inherently selfish is *res judicata*—a settled thing; it is unobjectionable and not debatable. Hobbes' thesis on man in the state of nature revolves around his 'pride and other passions', all of which are rooted in selfishness. Nonetheless, people for a long time have discriminated between selfishness and selflessness. Consequently, debates on whether human beings are inherently selfless or selfish abound. Whether or not there is a class of selfless human beings will be dialectically crystallised later in this discourse.

From a philosophical viewpoint, man is selfish because he loves. Succinctly, love is at the fore wherever there is selfishness. There is a common view that a person who loves another is by that love constrained and cannot act selfishly towards the beloved. Whereas there may be no reason to believe otherwise at this stage, this is just but one outlook of the expansive subject of love. Besides the popularly held view that love is the solution to selfishness, it is also the explanation of why man is selfish. The assertion suggests, already, that the concept of love is subjective and twofold.

There is, to coin the word, an *outbound* love, which is simply the love for others. It is outbound because it is felt towards others. It is the love that is known by everybody. Another variety of love may be called *ulterior* love, which is the love for self. It is ulterior because it is concealed inside a person possessing it and is inexpressible to others, but sets its wielder in motion to act in his best interest. It is a form of love, which is misunderstood and subsequently disparaged as selfish.

At the hearing of the word "love", people append it to the outbound love and sub-consciously lock their mind away from the prevalence of the other. The enigma surrounding the

concept of love is especially propagated by the Christian worldview. Nonetheless, such a posture is taken because those who take it fall short of internalising the gist of what the bible teaches about love. The bible is very explicit and non-metaphorical about the existence of the two strands of love such as I have described above.

There is the 'love for self' and the 'love for the neighbour' in the bible. The former corresponds to what has been referred to as ulterior love, while the latter corresponds to outbound love. Ulterior love by all indications wields primacy over outbound love. It is 'hogwash'—nonsensical to think that mortals can care about the interests and needs of others before theirs, or in a manner that transcends theirs. The bible concurs with this view without equivocation in the gospel of Mathew, which declares that "love your neighbour as yourself..." (Jesus in Mathew 22:39).

A thing to note from the biblical text is that the order of the statement is not inconsequential. It places self-love naturally and necessarily above the love for others. Put the other way without altering the meaning, the commandment may read: as you love yourself so love your neighbour. When adjusted, the foregoing biblical expression "as you love yourself" accords primacy to self-love. Self-love is the yardstick and standard upon which to qualify the love for others. One cannot be in a mortal state and love others more than himself. A person can only love others to the degree to which he loves himself, and in most if not all cases, man loves himself more than he loves others.

The fact of human nature is that it cannot permit a person to love others in excess of how much he can love himself. If the love for others exists, then it only does to the extent that the love for self permits. Any man can only love

another to the extent that he draws satisfaction and happiness from that feeling or expression, or to the extent that he does not draw sadness from it.

If the satisfaction and happiness wane, and dissatisfaction and despondence set in, love in a corresponding measure wanes. It is not surprising that even a man in a romantic relationship (which is the strongest possible bond of love there is) continues in it only as long as he continues to draw satisfaction from it; otherwise why else do relationships and marriages collapse? Even expressions as obvious as giving gifts to other people in a show of love or compassion, are motivated by the satisfaction a giver draws from the act. The reason is not because the giver loves the recipient, but because he draws satisfaction from performing such a lofty and noble act. This explains why nobody, under ordinary circumstances, can give if he is cognisant that the recipient will use the gift to hurt him.

Knowledge of such harmful designs eradicates the feeling of satisfaction and generates fears. Moreover, it is for the same reason that nobody wants to give or help unappreciative people. Receiving appreciation brings satisfaction. It is, therefore, natural that a prospective giver cannot be motivated to give if he is aware that the same gift will be used against him, or if he is aware that he will not be appreciated, since in both cases he does not draw satisfaction. From this, one can deduce that as long as the love for self is the epicentre of love, and dictates the pattern and extent of the love for others, every action or feeling towards others; good or bad, benevolent or malevolent, magnanimous or otherwise, is out of selfishness.

The illusion of selflessness

Are people inherently selfish or selfless? If they are selfish, why do they sometimes do things that are regarded as noble, virtuous, or benevolent? If they are inherently selfless, why do they sometimes do vile, evil, or malevolent things? Since people are capable of doing both good and bad, it may seem logical to contend that people are both selfish and selfless. However, that is not the case. Selfishness is the only fact that is tenant in human beings. Whether a person behaves in ways that are benevolent, or otherwise, he is driven by selfishness. All acts done by a person involve an element of self-interest.

In the context of this book, selflessness entails doing good deeds to others, even when they hurt the feelings, or when they adversely affect the satisfaction or interest of the doer. If a person gives to another, or performs other good acts, and his interests are not hurt because of the good act, then that is not selflessness. For instance if a man has two shirts and gives one to another who has none, the giver is not selfless. However, if a person's interests are hurt, that is, if he, for instance, chooses to starve and gives all the food he would have eaten, that person is selfless; the giver loves the recipient more than he loves himself. Selflessness entails a person choosing to clothe a naked person and he walks naked in lieu.

Mencius' fallacious teaching on selflessness

Mencius, one of the venerable Chinese philosophers, a sage and defender of man's intrinsic goodness, posited that people possess goodness at birth, but become delinquent as they grow, and life's demands order and format their behaviour (Wright 2011, p. 25). Additionally, Mencius conceived that

even when delinquent, there are highlights in a person's life when the innate goodness manifests. For Mencius, the inherent goodness of man predisposes him to act, not necessarily in his interest or for his own good, but in the interest of and for the good of others. To demystify his abstraction, he asked people to imagine a baby on the brink of a well, about to fall in. It is agreeable that even the cruellest person will under ordinary circumstances attempt to do everything in his power to save the baby.

The hard question remains, however, relating to whether such a good act when performed is due to the selflessness or of selfishness of the actor. Let us put it to the test through a figurative question. Imagine the baby described above is not a human being, but belongs to another species, for instance, a kitten, how many people would be bothered to save it? My imagination is that few or even none would be bothered much. The *raison d'être* of the enthusiasm to save, in the first instance, and little or most possibly the lack of it in the second instance, is that the former instance courts pain because of the relational proximity that derives from the fact that the baby is as human as the enthusiastic saviour, while the kitten is not. That a human being would be enthusiastic to save another is because he imagines himself with the same pain, a sense that transfers sorrow to him and thrusts him to act to prevent it from happening to his kind.

Ultimately, it is the sorrowful feeling (which is itself discomforting) that moves him to act because the love for self does not tolerate painful feelings. Therefore, all good or noble acts derive from a selfish drive. It is also true that the love for others, which obviously is dictated and ordered by self-love, is not the same as selflessness. If there are compelling arguments and evidence to prove that even kind acts are prompted by the

self-love of the actor, who then in this world is selfless? Obviously, there is not such a thing as selflessness or altruism. Self-love is the only force innately tenant in all human beings; and it is usually covert and triggered by intrinsic drives. Just as hunger is a covert feeling triggered by the desire for survival, selfishness is a covert feeling triggered by an inherent need to love and gratify self.

Self-love is competitive; it loves to conquer, dominate others, preserve self-dignity and prestige; and does not want to lose but wants to win. Also, it is desirous of respect and appreciation. Self-love is manifested in manifold simple and intricate ways. Whenever a person considers himself first and puts his interests, cares, and needs in preference to those of others, he is selfish. Every time one wants to be better than others, he is selfish. There is a deep-seated desire in all humans to be the best, have the best, and do the best. In this respect, there is no person who can feel dejected if he performs better than others in a competition. On the contrary, everybody by innateness is crowned with elation at success and triumph over his peers or competitors, and that is due to the sense of self-love.

Aristotle's philosophy on selfishness

Aristotle was perhaps the first philosopher to challenge the orthodoxy of human selflessness intellectually and comprehensively. In *Nichomachean Ethics,* he intelligently discussed the subject of self-love vis-à-vis selflessness, and arrived at the conclusion that no one is selfless, and that people who are perceived to be selfless are in fact selfish. In his discourse, Aristotle castigated the orthodoxy that discriminated between the "base", otherwise referred to as self-lovers and the

"decent", otherwise reflected as the selfless. Orthodoxy and popular orientation relating to human nature during Aristotle's time was that people ought to have loved others more than themselves. Subsequently, those who loved themselves more than they loved others were castigated as "base" and stigmatised as 'self-lovers' or selfish (Bartlett & Collins, 2011).

A base person or self-lover was he, who in the social construction of Aristotle's time acted in his own interest. On the contrary, a decent person as viewed by Aristotle's contemporaries was one who disregarded himself and his personal interest for the sake of what was noble and for the sake of his friends (Bartlett & Collins, 2011). However, Aristotle viewed the foregoing arguments as merely fantastic. Contrary to the prevailing conventional understanding of selflessness vis-à-vis selfishness, Aristotle argued that those who did noble acts, considered their friends ahead of themselves, and disregarded themselves for the sake of others were the genuine self-lovers.

Vice versa, for Aristotle, those who acted in their interest, instead of acting in the interest of others were not in fact self-lovers. Aristotle did not suggest, however, that these people were selfless, but it can be inferred that they were, to introduce another word, "self-haters" because according to Aristotle, they choose to settle for less valuable and destructive things. Since Aristotle's society considered a selfless or decent person to be one who did good things for his best friend instead of himself, Aristotle introduced a new concept relating to friendship to challenge the orthodoxy. He contended that one's best friend was not anybody else, but himself. Thus, the good things that ought to be done by a decent person to a friend ought to be done to oneself.

Stated otherwise, a decent person in Aristotle's view was one who loved his best friend—himself, not somebody else. Thus, Aristotle interred the idea that the decent did not act in their interest. In effect, Aristotle consolidated his argument that if a decent person does good things to others, it is not because he loves them more than he loves himself, but because he profits from doing good to them; otherwise, the love for his best friend—himself, cannot permit him. In other words, every good thing that is done to others is because of the personal benefit the doer derives from it.

Selfishness, the only driver of all human behaviour

Although Aristotle rejected the existence of selflessness and asserted that only selfishness drives people's actions, he believed that selfishness is of two types, and that one drives people to do good, while another drives them to do bad. The latter relates to the selfishness that is in accord with passion, while the former relates to the selfishness that consults the intellect. The self-love that appeals to passion, according to Aristotle, makes people to desire to allot themselves a 'greater share of money, honours, and bodily pleasures', and because many long for these things because they think that they are the best in life; 'hence, too, such things are fought over' (Bartlett & Collins, 2011, p. 201).

In other words, this kind of self-love gratifies passions and bodily desires because it is in accord with the non-rational part of the person who pursues them. It is this kind of self-love that Aristotle's contemporaries received pejoratively. Aristotle himself frowned upon this type of 'self-love' because in the pursuit of bodily pleasures, material fortune and honours, men can destroy themselves and others as they did in the Hobbesian

state of nature described in Chapter One. For Aristotle, therefore, this was not even self-love but a misnomer. Real self-love in the Aristotelian thesis was not evil.

The real self-lover in the Aristotelian logic was one who despised bodily pleasures, honours, and money, which in his view are agents of social discord and destruction. The Aristotelian self-lover; the selfish person was one who valued moderation, modesty, acted justly, or did all other things that comply with reason. This Aristotelian logic, however, was in sharp contrast to the conventional wisdom relating to self-love because conventional wisdom conferred the label of "decency" or "selfless" to the modest, the just, and the considerate.

Aristotle's logic was premised on the supposition that decency was of greater virtue and value than bodily gratification and other efforts in that orbit; and naturally, the self-lover desired what was of greater value to him. Thus, a person who loved himself much ought to have despised that which was of lesser value, and to have sought that which was of greater value. Those who were chided as "self-lovers" or "selfish" in the conventional context because they sought to gratify their bodily passions were not selfish in the view of Aristotle because they acted in accord with their passions in lieu of the intellect, and their passions misguided them to conceive that bodily pleasures, money, honours, and other things in that category were of greater value, yet in fact, bodily gratification and assimilated pursuits were of lesser and destructive value.

For, in Aristotle's view, every intellect chooses what is best for itself, and a decent person obeys the rule of the intellect (Bartlett & Collins, 2011, p. 202). Doing what is noble and virtuous is of greater value because, whereas the pursuit of bodily gratification causes social discord and destruction to

both the actor and others, performing noble acts does not only save the actor and others from destruction, but also courts admiration, high esteem, and veneration to the actor from his peers and foes alike, and obeying the intellect brings such. By extension, it is of greater value because it profits the greater society instead of destroying it.

To wrap up Aristotle's logic on selfishness, people who are motivated to act viciously, that is, after their passions; who are disparagingly called 'self-lovers' and variably referred to as selfish, are not indeed self-lovers because what they do does not benefit, but hurts them and others in the long haul. By contrast, those who act virtuously; after their intellect—conventionally regarded as decent or selfless, are indeed the self-lovers or selfish because their acts profit them, first and foremost, and then others as a consequence.[4]

[4] Aristotle also suggested that a person who loves himself more or one who is more selfish does more of what is considered nobler by the ordinary people, and cited an example of a politician who steps aside for others to rule. The ordinary people praise such an act as very noble and selfless, but the actor in the process wins their admiration, praise, and adoration, which are in the Aristotelian logic, of greater value. From this analysis, it is deducible that the first US president, George Washington, who declined to run for a third term, and Nelson Mandela, the first South African black president who stepped down just after one term in office, acted not out of the love for their fellow politicians, but out of greater love for themselves.

Aristotle's misjudgement of selfishness

Even so, Aristotle's logic is not entirely correct. It is defective in certain arguments and sometimes contradictory in terms. First, Aristotle's logic leads to the inference that all human beings love themselves. He argued that a person's best friend is not anyone else but himself, which justifies the fact that love is towards the person himself first. Thus, Aristotle implied that all human beings love themselves more than they love others because each is his own best friend. If this is true, why then did he contend that people who gratify their bodily pleasures ought not to be called self-lovers?

If from Aristotle's standpoint those who pursue pleasure harm themselves and others, then it is inferable that he implied that they are self-haters. This argument, then contradicts the earlier one, which asserts that all human beings love themselves. The fact is that nobody hates himself. Not even one who terminates his own life does. For, love desires and does good things for the beloved, but pain is not at all a good thing. One who ends his life, therefore, is motivated by a desire to free himself from the pain he may be subjected to.

The instincts of self-love do not tolerate pain, and if pain whether physical or psychological becomes unbearable, the person so feeling it may decide to end his life in the interest of gratifying the desire to be free from it. Such an act is out of self-love. All human beings love themselves more than they love others. They, therefore, desire and do the best for themselves if they have the power.

Second, Aristotle argued that a man who seeks to gratify his passions or bodily desires and pleasures obeys the non-rational part of his soul. In Aristotle's view, obeying the non-rational part of one's soul makes a person savage. This is

because most people seek the things that gratify their passions; and because they are many who seek them, they find themselves clashing over them. Aristotle, however, is in stark philosophical divergence with the psychoanalyst, Sigmund Freud on the concept of rationality; and as such, the two arrive at disparate philosophical conclusions.

For Freud, it is not the non-rational part that leads men to act savagely, but the rational part of their mind or soul. In the Freudian thesis, a man's mind is composed of three parts, that is, the id, the ego, and the superego. The id is the part of the mind that stores passions and bodily desires. A man's id is incognisant of the environment, and this can ram him into problems as he pursues things necessary for the satisfaction of his passions and pleasures because it is clueless of how best to satisfy them. The id is entirely non-rational and incognisant.

The ego, which is the rational part is aware of the environment, knows where hazards are and how to avoid them—it knows how best to gratify the passions and pleasures of man without landing him in trouble. The ego, therefore, employs its rational endowment to assist the id to gratify its desires reasonably, intelligently, and safely. The rational part is, thus, calculative. Subsequently, it may guide a person to be guileful, crafty, deceptive, and seductive, in order to gratify his interests safely, or it may guide him to be shrewd and tactful. In contrast to Aristotle's view, which contends that the non-rational part of a man's soul is base and the rational part is decent, Freud's analysis contends that the irrational part, that is, the id, and the rational part, that is, the ego are both base. In the Freudian thesis, the superego, the moral part is the only decent part of the human mind.

However, away from Freud, a man's rational part, subject to its calculative outcome is both base and decent. If a man in the pursuit of his interests is likely to thrust himself in danger, the calculative ego may guide him to gratify the desires in a shrewd way that avoids the danger. As such, the ego's rationality may guide a person to be modest, just, and considerate – what Aristotle rightly considered a decent person and a true self-lover.

However, the calculative ego may also guide the man to gratify his desires in a guileful and crafty way. As such, the person may satisfy his desires by being dishonest, unjust, and inconsiderate as long as the desires are satisfied in ways that keep the pursuer safe. Whether a person seeks to do what he desires for himself by obeying the dictates of his passions[5] or by obeying his intellect[6] as the Aristotelian logic categorises them, is a function of each person's decision-making process. Even so, there is no decision making process that is based strictly and exclusively on either of the categorisations.

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5 Aristotle traces man's passions to the non-rational part of his soul, which gratifies his bodily desires and pleasures. In Aristotle's view, obeying the non-rational part makes a person to become savage because many obey the non-rational part and end up fighting over the things that gratify the body.

6 The intellect or reason is the rational part of the soul or person in the Aristotelian logic. A person who obeys the rational part or follows his intellect and rationality rejects what the majority of the people fight over because he loves himself and does not desire to destroy himself and others by fighting over things the majority of the people regard valuable. Instead of fighting over them, he surrenders them to others. In the end, he preserves life, earns respect and admiration, which in Aristotle's view are of greater value.

Passion-based decision-making involves a certain degree of rationality, and rationality-based decision-making involves some degree of passionate considerations.

Rational decision making and Aristotle's logic

From Aristotle's decision logic, umpteen theses relating to how human beings make or ought to make decisions abound. Aristotle was, perhaps, the vanguard of the logical or rational decision school, although his version offers no practical aspects of making decisions rationally. Nonetheless, there are elaborate theories like the Expected Utility Theory, attributed to Von Neumann and Morgenstern that stretch from the rational decision school that prescribe the technical steps of rational decision-making.[7] The expected utility theory postulates that a rational decision-maker seeks to maximise the benefits that are due from his actions or decisions. Therefore, he subjects himself to a logical and systematic intellectual process.

This process includes; identifying the problem to be solved, contemplating the goals and ranking them, gathering information on the goals, identifying alternatives for reaching each goal, analysing each alternative by taking the consequences and effectiveness of each alternative and the probability of success into account, selecting the best alternative, implementing the chosen alternative, and monitoring and evaluating (Cashman, 1993, pp. 77-78).

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[7] The Expected Utility Theory of the rational decision school came in the 1940s. It deals with the analysis of human decision making in the microeconomics field, but nonetheless, it has ubiquitous application as far as rational or selfish decision-making is concerned.

However, it is sound to infer that rational decision-making is a rigorous process that takes time and that must take into account factors like accurateness and completeness of information and good judgment, among other factors. Real life decision experiences render the rational decision model an impractical ideal.

Firstly, the so-called rational decisions are taken with incomplete and sometimes inaccurate information because information gathering is itself a tedious process. Information may not be readily available, or the person gathering it may not be in position to know the type, quality, and volume of information needed for the task. Secondly, it is not always true that two people faced with similar situations and with similar information will come up with identical solutions. Judgement plays a part in the rational decision logic, yet it is subjective. It is based on what each person regards to be of greater value, which cannot be fixed to one standard, although Aristotle tried to fix it to things such as moderation, austerity, modesty, and justice.

Certainly, on what is best for each individual, it seems that Aristotle forgot what his sage, Plato taught in the dialogue—the "*Euthyphro"* about the facts that are not easy to agree on because they are subjective, and those that are easy to settle because they are objective, empirical and verifiable. In the *Euthyphro*, Socrates and Euthyphro (characters in the dialogue), concur that facts like just and unjust, noble and shameful, good and bad, cause differences of opinion among people because they are not definite, objective, or empirical.

Therefore, since the fact of value is not definite and not quantifiable, whether a person chooses to gratify his bodily desires or seeks honour and wealth—what Aristotle considered to be of lesser value, or chooses austerity and modesty—what

Aristotle regarded to be of greater value, is a function of that person's judgment, which is in turn a function of a decision process. It is unsound to extrapolate as Aristotle did, that a person who chooses to gratify his bodily desires and to seek honour, power, and advantage, does so in total discord with reason, or that he is irrational or self-hating.

Self-love and rationality are not limited to those who do noble things. It is defensible to deduce that whereas a choice to seek self-gratification, pleasure, power, a fortune and such things, is motivated by self-love; a choice to pursue austerity and to act kindly or even die for others is motivated by even greater self-interest. Therefore, to suggest as the Aristotelian thesis does that those who seek bodily desires and pleasures are self-haters and vice versa, is to be parochial. In other words, it is wrong to think that some people are selfish and others are not. Moreover, Aristotle deduced that a person who acts in accord with his non-rational part, or seeks to gratify his bodily desires and pleasures, does not only hurt the interests of others, but also his, when he pursues the things others also pursue. This is unsound because it is not always true as he assumed that a person who seeks such things always hurts himself. By contrast, many gain wealth, power, honour, and live happily without hurting themselves or others.

The major flaw of Aristotle's logic lies in the fact that his views were utopian. The things whose pursuit he condemned are what everybody desires and pursues. People desire and actually pursue honour, power, wealth, freedom, and assimilated things. To suggest that they are bad is to fallaciously eulogise subordination, poverty, subjection, servitude, and assimilated things that nobody can voluntarily submit himself to. The fact that everybody desires the obvious material things that generate happiness, and pursues them, does

not mean that they have to fight over them; they can compete for them under conditions of fair rules.

Capitalism and Aristotle's utopia

The success of capitalism has proved that rule-based competition can work and lead people to success without hurting themselves or others. Capitalism has survived as a political-economic system, in lieu of its rival, communism because the former is pragmatic, in that, it recognises that all individuals have a congenital proclivity for pursuing material things, and has given them a chance to pursue them under regulated conditions. Consequently, greater happiness has been generated as many individuals have become wealthy, employed many others in the process, paid taxes to governments from which they (governments) have been able to provide better public goods and services, and led to astounding scientific innovation and technological breakthroughs that have improved the standards of living. Vice versa, the latter system, communism, sought to curtail the pursuit of things that make people happy, the same way Aristotle discouraged it.

The communist ideal was established on its critique of capitalism; which the communists have argued, is exploitative, creates societal wedges on the basis of socioeconomic characteristics, enslaves the majority of people, and generally creates poverty. They have argued that since in the capitalist system the means for producing and distributing goods, that is, land, factories, technology, transport system and so forth, are owned by a small minority of people, that is, the capitalists or the bourgeoisie, it leaves the majority of them, that is, the working class or the proletariat as low-life sellers of their labour in return for a pittance.

The exploitative relationship between the bourgeoisie and the proletariat, the communists have reasoned, is rooted in the selfish nature of the former, who in their economic activities focus on the profit drive. In the communist critique of capitalism, the motive for producing goods and services is to sell them for a profit; not to satisfy people's needs. The products of capitalist production have to find a buyer, of course, but this is only incidental to the main aim of maximizing profit, that is, ending up with as more money as possible, than was originally invested.

According to the Communist critique, production is started not by what consumers are prepared to pay to satisfy their needs, but by what the capitalists calculate can be sold at a profit. To maximize profits, the capitalist must keep the costs of production, including the cost of labour as low as possible. For, the lower the cost of labour, ordinarily, the higher the profit; thus, according to the communists, a rational capitalist pays as much lower wages as possible, and provides no incentives that have a cost implication. The profit drive that motivates the bourgeoisie, according to the communist teaching, creates and widens the wealth gulf between them and the proletariat who work for them because the bourgeoisie can make more money by selling what the working class produces, at a price that is higher than the cost of labour.

The capitalists benefit from the profits they obtain from exploiting the working class whilst reinvesting some of their profits for further accumulation of wealth. Thus, the communists hold that the capitalists progressively accumulate wealth as the workers languish in poverty. The communists have argued that to survive, the bourgeoisie have to engage in ruthless competition for resources and markets for their products. It was in this breath that Julius Nyerere, the former

president of Socialist Tanzania, pejoratively referred to capitalist societies as ‘man eat man’ societies. The communists predicted that ‘man eat man’ societies were systemically flawed and set for self-destruction, domestically and globally.

Domestically, the capitalists were going to be overthrown by the exploited, organised proletariat and dispossessed of their means of production. International capitalism was to collapse under its own weight when the capitalist states fight over raw materials and markets in foreign territories. After the demise of capitalism, promised the communists, there would emerge a perfect society; an egalitarian society free of exploitation, socioeconomic class divisions, and private ownership of the means of production. Communism was projected as a system of freedom, prosperity, equality, and social justice.

Unfortunately, communism was too utopian; it failed everywhere it was tried. In Russia and later the Soviet Union, East Germany, China, Vietnam, Cuba, Tanzania, Zambia, North Korea, etc., they got stuck with tyrannical state control of all the affairs of life. Thus, communism led to poverty since the States controlled all the means of production, forced and exploited citizens as State workers, and expropriated their rights and freedoms. It did not create the classless society that its prophets promised, but exacerbated class divisions by creating the tyrannical political class, and the subjugated working class. It did create equality except that it made everybody equally poor, apart from those that wielded political power, of course.

In a society where all material resources are owned and operated by government, it implies that government is the only employer, and that no one can consume more than government allots to him (Mises, 1944). There can be no free choice of profession or trade where government is the only

employer and assigns everyone a task he must fulfil. The lack of freedom to choose a profession or trade enslaves workers and keeps their wages at subsistence level or lower.

Of course, the apologists of communism argued, upon realising its failure, that the Russians, Chinese, Cubans, Vietnamese, etc., hijacked it and turned it into socialism or 'state capitalism'. If it was indeed hijacked, not by the capitalists, but communism's cheerleaders like Lenin and later Stalin of Russia/Soviet Union, Mao of China, Castro of Cuba, Nyerere of Tanzania, etc., it follows that state ownership and control of the means of production, that is, socialism, was the only pragmatic way of applying communist ideals. The Communists promised an egalitarian and stateless society, in which nobody would be under the control of any authority. It was, thus, inoperable because it would not create equality, but anarchy and lawlessness such as the one Hobbes described in the state of nature.[8] Unfortunately, communism and its corruption, socialism or 'state capitalism', were both failures in that; while communism was inoperable, socialism was tyrannical.

Capitalism on the other hand espouses freedom or free choice, including the choice of workers to accept to supply their labour or to withhold it. Such freedom scales up the workers' bargaining power, especially those that possess the skills that are needed by capitalists. Increased bargaining power yields higher wages for the workers, increased savings, investment, and accumulation of wealth. Capitalism gives each one a chance to own property. Thus, unlike communism/socialism, capitalism gives all people a chance to become wealthy if they work hard.

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8 See, "Thomas Hobbes' philosophy" in Chapter One.

Capitalism has three shades that relate to individual freedom to pursue the good life. As a social system, it is based on the principle of individual rights. As a political system, it facilitates the freedom of individuals to make independent, sovereign choices with regard to offering or withholding labour to or from an employer, and buying or abstaining from buying from a producer. Economically, when such freedom is applied to the sphere of production, its result is the free-market, in which production and distribution and pricing of goods and services is determined not by government, but by the forces of demand and supply (Capitalism Magazine, 2013). In sum, capitalism is based on free enterprise and private ownership of the means of production, and everyone has a chance to own them. It aims at free competition and at the sovereignty of the consumers[9] (Mises, 1944).

Capitalism, understood in the context of individualism, is the most pragmatic approach to the pursuit of happiness because it is consistent with man's rational and selfish nature. Human beings are driven by self-interest to work. The basic reason why people work is to satisfy their needs and wants. Human beings are rational because they know what is best for them at the individual level. But rationality differs from person to person, and a person's rational part guides him, uniquely, to determine what is best for him. So, what is best for one individual is not necessarily what is best for another, which

[9] Consumer sovereignty refers to the freedom of consumers to buy a product or service produced by a capitalist, or to abstain, which makes them "kings", on whose preferences and tastes capitalists base to produce. In short consumer sovereignty gives consumers the power to determine what is produced, and expropriates that right from the producers—the capitalists.

justifies the need for individual freedom to seek what one thinks is best for himself, than what somebody else thinks.

Capitalism facilitates individual pursuit of happiness through private ownership and direction of the means of production for personal gain; and since it facilitates such, every human being has an opportunity to work hard, own the means of production, work for personal profit, and accumulate wealth. Given the undeniable selfish nature of human beings, the pursuit of profit, which the communists/socialists have attempted to demonise, is not wrong after all, but the only incentive for hard work, which is the means of escaping poverty and living happily.

Those who fail to accumulate wealth do so because of their own laziness rather than because of lack of opportunity. By contrast, communism/socialism curtails such selfish or individual pursuits. Under communism/socialism, no single individual can own the means of production, no one can be motivated to be enterprising, and, therefore, no one can accumulate wealth. The pathway to wealth is clogged when the State owns and controls the means of production and of distribution of goods and services.

Competition is healthy because it generates progress and happiness if regulated. As stated already, capitalism has demonstrated that rule-based competition engenders innovation, wealth, freedom of choice, high quality products and services, and improved quality and standard of living, in other words, it leads to happiness. Thus, like the communists were, Aristotle was wrong to philosophise that the pursuit of material things such as wealth and possessions is irrational; because clearly, without them men lack happiness. To denounce this view is to contend, as has been noted already, that poverty, subjection,

servitude, etc., lead to happiness. Such a view was of course held by Aristotle, but it is wrong.

In fact, Aristotle did not have issues with the pursuit of material things per se; his quarrel with their pursuit arose from the consequences—the fact that people fight over them, and hurt one another in the process. Thus, it is inferable that if there was a way to convince Aristotle that people can pursue material things without hurting each other, it is possible that his philosophy would have been different. He would possibly have stated that those who pursued material things were true self-lovers.[10] But since he did not know that they could be pursued and attained under regulated conditions, he wrongly condemned their pursuit and ended up screwing up his philosophy on selfishness.

Self-love and political expediency

Selfishness is a reality ingrained in the very nature of every man, as is rationality. As such, every man is guided by his rationality to pursue things that expediently bear dividends for him. Whether such dividends to the pursuer are in the immediate term (for instance the gratification of bodily pleasures), or the dividends are futuristic and enduring (such as admiration and veneration) is of no consequence because both are generated by rational, selfish motivations. We ought to recall that Aristotle, in his thesis on self-love, suggested that the acts that most people regard as 'noble'; for instance, one's moderation, sobriety, kindness and compassion among others, have positive impacts on others. This, in the context of this

[10] As discussed in Chapter Two, Aristotle disparaged people who pursued material things as not self-lovers.

book is the normality of self-interest or rationality. It is not only normal, but also desirable.

By contrast, the acts that most people regard as base, or evil'; and thus, 'selfish' in the ordinary understanding, which Aristotle did not consider to be out of selfishness, bear adverse effects to other people, although they may benefit the actor in the short run. These, in the context of this book are "disorders of self-love"—of selfishness or rationality. They are disorders of rationality and selfishness because they bear adversity not only to other people, but also to the actor, especially in the long run. Such acts as embezzlement, theft, oppression and the like are undesirable.

From the above, therefore, one need not be a nuclear or a rocket scientist to deduce that, although all acts are motivated by self-love and expediency, one set of rational action is desirable and the other is not. The selfish acts that bear heinous effects on others such as corruption, abuse of power and office, abuse of human rights and basic freedoms, nepotism, political advantage, legislation of draconian laws and others in that category, regardless of whether they benefit the actor, need to be fettered. They are disorders of selfishness or rationality.

CHAPTER THREE

Uganda's political odyssey

An elaborate narrative of the history of Uganda is beyond the scope of this book because there is already a lot of detailed literature about it elsewhere. In effect, only highlights of the chronicles of Uganda's politics are furnished. The political character of Uganda over the years bears colonial hallmarks. As such, to understand incisively why during her early days as a nascent state Uganda became mired in political turmoil, one needs to appreciate the roots of Uganda's political history.[11]

During the pre-colonial era, the territory that came to be Uganda consisted of few politically constituted entities that had a semblance of statehood, as well as many scattered communities that did not at all match the benchmark.[12] Some of the politically organised entities included Buganda, Ankole, and Bunyoro-Kitara. These entities, especially Buganda and Bunyoro-Kitara engaged in expansionist and hegemonic wars against each other (Adhola, 2006). Historically, although Bunyoro was up to around the mid-seventeenth century the undisputed hegemon in the region of what is now Uganda, it suffered power decimation as a result of Buganda's expansion

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[11] Uganda got her independence from Britain in 1962 [theoretically]. However, in 1966, just four years into self-rule, she got embroiled in a political and constitutional crisis. In 1971, a military coup took place. The years that followed were years of instability, armed conflict, and dictatorship.

[12] See the Montevideo convention for the parameters of modern statehood.

after the ascendency of Kabaka (King) Mwanga in 1674 (Adhola, 2006).

By the end of the nineteenth century, Buganda was not only the dominant power in the region, but was also receptive to foreigners for reasons that transcended just hospitality, which endeared them to the colonialists. In 1877 the first Christian missionary group, the Anglican CMS arrived in Buganda to spread their religion. However, there was rivalry between the Anglican Christians and the Roman Catholics back in Europe; the two sects considered each other apostates. Thus, to stop the proliferation of the Anglican "heresy", the Roman Catholic missionaries arrived in 1879, two years after the arrival of their Anglican counterparts.

This marked the genesis of religious tension and polarisation between Anglicans and Catholics in the region, which later spilled over into the political realm in the years that followed. However, beyond religion, the missionaries' activities in Buganda became the precursor of the penetration of the territories by the colonialists. In 1890, the IBEAC was chartered to administer Buganda on behalf of the British Government. In 1894, the British Government took over from the Company and ruled the territory through governors.

The British needed to legitimise their occupation and to this effect, an agreement was concluded in 1900 and was signed between the Buganda monarchy and the British Government, which needed raw materials and other interests pertaining to pecuniary gain.[13] The signing of the Buganda pact acted in many ways as a launch pad for the proliferation of British influence to other kingdoms and non-kingdom areas

[13] The treaty between Buganda and Britain signed in 1900 is officially called the Uganda Agreement, but is popularly called the Buganda Agreement.

in the region. Following the Agreement, the kingdoms of Ankole, Tooro, Bunyoro and the non-kingdom territories of Busoga, Bukedi, Acholi, and others, were annexed and the path to the pacification of the entire region was opened.

Immediately after the conclusion of the Buganda agreement in 1900, the challenge for the British was how to administer Buganda and concurrently extend their influence to other unsecured areas. To this effect, the British used a blend of direct and indirect systems of administration in their *terra nullius* or newfound territories. Indirect rule in the territories was entrusted to the Baganda chiefs, which fomented ethnic tensions. The tribes over which the Baganda chiefs ruled were averse to them not only because they had collaborated with their colonisers, but also because the chiefs oppressed them (Adhola, 2006). On the other hand, the colonial governors executed centralised rule.

The colonial masters introduced formal education. In schools, English was the medium of instruction at the crippling expense of native languages whose use was sternly abridged. This tradition continues until today; communicating in native languages in some schools may attract some form of sanction. The political-economic policy of the colonial era was designed, consciously, to exploit the resources of the territories. They introduced a cash crop economy in Uganda, which supplied cheap raw materials to the British industry back in Europe. They would then inundate the local market with costly finished products. While peasantry work was given to Ugandans, office work was reserved for the Indians, who found their way in Uganda when they came to work on the Uganda Railway that was designed to connect Uganda to the Kenyan coast of Mombasa.

In 1961, the colonial masters organised elections to constitute a government that they would relinquish power to at independence; thus, Benedicto Kiwanuka of the DP, who defeated UPC's Obote to win the elections became the first black head of government in Uganda. Notably, the elections were boycotted by the Buganda monarchy for reasons that were in the monarchy's best interests[14] (Adhola, 2006). The boycott was impossible to ignore because Buganda had been and was a major actor in Uganda's politics. Her refusal to participate in the 1961 elections created a democratic deficit, as it also threatened to encumber the colonial master's plan of bequeathing an undivided independent Uganda. Thus, the boycott forced negotiations that resulted in a compromise that led to the promulgation of the 1962 Constitution, which accommodated Buganda's interests (a federal status), and under which another round of elections to constitute a government to which the British would cede power was to be organised (Adhola, 2006).

The UPC had allied with Buganda during the negotiations at the Constitutional Conference (1961), which was organised to generate national consensus and at which Buganda's demands of semi-autonomy were granted (Adhola, 2006). With Buganda's federal demands accommodated, she was ready to participate in national political processes. Not surprisingly, the KY, a Buganda leaning party, and the UPC worked together in the subsequent political processes. The alliance was a rare one nonetheless because the two parties had

[14] Buganda Kingdom, desired to remain an independent entity as the British moved towards uniting the territories under their control into one independent state, namely, Uganda.

irreconcilable differences regarding the political architecture of Uganda.

On the one hand, the KY espoused and promoted the supremacy of the King of Buganda over the affairs of Buganda, which effectively meant that either Buganda was to be granted her own independence, or that she was to be granted a special status in a united independent Uganda, which would not downgrade the position of the king in his realm. On the other hand, the UPC was interested in a unitary State. Nonetheless, in the interest of defeating the DP in the subsequent elections, which was only possible if the UPC allied with the KY, UPC's delegate at the Constitutional Conference, Obote, tactfully supported the monarchy's demand for a federal status.

The Buganda establishment was for its part anti-DP because DP's leader, Benedicto Kiwanuka, although a Muganda, was hostile to the monarchy and its interests. Kiwanuka was a republican, not a monarchist, but most notably, he subscribed to the Catholic sect, whose members had been politically, socially, and economically alienated by the Anglican leaning monarchy during the colonial era (Adhola, 2006). Thus, the KY-UPC league was not based on principle, but on political convenience, that is to say, the parties drew inspiration from their shared need to deny the DP political victory in subsequent national elections.

In 1962, elections were organised again to constitute a government that would take over from the colonial masters at independence, and not surprisingly, the UPC-KY alliance facilitated a controlling majority in parliament and subsequently delivered victory against the DP. As such, Obote, the UPC leader formed a government to which power was transferred at independence. Nonetheless, although

independence was granted in 1962, Uganda did not become truly sovereign until 1963 because a British governor remained the head of state as Obote became the head of government.

In 1963, the 1962 Constitution was amended to provide for a president and a vice president. Thus, under the amended 1962 Constitution, a Ugandan head of state, that is, a president, and a vice president were elected. The king Of Buganda, Edward Mutesa, was elected as Uganda's first head of state, which in effect meant that Uganda became fully independent. The country obtained power to determine its own destiny and to reverse the negative course of its social, economic, and political history that had been built up during colonialism.[15]

However, since the UPC-KY marriage was not genuine, but one which was entered into because both parties desired to defeat a common enemy, the DP, it was bound to collapse once the unifying factor was out of the way. Thus, with the Kiwanuka spectre out of the way, the two allies started fighting just a few years after acceding to power. Because of ethnic and ideological incompatibility between the largely ceremonial president and his prime minister, in whom executive power was vested, the prime minister desecrated the 1962 Constitution on 2nd March 1966 and deposed the

[15] Although independent, it cannot be argued that Uganda was practically fully in the hands of Ugandans from 1962 forward. The British and the Americans had a great deal of influence, and in the later years after independence, the Israelis and the Soviets. The British and the Americans were interested in entrenching their capitalist system; the Soviets were interested in turning Uganda into a socialist state, while the Israelis were interested in using Uganda for their geo-strategic and security interests against their nemesis, Sudan.

president and the vice president. The act was called a "constitutional crisis" by Buganda enthusiasts, and a "revolution" by the supporters of Obote. The pro-Obote camp called it a revolution because they treated it as a worthy action against the monarchy's reactionaries, who wanted to maintain their vantage status and were, therefore, against the switch to national unity and democracy (Adhola, 2006). It was also seen as a triumph over monarchical capitalism that the colonialists had entrenched. The system had made some privileged few (Royals, chiefs and Anglican Christians) rich, and the rest, including the Catholics, poor (Adhola, 2006).

The anti-Obote commentators, on the other hand called it a crisis because they saw Obote as a high-handed, intolerant, power-hungry, and undemocratic man, who by force of arms inverted the 1962 constitutional order, 'killed' popular traditional institutions (kingdoms), and imposed an illegitimate government on the people of Uganda. On 15th April 1966, Obote summarily made or caused the making of a new Constitution, the "Interim Constitution", whose draft was placed in the pigeonholes of the members of parliament, and which was subsequently passed by a beleaguered parliament[16] that did not get sufficient time to study the draft (Johnson, 2009). In 1967, Obote organised a group, which drafted another Constitution, the "Republican Constitution", formally passed it through the parliament he arbitrarily turned into a

[16] The army surrounded the precincts of parliament while it was in session to promulgate the 1966 Constitution. The reason for the army's encirclement of the parliamentary building was to intimidate parliament into passing the Constitution in question.

Constituent Assembly to replace the "Interim"[17] or "Pigeonhole" Constitution that had been promulgated in 1966.[18] On the arbitrary turning of parliament into a Constituent Assembly, Tumushabe and Gariyo observed that:

> *"...perhaps, for the first time, the Legislature was used to legalize what appeared to be de facto illegal actions of the Executive. For example, the hitherto existing parliament whose term of office had just expired was constituted into a Constituent Assembly and given the mandate to draft a new constitution to replace the interim one."* (Tumushabe & Gariyo, 2009, p. 7)

Under the 1967 Constitution, Uganda's political configuration was fundamentally altered to suit Obote's original vision, that is to say, the one he shelved when he supported Buganda's demands for a special status, which in turn resulted in the 1962 Constitution that provided for a federal status for Buganda. The 1967 Constitution, therefore, turned Uganda from a federal to a unitary State, abolished kingdoms and the offices of prime minster and vice president, and shifted executive functions and powers to the presidency,

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[17] The 1966 Constitution was officially termed the interim Constitution by the Obote government protagonists, because it was an improvision, and a precursor of the 1967 Constitution.

[18] The 1966 Constitution was called a 'pigeonhole' Constitution because the members of parliament were not given times to study the draft constitution before its actual debate. They found the draft placed in their pigeon halls on the day of its passing.

whose occupant became both head of state and of government (Adhola, 2006). Under the 1967 Constitution, Obote became the first president with extensive executive and legislative powers at the expense of the legislature and the judiciary (Naluwairo & Bakayana, 2007). Further, the life of parliament, which acted as the Constituent Assembly was also automatically extended without elections (Parliament of Uganda, n.d). Thus, Obote presided over a government that lacked democratic legitimacy because he usurped the sovereignty of the people, who alone reserve the right to constitute a government.

In a turn of events, a semi-illiterate army officer, Idi Amin overthrew Obote's government in 1971 in a coup d'état, became president and abrogated the Republican Constitution. Amin unified the legislative and executive functions and powers. As chief legislator, he decreed laws for the governance of the Country. Amin, who ruled for nine years between 1971 and 1979, earned global notoriety as a brute and a dictator. Political historians agree that he perpetually suppressed political expression and ferociously crushed dissent.

He grossly abridged and violated the fundamental rights and freedoms of the people and sanctioned the murder of those who dared to criticise his misrule. Under Amin, there was no constitutionalism or the rule of law. He presided over the country capriciously. People mysteriously disappeared, and extra-judicial killings and torture were widespread and systematic. The most notable victims of Amin's tyranny were: Janan Luwum, the Archbishop of the Anglican Church in Uganda, and Benedicto Kiwanuka, the DP leader, who accepted to serve as a Chief Justice of an emasculated judiciary under Amin. They, and many others were extra-judicially

executed for the "crime" of speaking up against Amin's misrule.

Perhaps, one of the most enduring negative decisions he ever took was about to be made one year after his ascendency. In 1972, Amin expelled all Asians from Uganda in his "economic war" enterprise, a move that led to the economic collapse of the country and the exclusion of the regime and the country from the global family of nations. Amin was overthrown in 1979 by a combined force comprising the Tanzanian national army, the TPDF, and the UNLA, which was a coalescence of Ugandan exiles, including Yoweri Museveni's FRONASA and Milton Obote's Kikosi Maalum and other militias opposed to Amin (Adhola, 2006). Between 1979, when Amin was deposed and 1980, three presidents ruled Uganda, including, Professor Yusuf Lule,[19] Godfrey Binaisa[20] and Paulo Muwanga[21] in that order.

In 1980, elections were organised in an attempt to return the Country to a constitutional order. However, because of the selfishness of some political leaders in the race and a partisan electoral body, the 1980 elections were marred, allegedly, by massive irregularities. Obote, who also contested, was declared the winner of the election. All the parties in the

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[19] Yusuf Lule was appointed as president of Uganda and exercised presidential powers from 13th April 1979 to 20th June 1979. Lule ruled Uganda for only 68 days.

[20] Godfrey Binaisa replaced Lule and exercised presidential powers from June 1979 to May 1980. He ruled for 11 months.

[21] Paulo Muwanga was Chairman of the Military Commission (between 12th May and May 22 1980), which was the governing body in Uganda. As Chairman of the Military Commission, and later the presidential commission, Muwanga was the de facto president.

race rejected the results, apart from the declared winner and his UPC party. This opened "Pandora's Box" containing civil strife and armed conflict—again. Between 1981 and 1986, a protracted guerrilla war led by Yoweri Museveni was fought, leaving excruciating scars but with promises of a "fundamental change" for Uganda. Museveni captured power by force of arms in 1986 and has since been the head of state of the Republic of Uganda until 2016, when this book was published.[22]

It is not improper to state that there are dissenting voices in Uganda who feel that Museveni has thus far failed to cause the fundamental change he promised the Ugandan people. They cite political persecution, pervasive corruption, nepotism, and suppression of political expression, among other things. Although this book has not been written to provide an assessment of Uganda's presidents, nothing is obscure to the effect that the disorders of selfishness of Uganda's past and present leaders are glaring, and have been injurious because they were not sufficiently fettered.

[22] Museveni is so far the longest serving ruler in the history of Uganda. He has ruled Uganda more than all his seven predecessors combined, and ranks very high as one of Africa's longest serving rulers.

CHAPTER FOUR

The cynical definitions of politics

Politics in Uganda is grossly misunderstood. To many, it connotes savageness, deceit, discord, strife, disdain, violence, and similar things. In fact, some people in Uganda attempt to make a distinction between politics and leadership. When I had just commenced to write this book, a friend intimated to me what she felt about politics, and told me how she helped shape a campaign cliché for a guild presidential contender in one Ugandan public university.

By attempting to dissociate her candidate from the perceived "badness" of politics, Batamuliza suggested that their campaign slogan be; "we need a leader not a politician", which according to her distinguished their candidate from his challengers. In another but related incident, Batamuliza's friends complimented her as a "politician", to whom she responded that: "I am not a politician, but a leader in the making." She definitely in both instances sought to make a distinction between politics and leadership. Whether or not this attempted distinction is true is an academic subject that requires dissection and further inquiry. In this Chapter, various inaccurate conceptions of politics are discussed.

Politics as a 'dirty game'

In Uganda, politics earned infamy as a "dirty game". The definition is attributed to Idi Amin, and has been received very dearly by many people, especially around Africa. To arrive at it, Amin was perhaps motivated by what he saw play out as a senior officer in the armed forces, between President Edward Fredrick Mutesa and his Prime Minister, Milton

Obote. Thus, he must have constructed it on the authority that he lived to watch the political altercations that obtained between them and the military skirmishes that attended, at a close range. As stated in Uganda's political history in Chapter Three, it is alleged that during the Obote regime, the Ugandan people were polarised along religious and ethnic fault lines, and that Obote's political life thrived largely on exploiting them, a tactic he probably inherited from the colonial politics of divide and rule. In physical sciences, every action has a reaction that is equal and opposite. This principle seems to apply to political science as well. Thus, in an equal and opposite reaction, Obote's antagonists sought to counter his tactics with equal measure. The result was the 1966 impasse and subsequently, tyrannical tendencies. Amin watched the nasty spectacles of the power struggle, and came to the inference that reduced politics to a "game" and a dirty one at that.

The truth is that politics ought to be neither a game nor dirty in both theory and practice. In many instances, people who engage in the rather good and necessary activity are the ones who become delinquent. The perspective of politics as a dirty game is flawed because the absence of politics is a threat to the very existence of humanity. In every society, there must be organised structures of leadership with the goal of maintaining tranquillity and promoting the common good of the people.[23] We saw in Chapter One how much politics is a necessary phenomenon. It is necessary for the construction of a civilised state, that is, a society with a government, which has authority to issue binding rules of law and to implement them

[23] Refer to Chapter One of this book. Hobbes, Locke, and Rousseau all agree on the necessity and indispensability of government and politics.

for the good order, prosperity, and progress of the society and its people, but which also upholds the rights and freedoms of its people. In 1705, Nicolas Delamare said of the necessity of a government with state power, which he preferred to call 'police power', thus:

> *"its unique purpose is to lead man to the utmost felicity he may enjoy in his life…Police power includes the universality of the policies necessary to bring about the public good, of the choice and use of the means most fitted to make it real, to develop it and to make it more perfect. It is, so to speak, the science of government over men, to give them some good and to make them become as much as possible what they must be for the general interest of the society.''* (Zoller, 2008, p. 43)

Thus, politics saves man from the cynical state of nature that is explored in Chapter One. Of the fields necessary for the survival, wellbeing and longevity of man; including, economics, biology, physics, religion, et cetera; politics is the most crucial. In this context, Delamare argued that political or state or police power covers ''religion, discipline, the mores, health, supplies, public peace and security, roads, liberal arts and sciences, commerce, factories and mechanical arts, domestic servitudes, unskilled workers and the poor.'' (Zoller, 2008, p. 43)

Economics exists to generate and efficiently allocate wealth because resources can never be sufficient to satisfy man's insatiable needs and appetites. Resource constraints are prevalent in every society, and are not about to ease away. Biology tries to understand human physical anatomy with a

goal of knowing how to maintain the optimum physical well-being of humans. Physics exists to help humanity to understand the nature of physical objects, substances and natural forces, so that humans can relate with them safely and profitably. There is no equivocation as to the importance of these corporeal and explicable fields in creating the good life. They will exist for as long as human challenges exist in their diverse forms. One cannot enjoy the good life if he does not understand the physical forms around him and their benefits or potential destructiveness, so that he may harness the benefit and avoid the destruction.

If physicists had not studied solar sciences, we would not be having solar energy technology. If biologists had not attempted to understand the anatomy of man, we would be worse off with ailments today. If humanity had overlooked the field of economics, we would be foolish wasters and incidentally, poorer today. It is important to note that economics, physics, chemistry, and other unmentioned material fields that have been discussed, are necessary for human happiness and well-being. However, even with the so described necessity, human nature cannot be trusted. It is abusive for explicable, but umpteen reasons. We do both good and bad as we attempt to understand our environment and ourselves. Great discoveries in physics have eased human life; television, telephone, the Internet, radio, satellite, et cetera, have changed the way humans communicate; Metros/tubes, airplanes, automobiles have eased transport; nuclear technology has eased and solved energy needs, to underscore just a few examples. However, the study of physics has also led to lethal discoveries that threaten the existence of humanity. Sophisticated guns, cruise missiles, and battle tanks

are some of the dangerous physical discoveries alongside the good.

Chemistry and biology are no exceptions. Their study has yielded laudable breakthroughs and subsequently; they have enhanced human health through the development of life saving and life prolonging medicines and drugs. Sadly, chemistry and biology either severally or in concert, have yielded disastrous discoveries too. Hawks and avaricious men have used the study of chemistry on the one hand, and biology on the other, to develop lethal chemical and biological weapons; the hydrogen bomb is the most infamous. Thus, there has always been a necessity to regulate man's activities with the calculus to preclude him from doing things that can potentially destroy him and his kind. Politics exists, as one of its main objectives, to regulate the practices in the fields of economics, biology, chemistry, et cetera, in order to promote human progress and wellbeing. Therefore, politics is not a "dirty game", but a necessity for the construction of a good and happy society. Thus, Amin was inexcusably wrong in holding politics in such a cynical manner.

Politics as the 'management of a society'

Another figure who misconceived politics was Yoweri Museveni, Uganda's revolutionary and longest serving leader so far. Although he understood it better than Idi Amin did, he believed that politics is societal management.[24] Reducing politics to management of a society is a gross misrepresentation of the very purpose of politics. A good and

[24] See, "Museveni explains NRM Ideology" in the New Vision (Newspaper) January 16, 2012

well-construed management is of both a society and a government; not of a society alone as Museveni held.

Obviously and on a positive note, to manage a society means to supervise or control it, which may be justifiable because if left in a state of anarchy, human beings cannot enjoy the good life. Therefore, it is necessary that a society is managed, regulated, or moderated from heinous human excesses. Hobbes' apology for an omnipotent government was a measured one. It was to rectify the challenges of anarchy by managing, regulating, or moderating a society.[25] Thus, Museveni's conceptual construction of politics was in tandem with Hobbes' thesis on government.

However, both Museveni and Hobbes' conceptions of politics parochially diagnosed the social challenge. Their views were that human beings are inherently savage and barbarous and must be managed or controlled, period! Such an analysis may be sound, but it unreasonably exonerates the overuse of the power of government against the people. It remedies one problem only to create another. That the view of Museveni does not consider that governments, too, have their rational, selfish face that ought to be managed or moderated, gives a blank cheque to governments to exploit, subjugate, and tyrannise the people. Therefore, the Musevenian and Hobbesian constructions of politics, which reduce politics to 'societal management', are direct associates of dictatorship, and in fact, they are indefensible misconstructions especially in the 21st century.

Museveni's view of politics, which is similar to that of Hobbes, was rejected by John Locke, Rousseau, A.V. Dicey, Montesquieu, and so forth because it does not advance

[25] See Chapter One: "Thomas Hobbes' philosophy" on the construction of a functional state

the goal of politics. It enslaves the people, and turns citizens into subjects. It confers to rulers the title of "Augustus" or the "august" or "exalted one" and gives them power that is only next to God's.

Butanaziba's critique of Museveni

Yunus Lubega Butanaziba, who introduced me to the realm of political economy at Nkumba University, in his lecture notes of 12th September 2013, critiqued Museveni's conception of politics, contending that 'management' is related to economic profit. Thus, for Butanaziba, to 'manage a society' is to use political power as a conduit for self-enrichment. Consequently, he argued that seeking private profit (self-enrichment) through 'societal management' is despicable for any public servant because it conflicts with the noble purpose of politics. Butanaziba, in the alternative sought to improve Museveni's definition by associating politics with public administration. To him, public administration refers to systems and structures through which scarce public resources are mobilised and effectively transformed into public goods, and finally distributed to satisfy societal needs. Thus, the central distinction between 'societal management' and public administration in Butanaziba's logic is that the former is synonymous with private profit, while the latter is concerned with citizen welfare.

Museveni's conception of politics may be inaccurate, but Butanaziba's critique is in some way misplaced. As intimated, Butanaziba with due respect misconstrued the usage of the word 'management' and parochially restricted it to private profit through public service. Even if public management were a direct associate of the profit drive as

Butanaziba (mis)rationalised, it can be used *pro bono publico*—for the public good. The approach of profit drive in public interest is pragmatic because it has made China a socio-economic success, despite the fact that China was until 1979 against it. After the death of its radical socialist leader, Mao Tsetung, China, under Deng Xiaoping, from 1979 adopted a pragmatic approach. In the 'Leap Forward' economic programme, Xiaoping restructured state-owned companies and turned them into profit-driven corporations—in the interest of the Chinese public.

Of course, Butanaziba or any other like-minded person may attempt to link Xiaoping's economic approach to administration in lieu of management. However, it should be stressed that Butanaziba misconstrued the concept of profit. He disparagingly confined it to private gain, pejoratively related the same to management, and by inference extricated it from administration. Whereas Butanaziba's conception of public administration described already is agreeable, he thinks that politics is the same as public administration, and that management has no place in politics. Such a view is flawed because management cannot be extricated from politics, and public administration is not the same as politics.

Whereas public administration refers to systems and structures of mobilising and transforming resources into public goods to satisfy societal needs, as Butanaziba rightly construed, management of public activities refers to the function of definition, regulation, and control of such structures, systems, and activities. Thus, in government, there are both managers and administrators of public affairs. Politicians are the managers because they define rules, make laws and policies for the effective mobilisation and transformation of resources into public goods to satisfy societal

needs, after which they also perform the oversight function over administrators.

Public administrators, on the other hand, are implementers of the said rules, policies, and laws. They are the actual mobilisers, transformers of resources, and distributors of societal goods. They are professionals and experts in diverse fields including, *inter alia,* teachers, doctors, nurses, engineers, and accountants working with in the civil service.

The 'red' vs. 'expert' debate and Butanaziba's critique

The 'red' versus 'expert' debate holds two opposing views on whether it is better for efficiency and effectiveness' sake to distinguish politics from public administration, or not—which helps to crystallise the debate whether politics and administration are the same or different. The debate also serves to show that politics has a relationship with management. Thus, the debate is relevant in the context of this book because it relegates Butanaziba's critique of Museveni's definition of politics.

One side of the coin of the debate is that, for effectual public and social service delivery there should be a separation between the "reds"—politicians and the "experts"—public administrators. For Woodrow Wilson, there should be a wedge between policy formulation (the role of politicians) and policy implementation (the function of public administrators). He argued in the following terms:

> *"...Administrative questions are not political questions. Although politics sets the tasks for administration, it should not be suffered to manipulate its offices…Public administration is detailed and systematic execution of public law.*

> *Every particular application of general law is an act of administration. The assessment and raising of taxes, for instance, the hanging of a criminal, the transportation and delivery of the mails, the equipment and recruiting of the army and navy, etc., are all obviously acts of administration, but the general laws which direct these things to be done are as obviously outside of and above administration. The broad plans of governmental action are not administrative; the detailed execution of such plans is administrative."* (Woodrow, 1941)

Essentially, politicians or elected servants should necessarily restrict themselves to legislating and making policy frameworks as well as performing the oversight function. It follows that public administrators also ought to concentrate on implementing government programmes in consonance with the laws and policy frameworks put in place by the political class. Likewise, this perspective of the debate also decrees that administrators should not engage in partisan politics and should leave political issues to politicians. That is to say, administrators should not involve themselves in the activities of defining a society. If a public administrator is desirous of participating in politics, he should resign his administrative position before he can engage in politics.

The premise of the above postulation is that the decision-making processes of politicians are necessarily based on political expediency, the aggregate goal of which is to maximise popular support. Unlike the technical people, that is, public administrators, politicians are unlikely to make decisions that appeal to efficient mobilisation, transformation and allocation of public resources. Politicians, being in

competition (in democratic settings, obviously) have a proclivity for making decisions that seek to maximise their political advantage over the political competition.

Thus, they are predisposed to apportion more time and resources to populist machinations, in lieu of apportioning the same to public service in a non-discriminatory, efficient, and accountable manner. Stated otherwise, if politicians are allowed to be administrators or administrators politicians, rationality, pragmatism, frugality, and efficiency are, most conspicuously bound to be ceded to political expediency. Thus, in order to satisfy public needs efficiently and efficaciously, politics and administration ought to be separated.

However, the variance between politics and administration hangs on a very thin thread; thus, there should a judicious level of interaction between politicians and public administrators. It is indefensible to contend that any human being can be apolitical. The idea of technical freedom from politics does not mean and should not be construed to mean that technocrats cannot be political. They are by nature political animals; they have political sentiments, and support one political party over another and one policy over another.

In the same breath, politicians also have a defensible interest in the way administration is conducted and government programmes are executed because it is on the basis of satisfactory service delivery that their political life hinges. To suggest, if there is poor delivery of services, politicians, not the technical people "pay" for the deficiencies at the ballot. As such, it is unobjectionable that a total separation of the two realms is intellectually defective and practically impossible.

Further, the idea that administrators make rational decisions as opposed to politicians is itself inaccurate and fallacious. The theory of rationality in decision-making has

received a barrage of intellectual punditry on the basis that it is an impractical ideal. There is no single person who is completely rational. The decision-making process of any person entails a juxtaposition of social, cultural, political, legal, and other influences, which discount rationality. It is upon this basis that Simon (1976) argued that people do not actually make rational decisions because their rational capacity is "bounded" or limited. In view of this, Mingus noted:

> *"...bounded rationality includes factors such as poor memory, inadequate human or computer analytical power, the tendency of individuals to satisfice, and the differential importance of necessary decisions."* (Mingus, 2007, p. 65)

As corollary, many undercurrents including the political ones circumvent the so-called technical decision makers, as has been intimated already. It should also be stressed that technocrats are rational beings; they are self-interested. As such, their work can be skewed by many 'winds', including political and personal interests. However, non-separation should not be misconstrued to mean that there should be a total union of the two. In fact, there cannot be a total separation in much the same way there should not be a complete union of the two classes. In other words, administrators cannot be apolitical because political animalism in human beings is inherent. However, in order to uphold their professional standards and functional necessity to the people, the technical people in government should not be permitted to act in a partisan manner. In this spirit, since politics and administration cannot be completely disparate in ordering

public affairs, elected officials and appointed administrators are partners in public governance.

However, administration and politics are not the same, as has been explicated in the red versus expert debate. Further, public management and politics are not different; thus, Butanaziba was wrong to assume that politics is not an associate of management, when it is unequivocal that management connotes control, regulation, or moderation, which politicians do. The implementation function of public administrators is carried out within the precincts, regulations, controls, and frameworks of rules, laws, and policies made by the managers of public activities, that is, politicians. States have both political and administrative classes; and the political class regulates and; therefore, manages the activities of a State through the formulation of policies, rules, and laws, and performs oversight over the administrative class, which implements those activities.

These two classes of people in charge of public affairs are spread to all levels of governance. At the centre, ministers are the political heads of government departments, also known as ministries, while permanent Secretaries, in the case of Uganda, are the administrative heads of ministries. At the local levels of government in Uganda, district chairpersons, municipality and city mayors, and their respective councils are the political class, while chief administrative officers, town clerks and the respective professional staff under them, form the administrative class. The fact of functional disparity within in a State as discussed above is proof that public management exists distinctly from public administration and that public management is associated with politics. It is, therefore, not defensible to hold the term ‘management’ in politics in a cynical manner, and Butanaziba was wrong.

Politics as a struggle for power

Politics defined in terms of power struggle is another misconception, which is as unscrupulous as a "dirty game" or the "management of a society". The apostles and prophets of this concept take the standpoint of the inherent savageness of man with regard to his necessity for survival, which stretches from Hobbes' philosophy that is discussed in Chapter One, but they end up incorrectly deciphering the entire concept of politics and its true purpose. In this analysis of politics, the only motivation for people to engage in politics is to promote or protect their interests. It follows that acquisition and maintenance of power by force is inevitable, inherent, and inalienable.

Mbanje and Mahuku (2011) argued that politics is not a game of angels or of lesser evil men. They also argued that morality rarely matters in the political realm, and that politics involves a continuous struggle for power. They further argued that those who wield it maintain it by all means possible, and that those who seek it also do the vilest of things to obtain it. The prophets of power struggle philosophise that people have inherent and unique economic, social, and cultural interests, or a cocktail of them, which they regard as existential elements; and that the safest way of attaining and sustaining those interests is through clinching political power and clinging to it by force.

Thus, politics to them is a pathway to self or ethnic preservation. The danger, however, is that the pursuit of power with such an orientation cannot happen without one person or ethnic group infringing upon the economic, social, cultural, and political rights of another or others. This view also holds that for the power pursuers to achieve their goal, they must

impose their will upon others as they advance their interests, and stifle those of others in the process.

An unseasoned apologist may eulogise the above view by referring to Uganda's unfortunate political history discussed in Chapter Three as an exoneration of this thesis of politics. Nonetheless, power struggles are catastrophic, and as has been discussed already in Chapter Three in this book, they only blur the purpose of politics, as the pre-*Pax Musevenica* Uganda in which people fought to overthrow rulers and rulers fought back to prevent them from acceding to power, may attest.[26] Although it is undeniable that the greatest need of all men is survival and self-preservation, and that, men become ruthless when their survival or vital interests are threatened, such cannot be used to justify fighting for political power.

In the state of primitiveness described by Thomas Hobbes (discussed in Chapter One), men invariantly contended against one another, deprived, and alienated each other in order to satisfy their interests; however, the effect of such an architecture was undesirable. Life was nasty and brutish for everyone, which justified the creation of a government, and which authored the need for a civil or political society. Politics that is viewed in hawkish terms results in chaos, constant fear,

[26] Pax Musevenica is used in a similar manner that Pax Romana, Pax Anglicana, and Pax Americana are used in imperial history. They are literally translated; Roman peace, Anglican peace, and American peace respectively, and are used in reference to the periods the said empires alternately ruled the world. Thus, the empires' pax or peace was not indeed peace, but periods of their domination of the world. In the same sense, Pax Musevenica does not mean the "peace of Museveni", but the period from 1986, when he took the reins of power in Uganda.

bondage, and creates in everyone's mind an orientation towards war. It is primitive, regressive, and creates insecurity for everyone. It creates a state of nature that was described by Thomas Hobbes. Such is not in fact politics because politics was ordained naturally and necessarily to eliminate power struggles such as those that obtained in Hobbes' state of nature—through the construction of a civil state in which there is an authority, whose purpose is to create conditions that are suitable for all people to pursue their happiness.

Politics, therefore, in creating a conducive environment, maintains order and security, and also promotes the inalienable rights, liberties, and freedoms of all people. A civil State, which is created by politics, and in which the interests and rights of all groups of people including those of minorities are protected, eliminates deprivation, marginalisation, and alienation, which in turn eliminates the need to seek or maintain political power by force. Politics, therefore, is not what the cynics hold it to be. It is not a struggle for power but a preclusion of the need to struggle for power.

Politics as "who gets what, when, and how"

Closely related to the view that politics is a struggle for power is the view that politics is about conflicts. Laswell (1936) regarded politics as the source of conflict, and conflict as a product of politics. He categorised society as entailing two groups; namely, the "Elite" and the "Masses", among whom the Elite get most of what there is to be got mainly through violence. He argued at page 297 of his work; "*Politics: Who gets what, when, and how"* that "fighting is plainly one of the most direct ways by which men have come to the top." The

major premise of this concept is the natural selfish character of human beings and their survival instincts. If that contention is anything to go by, it follows that politics viewed in terms of power struggle has a sturdy nexus with politics viewed in terms of conflicts, as has been explained already because power struggle and conflict are not mutually exclusive but mutually reinforcing.

At the individual level, the "conflict" view of politics is between individuals. At society level, the analysis subsumes groups of people. Thus, factionalism, whether on political, tribal, racial, ethnic, or other grounds and the preservation of one faction at the expense of others, is characteristically natural and sound, it seems. However, such analysis is not only untenable, but also deleterious and injurious since actions of such nature are base and are derivatives of the disorders of human selfishness. If the conflict thesis of politics flourishes and is executed, it creates disorder and anarchy such as the one in the Hobbesian state of nature. This is because as one faction of a polarised society pursues its interests and seeks political power to dominate and suppress other sections, the other sections also seek it to elevate their status in order to satisfy their interests.

Even so, to obtain that power, the suppressed groups must first dispossess it from its incumbent wielders. This sustains conflict. It then follows that the conflict theory of politics assumes an invariant cycle of turmoil because once a ruling faction is overthrown, it will tend to fight back. This view of politics may find clemency in the fact that Uganda has had a nauseating turbulent political history that is punctuated with military coups and numerous armed rebellions.

Lomo and Hovil (2004, p.14) describe Uganda's post-independence political practice in their paper, *behind the*

violence, in the following words: “repeated power struggles following independence have left a legacy of dominion, violent politics, and militarism.” In the same paper, they also indicated that there were deep-rooted divisions between the north and the south of the country and that the cleavages were “accentuated by the various leaders...” (Lomo & Hovil, 2004, p. 14).

Conspicuously, the leaders Lomo and Hovil referred to include Obote, Amin, Tito Okello, and Museveni; since they are the only known leaders to have gained political power either through coups or armed rebellion, and are believed to have been vengeful. Political historians agree that the regimes of Obote (1962-1971 and 1981-1985) and Idi Amin (1971-1979) were full of civil conflict, torture, extra judicial killings, mass murders, and mysterious disappearances. Lomo and Hovil seem to agree that impunity is another factor that fanned these behaviours. They go on to suggest that because there was no accountability for misdeeds, the leaders unleashed terror, in some cases targeting particular ethnic groups. These events encouraged revenge to become an integral part of Uganda’s politics.

There is no difference of opinion within political history circles that the Ugandan society in the past experienced factionalism on the ethnic and regional bases, which manifested mainly in the constitution of the respective ruling governments and armies. People, who came from the same region or belonged to the same religion or ethnic group as the sitting president, dominated the government and army of the day. Today, during Pax Musevenica, officers hailing from the same region as the president hold most top army and civil service positions (Daily Monitor, 2012;The Observer, 2011; Daily Monitor, 2015). Politics viewed through the lenses of

conflict cannot yield the purpose of politics. It is associated with fear, mistrust, vengeance, disdain, division and in worst-case scenarios, ethnic cleansing, and genocide. The worst bit is that one bad event opens a host of others. It is a cycle of undesirable events fuelled by revenge.

Lomo and Hovil indicated that after Amin overthrew Obote in 1971, he ordered Obote's soldiers into barracks, killed many of them before extending his vendetta to hapless and unarmed civilian populations in Acholi and Lango sub regions. These tribes had dominated Obote's government and army. The FEDEMU, a predominantly Baganda outfit that fought alongside Museveni's NRA in the alleged "liberation" struggle of 1981-1986, is believed to have committed many war crimes against the people of the north in revenge against Tito Okello and Obote's repression of the Baganda[27] (Lomo & Hovil, 2004).

It is important to state that these fatal events were because of the misconception of the purpose of politics. Politics defined and understood in terms of conflict has grave consequences. Thus, Laswell's political conception of "who gets what, when, how", is inessential and about the struggle for the scarce resources needed to satisfy insatiable human wants and the promotion of tribal, religious and regional chauvinism. This perspective bears undesirable results as has been noted already, and is certainly not an accurate, but a primitive conception of politics.

[27] The liberation struggle is alleged because it is debatable whether it was indeed liberation. While some regard it in affirmative, others reason that it was a treasonable act.

Politics as the "authoritative allocation of values for a society"

There is almost universal agreement that David Easton rendered the most applicable definition of politics. However, as will be explained later, he eulogised tyranny. In Easton's view, politics is the "authoritative allocation of values for a society." His definition is based on the fact that any given society is a beehive of human activity and interaction that lead to competition for scarce things of value, and to conflict subsequently. As Mitchell (1961) indicated, it is impossible to imagine the function of or the need for allocation if there is abundance, since it is not abundance, but scarcity that is recipe for conflict. Ipso facto, Easton's defence of the necessity of authoritative allocation may be said to have proceeded from Hobbes' thesis on the necessity of an all-powerful Leviathan,[28] which is also according to Hobbes, necessary to obviate disorder. Easton's understanding of politics can be extracted from his verbatim hereunder:

> *"It is patent that without the provision for some means of deciding among competing claims to limited values, society would be rent by constant strife; the regularized interaction, which distinguishes a society from a random mob of individuals, could not exist. Every Society provides some mechanisms, however rudimentary they may be, for authoritatively resolving differences about the ends that are to be pursued, that is, for deciding who is to get what there is of the desirable things.*

[28] See, "Hobbes' omnipotent government" in Chapter One

An authoritative allocation of values is unavoidable." cited in (Mitchell, 1961, p. 80)

However, Easton's novelty lies in the fact that he supplied a compelling rendition of the interaction between the authority and the people in a society, which he insisted produces allocations (decisions, policies, laws) by those in authority—that must be complied with by the people. Easton borrowed his political system theory from the general systems theory, which posits that systems are a coalescence of integrated and interrelated units, which work complementarily (as opposed to working in competition), while they at the same time maintain a degree of functional independence, in order to achieve a common goal. Further, any system, in the view of the general systems theory exists in an environment, which it interacts with. As such, the activities of a political system affect its environment as much as those of the environment affect the system. In view of this, a political system as theorised by Easton interacts with its environment through input-output exchanges. The exchanges are necessary for both the survival of the system and the satiation of the environment's needs and desires.

Inputs emanate ordinarily from the environment, although they can also come from the system—what he preferred to call 'within' inputs—and are transformed by the system into consumable outputs, which may be decisions, laws, policies, or public goods or services for the environment's consumption, or adherence. The environment is the people. Therefore, the system is the government, which authoritatively allocates things of value to the people. Inputs are processed and transformed into outputs by the system on the system's timetable and prioritisation.

The environment depends on the system to have its things of value allocated authoritatively for its satisfaction; otherwise, the people in the environment are bound to conflict and fight over things of value. If there is independence of the environment from the system, the environment suffers the deleterious effects of the wild state of nature described by Hobbes. Conversely, the system also depends on inputs from the environment in its allocation function. If the system claims independence from the environment, it stops getting vital inputs, which affects its output qualitatively and quantitatively. However, the reason the system exists is to produce outputs for the satisfaction of the needs of the environment. Thus, if the system is to enjoy longevity, it has to sustain the business of allocating things of value.

The environment-system symbiosis was separately and inadvertently theorised by both Thomas Hobbes and John Locke, both discussed in Chapter One. On the one hand, the Hobbesian thesis on the necessity of a government posited that if a government (the "system" in Easton's thesis) is non-existent or is dysfunctional, the people (the "environment" in Easton's theory) dash to 'self-help'—the way it was in the state of nature.[29] Thus, the people or the environment, in the event that the system fails to produce outputs that are necessary for the satisfaction of their needs and wants, seek the satisfaction of those needs and wants on their own, in unbridled competition and ruthlessness—which is an undesirable situation that justifies the existence of the system in the first place.[30] In Locke's thesis on the other hand, the people or the environment, in the event that the system fails to produce outputs that satisfy needs and wants, eject it and

[29] See, Chapter One
[30] See, Chapter One

replace it with an effective and responsive one.[31] In summary, it is always in the best interest of both the environment and the system to be inter-dependent. The environment needs the system to create order, civility, and tranquillity through the authoritative allocation of things of value. Similarly, the system needs the environment's input for its continued relevance and longevity. Inputs from the environment are twofold according to Easton, namely; demand and support inputs.

Demand inputs provide 'raw material' in form of information regarding the environment's needs and wants that the system needs in order to produce appropriate outputs. Support inputs on the other hand are 'aids' such as a cooperative environment availed by the people, which allow the system to continue to perform its functions. Demand inputs originate from the fact that the environment has wants and needs that must be met by the system. These can be supplied either by a government agency or by a private corporation.

It is true that private enterprises are profit-seeking entities, whose motivation is not to serve the public cause per se, but to pursue the personal economic interest of the entrepreneur— of maximising economic benefits through the exploitation of the labourer (low wages) and the consumer (exorbitant prices) whenever possible. As such, some pundits may wish to disqualify the argument that private enterprises process public demands into outputs—on the premise that that is an obligation to be incurred by governments. Nonetheless, private enterprises are licensed and regulated by governments to perform the function of allocation on their behalf.

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[31] See, Locke on the sovereignty of the people in Chapter One

The view that private enterprises are necessary for the satisfaction of public needs and wants was cogently articulated by the classical market economist, Adam Smith. In the *Inquiry into the Nature and Causes of the Wealth of Nations*, Smith argued that the public good is better served when individuals are allowed to pursue their self-interest, that is to say, maximising profit. Smith wrote regarding the value of private self-interest to the public good, thus:

> *... it is not from the benevolence of the butcher, the brewer, or the baker, that we expect dinner, but from their regard to their own interest'. The individual does not intend to promote the public interest, but 'intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention'* cited in (Cohen, 2001, p. 102).

Stated otherwise, public agencies, which are consciously designed to provide public goods and services, may not effectively provide them because they do not have the profit drive that the private entities have, at least according the classical and 'Austrian' economic theories.[32] The value of the

[32] Classical capitalist economic theory as advanced, for instance, by Adam Smith, Jean-Baptiste Say, David Ricardo, Thomas Malthus, and John Stuart Mill advocated state non-participation in the economy. The ideology existed until John Maynard Keynes advocated government interventionism. The 'Austrian' capitalist economists like Ludwig Von Mises and F.A. Hayek later criticised the Keynesian school and defended government non-participation.

profit drive is that the entrepreneur seeks to reduce losses so as to maximise economic gain.

One way to achieve this is by investing in the production and supply of goods and services that are demanded by consumers. If undemanded goods and services are produced and supplied, the entrepreneur risks losing because consumers can abstain from buying his products and elect to buy from his competitor instead (Mises, 1944). Thus, in an effort to avert consumer abstention and the subsequent loss deriving therefrom, the entrepreneur is forced to produce only those goods and services that are demanded by the public—which leads to the satisfaction of public needs and wants, inadvertently.

Nonetheless, although the 'Austrian' capitalist economic theory, such as the one advanced by Ludwig Von Mises held that public enterprises lack the profit drive and should not on that basis participate in economic activities, there have been new realities, in that public management has mutated over the years. Under the concept of 'New Public Management', public enterprises are run on the private business model, which espouses the profit drive in the public sector.[33] The bottom line, however, is that private enterprises serve the public good; and in doing so, they assist governments to satisfy societal needs and wants. Thus, "publicness" or "privateness" of a private enterprise is a matter of degree not to

[33] New Public Management or NPM was an ideology that advocated public sector reform from the traditional inefficient, non-profit driven public bureaux—which swept the world in the 1980s. NPM combined splitting large bureaucracies into leaner ones, and making them competitive between themselves on the one hand, and between public agencies and private firms on the other, on economic premises, which included profit drive.

be found only in the form of the enterprise, but also in its utility.

If a private enterprise provides a public service or good, it assists the system in satisfying the needs of the environment; and thus, ensures the stability and continuity of the system. Easton himself did not completely reject the role of non-governmental actors in a society. Regarding the roles of opinion leaders, interest groups, and other groups or individuals that are not in government, including private business entities, Easton indicated that: "they are not part of the structure of authority even though at times some of these roles may be so incorporated… "(Easton, 1965, p. 270).

It has already been discussed that according to Easton, demands originate ordinarily from the people. However, they may also originate from within the system, as stated also. When they do from within the system, the Eastonian theory holds that it is not primarily for the good of the environment, but cardinally for the longevity of the system. In effect, the environment benefits incidentally. They are 'within' if they are not pushed by the environment. Although 'within' inputs are systemically initiated for the survival and longevity of the system, they nonetheless benefit the environment.

Easton also argued that sometimes 'within' inputs can be disturbances to the system and may lead to its failure to provide the environment's needs. This is especially possible if the system is much 'schismised', for instance, along political or other fault lines. In this connection, if in the system the executive is controlled by one political party and the legislature by another, and an input originates from within the government, disparate party interests may create a political impasse, which may lead to a government "shutdown" and

subsequently lead to systemic failure to produce outputs.[34] Party interests surface, in this case because the input's origin is not from the environment, but from a politically polarised government.

The other type of input from the environment, namely, 'support' inputs, is also necessary for the proper functioning of the system. Support inputs in Easton's thesis can be actions or attitudes of the people that indicate their acceptance of the system. Because the system must ensure its survival or continuity, it is preoccupied with ensuring that support flows steadily from the environment. This, the system does in two ways according to Easton. The first one is achieved when the system produces outputs that satisfy public demands, while the second one (socialisation) is generated when citizens come to regard the system as legitimate and its output as authoritative, even when the system's meeting of demands may be low.

Under socialisation, the people accept and may support the system, not because it provides good social services, but simply because it was democratically constituted and they accept it as the legitimate government on that basis. Further, the system may be supported when it does not provide public goods and services if it has in the past done something the people hold dear, such as causing security to prevail whereas it was not. The two ways generate "freewill" or

[34] A government shutdown occurs when the executive branch suspends some of its operations due to a budgetary impasse between the legislature which authorises public expenditure and the executive branch which spends public funds. In 2013, the US experienced a partial government shutdown because of a budgetary disagreement between the legislature and the executive.

"discretionary" support. However, sometimes the system may coerce the people to support it through, for instance, the threat or deprivation of public goods and services to the environment.

In the system, "within" support inputs are also crucial. Most certainly, the system needs support from within as it does demand inputs. Of course, the execution of decisions and policies transformed from demands is by the civil, police, and military service; and, good relations with these functionaries is crucial. A functional system, therefore, cares about the support of the civil, police, and military services; otherwise, the system's outputs cannot be executed; and non-execution means nonfeasance of the system. As such, without the crucial 'within" support the system risks plunging into dysfunction.

Governments' defence mechanisms

Easton's concept of a political system is that as any other system, it has to ensure its survival or at the very least; it ensures its longevity. Thus, the system has "automated" ways of averting failure. As has been discussed, the system is always exposed to influences or inputs from within itself and most importantly, from its environment. A fundamental consideration by Easton is that inputs, either from within or without the system, are not to be taken only as raw material to be converted into outputs, but also as possible bad influences that may threaten its optimal performance, which may subsequently render it defunct. However, as stated, Easton's idea of the system is that it has "responsive" and "adaptive" mechanisms that enable it to stabilise when attacked by stressful influences or disturbances.

Disturbances are activities that prevent the system from functioning optimally, cause it to fail to convert inputs

to outputs, and ultimately cause its collapse. Ideally, fluctuations in inputs (demand and support inputs) become "stressful" disturbances; and must be regulated by the system through its adaptive mechanisms.[35] There is an inverse correlation between fluctuations in demand inputs and fluctuations in support inputs, in that, when demand inputs fluctuate, support inputs also correspondingly fluctuate. Too many demands, for instance, may impair the system's capacity to process them into outputs, which may consequently diminish the environment's support. However, a functional system needs neither demand nor support input fluctuation because they disturb its performance and threaten its continuity or longevity. As such, when disturbances to the system occur, it applies 'defence mechanisms' in order to conserve itself from the stressful disturbances and their consequences.

Demands become stressful disturbances, either if their volume is greater than the system's capacity to convert them to outputs—what Easton called "volume stress", or if their substance requires a longer time to process than the consumers (citizens or the environment) of the outputs are willing to wait—what Easton called "content stress"—which bears negatively on the system's support from the population. Different political systems have different capacities to convert demands inputs to outputs, and if demands are greater in volume or content or both, than the system's conversion

[35] Fluctuations occur when inputs are not stable, that is, when sometimes they are too few while at other times they are too many. When they are too few, the system cannot processes enough for the environment, and when they are too many, the system may fail to process them at once.

capacity—what Easton called “demand input overload”, the system fails to convert them to outputs that meet the demands needed to generate support. If demands are not met and the support subsequently diminishes, the survival or longevity of the system is at risk.

Support inputs become stressful disturbances when the people’s good will towards the system is reduced to levels that make it difficult to sustain itself or continue being relevant. It should be recalled that the types of support inputs that have been discussed may be called mandated and discretionary. ‘Mandated’ support inputs are those that are generated in the environment by use or threat of coercion, while ‘discretionary' support inputs are those that are generated without coercion. What has been termed ‘discretionary’ support inputs in this book are in the case of Easton “specific” and “diffuse” support inputs. Easton’s ‘specific’ supports inputs arise from efficient and effective conversion of the demands of the people to outputs, and their allocation in ways that satisfy the needs of the people. For Easton, they flow from favourable attitudes and behaviours that are stimulated by outputs that meet the demands of the environment as they arise. By contrast, although ‘diffuse’ support inputs are also ‘discretionary’, they are not linked to satisfaction of the people’s demands by the system, but by loyalty to it.

The principle cleavage between ‘specific’ and ‘diffuse’ support inputs is that the former are temporary and are maintained by the continued satisfaction of demands as they arise, failure of which leads to a general decline in the level of support. The latter by contrast, are relatively enduring and can be generated when the system meets demands that the environment deems sacrosanct, regardless of whether other ‘ordinary’ demands are met or not. For instance, in Uganda,

the NRM government of Yoweri Museveni resolved the once elusive issue of the security of the people and property. Thus, on the basis of the security ushered in by the NRM, the Ugandan society, generally, has supported the NRM since 1986 even when the provision of other social services has not been good and corruption has been widespread.

Even so, it is not sustainable to argue that the two support inputs, namely; specific and diffuse, do not derive from the same source. Both are conditioned by the satisfaction of demands; and as such if the satisfaction of the demands that condition them ceases, the support wanes, or at worst ceases too. Not even diffuse support can subsist when the system fails to meet the sacrosanct needs of a society. The system's output failure may derive from a myriad of causes according to Easton; including, "demand overload", indifference of government, and incompetence,—all of which lead to a decrease in support and an increase in demands. However, we have seen that the system in Easton's analysis is capable of adapting and responding to the input stresses discussed above, to sustain its life. To do that, feedback from the environment with regard to the output produced by the system becomes handy.

Thus, Easton provides a feedback loop in his thesis on political systems. The loop is a mechanism that informs the system whether the goods or services it rendered satisfied the environment or not. Thus, feedback becomes a source of input into the system. If the feedback indicates a favourable attitude and behaviour towards the system, the system gets to understand that it has support from the environment. If, however, the feedback indicates hostility towards the system, it means that the environment is not pleased with either the

quality or quantity of the output, and is indicative of continued demand input into the system.

It has been explained that the volume and content of demands can stress the system if it has no capacity to transform them into outputs, which in turn threatens the relevance and longevity of the system. In such a case, the system has mechanisms of managing the stressful disturbances. It can reduce the demands or modify their content to levels it can handle. According to Easton, if the demand inputs to the system become too many, the system may restrict entry of the excess by regulating individuals through whom and groups through which demands are articulated to the system. The regulation of the activities of the environment described above is, in tacit terms, a restriction of the enjoyment of the freedoms of the people—ordinarily by means of legal regimes and coercive apparatus, to levels that the system deems acceptable.

The tyranny of Easton's government

In no uncertain terms, Easton, in defining politics as the authoritative allocation of values for a society was realistic about the need for an authority, that is to say, to avert the type of life that existed in the Hobbesian state of nature.[36] However, Easton's theory, which derives from his definition of politics above, may not be panacea to the cause of enabling the good life. First, Easton's political system is necessarily adaptive for the purpose of ensuring its survival or longevity. Thus, to ensure its continuity—its rational objective, in the face of inundating demands that may result in what he calls output failure, the system must regulate the behaviour of those that are conduits for channelling demands. Of course, as intimated

[36] See, Hobbes on the state of nature in Chapter One

already, the regulation of the behaviour of the demand side tacitly means stifling the will of the people. Governments, in Easton's thesis, by necessity, in order to ensure their survival, have a 'blank cheque' to employ violence against and to limit the political space of opposition figures and other centres of power such as the media, civil society organisations, academia, and intelligentsia.

Unfortunately, when the opposition and the aforementioned other centres of power are stifled, the politically rational, expedient government enjoys the leeway to be incompetent and sometimes to be indifferent to the public good, which may increase output failure. Easton himself acknowledged that sometimes governments register output failure because of incompetence and indifference (Easton, 1965). Subsequently, the need to maintain optimal political balance, that is, to reduce system overload from the demand side as indicated already, brings about the effect of disempowering the people and expropriating from them their sovereignty and by extension, placing governments in a domineering and tyrannising position.

Second, Easton's political system theory assumes that disturbances or stresses to the political system— whether demand stress or support stress, are imputable to the input side, which must be corrected even by force. This point of view elevates governmental power above the power of the people. However, regardless of the fact that Easton's systems analysis elevates the system as stated above, what he regarded as disturbances to the system also qualify to be corrective measures from the demand side, that is to say, from the people, especially if the system is incompetent or just indifferent to the needs of the people. Plus, in instances where the system is indifferent or incompetent, the environment reserves the sacred

and unalterable right to demand for public goods and services unhindered, and even to replace the government.

An incompetent or indifferent government does not have the right to impose itself on the people under pretext of the necessity to ensure stability. Of course, a competent and responsive government does not register output failure. Instead, it generates the support of the people and automatically ensures its survival and continuity. Easton's political system is a skewed moderational framework, which tilts the balance of power towards the authority and which tacitly suggests the erosion of the people's sovereignty. However, it is arguable that authorities, governments, or systems, are rational and expedient entities that must be moderated. A system's output failure is a disturbance to political stability, which must be corrected by the input side, that is, by the people. By defining politics as the 'authoritative allocation of values' without suggesting the limits of that authority, Easton suggested absoluteness; and thus, falls in the same category as Thomas Hobbes and Robert Filmer, who defended the absolute power of monarchs.

Of course, the term 'authoritative' has a nexus with subordination and subjection. To be under subordination is to lose all the rights and freedoms to an omnipotent authority; and this is very distant from possibly causing the achievement of the goal of politics. Additionally, to allocate resources means to distribute them to all partakers. Thus, governments collect taxes and provide social and public services. This is necessary from an economic perspective, but the 'authoritative' distribution tends to suggest that authorities must dictate how, when and where to distribute the resources with nobody having the right to question even when they feel marginalised in the allocation of wealth.

CHAPTER FIVE

What politics is

Politics is any activity that leads to the moderation of all actors within a State for the general public good. It is a mutual regulatory activity that entails and culminates in the regulation of the behaviour of both the people and government. The logic of a State is the logic of politics: to create conditions that enable the people to pursue and attain the good life. Therefore, any conceptualisation or application of politics that grants power to authorities beyond what is necessary for the creation of an environment that permits the people to pursue their happiness is as inaccurate as one that ignores the necessity of a government.

No doubt, any authority needs power to manage, allocate resources, and govern, like Hobbes, Museveni, Easton, and others discussed in this book agreed. However, to actualise the purpose of government and politics, a government must not be allowed to exercise untempered power because then, it will most likely act in excess of its functional necessity. According to John Locke, a government is only necessary if it promotes and protects the freedom of the people. It means that a government can only restrain a person if his actions are likely to injure or to prevent others from enjoying their freedom. From this, it is sound to opine that it is not a government's function to restrain anyone from enjoying his freedom or from acting in any way, except where such restraint is necessary for the common interest of all, that is to say, protecting the liberty of others. Further, it is not a government's function to restrain anyone in the interest of perpetuating its own sustenance because then it will become unaccountable, unresponsive, and

tyrannical, which in turn makes opaque the purpose of government and politics.

However, governments have a proclivity for advancing their interest and may turn to tyranny and repression to achieve their ends. It is of peremptory value that governments, authorities, rulers or whatever the designation, are brought under a mechanism that ensures that they stick to their functional necessity, that is to say, promoting the liberty of the people. Therefore, as political societies need governments to moderate actions and relations of the people, governments and their activities and relations between them and the people, too, to promote the good life of the people, need moderation. Politics, therefore, entails a mutual moderation of actions and relations in a society, that is to say; the moderation of the people's actions, and those of a government.

Regulation of people's actions and relations

Within any society takes place various activities that are undertaken by people. Private individuals act in pursuance of the good life, but while they do so they are predisposed to become overly selfish and to act in ways that injure others, who may also injure them back if they find the means. This state of events in the Hobbesian and Eastonian analyses, breeds chaotic ramifications, which behove the existence of a powerful authority who authoritatively allocates things of value and whom private actors obey—for order to be established in a State and in order to enable each person to pursue his happiness without hurting others or without depriving them of the freedom and opportunity to pursue theirs.

As such, activities of private individuals, severally or in league, merit moderation by an authority, to enable the pursuit and attainment of the good life of all. It is for the purpose of order that Museveni prescribed the 'management of a society', and Easton the 'authoritative allocation of values'—discussed in the foregoing Chapter. Governments regulate private action through legal, regulatory, and institutional frameworks. They enact pieces of legislation that delineate the rights and duties of private actors and provide for punitive sanctions against derogation. They also set up enforcement, judicial, and penitentiary institutions for the apprehension, trial, and punishment of offenders in accordance with written rules of law. Further, a government may regulate private action by authoritatively allocating the things of value that private individuals pursue, and in ways that are generally agreeable and beneficial.

Regulation of government

It has been intimated that politics is not, both in nexus and praxis if the regulator, that is to say, a government or an authority is not also regulated. "Moderator moderation" or the regulation of the regulator must as a matter of first instance and primacy be internal, but external moderation is justified if the internal one fails. The primacy of internal moderation finds rootage in the concept of statehood, which espouses the right of people to economic, political, and socio-cultural self-determination. Consequently, statehood espouses independence from external interference and meddling.

The concept of statehood holds that a political society or a State worth its name must be sovereign and self-governing, the sole intent of which is to create civility in which

the pursuit of the good life is possible for everybody. Statehood is, thus, in direct correlation with internal mutual moderation. Internal mutual moderation entails laws, mechanisms, and systems through which a government moderates relations and activities of the people within its jurisdiction, and through which the people also regulate their government. Moderation of the moderator is achievable through a number of mechanisms. Conducting regular, free, and fair elections by adult suffrage is one such mechanism that is supposed to moderate the power of the moderator and to bring it in check. The idea of elections is discussed in more detail in Chapter Fifteen. A government can also be brought in check through effective separation of powers and functional checks and balances, which are discussed in detail in Chapter Ten.

Nonetheless, some States do not meet the paradigm described above. They are not yet civil because internal mutual moderation is yet to be achieved. In a civilising State, that is to say, a State in which political civility is just evolving; in which a government as the moderator of activities and relations is not yet strong enough to perform the moderation function, or in which it is unreasonably too powerful, there is insufficient foundation for the people to pursue the good life. Thus, in such societies, the purpose of a State or the goal of politics, which is to cause conditions that enable every individual to pursue his happiness, is not actualised.

The society is not in fact sovereign or political because it cannot govern itself. Self-governance does not mean a rule of one person; it is a government by the people in their common interest, because no society belongs to a single individual. It proceeds from this that for a society to be self-governing or sovereign, in other words for it to be called a

political society or a State, internal mutual moderation must obtain therein. Political order gets out of balance, or mutual regulation in a State fails when a government exercises too much power over the people in ways that indefensibly limit their freedom to pursue their happiness, or if it is too weak to cause order, that is, if it cannot regulate the actions of individuals within its jurisdiction to keep them from limiting the right and freedom of others to also pursue their happiness.

If a society has a weak government, it cannot be called a State or a civilised society or a political society because of the chaos and barbarism that obtain in it. Thus, to restore the necessary civility and order, foreign intervention may be necessary, but only if such intervention is intended to strengthen the coercive organs of the government, such as training and equipping the police and army, as well as building the capacity of civil institutions of government for the purpose of maintaining civility. Intervention which is intended to rule, occupy, exploit, or annex the civilising state is not defensible. More often than not, however, civilising States have governments that wield unreasonable power, which they employ to turn the people into subjects—almost without rights, in lieu of citizens who should in that case be free to exercise their rights.

Both cases, as has already been argued, in which a government may be weak to command order, or in which it is unreasonably powerful, behove external influence, but only under the caveat of instituting or restoring the requisite balance. Foreign checks against an oppressive government can take the form of controls based on aid, international legal instruments and frameworks, as well as use or threat of force against governments that abuse the rights of the people, under the paradigm of international ‘responsibility to protect’ human

rights, which allows a State's sovereignty to be disregarded by others in order to prevent it from grossly violating the rights of its people.

The General public good

Attaining the good life is the end of any political society; therefore, all activities within a State must be directed towards that one end. So far in this book, the phrase "good life" has been used for the umpteenth time, albeit ambiguously. The good life, which justifies the continuance of human life and without which man does not have any reason to continue living, is pursued by all. The concept of happiness or the "good life" may be contestable because the facts associated with it are qualitative and without a standard measure. For instance, what constitutes happiness? Is it the possession of ostentatious material things like wealth? Is it the possession of basic material things such as shelter, food, clothing and so forth, so that if a person has them he may be deemed to be happy? Is it the possession of immaterial virtues such as piety, faith, and modesty?

Such facts pit one person against another because there is no agreement as to whether it is seeking and accumulating material wealth and living a life of luxury, or possessing the basics of life or spiritual gratification that makes a person happy. However, subjective as it may sound, people do pursue happiness however they define it. It is, therefore, sound to assert that no person can be happy without some form of comfort, whether it is material or immaterial. Poverty, disease, servitude, subjection, insecurity, disorder, etc., are facts that cause discomfort and are, therefore agents of unhappiness. Thus, enabling the economic, physical, and

spiritual wellbeing of citizens is enabling their happiness and the good life, and their deprivation expropriates their happiness and the good life.

A government must as a matter of necessity provide security, and create good order while observing and protecting the people's legitimate freedoms and rights because their deprivation can be recipe for chaos, yet if a society is chaotic, attainment of the good life is curtailed. A government also ought to provide public goods and services that make the life of the people comfortable. Therefore, is a functional government one that enables the attainment of the good life in universal, abridged, or general terms? Since it is irrefutable that happiness has no standard yardstick; and as such, its interpretation variable and dynamic across people and time, it is inferable, by virtue of its fluid and varied interpretation that the good life cannot be universal. That is, no government can practically satisfy all the needs and demands of all people in a society at any given time; and subsequently, no government can win universal support of all people.

However, the factual reality that a government is incapable of enabling the good life in universal terms does not mean that it is a bad government, or that it should be replaced on that basis. However, if such a government satisfies a diminutive number as it dissatisfies the majority, it merits to be replaced. Such a government is an aristocracy, oligarchy, a plutarchy, or a tyranny—which are disgraced political constitutions in which rulers act in their own interest, or in the interest of a few, and in the process deprive the majority of the people. Therefore, since universal satisfaction of the people is not plausible, and minority satisfaction is odious, general satisfaction is ideal for the construction of a good society in which the attainment of the good life is possible.

In a nutshell, regulating both the people and a government is intended to cause enjoyment of the public good in general terms. That is what politics is about. Therefore, the governmental function of law making, execution of the law, and adjudication by the law ought to promote the pursuit of the public good, which as indicated already is achievable when the people enjoy the freedom to pursue what makes them happy.

CHAPTER SIX

Discourse on corruption

The mire of corruption is as widespread as humanity itself. The singular society that can boast invulnerability from the prevalence thereof is one which is uninhabited by human beings. The reason for the inescapability of corruption finds fortitude in the realism that by inherence, human nature is self-centred and self-interested. For this reason, the nature sometimes sets its possessor in motion to do things that may be socially considered to be horrendous. When a person gets to this state, he is corrupted or simply, he is corrupt. Corruption then can be manifest in the social, economic, political, religious, and all other domains of life. Corruption can mean apostasy, delinquency, or immorality. However, the operational definition of corruption is a bit different and specific.

In the context of the World Bank, corruption is a dishonest exploitation of power for personal gain. Corruption is a subject that receives mixed appreciation from different quotas of people. Everyone has what he understands corruption to be. But corruption, from the understanding of the World Bank has three qualifiers: An act of corruption must be dishonest, there must be exploitation of power, and it must be for private gain. Dishonesty has two parameters; namely, transparency and accountability phobias. If a person accepts a gift and minds if other people get to know about it, such acceptance is dishonest, and if he takes action and conceals it because he fears to be held to some standards, that is, to be held to account, then such action, too, is dishonest. As already noted, any dishonest act committed to exploit power for

personal advantage amounts to corruption. But, who has the capacity to exploit? Is it the wielder of power or not?

The general perception is that the wielder of power is the lone person with the capacity to exploit it. Imagine an errant driver giving an unsolicited inducement to a traffic police officer, so that the officer can "forgive" him, who in this case is exploiting power? What about if it is the officer who solicits money from the driver in order to extend "clemency" to him, who is abusing power? The logical answer is that both the wielder and non-wielder of power are its potential exploiters. What if the above mentioned is for public gain, does is it still amount to corruption?

The World Bank's definition of corruption does not regard any act that is not calculated for private enrichment to be an act of corruption. But what public good is in a person inducing a lands officer to speed up the processing of a document at the expense of other clients? What public gain is in a police officer receiving money from a wayward driver? Therefore, as long as an act is dishonest and involves exploitation of power, then it is for private enhancement, and therefore, an act of corruption.

Overview of Corruption in Uganda

Corruption in Uganda has a long history. Of course, it is as old as the history of Uganda itself. In the post-independence era, during the first term of Obote's leadership, which ran between 1962 and 1966, the major scandal was the 'Gold scandal', in which senior army officers including Idi Amin and the Prime Minister, Milton Obote, were allegedly involved in smuggling gold and ivory from Zaire (now Democratic Republic of the Congo).

When the Obote administration was deposed in 1971, Idi Amin gave eighteen reasons for the ouster of the president, one of which was corruption. After the elections of 1980, which were allegedly rigged by the UPC, a protracted armed conflict waged by Yoweri Museveni and the NRA ensued. In the Ten-Point programme, Museveni and the NRA/M envisaged, *inter alia*, the need to defeat corruption.[37] Logically, it is sound to infer that Museveni and the NRA/M had diagnosed corruption as one of the "plagues" that had impeded Uganda's development.

Nonetheless, the NRM government had by the time of writing this book (after 30 years in power) failed to stamp out corruption, and the vice in Uganda may be runaway. According to HRW (2013, p.2), "corruption in Uganda is severe, well-known, cuts across many sectors, and is frequently debated and discussed in the media." At the top echelons of the government, ministers and top bureaucrats have been implicated in major corruption scandals. From the impious sale of the former UCB in 1997, to the "Junk" helicopters scandal that stemmed from the Museveni government's decision to procure four attack helicopters; to the "Global Fund" scandal which related to the misuse of GAVI Funds; to the "Temangalo" scandal in which the NSSF controversially purchased a piece of land at Temangalo; to the CHOGM scandal, which involved the misuse of funds appropriated to organise the CHOGM Meeting in Kampala in 2007, and many others— Uganda may have witnessed some of the worst corruption cases never known to it before.

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[37] The Ten Point Programme was a political-economic agenda and vision of Museveni and the NRA/NRM for Uganda, upon which they were to run the State in the aftermath of their insurgency that ended in 1986.

The Uganda superintended by the NRM government was, at least according to the 1998 National integrity survey conducted by the Uganda Inspectorate of Government, buffeted by multifarious forms of corruption, including; bribery [66%], embezzlement [15%], nepotism [5%] and favouritism [3%] (Martini, 2013).[38] Bureaucratic corruption was indeed a proliferated problem because studies showed that such illegal payments were so widespread that they often happened in full view, with public officials openly asking for bribes in exchange for services, and citizens and companies openly paying without complaining (Martini, 2013; Inspectorate of Government, 2008). In the Transparency International's corruption perception index (2013), Uganda scored 26 on the scale that ranged between 0 (very corrupt) and 100 (very clean), which suggests that Uganda remained a highly corrupt country.

Modes of corruption

Most people associate corruption with bribery because it is perhaps the most common form, but bribery is just one of the many forms. Others that are discussed in this book include; embezzlement and nepotism. They are elaborated hereunder.

Bribery as a disorder of selfishness

Bribery is an act of offering pecuniary or other gifts in order to assuage a person to take a favourable decision on the

[38] The survey does not reflect actual corruption rankings but perceptions of Ugandans concerning what they perceived to be the most common form of corruption in their country.

basis of the gift. Obviously, an errant driver who offers money or other gifts to a police officer should be guilty of bribery. A politician who constructs or repairs churches, schools, sponsors students, or performs other acts that are ostensibly for the public good during an election period, should be guilty of electoral bribery. As long as the motive of giving gifts, or doing acts that benefit the public is to induce response in the interest of the actor; it is bribery.

The foregoing illustrations, without anything allegorical, cannot be acts of bribery if they are done out of goodwill or with a clear conscience. A simple mind may argue that they are for the good of the public; and as such, not acts of corruption. However, since such things happen towards or during election periods in Uganda, it is a sturdy signal to a smart intellect that their intended goal is to induce support from voters and with nothing metaphorical, they are baits for the private gain of the politician, party, or government or whoever acts that way.

In the Aristotelian logic, electoral bribery, which benefits the community, for example, the construction of schools and roads is out of the self-love of the actor because such acts endear him to supporters. In the thesis on selfishness in Chapter Two of this book, it was inferred that selfish acts that do not hurt but benefit other members of the community are normalities of selfishness, and that such are sufferable. By contrast, selfish acts, which hurt other members of the community are disorders of selfishness and should be resisted. Should Ugandans, therefore, condone electoral bribery if it benefits the community although it also benefits the actor? No, because in the long run bribery hurts more than it benefits the public.

Bribery is akin to fowling. Fowlers trap birds using snares and baits. Baits attract fowls because of their allure. But fowls have more to lose if they are tempted to eat baits because by eating the tiny objects of allure, they can get ensnared and killed. Similarly, electoral bribes, which ostensibly benefit the community, are baits to benefit the bribing actor. Such services are entitlements to voters; thus, no one ought to be rewarded for doing what is dutifully one's mandate. Further, extending or improving services during or towards election periods is only a smokescreen by a political leader or government, whoever so does, to hide incompetence. The Ugandan experience informs that social projects peak during election periods, halt or slow after elections and resume or increase the ensuing election period.

The bribing political actor is aware of his duty to the community and is guilty of his nonfeasance. Thus, election-time quick fixes are usually calculated to make up for past failings. However, the real arithmetic behind such fixes is to 'blindfold' voters and lure them into voting them, but at a greater loss to the community when the schemer's baits deliver electoral victory, compared to when he loses the bid to a more competent person.

Embezzlement and economic expansion

Embezzlement is misappropriation or diversion of either money or other government property for the private gain of a civil servant. There is a view, for instance, as purveyed by Professor Tarsis Kabwegyere that embezzlement of public resources is not absolutely base, but that its baseness or lack of it is assessable on the vice's economic effect on a country (Kabwegyere, WBS TV , 2013). The logic of Kabwegyere's

thesis is that embezzlement, rather than drain, adds to the economy when embezzled resources are invested in it. The investment of stolen public resources in the view of corruption-optimists like Kabwegyere, yields industrialisation, creates employment, and expands the tax base from which a government can construct roads, schools, hospitals, employ more citizens, meet the public wage bill, and provide utility and other public goods and services. The centrality of the Kabwegyere thesis is that such a consequence has a multiplier effect of benefits to a State; and it is on this premise that the optimists argue that embezzlement is not bad *per se*. By the same logic, embezzlement is only base if embezzled resources are not invested in the economy from where they are stolen.

However, the resources so embezzled benefit the corrupt man, but hurt the citizens, since resource diversion hurts social service delivery. Plus, if not invested in the economy from which it was originally stolen, the consequences to a State are likely to be; malnutrition, poor health services, illiteracy, unemployment, low tax base, poor infrastructure and poverty. Therefore, embezzlement as a form of corruption is congenitally base, and no amount of intellectual apology can make it good. The view that embezzlement may lead to economic expansion is a parochial consideration and an emanation from unsophisticated analysis. If embezzlement does indeed add to the economy, then it makes sense to institutionalise it—make it official and widespread, for it to add substantive and positive value.

Andrew Mwenda in a post to the Independent magazine's website in 2015 insinuated that stealing less may

be an impediment to economic expansion.[39] He argued that: With Uganda's "budget of (Shillings) 24 trillion, I think stealing (Shillings) 500 billion is peanuts. In the wider scheme of things, a 2% theft rate is really small. It means that you are utilizing 98% of the money correctly. May be we don't lose the (Shillings) 500 Billion. May be the thieves invest it in more productive ventures than government would have" (Mwenda, 2015). In the analysis, Mwenda downplayed the hyped negative economic effect of corruption because of the "small" scale of theft in Uganda. More than that, he expressed optimism that it was possible that the 500 billion or about 2% was invested more productively than it would be if it had been left for public expenditure.

In effect, if the 2 % was invested in Uganda's economy by the thieves, then that was even better. Thus, Mwenda's position suggests that corruption is conditionally good. If his intellectual hope in corruption is not fallacious, then it makes sense to make corruption widespread by decriminalising it because if it remains criminalised, it discourages stealing in the first place, and the investment of stolen resources within the economy in the second, which in Mwenda's apology may make an economy miss rapid economic expansion.

However, institutionalising embezzlement makes the theft of public funds official and turns a country's resources into spoils to be shared among those who have access to them. A country in which every public official has a legal right to steal, or whose resources are spoils to be shared among those who can, is in deprivation not only of social services, but also

[39] Andrew Mwenda is a renowned journalist, and a political and economic analyst in Uganda. He is the founder and CEO of "The Independent" news magazine

of economic expansion. The economic expansion fantasised by Kabwegyere and Mwenda is phoney, untenable, and unsustainable. If all officials who manage public resources steal them officially or share them among themselves as though they are spoils, under conditions of institutionalised embezzlement, a country suffers resource depletion, economic collapse, and subsequently State failure.

If the public mandate of government is factored in, official and widespread theft of public funds renders a government ineffective because it may fail to produce public goods and services for its people. Every government is duty-bound to provide public and social services, pay salaries and allowances to its public, civil, and military services, and to conduct foreign relations, among other duties, which all need funds that no individual can singly provide. In a state of resource depletion caused by official corruption, a government has one logical option: to hike taxes on private investment and on salaries in order to raise revenue and in order to meet its public mandate. The effect of such a measure shrinks economic activity. The multiplier effect of a high tax regime on an economy is negative. It reduces profitability, leads to employee lay off, bankruptcy of businesses, and so forth, which are inevitable ramifications under conditions of institutionalised corruption.

Additionally, revenues raised from tax hikes under the foregoing economic conditions are not safe; they are available for swindling. Swindling is unlikely to end because the economic effects of tax hikes give rise to a genuine need to recapitalise enterprises, which sustains the need to continue emptying the public resource envelop and further sustains government's nonfeasance as a consequence. A protracted inability by a government to stabilise the economy, or to

provide public goods and services, leads to public disorder, chaos, political instability, and State failure. Therefore, embezzlement as form of corruption is an insufferable disorder of selfishness and rationality, which bears catastrophically on the people, and which must be curtailed. In view of this, embezzlement-optimists such as Andrew Mwenda and Tarsis Kabwegyere were wrong.

Nepotism as a disorder of selfishness

Nepotism is another grossly misunderstood form of corruption. Some Ugandans vaguely possess a clue concerning its correlation with corruption. Nepotism, in the context of this book, is a show of unmerited consideration by a person in power to another person, based not on competence or inducement, but on family or friendly ties. Nepotism in Uganda is common in the domain of the public job market and government contracts. The conventional view in Uganda is that nepotism is if a favoured person does not qualify for a job or contract, and that it is not if the person possesses the qualifications or meets the requirements.

In other words, all that is needed for nepotism to be absent, and merit to be present, is possession of qualifications and requirements by a person applying or being considered for a job or contract. However, that is a skewed perception that ignores the concerns of kin and kith in the seemingly paradoxical subject of nepotism. Simply put, the skewed conception of merit posits that it is superfluous to question the interplay of family or friendly relations between the appointing authority and the candidate, as long as the candidate is qualified.

The concept of merit as set out in this book may be fallible; therefore, a candidate for criticism, but it is certainly not parochial. Merit connotes the quality of deservingness restricted solely and exclusively to one's competence and experience. Merit is not if at any given time a decision maker or recruiter is biased or is compromised in anyway. If he bases his decision on anything else but qualifications, experience, competence and related facts, there is no merit. Succinctly, if there is a possibility that a decision maker in his decision-making processes is likely to be influenced, or if he is in fact influenced by any other factor besides or even alongside competence, qualifications, experience and assimilated facts of merit, such a decision is grossly deficient of merit. If a person becomes a public employee, or a contractor, and possesses the facts of merit described above, when the decision to place him in that position was in some manner based on relations with the decision maker, there is nepotism irrespective of whether the largest bit of the decision was based on the elements of merit.

In the concept of merit, relations cannot be simply wished away because if a decision maker is influenced by another factor besides or alongside competence, such a case serves two odious scenarios. First, there is a galactic plausibility to sacrifice superior minds and other endowments for family and friendly considerations. Of course, any society is a throng of thinkers on varied planes, and of many people with disproportionate skills and abilities. Some people think and work better than others do. Therefore, if relations play a part in appointing or contracting processes, then inferior minds or talent may be easily chosen.

Human sympathy and nepotism

In consonance with human sympathy, a rational person by nature is predisposed to act more sympathetically in relation to himself first, close relatives, close friends, distant relatives, distant friends, and others, in that order. This illustrates that under natural circumstances, human sympathy tends to rise commensurately with relational proximity to the person so sympathising, beginning with self; and by the same logic to dwindle commensurately with relational remoteness. Stated otherwise, other factors remaining constant, the closer a person is to another, the higher the possibility for him to obtain sympathy or to extend it, as the case may be; and the more remote a person is to another, the lower the possibility of obtaining or extending sympathy. Of course, this anchors on the premise that other variables that affect human sympathy, such as; legal deterrents, inducements, and merit, are not put into consideration.

Owing to the reality of human sympathy at work in all humans, it is true that the closer a person is to a decision maker, the more his likelihood of clinching favours, and the farther one is, the lesser his chances. The central concern of this Chapter is to determine whether nepotism should continue to be discounted and to be treated with pervasive lethargy as it is, or not. Nepotism potentially locks out better talent, the corollary of which is a slow tempo of development. It also sustains underdevelopment, which ultimately hurts the general population. Therefore, nepotism is a disorder of man's selfishness and rationality that ought to be fettered.

The second odious scenario is that nepotism limits the power of a public leader to demand accountability. As one of the principles of sound practice of politics, accountability is

necessary on the basis that a political leader is a trustee, not only of people's power, but of their resources also. Every society collectively owns resources, which must be spread for its common gain. A trustee is a person, who with legal authority manages another person's money or property. For clarity's purpose, a political leader or a government, as a trustee of the people's resources must first obtain legitimate or legal authority, which in modern politics is obtainable through free and fair elections. In this sense, when an election is not free and fair, even by the minutest indication, a political leader or government borne and begotten out of the process is an impostor. Such a person or body of persons cannot be a political trustee, but a plunderer.

The two are disparate because the former is a hired manager who is paid to do his job, and who ipso facto, must be responsive and accountable to the owners of the resources, while the latter is a manoeuvring heist who fights, kills, threatens, intimidates others, or procures his way to political leadership. A political heist's only motivation is to control the people's resources for self-enrichment, enrichment of his friends and family, or his ethnic cluster and political cronies, more than the public. To steer clear, there is no intention to convey the interpretation that illegitimate governments do not work for the people. In fact, they do provide public services, but the point that should be understood is that, in this variety of human animates, personal interests and those of their kin and kith are placed unduly ahead of those of the public.

For such a bundle of humankind, it matters in a very petite way how they get to the helm, but it matters most that they get there. For them, the end justifies the means; not the other way round. In the same breath, there is no intention to suggest that those who are elected legitimately and are handed

the levers of political power to hold the resources in trust do not have their personal interests. In fact, the notion of personal interest is not discardable from the catalogue of human motivations.

Nothing motivates a person to do anything except if in one's judgment it can have a positive effect on them. In this regard, nobody may offer himself to run in a draining electoral process restrictively for the benefit of others. In politics, there is too much to gain on a very personal plane. There is a handsome degree of power, glory, splendour, and grandeur to be worshipped of, and a fortune to be amassed. The power referred to here, ought to be discriminated from the "struggle for power" as a conceptual disorder of politics discussed in Chapter Four. As much as there is much to gain if one succeeds, there is also much to lose if one fails in politics. If this were imaginary or a concoction, it would be inexplicable why people suffer long and endure too much in armed struggles. Such unimaginable and agonising hardship is not sufferable strictly for the liberation of others. It has a lot to do with self-interest than the public interest.

The talk of "sacrifice", therefore, ought to be carefully examined because experience has demonstrated that those who criticise others before they capture power later attract criticism against themselves over the same issues when they attain power. They do or seek to do the same things they once were "averse" to when realism erases idealism. Thus, the intention is not to give a false sense that duly elected political leaders do not have selfish-interests, or that they are not rational or expedient. As such, it has been clearly intimated above that unlike legitimate political leaders, the illegitimate have a propensity to place their interests unduly ahead of those

of the public because an employee accounts to an employer, and a heist has no need to account.

In this regard, there is no need to discuss accountability in the context of illegitimate wielders of political power because they simply cannot account when their motive is to plunder. Therefore, in this book, the concept of accountability is restricted to leaders with democratic legitimacy. Seeing that trustees are not the owners of the wealth they manage, but just legitimate managers thereof, they have to give accountability to the owners—their employers—the people. One ought to note that, although it is incumbent upon contracted political managers to manage resources, they do "sub-contract" public duties to other persons. At this rate, accountability does not seem seamless. It is hierarchical and its hierarchy has to be clearly mapped out.

Logically, a person accounts only to another who contracts him. If, for instance, a trustee or a body of trustees elected by the people hires a person or contracts a company to provide public goods and services, that person or company cannot, logically account to the public because the two do not have a contractual relationship. Thus, an elected political leader must be accountable directly to people who elect him, or indirectly, through an elected, representative body—a national assembly at a national level, or local assemblies at local levels. It is, however, different with political appointees for example, ministers. These must account to their respective appointing authorities, that is to say, popularly elected political leaders, who, or a government, which must in turn account to the people. The danger, however, is that hiring or appointing people based on relations limits the power of those appointing to demand accountability. It naturally makes one to fear to hold their relatives and friends to standards and even more

frightening, to chastise them for not meeting the standards of service expected of them.

Human leniency, nepotism and accountability

Any rational person is always more lenient with himself first, close relatives, close friends, distant relatives, distant friends, and others, in that order. The sense is that the closer a person is to another, the more the leniency he is likely to obtain or extend, and the farther a person is to another, the less the leniency he is likely to obtain or extend. With all certainty, few (if any) presidents or public leaders can stand the fright of letting their wife or brother or son or in-law face the gallows for misappropriating public funds. If a leader allows his close relatives to serve a jail sentence because of corruption, he will be transgressing the principle of human leniency; but to transgress a principle that rules nature, one has to be superhuman. Human beings are not. Cognisant that corruption—bribery, nepotism and embezzlement, etc., negatively affect society, what keeps it around?

The tenacity of corruption in Uganda

The popular thesis on the public sector corruption discourse in Uganda is that its high prevalence is due to a "deficiency of political will". By the same logic, it is held that there is strong political will in countries where corruption ratings are low. Whereas such is the popularly held view, especially within the ranks of the opposition political parties and the civil society elite in Uganda, nonexistence of strong "political will" may not be the real sustainer of corruption in Uganda, or its existence the panacea in countries where the

ratings are low. Political will in the efforts against corruption is discussed later in this Chapter.

There is another thesis in Uganda that holds that corrupt people are more selfish and less patriotic. It holds, correctly, that people engage in corruption because they care more about themselves and less about their country and people. Nonetheless, this view fallaciously classifies people into the self-interested and the patriotic or the selfless.[40] When people engage in acts of corruption, it is not because they are less patriotic or less selfless than others are. It is because they understandably love themselves more, which is the very nature of all men. Patriotism is a consequence of selfishness; not of selflessness as conventional wisdom holds.

Those who are regarded as unpatriotic or selfish, get a window of opportunity to pursue their personal interests and see no chance of being caught or reprimanded. On the other hand, the supposed patriots in the ordinary understanding of patriotism, do not have a chance to act in their private interest; otherwise when they do and see no chance of getting caught or reprimanded, they will likely act in self-interest by virtue of the fact that everyone is inherently selfish. The chance referred to here is restricted to mean having access to the public funds in a milieu of weak monitoring and oversight systems. Society in general terms does not publically condone corruption, and to a large degree, nobody desires to be on the wrong side of the generally held societal perceptions, norms, and maxims.

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[40] Patriotism is used interchangeably with selflessness. Of course there is no selfless human being and even acts which seem to be out of selflessness are motivated by the selfish nature of the actor.

Therefore, under normal circumstances, corruption is not committed in the public eye because such may court public furore against corrupt officials. As long as there is a hundred per cent chance that a person will not be caught in the impious act, he will be inclined to succumb to the temptation to steal. No thief steals when he knows that there is one hundred per cent chance that he will be caught. Similarly, as long as there are ineffective mechanisms of monitoring public expenditure and enforcing accountability, there are vast chances that State employees will misappropriate public funds. Uganda's protracted battle against corruption has failed so far to yield solid results, although the NRM government has made giant strides in prescribing the anti-corruption normative in the form of monitoring and accountability. The government has even set up a plethora of anti-corruption legislation and institutions, yet there is yet to be a slump in the levels of corruption in the country.

Efforts against corruption in Uganda

In a bid to address corruption, the NRM government has set up legal and institutional frameworks. In this sense, the government committed Uganda to international conventions such as the United Nations Convention against Corruption, as well as the African Union Convention on Preventing and Combating Corruption (Martini, 2013). On the domestic plane, the government has enacted anti-corruption laws, such as the Leadership Code Act (2002), the Anti-Corruption Act (2009), and 'the Code of conduct and ethics of the Ugandan Public service, which regulates conflict of interest as well as related prohibitions such as the acceptance of gifts (Martini, 2013, p. 6).

The 'President, ministers, Members of the Parliament, judges, and civil servants, and their spouses, must comply with asset disclosure requirements, in accordance with the Leadership Code Act' (Martini, 2013, p.6). The government has also enacted the Whistle Blowers Protection Act (2010), which provides for monetary, security, and other incentives to encourage individuals to report cases of corruption (Martini, 2013). Further, it has put in place the Access to Information Act (2005), which gives every Ugandan the right to access government information, with the exception of information that is likely to threaten the country's security or sovereignty (Martini, 2013; World Bank, 2011).

The Government in 2008 launched the National Anti-Corruption Strategy (NACS), which was a five-year plan designed to enhance the quality of accountability and in subsequence reduce the rate of corruption in the country (Martini, 2013). The NACS was hoped to reduce corruption because it did not focus only on government structures and systems, but its focus extended to the people and on constructing a culture of integrity in Uganda (Martini, 2013; Directorate of Ethics and Integrity, 2008). In 2007, the Ugandan, Kenyan, and Tanzanian Anti-Corruption authorities signed a declaration to deny a safe haven to corrupt persons and investment in illicit funds (Martini, 2013).

In the same spirit, the government has put in place specialised institutions to fight corruption, including but not limited to; the Inspectorate of Government, the Directorate of Public Prosecutions, the Directorate of Ethics and Integrity, the Office of the Auditor General, the Anti-Corruption Division of the High Court of Uganda, and the Public Accounts and Local Government Accounts Committees of Parliament. The Inspectorate of Government (IG) is established under Article

223 of the Constitution, and is operationalised by the Inspectorate of Government Act of 2002. The IG is by law, mandated to 'investigate or cause the investigation of corruption, prosecute, as well as arrest or cause the arrest of corrupt officials', and also 'has the responsibility to enforce the Leadership Code of Conduct' (Martini, 2013, p. 7).

Impunity or absence of political will?

The core problem of Uganda in the fight against corruption is not insufficiency of anti-corruption laws or institutions. Therefore, something else must explain the problem, which in the analysis in this book, is impunity at top of the political class. Of course, impunity, which is understood in the context of this thesis to be the unfair exemption from punishment for wrongdoing cannot be a privilege of the feeble, but of the powerful. Those in power have the means to circumvent the law; they are protected by powerful friendly and family connections, influence, and money, while the feeble have no one to defend and nothing to shield them, as remarked below:

> *"Untouchables. Come rain, come [sun]shine, they're never going to court, not while there's somebody close to them in power. That's because of the politics involved." —Prosecutor in the Anti-Corruption Court of Uganda, May 21, 2013.* (Human Rights Watch, 2013, p. 1)

It is not surprising that in Uganda, the 'beautiful' anti-graft laws and institutions have thus far "netted" the weak and often left the powerful in the same boat of corruption scot free. On

29 June 2010, during a ruling convicting an engineer who had been found guilty in the CHOGM scandal, Justice John Bosco Katutsi lamented that "this court is tired of trying tilapias when crocodiles are left swimming" (Human Rights Watch, 2013, p. 1).

A society in which the ombudsman is accused of going after "small fish" and judges deplore selective prosecution; strong laws may exist, but corruption will be sustained as has been argued by the HRW:

> *"Corruption in Uganda is severe, well-known, cuts across many sectors, and is frequently debated and discussed in the media. Such corruption undermines human rights in multiple ways: a direct defiance of the rule of law and accountability, it indicates that the law and its institutions cannot be relied on to protect against violations of fundamental human rights or deliver justice."* (Human Rights Watch, 2013, p. 2)

Mechanisms, systems, and laws are unhelpful in the presence of impunity. The fight against corruption does not end with setting up laws and accountability systems and institutions; it only begins with it, and ends with eliminating the culture of impunity. Many people, especially those in political competition with the NRM, and civil society groups in Uganda, suppose that corruption is at large because of a deficiency of political will to undo it. The NRM on the other hand claims that it has the will to end corruption, and points to the many pieces of anti-corruption legislation it has enacted and the numerous anti-corruption institutions it has set up. Whereas the NRM government's thesis on the sustaining factor

of corruption is that there is a deficiency of patriotism, the opposition's is that there is a lack of political will. However, both sides of the political divide are wrong.

That the NRM government has attributed the rampancy of corruption in Uganda to a lack of patriotism, it is sound to suggest that it does not understand the basic fact that all humans are rational and selfish—and corruptible.[41] As such, the government tacitly believes that on the one hand, there are selfless and 'patriotic' persons and those who are base, 'selfish' and unpatriotic on the other, which is a misdiagnosis that may lead to wrong prescription and mismanagement of the vice. Although the government's misdiagnosis of the sustaining factors of corruption has led it to invest funds in national patriotism programmes, taking such a path cannot reduce corruption because of two reasons. Firstly, patriotism is misconceived—it is not selflessness, but the antithetic. Secondly, there is no selfless person; all men are selfish because they are all rational. That they are rational, they always seek to maximise their self-interest whenever they get a chance.

A Billy goat cannot produce milk and a rooster cannot lay eggs. Likewise, to seek to 'teach' selfish people to be 'selfless', that is, to put the interests of their country or of others above theirs, is to try to achieve the impossible. On the contrary, and as stated already, the opposition political parties and civil society organisations in Uganda have argued that there is a lack of political will by the government to end corruption. On close examination, however, one discovers that it is a fallacious and an unsophisticated charge.

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[41] Museveni was the NRM government's leader and president of Uganda since 1986 until the year this book was published (2016).

Discourse on political will

As has been stated already, “Political will” has been touted as the most important ingredient in the fight against corruption (Amundsen & Mathisen). However, the idea of political will has been misconstrued to the extent that it has misled its adherents to attribute the failure of anti-corruption efforts to its absence, that is, to the lack of political will (Brinkerhoff, 2010; Human Rights Watch, 2013; Uganda Debt Network, 2013). “Political will” has been defined (erraneously) as the sum of political statements and actions made by political leaders of a given country or institution (Amundsen, 2006). Thus, political will in the context of containing corruption may, within this meaning, be understood as the sum of statements and actions made by political leaders regarding the corruption problem. This thesis’ major postulation is that intent and action must work in synchrony to prove existence of political will. Thus, intent or aspiration without matching action renders the former mere rhetoric (Amundsen, 2006).

Nonetheless, this postulation derogates from the English language usage of the root word “will”. The Word Web Dictionary supplies various usages and multitudinous expressions of the word “will”. It may be used as a verb or as a noun. As a verb, it expresses the future tense, for instance, ‘next year I will make money’. Further as a verb, ‘will’ expresses bequeathal, for instance, ‘his father willed her all his fortune’, among other verbal usages. As a noun, the word ‘will’ may mean the quality of possessing intention, for instance, ‘he was willing to take the risk’. Further, as a noun, the term ‘will’ may mean a legal document containing a

person's wishes regarding disposal of his property when he dies.

Political will does not make sense when used as a verb, but as a noun. For instance, political will cannot be used to express the future tense, or bequeathal. As a noun, political will cannot be used in reference to a legal document containing a person's wishes regarding disposal of his assets. As such, it makes sense to treat the usage of political will as a noun to mean political intent. In the context of this book, "will" shall be taken to be an expression of intent, resolution, or indication of willingness or desire. Thus, it can be logically inferred that a political actor who expresses credible intent possesses political will. Action may fail, but that does not mean that the actor lacks the will. Incapacity may encumber action even where desire exists. Will or willingness is a natural disposition to want things to happen.

Capacity or ability is another thing altogether. It is a quality of being capable or able to accomplish something that is desired or intended. We all desire to be free, but not all of us are. We all intend to be happy, but not all of us are. Someone may want or may possess a desire to accomplish something, but he may not be able to accomplish it. In other words, he may possess the "will" but not the capacity or ability for its fruition. Similarly, someone may be able to accomplish something, but may not want to. He does not will, although he can. The two facts are distinct. However, it is unquestionable that under ordinary circumstances, when will is extant, attendant action follows sporadically. But, circumstances are not always ordinary or constant. Therefore, it may be sound to infer that "political will" cannot be taken in the broad sense in which this theory assumes it, namely, the sum of statements

(which reflect intent) and actions to achieve an object or a goal.

Similarly, since will and capacity are distinct, it is difficult to establish intellectually that action is evidence of will *per se,* or that without attendant action; intent is mere rhetoric—or no intent at all. Vice versa, it is also fallacious to aver that absence of action is evidence of absence of will. In fact, action may be imposed, and if imposition comes into the picture, will gives way because imposition and will cannot co-exist in a logical sense. It is, therefore, valid and necessary that any sound political will discourse makes a discrimination between willingness and ability, and between being willing and being able to act (Brinkerhoff, 2010).

"Will" versus "ability" in the corruption discourse

As has been intimated already, the orthodox political will discourse attributes absence of action to a deficiency of will. In many countries, failure to pass anti-corruption legislation, execute provisions of legislation, investigate, or pursue corruption cases in courts of law is cited as a negative indicator of political will (CHR Michelsen Institute, 2010). Nonetheless, as has been stated already, it is imperative that sweeping assertions of lack of political will are not made. This is because failure to act against corruption may be caused by a number of factors other than absence of political will, including; low levels of capacity or institutional rivalry, which are not associates of absence of intent or desire by the political leadership to contain corruption (CHR Michelsen Institute, 2010). The incapacity or the low levels of capacity referred to above include, but are not limited to; intrinsic, technical, or financial incapacity. A political actor may be intrinsically or

naturally rendered incapable (and not necessarily unwilling) when faced with situation where he has to comply with the natural law of human leniency.

The fallacy of "Political will"

In the context of this book, "Political will" to end corruption is a desire or intent possessed by a political leader to end the vice. Nonetheless if there is a desire to do something or a will to act, there is on the opposite end a lack of it. Imperative to note is that a desire to act does not happen from nowhere; therefore, there are factors that facilitate the strengthening or weakening of the desire to combat corruption. In the context of this thesis, there are mainly two factors that must work in sync to build the desire of a leader to fight corruption. First, a strong love and consideration for the people he leads—the citizens; and second, a weak or no love for the people who work under him—the ministers and civil servants, for instance. Stated otherwise, the will to end corruption requires a political leader's strong love for the citizens and a weak or zero love for subordinates in synchrony. However, the effectiveness of fighting corruption using this approach, that is, political will is questionable because it is incongruent with the principles of human sympathy and human leniency described earlier in this Chapter.

It has been written in the pages of this book already, that human sympathy predicates a leader to hire those close to him, that is to say, relatives, friends, or political allies, which in effect leads to the leader's leniency towards them when they flout the rules of prudent public finance management. Human leniency compels leaders to save those close to them from excruciating pain and when this happens, it creates a culture of

impunity. No leader loves the electorate, most of whom he does not know, more than the people he interacts and works with. Thus, a juxtaposition of sympathy and leniency lessens a leader's desire to fight corruption.[42]

However, erroneously, several civil society organisations have held that the sustenance of corruption in Uganda is imputable to absence of political will, and continue to hold as such. The Uganda Debt Network, a local civil society organisation has argued that:

> *"It is not for the lack of strategies, laws, or institutions that corruption has thrived; it is rather the lack of political will and commitment to the full implementation of the laws and policies"* (Uganda Debt Network, 2013).

[42] President Museveni has defended many politicians who have worked under him. During the so-called Temangalo Scandal in which Amama Mbabazi, the then security minister was implicated; Museveni summoned the NRM parliamentary Caucus and cajoled the MPs to clear Mbabazi of wrongdoing on the floor of parliament. Museveni also publically defended his former Vice President, Gilbert Bukenya in relation to the CHOGM scandal, saying he did not see merit in the case against him. He also publically defended Mike Mukula, a senior leader in the NRM party and once a minister in government, in relation to the Global Fund scandal and even paid his legal fees. The presidency is a very influential office in Uganda's politics, thus, a president's public defence of anyone accused can tip everything in the accused's favour. Not surprisingly, none of the three described above was reprimanded.

Similarly, the HRW, an international civil society organisation has argued that:

> *"Media attention of Uganda's corruption often focuses on the "big fish who got away" and who were allegedly protected from prosecution by other elites. Solutions—often proposed and supported by international donors—usually rely on technical responses. Those responses overlook what, based on past actions, can be described as the government's deep-rooted lack of political will to address corruption at the highest levels..."* (Human Rights Watch, 2013, p. 2)

However, although the HRW has argued, (inaccurately), that Uganda's sustained corruption is a consequence of absence of political will, it has nonetheless supplied a good observation as follows:

> *"President Yoweri Museveni, members of his government and the ruling National Resistance Movement (NRM) party have repeatedly promised to root out corruption since he took office in 1986. Despite these pledges major corruption scandals have surfaced again and again and no high-ranking member of government who managed the implicated offices—for example, not a single minister—has served prison time for a corruption-related offence during Museveni's long tenure. The only conviction of a minister was overturned on appeal in 2013, after the president himself offered to pay his legal costs." In the NRM Parliamentary Caucus Retreat in January*

> *2013, NRM members pledged support for the party's zero-tolerance policy on corruption. President Museveni echoed the same sentiments in his June 7, 2013 State of the Nation address confidently stating, "The evil of corruption is being handled. "His rhetoric was nothing new; the elimination of corruption and misuse of power was a key part of the president's 1986 Ten Point Program."*(Human Rights Watch, 2013, p. 11).

The fact that public statements are incessantly made, depicting a desire to tackle corruption is enough ground to lead one to the conclusion that Museveni and the NRM party are willing to do the job. For the civil society groups working in Uganda to argue that the Museveni government lacks the will to undo corruption is to suggest, also, that the government recognises corruption as a virtue and ipso facto encourages it. Therefore, the *onus probandi* or the burden of proof regarding such recognition rests with the civil society groups. In this book, the view that is taken is that political actors recognise corruption as a vice. From the immediate foregoing quotation, the HRW itself acknowledges that President Museveni during his State of the Nation address of June 7 2013, referred to corruption as 'evil'

If actors actually recognise corruption as a vice, they should be inferred to be willing to undo it because its continuance hurts their reputation or approval and subsequently, their political longevity. For, their continued stay in power hinges largely on their approval by the people. Because of the adversity associated with corruption,[43] which

[43] See, "embezzlement and economic expansion" in this Chapter (Six).

directly affects citizens, the leaders risk deposition by rebellion, coup, or ballot.

Sometimes leaders may employ corruption, especially political patronage, as a tool to assuage the people and to ensure the longevity of their political career. However, the approach is not sustainable because it demands the placation of the majority of the population by corrupt means if the leaders are to survive ouster, which is not practicable because the enterprise would require humongous amounts of resources. Thus, on account of scarce resources, only a handful of people can be bribed to support a corrupt regime. Although political actors may placate a few people through corruption, it is more likely that they in the process will offend the majority. Thus, it is in the best interest of political actors to stop the vice, since failure to do it puts their credibility at risk in the 'eyes' of the majority. In this connection, it may be generally inferred that political actors are intent on, or willing to fight corruption. However, some fail while others succeed.

Since it makes sense to argue that political will exists where there is recognition that corruption is a vice, the disparity between those who succeed and those who fail does not rest with the existence of willingness or the lack of it, but rather with human incapacity vis-à-vis capacity. Incapacity may be caused by the law of human leniency, which is at work in all men, weak legislation, and technical incompetence relating to detection and investigation. Since Uganda's legal and regulatory frameworks relating to corruption are numerous, the problem of corruption may still be extant on account of the technical incompetence of the investigative and prosecutorial machineries of the State. This should be easy to surmount (if indeed it is the impediment to the containment of corruption) because investigators and prosecutors can be given

cutting-edge training and tools. They do not cost a fortune—for a State, really.

Technical incompetence being easy to overcome, it does not present itself as a major encumbrance to anti-corruption efforts in Uganda. The problem is probably human incapacity that is associated with the law of human leniency, which then fosters impunity. Political actors may be willing to prosecute corrupt officials, but when they do not prosecute their own,[44] they are encumbered by the principle of nature, which is human leniency. Thus, this analysis seeks to make a cogent case to the effect that the concept of "political will" in the fight against corruption is seriously blemished. In other words, political will is defective, and Uganda's corruption ratings may be high because of another real reason; namely, human incapacity, not a lack of political will.

Impunity, the real sustainer of corruption

In the course of writing this book, I paid a courtesy call to a friend of mine at Entebbe and got an opportunity to observe a facet of human nature that exceedingly intrigued me. Two young girls of about three and six years, respectively, were playing as my host and I went about our business. The two girls then picked a controversy, during which the younger smote the older, and the older did nothing retaliatory. Their

[44] In 1997, when Museveni's brother, Caleb Akandwanaho, alias, "Salim Saleh" was implicated in the impious sale of the Uganda Commercial Bank, the president forgave him instead of allowing government to prosecute him. When Mr. Amama Mbabazi, his close confidant was implicated in the Temangalo Scandal, the president publically and spirited defended him and assisted him to be politically cleared of any wrongdoing.

uncle, Samuel Omeke (my host) intervened and threatened to reprimand the aggressor if she did not stop her aggressive actions, but she would not heed the warning. The behaviour of the two girls was fascinating. Physically, the older was stronger, but she could not make a reprisal. Secondly, the younger would not cease her attacks despite the threats by the uncle. So intrigued, I commenced an intellectual inquiry into why human nature manifested the way it did in the episode of the girls, and what bearing it possibly has on a person's will.

When I thought through the episode, I learnt that first and foremost, the older girl would not retaliate because such an effort would attract the protective wrath of the uncle in favour of the younger one. She restrained herself, not because she felt some sort of compassion for her tormentor, but because she was aware of the ramifications retaliation could attract. Aware of the consequences, and the agony of being hurt without being able to do anything about it, it was natural that she let out the rage by crying. On the other hand, the younger girl would not listen to her uncle's threats because it did not occur to her that they meant anything. The threats were not sufficient to deter her aggressive actions. Human nature always guides (or misguides) man to act in ways that fetch him satisfaction, even when another person gets hurt in the process, especially if he knows that nothing that hurts him back will be done to him. The implication is that whenever there is a culture of impunity, people tend to continue to act with less or no consideration of how their actions affect others. Bribery, embezzlement, and nepotism, may not be contained in Uganda as long as impunity is prevalent.

'Political force' against corruption

The issue to contend with at this stage is not whether political will should be invoked as a measure to combat corruption, since it has been explicated that it may be present but inept to curb corruption if a leader is permitted to observe the law of human leniency. Thus, it is sound to opine that a more effective strategy against corruption has anchorage in curtailing a leader from obeying the law of leniency, which fosters political protectionism, which in turn leads to a culture of impunity.

Since grand corruption occurs at the highest echelons of the structures of government, it is necessary that a top-down approach of accountability is employed. In order to defeat impunity, a political leader must be held to account for his role in corrupt practices as well as those of his subordinates if he fails to detect the evil practices or to reprimand the culprits or cause them to be reprimanded. This view proposes primarily, strict liability, and secondly, it is tandem with the administrative law concept of *respondeat superior* or vicarious liability, and the international criminal law doctrine of command responsibility.[45] The value of the concept of political force is that the war on corruption cannot be won without

[45] Strict liability refers to responsibility that falls on a perpetrator of an offence. Respondeat superior is a doctrine that imposes liability for administrative commission or omission by a subordinate upon his superior, while Command responsibility is a doctrine which imposes liability upon a superior for the criminal commissions (in criminal law) of a subordinate if the superior knew or had reason to know, but did nothing to prevent the commission or to punish the subordinate.

fighting impunity, and impunity cannot be fought with political will alone.

The logic of the political force approach to fighting corruption is that the top brass of society are invested with power, which they ought to use to sanction the corrupt subordinates, but which they may use to sustain impunity. The political force thesis, thus, assumes that leaders are culpable for the prevalence of corruption in their jurisdictions both strictly and vicariously. Strict liability occurs when a leader engages in corrupt acts personally, while vicarious liability should make a leader accountable for the corrupt acts of a public officer under his command if he did nothing to prevent or to cause him to be punished for engaging in such acts. If a president is made to account to parliament vicariously, for corruption in the country with a risk of impeachment on that basis, or if a certain fraction of the members of the public is allowed to recall him for failure to combat corruption, it may be sufficient force to set him in motion to stop the impious practice.

However, there is a possibility that parliament may be compromised by the configuration of party politics, which possibly marries the executive and the legislature. This marriage is discussed in detail in Chapter Eleven. The independence of parliament from the executive is, therefore, a necessary factor if political force is to be effective. The judiciary can also be drafted in to send a president 'packing" if it can be proved in the courts of judicature that he failed to combat corruption in government. While a judicial determination of vicarious liability of a president can be an effective tool of political force, there is a need for constitutional reform in Uganda to make the judiciary more independent. Judicial independence is discussed in Chapter

Thirteen. The reason a president should be held accountable is because grand corruption occurs among senior government officials, yet sometimes they continue to hold public offices. A president must be forced to "crack the whip" by exercising the power which the people entrust him with.

A president or any leader who is forced to fight corruption stops obeying the rule of human leniency that guides him to be lenient with people close to him. Political force in the fight against corruption in Uganda may also prevent a leader from observing the law of human sympathy. He will fear to appoint people who are close to him. Political force promises to be a powerful sanction against placid leaders because it can arouse the selfish nature in them to fight for their survival. In an effort to save his political career, a leader cannot atone for other people's errors, including those of his family and close associates. He will be forced to reprimand the corrupt, force them to vacate public offices, and cast them or cause them to be arraigned in courts of law in order to save himself.

CHAPTER SEVEN

Patriotism

Contrary to what conventional wisdom holds, patriotism is a consequence of man's selfishness, not his selflessness. It has been explained that man is self-interested to the extent that it is impractical for him to give up his interests for the interests of others. It has also been argued already in this book that self-interest is the only determinant of all man's actions, whether good or bad. However, Stephen Leacock (1921) defined patriotism as the sacrifice of the individual's interests for the claims of the community. Interestingly, there is no contradiction whatsoever, between Leacock's definition of patriotism, which espouses the sacrifice of personal interests for the interests of the community, and the verity that man is too selfish to give up his interests for the claims of others. To sacrifice one's interests for the interests of the community is not the same as to give up or to substitute one's interests for the interests of others. To substitute one's interests is to relinquish them and pursue those of others.

Leacock does not use the word 'substitute', but 'sacrifice' in his definition of patriotism. To sacrifice is to accept to lose a treasure of lesser value to gain that of greater value. Community interests are difficult to attain and are of greater value. Because they are difficult, they are attainable only if they are pursued with a concerted effort. They are interests, which everybody loses when each person pursues them singly. They are core interests whose failure to attain fails the attainment of private interests. For instance, there is no happiness and good life without peace and security.

Therefore, to enjoy the good life, which is the goal of each individual, a patriot must pursue security first in concert with others.

Because community or national interests are of greater value and are impossible to pursue singly, it is reasonable for individuals to defer the pursuit of their private interests and instead pursue those of the community. Therefore, a person who sacrifices the pursuit of personal pleasure or wealth or other things that gratify him, and fights for the liberation of his country, which gratifies him and others, tacitly fights for his personal interest under the banner of collective or community or national interests. He is in other words a selfish man. It follows that a patriot is not selfless, but selfish.

Away from Leacock, patriotism is also held to be one's strong love for his country or allegiance to it. If love is as strong as death as the Bible records in Song of Songs 8:6, then one's love for his country sets him in motion to fight for it to the point of death. But, what constitutes love for a country? It may not be effective to diagnose the understanding of love for a country without explicating what a country is. In the context of this discourse, a country shall be taken to be a State. The most authoritative statement regarding statehood is provided by the Montevideo Convention on the Rights and Duties of States (1933), which under Article 1 declares that: 'The State as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with the other States.'

The said capacity relates to sovereignty or independence of the State, since contractual capacity is possessed only by entities that are free and independent. Yet if

patriotism is love for a State, how does it then relate to territory, government, population, and sovereignty? Can one fall in love with them just for what they are? Let us examine the attributes of statehood and their relationship with patriotism.

Patriotism and love for a territory

In the thesis on selfishness, nobody loves anything unless it appeals to his self-interest. Indeed, in the 48 Laws of Power, Robert Green opines that people tend to respond to requests or situations from which they have some personal benefit. Thus, Green averred that:

> *"When asking for help, appeal to people's self-interest, never to their mercy or gratitude. If you need to turn to an ally for help, do not bother to remind him of your past assistance and good deeds. He will find a way to ignore you. Instead, uncover something in your request, or in your alliance with him, that will benefit him, and emphasize it out of all proportion. He will respond enthusiastically when he sees something to be gained for himself."* (Green, 2000, p. 95)

A person can only be desirous of defending his State's defined frontiers for one reason that within the frontiers resides wealth from which he can extract substance for his happiness and sustenance. Thus, the love for a country or patriotism as it is understood conventionally is in part attached to the resources that may be found within the territory of the patriot's State, from which he draws subsistence rather than to the boundaries

themselves. Patriotism then is love for self because patriots are stimulated to defend the frontiers of their State because of what they profit from it.

Patriotism and love for a government

As already stated, a State, as one of its qualifiers must have a government, which must be effective. A government in a given State exists mainly to allocate that State's wealth among its people as well as to define and enforce the values of that State. For that to happen, the government must exercise control over the entire territory and not just parts of it. If a government controls an entire territory, then it is effective; but if control is shared between competing groups, then that territory lacks an effective government. Thus, none of the groups should claim to be the government of the people of that territory.

If patriotism means love for a State, and government is a constituent component of a State, then must a patriotic person equally love the government in his State? Patriotism does not necessarily mean allegiance to a government, but to a State. Of course, a government is an association of few people contracted to administer the affairs of state. Therefore, were patriotism to be allegiance to a government, then it would mean one's love and allegiance to few individuals. Thus, since patriotism does not necessarily mean allegiance to a government, it is possible to resist it and still be patriotic. However, resistance against a government that meets the core interests of the State; namely, the supply of peace and security, provision of social services, provision of infrastructure that supports human and economic development, and respect for

people's fundamental rights and freedoms—is not an act of patriotism, but of treason.

Love for anything is a consequence of the cause and effect relationship. It is as much a derivative of the satisfaction of self-interest as hatred is of self-interest's dissatisfaction. Nobody can love a government if he does not benefit from its existence. Gaining and losing are pivotal to human behavioural dynamics, and they explain why some people may ardently support a government while others may not only oppose it, but also be averse to and fiercely resist it. The natural principle is that because people love themselves much, nobody wants to put up with a government that acts in the interest of a few at the expense of the core national interests—except of course if he's one of the beneficiaries.

If a person dislikes a government that sabotages the public interest, he is faced with two logical alternatives: to fight, or to fly. But, a choice to fight, or to fly is determined by either courage, or cowardice respectively. Those who are audacious stay and fight, while the cowards fly. But, why do some people stay and fight while others fly? The simple explanation is that these two classes of people have varying degrees of love. Courage is underpinned by love because love for a thing overcomes fear. The fear-conquering love should not be confused with the love for a government in this Chapter. It is rather a desire by an individual or a group to change a bad state of affairs. This desire gives mettle to the heart, which in turn strengthens a person's will and determination to overcome opposition from a bad government. It is within this context that Nelson Mandela remarked that courage does not mean absence of fear, but triumph over it.

In the context of this Chapter, the love that supplies courage is the desire in a person to have a better government,

which allocates resources and values better, that is, a government that allocates resources and values in ways that satisfies the interests of the majority, including those of the resister.

The desire to have their interests satisfied drives some people to put their lives in harm's way –even against very strong governments. For instance, history is replete with examples of feebler armed rebel groups that engaged and overthrew powerful and better-equipped governments, and of ordinary people who took on and ousted powerful rulers through civil disobedience. Therefore, unlike those who fly when their government does not meet their shared interest, those who stay and fight have stronger love for their country because they act to force a positive change, that is, a change that causes satisfaction of the greater public good. They are, in other words patriotic, but not because they fight for the good of others per se, but for their own benefit.

Essentially, love for a government is not a standard measure of patriotism, although it may sometimes mean so, especially if a government satisfies the general public good. It is, therefore, safe to claim that resistance against a government that falls short of benefiting the majority of the people is a patriotic act. Nonetheless, it is natural for one to love anybody or anything as long as that thing or person satisfies his self-interest. Correspondingly, it is natural for one to love and defend a government as long as he personally gains without extending consideration to whether or not that government meets the wider aspirations of the majority. This explains why even the most rogue governments have adorers. However, that does not necessarily mean that their support towards such a government amounts to patriotism because the benefits under such a government accrue to only few people.

Patriotism and love for the people

Without a permanent population, a State does not exist, at least within the meaning of the Montevideo Convention. A population is simply a group of people who inhabit a defined territory. The size and structure of a population is inconsequential to statehood. Some States have big populations while others have small ones. Likewise, some States are multi-racial while others are not. If patriotism is one's love for his country, and a population is one of the requirements for an entity to be a country, does one's love for his country mean love for fellow citizens? Can anybody sacrifice his life for the sake of his fellow citizens?

Uganda's story is that, while our fathers, mothers, sisters, brothers, aunties, uncles, grandfathers, and grandmothers, lived under the weighty hand of dictatorship, God sent a messiah in Yoweri Museveni, who led an armed struggle against the dictatorships, especially of Amin, Obote, and Tito Okello Lutwa. The 1981-1986 Museveni "bush" war tales, quite indisputably, hold that many personal sacrifices were made, and that strong will and unflinching determination existed to trounce bad governance. The projection of the story is that all sacrifices and excruciating hurt underwent and borne by the 'liberators' were for the sake of Ugandans. Whereas this is not untrue, it is only partially true.

To deny that the 'liberators' fought for Ugandans would be hypocritical of anybody who does so because Ugandans were held under the yoke of political, economic and military bondage by the forces Museveni fought against. It is on record that although the Obote and Tito Okello regimes were repressive, many just wished them away, while a small fraction of Ugandans fought them away. The 'picturesque'

thing is that every Ugandan gained from the labours of Museveni and his men's struggles, at least to a certain measure. Some people may dispute this observation and challenge it basing on Museveni's legacy (or lack of it) on political rights, media freedom, corruption, nepotism, militarism, the economy, social services delivery, democracy, et cetera— the very issues that vindicated his armed struggle against the Amin-Obote-Lutwa governments.

However, not even the most celebrated critic can deny that Museveni has scored on many of the aforementioned fronts, albeit with disappointing results on others. Nobody, for instance, can dispute the plain verity that the military under the regimes that preceded Museveni's had very poor civil-military relations. The economy may not be very good under Museveni, but it is far better than the ones under the past regimes were. The governance record of Museveni may not be picturesquely described, but it is far better than that of his predecessors. Corruption under *Pax Musevenica* or the reign of Museveni may be runaway, but it also existed before him. The purpose of the foregoing illustrations is not to apologise for the Museveni regime, neither is it to build a case for Museveni's legacy; it is only intended to drive the point that Ugandans gained in one way or another, out of the Museveni struggle. Uganda is better off in aggregate terms under Museveni than under the preceding regimes, perhaps all combined.

However, should Ugandans be misled that the alleged liberators fought for them; that Ugandans were on the 'liberators' minds and hearts while they fought? Is it, therefore, tenable to argue that the 'liberators' lay down their lives for a far-flung Patrick Barasa, an obscure Josphyn Kamya, or an oblivious Jacent Luswata, whom they had no idea about? It is unnatural for such a thing to happen. It cannot and did not. If it

did, then there was a transgression of the natural law of human sympathy described already in the preceding Chapter. However, nobody can break a law of nature and escape scot-free. If Uganda's so-called liberators transgressed the principle and remained okay, then it is obvious that they did not break it, but perhaps they sub-consciously or otherwise, lied about it. This, therefore, begs the question: in whose interest was the famous Museveni struggle?

Against the popular belief that the struggle was in the interest of Ugandans, we ought to look at it differently. From the above discussion, it is clear that the alleged liberators fought to secure their personal interests. Human beings are entrepreneurial not only in business, but in all aspects of life. They all invest where there is a prospect of gain. No rational man can sacrifice his comfort, pleasure, or even life if he is not going to profit personally. Thus, no rational person may be willing to place his life in death's way unless the prospect of gain matches or supersedes the risk of death. When people offer themselves to die for a cause, do we not see courage at its best? Even so, as has already been stated in this book, courage is a product of the fear overcoming love, which is a strong desire to achieve, and by extension a strong desire to meet one's aspirations and to satisfy one's interests.

Nevertheless, although the love for a thing may not overcome the fear of death, it offers greater hope for the future that overcasts the fear of death. The fear-conquering love overcasts but does not overcome the fear of death because if it could, then fighters would simply turn themselves in to be killed. However, if a person is dead there is nothing for that person to gain and; therefore, there is no point authoring or joining a struggle in the first place.

People in a struggle do not offer themselves to be killed; they are killed accidentally and against their wish, which is a risk in political and military entrepreneurship. Those who survive the risks of military and political struggles enjoy the fruits of the struggle when they triumph. They satisfy their interests for which they fought. Under normal circumstances, everyone benefits as he contributed to the struggle; it is a spoils system of rewarding. Therefore, some people invest their lives, while others invest their money in struggles against governments that do not meet their shared interests, so that they may create opportunities to have them satisfied and to make their lives better in the struggle's aftermath. Thus, Museveni and his other alleged liberators fought to tilt the balance of fortunes in their favour.

To answer the question regarding whether patriotism is love for the population, it has been rendered in Chapter Two that love for one's self is the standard against which love for others is measured because no man in his state of humanity can love other people to the proportions exceeding how much he loves himself. Therefore, patriotism and selfishness are related in that, regardless of whether a person pursues private goals or those he shares with others, he is patriotic if his efforts bear desirable effects to the community. Patriotism; therefore, is not love for the population per se, but love for self.

The two types of patriotism

Conventional wisdom holds that if actions bear dividends to the wider society, the author of the efforts responsible for the benefits is a patriot because he is presumed to have forfeited the pursuit of his private interests to the pursuit of those of others. Yet, as has been noted already, no

such a thing occurs in real life situations. When patriots forfeit the pursuit of private interests for shared interests, they are tacitly motivated by the benefits they can individually derive from the shared interests. But, patriotism is a more expansive subject than meets the eye, in that it consists of two strands, namely; presumptuous and veritable patriotism.

Patriots are assimilated by the verity that their actions engender positive consequences for the public generally, but they are severed on the basis of their goals. There are patriots who, whereas their herculean actions and sacrifices may produce positive results for the public in general terms, their core motivation or goal is not to invert a bad state of affairs. They are more motivated by a drive to overthrow and replace the superintendents of the status quo. So, when the public benefits from their efforts, for instance, by the removal of a tyrannical regime, they are taken to be heroes and patriots. Yet, based on their motive, they are not indeed real patriots, but patriots due to the (good) consequences of their efforts to the wider community. They are in fact presumptuous patriots because the core drive behind their actions is to capture state power. A tyrannical government is just a scapegoat to justify their actions.

Presumptuous patriots indeed change the status quo and make positive adjustments for the benefit of the public. They restore freedoms and liberties, security, and other variables necessary for the pursuit and attainment of the good life. However, the continued enjoyment of the variables enunciated above is conditioned on the security of the power of the patriots. If their rule is threatened, presumptuous patriots expropriate those variables, and restore them when the threat subsides because the motive for their sacrifice is to capture power and keep it.

Nonetheless, the other strand of patriots aims to change the status quo in order to create conditions in which they and others can pursue their private interests and attain the good life, and do not seek to alter those conditions in order to stay in power. They are veritable patriots. It is difficult to discriminate between presumptuous and veritable patriots until a struggle is complete. Indeed, after the struggle, presumptuous patriots fight for power and sometimes obliterate their real or perceived opponents. They promulgate or adjust constitutions or cause them to be promulgated or adjusted, and enact pieces of legislation that suit their core interest of keeping themselves in power. Because they nurse insatiable power interests, they risk plunging their country into security and political disorders that justified their resistance in the first instance.

By contrast, veritable patriots do not harass their opponents for the sake of power, they do not make or adjust their societies' constitutions in order to align them with their power interests, and they do not enact legislation to criminalise scrutiny of their rule. In the Aristotelian logic of self-love discussed in Chapter Two, presumptuous patriots are not self-lovers at all, but 'self-haters' because they live in discord with rationality. They, therefore, risk losing all they achieved for themselves and their country. On the other hand, however, the veritable patriots in the Aristotelian logic are the true self-lovers because they live in accord with rationality.

Patriotism and sovereignty

Everybody desires independence and authority because the two are ingrained in man's nature. Likewise, States also desire independence from other States. If a State is not independent, it is a colony and under control by a suzerain,

just as a person who has no power and authority is under those of another. Being under colonialism and being under the power and authority of another person have an arresting semblance, that is to say, both of them bear the hallmark of servitude. Servitude is associated with expropriation of freedoms, rights, and privileges; and nobody wants to live under such conditions. So, what relationship does patriotism, or one's love for a country, have with sovereignty, or an independent State?

From history, we see the scramble for and partition of Africa[46], which was the pathway to the continent's colonisation. The reasons for Uganda's colonisation were varied, but a discussion on that is beyond the scope of this present chapter and book. As insinuated previously, particular countries have particular resources and values. Different countries have peculiar ideals, ways of life, and ways of doing things, which grant them a unique sense of identity. To take away what belongs to them, or to alter their way of doing things or way of life is to take away their prized treasures and freedoms, yet one cannot expropriate sovereignty without expropriating those treasures and freedoms.

Colonialism, which is on the one hand the extension of one State's suzerainty to another, and on the other, the loss of one State's sovereignty to another, occurs when a suzerain forces a colony to do the former's will. The colony ceases to do as it deems fit, but follows the decision-making power of the suzerain. However, colonialism in all its forms whether

[46] The scramble for Africa is used in reference to the imperial wars fought by the 19th Century European powers for African territories. The partition of Africa is in reference to the Berlin conference that set out a framework in 1884 for civilly sharing the colonies in Africa.

classical colonialism or neo-colonialism—does not just happen. In the domain of colonialism, there is much to achieve and much to lose. There are resources to be controlled and resources to be lost; there are cultures, values and ideals to be promoted and cultures, values and ideals to be eroded. A country that loses wealth, values, ideals, and freedoms to another, owns nothing and its people are no better than slaves in their own territory. However, as intimated, nobody is desirous of being in bondage. Therefore, people fight to stave off foreign domination because it means loss of freedom to do their will. Patriotism then is love for that independence and patriotic actions are those that resist domination, subjugation, exploitation, and control from abroad. Independence of a government from foreign meddling means independence of its people. It means self-governance.

People can only be independent to the extent that their government is. It is the desire for self-governance by a people with wealth, cherished values, ideals, and culture that make them to desire an independent government. A person loves his country because his self-interests are catered for under the national interests of the country to which he belongs, otherwise known as shared interests or common interests. Therefore, love for a county's sovereignty is love for the independence of that country's government. A patriot in this context is a person who resists foreign domination over his government in word and deed, and all citizens ought to resist foreign influence by supporting their government.

Nonetheless, a patriot can also be a person who resists an independent government by any means including making alliances with foreign governments or organisations if the government expropriates their rights and freedoms, or subverts their sovereignty. However, there is a lot to be lost if foreign

forces are either permitted or are given justification to meddle in the affairs internal to a country. In fact, it comes at a high cost. Because foreign governments are rational actors, they cannot commit their resources and soldiers to 'assist' in a foreign country without taking into consideration the possible benefits they can gain from such 'assistance'.

A decision to intervene under the pretext of liberating or protecting civilians is not without cost implications for the intervening government. Foreign governments do not expend their financial resources, or put their soldiers in harm's way without a calculus to profit strategically, commercially, culturally or politically. The opportunity cost of financing a security or humanitarian project of another country under the ever-present conditions of resource constraints, in lieu of using the same to finance domestic projects is always a measured one. Therefore, a choice by a foreign government to intervene may be based on a calculation to either control resources, spread its political ideals, or to secure commercial and trade deals, among other interests—in a country in which it intervenes.

Nonetheless, it is better for the people to lose some of their wealth and cultural values in exchange for freedom from the tyranny of their own government because like life, freedom is sacrosanct. As Rousseau argued, people may give up property, but they may not consent to give up life or freedom because they are essential elements of their humanity. This position does not mean that this book advocates unnecessary foreign interventionism. However, intervention is nonetheless desirable if the supremacy of the people is spited and trampled upon by repressive governments. Patriotism, therefore, is love for an independent government, but only to the extent that the government recognises and respects the supremacy of the

people. Else, patriotism is also found in disdain, disobedience to and betrayal of an independent government, which does not recognise and respect the supremacy of the people.

CHAPTER EIGHT

Sovereignty

We saw in the Montevideo Convention's definition of statehood that the fourth aspect that makes an entity a State is sovereignty. Sovereignty is a construct that has been a subject of multifarious interpretations over the years. To some authors, the sovereign was that person invested with power to legislate and abrogate the law unilaterally and without any limits of any kind—such as an absolute monarch, or a supreme parliament, especially the Westminster model.[47] To others, the sovereign is not the unilateral and unlimited lawmaker, but one to whom the lawmaker bows, namely, the electorate who elect the lawmaker. Yet to others, the sovereign is not one who makes law, or controls the lawmaker, but one who holds the most exalted title in a State, namely, a head of state such as a constitutional monarch or a president.

However, basically, the meaning of sovereignty has two faces. First, it relates to a supreme authority within a State. Within this meaning, an entity is self-governing (or sovereign) if it has a defined supreme authority, whether the authority is the citizenry, a parliament, or a head of state. Second, sovereignty relates to the independence of the highest or supreme authority from direction, control, and

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[47] The Westminster Model makes parliament the supreme lawmaker because its laws cannot be vetoed by a head of state or government, or invalidated by a court of judicature. A parliament such as that of the UK, alone has the power to legislate and to repeal its own legislation, and not any other person or body.

undue influence from a similar authority outside the State in its exercise of the functions of government. Subsequently, the second aspect of sovereignty has engendered four sacrosanct notions in international relations: respect for territorial boundaries of a State, non-intervention in the State's internal decision making processes, equality of States before international law, and immunity from legal and judicial processes of other States.

Origin of the idea of sovereignty

The journey to sovereignty as the concept is understood today was an epic one. In 27 B.C.E., Augustus established the Roman Empire, which encompassed territories in Europe, Asia, and Africa.[48] In 330 C.E., Emperor Constantine due to governance-related challenges that arose from the fact that the Empire had become too large to govern effectively, created another capital at Constantinople in the East of the Empire (ushistory.org, 2016). The creation of *Nova Roma* or the 'New Rome' as it came to be known, at Constantinople, effectively culminated in the creation of two empires in one, and although the two were taken to be one empire, that was just in theory.

In reality, the empires were separate; they were governed by different emperors, and adopted different languages with the Western Empire maintaining Latin, while

[48] Augustus means the "August" or "exalted" one. Augustus was a title that was conferred to the Roman statesman whose original name was Gaius Octavianus by the Roman Senate in 26 B.C.E. Augustus succeeded Julius Caesar, his uncle as leader of the Roman Republic before expanding it and establishing in its stead the Roman Empire in 27 B.C.E.

the Eastern adopted Greek. They had separate capitals with Rome in the West and Constantinople in the East. However, the most cogent demonstration of the difference between the Western and Eastern Empires happened in 476 C.E., when a Germanic prince called Odovacar deposed the last Roman emperor of the west, Romulus Augustulus. While this happened, the Eastern Empire remained. Following the fall of Rome, the Western Empire was balkanised into separate states, which were ruled by various kings and princes.

In 800 C.E., Pope Leo III attempted to revive the idea of an Empire in the west when he crowned the ruler of Germanic tribes, Charlemagne. However, Charlemagne was reluctant and the Empire was not revived. Thus, it was Pope John XII who actualised the vision in 962 C.E., when he crowned Otto I as Emperor, thereby erecting the Holy Roman Empire in the stead of the former Western Empire. The Holy Roman Empire became more significant than its Eastern counterpart, which also came to be known as the Byzantine Empire whose headquarters remained in Constantinople until it was conquered by the Ottomans who established the Ottoman Empire in 1453 in its stead.[49]

It is impossible to discuss sovereignty without focusing on the political constitution of the Holy Roman Empire. Originally, the Holy Roman Empire was structured in such a way that religion and government were conjoined inextricably as government and secularism are today. There was no discourse of politics entirely separate from that of religion in the Holy Roman Empire because religion sanctified all authority, temporal as well as spiritual (Jackson, 2007).

[49] The Ottoman Empire is now Turkey, and Constantinople is now Istanbul, the capital city of Turkey.

The Holy Roman Empire was managed under a confoundedness of the dualist authorities of *regna* and *ecclesia.* Regna were local territories within the Holy Roman Empire; for example, there was *Regnum Anglicana* and *Regnum Gallicum*, or the territory of England and the territory of France respectively (Jackson, 2007). The Holy Roman Empire also had Christian institutions scattered in all the regna. Thus, there was *Ecclesium Anglicana* or the Church of England, *Ecclesium Gallicum* or the Church of France, etc., (Jackson, 2007).

Emperors in the Holy Roman Empire did not exercise imperial power because sovereignty was attributed to God, the pope, the emperor, and the king, in that order (Jackson, 2007). Because of that hierarchy, emperors would accede to the imperial position when a pope picked and anointed them. With such a prerogative, popes possessed ammunition to contain the influence of emperors. Rational popes anointed emperors who they were sure were amenable to their interests and reverend of their position as God's representatives on earth; which emasculated the latters' influence over the affairs of the Empire.

Thus, in the regna that constituted the Holy Roman Empire, no one had significance than popes and kings. Popes were significant because they projected spiritual power all over the Empire, and kings were because they wielded temporal power over their territorial regna. In the regna where they were accommodated, the ecclesia were not under the complete control of kings since they were administratively and spiritually under the papacy (Jackson, 2007). Vice versa, the ecclesia and the papacy did not exercise complete authority over the regna. The duality of authority within various regna

across the Holy Roman Empire created an ambivalence of sovereignty, as Jackson has noted:

> *"The regna were not independent as we understand that idea. Yet neither were they provinces of an overarching imperial state, as in the (Holy) Roman Empire. They were something in between.* (Jackson, 2007, p. 26)

Within the regna, kings contested sovereign authority with popes, who exercised it by proxy, that is, through their representatives in the regna—the archbishops, the cardinals, the bishops, etc., who also occupied senior political positions in the regna where they represented the papacy and its interests (Jackson, 2007). Kings had temporal authority in their jurisdictions, but because they were Christians, they were bound to obey church law and papal authority, and did not have supreme power over religious matters in their realms (Jackson, 2007). Likewise, the papacy either directly or through the ecclesia, did not have control over the political, economic, social, or military matters of the regna. For example, the papacy did not have power to decide whether a king should levy war or not, or whether he should increase taxes or reduce them.

As has been stated already, religion and politics were not severable in the Holy Roman Empire, and because of that architecture, members of the clergy also served as political officials of the regna. But, since the papacy and kings shared authority in the regna, the public officials-cum clergymen were caught up in the confusion because they did not know who exactly to accord ultimate loyalty if the kings and the popes disagreed on a matter.

For example, as Mathew and Jackson have suggested:

> *"In England at the end of the Middle Ages the majority of bishops were government officials."*(Mathew, 1948, p. 10) *"But their dual status could be a source of difficulty and even discord. They could find themselves in a conflict with the pope if they served the king too faithfully or with the king if they were too devoted to the pope. They performed a perilous act on a high wire one end of which was held by the king and the other end by the pope: failure could bring imprisonment or even death at the hands of the king's executioners, or ex-communication and a sentence of eternal damnation at the command of the pope."* (Jackson, 2007, p. 32)

Whether it was to be wielded and exercised by popes, and the rest of the regna relegated as administrative territories of the Holy Roman Empire, or by kings within their realms thereby rendering the Holy Roman Empire shaky and of non-effect, the idea of sovereignty was bound to be decisively streamlined.

The move to territorial sovereignty

In 1534, King Henry Tudor VIII of England demanded and obtained from the English Parliament the 'Act of Supremacy', which recognised the King as the supreme head of the *Ecclesia Anglicana*, and granted him immunity from 'foreign law' and foreign authority, which according to Jackson (2007) were laws and authority of the latin

Christendom or the Holy Roman Empire that was ruled by popes. Thus, following the promulgation of the Act of Supremacy in 1534, England became independent. The promulgation of the Act also marked the genesis of the disintegration of the political unities of the Holy Roman Empire and the begining of the grounding of the concept of sovereignty based on territoriality.

The decision by Henry VIII to claim sovereignty followed an impasse between the King and Pope Clement VII. At the heart of the impasse was Henry's desire to divorce his wife, Catherine of Aragon and to marry Anne Boleyn in her stead. To do so, he needed the pope's dispensation because as a Christian, Henry could not legally get the divorce unless the pope sanctioned it. Unfortunately for Henry, the pope as vicar of Chirst and God's representative on earth and final authority on all religious matters in all of the realms of the Holy Roman Empire, declined to grant him leave to neither divorce nor remarry, and in response, the King by the Act of Supremacy declared independence.

During the same period, the church was dogged with reformation movements, which later divided it into Roman catholic and protestant denominations. By extension the Holy Roman Empire was later divided into catholic and protestant realms. The secession of England set the stage for other territories to follow suit. In Germany, the Peace of Augsburg of 1555, which aimed to diffuse religious tension between Roman Catholics and Lutheran protestants in the realm, gave the Prince of Germany power to determine the religion of the realm as he saw fit. By this peace agreement, the doctrine: *cujus religio ejus religio,* which later allowed kings not only in Germany but in all of Western Europe to determine the religion of their realms, was engendered. In 1598, King Henry

IV of the realm of France, by the edict of Nantes ordered his subjects to tolerate religious diversity in his realm, that is, he recognised the right of his protestant subjects to practice their religion. The Act of Supremacy, the Augsburg peace treaty and the Edict of Nantes, all occurred to obviate or at least to undercut the intrusive power of the papacy in the realms.

The Holy Roman Empire continued to disintegrate following the 30 years war (1618-1648) between the realms that were disloyal and those that were loyal to the papacy, which was formally ended by the peace treaties of Westphalia in 1648.[50] The peace treaties, by the doctrine that was engendered by the peace of Augsburg, namely, *cujus religio ejus religio,* granted each king the right to determine the religion of his subjects and in effect to be independent and free from foreign law and foreign authority, including that of the papacy, and from any form of influence and meddling from the Holy Roman Empire.

The disintegration of the Holy Roman Empire brought about the concept of territorial sovereignty under the maxim: *rex superiorem non recognoscens,* or "the king recognises no other superior". At this point, most of the realms of the Holy Roman Empire became independent formally, each with a sovereign—a king, able to exercise supreme authority in all matters within his jurisdiction, issuing binding commands and enforcing them without restraint. The emancipated kings did the foregoing under the maxim: *rex est imperator in regno suo, or* "the king is emperor in his own kingdom". The idea to allow the kings to exercise unrestrained control over the

[50] Sometimes it is thought of as a single treaty, but this is erroneous. The treaties were more than one, and were signed in the towns of Munster and Osnabruck in Westphalia, Germany.

territories in which they reigned was inspired, in part, by the Lutheran critique of papal authority.

As has been intimated, the Holy Roman Empire's jeopardy was double, in that, while nationalism was in the process of demolishing the political unities (such as England, the Netherlands, and Germany), religious reformation demolished the religious ones, and Martin Luther was *in res media* or at the heart of the reformation (Bainton, 1963). Thus, for Luther, popes were not God's representatives on earth as they claimed; kings were in their respective territories. In declaring kings lieutenants or representatives of the Christian God on earth, Luther based on Paul's epistle to the Romans, in which it is averred that: (temporal) 'rulers are God's servants sent for your good...for punishing evil doers'(Paul in Romans 13: 4).

The sovereignty of kings

Following the treaties of Westphalia, sovereignty exclusively belonged to the kings of the independent realms: only they were sovereign because in much of Western Europe, with the exception of England, they embodied the sovereignty of their nation-states.[51] It was within this meaning that King Louis XIV of France boasted that: '*L'Ėtat, c'est moi'* or 'the State, it is I'. The kings, after Westphalia each reserved the right not only to determine the religion of their realm, but also

[51] In England, the king was not the clear sovereign. The law of the realm bound him to observe the rights of the people of England, and to work with his parliament in governing the realm, for example, King Henry Tudor VIII sought the approval of parliament when he wanted to secede from the papacy in 1534.

to be the supreme lawmaker for the governance of their respective realms, and of course, sovereignty was subsumed under law-making.

Jean Bodin condensed sovereign power into the law-making power of a king. He argued that: the attribute of a sovereign prince is "the power to make law binding on all his subjects in general and on each in particular'' (Zoller, 2008, p. 27). Bodin's conception of sovereignty had two facets. First, sovereignty was indivisible, in that only one person (a sovereign prince or king) possessed it and none else. For Bodin, sovereignty was power to make laws for a realm 'without the consent of any superior, equal, or inferior being necessary' because 'if the prince can only make law with the consent of a superior, he is a subject; if of an equal he shares his sovereignty; if of an inferior, whether a council of magnates or the people, it is not he who is the sovereign' (Zoller, 2008, p.46).

Second, sovereignty was *solutus legibus*— or absolute in the sense that a sovereign prince alone possessed the power not only to make law but also to unmake it as he saw fit without asking leave. Human laws did not bind the king; he could break the customs, change or abrogate them by legislative enactments, and make new laws (Zoller, 2008, p.48). In other words, law could not limit a supreme lawmaker; a king. Burgess also defended absolute power, when he defined sovereignty as unlimited power exercised by kings over subjects. D.F Russell understood sovereign power to be the strongest power and supreme authority within a State, which is unlimited by law or anything else. It goes without saying, then, that classical theorists apologised not just for absolute exercise of power by kings over subjects, but also that

such power is necessarily unlimited by law or anything else in a society where it is exercised.

Leacock (1921) provided an arresting philosophical exposition to the effect that a sovereign or supreme lawgiver cannot be limited legally and that any idea of limiting the power of the lawmaker amounts to a contradiction in terms. For Leacock, a legal limit must mean a limit by means of law, imposed by a law giving authority. Thus, a legal limit to the power of the lawgiver is that which the lawgiver permits against himself, which he can also waive when it suits his interests. Leacock, therefore, concluded that since a supreme lawgiver can also rescind his own law when he wants, it is not practical for him to be under legal limits; thus, a sovereign possesses and exercises unlimited and absolute power, conceptually and practically. Leacock also argued that a sovereign ensures that the subjects of the law he makes obey it, even by force.

For Austin, when a determinate human superior is not in the habit of obedience to a like superior in the same territory, but rather receives habitual obedience from a bulk of a given society, such human superior is a sovereign in that society and such a society is political and independent. Certainly, Austin's conception of sovereignty and the sovereign is restricted to habitual, incessant, and unflinching obedience to a sovereign, irrespective of whether such a sovereign is oppressive, tyrannical and exploitative, or not. Austin's point is that the fact of habitual obedience to one superior is the only necessary condition for sovereignty to be said to exist—and the sovereign to whom obedience is due is a king.

The theory of the divine right of kings

Most apparently, the idea of the sovereignty of kings was rooted in the theory of the divine right of kings that was dominant during the medieval times.[52] The theory postulated that kings were not ordinary humans but God's lieutenants on earth and, in fact, that they were gods among men. Thus, as lieutenants of the sovereign—the supreme spiritual God, they were on earth embodiments of the attributes of the spiritual God, that is to say, they were sovereign and supreme over their subjects. In this breath, the kings of England sought to assert their absolute sovereignty in disregard of parliament and common law.

King James I believed that kings alone were sovereign. Before assuming the English throne in 1603, he had written a book: '*The Trew Law of Free Monarchies',* contending that all the power kings exercised came from God and that disobedience to the king was as much sacrilegious as disobedience to God was (Zoller, 2008). In 1610, he told the English Parliament that 'Kings are not only God's Lieutenants upon earth, and sit upon God's throne, but even by God himself they are called Gods.' By these statements and beliefs, James I sought to impose on England the absolute sovereignty of the king. The Monarch also attempted to justify his absolute, unlimited, and universal power over the British subjects stating that:

> *'...Kings are justly called gods for that they exercise a manner or resemblance of divine power upon*

[52] The theory that apologises for the omnipotent government as a cure for the base effects of human behaviour in the state of nature.

> *earth...If you will consider the attributes of God, you shall see how they agree in the person of a king. God has power to create, or destroy, make, or unmake at his pleasure, to give life, or send to death, to judge all, and to be judged or accountable to none... and to God are both soul and body due. And the like power have kings: They make and unmake their subjects; they have power of raising and casting down, of life and of death; judges all their subjects, and in all cases, and yet accountable to none but God only...'* cited in (Martinich, 1992)

Indeed, if kings were God's lieutenants, and by extension gods exercising sovereign power on earth as James I claimed, the power so exercised was original. If kings made and unmade subjects, had power of raising and casting down, of life and of death; that power so exercised was indeed absolute. If kings judged all their subjects and in all things, and yet accountable to none but God, that power was indeed universal. However, James I drew his inferences on the exercise of supreme power from a combination of the metaphysical world and *a posteriori*, empirical evidence of practice, in lieu of *a priori* analysis. Thus, his arguments on monarchical supremacy lacked convincing intellectual foundation.

It was perhaps on the premise of the "unconvincingness" of King James I's claims that Thomas Hobbes and Robert Filmer came up with their theories discussed in Chapter One, which supplied compelling philosophical renditions on the necessity of an absolute government with unlimited power. In Hobbes theory, there was a social contract, which was not between the people and a

government, but among the people themselves to submit to a government because of the adversity inherent in man's state of nature. The Hobbesian logic on the necessity of an absolute and unlimited monarchy was based on the supposition that men in their primitive life were in a state of equality, which made them proud and insubordinate, and consequently, plunged them into anarchy and mutual destruction. In Hobbes' view, to argue that subjects could enter into a contract with a monarch was to equalise the monarch and the subjects, as both would claim and demand rights, which could not solve the problem of the state of nature. Therefore, in order to create a civilised society, it was necessary that a ruler exercised all the power of a sovereign State unlimitedly and absolutely.

However, absolute exercise of power is synonymous with tyranny. Like Locke showed, it is possible and necessary to cause order in a society by exercising reasonable, defined, measured, and limited power. Besides, there is no guarantee that absolute exercise of power causes order. As history is replete with illustrations, absolute exercise of power exasperates the people, breeds insubordination and insurrection and ultimately, it creates disorder and encumbers the pursuit of the good life. Further, the idea of unlimited and absolute exercise of power to give and enforce laws by a human superior is indefensible. It supports enslavement under one evil man's hand of all citizens.

It is a mistake to allow an individual to exercise untempered political power because all people including rulers are inherently selfish, and unconstrained, a ruler can tyrannise the people if their interests come in conflict with his. Therefore, to unfetter the actions of rulers under the pretext of the necessity for absolute and unlimited legal sovereignty is to permit them to act whimsically, arbitrarily and brutally.

Parliamentary sovereignty and limited kings

Following the disintegration of the Holy Roman Empire, which started with the independence of the realm of England in 1534, supremacy within the independent realms meant exercising the power of government over the realms, including the power to legislate, to abrogate law, to adjudicate and to execute law. In some realms such as England, although some kings desired to exercise unquestionable authority, there was no single individual in possession of all the power enunciated. Indeed, the English Parliament was the 'king's parliament' and the court '*curia regis*' or the king's court. The king in England also enjoyed sovereign immunity because he was deemed incapable of doing wrong; and therefore, could not be sued in his 'own court'.

Nonetheless, the king was never above the law of England. This was affirmed even before England's independence by Henry de Bracton who was a judge under King Henry III, that England was ''not under the King but under God and the law" (Woodbine, 1915-1942, p. 33; Zoller, 2008, p.88). It is deducible from this that the king was not an absolute sovereign or an unlimited supreme lawgiver because he was under the law. In fact, the fact of the legal limitedness of the English king was entrenched on June 15, 1215, when King John II was forced by the English people to sign the *Magna Carta*, which established the principle that the king was not absolute and that the English people had rights under the law to which the king was also bound.

Further, during the secession of England in the sixteenth century, England under Henry Tudor VIII worked with the English Parliament, which was composed of the Lords Spiritual, Lords Temporal and the Commons, to make

legislation for the governance of the realm. Even when he wanted to break with the Catholic Church, he sought an Act of Parliament to that effect—the Act of Supremacy, and obtained it. Any lingering doubt about the status of the absolute sovereignty of the king was by the end of the seventeenth century settled that the king in England was not alone the legal sovereign. (Zoller, 2008). The king made law upon approval by his parliament. The legal sovereign was, therefore, not the king in his majesty, but the king in parliament.

The sovereignty of the people

The switch from the suzerainty of the Holy Roman Empire to the sovereignty of kings engendered deleterious outcomes because kings turned themselves into 'emperors', acted tyrannically, and suppressed, oppressed and exploited the people in their jurisdictions. The 'lieutenants of God', claiming the 'divine right of kings' and acting omnipotently, did not create order but discontent and eventually, disorder when the people revolted against their highhandedness.

Whereas Hobbes defended the exercise of absolute power as necessary for creating orderly relations, and whereas Burgess and Leacock defended the exercise of the same as a necessary pre-condition for the existence of an independent political society as has been discussed, John Locke, Jean-Jacques Rousseau, A.V. Dicey, and Baron Montesquieu rejected such a conception on the ground that it enslaves the people. The writers who opposed the absolute exercise of power mentioned above, and others not mentioned here such as Blackstone, prescribed a limited monarchy in lieu of an absolute one. Further, although not thought possible by Austin and Leacock, they espoused the idea that it was possible to

limit legally, the power of rulers and maintain independence at the same time.[53] For them, sovereignty did not rest with monarchs, rulers, or governments, but with the people.

The highhandedness of their supreme majesties, the kings, caused paradigm shifts from the traditional concept of sovereignty. In this regard, Marsilius observed that "the primary and proper efficient cause of the law is the people ... commanding or determining that something be done or omitted with regard to human civil acts, under a temporal pain or punishment." (Gewirth, 1951, p. 45). The States-General of the Netherlands rejected the King's absolute rule, asserting that:

> *"A prince (king) is constituted by God to be ruler of a people, to defend them from oppression and violence'. If instead the prince abuses them, 'then he is no longer a prince but a tyrant, and they may not only disallow his authority, but legally proceed to the choice of another prince for their defence"* cited in (Wight, 1977, p. 155).

The Dutch presented a novel departure from the theory of the divine right of kings and of their unlimited sovereignty. It was not the right of the king to deal with people as he felt or desired, or according to his whims as the theory posited. It was instead the duty of the king to ensure the freedoms, rights and liberties of the people in his realm. If he abdicated this duty and did the reverse, then he was not king. In that case the people had the right, as Locke also believed, to depose him

[53] Austin argued that for a society to be political and independent, it had to be with a determinate human superior who was unlimited by law.

and to choose another to rule in his stead.[54] If the people, therefore, had power to depose and install kings to rule in accordance with the duties defined by them, then sovereignty did not rest with the kings, but with the people.

In England in the seventeenth century, King Charles I attempted to subvert the established tradition that rejected imperial, unlimited, and kingly supreme majesty.[55] In 1648, the king was taken prisoner by anti-monarchical reformists, led by Oliver Cromwell. In January 1649, the king was tried by the English Parliament, during which were interesting arguments relating to sovereignty, by both the defence and the prosecution. On the one hand, the defence's argument, briefly summarised, ran as follows:

> *"...there was no English law in existence that authorized the trial of a lawful king by his subjects. And Charles was the lawful king of England. The king alone possessed sovereign authority which was sacred and which God had entrusted him with. True sovereignty was vested in the king by God.* (Jackson, 2007, p. 59)

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[54] The States General's argument was contradictory in terms. If God constituted the prince, as they believed, it makes logical sense to believe also that God reserved the right and power to depose the prince when he abdicated his princely duties. For people to claim power to depose the prince, therefore, amounts to usurpation.

[55] In 1215, long before Charles I was king of England, there was an agreement, the Magna Carta, which entrenched the idea that kings did not wield absolute or whimsical power over people.

On the other hand, however, the prosecution, which was in denial and rejection of the absolute sovereignty of the king in favour of the sovereignty of the English people, had a different argument. Whilst king Charles I found defence in the 'divine right of kings', the prosecution relied on the power of the people as the only legitimate source of all power. For the prosecution, the 'parent or author of law'—the sovereign were the people of England to whom Charles was bound, but had reneged (Wedgwood, 1964, pp. 122, 129). He had contrived a plot 'to enslave the English nation' and had waged war on his subjects, which was an act of 'treason' (Jackson, 2007). The prosecution's charge as quoted by Wedgwood (1964, p. 161), read as follows:

> *"There is a contract and a bargain made between the King and his people, and your oath is taken: and certainly, Sir, the bond is reciprocal: for as you are the liege lord, so they liege subjects . . . This we know now, the one tie, the one bond, is the bond of protection that is due from the sovereign; the other is the bond of subjection that is due from the subject. Sir, if this bond be once broken, farewell [*kingly*] sovereignty!"*

Subsequently, the King was executed for the crime of erecting an unlimited and tyrannical power to rule according to his will, and to overthrow the Rights and Liberties of the People (Jackson, 2007). It is important to note that the idea of popular sovereignty became the dominant concept as revolts against absolute monarchism proliferated across Europe. The arguments by the prosecution at the trial of Charles I were in tandem with the philosophy of John Locke, which advance the

idea that rulers can only rule with the consent of the people and that their necessity was to promote and protect the liberty of the people, not to abridge it or to oppress them, and that once a ruler abdicated that duty, the people reserved the right to depose him.

The status of "kings" in Uganda

There were monarchs in Uganda who presided over territories, promulgated laws in their territories[56], and exercised power unlimitedly over their territorial subjects, but that was before colonialism. When Britain colonised the kingdoms, legal sovereignty shifted to the British Crown through the various treaties[57] between the Crown and each of the kingdoms. When Uganda became decolonised and theoretically obtained independence in 1962, what were once kingdoms with kings exercising unlimited and absolute legal sovereignty became constituent territories of the State.[58]

In the new State, the kings completely lost the legislative mandate they once had before colonialism. The kingdoms in the State derived their existence from the 1962 Constitution. The kings were not the lawgivers, but the subjects of the law made in the political, independent State of Uganda, that is to say, the balance of power was tipped in the

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[56] The kingdom territories in Uganda included Buganda, Bunyoro, Tooro, and Ankole.

[57] The Buganda Agreement, Tooro Agreement, etc.

[58] Although it is held that Uganda obtained independence in 1962, the independence was only symbolic, because the head of the state was still the queen of England. That changed in 1963, when the 1962 Constitution was amended to pave the way for the election of a Ugandan head of state.

kings' disfavour. However, the 1962 constitutional architecture that allowed the existence of the emasculated kingdoms within the semi-federal State was dissolved in 1967, as the State was turned into a unitary one. This arrangement wherein the kingdoms lay in limbo lasted from 1967, when they were abolished until 1993, when they were allegedly restored.

However, what was restored are not kingdoms, but pseudo-kingdom institutions, so to speak, whose 'restoration' was a political arithmetic by the authorities that purport to have restored them, to win popular electoral support. Currently, the so-called kingdoms derive their existence from the Constitution, which addresses them not as kingdoms but as institutions of traditional or cultural leaders. The said institutions and their leaders have a good number of constitutional limits, which effectively disqualify them from being monarchies and their leaders sovereign. The Constitution proscribes traditional or cultural leaders who are supposed to be sovereign from compelling the people to pay allegiance to them, participating in partisan politics, and as the biggest highlight, exercising administrative, legislative, or executive powers of government.[59]

They are 'kings', who cannot impose taxes, legislate, execute law, or compel their 'subjects' to pay allegiance to them in the territories over which they should superintend. Put succinctly, the 'restored kings' are not sovereign because they do not legislate and do not command obedience from a bulk of their society. Instead, they are in the habit of obedience to another superior in their own territories. Whether the 'kings' in Uganda are in the habit of obeying a human superior or obeying an institutional superior is another thing that merits

[59] See Article 246 (3) of the Constitution

debate, but what is not obscured is the fact that the 'kings' are not determinate human superiors they ought to be. Thus, they are not sovereign and their territories, in the conception of John Austin, are not political and independent societies. They are not sovereign, also because in the logic of Jean Bodin and D.F Russell, a sovereign must exercise power unlimited by law in a territory he presides over. However, not only are the pseudo-kings in Uganda limited by law to exercise monarchical power; they are also completely powerless. They are absolute legal subjects in lieu of being absolute legal sovereigns.

"Federo" and a sovereign Kabaka

Of course, some of the pseudo-kings in Uganda are cognisant of their subjected position. As such, they have sought and continue to seek the restoration of monarchical power or a semblance of it. Buganda, one of the institutions of traditional leaders allegedly restored as a 'kingdom' has maintained the spirit demanding for *federo*, which is a semblance of, and, which most Baganda[60] people confuse with federalism. Although most Baganda may think that *federo* is the vernacular equivalent of federalism, the former is just a corruption of the latter. A federal system is a political design, which prescribes sharing power between a central or federal government and local governments in a democratic setting. A federal arrangement dictates popular and periodic election of leaders at all levels of governance, and provides for constitutional and legal limits on the exercise of power by institutions and leaders.

[60] The People of a tribe from Buganda kingdom, which is in central Uganda.

Vice versa, the concept of *federo* espouses a political but non-elected head of Buganda, a *kabaka* who receives obedience from his subjects, issues legal commands through a *Lukiiko*—a legislative council which pays absolute allegiance to him, and which cannot limit or check his power. The concept of *federo* also hinges on the return of the 9,000 square miles of land held by the government, and the recognition that Kampala city is part and parcel of Buganda (Naluwairo & Bakayana, 2007).

Buganda *federo* enthusiasts are not comfortable with the constitutional and legal status of Kampala. Article 5 (4) of the Constitution provides that Kampala is the capital of Uganda, while Section 3 (1) of the KCC Act (2010) is more categorical as to which entity owns Kampala. It states that: "In accordance with article 5 of the Constitution, Kampala, located in Buganda, is declared the capital city of Uganda." The legal status of Kampala created by the KCC Act cleared any lingering doubt as to where Kampala legally belongs. The Act's declaration indicates that although Kampala is geographically situated in Buganda, it does not belong to the Buganda establishment.

CHAPTER NINE

Civil-Military Relations

Civil-Military Relations, as the word suggests is a concept that refers to a relationship between the military and civilians. The importance of a good relationship cannot be overemphasised; it is indispensable for the construction of a free society. Within this meaning, the relationship is good if there is no tension between the military and civilians, and vice versa. The norm is that peaceful coexistence between the military and civilians can only subsist when the military focuses on its mandate of keeping a State free from threats of external military invasion and internal military disturbances, and keeping in barracks when there are no such threats.

The exception, however, is that when the military is not warring, it may provide relief and humanitarian assistance to civilians, such as search and rescue, medical treatment, food distribution, and related services, where civil institutions are genuinely stretched during emergencies or disasters. The military, however, must wait to be called on by civil authorities, in which case the military should only play a supportive role. In civilian causes, civil authorities must always be in charge. It means that the military must remain under the supervision of civil authorities in civilian causes. This is to ensure that the military sticks to its military mandate, and leaves civilians to take care of their affairs.

The necessity of civil and military authorities

The two authorities have the same goal, although they have different mandates. Civil authorities legislate, execute the law, and dispense justice in order to promote the pursuit of civic, social, economic, political, and cultural interests in a society. Militaries on the other hand provide security from threats to the pursuit and enjoyment of those interests through war. Law, order, and justice, which are provided by civil institutions, and security, which is availed by the military, are the ingredients that allow the pursuit and enjoyment of those interests and happiness, but only insofar as they promote the freedom of the people, since an unfree person cannot pursue his interests or happiness. It follows that liberty is the chief of all of a living man's interests.

Although liberty is the most important of the interests of people, in that it permits the pursuit and enjoyment of other interests, it can be abridged or curtailed by law, by claims of the need for order, by unjust judicial decisions, and by claims of the need for security. Tyrannical rulers curtail the enjoyment of liberty by those claims, in which case they abuse the purpose of both civil and military institutions. Law, order, justice, and security are useless and unwelcome if they do not promote and protect the liberty of the people. In order to promote their functional necessity, which is to avail liberty, therefore, it is important that the two authorities do not antagonise each other. They ought to work in harmony otherwise their mutual antagonism is a recipe for tyranny. However, harmony is impossible to achieve if the two authorities are equal or totally independent. Political science demands that for a healthy relationship between the military and civilians to exist, which

in effect leads to the construction of a free society, the military must be subservient to civil authority.

Civilian control of the military

For any authority to be functional it must be in possession of enabling power; otherwise it is ineffectual. Thus, for their functional necessity, both military and civil authorities possess their unique powers; the difference being that the powers are not similar in terms of strength on the one hand, and importance on the other. Civil authorities possess civil power, which they use to make and implement law and public policy civilly. Military authorities on the other hand wield military power, which they use to provide security and to defend a State's territorial sovereignty through war and force. The military, therefore, is also the most powerful institution, in that it possesses the most lethal implements of coercion.

Ironically, political science places the military under civil or political authority. It is contradictory in terms to make the stronger subservient to the weaker, it seems. However, it is not impossible to place the stronger under the weaker if the weaker is more important, or if such arrangement is out of necessity for the mutual benefit of both the stronger and the weaker. Civil power is more important than military power in the construction of a free society. It is because the pursuit of the interests of the people requires civility, which civil authority avails. Thus, military power is of lesser value to a free society under ordinary circumstances. It is necessary only circumstantially—for example, when there is an armed threat to the pursuit or enjoyment of the interests of the people.

If the military is at the helm of the affairs of a State, the State risks being ruled militantly and tyrannically because

militants are seldom civil in their dealings. Military governments are inherently oppressive and tyrannical. A person, who sees every problem as a nail, tends to think that the solution to every problem is a hammer. Likewise, that the military is trained and placed in a mental state to war against armed enemies, it tends to resolve problems by military means. However, in political science, military resolution of non-military problems is a taboo because it expropriates the inherent freedoms and rights of the people, instils fear, and curtails the pursuit of the interests of the people.

Stated otherwise, military rule impedes the creation of a free society, which is necessary for the pursuit of the good life. In this sense, Marchamont Nedham, writing in 1654 in defence of the first written Constitution of England, entitled: *A True State of the Case of the Commonwealth*, which was promulgated under Oliver Cromwell stated that: The continuance of military government would have been dangerous because it would have left both the instituting and executing of the law "to the arbitrary discretion of the souldier," who would be apt to execute his own will in place of law, without check or control (Vile, 1998, p. 54). Therefore, it is necessary for civilisation's sake to make the military subservient to civil authority, and to be called to action when it is needed, and when a civil authority determines such necessity and supervises the military.

The metaphor of a dog and its master

The logic of having a subordinated army can be understood more plainly by the dog-master relations. A bond exists between a dog that watches over its master's home and the master whose home it keeps. It is a bond of protection, on

the one hand, and of subsistence on the other. The master is less agile and generally less skilled in matters of security than the dog; thus, he needs and enjoys the bond of protection that is due from the dog. On the other hand, the dog is unskilled in making money, buying, and the preparing goods of subsistence such as meat, which it needs and enjoys— thus, it enjoys the bond of subsistence that is due from the master. In the bond, the master goes to work to make money with which he buys meat for the dog, prepares it or causes it to be prepared, and serves it or causes it to be served to the dog. Reciprocally, the dog keeps awake at night and patrols the territory of the master to keep him safe from intrusion, as well as from theft or injury that may proceed from intrusion.

Ironically, the dog is subservient to the master, since he can instruct it and it obeys, or he can choose to leash it until he decides others. Although the master enjoys security from the dog, he masters it, and it obeys him for the mutual benefit of both. Should the arrangement be inverted, and the dog takes the place of the master, and the master that of the dog, there is mutual loss for both in the bond. The dog at the helm will bite and injure the master, and will not work to buy and prepare meals for him. The net effect of the inversion is desolation because the dog will eventually stray from the home that has no food, as the master will also desert the home that threatens the security of his life.

Thus, for the purposes of order, tranquillity, and civility, the military should be subordinated for the good of all, although it is more powerful than civil authority. Indeed, military governments are rejected and opposed everywhere, and civil authorities govern most States. In civilised States, civilian heads of state are commanders-in-chief of the militaries. They provide supreme command and control over

them, and appoint and promote officers. Likewise, legislative bodies in civilised States make laws that regulate the behaviour of their militaries, and authorise, or nix their engagement in external military action. Legislative assemblies also scrutinise and appropriate budgets of the militaries. Last but not least, in civilised societies the military sticks to its mandate of warring against armed external or internal enemies, and keeping in barracks during peace time including when a civil disturbance that does not involve arms erupts.

The above is in tandem with Kohn, who picturesquely summarizes this view when he writes that:"[t]he point of civilian control is to make security subordinate to the larger purposes of a nation, rather than the other way around. The purpose of the military is to defend society, not to define it (Farrand, 1911).

Intrusion of the military in Uganda's political life

As intimated, the prudence of the concept of Civil-Military Relations demands that for the purposes of order, security, liberty, and tranquillity, the military should perform its bottom line function of defending a State and its interests through war, and stay in barracks during peacetime unless called upon by civil authorities to assist in non-belligerent causes. Unfortunately, the military in Uganda has been abused severally. In post-independence Uganda, the military was used even by civilian leaders to settle political scores. In 1966, the military under Obote was used to resolve a political impasse between himself and Mutesa, during which according to Tumushabe and Gariyo (2009), over 2,000 civilians were killed when Obote ordered the army to attack the headquarters of

Buganda Kingdom. The military was also used to beleaguer parliament to pass the 1966 "pigeonhole" constitution.

In 1971, the military was used to depose its civilian commander-in-chief, Obote. From 1971 to 1979, the Civil-Military Relations in Uganda went from bad to worse. The military took the reins of state. The constitutional and civil order was overturned; civil institutions like parliament and political parties were barred from operating, elections were banned as the judiciary was emasculated. There was no free speech or any other universally recognised freedoms and liberties. It was a reign of terror expected of "a dog-in-charge".

In 1986, a civil government that had been constituted in 1981 following a democratic process in 1980 was forcibly removed by the NRA and replaced with a military government. In the aftermath of the NRA armed rebellion, the group's former combatants dominated civil institutions. For example, in 1986, the NRA by the Legal Notice No.1 (a legal document that legalised Museveni's otherwise illegal government under the 1967 Constitution) created the NRC as the legislative arm of government and filled it with militants. The former rebel leader, Museveni, became the chairman of the NRC, which made him the speaker of the legislative arm. At the same time, he was the president and head of state. Thus, with a military executive and speaker of parliament, and a military parliament, the military was accorded undue prominence in the governance of civilian affairs.

In 1987, the shape of the NRC began to be altered when by the Legal Notice No.1 (Amendment) decree of 1987, cabinet ministers some of whom were civilians, were allowed to become members of the NRC, and changed much further in 1989 by the Legal Notice No.1 (Amendment) decree of 1989, by which elected representatives including women, were

allowed to be part of the parliament. By 1992, the NRC's membership had increased to 277, which included historical and original members of the NRC, who numbered 38, and the representatives of the NRA, who numbered 10 (Tumushabe & Gariyo, 2009).

Although the NRC had expanded to accommodate civilian representatives, the military continued to have a tight grip on the civil institutions of state. The executive, Yoweri Museveni, was until 2004 a serving militant. The militant was also the speaker of the legislature from 1986 up to 1994 when a Constituent Assembly was constituted to promulgate a new constitution. The NRC was also in its legislative function still required to consult a military council, the National Resistance Army Council (NRAC), and military representatives continued to occupy it.

With the promulgation of a fresh constitution in 1995, which rendered the Legal Notice No.1 inoperable, the military was ostensibly subordinated to civil rule. The Constitution compels the military in Uganda, under Article 208 (2) and Article 3 (1) (a) of the Uganda Peoples' Defence Forces or UPDF Act (2005)[61] to be under civil authority. However, the military still enjoys accommodation in civil institutions and is, therefore, equalised with civil authorities. For instance, the Constitution under Article 78 (c), grants the military the right to be represented in parliament.

The army has defended the accommodation of the military in parliament on the ground that the decision was

[61] The UPDF Act governs the administration and conduct of the military in Uganda. Article 2 of the Act defines civil authorities as: (1) a President of Uganda, (2) a minister, (3) an Inspector General of Police, (4) a Resident District Commissioner, or (5) a District Police Commander.

informed by Uganda's violent history. It has contended that the military was in the past used by politicians to settle political questions, and that they succeeded because the military was alienated from political processes, which curtailed the army from political consciousness and the knowledge of the extent of its duty, which in effect made it gullible and to be used in ways that cost the nation. Hence then, accommodating the army in political processes, the army has reasoned, was measured to immunise it against political ignorance that leads to ill effects such as those witnessed in the past.

Although that is the reasoning, it is not cogent to override the sanctity of the principle of civil-military relations. The accommodation of the military in parliament, or any other civil institution cannot augment the political consciousness of the army. Parliament makes laws; it does not teach political studies or political history, which can only lead to the conclusion that the army cannot become politically conscious by being represented by a few individuals in the civil institution. The only effect of the army's accommodation in parliament is that it was made part of the legislative arm of a civil government, which is a blatant violation of the idea of civil-military relations. Likewise, appointing serving military figures to head civil institutions such as the police [62] cannot be done without violating the idea of civil-military relations.

[62] General Katumba Wamala (now the Chief of Defence Forces) served as Inspector General of Police between 2001 and 2005. He was replaced by General Kale Kayihura in 2005. Kayihura is still (2016) the police chief. General Aronda Nyakairima served as Minister for Internal Affairs between 2013 and 2015, while General Jeje Odong served in many civil institutions while still serving in the army.

Article 42[63] of the UPDF Act (2005) allows the army to "aid" the police in case of an internal disturbance if in the opinion of an "appropriate civil authority", such as a president, an Inspector General of Police, a minister, a Resident District Commissioner, or a District Police Commander, the "disturbance is likely to be beyond the capacity of the civil authority to suppress or prevent." This particular Article is odious because it disturbs the sublimity of the reasoning behind the idea of civil-military relations, especially if the people taking part in a disturbance are not armed. First, militants are trained to fight armed enemies, not unarmed citizens. It, therefore, defeats common sense if the military is allowed to deal with unarmed civilians. Militants will most likely kill citizens because they are oriented to be killers in situations of confrontation.

Second, involving militants in disputes between the people and their government usurps the sovereignty of the people and their inherent right to be governed with their consent and will. As noted earlier, tyrannical regimes use the law or claims of the need for stability to deny the people their liberty, and the Article in question may facilitate exactly that. It may be used to mobilise the army with its lethal implements to deter citizens from expressing their grievances to rulers, which in effect makes rulers more unresponsive, unaccountable,

[63] Article 42 of the UPDF Act (2005) states that: "The Defence Forces, any part of the Defence Forces, and any officer or militant, are liable to be called out for service in aid of the civil power in any case in which a riot or disturbance of the peace occurs or is, in the opinion of the appropriate civil authority likely to occur, if in the opinion of the appropriate civil authority the riot or disturbance of the peace is likely be beyond the powers of the civil authorities to suppress or prevent."

inefficient, corrupt, and arrogant. A political configuration such as this does not lead to the construction of a free society. Instead, it facilitates and entrenches tyranny. For freedom to subsist in a society, which is the end of the idea of civil-military relations, the capacity of the police should be built to deal with civilian disturbances. A government in a free and civil society does not need to fight its unarmed citizens or crush dissenting voices; it needs to listen to them, and only in cases of violence should the police, not the military act to stop it.

The trend of civil-military relations in Uganda is a cause for concern. Museveni is overtly obsessed with the idea that military men are more effective than civilians, and has increasingly thrust the former in civil affairs. He, in 2013 transferred to the army an agricultural extension and advisory programme, the National Agricultural Advisory Services (NAADS) that was originally and naturally under the Ministry of Agriculture. Before transferring NAADS to the army, he renamed it "Operation Wealth Creation". Going by the current rate of the incursion of the military into civil life, the nadir of disordered civil-military relations is yet to come. There is a risk that the military may take over all or most of the civilian sectors, at which point it will be effectively in charge of government and the State.

But even before Uganda gets to a point where one has to be a serving military man to be a Member of Parliament, a judge or justice, a policeman, a permanent secretary, a district councillor, a headmaster, or a nurse, the current state of civil-military relations has already sired a state of tension between civilians and the military because the military has been placed in a preponderant mental state, which threatens the construction of a free society. This was exemplified in 2005,

when the military beleaguered the High Court of Uganda with a view to intimidate the Court into not bailing treason suspects before it, an act the then Principle Judge, James Ogoola called "the raping of the temple of justice". Further, senior military officers have severally and openly, with impunity threatened political leaders and parliament.[64]

[64] In 2013, General Aronda Nyakairima, the chief of the army then, threatened to overthrow the elected government of Uganda over what he called 'bad politics'. General Katumba Wamala, who succeeded General Aronda, warned Kizza Besigye, an opposition presidential candidate during the 2016 general elections against what he called "lies" against president Museveni's record on healthcare.

CHAPTER TEN

Separation of Powers and Checks and Balances

The doctrine of separation of powers, whose prophets insisted was necessary for the construction of a free society, dictates that government must be divided into three distinct and independent arms to perform the public functions of law making, law execution, and adjudication on the basis of law. The prophets were driven by the belief that the division of the functions of government and the powers that attend them was the only sure way to combat the ill effect of tyranny that is associated with a unified government, that is to say, a type of government in which all the functions and powers of government are attached to one person or one body.

In 1654, Marchamont Nedham averred that: the ancient wisdom of the English had been to "temper" their government by placing the supreme law-making power in the people in Parliament, and entrusting the execution of law, "with the mysteries of government," in the hands of a single person and his council… The secret of liberty is "the keeping of these two apart, flowing in distinct channels, so that they may never meet in one…" (Vile, 1998, p. 54). In 1748, Baron Montesquieu, a French philosopher in his book, *the Spirit of Laws,* noted that:

> *"If the legislative and Executive power are united in the same person or in the same body of persons, there is no liberty because of the danger that the same monarch or the same senate make tyrannical laws and execute them tyrannically. Nor again is there any liberty if the judicial power is not*

separated from the legislative and the Executive. If it were joined to the legislative power, the life and liberty of the citizens would be arbitrary; for the judge would be the lawmaker. If it were joined to the Executive power, the judge would have the force of an oppressor." cited in (Leacock, 1921, p. 144)

It was not only Marchamont Nedham and Baron Montesquieu who were wary of the ramifications of a unified government. Blackstone, an English Jurist also shared their views in "the Commentaries on the laws of England" (1765) when he wrote:

"In all tyrannical governments the supreme majesty, or the right both of making and enforcing laws, is vested in the same man, or one and the same body of men, and when these two powers are united together there is no public liberty." cited in (Leacock, 1921)

Nonetheless, before Montesquieu and Blackstone, Edward Coke and John Locke had long defended the extrication of the kings of England from the functions of law-making and adjudication at a time when the kings claimed sovereignty *solutus legibus* or absolute sovereignty, that is to say, when the kings claimed ultimate power in the matters of law making, law adjudication, and law execution. In 1607, while the courts of law of England were still called *curia regis*—or "kings' courts", Justice Coke reminded king James I that:

'*the King in his own person cannot adjudge any case, either criminal, as treason, felony, etc., or*

> *between party and party, concerning his inheritance, chattels, and goods, etc., but this ought to be determined and adjudged in some Court of Justice, according to the law and custom of England [. . .]; that no King after the Conquest assumed to himself to give any judgment in any cause whatsoever, which concerned the administration of justice within his realm, but these were solely determined in the Courts of Justice'* cited in (Zoller, 2008, p. 91).

This opinion confirmed that in England, the king did not have judicial powers to adjudicate neither criminal nor civil matters. The king was also challenged in respect of his legislative powers. In this regard, Justice Coke in 1611 averred that:

> *'the king by his proclamation cannot create any offence which was not an offence before; for then he may alter the law of the land by his proclamation in a high point. For if he may create an offence where none is, upon that ensues fine and imprisonment. Also the law of England is divided into three parts: common law, statute law, and custom. But the king's proclamation is none of them. . . . Also it was resolved that the king hath no prerogative but that which the law of the land allows him. But the king, for prevention of offences may by proclamation admonish his subjects that they keep the laws and do not offend them, upon punishment to be inflicted by the law.'* cited in (Zoller, 2008, p. 92).

The Common law referred to was judge-made or case law, while statute law was law enacted by Parliament, and custom was law that accreted out of everyday practice and usage. In simple terms, Coke simply affirmed to the King that he did not have power to create law in England. If the King in England did not possess either judicial or legislative powers as was the opinion of Coke, he was restricted to performing royal functions, which were executive in character. It is in this connection that Zoller (2008) asserted that the pronouncements of Coke were forerunners to a separation of functions. John Locke, in 1689, writing in reference to the need for separation of powers and the rule of law stated that:

> *"Whoever has the legislative or supreme power of any commonwealth, is bound to govern by established standing laws, promulgated and made known to the people, and not by extemporary decrees; by indifferent and upright judges, who are to decide controversies by these laws; and to employ the force of community at home, only in the execution of such laws.."*cited in (Cohen, 2001, p. 74).

There is nothing equivocal about the fact that Nedham, Coke, Locke, Montesquieu, and Blackstone, advocated a constitution in which public functions and powers are placed in separate hands. The rationale for the suggestion to separate powers is that: if public functions and powers are placed in separate hands in a way that facilitates independent performance of each public function, the liberty of the people is safeguarded because then a person or body that makes laws is inhibited from executing them and from adjudicating; a person or body

that executes laws is barred from legislating and adjudicating; and finally, a person or body that adjudicates is restrained from legislating, and neither can he execute the laws nor the decisions that proceed from his adjudicative function.

The sacrosanct value of the theory of separation of powers, it may be assumed, lies in the fact that it has inbuilt mechanisms to encumber the predisposition of rulers to use power to satisfy their selfish interests. This is unlike in a political constitution in which one person or body can make laws, and the same person or body can execute them and adjudicate by them. The latter constitution, plainly, makes it possible for a ruler to make laws that advance and entrench his selfish interests at the expense of those of the people, since he can at once legislate, execute, and adjudicate. The constitution in which the power of government is unified in one person or body is capable of turning even the most magnanimous pope into a ruthless tyrant. Thus, the theory of separation of powers is inviolable in governance, but only insofar as it inhibits tyranny and advances the liberty of the people.

A mixed constitution and checks and balances

Separation of powers was suggested by political philosophers as an arrangement that contains mechanisms that curtail rulers from observing the natural disposition to abuse power. However, although it may be assumed that separation of powers contains such mechanisms, the theory in its pure form is ineffective. Like a unified government, a totally separated government does not solve the problem of tyranny, nor does it guarantee the freedom of the people.

By dividing government into three branches, and giving each of them total independence, separation of powers

does not solve the problem, but rather sustains it in another form. The ill effect of total separation makes one branch of government, especially the one that is concerned with law-making, dominant. The fact that separation of powers makes the legislature very powerful led Locke (1689) to refer to it as the "supreme power of any commonwealth"; Leacock (1921), the "chief of the powers of government"; and Judge Story, the "great and overruling power in every free government".

Separating public functions and powers makes the legislature dominant and dictatorial because of the primacy of the legislative function. In a separated government, the executive implements the law that is given by the legislator, as the judge adjudicates by it. The executive and the judge are, therefore, relegated to carrying out the will of the legislator. The legislator, when he enjoys total independence is likely to abuse the legislative power because he can make laws that promote his interests, and since the executive in a separated government is required to implement the laws that are made by the legislator, and the judge to adjudicate by them, a dictatorship of the legislator when it crops up has no way of being stopped.

If the legislator is a tyrant, he makes laws that are tyrannical, and the executive and the judge have no option but to implement the legislator's laws and to adjudicate by them tyrannically. If he is avaricious, he enjoys the leeway to make laws that promote his avarice, and the executive and the judge in a separated government are duty-bound to implement the laws given by the legislator and adjudicate according to them to actualise his avarice. A tyrannical and avaricious legislator is dangerously unencumbered in a separated government, and the people enjoy no liberty in such a constitution.

The idea of separating powers was rejected in many societies. In England, it was rejected in favour of a mixed government in which all branches of government share in the most prestigious public function, that is to say, the legislative function, but in which also each branch was to have its distinct functions. Lawson in 1660 held the view that the proper constitution of a free England was not one in which the legislative power was divided between king, lords, and commons but rather one in which it was vested in king, peers and commons jointly (Vile, 1998). Bolingbroke also touted the need for a mixed constitution in which while the executive and judges enjoy independence to perform their respective functions, they are also members of the legislature. He stated thus:

> *"A King of Great Britain is that supreme magistrate, who has a negative voice in the legislature. He is entrusted with the executive power, and several other powers and privileges, which we call prerogative, are annex'd to this trust. The two Houses of Parliament have their rights and privileges, some of which are common to both; others particular to each. They prepare, they pass bills, or they refuse to pass such as are sent to them. They address, represent, advise, remonstrate. The supreme judicature resides in the Lords. The Commons are the grand inquest of the nation; and to them it belongs to judge of national expences, and to give supplies accordingly."* cited in (Vile, 1998, p. 80)

However, not many societies adopted the English system of a mixed constitution in which the executive and

Judges participate in the legislative function in parliament, while at the same time performing their other natural functions of executing the law and adjudicating respectively. The United States, for instance, adopted a constitution that keeps the arms of government separated, but introduced a mechanism that prevents any one branch from accumulating undue power. In this type of constitution, neither the executive nor his subordinates participate in law making, but the executive must ratify the laws that are passed by the legislature. The Judiciary also does not in this constitution participate in law making but has the power to review legislative action. This constitution espouses what is known as 'checks and balances'.

In fact, the philosophers who suggested separation such as John Locke and Montesquieu implied that while separation was necessary, it was also necessary that no one branch should be allowed to dominate the others. After Locke had stated that: "There can be but one supreme power, which is the legislative to which all the rest are and must be subordinate", he was categorical somewhere else that: where the "executive is vested in a single person, who has also a share in the legislative; there that single person in a very tolerable sense may also be called supreme." Not because he has all the supreme power, "—Law-making," but because "he has in him the supreme execution, from whom all inferior magistrates[65] derive all their several subordinate powers." (Vile, 1998, p. 71).

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65 "Magistrate" was used by Locke to refer to ministers who are appointed by the Supreme executive, whoever it may be: a king, a president, a chancellor, etc., and not a judicial magistrate as the term is understood in contemporary times.

It may seem that Locke contradicted himself when at one point he said that legislating is the supreme function, and at another that a free society also has a supreme executive. Nonetheless, in calling the executive a 'supreme executive', he did not intend to weaken the legislative function but to show that although the legislature exercises the supreme power of government, it is not itself omnipotent, and that the executive in a free society is not subordinate. In Locke's view, in a free society, the executive must have a voice in the legislative function, even when he may not actively take part in legislating. The voice of the executive in Locke's free society is expressed through his consent to the laws that he will have to execute, and in doing so, he checks the power of the legislator. Locke's theory of legislature-executive relations is the forbearer of presidential veto power in modern democracy.

The checks and balances in Uganda

Uganda adopted a semblance of a balanced constitution, which espouses the doctrine of checks and balances. No single person or institution within the State possesses absolute power, although as we will see in the next Chapter, the executive has the means to circumvent the checks. The executive, the legislature, and the judiciary all participate in law making under constitutionally defined circumstances. In this sense, parliament is the foremost legislative authority in Uganda,[66] although it can also delegate the legislative function by an Act or a law, to subordinate persons or bodies (only because they do not possess the primary legislative function) to

[66] See Article 79 (2) of the Constitution

enact binding legislation on its behalf.[67]Because Uganda is a common law country that adopted the English legal system, it in effect espouses the doctrine of *stare decisis,*[68] which allows judges to make law in *non-liquet* [69] situations.

Although parliament is the highest legislative authority in Uganda, its legislative function is not without limits. The legislature is empowered to enact laws on any matter for peace, order, development, and good governance, but the laws must conform to all the provisions of the Constitution.[70] The Constitution proscribes parliament from enacting certain Acts, such as those that may alter a judicial decision or judgement concerning parties to the decision[71] or those that may establish a one-party state.[72] Further, parliament in Uganda is proscribed from legislating on financial matters that involve imposition of taxes or alteration of a tax regime except if the alteration is a reduction, unless a bill to that effect is introduced on behalf of the executive.[73]

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67 Parliament may delegate legislative authority to local government councils and to the executive to make binding legislation as long as it does not contradict Acts of parliament and the Constitution.

68 Stare decisis is a doctrine of law adopted in common law countries. It prescribes that past judicial decisions should be considered as part of a legal system of a country. It allows precedent court decisions to be regarded as law in determining subsequent legal questions of similar nature.

69 Non-liquet or 'not clear' is a situation where a court of law lacks a written law to apply to legal disputes before it. It is a situation of a legal lacuna.

70 See Article 79 (1) of the Constitution

71 See, Article 92 of the Constitution

72 See, Article 75 of the Constitution

73 See, Article 93 of the Constitution

Additionally, the legislative power of parliament is limited by the power of the judiciary to review its Acts. The Constitutional Court has original jurisdiction to review legislative action of parliament. If the Court makes a judicial determination to the effect that an Act or part of it is in tension with the Constitution or its provision or provisions, it can invalidate the Act or strike down the parts in the Act that may be found to infringe on the principles that conserve liberty and freedom as written in the Constitution. The Court can also strike down an Act if it finds that established legislative procedure was not followed in the process of enacting the law. Parliament's legislative power is also checked by the presidential veto. A president in the current political constitution does not himself legislate in parliament (although his ministers do), but he holds the power to assent to a law or to withhold assent. When parliament passes a bill, it does not become operable law until the executive expresses consent to it.[74]

Away from the legislature, the executive, as has been stated already, can make subsidiary legislation by what is called a statutory instrument, which may be made by a president as the executive or by a minister he may delegate for the purpose.[75] However, the legislative power of the executive is subordinate, and is checked by both parliament and courts. A president or a minister cannot make subsidiary legislation unless parliament by an Act gives him such permission. Further, where parliament gives a president or a minister the legislative mandate, executive legislation may be subjected to a judicial review and struck down if the piece of executive

[74] See, Article 91 (3) of the Constitution
[75] See, Article 99 (5) of the Constitution

legislation is found to be in conflict with an Act of parliament or the Constitution.

The executive is also limited in his use of the veto power, in that the veto is not absolute but suspensive. It means that a rejection of a piece of legislation by the executive does not mean its end. If it were, the executive would be an absolute sovereign, which would portend executive tyranny. In this regard, executive power is checked because a law can be enacted without the assent of the executive if the executive vetoes a bill twice and parliament passes the same bill for a third time with a two-thirds majority.[76]

The executive is also checked in his function of implementing the law. If he applies the law without supervision, he may derogate from it and may act capriciously and tyrannically. Thus, the current political constitution imposes upon the legislature the duty to supervise the executive in his executive function, and the executive to account for his actions to the legislature. The executive, however, does not need to account in person; he may be represented by his ministers or senior administrative officials in defence of executive actions to parliament. Judges also have the power to review executive action to ensure that the executive or his ministers or other public officials under him do not act capriciously. Thus, executive action may be subjected to a judicial review if it is believed that the executive or an official under him acted outside established law or procedure, or if it is believed that he abdicated a legal duty.

The judiciary, therefore, plays an important role in checking the excesses of the executive and the legislature. Nonetheless, the judiciary itself is in the political architecture

[76] See, Article 91 (5) of the Constitution

of Uganda not unencumbered. Ordinarily, the judiciary neither makes law nor does it execute it. The function of the judge is to adjudicate by the law that is made by the legislator. Although the judge may make law, it is only occasionally in non-liquet situations. His function is, therefore, a limited one. The judge is also limited and checked because he can neither prosecute a case in his own court nor can he implement his own decisions. If he enjoyed that prerogative, he would be a tyrant.

In doing so, judicial review of both legislative and executive action, legislative oversight over the executive and the officials under him, and executive veto power, are inbuilt mechanisms in the doctrine of checks and balances that are supposed to ensure adherence to the rule of law, cut the caprice of rulers and abuse of power, which are in turn hoped to cause the construction or maintenance of a free society. Nonetheless, the checks and balances in the obtaining political constitution are inadequate and cannot lead to the construction of a free Uganda. The reasons for the inadequacies are discussed in Chapters Eleven, Thirteen and Fourteen.

CHAPTER ELEVEN

The Executive

The executive is generally regarded in Uganda as the first arm of a separated government, while the legislature and the judiciary are regarded as the second and third respectively. This is a fundamental departure from the original view of the arms of government in the theory of separation of powers. Originally, as has been discussed in Chapter Ten, the legislative arm was the first and most important arm of government because it exercised what was known by John Locke as the "supreme power" of government. Although that subsisted, it was erroneous to accord supremacy to the legislative arm because of the inherent risk that proceeds from the fact that power corrupts and can be abused if it gravitates towards one person or group.

The crux of the theory of checks and balances lies in the need to avert abuse of power. To that end, the theory of checks and balances allows the executive to ratify or veto any piece of legislation, and the judiciary is allowed to review laws and to uphold or strike them down from the law books if they are detrimental to the freedom and wellbeing of the people or to the public good. That way, legislative power is regulated by the executive and adjudicative arms, and legislative tyranny is contained. The need for checks and balances does not end with a containment of legislative tyranny, but subsists for the purpose of containing executive and judicial dictatorship also. Unfortunately, the political constitution of Uganda allows executive tyranny to flourish.

The executive in Uganda's political architecture is supposed to perform the executive function and that of

checking legislative tyranny. However, the political architecture makes him more than just an executive. In the current architecture, the executive is part of the legislative process because ordinarily, the legislative function commences from and ends in the executive branch. A cabinet of ministers appointed and supervised by the executive, who is a president, proposes laws and introduces them in parliament. Ministers, who are by the obtaining constitutional order also legislators in parliament, actively participate in legislative processes. As such, the executive drafts laws, introduces and defends them in parliament, and votes to pass them.

When that is done, the proposed laws when passed are forwarded for assent to the supreme executive, a president, who by the way would have had a chance to approve them before they were introduced in parliament. It means that the executive in Uganda is both a legislator (by virtue of the fact that his ministers are) and implementer of the law. He possesses power that is only next to God's, which amounts to a desecration of sound constitutional philosophy. The executive in Uganda is not effectively limited and is a great danger to freedom, and an encumbrance to governance efficiency and accountability.

Imperial presidency in Uganda

Arthur Schlesinger in the 1970s coined the term "imperial presidency" to describe a political constitution, which allows a president to accumulate power in doses that are inimical to the spirit of the doctrine of checks and balances, and in amounts that may lead to tyrannical tendencies. The authors of the Constitution of Uganda were overly lavish on the presidency. The Constitution vests all executive powers in a

president.[77] However, more than just conferring upon him supreme executive powers, the Constitution makes him the head of state and government. The executive, therefore, wields comparative power advantage over the other arms of government because the authors of Uganda's Constitution envisaged a hierarchical structure of governance. They fell in the trap in which Leacock and Judge Story also fell. Whilst Leacock and Story elevated the legislature, the authors of the Constitution of Uganda elevated the executive.

However, the above should not be surprising because the constitutional making history of Uganda bears hallmarks of political expediency in favour of incumbent presidents. The 1966, 1967, and 1995 constitutions were all designed with expedient calculations in favour of incumbent presidents. The said constitutions were engineered at the behest of the incumbents to give them political clout. The Constitution, which is operational in the current architecture, is explicit regarding the place of a president: he is the Head of State and Government.[78] Ironically, government is divided into three branches, all of which according to the doctrine of checks and balances, are supposed to have a moderating effect on each other, so that the people may pursue felicity and enjoy liberty and other inalienable rights and freedoms. A hierarchically constituted political structure that Uganda has leaves the presidency in an imperial position.

In view of the hierarchical order, and in Thucydides' theory of *realpolitik*, there is only one type of justice: that is, one in which a stronger power forces a weaker one to accept conditions for the latter's destruction. According to Thucydides, 'the standard' of the realist 'justice is dependent

[77] See, Article 99 (1) of the Constitution
[78] See, Article 98 (1) of the Constitution

upon the equality of power'[79] 'to compel, and in fact,' (in this realist justice of power relations), 'the stronger do what they have power to do and the weaker accept what they have to accept' (Green, 2000, p. 164). Thus, it should be manifestly clear that a hierarchical order makes one arm of government stronger, and the others weaker, and predicates the stronger to dictate terms and events, and to impose its will upon the weaker ones.

Commensurate with the vast powers vested in him by the Constitution, a Ugandan president possesses power to appoint almost everyone who matters in the country, including; a vice president[80] and all ministers,[81] a governor of the central bank,[82] an ombudsman,[83] an IGP,[84] the Electoral Commission,[85] senior judicial officers,[86] the list is endless. Such power threatens to make a president in Uganda an executive emperor because by wielding power to appoint all important public officers, but members of parliament, he also holds the power to make them amenable to his will.

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79 Equality of power here is not the same as equilibrium of power, but power relations between the strong and the weak

80 See, Article 102 (2) of the Constitution

81 See, Article 113 (1) and Article 114 (1) of the Constitution

82 See, Article 161 (3) of the Constitution

83 See, Article 223 (4) of the Constitution

84 See, Article 213 (2) of the Constitution

85 See, Article 60 (1) of the Constitution

86 See, Article 142 (1) of the Constitution

In an effort to prevent a president from becoming an executive emperor, however, the Constitution gives parliament the power to ratify or to veto a president's decisions regarding appointments. This can be effective only when the legislature is independent from the executive. Nonetheless, parliamentary approval, which should check the presidential power of appointment, is watered down if a ruling party occupies the presidency and enjoys majority representation in the Legislature at the same time. More specifically, the requirement for parliamentary approval of presidential nominees is of non-effect if a party in power has more legislators on the Committee of Parliament that vets the said appointees; and worse, when there are no constitutional safeguards to prevent a possible collusion between the executive and the legislature. It is important to note that party politics in a way facilitates a cosy relationship between the executive and the legislature, which may erode the requisite independence of the latter that is in fact necessary for obviating a president from becoming an emperor.

The Constitution does not provide for sufficient safeguards against the possible union of the legislature and the executive in case one party enjoys hegemony. Thus, it makes the people vulnerable, and puts them at the mercy of the dominant centre of power. Experience, however, has illustrated that even when there are no sufficient constitutional impediments, the legislature has sometimes defied the will of president Museveni by rejecting his appointees the hegemony of his party notwithstanding.[87] Such parliamentary sobriety

[87] In 2011, the appointments committee of parliament rejected presidential appointees, namely; James Kakooza and Nasser Ntege Ssebaggala—on the basis of inadequate academic qualifications.

may happen only occasionally when the interests of a dominant party are not at stake, otherwise, party politics in the political constitution of Uganda provide an easy platform for a president to influence or force parliament to perform or to accept his will, and through parliament to extend his imperialism to dimensions that curtail or abridge the freedoms of the people. The freedom of the people is sacrosanct and any political architecture that threatens to subvert it should not be defended as democratic because the ultimate end of democracy is to guarantee the sovereignty of the people which is manifested in the enjoyment of their inherent rights and liberties.

Party caucus and the imperial president

If a political party controls both the executive and the legislature, then caucuses in parliament are unwelcome because then the executive can easily collude with the legislature to advance each other's interests. In Uganda, caucusing has eroded the independence of the legislature and appended it to the executive to the extent that the two supposed-to-be independent institutions are now stuck in democratic infidelity. The NRM caucus has been too powerful in parliament since 2006 when multipartyism was re-introduced.[88] Apart from being the party in the executive branch, it has also always had a controlling majority in parliament, and through its caucus, the NRM party

[88] In 1986, political parties were banned and elections were held under the "individual merit" theory, which underpinned the no-party "movement" political system. The prevailing multiparty dispensation was reintroduced again in 2005 following a referendum that allowed the switch from the "Movement" political system.

has been and still is the de facto parliament because whatever decision has been arrived at in caucus meetings has also become the decision of parliament. Parliament has also been seen reversing its own decisions following caucus meetings, which have been chaired by the executive in his capacity as the chairman of the NRM party.[89] It may be argued that in a multiparty political dispensation caucusing is necessary for the purposes of debating, refining, and harmonising the positions of legislators who belong to the same party. However, the case of Uganda is detrimental to the spirit of checks and balances, which the political architecture purports to espouse.

In the architecture that obtains today, although it results in a desecration of the theory of separation of powers and checks and balances as discussed in Chapter Eleven, the executive can caucus with legislators who subscribe to his party. In fact, the executive in his capacity as chairman of the NRM party has umpteen times chaired caucus meetings, stated his position on what obtains or what ought to obtain in parliament, and cajoled legislators to adopt his position and decide accordingly in parliament. To mention just a few examples: In 2012, the NRM caucus at the urging of the president resolved to exonerate the Governor of the central bank, Prof. Tumusiime Mutebile for causing a loss of public funds, in disregard of the

[89] In 2011, parliament passed a ten-point resolution following allegations that some ministers accepted bribes from oil companies. One of the points in the resolution was a demand that the implicated ministers resign to pave the way for investigations into the allegations. Another point was that the executive tables the oil production sharing agreements before parliament for scrutiny. A couple of weeks later, parliament reversed its own resolution after a meeting of the NRM caucus that was chaired by the president, Museveni.

recommendations of the Public Accounts Committee of parliament to the effect that Mutebile be personally held responsible for the loss. Following the resolution, parliament cleared Mutebile. In 2008, parliament exonerated Security Minister, Amama Mbabazi, and Finance Minister, Ezra Suruma after they were found liable by the Public Accounts Committee of parliament in the Temangalo scandal. This was an effect of the NRM caucus at the behest of the president. The NRM caucus has almost always given in to the bidding of the president on public questions in parliament.

It goes without saying, therefore, that the NRM caucus has transmuted itself into a conduit through which its chairman, who is also the executive, imposes his bidding on the legislature. Thus, if the president wants draconian laws, they can effortlessly get a safe passage through the caucus, and automatically through Parliament. In the U.K. the executive, a Prime Minister can caucus with legislators from his party. The difference, however, is that the U.K. espouses a mixed political constitution in which a Prime Minister is a legislator. It therefore makes sense if he caucuses with his fellow legislators. Second, the U.K. legislative structure is bicameral. Thus, if a parliamentary decision in which the executive participated is politically expedient, it can be revised by an upper chamber of the U.K. parliament, which is not politically constituted.

Thus, since Uganda does not espouse a mixed political constitution, but one in which the executive is not a member of parliament, it is wrong for the executive to caucus with the members of parliament. The danger with caucus politics in Uganda is that the executive can easily amass undue power at will. Courtesy of caucusing, laws that entrench executive tyranny can be easily made if the executive wields influence over his party, because then the executive can influence their

enactment, ratify them when they are passed, and implement them—tyrannically.

An imperial president in a constitutional hierarchy

A president in Uganda is also a commander-in-chief of the national army and a fountain of honour at the same time. Further, in Uganda's political hierarchy, a president takes precedence over all persons in Uganda, and in a descending order, a vice president, a speaker of parliament, and a chief justice.[90] By implication, a president is the first and most powerful person in Uganda, a vice president is number two, and a speaker of parliament is number three, while a chief justice is in the lowly fourth place in the order of value and power. That a president and a vice president—the number one and number two persons, respectively are both from the executive branch, and the third in the pecking of order of authority is from the legislature, while the fourth is from the judiciary, writes a negative statement.

It is indefensible, but a reality that the executive and particularly, the presidency has the latitude to accumulate more power than the rest of the branches. Of course, the anatomy of Uganda's framework of government as arranged by the Constitution is palpably hierarchical, even when it is ferociously treacherous to the concept of checks and balances, and translates into a manifest abridgment of freedoms and rights of Ugandans. However, even if it were defensible for the system to be hierarchical, it is dubious for the top two persons to belong to the same branch. Further, it is democratically impure to accord pre-eminence to a vice president above a

[90] See, Article 98 (2) of the Constitution

speaker of parliament, since the vice presidency is not an elective position.

Popular election of a vice president

There is power that is original, unalterable, and supreme. Vice versa, there is that which is conferred and limited. Those who possess original, unalterable, and supreme power, that is to say, the people, confer it to those they elect for the purpose of managing public affairs in their interest. Elected leaders may also in the interest of effective and efficient management of public affairs, appoint other people. An appointed person derives his power from the person who appoints him, and; therefore, owes accountability to that person. An elected person on the other hand derives his from the people who elect him, and owes accountability to them. Going by this chronology, an elected leader must be more powerful than one who is appointed because the source of their power is from the people, and is unalterable, original, and powerful, while the source of the power of an appointed person is conferred and, therefore, limited.

A speaker of parliament is elected, first by his constituency, then by the legislature, while a vice president need not be elected by a constituency[91], and when appointed, he only needs the approval of a small committee of Parliament.[92] It is, therefore, unsound even when the structure of government is hierarchical, to have a vice president in the number two spot. It makes democratic sense for a speaker of parliament in Uganda to be in the second slot in the hierarchical distribution of power.

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91 See, Article 78 (1) (d) of the Constitution
92 See, Article 108 (2) of the Constitution

If a vice president must be number two, the holder of the position must be elected. The Americans saw the wisdom of having an elected vice president as opposed to one who is appointed; thus, their democratic system requires each presidential contender to pick a 'running mate' so that the electorate at once elects a president and a vice president. It is sound to make a vice president the second person in the hierarchy of government In the American system, because he, like a president is also elected by the whole country.

The risks of imperial presidency

It is apparent that the power of the presidency in relation to the other branches of government is much. Nonetheless, the presidency may not seek to pursue actions or take decisions to hurt the ordinary people they lead deliberately. No leader, not even the much demonised Hitler[93] of Germany or Idi Amin[94]of Uganda or Bokassa of the Central African Empire, infamed for their ruinous acts against their peoples, acted out of fanfare. The massacres that are attributed to them were simply incidental to and reflexes of either actual or perceived threats to their existence or continued rule.

Even so, it should be stressed that no president is invulnerable to such impulses as long as there are legal gaps permitting them to act savagely in the face of threats to their rule. There is no good leader in the entirety of the world. A leader is naturally only good to himself, and if he must be good to others, it is by involuntary means or only when his personal

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93 Hitler is believed to have murdered an estimated six million Jews in concentration camps in Germany.

94 Amin, between 1971 and 1979 is believed to have killed more than 300,000 people.

interests are not severely threatened. Like all human beings, leaders become good mostly by some impulsion. A leader always seeks to satisfy his self-interest as long as there are no sufficient structural encumbrances to impede him.

Experience in Uganda has shown that presidents from Obote to Museveni did whatever they craved. Obote abrogated the 1962 Constitution in 1966, and in 1967, a parliament he controlled promulgated a Constitution that banned traditional institutions and gave him sweeping powers for his rational expediency. Today, whatever Museveni wants, Museveni can almost get because of the configuration of government.[95] When he wanted the Constitution amended to lift the presidential term limit in 2005, it was adjusted and they were lifted. If today Museveni wants to amend the Constitution to lift the 75 years age cap,[96] it will be done because the structural conditions that led to the lifting of the term limits have not changed. His party enjoyed numerical supremacy in Parliament; it still does. This is not limited to Museveni and his NRM party. Nobody is invulnerable, and as long as the same conditions manifest in a similar fashion, any other president will do what Museveni has done and continues to do because all human beings are self-interested, rational actors.

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[95] Museveni who had ruled from 1986 promulgated a new constitution in 1995. The 1995 Constitution provided for two five-year terms. Museveni contested and won his first constitutional term in 1996 which ran up to early 2001. He again contested and won the constitutional second and last term in 2001 which was running up to early 2006. In 2005, he is alleged to have bribed his NRM members of parliament with five million Uganda shillings each to lift the term limit. He was successful and was eligible to contest again indefinitely.

[96] See, Article 102 (b) of the Constitution.

The threat of imperial presidency does not lie in the ability of the emperor to change a constitution to suit his personal goals, but in the fact that if it is easy for a president to use parliament to his advantage, the liberty of the people is at stake. Since presidents are human, it is untenable to gift them with too much power because they may abuse it. As long as a president is permitted to have an imposing influence on parliament—through a parliamentary caucus of a dominant party whose meetings he chairs, Uganda should brace for abridgement of liberties.

The fraud of presidential immunity

All heads of state or government, that is to say, presidents, kings, queens, emirs and so forth, claim immunity from prosecution in domestic and foreign jurisdictions. However, the idea of immunity of heads of state or government is not only potentially deleterious, but also intellectually flawed and obsolete. The idea of immunity is traceable to the classical idea of sovereignty, which as has been explained in Chapter Eight, was claimed by absolute rulers, and apologised for by philosophers such as Thomas Hobbes in the *Leviathan* and Robert Filmer in the *Patriarcha.* Thus, presidential or head of state immunity is a derivative of the medieval concept of sovereign immunity, which was based on the maxim that kings, being gods on earth could do no wrong.

In addition, sovereign immunity was also based on the maxim that a king could not be tried in his own court; because in the medieval era, kings were fountains of justice, and judicial power was exercised on their behalf and in their courts. Holding such a status, it was neither intellectually

defensible nor practically feasible to subject a king to a judicial process in his own court. They were also sovereign lawmakers, who could unmake the laws they made at will. A king in his realm was the omnipotent God's lieutenant, instituted by Him to create order on earth.

A king, in Hobbes' apology was a "Leviathan", that is, a human omnipotent, who in his role as director of human affairs on earth was the lawgiver for that purpose, and was, therefore, above the law he gave. In Leacock's (1921) view, it is not intellectually possible for a lawgiver to be bound by the law he authors. Leacock expressed that if a supreme lawgiver, that is, a sovereign, is again bound by the law he gives, it is a 'contradiction in terms' because being supreme, he is capable of repealing the law to suit his whims. If a sovereign has power to adjust the law because he is the supreme lawgiver, he in effect ensures that the law he gives does not limit his power and actions, and when it does, he conveniently adjusts it in his favour. Thus, sovereign rulers were naturally and necessarily set above the law they made, and consequently, they enjoyed immunity.

Nonetheless, the idea of sovereignty in the classical sense bore negative ramifications in umpteen societies. As such, the classical, absolute, and unlimited sovereign power that was claimed and exercised by kings should not be applicable in modern times. The concept of sovereignty has changed a great deal; therefore, it makes logical and intellectual sense to discard the idea of presidential immunity because the era of omnipotent humans vanished, and presidents are not sovereign. In the twenty-first century, there is no individual supreme lawgiver; law is negotiated before it is made or applied. Law in the twenty-first century is an accommodation of various interests and a result of compromise

by many shades of people and groups. The twenty-first century is also a century where the common people are sovereign, and judicial power is derived from them and exercised on their behalf. Thus, courts of law are people's courts. The astronomical shift in the authorship of law and justice from kings in the medieval era to the people (through their deputies in parliament in the case of law, and judicial officers in the case of justice) in the current century, should obsolete the claim of sovereign immunity. On a sad note, however, the fraud of sovereign immunity continues in all societies.

There is a colossal defect in the Constitution relating to the fraud described above, which under article 98 (4), grants immunity to presidents.[97] Nonetheless, the Constitution recognises the fact that presidents are fallible, and that they can commit crimes. Thus, it provides for a waiver of immunity under Article 98 (5), but under the caveat of secession of the presidency.[98] On the surface of things, the waiver sounds defensible. It promises justice in case a president abuses power while in office, it seems. It was also intended to act as deterrence against possible abuse of power, since if a president is aware that he will possibly face prosecution in the future, he may desist from abusing power, it seems also. However, the

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97 Article 98 (4) of the Constitution of Uganda states that: while holding office, the President shall not be liable to proceedings in any court.

98 Article 98 (5) of the Constitution of Uganda states that: "Civil or criminal proceedings may be instituted against a person after ceasing to be President, in respect of anything done or omitted to be done in his or her personal capacity before or during the term of office of that person; and any period of limitation in respect of any such proceedings shall not be taken to run during the period while that person was President."

waiver of immunity upon cessation of the presidency, rather than obviate abuse of power, it may instead fuel a reign of terror as is explained below in the ensuing allegory.

Tyranny, the ill effect of presidential immunity

Human beings have a tendency to mind much about the present than the future. The present is real. The future, on the contrary is not but imaginary, and a person can only have impressions of it. An impression is a shadow of reality. It is not compulsive; thus, it cannot induce the urgency of action that reality does. A person who experiences a migraine feels the urgency of taking painkillers; therefore, the sufferer takes a quick decision to buy painkillers faster because pain is present. On the contrary if a person does not experience a migraine, he cannot buy painkillers in the present, but will defer the decision until he experiences pain.

In a similar fashion, an incumbent president who enjoys immunity from prosecution may not feel the urgency of restraining himself, but can tread carefully if he has no such immunities because of the imminent proximity to the reality of possible prosecution. Unfortunately if prosecution is deferred, as the Constitution allows, it may be cataclysmic. Deferral of prosecution gives a president a false hope of safety. The thought of future prosecution at this stage appears like an impression; thus, human excesses may not be deterred. However, things begin to change when presidents notice that their time to go is at hand, and that their immunity ends soon. The possibility of prosecution begins to become more real, as impressions are swapped with reality.

At this stage if there are offences already committed, fear grips the leader, and naturally, the survival instincts leads

him to fight when he still holds the levers of power. He rather dies in power than step down to stand degrading trial and the ensuing misery. He may change a country's constitution, and cause to make or to amend laws that protect him and tyrannise others, and may execute them tyrannically. Therefore, the phoney concept of presidential immunity from criminal and civil prosecution is likely to sustain rulers in power, and may induce them to perpetuate atrocities against the people. Way back in 1986, Yoweri Museveni stated and later in 2000 wrote that 'the problem of Uganda and Africa in general is not the people, but leaders who do not want to leave power' (Museveni, 2000). Although this statement has reverberated throughout the three decades Museveni has been in power, it was not an accurate diagnosis. Overstaying in power is not the problem, but the symptom. The real problem is political constitutions that allow too much power to gravitate towards rulers, who inevitably abuse it with both impunity and immunity.

CHAPTER TWELVE

The Presidential Term Limits Discourse

The notion of term limits is not one of the core facets of democracy. Many advanced democratic States do not espouse it; the United Kingdom, Germany, France, Israel, Spain, Australia, and others, do not. However, the U.S. is famed for upholding it. Term limits found their way in the American Constitution by the Twenty-Second Amendment, which was passed by the U.S. Congress in 1947 and ratified by the constituent states in 1951.

Before enshrinement, term limits had been practiced as a custom traceable to the decision of the first U.S president, George Washington, who after only two terms in office declined to run for a third term.[99] Washington's landmark decision became *lus non scriptum* or an unwritten rule in the politics of the U.S., until it was "breached" by Franklin Roosevelt who ran for and won a third term in 1940 and a fourth term in 1944. Following Roosevelt's death in 1945, the U.S. Congress passed the Twenty-Second Amendment in 1947. Thus, by the Amendment, presidential term limits became part of the *lex scripta* or the written rules governing the United States.

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[99] When declining to run for a third term, George Washington, the American revolutionary leader, and U.S. first president famously remarked that: "I did not defeat King George III to become King George I." George III was the reigning king of Great Britain and Ireland that George Washington fought against to lead the American colonies to independence. Washington's statement was indicative of his loathing for infinite leadership.

The presidential term limits debate in history

The debate relating to presidential term limits is not of a recent origin; it is as old as the constitutional making process in the United States. The issue of presidential term limits was discussed and rejected at the 1878 constitutional convention, as those against carried the day. Alexander Hamilton wrote in The Federalist No. 72: "Nothing appears more plausible at first sight, nor more ill-founded upon close inspection than a scheme which in relation to the present point has had some respectable advocates, I mean that of continuing the chief magistrate[100] in office for a certain time, and then excluding him from it, either for a limited period or forever after."

Hamilton explicitly argued against inserting term limits in the U.S. Constitution, calling it a scheme—because he felt that restricting leaders to certain terms would demoralise them. In this sense, Hamilton in the Federalist No.72 stated that: "one ill effect of the exclusion would be a diminution of the inducements to good behaviour," and that: "there are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantages of the station with which it was connected must be relinquished at a determinate period, than when they were permitted to entertain a hope of obtaining, by meriting, a continuance of them."

Hamilton also argued against term limits on the premise that they would tempt leaders into corruption and

[100] "Chief Magistrate" was used by Hamilton to refer to a president of the proposed union of American independent colonies following the defeat of their colonial master, Great Britain in the 1775-1783 war of independence. The union sired what is today known as the United States of America.

tyranny. He argued that: “An avaricious man, who might happen to fill the office, looking forward to a time when he must at all events yield up the emoluments he enjoyed, would feel a propensity, not easy to be resisted by such a man, to make the best use of the opportunity he enjoyed while it lasted, and might not scruple to have recourse to the most corrupt expedients to make the harvest as abundant as it was transitory…” (Federalist No.72).

He also argued that: “An ambitious man, too, when he found himself seated on the summit of his country's honours, when he looked forward to the time at which he must descend from the exalted eminence for ever, and reflected that no exertion of merit on his part could save him from the unwelcome reverse; such a man, in such a situation, would be much more violently tempted to embrace a favourable conjuncture for attempting the prolongation of his power, at every personal hazard, than if he had the probability of answering the same end by doing his duty” (Federalist No.72).

The third charge against term limits was that they deprive a country of experienced leadership. In this sense, Hamilton argued that: “A third ill effect of the exclusion would be, depriving the community of the advantage of the experience gained by the chief magistrate in the exercise of his office. That experience is the parent of wisdom, is an adage the truth of which is recognized by the wisest as well as the simplest of mankind… Can it be wise to put this desirable and essential quality under the ban of the (U.S.) Constitution, and to declare that the moment it is acquired, its possessor shall be compelled to abandon the station in which it was acquired, and to which it is adapted?” (Federalist No.72).

Another charge against term limits was that they deprived political stability and continuity of policies. Hamilton

argued that: “by necessitating a change of men, in the first office of the nation, it would necessitate a mutability of measures. It is not generally to be expected, that men will vary and measures remain uniform. The contrary is the usual course of things. And we need not be apprehensive that there will be too much stability, while there is even the option of changing; nor need we desire to prohibit the people from continuing their confidence where they think it may be safely placed, and where, by constancy on their part, they may obviate the fatal inconveniences of fluctuating councils and a variable policy” (Federalist No.72).

However, Hamilton’s charges against presidential term limits were informed by fallacy. In his first charge, he, by conjecture and anti-term limits predisposition argued that presidents may be demoralised at the consciousness that they will cede power at a certain, fixed time. Ipso facto, Hamilton inferred that a president’s performance may be negatively affected by such knowledge, the ultimate loser being the citizen. By the same logic, a president’s performance is upped by the knowledge that he is to continue serving, for the ultimate benefit of the citizen. Nonetheless, a psychological orientation that anchors on the hope of unlimited rule that Hamilton eulogised is unsustainable and undependable because unlimited rule itself may lead to complacency and subsequently to underperformance.

A president who is certain that his end is not near is in the most realist logic not likely to be a good president because then he will not feel the urgency to execute policies in time. Naturally, a person who does not feel the urgency of executing a task is likely to observe Parkinson’s Law, that is, he will

defer tasks and under perform in the process.[101] He may also advertently do piecemeal work in order to magnify his indispensability and in order to justify his re-election, which may come at a cost to citizens. For instance, a president who is desirous of continuing to rule, within the environment of no term limits, may improve a security situation, but deliberately refuse to cause a total pacification even when he has the means. Or, he may improve the socio-economic conditions of the people to levels that are appreciable, but when he could have done better. Such tactics may be used in order to create a basis for asking for more time to "consolidate" achievements. Vice versa, a president who is certain that his allowable time of service is fixed may work hard to complete his agenda for a country within the allowable timeframe—in order not to squander an opportunity to build his legacy.

On the point that term limits may entice a president to become corrupt, Hamilton was wrong because avarice is a vice and once avaricious, always avaricious. Avarice can neither be expanded by a short time nor abridged by a long time in office. In the former Zaire, Mobutu Sese Seko was for a long time never worried about losing his grip on power. However, he is reported to have stolen colossal amounts of State resources during his 32-year long spell in power. For example, by the time of his ouster, Mobutu is reported to have diverted to personal use 5 of the 12 billion U.S. dollars that was loaned to

[101] Parkinson's Law was formulated by NorthCorte Parkinson. It describes the patterns of behaviour when people are either given little time or much time to accomplish a task. The law states that "work expands to fill the time available for its completion." The law reveals the human tendency to procrastinate and to defer tasks that they would do faster, if they are given longer than necessary time.

the former Zaire by the IMF (The Guardian, 2004). In Indonesia, Suharto in his 31 years at the helm of the affairs of the State is reported to have stolen U.S. dollars 35 billion, while in the Philippines, Ferdinand Marcos is reported to have swindled U.S. dollars 10 billion in his 21-year rule (The Guardian, 2004). Since avarice is a vice, an avaricious president is more likely to steal less when there are term limits than when there are no term limits. Thus, it is rational to espouse term limits in a constitution in order to curb presidential avarice.

On the point that term limits impede continuity of policies and stability, Hamilton ignored the fact that some presidents make bad policies. By focusing on continuity, he assumed that leaders make only good policies, but he was wrong. Since leaders make bad policies also, the absence of term limits condemns the people to sustained bad policies when they are perpetually made, whereas term limits promise an end to them and a switch to the good ones that may be initiated by new leaders. The fear of the possible erasure of good policies upon the departure of a president who initiated them is unfounded because good policies are explicitly beneficial and are generally embraced because of their utility. It means that if they are discontinued by a new president, their utility will be missed, but only if the people allow that to happen. Citizens are rational people, however, and it is unlikely that they will not put up a fight against a discontinuation of good policies. New leaders are also rational people, in that, they do not want to be resisted or loathed by the people. As such, they cannot undo programmes initiated by their predecessors unless they are inimical to the needs of the people. Instead, new leaders will be forced to continue the good policies or even improve them.

There is much that is fundamentally wrong with the absence of term limits that Hamilton failed to fathom as he advanced his argument that term limits impede continuity of policies. Whereas it is true that the absence of term limits may promote the continuance of bad policies if leaders with poor judgment are continued in office and promotes the continuance of good programmes if leaders with good judgment are continued, the absence of term limits do a terrible thing: they inhibit the promotion of better policies that would be initiated by new leaders. There is a fallacy, however, that misinforms the Hamiltonists that democracy has inbuilt mechanisms that lead to the ouster of bad leaders, and that it is useless to legally limit the terms of a president if a society is democratic.[102] That is not obvious. It is a given that bad leaders have the means to sustain themselves in power if they choose. They have a range of devices they can employ to influence the outcome of elections in their favour. They can use intimidation, patronage, and voter bribery. They can abridge political space and curtail credible competition, can incarcerate their political opponents, and can gag the media.

Despite the inherent weaknesses of the arguments against term limits, the U.K., France, Germany, Israel, Australia, etc., as indicated already, do not uphold the notion of term limits. That, however, has not diminished their status as democracies. This has a confounding effect: do term limits matter or do they not? If they do, why don't most advanced

[102] "Hamiltonist" is here used to refer to people who oppose presidential term limits. The term is a derivative of the most renowned opponent of the limits, Alexander Hamilton, who in the Federalist No.72 wrote a scathing intellectual criticism against their insertion in the U.S. Constitution.

democracies espouse them? Vice versa, why did the U.S. find it prudent to enshrine them in its Constitution? First, as already intimated, term limits are not a critical component of the democratic ideal at present; and for this reason, a State is not undemocratic if it does not have them.

The most critical elements of democracy are: legitimacy of leadership characterised by regular, free and fair elections; accountability to the people; strong institutions; the rule of law, and separation of powers and checks and balances. In effect, it may be fair to argue that as long as a head of state or government enjoys democratic legitimacy (or popular support), is accountable, respects the principle of the rule of law, and does not interfere with the functional independence of State institutions; the length of his leadership should not be bounded. However, this view may not be ideal for all societies and situations.

Most African States espoused the notion of term limits in their constitutions after flirting with autocratic rule in the 1970s and 1980s. The post-independence African rulers before the 1990s were presidential autocrats who oppressed their peoples; thus, when democracy dawned, many African constitutions provided for the limits. This, as Mukholi (2015) has indicated, was partly driven by the fear that democratically elected leaders could also turn into autocrats with longevity. Term limits were, thus, inserted in the African States' constitutions in the 1990s to act as a sentry against a possible slide back to presidential autocracy. However, about a decade or so after adopting term limits, some African governments are trending away from them and reverting to timeless leadership. And whether the reasons for the slide back are good or bad, term limits do not seem to be popular with African leaders.

The Parliament of Uganda, by the Constitutional Amendment Act of 2005, repealed Article 105 of the Constitution under which the maximum number of terms a president could serve in that capacity had been fixed to two.[103] In 2015, Burundi's president, Pierre Nkurunziza ran for and won a third term, which the opposition in the country said was against the two-term provision in the country's Constitution. In October 2015, Rwanda's parliament voted to revise Article 101 of Rwanda's 2003 Constitution to remove the two-term limit.[104] The process was consummated by a referendum that was held in December of 2015 in which over 98 per cent of registered voters adopted the amended Constitution.

The President of the Republic of Congo, Denis Sassou Nguesso, engineered the removal of the two term limit from Congo Brazzaville's Constitution, which was adopted by a referendum that was organised on October 25, 2015 and

[103]The term limits were removed under controversial circumstances. There were allegations that President Museveni bribed the members of the seventh parliament of Uganda with five million Uganda Shillings each.

[104] It may be argued that president Kagame did not change the Constitution of Rwanda, but the Rwandan parliament, which repealed Article 101 of the 2003 Rwandan Constitution. Kagame himself on many occasions made public statements suggesting that he was not interested in a third term. However, there is no concrete evidence (save for his rhetoric) to suggest that Kagame was not interested in having the 2003 Constitution amended to allow him to pursue a third term. He tacitly encouraged the amendment by being non-committal on whether or not he would step down after the mandatory two terms. Moreover, President Kagame enjoyed majority support in the parliament of Rwanda, because most MPs belonged to his Rwandese Patriotic Front (RPF) party.

upheld by the Constitutional Court of the Republic of Congo on November 6, 2015. However, the referendum was boycotted by the opposition.

Further, many other African presidents have attempted, although in vain, to adjust their countries' constitutions to lift term limits. In 2014, Burkina Faso's president, Blaisé Compaore, unsuccessfully attempted to have Burkina's Constitution amended to lift the cap that it imposes on the number of terms a president can serve. In 2006, Olusegun Obasanjo of Nigeria attempted to adjust his country's Constitution to lift term limits but his plan was nixed by his parliament. Bakili Muluzi also attempted, but failed to change the Constitution of Malawi in 2002. Fredrick Chiluba, also in 2001 attempted to change the Zambian Constitution but was stopped by public protests and a rebellion from his own party. By the time this book was published in 2016, the Democratic Republic of Congo was still mired in the controversy of whether to change the State's Constitution to lift the presidential term limits or not.

Rugunda and Mbabazi's apology

The issue of presidential term limits is polemic on the African continent. Those who favour term limits advance inhibition of elected leaders from morphing into autocrats with longevity, and precluding incompetent leaders, as their reasons. Those for the lifting of term limits on the other hand argue that their absence allows competent presidents to continue serving until their incompetence, in which case they can be voted out of office.

They also contend against the idea that longevity of presidents may aid them to morph into dictators. In this

context, Rugunda at a conference organised in 2005 by the the Wilson Woodrow International Center for Scholars, argued that dictators always emerge with or without term limits because they do not respect constitutionalism or the rule of law. At a conference organised by the Royal African Society in London in May 2005, Amama Mbabazi, then the Minister in charge of the Defence docket in the Museveni government, toeing what appeared to be the official government narrative, also argued that tyranny and dictatorship do not need "third, fourth terms", etc., to manifest themselves. In other words, Rugunda and Mbabazi posited that there is no relationship between long rule and the emergence of autocracy.

Citing the examples of Kamuzu Banda of Malawi who was voted out of office in 1994, Mathieu Kerekou of Benin who was voted out in 1991, and Kenya African National Union (KANU), which was voted out of power in 2001, Rugunda further stressed that in case a person exhibits autocratic tendencies, he can be removed by the people if a society practices democracy. Amama Mbabazi at a dialogue on electoral systems in Africa argued that term limits are undemocratic if elections are held frequently (New Vision, October 30, 2008). Further, at the Royal African Society conference in London, Mbabazi assumed that elections have an inbuilt mechanism to remove bad or poor and incompetent leadership, and charged that the promoters of term limits seek to disenfranchise voters and to emasculate the power of the ballot.

Rugunda and Mbabazi's flaws

Rugunda and Mbabazi's views on term limits were intellectually accurate. However, the good effect of unsullied elections insofar as they empower the people to replace incompetent and tyrannical leaders is not universal. Some societies do not enjoy the luxury of unsullied, free and fair elections, which leads to the belief that term limits remain sacrosanct in those societies. Rugunda, at the Wilson Woodrow conference in 2005 was spot on: unadulterated, free, and fair elections are important in States without term limits. Indeed, the U.K., Israel, France, Australia, have frequently changed incompetent leaders, but have also sustained the competent ones until their level of incompetence. In the U.K., Margaret Thatcher led for three terms between 1979 and 1990 before being defeated by John Major; John Major led for only one term and was defeated by Tony Blair in 1997, who was elected thrice before resigning in 2007 evidently because he feared to lose the elections if he contested again.

The foregoing examples suffice to prove that term limits may be unnecessary. They are useless if elections can deliver desirable political results, namely; change of bad leaders and sustenance of good ones. However, as Mbabazi later admitted in 2015, the ritual of elections does not guarantee an end to incompetent and autocratic leadership that term limits are envisaged to stop, especially if a State is ruled by strongmen, or if the electorate is poor and ignorant. The existence of strong individuals makes institutions amenable to the individuals' interests. In the same vein, a predominantly poor and ignorant electorate is gullible, and easy to bribe and manipulate. If a State has such electoral conditions, it in no uncertain terms needs term limits.

The foregoing view is supported by Mbabazi's realisation of what powerful individuals can do, and how poverty can ruin the purpose of elections. Having argued in 2008 that term limits are undemocratic if elections are frequently held, he later in 2015 called for the reinstatement of the same in the Constitution. While appearing on the "Capital Gang" show of Capital FM radio,[105] Mbabazi said:

> *"I was a vigorous defender of the amendment of the constitution (to lift term limits). I had very many good reasons and I still stand by those reasons, but… experience is the greatest teacher; we have seen a lot of things come up that we had not taken into account at the time when we made these arguments…Democracy means people having free choice… However, from the experience of Uganda, I have looked deeply at that choice… What I had in mind is that people have a conscience in making choice; people have the freedom to make that choice. When you find yourself in a situation where people either are not conscious or when the environment is not conducive to that freedom, then they cannot make a free choice. If you are in a situation where intimidation, state machinery, corruption, bribery are used as a method of influencing people who live in abject poverty, then obviously people will not have a free choice. I think in our circumstances and until*

[105] Mbabazi made the statement on Capital FM, a private radio station based in Kampala, Uganda, after he left the Museveni government in which his last position was that of Prime Minister, and had declared his intention to run against his former boss, President Yoweri Museveni.

certain conditions exist for democracy to flourish, it makes sense to revisit this question of term limits. I actually think that in order to minimize the abuse of state power, term limits are the only solution…" (The Observer, 6 July, 2015).

By Mbabazi's own admission, he defended the repeal of Article 105 of the Constitution to allow for the removal of term limits on faulty diagnosis of the political environment in Uganda. Since different countries have different political environments, it is not prudent to make a blanket generalisation that term limits are useless in electoral democracy. They remain useful in certain environments. With respect to whether term limits emasculate the power of the ballot, Mbabazi was wrong. He sought to advance the view that it is unfair to both voters and leaders if some leaders are barred from contesting. To voters, their right to decide who leads them is taken away when some leaders are barred. To leaders, their right to offer themselves is frivolously denied. Nonetheless, the argument that the power of the ballot is emasculated was weak because there is no society that is short of talent. As such, voters can still exercise their right and choose from the many others.

Further, barring people from contesting elections is not a new thing. Most constitutions, for example, bar people with a criminal record from contesting elections. It follows that term limits do not in any way, emasculate the power of the ballot. In a related argument, Mbabazi reasoned that the limits lock out good talent and subsequently blurs the purpose of electoral democracy. On the fringes, the argument sounds intelligent. However, it is far from it because, instead of making opaque the goal of electoral democracy, term limits

promote it. The goal of electoral democracy is to enable choice of the best, not just good talent. What the absence of term limits does is that it promotes a continuity of good leaders and blocks best leaders. Uganda's experience serves as a nice fit.

In 1980, Museveni contested and finished a distant and embarrassing third, not because he was the worst leader, but because the people perceived him as such. Later, from 1986, Museveni proved to Ugandans that he was better after all. Obote's leadership was not inherently bad; it was good although inadequate, and his continuity curtailed the emergence of a better leader in Museveni. The future always produces better things, ideas, and of course, better leaders. It follows that maintaining one leader for too long cannot be a smart idea.

Term limits and diminishing human productivity

At the Royal African Society Conference of 2005, Mbabazi argued that developing nations needed to grasp the idea that to achieve the level of statecraft and good governance necessary to catch up with the rest of the world, they had to design and adopt systems that enable them to build a cumulative base of knowledge and experience, and that long experience in democratic governance helps to build young nations. This line of deduction is analogous to that made by Hamilton while bashing the sanctity of term limits. Mbabazi, in effect, like Hamilton, inferred that term limits are disadvantageous. However, this may not necessarily be true because of the operable law of diminishing human productive capacity. Inherently, people tend to be more productive in the immediate term, less productive in the medium term and counterproductive in the long term.

In the immediate term, they tend to work hard, with novelty and industry because they have impetus to impress, to win approval, to outperform their predecessors and to prove critics, sceptics, and pessimists wrong. In the immediate term, there is impetus and it is at the 'impetus stage' that the incumbent's own innovation and energy are high, and at which he encourages players on his team to be innovative and energetic. At 'impetus', the incumbent is a team player; not an overbearing veto player because he recognises his boundedness, finiteness, and limitedness, yet he is focused on delivering distinguishable output. Moreover, the incumbent is a team player because his rational 'antennas' are high, in that he knows that it is more profitable to harness the benefits of synergising (for his own credit), than going it alone. Thus, because of the impetus to achieve, the incumbent is keen on team cohesion, is tolerant to internal opposition and extraneous dissent because he is desirous of building consensus and maximising benefits from the same.

In the medium term, the novelty and hard work wane, as impetus ebbs and the incumbent stagnates. His input, industry, and teamwork stagnate, as does his motivation. The cause of stagnation is complacency, which arises when the incumbent is satiated, especially when he has 'stamped' impression upon his superiors, outperformed his predecessors, and proved critics, sceptics, and pessimists wrong. The medium term is a stage of complacency, and it is at this stage that the incumbent suffers from, and is affected by performance swagger and achievement imperiousness, which set the ground for stagnation. Stagnation sets in because the incumbent lacks the impetus to generate fresh ideas, and sees no need to maintain the broad base after he has achieved and subsequently lost motivation.

At this stage, the incumbent discards the team player and adopts the 'veto player' style. The incumbent recycles old ideas, sticks to old processes and procedures, and is predisposed to oppose any change he does not author. Although he may still have some energy to keep his team together, it is too little to keep it cohesive. The team develops fissures, and some players become disgruntled and ready to splinter. The incumbent is too imperious to be bothered by the cleavages in his team; and as such, he is in turn, prepared to estrange his maverick colleagues and to co-opt others who are amenable to him and his *modus operandi.*

In the long term, the centre can no longer hold, and things begin to fall apart. The maverick members are either sacked or they splinter, the team disintegrates, and decline ensues. The incumbent and the splinters, at once lose focus on the real task, and focus on petty, egoistic grievances and open conflict, which in the end are detrimental to the health of their organisation. Every effort becomes counterproductive and unravels past achievement. The organisation is at the 'decline stage'. During the period of impetus, the organisation, whether it is profit seeking, voluntary, faith based, political or otherwise, benefits immensely from the efforts of the incumbent. Here, the incumbent is needed, but after that, during the complacency/stagnation and decline stages, he becomes a liability and threatens to undo the spectacular work done.

Prudence, therefore, requires that since people tend to be more productive in the immediate term, less productive in the medium term and counterproductive in the long term, they should be replaced before they become counterproductive. This is necessary to avert the ramifications of conserving an incumbent to the level of counter productiveness, and to

harness the benefits of hiring a new incumbent regularly. In government and politics, people ought to replace presidents before they become counterproductive. This is doable through periodic, free, and fair elections. However, this path is bumpy in many countries including Uganda. First, people, especially in emerging democracies are rarely prudent to do the needful. They are predominantly agrarian, with low levels of literacy and with biting poverty, and therefore, may lack sufficient wits to 'sack' an incumbent before he becomes counterproductive.

Second, elections in Africa are seldom free and fair, the consequence of which is that it is nearly if not totally, impracticable to change incumbent presidents; and this is not because incumbents are more competent than their opponents, but largely because elections in Africa, generally, are not without huge flaws. They are usually slanted in favour of incumbents. Moreover, the worse absurdity is that when electoral processes are skewed to favour incumbents, turmoil, unrest, destruction, and death are likely to ensue—a further testimony of decline in the incumbent's performance. The idea of elections is discussed extensively in Chapter Fifteen.

Thus, as panacea for the foregoing 'ailment', it is prudent to draft a constitutional requirement to restrict the number of years any president should serve; and care should be taken to ensure that such limits do not generate the ramifications of the long-term service described above. A president can do in sixty years what he can achieve in ten years. Stated otherwise, what a president cannot achieve in ten years, he cannot in sixty years; therefore, after ten years, he may be a liability. This argument is based on 'Parkinson's law', which prescribes that 'work expands to fill the time available for its completion'. The inference of Northcote Parkinson's observation is that if work is doable in two years,

and is allotted that amount of time, it can be done within that timeframe. However, the same piece of work can take sixty years if it is allotted that latitude of time. Therefore, Parkinson is also in agreement with the concept term limits.

From the foregoing, there ought to be a reasonable timeframe within which a president should be allowed to work; being mindful that after that time, he may not be very useful. Certainly, to show a president the exit after an unreasonably short time is to lose the benefits that accrue from his impetus to deliver. Nonetheless preserving him for a long time is preserving bitter brew. Thus, term limits should not be too short or too long. The issue of overstaying in the same position is so serious to the degree that even presidents who do not retire early, do not keep the same lieutenants (civil and military) in the same capacities for as long as they are presidents. They keep shuffling and reshuffling their vice presidents, prime ministers, ministers and other public servants because they recognise the fact that people outlive their purpose, and that keeping a person in one position for long, turns them into a liability in the end. By shuffling and reshuffling, don't they testify against themselves that long-stay in the same capacity is detrimental?

CHAPTER THIRTEEN

The Judiciary in Uganda

The judiciary plays an interpretative, adjudicative, and a checking function. In line with this role, the judiciary settles disputes of civil, criminal, administrative, and constitutional nature between citizens, and citizens and government agencies or non-government organisations. Through the Constitutional Court, the judiciary can review and invalidate Acts of Parliament if they are in tension with the Constitution, and settles controversies of constitutional nature. It also through the High Court reviews actions of administrative agencies, or the actions and behaviour of State functionaries by ordering them to reverse a decision, or to perform a legal public duty. In doing this, the High Court has the ammunition of several judicial remedies including declaration, injunction, *mandamus*, *certiorari*, and prohibition.

Judicial review of legislative and executive action, which is in tandem with the doctrine of checks and balances was designed to stop both the executive and the legislature from overstepping their constitutional and legal mandate, to ensure that they work and act within the precincts of the law and the Constitution, in order to preserve the liberty of the people. It follows that the judiciary is a very important arm of government in promoting and protecting the liberty of the people. The independence of the judiciary is, therefore, sacrosanct because if it loses it the people also lose their liberties in effect. Nonetheless, the judiciary in Uganda is vulnerable to the intrusive power of the executive because of the way it is constituted.

The subservient position of the judiciary

In any democracy, the idea of checks and balances demands that the three arms of government should each wield enough power to deter the others, so that no single branch concentrates overbearing power, but each maintains such power that is reasonable and necessary for it to perform its duties. On the same note, checks and balances should not lead to one branch to compromise others or to interfere in their core public function. For this to come to fruition, each branch ought to be independent, thus, the judiciary's independence cannot be over emphasised and should not be permitted to get compromised. If it is compromised, the people's liberties and freedoms are staked. It follows then, with nothing equivocal, that the purpose of the independence of the judiciary is to protect and guarantee the inherent liberties and freedoms of the people if the legislature and the executive cannot uphold them.

The independence of the judiciary in Uganda is enshrined in the Constitution under Article 128. Clause 1 of the Article states that: "In the exercise of judicial power, the courts shall be independent and shall not be subject to the control or direction of any person or authority." However, by virtue of the current constitutional architecture in Uganda, which enables it not only to control the armed but also (and most unfortunately for the judiciary), to appoint senior judicial officers, the executive in Uganda has the leverage of seniority over the other branches of government. The skewed power distribution in government predisposes the executive to impose its will upon the rest of the members of the family of government.

Executive arms, especially a commonplace occurrence in Africa, more often than not, attempt to

compromise the indispensable independence of judiciaries. Thus, the judiciary in Uganda is not independent, and the main reason for the lack of independence is the power a president in Uganda has to determine who becomes judge or justice of what court. Armed with the power to constitute the judiciary, he can deliberately appoint political cadres or sympathisers to the bench if he chooses to act in his rational interest.[106] By the same logic, since the executive is a rational man, he may be predicated not to appoint those he knows are against his political ideology. However, there is a smokescreen procedure that requires the executive to appoint judicial officers upon recommendation by the Judicial Service Commission, which is ostensibly intended to undercut the executive's rational tendencies while appointing judicial officers.

Indeed, it is *res judicata* that the process of appointing senior judicial officers in Uganda is tripartite; it involves the Judicial Service Commission (JSC), the executive, and parliament. This settlement followed the attempt in 2013 by President Museveni to re-appoint Benjamin Odoki, against the advice of the JSC, as Chief Justice of Uganda after he vacated

106"Cadre judges" are judicial officers who have a predisposition to make judicial decisions in favour of government rather than on the merits of a case before them. In an interview with the Daily Monitor that was published on April 30, 2016, Justice Wilson Tsekoko who retired from the Ugandan judiciary where he served to the level of a Justice of the Supreme Court, admitted to the existence of cadre judges in Uganda's judiciary. He noted that cadreship in the judiciary is on the rise, and that occasionally, "you get some judgments and you can't understand that they are from judges who are supposed to be independent"

the same position upon attaining the age of seventy years.[107] A constitutional petition was filed in 2013 to challenge the decision by the President, in which it was argued in part, that the decision by the President to ignore the advice of the JSC violated the Constitution. The Constitutional Court held that:

> *"Under Article 142,[108] the Constitution provides for a tripartite procedure in which the Judicial Service Commission is required to compose a list of nominees and submit the list to the President. The President then makes appointments from this list and sends the*

[107] Article 144 (1) of the Constitution states that: A judicial officer may retire at any time after attaining the age of sixty years, and shall vacate his or her office-. (a) in the case of the Chief Justice, the Deputy Chief Justice, a Justice of the Supreme Court and a Justice of Appeal, on attaining the age of seventy years. The phrase 'a judicial officer may retire at any time after attaining the age…' (of retirement) above, seems to imply that the officers have unlimited time to retire. Nonetheless, the allowance is not unlimited. In fact, it is fettered under the same Article and for a specific reason. Thus, to avoid confusion, one also needs to read the provision under the same Article which reads that: 'but a judicial officer may continue in office after attaining the age at which he is required by this clause to vacate office, for a period not exceeding three months necessary to enable him or her to complete any work pending before him or her.'

[108] The said Article 142 states, in part, that: the President may, acting on the advice of the Judicial Service Commission, appoint a person qualified for appointment as a justice of the Supreme Court or a Justice of Appeal or a judge of the High Court to act as such a justice or judge even though that person has attained the age prescribed for retirement in respect of that office.

names to Parliament for approval. The President can only appoint a Judicial Officer from a list the Judicial Service Commission provides. It is therefore my considered opinion (that) the President cannot initiate the process of appointing any particular individual to judicial office. To allow such a process would be to undermine the independence of the Commission and in a way subject it to the direction or control of the Executive Arm of Government, contrary to Article 147 (2) of the Constitution." (Hon. Gerald Karuhanga Vs. Attorney General, 2013)

Nonetheless, as has been intimated in the foregoing and ensuing pages of this book, the executive has many avenues of circumventing the constitutional fetters placed upon him. For instance, he constitutes the JSC with insufficient checks. Under article 146 (2) of the Constitution,[109] a chairperson, a deputy chairperson, and four other members of the JSC are appointed by the executive without any checks. It is noteworthy that only three of the nine members of the JSC are not nominated by the executive. Overall, the executive has the biggest stake in determining who is appointed to the JSC. Although under the same Article parliament must approve the members nominated and appointed by the executive to the JSC, parliament may not reject appointees if the executive has influence on parliament through caucus politics. Thus, it is

[109] Article 146 (2) states that: the Judicial Service Commission shall, subject to clause (3) of this Article, consist of the following persons who shall be appointed by the President with the approval of Parliament. Clause (3) makes an Attorney General a member of the JSC by default.

easy for the executive to constitute an amenable JSC if he chooses to act with political rationality (or expediency). In effect, the rational instincts of the executive to constitute a compromised judiciary may not be fettered by the JSC.

Therefore, the executive can emasculate the judiciary by appointing more judicial officers that are sympathetic to a ruling party's political ideology, so that they decide cases in his or his party's favour in case a political dispute ends up in the courts of law, and as we will see next, appointment and allegiance are cordial concepts. If the executive appoints politically sympathetic judicial officers, which he can do in the prevailing political architecture in Uganda, the executive also inevitably enlists judicial loyalty from the judiciary in subsequence. In such cases, the judiciary is in fact subservient to the executive. The net effect is that the judiciary cannot be independent if it is constituted by and subordinated to the executive.

Popular election of Uganda's judges

In Locke's theory of a free society, a government cannot exercise any of the powers of public governance without the consent of the people. The idea of the consent of the people stems from the theory that in every free society, the people, not a ruler, are sovereign. Therefore, the legislative, executive, and judicial functions of government and their attendant powers naturally and originally emanate from the people. The legislative, executive and judicial functions, in Locke's view were exercised by individuals in the state of nature, long before the idea of a government was conceptualised.

In Locke's theory discussed in Chapter One, all men in the state of nature, that is to say, in their primitive state, were equal and free to do whatever they wished except as limited by the law of nature, that is to say, the common sense that being equal, no individual possessed the right to hurt the freedom of another person. The fact that men were free to decide what was lawful, although within the bounds of the law of nature and to act accordingly, made them legislators even before a government existed, and according to Vile (1998), this was the origin of the legislative power.

Locke also argued that man in the state of nature also possessed the duty to punish anybody who transgressed the law of nature, or the common sense that no man possessed the right to attack another man. Thus, when attacked, man in the state of nature had the power to execute the law by punishing the offender, which Vile (1998) has asserted was the origin of the executive power. However, both the legislation and execution of the law in the state of nature were intended to preclude injustice and to promote justice. Thus, it may be inferred that the cause of justice was part and parcel of man's interests in the state of nature, and it continues in the current age.

Of course, as indicated in Chapter One, the incapacity of man in the state of nature to effectively carry out the legislative, executive, and by inference judicial functions, gave rise to the need for a government to perform the functions on behalf of and in the interest of the people. Therefore, when Locke says that "Men being by nature, all free and equal and independent, no one can be...subjected to the political power of another, without his own consent...", as discussed in Chapter One, he effectively means that consent to governed through the legislative, executive, and judicial powers, is sacrosanct.

In the above regard, the Constitution is categorical and unequivocal with regard to the sovereignty of the people of Uganda and the need for them to consent to be governed. First, the Constitution recognises that all power, that is legislative, executive, and judicial power, belongs to the people of Uganda.[110] Second, it also declares that all authority in the State of Uganda emanates from the people of Uganda, and that the people shall be governed through their will and consent.[111] Third, the Constitution provides for the process through which the people shall express their will and consent to be governed. It states that: "The people shall express their will and consent on who shall govern them and how they should be governed, through regular, free, and fair elections of their representatives or through referenda."[112]

Concerning judicial power, the Constitution states under Article 126 (1), that: "Judicial power is derived from the people and shall be exercised by the courts under this Constitution in the name of the people..." This provision is actually misleading. One may think that the people consent to the judiciary to exercise judicial power over them, since the Constitution alleges that judicial power is derived from them. The fact is that the Constitution under Article 142 (1), which empowers the executive, the JSC, and the legislature to constitute the judiciary, expropriates the right of the people to consent to the exercise of judicial power, contrary to the sound philosophy of the sovereignty of the people and the consent to be governed that attends it, and Article 1 (1), 1(2), and 1(4) of the Constitution.

[110] See, Article 1(1) of the Constitution
[111] See, Article 1(2) of the Constitution
[112] See, Article 1(4) of the Constitution

The pretention that judicial power is derived from the people is based on the fallacious view that alleges that the people constitute the judiciary, albeit indirectly through the leaders they elect, namely; the executive and the legislators. The view is not only an affront on logic but also on the theory of the sovereignty of the people to whom all the power of government belongs. The people directly delegate their legislative power to the legislature, and that of execution to the executive through elections. They do not, however, delegate their adjudicative power to the executive or to the legislature, but the current practice leads to that conclusion.

If the executive and the legislature get their power to appoint judges, from the people, then it means that the people delegate judicial power to them directly when they elect them, which they sub-delegate to judicial officers. There can be no duty without the attendant power to oil the performance of the duty, and logically, the person with the duty to appoint is the only one who can devolve the attendant power. Thus, the executive and the legislature cannot appoint judges if they cannot devolve the attendant judicial power. The current practice that is legalised under Article 142 (1) of the Constitution seems to mean that the executive and the legislature possess judicial power, which they delegate to judges and which they can also withdraw. If it makes philosophical sense, then the practice places the judiciary in a subservient position, and contradicts the doctrine of checks and balances. It means that the judiciary lacks the necessary independence to effectively check the excesses of the executive and those of the legislature.

Further, the executive and the legislature cannot appoint judges without emasculating the sovereignty of the people. Moreover, the pretension that the legislature and the

executive appoint judges on behalf and on the authority of the people, which effectively means that they sub-delegate judicial functions and powers to them, blocks any possibility of judicial accountability to the original owners of judicial power, that is to say, the people. Nonetheless, it is not possible that the legislature and the executive also possess judicial power. They do not possess it and cannot, therefore, sub-delegate it. It means that the whole arrangement that allows the executive and the legislature to appoint judges is based of false logic and on a philosophy that lacks any sound intellectual pedestal.

Since all power, including the judicial power, belongs to them, the people must also delegate their adjudicative power to the judiciary. There is no reason that can be advanced to defeat the sound philosophy of the sovereignty of the people and their sacred and unalterable duty and right to give their direct consent to judges to exercise judicial power on their behalf. Of course, deriving power from the people means subjecting one's self to the will and consent of the people through the ballot. That is what the Constitution under Article 1 requires, and that is what the executive and the legislature do, and what the judiciary should be doing, but does not.

The foremost justification why judicial officers are not subjected to elections is that they, by virtue of their public duty, are supposed to be apolitical. As such, subjecting them to popular elections may blur their functional necessity, it seems. The fear is that their noble duty of dispensing justice independently and without political bias may be compromised, thus, their decisions may be in danger of being punctuated with political predispositions, which can in turn violate the established and necessary principles of fairness and impartiality. By contrast, the foregoing fear is intellectually unfounded. First, there is a distinction between being partisan

and being political. They are not the same and it is possible to be non-partisan, but it is not possible to be apolitical. To be political means to be interested in politics overtly or covertly.

Everybody is a political animal because all men affect and are affected by politics. Even those who do not actively participate in political affairs—for instance, those who do not vote, affect politics by their acquiescence because by abstaining from voting, they naively influence the outcome of an electoral process. For instance, if there is a political contest involving two candidates, and one candidate is competent and another is not, those who vote one candidate over another influence the outcome of the election in much the same way as the ones who think they are not political and as a result do not vote. If the competent one is elected, he will have been helped by the people who voted him as much as the people who did not vote but would have voted the opponent. Similarly, if the incompetent one is elected, he will have been aided by the non-participation of those who did not vote, but who would have voted the opponent if they had voted.

The above analogy is based on the premise that in an election, all people have a favoured candidate manifestly or tacitly. Even minors by bandwagon prefer certain candidates to others, which is testament that all people are political. The other proof is that nobody can live an entire life cycle without engaging in a political discussion or making comments about government policies (good or bad) and politicians (also good or bad). The reason that no human being can go an entire life cycle without mentioning politics is objective proof that all men are interested in politics. Thus, judicial officers, being human, are also political beings. Law and politics are inextricable fields because the people who make laws and those who execute them are politicians. Similarly, justice and

politics are also inextricable because judicial officers work in political environments, arbitrating and interpreting laws.

Thus, it is sound to opine that judicial officers are political animals because their judicial function entails the use of laws, which result from political processes. They also use laws to settle disputes of political nature. In fact, judicial officers have political leanings. As rational beings with a deep understanding of political issues, they have the potentiality of appreciating and incidentally, supporting one political ideal and ideology over another, one party over another, and one president over another, et cetera. The only difference is that because of the nature of their work, they are required or expected to suppress their political preferences, but this does not and should not take away the fact that they are political. They may be non-partisan, but because they are human, they are *ipso facto* political.

Thus, since judicial officers are political persons, they can engage in political activities, including subjecting themselves to popular elections if they are to derive their power directly from the people and to exercise it really on behalf of the people. They should also subject themselves to popular elections so that they may be accountable to the people like the other branches of government. Of course, concerns of partisanship remain. In the discharge of their duties, judicial officers are expected to be unbiased. However, can a politically active judge be unbiased in the discharge of his duties? The answer is yes. If they were unbiased when they were being appointed by the executive and the legislature, they will be unbiased even when the method of constituting the judiciary changes, that is, when they are subjected to the will and consent of the people. The reverse is also true. Nonetheless, judicial officers can and should be elected to keep

in sync with the philosophy of consent and the democratic idea of sovereignty of the people, and to obtain judicial legitimacy. They should also be elected to effectively secure the independence of the judicial arm of government from the power of especially the executive. They should also be elected to make the institution accountable to the people of Uganda.

On the last point above, the judiciary has the mandate of dispensing justice in order to resolve controversies and avert a resort to violent means; foster civil order; and make the law relevant to the interests of the people. No one else can form a clearer vision for these public interests than an elected judicial officer, and no one can be more accountable concerning them than a judicial officer given the mandate by the people to pursue them. The judiciary in Uganda is dogged with case backlog and corruption within the institution, which directly impair its ability to dispense justice effectively and efficiently. However, there is no one in the current structure of government in Uganda to account for the inefficiencies to the people. Nothing can be more unequivocal than the idea that popular election of senior judicial officers is the only pathway to make the judiciary independent, accountable to the people, and responsive to the judicial needs of the people of Uganda.

CHAPTER FOURTEEN

The Legislature

Political systems have undergone a process of evolution over the ages. The primitive political systems favoured either monarchies or no party governments, in which all power was concentrated in one person and his officials. In the era of absolute monarchies, all power of government, namely; the legislative, judicial, and executive powers were all vested in monarchs. Kings were sovereign and the people were subjects. This kind of configuration betrayed the purpose of politics because it bestowed excessive power on monarchs, as it subjugated the people. It was in this regard that philosophers like John Locke, Jean Jacques Rousseau, et al, challenged the political architecture of their times, which later culminated into the inversion of the monarchical political systems in Europe.

From the eighteenth century, revolutions[113] took centre stage; and kings, who claimed the divine right to rule—in complicity with philosophers like Robert Filmer and Thomas Hobbes, were ousted. The inversion of the European monarchical systems marked the end of the rule of the predestined, aristocratic, and highborn; and the beginning of the rule of the ordinary people. The overthrow of monarchies led to the emergence of no party or one party dictatorial political systems, such as the ones witnessed in France under

[113] John Locke wrote the "Second Treatise on Government (1690) in defence of the English revolution which occurred in 1688. Rousseau's work "The Social Contract" (1762) offered great inspiration to the French people who participated in the French Revolution, which started in 1789.

Napoleon Bonaparte, in Italy under Fascism, and in Germany under Nazism. In the 20th century, no-party dictatorships emerged in some African countries like Uganda under Idi Amin, former Zaire under Mobutu, Central African Empire under Bokassa, and a string of others. They, like monarchies, never tolerated neither opposition nor criticism.

In the post-independence era in Uganda, multipartyism prevailed up to 1969, when Obote banned political party activities. The wisdom behind the choice of the multiparty political system over the no-party or one party system resides in the fact that the former has a far better possibility of serving the purpose of politics, and is one of the building blocks of democracy. First, multipartyism recognises the fact that people are by nature different and have an immutable right to be. For that reason, they cannot be put in one "thinking box". People have an alienable right to freely associate and assemble with other like-minded people. It is a right that no person, party, association, organisation, or authority grants, and on that basis, no person or entity should expropriate. As such, every person has an inherent right to form and join social, political, cultural, or economic coteries that resonate with his persuasions.

Also, the political architecture spurs positive political competition and offers choice. Since the goal of politics (or governance) is to create an environment that allows people to pursue and attain happiness, and since each person knows what is best for himself, it is necessary that each is given a choice to pursue what he considers happiness to be. Thus, it is important that a political system allows people to exercise the right to choose—and the multiparty political system allows political parties to offer disparate ideologies from which the people can make a choice in line with their aspirations. Because each

party competes to capture State power and to keep it, each desires its ideology to be the best; thus, each works to design policies and programmes (in line with its ideology) that appeal to voters more than those of other parties. This way, the people stand to gain, at least in theory, since they are presented with an opportunity to opt for a party that presents the best ideology, and therefore, the best policies and programmes.

The first multiparty political dispensation in Uganda was, sadly, abused by the powers that be. Political parties advocated ethnic and religious hatred. They incited people against one another instead of uniting them. For instance, Obote of the UPC party, and an ethnic Lango is alleged to have made the anti-Baganda statement: "a good muganda is a dead one", which is proof of the existence of a vortex of tribal sentiments obtaining in the political arena of Uganda at the time. Thus, to implement the third policy proposal in the Ten-Point Programme of the NRM, that is, elimination of all forms of sectarianism, Museveni banned multiparty politics from 1986 up to 2006.

As a justification for the foregoing, Yoweri Museveni, the leader of the NRA/NRM, who later became Uganda's longest ruling president, reasoned that the multiparty political arrangement anchored itself on sectarianism, and that it in effect led to chaotic ramifications that buffeted Uganda in the aftermath of independence. He, thus, toeing that conviction, introduced the "movement system"[114], which was envisaged to be a large political marquee for all political actors under the innovative "individual merit" theory.

[114] The movement system was a no party system in which everyone was barred from participating in partisan politics. All who wanted to contest political offices did so under the system on the principle of individual merit.

However, this system was phoney, in that it caused a democratic deficit in Uganda, and was not sustainable because it incarcerated the people and forced them into one "political box". The "movement system" undermined the right of the people to be different, and to freely associate and assemble with like-minded people. The system also undermined the people's right to think differently and to meaningfully express dissent. Ultimately, the system, for twenty years stifled positive competition and the political advantages therefrom. Under the "Movement" political system, the people of Uganda were indoctrinated against multipartyism and pluralism, and were made to believe that political competition (on party basis) was unnecessary and that political parties were inimical to the development and stability of the country.

Yet, the role of political parties cannot go unmentioned in contemporary politics. First, since people think variously, political parties offer fortresses where people with dissenting opinions and views from those of a particular group, can break away to join those with whom they share opinions, and bond to express those opinions. In this regard, political competition facilitates a war of ideas, which helps to stave off a war of swords in case of a disagreement. Second, in David Easton's political system model, political parties play an indispensable role. Easton postulated that they articulate and aggregate the people's interests. The aggregating function of opposition political parties entails gathering the views of the people on a particular issue of national concern, and designing appropriate policy actions. Parties also communicate the views in the form of demands to the party in power. This may be done through various means, including but not limited to political rallies, demonstrations, through their representatives in Parliament, and by way of peaceful protests.

The articulation of alternative solutions by opposition political parties forces parties in government to be responsive, and helps opposition parties to hold parties in government to account for their actions, inactions, or acquiescence. It follows that the role played by opposition political parties is important in that they help to break political monopoly, which in turn pressures a party in power to respond to, and to adjust and align its programmes with the interests of the people. This is unlike in a single party or no party system. It may, therefore, be safe to opine that Uganda was denied these benefits for twenty years. However, in 2005, partly because of external pressure and partly because of mounting dissent within the NRM ranks, the Constitution, which had barred multipartyism, was amended to re-open Uganda to political pluralism (Rubongoya, 2007).[115]

The legislature in a multiparty architecture

Although many enthusiasts of multiparty politics in Uganda received the foregoing development with optimism, it has largely been a disappointment. Multiparty politics comes with its *sui generis* path, which if not trodden carefully is able to stifle the purpose of politics. Parliament, which is the main political battlefield in a multiparty political system is occupied by the people's representatives, elected mainly on party basis, albeit on individual merit in some cases. In the discharge of national duties, three types of interests umpteen times guide legislators. First, personal interests: members of the legislature are human beings with vested interests. Although they claim

[115] The first attempt to change from the Movement system was made in 2000 in a plebiscite in which Ugandans voted against the proposed transmutation.

that they seek to serve the people when they ask them to send them to parliament, their main incentive is to satisfy their personal interests. Provision of the public good is only a means to the real end of the legislator, and is only incidental to his private interests.

Second, party interests: legislators are usually elected on party basis in multiparty politics. Parties finance political campaigns of legislators who subscribe to them and since parties are trapped in invariant political competition for ideological and incidentally, political hegemony, legislators in a multiparty dispensation, project and defend their party position in the politically and ideologically stratified branch of government. However, that they promote and defend the interests of their parties in parliament is not because their private interests are disregarded. A party is an abstract entity that has no interests of its own. Party interests are, therefore, a coalescence of individual interests within a bigger forum of politically like-minded persons.

Third, national interests: these supersede individual and party interests, and cut across all people and parties. National interests are chief among all interests because their secession also ceases both personal and party interests. Issues of national interest indiscriminately affect everybody in a society, and it can be argued that such issues in the event that they arise, should unite all people across the ideological and political divide. However, deplorably, when an issue of national concern arises, individual and party interests are usually intermingled with it by politicians in Parliament.

In multipartyism, each political party is desirous of being seen as the champion of national issues, although the aim in such a desire may be to gain political capital, earn goodwill, and eventually win popular support, more than other parties in

the competition. Thus, all variables remaining stable, issues of national interest tend to end partisanly, a situation which may usher in political wars based on conflicting ideologies. It is imperative to state that ideological or party wars (not actual combat), whatever the case, are political wars about policy and governance. They are fought to resolve issues of who gets to have the last word in the affairs of a given territory. They are about determining whose ideas gain primacy in a political society, and which laws are made and in whose interest.

Since political parties always seek dominance, inevitably, on the basis of political expediency, their main goal is not to address public questions, but to gain hegemony over other parties in the political competition. If an attempt to address national issues is the means for political parties, a desire to clinch hegemony is their end. The laws that govern a political society come in handy because it is unfashionable and increasingly impossible, in modern politics, to govern without adherence to the principle of the rule of law. Thus, laws are an intimate aid and a political companion in fighting ideological and political battles.

This insight resolves the question of why major political battles are settled in the legislature and why political parties yearn to gain a commanding majority in the legislature. The legislature's functional call is to make laws around which the lives of the people may be organised. Conceivably, concerning public or public questions, the "workshops of law", that is to say, legislatures, in multiparty political systems are characteristic of invariant squabbles among legislators of opposing political groups. As the legislature manufactures legal regimes of a country, political parties represented feud over which laws are passed. However, legislative wars are not fought for naught. Political parties have a lot to lose and to

gain. As has been intimated already in this Chapter, governance in pluralist societies is about who gets the final say about the issues of a country, whose ideas gain primacy, and political parties are just about that. Therefore, feuds in legislatures are not just about laws that govern a political society, but about those that give a particular political party leverage vis-à-vis others in the governance of that society. Laws are about supremacy and balance of power. In the power politics of Thucydides' *history of Peloponnesian war*, those in power determine what is fair and what is not. (Green, 2000, p. 164)

Here is a lucid exposition of the above point: Consider the NRM party or the FDC party or the UPC, whichever may be in power. The party running the affairs of Uganda always seeks to draft laws with designs to entrench it more firmly in power. But, such a party cannot seek to entrench itself without subjugating other parties, since there is a correlation between dominance and subjugation. As a party in power seeks to up its leverage in relation to other parties in the political competition, it automatically seeks to narrow the political space of others by constricting their activities. The result of that is that when a ruling party gains such hegemony through a legal regime that accords it a commanding position, it becomes the only visible party.

Opposition parties do not want to see this scenario happen on their watch. They always put up a fight to preclude a party in power from doing its bidding, or as a strategic measure, to deny a party in government such leverage. This, opposition political parties in parliament achieve by seeking to pass laws that encumber the operations of a ruling party. In a politically stratified parliament, therefore, numbers count immensely, since parliamentary decisions are taken by the

majority, and also because every political party represented in Parliament always seeks to carry the day by pushing its agenda through and winning. Whereas a party in power may seek to make laws that give it leverage, and whereas parties not in government seek to push for the laws that limit that leverage, and since numbers determine which party carries the day, issues of party cohesion become crucial.

The cons of party caucuses in Parliament

The need for party cohesion in parliament justifies the existence of party caucuses. Caucuses are platforms through which party cohesion is sought for a unified position on a policy or a piece of legislation that is in the interest of the party so caucusing. However, sometimes maverick legislators may decline to toe an official party line agreed at a caucus meeting. Nonetheless, when a legislator goes against his party position for national interests, it is not because he is saintly, or that he is magnanimously interested in the interests of the people than his own. Rather, it is because his interests are better catered for by the collective interest of a country than it is by the interests of his party.

The phenomenon of caucusing may sound defensible, but from the angle of national interests and the common good, the caucus business, to say is obnoxious, may pass for an understatement. Voters have issues on the individual and collective bases they want fixed, upon which they base to elect a leader. In this regard, legislators are expected to engage in an open and free debate, employ their independent reason and judgment on behalf of their constituents, yet party politics demands party cohesion and the toeing of a party's official line. By divesting his right to think and express his thoughts

independently, this phenomenon does not only degrade the sanctity of the job of a legislator, but also sacrifices the interests of the people at the altar of party interests. This has caused Uganda grievous political harm because a clash of parties in parliament has degenerated too much, left one party as hegemony and relegated the aura of Uganda's politics.

The "Rebel" MPs Case

The so-called rebel MPs' case, however, brought a sigh of relief for democratic puritans in Uganda. In Ssekikubo & 4 others v. Attorney General & 4 others (2015), the Supreme Court of Uganda was asked to determine whether or not a Member of Parliament can automatically lose his parliamentary seat if he is expelled from his party. The case was of particular significance because it cleared the enigma relating to where an MP's primary responsibility lay; whether to his constituents or to his party.

The case arose from the 14th April, 2013 decision by the Central Executive Committee of the NRM, the party's top decision making organ, to expel four of its members, namely; Theodore Ssekikubo, Wilfred Niwagaba, Mohammed Nsereko, and Barnabas Tinkasimire, who at the time of parliamentary elections belonged to and were sponsored by the NRM. Following their expulsion, the Secretary General of the NRM wrote to the Speaker of parliament, Rebecca Kadaga asking her to direct the Clerk to parliament to declare their seats vacant in order to pave the way for the Electoral Commission to organise by-elections in their respective constituencies.

The speaker declined to declare the seats vacant, upon which the Constitutional Court was petitioned to determine

whether or not an MP can retain his seat in parliament if he is expelled from his party. The Constitutional Court held that:

> "*The expulsion from a political party is a ground for a Member of Parliament to lose his/her seat in Parliament under Article 83(1)(g) of the Constitution."* [116]

The MPs appealed against the ruling in the Supreme Court, which overruled the Constitutional Court. The Supreme Court ruled that:

> *"[I]t is the view of this court that once the four members were elected by their constituencies to represent them in Parliament they remained members of parliament .... by being expelled from NRM party, the four appellants did not vacate their seats... Therefore, by remaining in Parliament after their expulsion, they continued to be in the category of "members directly elected to represent their constituencies…""*

The crux of the ruling of the Supreme Court was a victory for the sovereignty of the people. The ruling released Ugandan MPs from the leash of party positions and built for them a firm

[116] Article 81 (1) (g) states that: A Member of parliament shall vacate his or her seat in parliament if that person leaves the political party for which he or she stood as a candidate for election to parliament to join another party or to remain in parliament as an independent member.

pedestal to enable them to take independent positions in parliament without the fear of losing their seats.

Unicameralism vs. Bicameralism

Uganda needs to have a real, meaningful, and independent parliament, which does not project party interests at the expense of the interests of the people. In this regard, the Constitution needs a considered adjustment because it is full of gaps that may be easily exploited for selfish and rational interests with great potential to encumber or obliterate the goal of politics. It is clear that caucuses can be abused for selfish gain if partisan legislators become interested in advancing party interests, which are in fact individual interests safeguarded within those parties. There is a need for parliament to be extricated from the spell of caucuses because they may be purveyors of the bidding of the executive if it wields influence on them.[117]

From the foregoing, it goes without saying that the legislature, which is the hub of legislative activity and a melting pot of diverse interests, may behove an internal system of checks and balances. Some States have benefitted from the imperative of checks and balances within the legislature. The architects of the political systems in those States realised the defects and inadequacies inherent in unicameral legislative systems such as the one Uganda maintains. According to Leacock (1921, p.161), "the unicameral legislature has been tried and found wanting. A single legislative house, unchecked by the revising power of another chamber associated with it, proves itself rash and irresponsible; it is too much exposed to

[117] See, "Party caucuses and the imperial president" in Chapter Eleven of this book.

the influence of the moment; it is swayed by emotion, by passion, by the influence of oratory; it is liable to a sudden access of extravagance or of retrenchment."

The idea of a unicameral parliament originated from France following the French Revolution. In 1791, the democrats of the French Revolution in the Constituent Assembly adopted a legislature of a single house after rejecting a proposal to unite it with an upper chamber, as it was in Britain. This, they rejected because they considered the British House of Lords as an aristocratic institution (Leacock, 1921). In 1848, the Constituent Assembly of France also rejected an upper chamber during the constitution of the Second French Republic,[118] on the same grounds (Leacock, 1921). Single chamber parliaments were also adopted in Germany in 1884, and in some states in the United States, such as Georgia, Pennsylvania, and Vermont—before they all reverted to two-chamber parliaments. It was, therefore, the desire to erase the vestiges of aristocratic governance, and to entrench the sovereignty of the people that inspired the creation of a unicameral type of legislature.

Nonetheless, as Leacock (1921) argued, the rationale for a unicameral architecture was hollow because bicameralism does not erase the sovereignty of the people, especially since a constitution can be configured to allow the people to elect representatives to both chambers of parliament. Instead, unlike its unicameral counterpart, a bicameral parliament guards against the tendency of members of parliament to promote

[118] The Second French Republic was established following the revolution of 1848. It occurred because the First Republic that had been established after the French Revolution did not meet the democratic expectations of the liberal republicans.

personal interests or party interests. Leacock (1921) at page 161 observed that members of a unicameral parliament "represent the opinions of the community at a particular moment and on particular issues. But the lapse of time and the appearance of new public questions may render a legislature such as this quite out of harmony with public opinion long before its term has expired." For the sake of safeguarding and promoting national interests, parliamentary decisions need to be subjected to checks to force them to conform to the interests of the people. In this regard, Countries like the U.K., the U.S., and Nigeria and most recently, Uganda's neighbour, Kenya, adopted the bicameral structure.

The United Kingdom's Legislative system

Unlike the unicameral system, which has one chamber, the bicameral legislative system boasts two, that is, the lower and upper chambers. If bills are passed in the lower chamber, they do not become law outright. They are forwarded to the upper chamber for further scrutiny and debate. This system serves the advantage that bills are not rushed into law with careless blemishes in them. They are subjected to scrutiny by the upper chamber before getting a final nod. Most political puritans are endeared to the bicameral parliamentary system because of the perceived internal regulatory function it plays. Like all bicameral systems, the U.K.'s was calculated to avoid the shortcomings of the unicameral system, including but not limited to: containing the promotion of personal interests or party interests at the expense of national interests, and curbing rash parliamentary decisions.

The novelty of the Westminster model, until 2009, of course, was that all the three branches of government

participated in legislative activities. Members of parliament, members of the executive branch, and some members of the judicial branch, including the lord chancellor,[119] all performed the legislative function. However, from 2009, following the creation of the Supreme Court of the United Kingdom, the judiciary is not part of the U.K.'s mainstream legislative system, which is structured in such a way that members of the executive are by default Members of the legislature. This is because the U.K. subscribes to the parliamentary system of democracy, whereby the people elect their members of parliament on party basis, and the leader of a political party that garners the highest number of seats in parliament becomes the head of government, or the prime minister. The person who becomes prime minister then forms a government by drawing ministers from parliament, who need not resign their parliamentary seats upon appointment. Thus, the executive is part of the legislature in the U.K. system.

Both the executive and the non-executive members of parliament together constitute the House of Commons—the Lower House of the legislature. But, as already stated, the judiciary was part and parcel of the legislative structure in the U.K. The U.K.'s senior judges, or the law lords as they were known, were part of the House of Lords, juggling between judicial and legislative functions. That the Law Lords represented the judiciary in the House of Lords, consequently

[119] A lord chancellor is a head of the judiciary in the U.K. and a cabinet minister, and was before the creation of the Supreme Court of the United Kingdom in 2009, a judge of the Appellate Committee of the House of Lords. A lord chancellor, therefore, before 2009 was all things: a legislator in parliament, minister in the executive, and a judge in court.

making them lawmakers;[120] they could not overturn an Act of the U.K parliament. The law lords constituted the Appellate Committee of the House of Lords, which also until 2009 doubled as the country's highest court in its judicial system. However, in 2005, the Constitutional Reform bill, which sought to divest the lords from the legislative arm, was enacted (Politics.co.uk). As such, the Appellate Committee of the House of Lords was abolished following the creation of the Supreme Court in 2009 (Politics.co.uk). It follows from this that the House of Lords does not accommodate law lords any more. As such, the Upper Chamber of the U.K. parliament is now composed of: (1) the Lords Spiritual, including the Archbishops of Canterbury and of York and other senior bishops of the Church of England; (2) from November 1999, 92 hereditary peers; (3) from January 1980, all life peers and peeresses created under the Life Peerages Act of 1958 (Das, 2013).

The legislative process in the U.K. is internally checked and balanced, in that, bills are ordinarily introduced in, and debated and passed by the House of Commons, although a bill does not become law automatically. If it should become law, the same must also be debated and passed by the House of Lords in the same form and content, before it can be submitted the Crown for royal consent.

[120] Although their primary function was judicial, the law lords enjoyed the right to speak and vote in the House of Lords in legislative matters. They also carried out non-controversial legislative work, chairing a number of parliamentary Committees, such as subcommittee E of the European Committee.

This, however, applies to some bills and not to others as (Das, 2013) has noted:

> *"The powers of the modern House of Lords are extremely limited—necessarily so... The House of Lords' powers are defined in the Parliament Act of 1911 and 1949. Under the 1911 Act, all bills specified by the speaker of the House of Commons as money bills (involving taxation or expenditures) become law one month after being sent for consideration to the House of Lords, with or without the consent of that house. Under the 1949 Act, all other public bills (except bills to extend the maximum duration of Parliament) not receiving the approval of the House of Lords become law provided that they are passed by two successive parliamentary sessions and that a period of one year has elapsed between the bill's second reading in the first session and its third reading in the second session. On rare occasions the 1949 Act has been used to pass controversial legislation lacking the Lords' support—including the War Crimes Act of 1991, which enabled Britain to prosecute alleged war criminals who became British citizens or residents of Britain."*

Nonetheless, the House of Lords remains important in the legislative process of the U.K. parliament. Its most useful functions are revision of bills that the House of Commons has not formulated in sufficient detail and the first hearing of non-controversial bills that are then able, with a minimum of debate, to pass through the House of Commons (Das, 2013). It

is further argued by some observers that the House of Lords performs a valuable function of providing a national forum of debate free from the constraints of party discipline unlike in the House of Commons (Das, 2013). Although a defeat of government legislation by the House of Lords has been relatively rare on major legislation, it has sometimes defied the U.K. governments, especially Labour Party governments. For example, the House of Lords defeated 230 pieces of legislation proposed by the Labour government of 1974–79 (Das, 2013). In the U.K., therefore, bicameral checks and balances limit the power of a politically expedient ruling party since party politics is restricted to the Lower House, at least in theory. Legislators who occupy the Upper House do not represent partisan political interests and are free from the grip of party caucuses and its demerits.[121]

Once a bill is passed into law, the U.K.'s judiciary cannot invalidate it. It has been noted previously that before the constitutional reforms that were initiated in 2005, the judiciary was not empowered to invalidate laws enacted by the U.K.'s legislature because judicial officers sitting in the House of Lords would have had an opportunity to shape the laws. However, even after the constitutional reforms, which were followed by the divestiture of the law lords from the House of Lords in a bid to somehow sever judicial and legislative duties and powers, the separated U.K. judiciary cannot invalidate laws enacted by the legislature. That is so because in the U.K., parliament enjoys the status of a legal sovereign. Therefore, the judiciary cannot invalidate laws enacted by the legal sovereign. The legal sovereign alone can unmake the laws it makes.

[121] See, "Party caucus and the imperial president" in Chapter Eleven.

The aura of the bicameral architecture of the U.K.'s legislature is that legislative politics with the attendant pursuit of party interests, in lieu of national interests, is restricted to the Lower House, and it can be effectively checked by non-partisanship in the Upper House. Considering that the Upper House is currently not stratified by political partisanship, it may be taken to be unbiased, impartial and nationally minded; and therefore, well positioned and armed with political sobriety, to counter-balance the hegemony of one party in the House of Commons when it crops up.

The United States' Legislative system

Like the U.K., the U.S. also has two chambers of parliament, namely; the Lower House or the House of Representatives, and the Upper House or the Senate, both of which make the U.S. Congress. However, unlike the U.K.'s system, both chambers of the U.S. Congress are constituted on party basis. The American bicameral legislative system extends a lot of latitude to parliament to collude with the executive, and to advance the interest of a particular party in certain situations. It means that the U.S. parliament is not invulnerable to negative influences from political parties or from the executive.

If a political party controls the executive and the two chambers of Congress, a possibility of collusion between the two arms of government is opened. In such a situation, the legislature is emasculated and is likely to be amenable to the executive if he holds sway in his political party. However, the architects of the U.S. political constitution anticipated such unintended consequences, and provided for a moderator, that is to say, the judiciary. The sanctity and need of the judiciary in

the U.S. political constitution was clearly explicated by Alexander Hamilton. He explained that: "A circumstance which crowns the defects of the Confederation remains yet to be mentioned, the want of a judiciary power. Laws are a dead letter without courts to expound and define their true meaning and operation" (Federalist No.22). The fact that the judiciary is needed to interpret laws and to define their operation, stems from the fundamental fact that sometimes the legislature and the executive collude to advance the interests of a party or of a powerful individual or individuals in the party, and to defeat the public good in the process. This is the logic of judicial review of legislative acts, that is to say, to uphold laws when they not infringe on the public good and to strike them down when they threaten it.

However, the fact that the U.S. political constitution places its hope in the judiciary is an indictment of the presidential veto power, which is the first line of defence against congressional excesses, but it is also an indictment of the U.S. bicameral legislature. It means that the legislature is not invulnerable to influences of party interests, and by extension, from those of the executive if he wields influence on a dominant party.

The ideal legislative system for Uganda

If a choice is to be made between the unicameral and bicameral systems, it turns out to be a frustrating effort because both systems cannot be relied on in their known forms. Although, the bicameral variety is more highly regarded by many political scientists, the unicameral, too if well adjusted, can be reliable. There are a number of interventions that can be made to alter the course on which Uganda's legislature is set.

Uganda may maintain the caucuses and the unicameral system, but if we opt for that, we must make constitutional adjustments, either to restrict the probable undue influence of dominant party caucuses or to discard the caucus business altogether.

It may be unnecessary to discard the party caucuses if they do not impose their tyranny over the legislature. However, if a choice is made to maintain the caucuses, then it goes without saying that, to preserve the independence of parliament, no one party caucus should be permitted to accumulate too much power to impose its will upon the entire institution of parliament, which may in turn bear ill effects on the country. A veto power cannot be a misfit here. It can go a long distance in effectively counter-balancing the hegemony of one political party in parliament.

The main question, however, is: who should wield the veto power? The two protagonists in a multiparty parliament are: (1) the leader of government business in parliament, who in Uganda is a Prime Minister, and (2) the leader of the opposition in parliament. This is in light of the fact that a speaker and a deputy speaker do not participate in voting, but are restricted to moderating debate and should *ipso facto* be disqualified from wielding the veto power. Also, a speaker and a deputy may both belong to a controlling party, which may make it easy for both of them to collude with the party and make it even more overbearing and a worse threat to the public good. If only one of the two persons vetoes a bill in the recommended unicameral parliament, that bill should be deemed unsuccessful or not accepted and should be revised and tabled again.

However, a veto in parliament should be used only if one political party controls both the legislature and the executive. If one party controls the legislature and another the

executive, then a veto power in parliament is useless because then collusion between the legislature and the executive is not possible, and the excesses of a dominant party in parliament can be trimmed by the veto power that the Constitution confers on the executive. A veto power in parliament is intended to make it independent from the spectre of caucus tyranny, which annexes the legislature to the executive. In order to prevent the possible abuse of the veto in parliament, its use should be restricted to clearly delineated circumstances such as those that prevent the abridgement of the people's freedoms, those that prevent the executive, judiciary, and the legislature from accumulating undue power, and those that give advantage to one political party or organisation. Once a veto is used, it should force a party that controls parliament and the executive, and opposition parties to negotiate until they reach an agreement.

The second option is an improved bicameral system through which independence must be secured by ensuring effective checks and balances between the two chambers of the legislature. Although a far much better arrangement than Uganda's current unicameral, the U.S. bicameral needs more tightening if it should be recommended for adoption by Uganda. In this regard, the ideal bicameral system will have to have a ruling party in one chamber and opposition parties in another, but both chambers must wield equal and offsetting legislative authority on all issues. The Lower Chamber should be reserved for a ruling party while the Upper be left for all opposition parties and both houses must agree on one version of a proposed legislation for it to qualify to be passed into law. Any attempt by one party to irresponsibly dominate the affairs of the country will be decisively dealt with because the two chambers will be acting as bulwarks against each other's

excesses. As a corollary, this will shelter the indispensable autonomy of parliament from the overbearing influence of the executive.

An intelligent question may be raised with regard to the above proposition: can't the opposition in command of a full chamber of parliament deliberately frustrate efforts by a party in government to promote the public good, and, can't a party in government, also in command of a full house of parliament, work to frustrate the opposition? To the best of what the intellect can avail, both sides of the political polarity are inherently interested in frustrating efforts that accord leverage to their opponent. Therefore, no political pole will seek to tinker with any efforts that do not give their opponents an edge.

Nonetheless, the attempts by one chamber to frustrate the other, is a necessary process of purification. The process of political jostling between the chambers will produce a solution to a public question that that is free of any open or insidious partisan or personal motives. This arrangement is the only sure way of extricating a two-tiered legislature from the negative influences of a dominant political party or those of the executive who has influence on a dominant party. Some scholars and writers have, however, suggested that the best way to prevent the negative effects of party interests is to restrict party politics to a lower chamber and in the same vein to free an upper chamber from partisan politics by constituting it with representatives from non-political constituencies, the way, for example, the House of Lords is constituted in the U.K. The proposal proceeds from the view that partisan politics prevent or abridge the promotion of national interests. Thus, it is necessary for an upper chamber to revise bills that are made by a lower house to remove from them narrow,

partisan elements, and that to actualise that, an upper house needs to be free from the grip of political parties.

Whereas the foregoing argument is attractive, it may be misleading. The fact that legislators in an upper house may be free from the dictates of party discipline that comes with party membership, does not extricate them from the fact that they have partisan political views and that their views direct their reason and decision making. It means that a legislator does not have to belong to a political party to be partisan or to take a partisan decision. It also means that legislators who sit in non-politically constituted upper houses actually make partisan decisions.

Thus, since no one is free from partisan views, there is no harm if an upper chamber is politically constituted. Nonetheless, there is a concern that relates to a possible political stalemate in the bicameral architecture that is proposed in this book. If a stalemate occurs, the issue should be referred to the people who should break the stalemate through a referendum. Alternatively, a stalemate between the upper and lower houses on a bill can render the bill unnecessary and not in the national interest and such a bill ought to be discarded.

CHAPTER FIFTEEN

Electoral Democracy in Uganda

On the basis of general State practice, democracy is an international norm, which umpteen States globally accept as a better form of governance.[122] In this regard, no State prides itself in being branded 'undemocratic'. China, for instance, which is largely regarded as such by Western democracies, rejects such a label and may claim to practice its "own" democracy. In fact, China has a constitution, which provides for the promotion and protection of human rights, elections, etc. However, democracy has generally accepted paradigms, one of which is the recognition that governmental authority is not divinely ordained, but granted by the people.

The foregoing recognition derives from the theory of the sovereignty of the people, who according to John Locke's philosophy discussed in Chapter One, possess the original duty to perform the functions that preserve their inherent freedom, that is to say, legislative, executive, and adjudicative, and incidentally possess the power that attends them, but which they delegate to a government, which must in turn perform the functions to promote their interests. Thus, the principle normative of the democratic ideal is that the people must consent to be governed. To this end, elections as a means of expressing that consent, and determining on whom the authority may be conferred are handy.

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[122] According to Aristotle, there are six classifications or forms of government: Monarchy, Aristocracy, Polity, Tyranny, Oligarchy, and Democracy. According to Baron Montesquieu, the forms of government are: monarchy, tyranny, and republic (aristocracy and democracy).

The Constitution of Uganda, in recognition of the reality of the right and the inherent power of the people to constitute a government and to grant governmental authority, provides for elections to be held at periodic intervals. The subject of elections is a contentious one, not only because it has multitudinous facets, but also because elections are the only means of legitimising authority. However, not all elections are legitimate. There is political and scholarly consensus that for elections to legitimise authority, they must be unadulterated. Of course, some States organise pseudo-elections in order to paint a picture of legitimacy for their rulers, which absolves the explanation given earlier in this book that human nature is intrinsically rational and self-centred; and as such, man has a proclivity for employing unscrupulous means in order to gratify his ambitions if not constrained. It is a rule without exception, and elections are not immune to such human impulses in the absence of realistic safeguards.

In an effort to cure the adverse ramifications that attend human rational choices as far as elections are concerned, there are universal standards, which define real and credible elections, and which subsequently give the effect of democratic legitimacy to a government. In this respect, electoral aspects relating to franchise, frequency, freeness, and fairness, give elections the character of validity or invalidity, depending on how they are observed.

Franchise in electoral democracy

I have written plainly in this book that the idea of elections stems from the idea of the sovereignty of the people, which according to Locke's theory means that no government in a free society can perform the functions or exercise the powers of government without the consent and will of the people, which are expressible through elections. The requirement to express consent has, however, generated debate throughout the history of representative governance as far as the question of who qualifies to express the consent is concerned.

Because the expression of consent to be ruled is the most important sovereign decision, in that it translates into giving up one's 'birth right' to govern himself to another person, that is to say, to a governor or government, the right to express that consent or the right to vote, which is franchise, cannot be made available to everybody. Although the author of the theory of the sovereignty of the people, John Locke, argued that all men being equal, no man ought to be placed under anyone's political power without his consent, it is necessary that some people are excluded from expressing such consent.

The foregoing is logical because sovereignty is not possessed by all men. Sovereignty means independence, and with independence comes the burden of maturity, capability, and freedom to make sound judgment. In this sense, Leacock (1921) at page 224 argued that: "[n]o amount of political dogma could make it appear reasonable that a ballot should be deposited by a two-year-old child or by an incapable idiot", and that: "That the principle of exclusion must be adopted is an actual if not a logical necessity." Franchise, therefore, is a very important aspect in elections, as it is controversial. The

controversy lies in the fact that a decision has to be made whether to avail the franchise to all people or to some sections of society, that is to say, whether it should be universal or limited.

In the early days of electoral democracy, the franchise in many societies was not availed to all and sundry. The French Constitution of 1791, in a bid to balance between the sovereignty of the people with the necessity of a limited franchise, divided the French people into those who possessed the legal right to vote or the “active citizens” and those who did not or the “passive citizens”. A person in the 1791 French Constitution qualified to be an active citizen and acquired the franchise when he paid annually a direct tax equal at least to the value of three days' labour (Leacock, 1921). In England, the right to vote was granted to rich land owners. A statute of Henry VI (1430) limited the right to vote in county elections to residents possessing a freehold worth forty shillings a year (Leacock, 1921). In the United States, in its early years of independence, the franchise and with it the right to be elected also rested on quite restrictive property qualification (Leacock, 1921).

It is deducible from the above that the franchise was availed in the early Constitutions of France, England, and the United States to wealthy people only. Given the conditions that obtained in those times, it is also deducible that women, slaves, and blacks, not to mention children and idiots, were not wealthy, and in effect did not possess the franchise.

Universal suffrage

It may seem that universal suffrage means the right of all people including men, women, idiots, lunatics, infants, minors, adults, convicts, and slaves to consent to be ruled. However, the word "universal" is actually misleading because there is no society that can avail the franchise to all people. Therefore, the franchise is universal insofar as it is not limited to the wealthy as it originally was, and to the extent that all people who possess the rational capacity and freedom to make sound political judgment exercise the right to vote. The doctrine of universal suffrage first emerged in the eighteenth century and was suggested by the Jacobins, or extreme republicans among the French revolutionists, though even among these only a minority considered that women should share in this "universal right" (Leacock, 1921). In the nineteenth century, the U.S. inched closer to the doctrine of universal suffrage when its constituent states abandoned the property qualification, which then allowed all adult white men to exercise the right to vote (Leacock, 1921).

However, the progress towards the "universalisation" of franchise in the United States excluded women and blacks. Black men were not allowed to vote until after the Fifteenth Amendment to the U.S. Constitution in 1870, by which no one was to be denied the right to vote 'on account of race, colour, or 'previous condition of servitude'. Women were barred from voting until 1920 when by the Nineteenth Amendment to the U.S. Constitution; the right of citizens of the United States to vote would not be denied or abridged "on account of sex". In England, women were only allowed to vote in parliamentary elections following the Representation of the people Act of 1918, by which women the age of 30 or above who met a

property requirement were allowed to vote. Not surprisingly, the same Act abolished property and other restrictions for men, and extended the vote to all men from the age of 19. The unequal franchise was eliminated in 1928 following the enactment of the Equal Franchise Act.

The reasons for the prolonged exclusion of blacks from voting were various. First, blacks were considered to be of subnormal intelligence, destitute of the ability to make sound decisions especially those that have serious implications not only for those who make them but also for other members of a society. Second, expressing consent to be governed is a preserve of free and independent men, because an unindependent and an unfree man does not have a will of his own, and does not do anything except one that his master sanctions. Blacks, being in servitude were not. Therefore, they could not vote until after slavery was abolished. As for women, it was argued that they were mentally inferior to men in the particular aptitudes required for the proper exercise of political rights (Leacock, 1921). It was also claimed that women were for the most part dependent for their political convictions on the opinions of a husband, father, or other male relation; they were thus already represented in an indirect fashion, and to give them a vote would unfairly duplicate the voting power of their male relations (Leacock, 1921, p. 227).

The fallacy of universal suffrage

Although the limited franchise was resisted, it may be sound to argue that limitedness has its usefulness. The foremost disadvantage of universal franchise is the proclivity it has for leading to the election of incompetent leaders. The present franchise is universal in the sense that all people who

are adults however each society defines adulthood, have the right to vote. The only exclusions are minors, convicts, and lunatics. Universal suffrage does not exclude the uneducated and the ignorant, yet although they are not completely irrational; their rational capacity to make sound political judgment is generally impaired. Universal suffrage has, unfortunately, in Uganda and Africa nurtured a false notion that democracy means that, to use Isaac Asimov's words, "my ignorance is just as good as your knowledge." (Asimov, 1980, p. 19).

In electoral politics, a candidate offers himself for election to fulfil his selfish interests; otherwise, he has no other motivation. Thus, although politicians invariantly claim that they join politics to serve the people, service is not the incentive, but only a pathway to attaining their primary and overarching goal. The real incentive of all politicians is the attainment of wealth, honour, power, or security. In the pursuit of self-interest, a rational political actor may act in two ways. He may propose sound programmes that potentially address the interests of the people as a basis of his election campaign. In substitute, he may choose to procure the election through vote buying, violence, intimidation, or other unscrupulous methods. However, both an 'honest' political actor and a sly one act out of self-interest, although the former is good self-interest that yields good social consequences, while the latter is bad because it yields deleterious social outcomes.

As rational political actors seek to expediently maximise political benefits, voters also, guided by rationality and the associated self-interest, seek to draw benefits from elections. Since the success or failure of selfish politicians in elections is dependent on voters' choices, voters ought to act more rationally in order to counterbalance the expediencies of

politicians for the greater public good. But, human rationality varies from person to person; therefore, some people may be predisposed to vote more rationally than others.

Whereas the more rational voters can aptly discern the negative self-interest of the less scrupulous politicians, who may give material and pecuniary incentives to voters to procure a win, the less rational may not discern the long-term ramifications associated with such manoeuvres. The less rational voters satisfy themselves less rationally because their rational limits guide them to think that instantaneous material benefits they obtain from bribes is the best there is from politicians.

However, voters of such ilk do not appreciate the fact that a politician who gives instantaneous material and pecuniary offers is a rational person who does so to maximise electoral benefits. Nothing matters how he achieves the benefits, and when he wins an election, he reimburses himself for the expenditure he incurred, instead of advancing the public good. In such situations, the real losers are the voters. They lose their right to be served by politicians when they win elections and constitute a government. The price voters pay for being less rational is that they forfeit the greater benefit by accepting offers of short term value. By contrast, the more rational voters do not base their decision on baits offered by politicians, but on sound programmes proposed by contesting politicians and their capacity to deliver things of greater and enduring value to the people who vote them. The more rational voters may accept the baits that may be offered by sly political actors, but the baits do not necessarily influence their decisions.

The disparity between voters whose rational quality is high and whose is low is resident in disparities in education,

knowledge, and information. Like lunatics and babes, the uneducated are not cognisant of the ramifications of, for instance, corruption. They do not mind voting a corrupt politician if he bribes them. No one can reason effectively without sufficient knowledge, information, and the ability to analyse pieces of information. The uninformed and uneducated do not possess the capacity and skill to effectively synthesise pieces of information that are necessary for sound political judgement. Ability to reason is a function of the type, level, and quality of education, and information one is subjected or exposed to. Thus, one can infer that the level of political ingenuity any person may wield is a combination of the three foregoing variables.

It is not uncommon for people with a background in political education to be better placed to comprehend and assess political dynamics than those from other backgrounds if other variables like the level and quality of education remain constant. Stated otherwise, assuming two people have the same level of education, yet one has a firmer background in political education or better access to political information relative to the other, the former may be more inclined to have more leverage in politics, and stands to be a voter of better quality than the latter.

Also, a disparity in levels of education between or among people creates a difference in their wits; thus, a senior four graduate cannot have reasoning qualities that are equivalent to that of a university graduate. Under normal circumstances, therefore, a graduate voter adds more quality to elections than a senior four graduate. A country is in an electoral trap if the majority of its voters have little or no education, and contestants in that community employ stratagem and sophistry. Further, if they use political and

economic baits on a dominantly less educated and poor population, that community is in an electoral quagmire. The decisions of the uneducated and the uninformed may blur the purpose of electoral democracy because there is a big likelihood that they may vote a less potent person, when the purpose of electoral democracy is to lead to the election of the most qualified.

Likewise, if a constituency or country is dominated by people with little or no education, and one of the contestants is of the same social status, and is competing with those that are educated, it is more likely that the less or uneducated candidate will be overwhelmingly elected. In any society, people tend to identify with others with whom they share characteristics. Thus, in elections if a population is predominantly less educated, people tend to make electoral choices based on, *inter alia*, colour, ethnicity, race, language, religion and socio-economic status because their level of rationality guides them to reason that their kind has a natural predisposition toward them, shares their interests and understands their plight. It follows from this that if a candidate is less educated and the majority of voters are also less or uneducated, he, instead of the educated candidates, is likely to get elected. What draws uneducated voters to an uneducated candidate is identity rather than capacity to perform.

However, the quality of an electoral outcome is not determined by the type and level of education only. The quality of education is too an indispensable variable. Taking into consideration the inviolable necessity of politics, the necessity of the quality of education obtained by both voters and politicians cannot be overstated. Politicians need creative and analytical skills to govern well and to be able to construct, intelligently and creatively, workable solutions to problems

that may face their voters. By the same token, voters must also possess analytical and critical thinking skills to be able to assess and choose the best candidate. If voters possess these qualities, they are likely to make electoral choices that transcend ethnicity, regional or religious considerations, as well as those that proceed from material and pecuniary incentives. Instead, they are likely to base their electoral decisions on one's capacity to properly perform public duties. Further, voters need the same skills and qualities to enable them to hold elected leaders accountable for their actions and inactions, or commissions and omissions. Therefore, it follows that it is a mistake to grant the franchise to uninformed and uneducated people in the name of universal suffrage.

If poor education explains the election of incompetent leaders, poverty is another factor that weighs in heftily to compound the situation further. Poor people are hungry people. All they care about is survival and for that reason, they are willing to trade their vote for anything that will extend their survival. In poverty-stricken societies, no candidate can win an election without literally bribing voters. He either procures votes or readies himself to lose elections. Nonetheless, a person who procures is a businessperson, whose goal is to maximise profit. Therefore, when political actors win elections after procuring votes, they work not just to recover their expenditure but to make a profit from the public resource envelop. Their ability to promote the public good is, therefore, impaired. Likewise, it is also a mistake to allow poor people to participate in elections because they are likely to abuse their sovereignty by making poor political choices. If a society is predominantly poor, it is likely that its collective choice will be poor, which in turn exposes the doctrine of universal suffrage and its ruinous effect to a society.

The typical Ugandan voter

Overall, the Ugandan voter is less rational. Generally, they cast their votes based not on the strength of politicians' proposals, but on their status, affinity, party affiliation, and money, or other like categorisations. The typical Ugandan voter lacks sufficient faculty to examine politicians' proposals. The ingenious-cum-crafty politician then finds it easy to ride on the backs of his constituents, and then with little intellectual effort finds his way into a public office.

It is absurd that voters in Uganda accept and solicit inducements from politicians. Unfortunately, it is an entrenched political culture in Uganda; voters make financial demands from politicians during election periods. The ill-consequence of the clientelistic relationship is that politicians gain more than voters do. Ugandan voters easily fall prey to politicians' devices because their levels and quality of education are generally low. The Ugandan education system, especially at the Ordinary and Advanced secondary school levels, prepares students to pass national examinations, and not necessarily to understand, explain, or analyse academic concepts.[123] The mighty textbook is utterly discounted and has been replaced with the oversimplified pamphlets, from which students simply "copy" material into their brains and "paste"

[123] The emphasis on passing is caused by the profit drive that schools pursue. The more the students pass, the better for a school's profitability, because schools attract even more students when they excel in national examinations. Thus, rational school proprietors concentrate of spoon-feeding students, and even cheating for them in the examinations. It is an adverse effect of the liberalisation of the education sector in Uganda.

the same on paper during examinations. The examinations test memory as they discard critical thinking qualities.

A country cannot hope to raise a critical and creative population when there is no conscious policy to train students to think independently and to challenge existing notions. A poor education system exacerbates the parochial and unilateral ways of thinking. The cognitive incapacity or imbalance, limits people's analytical abilities; thus, the cunning, sophist-politician is handed the leeway to toss the masses in his own direction.

High proportions of poverty may also provide a credible insight into the cause of less rational voting behaviour in Uganda. The majority of people in Uganda are the rural folks; and while there is prevalence of voter inducement in urban areas, the one that occurs in rural areas is incomparable in scale. If the people are not generally poor, they are difficult to compromise with doles. If they are educated, both formally and civically, they tend to employ their logic and reason, but tragically, this type is "endangered species" in Uganda. The largest majority of voters are rural folks with appalling levels of education and living in the mire of poverty. They also lack access to sufficient information to enable them to make informed political choices.

Politicians with ease, hoodwink the electorate through a cocktail of crafty deception, gifts, and at times sophistry. Any good scholar of democracy should tell that for democracy to bear its intended fruit, voters must possess some competences, which should include, inter alia, ability to grasp life's composite variables, knowledge of the functioning and purposes of government, and knowledge of prevailing public questions. It follows that a population that is predominantly

less educated and less informed is easy to excite by rational politicians, and such is a state of affairs that obtains in Uganda.

Zoning of suffrage in Uganda

One of the innovative ways of averting the ill effects of universal suffrage is to zone voting rights on the basis of the level of education. In fact, zoning is applied in Uganda, except that it does not relate to voting rights. Different political offices are discriminately preserved for certain people who meet defined education requirements. For instance, although insufficient, a person must have completed at least secondary school education or its equivalent to be eligible to run for president or for a member of parliament under the existing constitutional framework. A minimum academic requirement is certainly not for fun. It was considered by the framers of the Constitution because public management is complex and requires a sophisticated intellect, which education produces.

The excruciating experience with President Idi Amin demonstrated that the uneducated or less educated leaders are agents of political and socio-economic mayhem. If formal education is such an indispensable precondition for good leadership, should not the same be equally important for voters? It is not wishful thinking; an academic requirement is equally important for voters. Politicians and voters are not mutually exclusive; they have a symbiotic relationship because their decisions affect each other. If it is indisputable that an educated leader reasons, analyses, forms good judgment and consequently takes right decisions better than the uneducated does, the same should be true of voters because they ought to choose the best out of those who offer themselves for leadership, and thereafter to hold them to account.

The biggest cataclysm in democratic practice in Uganda today, is the unrestricted permission that is granted to the less rational to participate in elections under the skewed principle of universal adult suffrage. They impose their will with grievous irresponsibility in societies like Uganda where they are the majority. Because they are limited in reason, they are easily swayed by politicians' clever and fine speeches and money, and since it is numbers that count, the less rational in most cases vote undeserving people. This, of course runs counter to the purpose of democracy.

Electoral democracy was envisioned to yield the best leaders, but due to the idea of universal adult suffrage, it does not, especially in societies like Uganda. The United States, Britain, and France extended franchise and adopted universal adult suffrage responsibly. Therefore, developing democracies in general, and Uganda in particular, should not be misled because the levels and quality of education are high in the United States and other advanced democracies, but not in the nascent ones. In advanced democracies, the educated and the informed outnumber the uneducated and the uninformed.

There is little doubt, therefore, that the concept of universal adult suffrage seems to be a near perfect fit for them, but certainly not for Uganda. However, electoral politics is remediable and its sanctity is restorable in the developing world, including Uganda if the applicable principle is considered as discussed in the ensuing piece. The remedy for developing States, where the level of education is low and the quality thereof is a subject of contestation, is to match the thresholds of the levels of education of politicians with those of voters. If the minimum academic qualification for one to be president is a first university degree, then only those citizens who possess matching academic qualifications should be

granted the franchise to elect a president. This principle should apply to lower political positions respectively. The idea is to propagate a balance of reason between leaders and voters in all segments of the national political domain, in order to promote meaningful elections and vertical accountability.[124] The matching concept is best applicable in societies in which the proportion of the uneducated citizens outstrips that of the educated.

Even so, this may not be sufficient to up the quality of elections in isolation because, while formal education sharpens a person's ability to reason, it may generally be treacherous to be solely and exclusively relied upon. Highly educated people in mathematics, physics, economics, and other non-political backgrounds may not necessarily be politically conscious, their high levels of education notwithstanding. Their education does not translate into knowledge about their rights and duties automatically, yet a deficiency in any knowledge is a pathway to its lethargic application. Thus, it is important to weave civic education into the curricula of schools and to introduce compulsory and universal basic political education in all universities and other institutions of higher learning.

Uganda's educated generation, more than ever, needs to understand the functioning of government and the sanctity of active citizenship and civic participation, and this can only come to pass when the disconnect between students and politics is bridged. Universities and colleges of higher education in Uganda must have a sense of public purpose and civic assignment to help produce students, who do not only acquire knowledge in their fields but who are also committed to political issues.

[124] Vertical accountability is a type of accountability that is due from a government directly to the people.

Frequency of elections in Uganda

Contemporary politics, as already indicated, is not just about elections in the generality of the word, or about who should have the right to vote and who should not, but also about the rate of occurrence and recurrence of the elections. Regularity of elections is necessary for the purpose of evaluating performance, so that there may be extension or not of the tenure of leaders. As intimated earlier in this book, the goal of politics is to create conditions that enable the people to pursue happiness, and the goal of political leaders, in tandem with the ultimate goal of politics is to serve the people according to their aspirations.

It makes sense, therefore, if the people have an occasion on which they appraise the performance of their elected leaders. Even so, does it carry any weight when I suggest "an" occasion? Does it not mean once in a lifetime; a day on which the people in a given country assess the performance of their leaders? Undoubtedly, it seems to mean that, because the expression "an" denotes one and in this regard, one moment. But, such an interpretation is far from the sense intended in this book. One occasion is as good as unhelpful because elected governments subsist on the social contract basis—an expression of consent to be governed, which must be periodically reviewed.

Social contracts are a bit similar to legal contracts, but they are not necessarily the same. On the plane of similitude, both have elements of "offer" and "acceptance", which are fundamental ingredients in determining if a contract actually exists between parties. Social contracts, by their character are public 'agreements' obtaining between elected leaders and the people. Politicians and voters enter into such agreements by

way of promise and consent respectively. We already know that governments exist to allocate resources and values in society. On that premise, it becomes imperative that politicians, who desire to govern, obtain the consent of the people they seek to govern.

Even so, people who are desirous of ruling; therefore, who desire to obtain consent must convince voters to elect them. This necessitates the person seeking the consent to make promises to voters in respect of how he intends to govern; that is, how he intends to allocate resources and values. If the promises satisfy the people, they may consent to the rule of that person or that group of people. The promises become part of the terms of the contract to which the ruler is bound in conjunction with the laws of the country. In legal terms, the promises are the "offer" and the consent is the "acceptance" elements of the contract. The people express their acceptance by voting. However, the two types of contracts are not necessarily the same as stated already. For instance if there is a breach, the processes of arbitration are not the same.

The concept of elections is necessary in the social contract theory because it facilitates the process of concluding the contract. However, we are also cognisant that there is always a likelihood of one party breaching the contract, which gives rise to the need for arbitration. Arbitration in legal contracts is straight forward because legal contracts are normally put in writing. It is, therefore, possible for parties to agree in a contract what to do in case terms are violated, that is to say, the affected party possesses the right to be compensated, and if the liable party fails, the affected party can seek a judicial remedy. It is easy to enforce the terms of a legal contract in courts of law. However, remedy is not easy in case of a breach of social contracts. One cannot enforce a social

contract in courts of law because it has legal inadequacies that make claims of a breach unsustainable.

In electoral politics, there is usually more than one person contesting a political office, mainly under the aegis of political organisations, although some people contest on their own merit. As stated already, contestants run their campaigns by making promises and offers to the people. The people respond to those offers by voting, and a contestant who garners the highest number of votes in an election is the one whose offer the people will have accepted. This offer and acceptance, which the concept of elections facilitates, marks the conclusion of a social contract.

The main question then is: in the event that elected leaders renege on delivering their promises and offers, what legal remedies are available? There are legal hitches, as has been already intimated that with all certainty encumber enforcement of social contracts. The first encumbrance is that not all people vote the winning person or the party that forms a government; therefore, those who did not vote the winner cannot claim that a contract exists in a legal sense; they lack the acceptance element. Even so, the social contract theory maintains that there exists a contract, which is binding upon all the people, whether they accepted or not. However, the legal interpretation is very strict on the elements of offer and acceptance, which prove the existence of a contract. This, however, cannot be admissible in courts of law.

There is a need to prove the acceptance of all the people in order to qualify the binding force of the contract on all the people. This necessitates a person or a group of persons, whichever is applicable, to be voted by all people and to win an election with 100 per cent, to be able to create a contract that is binding on all people.

However, in a political society, the foregoing is impracticable. Courts of law do not recognise social contracts, but legal contracts. That is why in case of a breach of a social contract, no one can seek legal remedy. That said, what happens to the people who voted; therefore, who expressed acceptance? Don't they have a contractual relationship with the leader or government they voted? This lot cannot be helped by the legal dogma that underpins the concept of legal contracts either, especially when put in the perspective that a credible election must be by secret ballot. The secret ballot requirement, which undeniably is necessary, dictates a jealous concealment of each elector's choice. Because of the secret ballot requirement, there cannot be evidence that an aggrieved person or persons voted in favour of the breaching leader or government.

Therefore, it is impossible to substantiate acceptance of a social contract, a necessary precondition for enforcement of legal contracts. So far, we have seen that is difficult to sustain legal action with regard to breaches of social contracts. It is, therefore, unambiguous to suggest that voters deserve to have an opportunity to terminate the contract if they feel there was a breach. It is, therefore, also prudent, based on the need to have an opportunity to terminate a social contract, which of course is not terminable in courts of law, that the people have an opportunity. This opportunity is only possible when there is a requirement to renew the contract after a specific period, so that the people if they wish to terminate the contract can do so by voting leader or government out. On that basis, it is imperative to have regular elections. What is more? Lifelong leadership by the same leaders is the foremost and most known "brooder" of insurgence in Africa.

The instinct to rule is not a preserve of one or two people. Every political society has an umpteen number of people who desire to become leaders. It is, therefore, not superfluous to claim that it is essential to give hope to such people, and regular elections inspire it. The moment they lose sight of that opportunity, they will devise other means and ways to force their way into leadership. Succinctly, civil wars, revolts, and revolutions will continue to be read about, as history never stops to repeat itself if credible elections are not held on a regular basis.

The sense, therefore, in which it is stated that people need to have "an occasion", is that it is a time between known intervals of governance, rather than one time in a life span or indefinite intervals. The perfect interpretation then is that the opportunity to terminate social contracts has to occur at regular periods that have specific time bounds as a going concern. The aura of the democratic ideal is that it provides for that opportunity by requiring political societies, which profess its ideals to conduct regular elections. However, a political society ought to make serious consideration in respect of the idea of regularity of elections. A very long-term length of, say, fifty years can be as cataclysmic as a very short-term of, for instance, six months. While an unreasonably short term may hamstring an elected leader's ability to deliver, an unduly prolonged term may lead to a subjugation of the peoples' right to evaluate their government since delay may mean denial altogether and can heighten political impatience.

I cannot provide a standard yardstick for an appropriate number of years each term of political office should be, but practice suggests that the appropriate number of years in a term should range between four years and five years. This means that terms, which run in sub-fours and super-fives,

may ruin the purpose of politics. I would like to suggest that no amount of attraction or pressure should ever make Uganda to succumb to the temptation of resorting to the dangerous path of extending the number of years of the term of office above five years or collapsing it under four years. However, of course, those who have authority to change the tenure are those in government. As such, it is possible for them to adjust the number of years if it suits their interests. In view of this, government should be impeded for the good of the Ugandan society, by entrenching in the Constitution the number of years per term.

Freeness and Fairness of elections in Uganda

A concurrence of the selfish human nature, the attraction of political power, influence, and pecuniary gain, may drive political actors to abuse electoral processes. This human proclivity gives rise to the need to uphold the concepts of freeness and fairness of elections, in addition to upholding the concept of regularity discussed above. The cardinal purpose of freeness and fairness of elections is to produce the intended result, that is, a credible and legitimate rule, which truly proceeds from the will and consent of the people.

The calculus of the concept of free elections is to guarantee merit in an electoral process, and its rationale is to prevent leaders, who through crafty or coercive means would want to gain an unfair advantage over their fellow political players, and eventually impose their leadership on the people from doing so. Intimidation of one political opponent and his supporters by another is one such vice that discredits an electoral process.

The baseness of intimidation is that it prevents voters from freely expressing their democratic will. If unabated, two scenarios are likely to occur: First, the people may stay their vote on polling day; and second, they may be cowed into choosing a leader, not on the basis of the leader's abilities, but out of undue influence. Thus, the deployment of defence and security forces during elections should be done judiciously if elections are to be credible. Another dimension of electoral unfreeness is the unbridled employment of finances in elections. If vote buying in all forms, overt or veiled occurs in elections, it compromises voters especially the poor and blurs their necessary free will and consent in effect.

A compromised voter is a mindless voter. The bottom line is that an election will only serve its intended purpose if voters are free from coercion and compromise. In the event that an election is not free, victor political leaders impose themselves upon the people, and are not likely to pursue the goal of politics, of advancing the interests of the people. If an election is not free, conflict ensues. Post-election violence relates to unfreeness of elections. The vanquished who feel cheated may choose violence. These are some of the real problems facing Uganda and Africa. When Museveni decided to take to the 'bush'[125] in 1981, he cited electoral malpractice. Kizza Besigye, who in fact fought alongside him and served as his personal physician during what they called the war of liberation, now accuses Museveni of rigging elections, and as a result, he has undertaken a defiance campaign since 2011, with a human, economic, and political cost to the country.

[125] A Ugandan parlance employed to denote the armed disobedience led by Yoweri Museveni, now president of Uganda from 1986.

The Electoral body and a rational government

Just like in the case of judges as discussed already in Chapter Thirteen, the obligation and the power to constitute the Electoral Commission is resident in the executive. The framers of Uganda's Constitution, however, armed with the doctrine of checks and balances, provided for the compulsory approval of the commissioners by the legislature.[126] Thus, parliament through its appointments committee is required to vet the executive's nominees to the Electoral Commission to ascertain their suitability as per the Constitution before they can take office—to ensure that the executive does not derogate from the constitutional limits placed upon him when appointing commissioners.[127]

The challenge, however, is that although Article 60 (1) of the Constitution provides for a bipartite procedure of constituting the Commission, it leaves lapses that can be exploited by a rational president to compromise the

[126] The Constitution under Article 60 (1) states that: There shall be an Electoral Commission, which shall consist of a Chairperson, a Deputy Chairperson and five other members appointed by the President with the approval of parliament.

[127] The Constitution provides that for a person to qualify to be Chairman or a member of the Commission, they must be persons of high moral character, proven integrity and who possess considerable experience and demonstrated competence in the conduct of public affairs: Article 60 (2); must relinquish their positions upon appointment as members of the Commission, if they were members of parliament, members of a local government council, members of the executive of a political party or political organisation, or a public officer: Article 60 (5)

Commission, and subsequently render electoral processes unfree and unfair.

An independent Electoral Commission?

An electoral management body as an umpire of the electoral game, so to speak, must not only be fair, but must also be seen to be so. The Commission should not work for one side against another. Similarly, it should also not be seen or suspected to do so. In this sense, the Commission ought to be under some measured control to preclude it from acting outside its constitutive necessity and the law. Further, the Commission must also be allowed to be independent, if that is possible at all. Control and independence of the Electoral Commission is a delicate balance that the Constitution attempts to foster.

There seems to be a contradiction in terms regarding the necessity to have a Commission that is free from the direction and control of any person or body of persons as provided for under Article 62 of the Constitution, and the need to place actions and decisions of the Commission under judicial, executive, and legislative checks. In a strict sense, if a person is under the control of another, he lacks the liberty to act on his own or in accordance with his judgment, but in accordance with the will and judgement of another who controls him. Thus, it seems that it is impossible for the Electoral Commission to exist or work independently if the Constitution mandates the executive, the legislature, and the judiciary to regulate it.

Nonetheless, the conflict does not exist at all because Article 62, which provides for independence is not with any nuances as far as the extent of the independence is concerned.

The Article's end is to enable the Commission to perform its constitutional functions without being compromised by the executive, legislature, political party, judiciary or any other organ or individual, while performing its constitutional duties enunciated under Article 61 of the Constitution.[128] In fact, Article 62 does not make the independence absolute, but restricts it to the performance of the functions. This limited independence opens up the possibility of accountability, which is necessary but as discussed later in this chapter, it also exposes the Commission to undue influence in some instances, which in effect leads to desecration of electoral processes.

The judiciary exercises control over the Commission by reviewing its decisions. Judicial review is practiced in civilised societies to ensure the rule of law or compliance with the law. In this connection, Article 64 (1) of the Constitution provides for a judicial review of decisions by the Commission

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[128] Article 61 of the Constitution of Uganda states that: The Electoral Commission shall have the following functions—
(a) to ensure that regular, free and fair elections are held;
(b) to organise, conduct and supervise elections and referenda in accordance with this Constitution;
(c) to demarcate constituencies in accordance with the provisions of this Constitution;
(d) to ascertain, publish and declare in writing under its seal the results of the elections and referenda;
(e) to compile, maintain, revise and update the voters register;
(f) to hear and determine election complaints arising before and during polling;
(g) to formulate and implement civic educational programmes relating to elections; and
(h) to perform such other functions as may be prescribed by parliament by law.

in respect of election complaints arising before or during elections submitted to it by individuals, in which case individuals may appeal to the High Court if they are not satisfied with the Commission's decision. Further, Article 86 of the Constitution provides for a judicial review of a decision of the Commission in case of a disputed parliamentary election,[129] while Article 104 provides for a judicial review of a decision of the Commission in case of a disputed presidential election.[130]

As stated already, the Commission is not only subject to judicial control, but also to that of the executive and legislature. In this context, although it explicitly immunises the Commission against the functional control of the executive and the legislature, the Constitution provides for executive and legislative control over the Commission through their power to constitute and reconstitute it. The executive and legislature exercise control over the Commission through the power they possess to constitute the Commission under Article 60 (1), which with the obtaining political architecture makes the Commission vulnerable, especially to the executive.

Whereas the authors of the Constitution recognised the indispensability of the independence of the Commission, they fell short of providing for its effective actualisation, when they allowed an incumbent president-cum-candidate to

[129] Article 86 (1) (a) states that: The High Court shall have jurisdiction to hear and determine any question whether a person has been validly elected a member of parliament…

[130] Article 104 (1) states that: Subject to the provisions of this Article, any aggrieved candidate may petition the Supreme Court for an order that a candidate declared by the Electoral Commission elected as President was not validly elected.

constitute the Commission. In Uganda, the executive is the most powerful person and can influence almost everything or anyone. It follows that if the executive intends to run again for the position, he will seek to increase his chances of re-election through the Electoral Commission. As a rational person, he is likely to be inclined to consider the political affiliation of his prospective appointee. He cannot think of appointing a person or persons on the opposite political camp, but a person who shares the same political views with him.

Moreover, the positions of the Electoral Commission are themselves prestigious. Apart from the handsome remuneration that is attached to their offices, there is a huge opportunity for its officers to attain high social status. Therefore, successful appointees also have a lot to gain from the appointment. Owing to the fact that there are usually many qualified people, those who are appointed by the executive may consider the appointment as a favour, and will naturally feel indebted to he who appoints them. The feeling that they are the preferred and the desire by the appointing authority to gain political advantage creates a unique relationship between the officers of the Commission and the executive. The situation is not helped by the fact that the Constitution gives the executive the power to re-appoint the officers at the end of their term of office. Therefore, the executive, as a rational person can only renew the contracts of the officers of the Commission if they discharge their duties in ways that 'satisfy' him; otherwise, he has no other basis on which to renew them.

The concept of "satisfaction" has a strong nexus with self-interest common to all men. In the light of this, the executive will only measure the performance of his appointees as satisfactory, when and if that performance appeals to his political interests or if the performance does not disadvantage

him even when the Commission acts with neutrality. Electoral commissioners are rational people too, who know where the power that sustains them in their offices lies. Therefore, they act as rational persons to satisfy the interests of the one who appoints them, not because they want, but because the only way to cater for their interests is to cater for the interests of the appointing authority. It is, therefore, in the commissioners' best interest to serve the interest of the executive. These are inescapable human dynamics, which the framers of Uganda's Constitution failed to fathom or which they consciously ignored. The idea to give a president-cum-candidate the power to appoint the members of the Electoral Commission was misconceived and is seriously flawed because it does not only expose the Commission to undue influence, but also makes the whole electoral process unfair.

Even so, there are folks who may reason that the authors of the Constitution foresaw the possibility of the foregoing human selfish dynamics arising, and took care of them by mandating parliament to approve the appointment of officers to the Electoral Commission. One may fail to disagree with that line of thinking because it appears authentic. Indeed, the authors of the Constitution intended to secure the independence of the Commission, but, in making that consideration, they ignored many facets of human dynamics. For instance, they depended unduly on the premise that parliament will always be independent, even when it is eloquently clear that they did not place sufficient provisions to that effect.

The spectre of party politics as applied in Uganda presently emasculates parliament. Therefore, it is unreasonable to talk about parliament's ability to stop a marriage between the executive and the commission, when with the aid of party

politics as rendered already in Chapter Eleven, parliament itself is in such matrimony. The appointments committee of parliament, which vets and approves presidential appointees, has been and is still overwhelmingly dominated by the members of the NRM party, the same party whose present chair is also the executive.

Let us consider a situation where the biggest number of the members on the appointments committee, who when they have to vet appointed commissioners, are summoned by the executive in his capacity as chair of their political party to a party caucus, and one of the items on the agenda is the approval of the commissioners. In the caucus, they meet to find a common position that is in the best interest of their party. Therefore, if the caucus agrees that the appointments committee's approval of the nominated commissioners is in the interest of the party, then the members of the appointments committee of parliament who subscribe to the party, whose chair is also the executive, are predisposed to execute the party's position in concert with the position of the executive. If under these circumstances the executive's party has a commanding majority, it follows that the nominees may get automatic parliamentary approval.

It may be argued that caucusing is a democratic exercise and that democracy is about majority decision making—and that; therefore, it is perfect for the executive and the members of parliament to agree. Nonetheless, it is imperative to state that whereas the general rule of democracy is rule by majority will, it is not without exception. To understand why the general rule has exception, one needs to gain insight into the rationale of democracy.

Democracy as a form of governance emerged as a result of the rule by the powerful who dictated their will upon

others whether they were right or wrong. As a result, the ruled suffered under the tyranny of the powerful, and democracy emerged to stop it. In this connection, all dictatorship is unwelcome whether it is of the majority or the minority because it places its victims under tyranny. It is for this reason that John Locke, Jean Jacques Rousseau, Baron Montesquieu, A.V. Dicey, and others, opposed dictatorship and suggested a government that is limited in the exercise of governmental power. Montesquieu particularly suggested a separation of powers, so that power is not accumulated by one person or a particular group of people to tyrannise others.

It is for the same reason that the authors of the Constitution envisaged the necessity to place safeguards against a one-man show, and required a bipartite procedure of constituting the commission. The logic of having exceptions to the general rule of democracy, namely, a rule by majority will, is well captured by Jean Jacques Rousseau in his teaching on the 'General Will' as opposed to majority will. He stated as follows:

> *"[T]he General Will is not tantamount to the will of all citizens. Nor is it the sum of all individual wills or the expression of a compromise or consensus among them. Nor is it the equivalent of the will of the majority, for even the majority can be corrupt or misguided...The General Will is general, not because a broad number of people subscribe to it but because its object is always the common good of all."* Cited in Dunn (2002, p.10)

Therefore, to suggest that there is no problem if the executive and the legislature act in complicity is to go against the spirit of democracy and the Constitution. *Ratio legis est anima legis*; *cessante ratione legis, cessat et ipse lex,* or the underlying reason for a law is the soul of the law. Thus, if the reason outlives its purpose, then the law itself should be repealed or amended. If the spirit of Article 60 (1), that is to say, to avert a rule of one man is disregarded by a complicity between the executive and the legislature, then it is better to vary the Article to give it effect, or to repeal it altogether, instead of maintaining it when it does not serve its intended purpose.

A balanced Electoral Commission

It is not possible to have a neutral, let alone an independent electoral body. However, it is possible to have a balanced one. To state that there can be an independent Electoral Commission is to suggest that it should be self-appointing and should owe no allegiance to any person or body of persons. This would be pristine, but it is impractical to have a self-appointed agency. The alternative that has the promise of constituting an independent electoral agency is if the officers of the agency are subjected to popular elections. However, the challenge of lack of independence of such elected body abides because Uganda operates in a multiparty dispensation, which inevitably would require political parties to front the commissioner-candidates, which again is bound to make them partisan with the inevitability of eroding the independence of the commission.

They may be elected on individual merit, but such does not guarantee their non-partisanship, since having a political side is a natural whim that is not idiosyncratic to one

person or a handful of people, but a whim that is ingrained in everybody. People always have parties they favour, thus, since most electors in Uganda are less rational, and do not mind about checks and balances, the country may end up having a Commission that has more sympathisers and supporters of one political camp than that of another or others.

Concerning constituting a neutral commission, it is just a romantic idea. All men are political animals and there is nothing like neutrality in politics. Everybody supports a side. The best alternative is for Uganda to have a balanced commission. A balanced commission is one which has equal representation of political parties. A balanced commission that Uganda needs to counter balance a rational president is one, which is configured, consciously, to be bipartisan whereby every political party has a stake in constituting it by appointing an equal number of representatives.

There might be worries of the possibility of "politicising" the commission, but why worry? Politics is a good thing after all, and if it can be held thus, then there is no need to be wary of "politicising" the commission. The other advantage is that there will be checks and balances within such a commission, which might ensure the preservation of its sanctity. In the alternative, an incumbent president should be allowed to constitute the commission if he is not going to contest. If he intends to be a candidate, his power to appoint the commission should be spread to all participants in a race, including the president's political party, opposition political parties, civil society groups and the judiciary.

The unfairness of presidential elections in Uganda

Necessarily, elections, being the only legitimate means by which the people may express their will and determine their destiny by determining who governs them, it is imperative that no body, system, or law perverts the process. The essence of elections is political competition. In other words, one cannot talk about elections and leave out the element of competition because as the word suggests, to elect is to choose. Even so, one cannot talk about choice without one talking about variety. The concept of elections recognises the fact that different people have different preferences, and that different people have different skills and abilities.

In other words, it recognises the fact that some people are more talented than others are in statecraft. The rationale for elections in a political society is to give members of the society a chance to prefer and choose a person or persons they think is more talented than others in leadership. The concept of elections gives some people an opportunity to compete, as it gives others the opportunity to choose who they think is more knowledgeable, talented and armed with the best ideas. Elections, therefore, avail a contest of skills, talent, knowledge, and ideas regarding statecraft. However, competition must not only be free, but also fair. Therefore, there should be rules to regulate the conduct of competition in consonance with the principle of fairness. If an electoral process is perverted, that is if the rules do not adhere to the principles of freeness and fairness, one person will have undue advantage over others. The corollary of this is two pronged: Firstly, the disadvantaged candidates in a political race and their supporters may feel dissatisfied, which may brew violence and anarchy. Secondly, a flawed electoral process leads to the imposition of an unduly

advantaged candidate upon the people when he wins elections. Therefore, any credible election must conform to the principle of fairness in unadulterated terms. It is impossible and imprudent to talk about fairness without talking about 'squareness'. The 'squareness' of candidates is a desirable value, which espouses equality of opportunity and access to rights and privileges without discrimination in an electoral process. The principle of 'squareness' marries the requirement of a level playing field. In Uganda the legal machinery governing the conduct of elections, especially presidential elections are utterly out of square with the parameter of 'squareness'.

At the conclusion of a five-year presidential term, the incumbent if he chooses to run again for elections, is accorded the privileges that are due to the office of the president. Article 27 of the Presidential Elections Act allows a president running for re-election to use State resources, as it bars his challengers.[131] The incumbent is legally, but unfairly, entitled to the Presidential security detail, use of State helicopters and vehicles, and access to other State resources that other candidates in the race cannot have or access.

The apologists for the preferential treatment accorded to the incumbent may contend that since the incumbent is also during the electoral season still president, head of government,

[131] Article 27 (1) states that: "Except as authorised under this Act, or otherwise authorised by law, no candidate shall use government resources for the purpose of campaigning for election." Paragraph 2 adds that; "Notwithstanding subsection (1), a candidate who holds the office of President, may continue to use Government facilities during the campaign, but shall only use those government facilities which are ordinarily attached to and utilized by the holder of the office."

head of state, commander-in-chief of the armed forces and a fountain of honour, he deserves to be treated presidentially. Therefore, in the context of this thesis, it is unreasonable to think about compromising the president's security and comfort at any given time or season.

Indeed the presidency is a coveted position; therefore, innumerable people wish to be in such a position because the privileges and entitlements that attend it are magnetic. As such, some people wishing to be in the position may seek to eliminate the occupant of the presidency in order to occupy it themselves. Additionally, a president wields executive decision-making power, which he may use rationally, irrationally, in self-interest, or in national interest. In the executive decision making processes, there are intricacies, which by nature cannot permit any decision at any given time to appeal to all sections of a society.

Equally true, no decision at any given time can be too disgusting not to appeal to any section of a society. It is, therefore, innate that the executive's decision or decisions will always appeal to one section of a society and repel another section of the same society. The constancy of this state of affairs casts the security of a president on the line. Some people who may be displeased by the executive's decision may become indignant to proportions of seeking to eliminate the decision maker. Conceivably, there can be no more compelling reason to believe that it is unfair to compromise the security of a president. Thus far, the presidential security view and the squareness concept in respect of presidential elections are ostensibly irreconcilable, but the seeming contradiction is easy to resolve by logic. Therefore, the presidential security argument should not be fronted to defeat the noble concept of a fair electoral process.

Candidacy versus incumbency

The foremost way out of the intellectual impasse relating to presidential security versus electoral fairness, is in the need to resolve the Janus-face of president-cum-candidate in situations where an incumbent seeks re-election. In other words, one must draw a clear contrast between a president who indeed deserves security and comfort, and a candidate who seeks re-election. In no uncertain terms, a state needs to guarantee the security of its president without unnecessarily compromising or infringing on the need to level the playing field in the political and electoral arenas. In this respect, a president should be a president and a candidate should be a candidate, but not both simultaneously.

By implication if a president seeks re-election, or considers doing so, there should be in the legal instruments concerning presidential elections, a requirement to impel the president to resign his position before running again. That way, a political society champions the pristine concept of fairness in its electoral processes, and stops imposing on its people rulers who cheat their way to leadership positions through dubious means, which include organising unfair elections. Moreover, the foregoing is necessary because in societies like Uganda, the people especially the rural folk may not draw the distinction between a president in presidential capacity and a president in the capacity of a candidate during elections. What they may see in an incumbent is a person in a position of power and the only person able to solve their problems by virtue of the position he holds. Rarely will the people see an incumbent through the lenses of a candidate seeking to get their mandate to govern. This state of affairs enslaves the people to the incumbent, whom they regard so highly.

The cultic, omnipotent-problem-solver status, which the president-candidate enjoys, generally hoodwinks the common people to vote him. They also vote the president-candidate because of the splendour and grandeur, as well as the military and monetary power around him, which results in voters treating other candidates with contempt and as unequal with the incumbent. Uganda needs to address this anomaly urgently if it is desirous of organising fair elections; otherwise, as the situation and the laws stand, the State cannot organise a fair election when the playing field is not level. The rational government will carry on the habit that fetches it greater advantage and that which is highly beneficial to the governors. In order not to be quoted out of context, "rational government" as used in this book is not idiosyncratically used in reference to a particular government, but any government that draws excessive advantages at the expense of the population and other political players, whether in the present age or in the age to come.

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