

**The Essence of the Social
Contract Theory And Its Application To Modern Kenya.**

By

Betty A. Wambui,
Bachelor of Arts(Hons.)
University of Nairobi

A Thesis submitted in partial fulfilment of a Master of Arts in
Philosophy in the Department of Philosophy at the University of Nairobi

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DECLARATION.

I, Betty Angella Wambui, hereby declare that this Thesis is my original work and has not been presented for a degree in any other University.

Wambui.

DECLARATION BY SUPERVISORS.

This Thesis has been submitted for examination with our approval as University Supervisors.

Mr. Frederick Ochieng' - Odhiambo.

Frederick Ochieng' - Odhiambo
21.7.98

Dr. Jack Odhiambo.

Jack A. Odhiambo
21st of July 1998.

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DEDICATION.

**To the circle of Life, to the circle of Love.
To the bond between Mothers and Daughters. Mothers and Daughters.
To Grandmothers, Mothers and Daughters.
To Wambui. Njeri and Wambui.
To the past, the present and the future.**

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I am what I am mainly because of my family. They have constantly encouraged me to be what I want to be: to live my dream and always to be the best I can be. For this I will be eternally grateful. Indeed, I am especially grateful to my Mother - Mrs. Julie Njeri Njoroge and to my Grandmother - Mrs. Elizabeth Wambui Wanjama who pushed and shoved, convinced and cajoled so that I was able not only to dream but also to live the dream, it was worth it. This work is dedicated to them.

ABSTRACT

This work investigates the claim that the Social Contract Theory* is not only philosophically tenable but also philosophically preferred as an explanation to government and governance (Political Society). To prove this claim, opinion from Europe's Hobbes, Locke and Rousseau is juxtaposed with that garnered from interviews with African Scholars and Sages** such as G. Muriuki, P. Chitere and M. Wanjiku. Using these views as obtained from library and field research, an attempt is made to compare what might be referred to as Western and African positions.

Justification of this kind of an analysis is based partly on the Jungian claim that there exists a "Collective Mind" housing certain ideas that are universally shared. This thesis claims that human beings can access these concepts. Indeed, it suggests that some of the ideas are recalled and form the basis of theory and practice. Theories of this nature are said to be universal. Furthermore, it claims that the universality of such theories can be tested through an analysis of opinions and perceptions of particular individuals of diverse cultural origin and orientation. It is with this argument in mind and in the face of a tumultuous African Political situation that this thesis starts and concludes its investigation of the relevance of the Social Contract Theory.

This thesis allows that opinion solicited from different individuals and Societies on the subject might at first glance seem different. Such difference is however discovered to be merely superficial and due to for example, cultural or environmental factors. In actual fact, reflection reveals these positions to be essentially the same as they express different aspects of one idea. It is this essential sameness that this thesis calls "Essence" and seeks to express. That is, that distinctive aspect of the Social Contract that remains the same no matter how it is dressed by time or space, culture or inclination. The investigation is carried out in a number of stages.

In the first place, an attempt is made to reconstruct history (especially Political History). In this endeavour, ideas as to the reason Man moves from one State to another, why Man evolves certain institutions, are investigated. Reason it is suggested is to be found in Man's end to enter Civil Society by Civil Agreement. This conclusion is arrived at after research compares opinion from different individuals. When such opinion is very similar amongst individuals from one Community, it is taken to be a reflection of that Society's perception and that perception, one about a real phenomena whose form might be unclear. The practice and explication of the Social Contract Theory is therefore seen as an attempt to express a phenomena whose very existence is upheld by the presence of diverse opinion and perceptions on the subject as well as the fact that this theory presents a philosophically sound, logically coherent argument.

Secondly, this thesis identifies certain aspects as integral to the Social Contract. These are Authority, Legitimacy, Duty and Obligation. An understanding of these terms is considered imperative to an understanding of the theory and Society. Subsequently, an attempt to understand the function of these terms, their meaning as well as their relationship within the Social Contract is undertaken. It is found that these terms have very specific meaning and function within Political Society and that they cannot be defined outside the context of Civil Society in the Language Game of Political Theory.

In this work, the individual is seen as an important component of any theory if it is to have import. He is seen as the recipient of any ideas and benefits flowing from any system - theoretic or practical. This work therefore attempts to define then indicate the place of the individual in the scheme of the Social Contract. Two individuals are identified in this work: one real, one metaphysical - the human individual and the person of the State. Each has a specific place in the design of the Contract Theory. A certain balance between the two is demanded if harmony is to be established to enable the needs of each to be met. This work attempts to objectively establish this balance by describing and discussing the parameters of these needs in view of the Social Contract Theory.

While this Thesis finds no need to reconstruct the Social Contract Theory (since the concept is perfect as it stands); it does find a need to clarify its basic tenets, as well as the preconditions for its effective application. This is a task this work meets by way of "Conclusion". In the course of this endeavour, a need to investigate particular societies so as to specifically delineate the problems that beset them is identified. One solution is seen in the re-education of society, Kenyan in particular, African in general; if Society and Man's quality of life are to improve. Such a change can only herald good both for the individual and society as it would begin the process of perfection for both.

A set of philosophical arguments claiming that Political Society is a result of agreement between Men who then set up a governor-governed relationship
From the Kikuyu and Wanga Communities.

OPERATIONAL TERMS AND DEFINITIONS

Please note the following distinctions and definitions

1. **The Concept of the Social Contract**

This is a reference to the idea whose ideal form should be the object of governance. An investigation of this "form" is the subject of this work. It is also referred to as Covenant, Trust, Pact or Agreement herein.

2. **The Social Contract Theory**

A reference to logical arguments that seek to define and describe the phenomena of Political Society which they claim is a result of agreement (contract) between individuals to enter Society. Proponents of such a theory are often referred to as the Social Contractualists.

3. **Contract**

In this work, contract is understood to be an agreement between two parties or a number of individuals. Such an arrangement it is said; demands immediate gratification as each party is expected to fulfil their part of the bargain immediately. It is also an arrangement which once entered cannot be withdrawn from. Society in this work is seen as contracted.

4. **Civil Agreement**

Herein, Civil Agreement is distinguished from Contract. It is seen as an upgrading of Pact, Covenant, Trust or Agreement. Though similar to these concepts as its demands are met at different times by its adherents, it is superior. This is because it works within the Perfect State - the Civil State amongst perfected human beings - and Civil individuals. It therefore represents the improvement of the individual and society.

5. **Civil Society**

This is the ultimate state of perfection for Man in Political Society. It is Political Society entered voluntarily by individuals who are ego controlled rather than id or super-ego dominated. It is therefore characterized by Civility, harmony and balance in its demands of the individual and the individual's demand of it as it operates within the prescriptions of the Civil Agreement which is the ideal of the Social Contract attained.

6. **Contracted Society**

Individuals who have agreed to join together and live together in cooperation.

Note therefore that Contracted Society and Civil Society are two different ideas in this work. The former refers to Mere Society while the latter refers to improved Political Society.

7. **Suum Bonum - the Ultimate Good**

This is a concept that is borrowed from Ethics which adapted this phrase from Latin.

8. **The following terms when began with an upper case (or capital) letter, refer to the "general ideal" and the "particular" or specific when the first letter is lower case**

Law	-	law
Man	-	man
Political Society	-	political society
Social Contract	-	social contract

Consequently .

People :

Refers to the citizens who in unity form a Body Politic That is, individuals in covenant who acknowledge and seek the same or similar objectives. This is, an ideal People (unless it is in the beginning of a sentence).

people :

A reference simply to a number of individuals or a group of persons.

9. **Q**
This shall be equivalent to Question number and shall refer to answers as given by respondents in the Annex which is part of this document.
10. **Western culture, philosophy or perspective**
Along with Wairimu Gichohi (unpublished, 1996), denotes a culture, mentality or tradition which has its roots in the European continent in this work. Note that this work acknowledges the fact that there is no uniformity in thought or behaviour patterns anywhere in the world, however, this work also argues that certain levels of similarity form a good basis to associate particular patterns with certain groups of people.
- Similarly **African, Philosophy or perspective** is a reference to that mentality, culture or tradition whose roots lie in Africa amongst the African people. Once again note that this is not a claim to uniformity or lack of originality amongst the people so referred but merely an attempt to classify for purposes of analysis certain patterns of thought and practice.

CHAPTER ONE : RATIONALE OF STUDY.

1:1 Background To The Problem.

Claim

Africa, and Kenya is no exception, is a continent in a series of transitions and upheavals.

Explanation

In what may be referred to as the "Afro hang-over" transition from Traditional Africa to present day Africa, Africa attempts to cling to traditions of the past while trying to live in the present westernized world. A compromise of the two has not yet been found or adopted.

The African individual is entangled in the "Other-to-I transition". This is the transition from the Colonial personality to the present day personality. This is the transition much discussed by Frantz Fanon in his Black Skin White Masks. A study of this transition makes it clear that the African is insecure about himself and lacks confidence in his history and culture. Consequently although the African claims equality in difference with the White Man, he still feels, acts and performs inadequately in the political, economical and social spheres. The African has yet to find himself and be himself.

A further complication to the question of African and Kenyan development as well as the articulation of a National or maybe even a Continental philosophy is posed in the form of the "Un-understood mythical transition". This complication is epitomized in the transition occurring all over Africa where one Party or Military states are "converting" to the little comprehended but famous pluralist and/or democratic forms of state so popular in the West.

These transitions are made even more difficult by Africa's adaption of a large variety of foreign cultures. These cultures include Greeco-Roman, British (read European) and American. Worse, these transitions are occurring simultaneously.

All these factors make governing and government very complex

1:2 Statement Of The Problem

Given the dynamics of socio-political change witnessed in Africa, Kenya in particular, it becomes pertinent to harmonize the implicit contract that was in Traditional Africa with its more explicit version from the West that borrows heavily from the Contractualists ideas.

This harmony and synthesis might well answer crises of government and individual personality for the African Nation-States which seem to lack a base on which to build and develop a governor - governed relationship. It might also answer the existent need to clarify the currently foggy concepts of authority, legitimacy, duty and obligation paying particular attention to the individual's needs and the role in the scheme of government. This is the object of this project. Why?

As today's government is partially based on the western model, and this model borrows heavily from the contractualist, could the answer to Africa's crisis of government and governing be found in a revisit of the Contractarians? This thesis investigates this possibility.

1.3 Justification Of Study

The importance of this thesis obtains mainly in four ways:-

- (1) A philosophical construction or reconstruction of various contract theories that could well lead to the creation, the articulation of a new contract theory.
- (2) The attempt to create a new understanding of "the" contract of government in a manner both relevant and useful to Africa and Kenya. Relevant and useful in the search for and the development of Continental and National philosophies as well as helpful in the proper focusing of policy and development.
- (3) A clarification in terms of meaning and use of concepts and terms in operation today that is best done by an investigation of their original use.
- (4) A refocusing of attention towards the individual in policy and administration.

1:4 Objectives

A critique of the Contract Theories, their construction, reconstruction or deconstruction and or merging with a particular interest at the highlighting of their salient features, particularly their discussion of the individual shall be the object of this thesis

1:5 Hypotheses

This thesis sought to test the hypotheses that:-

- 1) The Social contract can explain the existence of various forms of government, their effectiveness, appropriateness or lack of the same.
- 2) The Social contract theories as they stand now are multifariously used and open to misunderstanding.
- 3) The African crisis of government is a result of improper understanding and use of the Social Contract, further; that this can only be resolved by a revisit: clarification and comprehension of the theory.
- 4) There is and can only be one proper Social Contract.

1:6 Methodology And Investigative Background.

There are several paths to tracing and establishing the need, presence or even lack of the Social Contract. This thesis takes the traditional mode of finding and justifying its need as well as its presence from and in the State of Nature. Several perceptions have been advanced regarding the State of Nature as is shown in Chapter Two. One might use the State of Nature as a theoretical model or as a historical reality. Though accepting the State of Nature as a theoretical model; this thesis proposes that history is always an individual or Society's perception of events which if objectively investigated and analyzed reveals their World view - their Philosophy. Consequently, this thesis beginning from the State of Nature attempts to investigate the following:-

- 1 Does the idea of a State of Nature exist in the African Mind?
- 2 Might this idea find justification either in history or its reconstruction of it in the form of myth and otherwise amongst Africans?
- 3 What is the basis of governance and subjection in Africa?
- 4 Do the relevant terms delineated in this thesis find space in the African Scheme of government and language?
- 5 What are the sources of these terms, what are their definitions and relevance, if at all?
- 6 What is the place and role of the individual vis-a-vis other individuals in African Society past and present?

In brief, what is the justification and operation of Political Society in Africa.

In this investigation, cultures are juxtaposed - African and Western. Hobbes, Locke and Rousseau are taken as representative of Western culture and tradition. Consequently some of their original works are isolated for intensive study

- * Leviathan - Thomas Hobbes.
- * Two Treatise Of Government. - John Locke.
- * The Social Contract - Jean Jacques Rousseau.

as part of this work's secondary research. Critiques by scholars such as Maurice Cranston, John Rawls and Frederick Ochieng'-Odhiambo are also investigated. As this work conducts primary research in the field, two sample groups are isolated for study in Africa - the Kikuyu and Wanga ethnic groups in Kenya. Justification for the selection of these two Communities is two fold. In the first place they seem to have had two totally opposed political systems - a Representative Democracy and a Monarchy, respectively. Secondly, their experience of colonialism is often painted as totally opposed by the conventional observer. Hence we have the Kikuyu as a resistance group and the Wanga as sympathizers in this view. In common is the fact that they are both African ethnic groups. If some sort of synchrony and harmony can be found in the midst of such seeming difference then it is the opinion of this thesis that the same can be found in the rest of the country and the continent. Also, the two communities seem to encompass the two kinds of experiences that ethnic groups went through during colonialism in Africa: experiences that have shaped the Africa that is today. If reason can be found in these experiences and their effects as seen today, then this might be a first step in the crystallization of a truly African Philosophy of government. A Philosophy that might validate or nullify academic belief in the justification and universal appeal of the Social Contract theory.

Within these two groups the age group fifty (50) and above is selected for interviews. This is justified by a number of reasons. Firstly, this age group is that which in Kenya has the closest experience with the eras that shall form a basis for our investigation. That is; with Traditional African Society, Colonialism and Modern Kenya. It is therefore from these individuals that this thesis shall seek facts, wisdom, experience, information; to enable the formulation of "An African's perception of the Social Contract". It will be their views, their opinions, their philosophies that shall be used to answer the question -

What has gone wrong - If at all - with African governance and subjection ?

It is important to note that in the course of research, what this thesis seeks is insight as to what perception there is regarding the Social Pact, government and the individual in Africa. It does not therefore specially go out to look for philosophers to interview. Instead, it merely seeks to talk to Kenyans who may offer an interesting glimpse of these concepts and by so doing answer questions that this thesis seeks an answer to. However - as is clear - in the course of research, there is revealed the existence of interesting thinkers and ideas in Kenya. It becomes clear that just as thinking is universal so are some of the great

philosophical ideas such as the Social Contract Theory. These ideas may be well articulated in the West but they are not unique to this Society. They are universal and form the source as well as the basis of much social edifice worldwide. This research reveals that solutions to a lot of today problems are to be found not just in new technological advances or greater material benefits which are all very good; but also in the application of knowledge already with us and within us.

The Delphi method is used in this research. It has however been adapted to suit the needs of this thesis. Consequently, instead of sending out questionnaires for responses and sending them back in instances where answers were unclear; the interviewer evolved a slightly new method. Hence, the interviewer met respondents, read out the questions to them explaining any section that sounded vague or unclear to a respondent. If a respondent wished they were left with a questionnaire. After a while the interviewer went back, discussed the questionnaire and a respondent's responses. If the respondent was willing, the discussion would be recorded. If in the course of transcription a problem arose for example lack of clarity or an avenue that had opened itself during discussion but was not fully explored then; the interviewer went back and held further discussion with the respective respondent.

Note that thirteen of the interviews were recorded while the fourteenth could not be recorded as batteries had run flat, there was no electricity in the area and the respondent was not even willing to be recorded. Also note that some of the interviews have been edited so as to omit as far as possible extraneous details. On the other hand editing might have been unconscious in the course of translation since some of these interviews were conducted in the respondents Mother Tongue or Kiswahili.

The advantage of the method that was used in this research is that a rapport was created between the interviewer and respondent. This meant that the respondents were willing to freely give their opinion while the investigation could be pushed to the limit. Also the constant visits made sure that the facts and opinions given were constant incase there was a need to cross check them. The questionnaire that was used is contained in Appendix.

1:7 Analytic Influence And Theoretical Framework.

Since this is a work of Philosophy, a discipline within which ideas and terms have long histories in the search for their specific meaning and significance by earlier scholars, it is only right to outline the influences that determine the author's analytic style thereby explaining the use of certain terms and concepts in this work.

Socrates' methods of intellectual midwifery² is used in an attempt to organize the ideas of this investigator. Consequently certain questions are addressed to the interviewees who are herein defined as both the Kikuyu and Luyia respondents as well as Hobbes, Locke and Rousseau whose works are for this purpose treated as interviews. By this method it is hoped that answers or at least direction to resolving the identified problems is found.

Plato's conception of the dualistic nature of reality³ influences the direction analysis takes in this work. This idea claims that what exists in the sensory world is merely "form". As Plato demonstrates in the allegory of the cave⁴, this form is not perfect. The ideal is not to be found in a world of forms which is that which we occupy. Rather, it is to be found in the world of ideas which is that which hosts what might be referred to as the perfect ideal. This author takes the liberty of merging this notion with that of Rousseau who claims that Man and Society are in the process of moving towards an end whose aim is "perfection"⁵.

Subsequently, the existence of various forms of Political Society and the working of various Social Contracts is found by this thesis to be merely an expression of the particular (form). This work therefore suggests that while there exist many particular attempts to express and experience perfectly contracted political society, there exists only one exemplar of perfect society in contract, one ideal to which man and Society aspire. It is this exemplar that is sought in the particular study of specific societies and practices Luyia and Kikuyu, in the individual works and opinions of Hobbes, Locke and Rousseau. This ideal is that which the author glimpses and attempts to describe in all its ambitions and limitations in the discussion of what Civil Society by Pact, Agreement, Covenant or more conventionally, Social Contract is - eternal and immutable.

From Aristotle is borrowed the concept of "potential"⁶. Contained in this idea is the fact that a thing cannot become what it is not; for example, a maize seed harvested as bean produce. Potential therefore contains not only the idea of extent but also that of limit. Accordingly, it is discovered that while Man contains the potential to be in a State of Nature, he also has the potential to progress from such a state into a better one. It is this potential and progress that is investigated to Man's final cause which is in this thesis identified as Civil Society.

It is also against the background of ideas by Averoes, Heraclitus and Jung that research and analysis is done. Averoes claims the existence of a Universal Mind, what Heraclitus refers to as Logos (equivated to Universal Law or Universal Reason); this it is claimed is catholic, accessible to all Men, a constant that remains in the midst of all inconsistencies, all flux, all

opposites; as it is the meeting point of all good and bad. This author sees these two ideas (Universal Mind and Universal Reason) as reaching maturity in Jung's claim of the existence of a Collective Consciousness⁹ which can be empirically ascertained by a study of dreams, mythology and cross cultural data. Such data shows an area of convergence in human thought which proves our sameness as a result of our being human and belonging to human society. Ergo, research indicates as this work attempts to prove, that the Social Contract Theory is one of those ideas that can be said to cross culture and to belong to the collective conscious in its perfection. The attraction of the Social Contract Theory is therefore seen to lie not only in its power to convince and justify Political Society but also in the fact that as part of the collective conscious of the human race, it cuts across the micro level of tradition which binds only on a family, village, tribal, National or even Continental level to the macrolevel where it makes sense to people of all walks of life.

If it is admitted that the Nation -State can be perceived as a metaphysical individual housing actual individuals with particular personalities, the ideas of Freud,¹⁰ can then come into play and are adapted by this author. On this basis, it is assumed that like any human individual, the State has a personality comprising of processes known as the Id, Ego and Super Ego. Using this breakdown, the id is said to contain our pleasure seeking, pain avoiding tendencies, all our basic drives and instincts. The Super Ego on the other hand is said to contain the demands of Society on us. Ego is that process that rises to realistically meet the demands of either the id or super ego when these conflict for the survival of a healthy personality and individual. The ego therefore acts as a sort of mediator or moderator.

Against such a background this thesis claims that Nation-States in Africa have failed to develop into healthy personalities. The Super Ego and its demands (for example duty, obligation, responsibility) are suppressed in favour of nurturing the id's basic instincts and drives (for example greed, corruption). Consequently a large part of Africa is Id dominated rather than Ego controlled.

This work is also influenced by Wittgenstein to seek meaning in language and communication¹¹. Both his theories of Language as a picture and Language as a tool are taken into consideration and utilized. In the language game of Political Theory and Government, this thesis seeks to find out whether certain terms identified as integral for example Authority, Legitimacy, Obligation and Duty wield meaning and if they do in which context. Furthermore, it is asked whether these terms express exact pictures of reality or whether they are used as tools with a variety of uses. Adopting the late Wittgenstenian stance, this work

identifies its duty as an attempt to clarify misunderstanding in the use of terms, clarification not by correcting words but rather seeking to understand them. That is; to know their function and purpose. As a result of this, a large part of this work takes a descriptive tone.

In the course of this investigation it is found that both of the theories Wittgenstein proposed hold merit and can be merged. It is found that indeed, the concept Social Contract brings to mind a particular picture of a specific kind of relationship within which certain terms such as duty and obligation operate. At the same time terms integral to the concept and the propositions within which they are used are found to be tools expressing a particular state of affairs. Indeed out of the context of Political Theory and Society as described in this work, it becomes clear that it makes no sense talk of such integral terms and concepts as authority, legitimacy, duty or obligation or even related concepts such as liberty, equality or sovereignty. It is only within this language game that these tools gain meaning and so can paint a picture which can be expressed and understood.

Note also that just like Ayn Rand¹² this thesis acknowledges the importance of the individual who is given special attention as it is admitted that the individual is the basic component of society. It is for the individual that all else should work if it is to be effective and purposeful.

All these ideas are used within the framework of the Social Contract Theory. This work identifies this theory as an arrangement within which individuals in Society agree to co-exist in order that their survival and preservation is ensured. It is the form and essence of this ideal that this work sought to identify in research and analysis.

Within the kind of schema described here, this thesis conducted research and analyzed results in the hope of producing a uniquely individual perspective¹³ and solution to the unique problem that is the African Crisis as described here.

ENDNOTES

1. Analytic influence and Theoretical Framework since ideas outlined in the section affect this authors perception but do not dictate the direction this work takes. Rather, analysis is based on a unique perception that is a mix of both these influences and the author's own disposition. The result is in the author's opinion a new original outlook which is a high breed of the author's experiences and the interpretation as well as novel utilization of the ideas presented here.
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8. Samuel Enoch Stumpf. *ibid*. pp 14 - 16.
9. Barbara Engler. Personality Theories : An Introduction: Houghton Mifflin Company, Boston, 1985. pp 70 - 100.
10. *Ibid*,pp 95 -100.
11. Refer to:
Justus Hartnack. Wittgenstein and Modern Philosophy: Maurice Cranston (Trans), Methuen and Co. Ltd, New York, 1965.
12. Ayn Rand. Atlas Shrugged: NAL Penguin Inc, New York. 1985.
13. A discussion and justification of the worth of individual opinions and perspectives, the influence of history on them, their influence in history, yet also their originality is presented in a paper entitled "History and An Individuals Point of View" by Prof. Proudfoot of Reading University as given in the University of Nairobi's Philosophy Department in December 1996.

CHAPTER TWO : THE NEED TO CONTRACT - The State of Nature.

2:1 Preview.

The object of this chapter is to trace the origin of the Social Contract and Contracted Political Society in Western thought.

Suggested herein is that the origin and need for these is to be found in:-

- * The Nature of Man
- * The State of Nature
- * The Nature of the State of Nature.

To prove the above suggestion, an investigation of Contractarianism as depicted by Hobbes, Locke and Rousseau is carried out. The role and place of the individual as well as the meaning of Legitimacy, Duty, Obligation and Authority in the State of Nature shall be investigated.

As this thesis suggests - along with Hobbes, Locke and Rousseau - that there are conditions inherent in Man and Nature, leading to the formation as well as formulation of Society and eventually of Contract, an investigation of these concepts shall be indulged in. That is, an attempt to discover where Society and Contract originate especially for these three philosophers shall also be ventured into.

In a discussion of the State of Nature and the Nature of Man, Hobbes, Locke and Rousseau seem and are often depicted as very different. Hobbes and Rousseau are often shown as having extremely opposite views. Locke often seems a moderate voice between the two. This thesis discovers that this is not necessarily true as the discussion below shows.

These three philosophers consider the State of Nature a viable idea. Consequently each of them uses it to explain and/or justify concepts such as the Nature of Man and the Social Contract. While both Locke and Rousseau discuss the State of Nature as if it is a past experienced - a historical reality, Hobbes uses it differently. Hobbes uses it as an analytical model that predicts the future. He uses it as an example of what could be if Social Structures were to break down. That is, is a gauge of what

would be if Social Restrictions were relaxed and Central Authority dissolved.

There is also marked contrast in their depiction and perception of Man in the State of Nature. Both Hobbes and Locke consider the Nature of Man in the State of Nature his true natural Nature. Rousseau considers this Nature (character) in the State of Nature his original nature or state not his Natural/True State or nature.¹

Hobbes, Locke and Rousseau use the deductive argument to discover and arrive at what the Original State of Man could have been. They all assume the existence of the Original State and from this deduce in reality the basis for Political Society and Obligation. It is in this manner - by assumption and deduction - that they attempt to study Society before the institution of Social Restrictions, Authority and thereafter.

Hobbes and Rousseau try to be scientific and analytic in their study. They therefore begin their analyses from the aspect of Man as a biological animal before observing him in Society. In this manner, they hope to discover and garner his true natural self. Locke prefers not to conceive of Man as anything less than human. He seems to think that he already knows Man's nature. He depicts this nature as special and different from that of a beast. A look at these philosophers views and depiction of Man and the State of Nature is appropriate here.

2:2 The Individual In The State Of Nature: A Comparative Study

(i) The Individual

Although Hobbes, Locke and Rousseau disagree on issues such as the characteristics of the State of Nature, the three agree that the individual is the single most important basic factor in the State of Nature. Hence for each of them, argument about the State of Nature, about the Social Contract and about Political State begin with the individual. Each of them investigates and describes the particular - that is the individual, before investigating the whole - Society. Each asks what the nature of Man was or is before asking the same about Society. They are in agreement that nothing comes from nothing; that the emergence of Society can be explained by an investigation of Man and that both the nature of Man and Nature find explanation in each other

superficially. Hobbes, Locke and Rousseau disagree on the nature of Man. Rousseau insists that Man is good. Locke suggests

that he is both good and bad. Hobbes claims that he is evil. However, it is clear that the three agree that Man is inclined to evil (and how can he incline to evil if he is not evil himself?). These evil inclinations, they inform us, are the source of war and insecurity both within and without the State of Nature.

Hobbes claims that evil inclinations are imbedded in the very nature of Man. And so he says "that in the nature of man, we find three Principal causes of quarrel. First Competition; Secondly diffidence; Thirdly glory".² That this: "Competition of riches, honor, command or other power inclineth to contention, enmity and War...".³ Furthermore, he claims that this continual competition creates ground for "envy, hatred and finally war."⁴

Although Locke like Rousseau denies the actuality of Man's evil, he has to admit this potential and eventually its reality. Thus although he attempts to depict Man as peaceful and good, he has no choice but to contend with the fact that contentions and quarrels do arise between men. It is this reality that is the basis of the right each individual has in the state of Nature to punish an offender, to be the "Executioner of the Law of Nature."⁵ For Men have the ability to transgress against each other and often do - particularly as regards property. Locke attempts to resolve this issue by claiming that when Men offend each other they act without reason and in so doing admits that they do act evilly. "With Enmity, Malice, Violence and Mutual Destruction" towards each other. With "force, or a declared design of force upon the person of another...".⁶

Similarly, however hard Rousseau tries to insist on or justify Man's original goodness, he has no choice but to admit that Man has "Insatiable ambition" which "Inspired all men with a vile propensity to injure one another, and with a secret jealous... In a word, there arose rivalry and competition."⁷

All the three, it becomes clear, agree that potentially or actually Man is inclined to evil, to selfishness and conflict. The difference between them is that Hobbes is overt in his opinion while Locke and Rousseau are covert.

In a like manner, although the three seem to disagree on the institution of family and Man's tendency to Sociability, a thorough reading demonstrates otherwise. Thus although Hobbes and Rousseau initially deny Man's Sociability, they cannot deny certain aspects of Man's sociability. They cannot explain away the existence of the family whether it is convenient to their theories

or not. Neither can they explain why the solution to Man's insecurity and fear is found in Society. In the end, implicitly or explicitly, the three agree that for whatever reason, family and society are important components of nature. They agree that Man, whatever he would like to be or how we prefer to perceive him, is a social animal, immediately or eventually dependent on other men.

For Locke, this dependence and sociability is merely part of Man's character, an aspect of Man's nature that needs no further qualification. Hobbes sees it forced upon Man by his need for peace and security. Rousseau conceives it a product of civilization and lust.

The three disagree on whether or not Man is originally a rational being. Locke and Hobbes agree that Man reasons right from his initial existence. On the contrary, Rousseau claims him originally foolish. However, Rousseau agrees with Hobbes and Locke that Man has access to reason which he (Man) eventually claims in the act of self improvement, of perfectibility which Rousseau deems integral to the nature of Man.

This notwithstanding, all agree that Man is special. Although men may use each other as instruments to an end - as in Hobbes and Rousseau - or as an end in themselves as Locke claims, the importance of the individual is never underestimated by any of them. Consequently Hobbes, Locke and Rousseau perceive all individuals in their dissimilar abilities and capabilities as equal and free. Furthermore, they agree that within and without the context of the State of Nature, the survival of the individual is imperative.

As Hobbes says, self preservation is "THE RIGHT OF NATURE... Jus naturale".⁸ Locke designates it a claim taught and assured to Man by reason as well as the "first and strongest desire planted in Man by God and Wrought into the very Principles of their Nature". While for Rousseau it is, as earlier stated Savage Man's sole and chief concern.

In the State of Nature, a situation within which Man though rational is on the main motivated by passions and instincts where van glory (Hobbes) and self love (Locke and Rousseau) rule. Morals and ethics are bound to be characteristically subjective and egoistic. The bottomline however remains the individual. He is to be preserved at all costs.

They all agree that in the State of Nature, there exists no central authority and that the absence of this is the root of trouble for the individual. Hobbes describes the circumstances this way: "that during the time men live without a Common power to keep them in awe, they are in that condition which is called War".¹⁰

Locke phrases his claim differently. Hence he describes the State of Nature as that where there is naturally: "no superiority or jurisdiction of one over another, what one may do in prosecution of that Law everyone must needs have a right to do" which leads him to the same conclusion as Hobbes that in the State of Nature there is no "Absolute or Arbitrary Power".¹¹ This situation, he says, easily degenerates into a State of war as there lacks "Authority to decide between contenders".¹²

Rousseau agrees with Locke and Hobbes that there exists no central authority in the State of Nature. For Rousseau the lack of authority is not felt. Indeed authority is not required until Society is instituted with the greed and introduction of property that accompany it. For "...everyone, before the Institution of law, was the only judge and avenger of the Injuries done him...".¹³

Consequently to protect and preserve the individual particularly from rule by the mightiest the three philosophers suggest government. Specifically, Hobbes introduces government to limit the various centres of strength so that rule by the strongest is actualized for the benefit of the individual. That is, to limit the variety of masters and so reduce fear and insecurity for the individual. Locke particularly desires government for the individual so that his property may be preserved. Rousseau on his part sees it as a way to maintain for the individual, his freedom. Ultimately therefore, they agree that in the State of Nature, the danger or actuality of right by might as actually or potentially the operative right, prompts change.

Hobbes, Locke and Rousseau accept the existence of God disagreeing only on what his exact status is. Thus Hobbes and Rousseau discuss Man, Society and the Social Contract almost wholly without reference to God. Yet Hobbes sees him as the author of Natural Law, as Sovereign and one with whom no contract can be made. Rousseau regards the Sovereign Creator as the foremost example of benevolence. Locke does not attempt to avoid or ignore the concept of God. Indeed he makes God central to his theory seeing him as the source of reason and the Law of Nature as well as the maker and creator of all.

Note however, that for the three, Man is to a large extent a free agent particularly as far as action and judgement are

concerned. Hence although Man's nature is inclined to evil, he is free to be and to do either good or bad. Although God is a real and powerful element in Nature, he does not interfere in Man's affairs to restrain or incline him in any direction. Even nature does not meddle or intervene in Man's affairs to enforce its choices. Rather, Man is, within reasonable scope, left to act as he desires.¹⁴

Subsequently, as Man is not restrained or directed by anyone or anything except his own nature, he creates by himself a situation of fear, insecurity and uncertainty for himself - a state that reflects his nature. This situation in turn creates a need for restraint. This individuals can attain only in a new circumstance. To create a situation of peace, of security, of contentment, Man enters Society and later contract - the Social Contract.

(iii) Conclusion

Though Hobbes, Locke and Rousseau begin on seemingly dissimilar premises their portrayals of Man have an uncanny resemblance. More than this is their conclusion which is the same. That is, that there is need for Man to be restrained if he is to attain peace and security. Ideally they suggest that this restraint of Man should be by a contract which the whole Society participates in. Indeed they seem to imply that it is by this contract that Man has been tamed and restrained. With this observation in mind, one might venture to suggest that the three are representatives of one school of thought - the Western tradition of thought. This suggestion - at least as regards the Social Contract - will be investigated further in the next chapter.

2:3 Relevant Terms - An Investigation In The State of Nature.

One of the claims this thesis makes is that the terms Legitimacy, Duty, Obligation and Authority are wholly tied to the concept Social Contract. It further states that a lack of comprehension of these terms leads to a misconception of Social Contract. This in turn leads to unstable Political Societies as is characteristic of modern Africa.

An attempt to understand these terms shall be ventured into at this juncture. The object here is to find out whether these terms have meaning out of Society - particularly the Contracted Society. As this thesis progresses, it shall also be enquired whether these terms change meaning or their meaning remains constant.

This analysis shall take place in two stages. As a start, the immediate meaning of these terms shall be taken from the Oxford Senior Dictionary. Secondly, the following shall be enquired: are these concepts utilized, consciously or unconsciously - in a discussion of the State of Nature as it has been presented by Hobbes, Locke and Rousseau? If so used, how?

i) Authority

Authority is said to be either - "Power or right to give orders and make others obey or take specific action, person (OR) group with such power."¹³

From this definition it is important to note that authority has to do first with ability and secondly, "the other". Important also is the fact that authority embodies the ability and/or right to make "the other" obey one or act because one asks it of them.

One identifies two sources of authority in Hobbes' State of Nature. First, the strongest individual. [This depending on the circumstance could be brute strength (that is brawn or muscle) or brain strength (that is intelligence or cunningness).]

Secondly, biological - The Father. [The Father as by reason of Biology and Nature is always strongest for a period in this unit, stronger than for example the pregnant or newborn].

Both of these sources are fluid. That is, the strongest is never strongest forever - he grows old and weak, neither is his particular skill sufficient in all instances. He can demand and make others obey him only for a while. If another, stronger than he emerges, authority changes hands. Similarly, the Father is never the father (strongest) for life. He is only a figure of authority while the children and mother are dependant on him for sustenance and protection. The centre of strength in Hobbes' State of Nature is never permanent. These centres seem to represent power rather than right.

Locke identifies God as the overall irresistible permanent figure and source of authority. Without God, a figure of authority lacks in his State of Nature.

Rousseau is seemingly unclear about sources of Authority in his conceived State of Nature. Despite this, a good reading of his work reveals that, might is translated into right and authority. As Rousseau's Savage seeks peace, he allows the stronger to take what he (the stronger) desires if it is not an absolute necessity to the weaker. Ability to ignite action thus lies in might

Like in Hobbes, authority is fluid. No single individual is always the stronger or the strongest. Consequently the source of power and so of authority shifts often.

ii) Legitimacy

Legitimacy is a term derived from the word legal. That which is legal is that which first of all is "of or based on the Law". Secondly it is that "in accordance with Law. Authorized or required by Law".¹⁶

Hobbes accepts the existence of rights - *jus naturale* - in the State of Nature but not of Law. This being so, nothing can properly be called legitimate in his conceived State of Nature as nothing here is "in accordance with the law or rules"¹⁷

In the state he describes, there are no laws to regulate and, or demand standards of behaviour. Similarly, there cannot be illegal actions, as actions here do not require justification nor have they been defined as right or wrong, legal or illegal.

The existence of both rights and law in the State of Nature is denied by Rousseau. Hence, as in Hobbes' work, Legal and the term illegal, legitimate and illegitimate have no meaning.

From Locke, who states that in a State of Nature God gives Man reason which in turn allows Man to discover the Laws of Nature; might the meaning of legitimacy in this State be derived. Legitimacy as it is here discerned is based on the theorem that one is not to harm themselves or others. It is limited to personal and interpersonal action. Legitimate and therefore legitimate action in Locke's State of Nature is that which does not go against the principles of God and the reason he has bestowed upon Man.

iii) Obligation

The Oxford Senior Dictionary shows obligation to be a term derived from oblige. That is "to compel by law, agreement, custom or necessity".¹⁸ Thus obligation is "what one must do in order to comply with agreement or law". As demonstrated earlier, there is no law for either Hobbes or Rousseau in the State of Nature. Obligation cannot therefore in this state be based on law. Custom on its part requires speech to transfer knowledge - a quality which both Hobbes and Rousseau insist upon.

develops slowly. Hobbes claims it to have been lost in Babel¹⁹ (that is the power of speech), and slowly regained. Custom also requires an ability to retain knowledge and remember habit. It requires reason and memory. The savage, Rousseau claims, does not have either of these. Custom also requires a society within which it can be nurtured and approved of as acceptable. Both Rousseau and Hobbes deny the existence of Society in the State of Nature. Custom can therefore not be found within this state. Neither then can obligation be found, justified or based on custom in the State of Nature in the works of Hobbes and Rousseau.

However, Hobbes, Locke and Rousseau agree that in the State of Nature there exists a necessity to survive. Within this State they agree there exists an agreement, mainly implicit that strength means right. An agreement with the self that survival for the individual is most desirable. Thus although the term obligation amongst the three philosophers is not easily spelt out, if it is as regards the individual it is clear. This is that the first obligation of each person in the State of Nature is to the self. This means that each individual must comply with the dictates of self preservation which nullify any agreement with any other individual that puts the self at risk of or in danger. Consequently the only form of obligation that can be discerned in this state is that commitment of individual to do all that is necessary to ensure his own survival.

iv) Duty

Duty is defined as "Moral or legal obligation" as well as "Task that must be done, action required from a particular person"²⁰ If the word 'moral' is to be taken as the key term in this definition, if it is also accepted that in the State of Nature morality is selfish and egoistic, then indeed within this state duty has meaning. This is the responsibility to avoid pain or discomfort and ensure the survival of the self.

Alternatively, if the key word is legal and legal in the sense of a constitutional framework in the strict sense then duty in this State is meaningless. If however the Law of Nature as expressed by Locke is to be loosely taken to describe a legal framework then duty might be taken - at least in Locke - to be each individual's responsibility not to harm himself or others. Duty however in this sense has no place in the work of Hobbes or even that of Rousseau as they deny the existence of any definition of right or wrong and even of law in the State of Nature.

On the other hand if definition (2) is accepted, Duty is meaningful for the three. In this case, the task required of each individual in the State of Nature is clear - self preservation.

As is clear from this discussion, there lacks consensus about the terms Authority, Legitimacy, Obligation and Duty amongst the three philosophers. It might be more fruitful to seek unanimous meaning and application of these terms in Contracted Society which all the three philosophers agree is the natural follow up to the State of Nature²¹

2:4 Recap And Preview. 2

The fact that there are inherent conditions in the State of Nature leading to the formation and formulation of Society and contract is derived from the works of Hobbes, Locke and Rousseau. In these works, the end for Man is to be found in the change of status that ultimately leads to Society and Contract. As stated above, on the surface the three proffer different reasons for this move.

Nature and fellow man in Hobbes' State of Nature are claimed inhospitable. This is aggravated by Man's inherent greed, competition and most dangerous - negative pride or what he refers to as vain glory. This leads to a situation of fear and insecurity amongst men: Herein the Arts and Sciences cannot develop or progress. With Man's own survival at peril, reason dictates Society and Contract as remedy.

Locke's argument is mainly based on the nature of Man and his relationship to his controller and creator - God. As man is an instrument in God's hands, directed to the fulfilment of God's purpose. History and Man's actions are pre-planned. This being so, entry into contract (note-Society exists from the very beginning for Locke) is merely a fulfilment of God's will.

Rousseau sees progress into Society and Contract as part of a larger chart. He sees it as part of Man's movement towards perfection. Rousseau discusses this progress on two levels: First the evolution of Man from simple uncultured Savage to Complex cultured, Man. This progress is itself reflected in Society as described in the second level which is the evolution of Society from Primitive to Civil Society.

This evolution of Society is instigated by Man's natural characteristic of perfectibility. That is, Man is by nature inclined to

evolve towards the perfection of himself and his environment. This being so, he cannot and does not stay a lonesome, isolated Savage forever. Instead he improves and develops his potential for reason and compassion. These in turn veer him towards the actualization of Society and Contract.

The conclusion that can be deduced from the three philosophers is that the journey that begins in the State of Nature leading to Society and Contract is bound to continue (ideally at least) into the Social Contract State. In preparation for an investigation of this State and the Contract that gives birth to it this thesis shall now seek a definition of and discuss Society and Contract.

END NOTES.

1. According to Rousseau, Man has certain traits in a State of Nature. He might be selfish, impulsive, stupid, unimaginative, and so on. Such traits are his nature in this State. However, this is NOT how he SHOULD be. As Rousseau implies and this thesis suggests, Man can only attain his REAL TRUE nature in the Civil State which is entered only by the Civil Pact. For this discussion also refer to:
Girvertz, Harry et al. Science, Folklore and Philosophy: Harper and Row Publishers New York, 1966.
2. Thomas Hobbes. Leviathan: Cox and Wymman Ltd., London, 1967, pp.142-3.
3. Ibid, p.123
4. Ibid, p.175.
5. John Locke. Two Treatises of Government: Peter Lasslett (ed.), Cambridge University Press, London, 1967 II:8. (Note that I shall refer to the First treatise as I and to the Second Treatise as II while :1, :2, :14, :100... shall indicate the page number. This is to ease cross checks in the text as this particular edition retains the original text arrangement. Therefore II:16 for example indicates page sixteen in the Second Treatise.)
6. Ibid, II:19.
7. Jean Jacques Rousseau. The Social Contract And Discourses :G.D.H. Cole (ed.), E.P. Dutton and Company Ltd., New York, 1950, p.248.
8. Thomas Hobbes, op cit, p.149.
9. John Locke, op cit :188.
10. Thomas Hobbes, op cit p.143.
11. John Locke, op cit, II:8.
12. Ibid, II:21.
13. J. J. Rousseau, op cit, pp. 242-3.
14. Note that in differentiating God and Nature, neither the independence nor interdependence of either of these concepts on the other is made. Indeed not even a definition or identification of either is attempted.

15. Joyce M. Hawking (ed.) Oxford Senior Dictionary: Oxford University Press, London, 1964, p.38.
16. *Ibid*, p.353.
17. *Ibid*
18. *Ibid* p.246
19. Thomas Hobbes, *op cit*, pp.73-5.
20. Joyce M. Hawking, *op cit*, p.191.
21. Note that for Hobbes and Rousseau progression is seen in the following sequence - Man in the State of Nature to Man in Society that remains in a state of nature and finally Man in Contracted Society which is a state out of the State of Nature. For Locke, progression consists of Man in Society in the State of Nature to Man in the Contracted State. This distinction will become clear in the next chapter.

CHAPTER THREE - The Need to contract: Society and Contract

3.1 Recap and Review

Chapter two was dedicated to finding out whence the need to contract arises. The "*raison d'etre*" is found - it is suggested - in both the State of Nature as well in the Nature of Man. Hence it is found that the State of Nature though sufficient in itself, is sometimes unfriendly and unaccommodative to Man. Thus, either it does not provide enough for all to share and enjoy amicably and equitably or Man perceives it not to. It also often strikes Man with unexpected or even expected calamities like drought and floods. This makes Man's life insecure and unpredictable. Even as this is so, Man is Himself often antagonistic towards other men. This is particularly so when individuals desire the same thing and there is a stronger one amongst them. More than being selfish, Man has the capacity to reason. He is thus able to reason and so discover that a state of security is preferable to that of insecurity. Reason leads him to the knowledge that he can only achieve his ambitions while alive. It also reveals to him that there is a way to ensure both his survival and security - Society.

Note that between Man in the State of Nature and Man in Political Society there is sometimes suggested an intermediate state. This state is described in the following manner: Most probably various individuals organize themselves or merely drift into a unit from which they launch into a Political Society. Consequently it is suggested that the conversion from the State of Nature to Political Community is most probably not instantaneous. The transitory state between these stages is what has been referred to as the Stateless State or merely as Society.

The act that changes this unit from Mere Society to a Political Unit is what is referred to as Contract. Because the contract pertains to the social, it has come to be known as the Social Contract.¹

To understand the essence of the Social Contract as well as principles that relate to it, it is important to understand the term society as well as contract. This chapter shall attempt to define what Society and Contract are in preparation for a discussion of what the Social Contract is. The works of Hobbes, Locke and Rousseau shall be used to discuss the meaning, origin and

nature of Society and Contract.

3.2 Definition of Society

The Oxford Senior Dictionary defines Society as:

1. An organized community, the systems of living in this Community
2. People of the higher social classes
3. Company or Companionship
4. A group of people organized for some common purpose²

For our purposes definition (2) is not relevant. As earlier stated: in the State of Nature, all individuals were more or less equal. Indeed, this status quo remains in this next stage of development herein referred to as Mere Society. Hence within it there are no higher or lower social classes.

Definition one (1) does not apply to the sort of community Hobbes, Locke and Rousseau discuss. This is because the organisation of the community is characteristic of society only after contracting.

Company or Companionship (definition three - 3) is definitive of the community that the three discuss. This is in the sense that transitory society is a result of need for another human being. A result of need for assistance in attaining ambitions and developing, need for support and security as well as for sexual fulfilment.

Characteristic of this society as described by the three philosophers is definition four (4). Individuals often come together and organize themselves for some common objective. Goals for example include defence against an invader, support against natural elements or a search of sustenance. Indeed and most important of all, this characteristic is well demonstrated when individuals eventually join to form Political Society and elect a leader.

Note however, that those organizations or groups described by the Philosophers in their works (that is all groups except Political Society), are not binding or obliging. Instead: they are based on selfish immediate motives - mainly for the purpose of self prevention. Thus, if one abandoned his group and pursued his own advantage when it appeared more beneficial to do so, it would not and could not be held against them. An individual could not be accused or charged with dishonourable conduct or abandonment as no such conduct was acknowledged.

Such organizations were not internally cohesive or stable. This is mainly because these groups emerged only to serve some external and immediate purpose. A purpose that was usually related to self gratification. Consequently when the threat to individuals in a group was overcome, the group broke up, not just into rival factions but often into individual conflictors.

Benn in The Encyclopedia of Philosophy suggests that the term society is used abstractly and also to refer to entities which can be particularized, identified and distinguished from each other often as social systems or organizations. The Social Contractualists, Benn says, use the term to refer to this latter more tangible definitions. For them, society implies a system of more or less settled statutes, he suggests. To each society there corresponds particular patterns of actions, [these in turn] appropriate to a range of situations.³

Society Benn therefore says, can be defined as "an aggregate of interacting individuals whose relations are governed by role conferring rules and practices which give their actions their characteristics significances"²

Seemingly society can be viewed as whole or reduced to a series of relations and actions of individuals. It is within this later meaning that the Social Contractualists often perceive of stateless societies.

Cruick on the other hand defines society as "a voluntary organization and individual's initiative". Hobbes, Locke and Rousseau would agree with him. To them, one enters society - particularly, Political Society voluntarily. It is also the individual they might say who is the impetus to create and maintain society. It is the individual who determines what type of society emerges from this voluntary structure. It is therefore truly a result of and indeed itself an affirmation of individual initiative

Benn and Peters⁴ as well as Ochieng' - Odhiambo seem to prefer the holistic definition. To them society is characterized for example by common interest and shared kinship ties. Ochieng' - Odhiambo like Cruick notes that society is formed out of choice or occurs naturally. It represents, he says, a group of individuals in pursuit of common interests. These interests might be historical and, if so, would create a common culture. This in turn would bind individuals to the pursuit of group aspirations.

Benn and Peters suggest as their definition of society, "a group of individuals with or pursuing a common interest" or "a number of individuals bound together by a normative order or body of rules"⁵.

It is the first part of this definition that Hobbes, Locke and Rousseau refer to as Society; and the second part that they perceive as Political Society

3.3 Contract Defined

Contract is in the Oxford Dictionary defined as

- 1.a) A formal agreement between people or groups of countries
 - b) A document setting out the terms of such an agreement
- 2.a) To make or become smaller or shorter
 - b) To arrange or undertake by contract
 - c) To catch (an illness), form or acquire (a habit or debt)⁹

1:b is not applicable since the contract that the contractualists refer to is not a written down document but an imagined one.

If we are to take "formal" to mean "Conforming to accepted rules or customs, showing or requiring formality"¹⁰ and Agreement as "agreeing" [that is], "to consent" or "harmony in opinion or feeling" or even as "an arrangement agreed between people" then 1:a is more helpful. Indeed the contract that the contractualists discuss may be interpreted as a formal agreement. That is as a settlement in accord with or complying with opinion, feeling or rules set up and consented to by involved individuals. That is, an arrangement expressing the feelings and opinions of those formulating and participating in it. The contract they discuss sets out tenets of behaviour between individuals whom it brings into society and eventually between groups of people or countries.

Definitions 2.a and 2.c offer us no aid in understanding contract as discussed by Hobbes, Locke and Rousseau. However, definition 2.b does assist us. The contract these philosophers discuss is partly reflected by this definition. That is, it does arrange relations between individuals in society. Furthermore this kind of arrangement ties individuals or commits participants to certain duties and responsibilities so as to maintain society as a unit just as 2.b suggests.

Plamenatz describes contract as this kind of arrangement since it is really "essentially a voluntary and deliberate agreement, [within which] the parties to it are presumed to be free not to make it and also to understand what they are doing when they make it"¹¹. It is this definition that seems to most aptly express what the Contractualists mean by Contract, Covenant, Compact, Pact, Agreement or Trust¹². For Plamenatz, the following are therefore important in a discussion of contract - knowledge of

what one is doing as well as, an understanding of what one's actions [be it entry or lack of entry into contract] means. That is an understanding of the consequences of performance or lack of the same, and a freedom of choice.

Entry into Society and later Political Society is assumed to be intentional and optional. Each individual who is part of society is therefore freely party to the contract that forms it. This freedom is exercised by all except those individuals who are disqualified from making such decisions by age, or mental disability for example. As each individual is assumed to have access to deliberation and will and so be rational, he is expected also to comprehend the meaning of contracting. That is; the implications and resulting obligation of being party to a contract. Each individual is therefore willingly and knowingly bound to contract as each one can choose to enter or abstain from contract.

3.4 Conclusion

Hobbes, Locke and Rousseau have no option but to admit that society itself contains impetus for an extra move into a new organization. A move to restrain Men through voluntary agreement within the contracted state here referred to as Mere Society. Although Society is an improvement from the Pure State of Nature as now cooperation exists, at least sometimes; it is not sufficient. Man's nature has also developed so that it requires more than the small unit he now belongs to - family - can provide; more than the bigger unit of Pure Society can secure¹⁴.

The move therefore from the Pure State of Nature within which Man mainly lived on his own; to the state referred to here as Pure or Mere Society does not improve Men's condition much. Although Man interacts with other Men cooperating when necessary (and necessary here is defined as exigency or advantage to the individual), Man remains insecure and unhappy.

Hobbes, Locke and Rousseau indicate that on one level, Man's basic nature changes not in society except superficially. Man remains selfish as well as self seeking and ambitious with his main goal being self preservation. Hence whenever conflicting interests meet the right of the stronger continually rules.

Man's horizons had however, been expanded. Man in Society experienced much and learnt a lot. Man had grown to know of and need more than mere survival. He had been exposed to comforts and the experience of ownership; a concept he desired to retain. Hence when conflict arose he desired a way to make sure that not just might but right decided the outcome of contention. Man hoped to be able not only to be free to acquire but also to retain what he acquired. At the same time he

wished to have time to worry about more than his own survival and ownership, he hankered after a chance to improve and develop himself.

Man discovered that Pure Society cannot ensure his protection and security. This is because within this state there lacks law to define right and wrong, there are no rules to describe right and wrong procedure and therefore legitimate action. This aside, there lacks an authority or power to whom appeal to right a wrong can be made and who all respond to: a person or body to keep a balance of right by justice. Authority remains limited to the family and this is itself handicapped. In actual fact, it seems that the self and the dictates of self preservation remain the only source of authority (which stretches the meaning of the term really far) and right action. Legitimacy cannot be discussed as no law exists except that claimed to be embedded in Man as Natural law. This is itself interpreted by each individual and cannot really be said to be a standard of right and, or wrong, legitimate or illegitimate. Obligation in this state is fleeting as one is obliged only while there exists a self-related need. Remember, need here, like right and wrong, is defined by the individual and personal interests, an individual who is ambitious and self seeking. While duty is only really to the self and self preservation.

The individual remains the most important single element within Society. His needs and survival are paramount in society. It is therefore the individual who, and for whom the next step in the course of Human kind is taken - entry into Political Society and the Social Contract.

Man remains unfulfilled and dissatisfied in Mere Society while his nature remains uncontrolled. Mere Society like the State of Nature remains unfriendly to Man while he himself remains hostile to other men. To tame Nature, Society, other men and himself: Man enters Political Society and Social Contract. It is these that shall be investigated in the next chapter.¹⁶

ENDNOTES.

- 1 See Peter Laslett, "Social Contract" in The Encyclopedia of Philosophy vol.7. Paul Edwards (ed.), Crowell Collier and Macmillan Inc., New York, 1967, pp.465-7.
- 2 Joyce N. Hawking (ed.), Oxford Senior Dictionary: Oxford University Press, London, 1964, p.606
- 3 Stanely I. Benn "Society" in The Encyclopedia of Philosophy: Paul Edward (ed.), Crowell, Collier and Macmillan Inc. New York, pp.468-472.
- 4 Stanely I. Benn, *ibid.*, p.471.

5. J.A. Langley,(ed). "Introduction" to Ideologies of Liberation in Black Africa. 1856-1870: Collings Publishers, London, 1978. p.4.
6. S.I. Benn and R.S. Peters. The Principles of Political Thought: Collier and Macmillan, New York, 1964.
7. F. Ochieng'- Odhiambo. Unpublished Lecture Notes, 1992.
8. Benn and Peter, op cit. p.22.
9. Joyce M. Hawking, op cit. p.131.
10. Ibid, p.242.
11. Ibid. p.13.
12. John Plamenatz. Man and Society vol.1: Longman Inc., New York, 1988. P.162.
13. Distinction or similarity between these terms shall be drawn as this thesis progresses.
14. "Small Unit" here is in reference to family. Note - again - that in Locke, family and Society always existed; and cannot be divorced from Man. However, even for him Man's nature and habitat grow and change otherwise how would man proceed from one stage to the next? For the philosophers opinion or a discussion of this refer to :
 C.A.J. Coady. "Hobbes: Reason, Morality and Politics" in Political Thinkers: David Muschamp (ed.), South Melbourne, 1991.
 John Locke. Two Treatises of Government: Peter Lasslett (ed.), Cambridge University Press. London, 1967, II:123.
 Jean Jacques Rousseau. The Social Contract and Discourses: G.D.H. Cole (ed.), E.P. Dutton and Company, New York, 1950, p.244.
15. Refer to : Thomas Hobbes. Leviathan: Cox and Wymman Ltd., London, 1967,pp.148-151.
 Locke, *ibid*,II:123.
 Rousseau, *ibid*, pp. 270-272.
16. Hobbes, *ibid*, p.151.
 Locke, *ibid*, II:87.
 Rousseau, *ibid*, pp. 270-272.

CHAPTER FOUR.

CIVILITY, THE CIVIL STATE AND THE CIVIL AGREEMENT.

4:1 Recap And Preview - Hobbes, Locke & Rousseau

This section concentrates on an analysis and comparison of Hobbes, Locke and Rousseau as regards their perception and presentation of the Social Contract and the Contracted State. Hobbes, Locke and Rousseau agree that men though currently in Civil State and Contract were not always in the same. This former immediate period is referred to in this thesis as Mere Society¹. The three agree that there was a time WHEN this status was changed - as in temporal identity. Hobbes, Locke and Rousseau also agree that this change was not coincidental. The three explain the WHEN and WHY through an appeal to the State of Nature and Social Contract.²

The Social Contract is that which transforms Mere Society to Political Society according to the three. Hobbes and Rousseau distinguish between a Society Less State of Nature and Society in the State of Nature.³ According to the two, this latter society is that which grows into Political Society. In contrast, Locke prefers not to conceive of Man in anything other than society. Transition for Locke therefore occurs from Society in the State of Nature, to Political Society. This difference notwithstanding they all agree that at some point Man moves from the former arrangement⁴ to another. It is the latter they refer to as Political Society.

i) The State of Nature And Nature of Man.

Though each of the Philosophers offer different argument and justification for the move from the State of Nature, they agree that this State is unsatisfactory and change is imminent. They agree that the State of Nature is ultimately unfriendly and that there exists a need within it to move away from it. It is in the very State of Nature that the three find the motive needed to move from the same and enter Contract and Civil Society. Thus though they agree that there is equality and freedom in the State of Nature, these they agree are on the main, illusionary - at best temporary. Equality and freedom, they agree, are often used one individual against the other to harm. Thus they are often more of a liability than an advantage. Worse, they agree that equality and freedom often make for conflict in pursuance of self interest.

An analysis of all the motives proffered by the philosophers as cause for the Contract move reduces them to three. That is, to self interest, protection of possessions and self preservation. Hobbes, Locke and Rousseau also agree that an added stimulus prompting man to Contract is present within "Pre-civil Man".⁵ The three authors refer to this stimulus as REASON. Detecting this capacity within Man, they suggest it is that which discovers, designs and interprets the next stage in Man and Society's development, that is, Civility and the Contracted State.⁶

ii) Man's End.

Another element prevails in the three philosophers' explanation of progress to Civility and Contract. What one might refer to as their element of predestination or fatalism. Each of them show Man as fated to enter the Civil Agreement and the resultant Political Society as part of a wider Universal design.

Hence, Hobbes' mechanistic theory finds justification for progress in its conception of Man's nature as reasoning, as well as desiring opportunity and security. In contrast, Locke finds justification in his belief in God and His plan for Man. Rousseau finds justification in his principle of perfectibility and perfection as the end of Man.

4:2 The Essence of Contract and Civility

i) Perfection, Limit and Balance

A reading of the works of Hobbes, Locke and Rousseau reveals a unique yet similar conception of Contract and Civility. For example, on one level they perceive Contract and Civility as natural to man while on another artificial to him. Natural in that it is only in the Contracted State that man can attain his aspirations and develop his nature to the best. Artificial in that Contract and Society restrain man. These latter (Contract and Society) force man into Civility and Agreement which are not natural to him. Civility and Agreement in turn introduce Man to new forms of freedom and equality which contain aspects of restriction. This restriction is not seen as natural to man. However, self imposed restriction well managed, avails to Man the equality and freedom that is the charm that seduces him into and keeps him in Contract and Civility. Consequently, though Contract and Civility are paths to Man's perfection, they require good management so that no individual suffers or makes another suffer. This is done, as shall be shown, through an education about one's relationship with the Civil Agreement. An education that establishes each one's rights thereby protecting all and introducing as well as truly maintaining self government in every sense of the term. That is, by limiting and balancing power as well as rights which are now converted to authority.

and Law whose limits are legally delineated, assured and enforced as duties and obligations so that balance characterises this kind of society.

ii) The Civil Agreement Process

A discussion of the interpretation of the Social Contract as presented by Hobbes, Locke and Rousseau is appropriate here. The three concur that this arrangement encompasses a whole wide range of activities. These activities include:

- * A contract between all persons in Society - each individual to the other - and so the term "Social Contract".
- * An agreement and arrangement to convene government as well as the by laws or rules governing the new state.
- * An arrangement to elect a Supreme Authority.
- * An agreement as to the extent and limit of authority within the new state.
- * The rights and duties of each individual citizen and leader as governed by this arrangement.

Hobbes, Locke and Rousseau insist that there is only ONE valid proper Social Contract. This, they assert, is the source of justice, right, equality and freedom.⁷ The three, in regard to the Social Contract hold a position that may at first glance seem contradictory. This is the idea that the Social Agreement is irreversible yet reversible. Reasons for why it is irreversible are variously offered by the philosophers. On the main however, they seem to add up to the notion that its reversal would require the consent of the whole of society (as in each individual in Society) and a renegotiation with them.⁸ This process, they say, might prove impossible.

Another catch they present is in the form of the sovereign. Any new contract signed in a Political Society would require the consent of the reigning sovereign. This they guess, would most probably not be forthcoming. Connected to this is the idea that any new contract signed under a contract sovereign is subordinate to the original social contract. At the same time, any contract that fairly and justly addresses the issues that the Social Contract addresses would not be a new contract but a continuation of the former. A further paradox lies in the fact that any abuse of the Social Contract or its tenets nullifies it so that it ceases to apply or exist. As it is denied when abused, the Social Contract is impossible to imitate or alter; and so the Philosophers perceive it as unique in its perfection.

4:3 Ingredients of Civil Agreement.

i) Submission

There is agreement on the ingredients the three philosophers consider necessary for the formation of Political Society. Most basic for the three is submission - total submission of each individual to the Person or Body which now gains authority. This submission is symbolically and practically expressed in a transfer of Natural Rights from each individual to the newly created person. Thus each person submits the "right of governing myself, to this man, or to this assembly of men, on this condition, that thou gave up thy right to him, and authorize all his actions in like manner."⁹ By this voluntary act of submission and consent whereby:

every one of the members hath quitted their natural power, resign'd it up into the hands of the Community in all cases that exclude him from appealing for protection to the law established by it;¹⁰

the philosophers agree that contract is entered and a Political Society created. Rousseau refers to this situation as that of "Alienation". A "total alienation of "each associate together with all his rights to the whole community",¹¹

This transfer, the three agree, is more than a simple act, it is a complex procedure. It consists of a transfer of natural rights from the individual to a supreme Body or Person in return for a promise of security and protection in the form of legal rights. That is: a conversion of rights natural, which only the individual interpreted and applied in the Natural State: to rights legal, binding to all citizens in a Positive community. Positive rights to which each appeals to for protection or judgement. Though this transfer is total - that is "without reserve"¹², it is also conditional on some benefit. This benefit must be real not merely apparent. The benefit also must be geared towards the good of the Individual in Society as well as Society itself. This ultimate right or benefit for the Individual and Society is self preservation.

It is interesting to note that the philosophers agree that the transfer of rights serves an important function. That is the creation of a new entity which is referred to as Civil or Political Society herein. It is this new entity that Hobbes calls "COMMONWEALTH, in Latin *civitas*." A commonwealth as it is "the multitude so united in one person".¹³ Locke agreeing with Hobbes says that:

When any number of men have so consented to make one community or Government they are thereby presently incorporated and make one Body Politick

That is

Unite into one Political Society, which is all the compact that is, or needs be, between individuals that enter a Commonwealth.¹⁴

Rousseau expands this concept and says that - "this act of association creates a moral and collective body."¹⁵ A body with a common identity, life and will of its own. He call this "Republic", "Body Politic", "State", "Sovereign", "Power"¹⁶ or "Civil State" in its different activities.

This new entity is a new metaphysical entity. An entity that consists of each individual, individually and collectively.

ii) Rights And Law

Introduced in Civil Society are individual rights which are transformed, expressed and honoured in law as legal rights. Political Society therefore utilizes the concept of Law to ensure respect for the individual and his rights as well as the protection and continued existence of the Civil State. Each of the three philosophers seem to conceive of Law differently.

Hence, Hobbes says; "Law is a command and a command consisteth in declaration or manifestation of the will of him that commandeth..."¹⁷ that is, "the word of him that hath command over others"¹⁸. Distinguishing between Natural and Positive law Hobbes says Positive Laws are those operative in the Civil State and claims them also

those which have not been from eternity, but have been made laws by the will of those that have had sovereign power over others and are either written, or made known to them by some other argument of the will of their legislators¹⁹.

Narrowing down on civil law Hobbes says that it is any Law obliging and obeyed by any member of any commonwealth.

Rousseau on his part defines law as an act by which: "the whole people decrees for the whole people...considering only itself"²⁰. He therefore claims that Law is an act which " unites universality of will with University of object"²¹. Therefore, for him, it is a general decree that expresses the general will. As he points out, law is always general never particular. Laws therefore, he says are "Conditions of Civil associations". They have as their subject, the people. As such, he insists that "People being subject to the laws ought to be their author "

Locke in expressing what Law is, merges the act of command by authority with that of Law as an expression of the people's will. To him therefore, Law is "the will of the Society, declared by the legislative"²², that is the citizen's will as declared by those with authority to govern²³. Locke in his discussion of Law illustrates well the concept of authority and that of legitimacy

We shall discuss these concepts later. At this point, we can only point out that he distinguishes authority from power. Authority is portrayed by Locke as an attribute that is bestowed upon one from without themselves. In regard to the concept Law he highlights the aspect of legitimacy, the fact that not just any one can stipulate Law. Only those with permission to express the will of citizens can do so. That is, those who have properly been given the right to rule and who have taken up governance as their duty. Consequently, to Hobbes' idea that Law is the dictate of a power capable of enforcing obedience is added the moral element. That is that the people must be willing to obey the power that dictates law. This willingness is based on the fact that the people themselves have legitimized the power by accepting it - authorized it. To Rousseau's idea that Law is an expression of the People's Will, is added the idea that not just anyone expresses the People's desires. The channel of expression is identified as the Person the People choose.

Hobbes, Locke and Rousseau agree that Positive Law in the Civil State is different from Natural Law. Hence it is not instinctively known but should be actively made known to all those bound to it. As Locke says, part of the Civil State's appeal for men is that it provides;

an established, settled, known Law, received and allowed by common consent to be the standard of Right and Wrong, and the common measure to decide all controversies between them.

This is in contrast to

the Law of Nature (WHICH) be plain and intelligible to all rational creatures; yet Men being biased by their Interest, as well as ignorant for want of study of it, are not apt to allow of it as Law binding them in the application of it to their particular cases²⁵

It is this view Locke reiterates when he says that:

whatever Form the Commonwealth is under, the Ruling power ought to govern by declared and received Laws and not by extemporary Dictates and undetermined Resolutions... For all the power the Government has, being only for the good of the Society, as it ought not to be Arbitrary and at pleasure; so it ought to be exercised by established and promulgated Laws: that both the people may know, their Duty, and be safe and secure within the limits of the Law, and the Rulers too kept within their due bounds and not be tempted by the power they have in their hands to employ it to such purposes, and by such measures, as they would not have known, and not own willingly²⁶

Hobbes expresses the view that law should be promulgated in a clear, practical even sympathetic manner when he says -

If a law obliges all the subjects without exception, and is not written, nor otherwise published in such places as they may take notice thereof, it is a law of nature. For whatsoever law is not written, or some way published by him that makes it law, can be known no way, but by the reason of him that is to obey it; and is therefore also a law not only civil, but natural²⁷

Stressing on the communication of the Law, Hobbes argues that

The Law of Nature excepted, it belongeth to the essence of all other Laws, to be made know, to every man that shall be obliged to obey them, either by word, or writing, or some act, known to proceed from the sovereign authority.

For the will of another cannot be understood, but by his own word, or act, or by conjecture taken from his scope and purpose, which in the person of the Commonwealth is to be supposed always consonant to equity and reason.

It is not, he says;

enough that the Law be written, and published; but also that there be manifest signs, that it proceedeth from the will of the sovereign²⁸

While Hobbes makes it the sovereign's duty to make law known, he apportions to the subject the alternative duty. That is, he argues that it is the duty of every subject of any particular commonwealth to know the Law - particularly Civil Law. This is because Civil Law is the subject's law, a law that binds and obliges him as a member of the Commonwealth. For,

law in general, is not counsel, but command; nor a command of any man, but only of him, whose command is addressed to one formerly obliged to obey him.

Narrowing down to civil law which is what he considers obliging to any and all members of a commonwealth, he says,

as for civil law, it addeth only the name of the person commanding, which is persona civitas; the person of the Commonwealth.

And so he defines Civil Law as that which;

is to every subject, those rules, which the commonwealth hath commanded him, by word, writing, or other sufficient sign of the will, to make use of, for the distinction of right and wrong, and what is not contrary to the rule²⁹

Several important concepts are brought to our attention when one reads Hobbes' position. Of interest to us are duty and obligation. We note that Hobbes argues that positive law should be obliging to all who have consented to be part of a Commonwealth as by this consent they agree to be governed by the Law of their particular Commonwealth - their Civil law. Indeed Hobbes is very specific about whom positive law is addressed to, how it is obliging to its subjects and why it is addressed to them.

First of all he says that ideally Positive Law reflects Natural Law which is always geared to the good of the individual. In this state we have two individuals - the subject and the Commonwealth. Consequently for those subjects who can know, the law is obliging. These are individuals who have access to the understanding and so can understand the demands and dictates of the law because they have access to reason. This, in his opinion, eliminates natural fools, children and madmen. This group, he argues cannot fully comprehend the import of Law and its demands. Furthermore they cannot interpret it; and so cannot be held fully responsible for their actions. To the rest therefore - that is subjects mentally competent, the law is obliging and it is their duty to respond to it by obedience. To these - as long as the law is well communicated, there is no excuse to disregard

or disobey it. They can therefore never plead ignorance of the law or of its penalties.

Agreeing with Hobbes and Locke, Rousseau argues that -

Humanly speaking, in default of natural sanctions the laws of justice are ineffective among men [so] In the state of nature, where everything is common, I owe nothing to him whom I have promised nothing; I recognize as belonging to others only what is of no use to me.

Hence he argues that

Conventions and laws are therefore needed to join rights to duties and refer justice to its object.

This is done "In the state of society [where] all rights are fixed by law"³⁰ Under this new arrangement and as a result of it, men are able to relate civilly to and with each other.

Hobbes, Locke and Rousseau may draw what superficially might look like different pictures of the Law in a Contract State. However seeming discrepancies might be explained by their emphasis on different aspects of the same concept - the Law. Thus we see Hobbes' stress on the Sovereign's Command, Locke on a legitimate legislature and Rousseau on the Will of the People. However, a close study of their presentations enables us to discover that in essence they agree that the law is an expression or at least should be an expression of the general will no matter what the channel of this will is. The three agree that this will should be freely and clearly expressed. It should also be made available to all whom it obliges. Furthermore; they agree that Law is one of the most important instruments of the Social Contract. An instrument that ensures the survival of the Social Contract and the Civil State as well as the continued survival and freedom of the individual within Civil Society through its demand and ensurance of civil behaviour.

iii) Liberty And Equality

If Law and submission are characteristic of the Socially Contracted State, if Law binds and submission demands compliance to as well as the observance of the bounds of law, is there any freedom to be found in the Civil State? This prompts a discussion first of the three philosopher's conception of freedom. Secondly a description of the kind of liberty to be found under the Civil Agreement. A liberty that is the foundation of a new type of equality.

First of all one needs to note that Hobbes, Locke and Rousseau agree that with the institution of the Civil State man loses a measure of his freedom. At the same time, they agree that he gains much. Hobbes tells us that for peace and

is;

willing, when others are so too, as for forth, as for peace, and defence of himself he shall think it necessary, to lay down this right to all things, and be content with as much liberty against other men, as he would allow other men against himself.³¹

So while Man in the State of Nature had "a right to everything even to another's body",³² he exchanges it for civil right which is "that liberty which the civil law leaves us". A liberty which is actually an obligation to obey in "all cases where protection of the law may be safely stayed for". This claim seems both ironic and contradictory in the face of Hobbes definition of civil law whose description he poses as "an obligation, [saying it] takes from us the liberty the law of nature gives us"³³.

In argument similar to Hobbes, Locke says that;

man being born as has been proved, with a Title to perfect Freedom, and an uncontrolled enjoyment of all the Rights and Privileges of the Law of Nature....hath by Nature a power not only to preserve his property, that is, his life, liberty and Estate against injuries and Attempts by other men, but to judge of, and punish the breaches of the law in others as he is persuaded and the offence deserves, even with Death itself, in crimes where the heinousness of the Fact, in his opinion requires it.

This notwithstanding, Locke says that Man is willing to leave this former state and enter Political Society

where every one of the members hath quitted their natural power³⁴.

Rousseau preferring to use the term "Liberty" makes the claim that one of the characteristics of Natural man is his Common Liberty [WHICH] "results from the nature of man". In a State of Nature therefore, Man's:

...first law is to provide his own preservation, his first cares are those which he owes himself, and, as soon as he reaches years of discretion, he is the sole judge of the proper means of preserving himself, and consequently becomes his own master³⁵

Yet, Rousseau tells us, inspite of "all being born free and equal" Men, "alienate their Liberty"³⁶ And this, a complete "alienation of each associate together with his rights"³⁷ However, he insists that this alienation is for "their own advantage"³⁸

As demonstrated above, the philosophers agree that Man willingly loses his Natural Rights. As these Natural Right are precarious claims determined only by individual strength, it is a bearable loss. In return for Natural Rights, they agree that Man gains certain definite rights which do not contradict his Natural Rights. That is, Man gains legal rights. These latter they agree are rights determined by and protected by Social might that is the State and Law. It is these legal rights within a

Contract State that attain and assure for Man his ultimate desire and goal - freedom.

Hobbes, Locke and Rousseau concur that Man's ultimate good and desire is for freedom. This, the three agree, cannot be procured in the State of Nature as this State is characterized by constant insecurity which does not augur well for true freedom. Man cannot in this State follow or fulfil his desires as both Nature and his fellow man restrict him. Most importantly, Man does not and cannot always act according to reason. Indeed he is often forced to obey impulse and instinct which occasionally contradict freedom. Yet for the three, true freedom is found only in following the dictates of reason. Reason dictates civility and order, particularly in the Contract State for it is by this and in this that Man is able to actualize himself and so be truly free. That is, entry into the Contract State offers Man the opportunity to be free of fear, free to chase and attain ambition, free to choose good or bad, that is freedom to be a reasoning being.

A close look at the works of Hobbes, Locke and Rousseau discloses that they all have as their objective an attempt to find for Man both this freedom and the channel to it. They all address this same problem - a search for freedom for Man. Interestingly, they find the answer in the same solution - Civil Society and Civil behaviour as directed by the Law. The three philosophers therefore find freedom only in "Chains", the chains of Society and its restrictions which they think allow Man to be himself, a reasoning being. The instrument and channel of this and to this freedom is perceived by the three as the Social Contract. Furthermore, the three try to beget, express and protect this freedom using the concept of the Social Contract. Hence, each on a different level tries to express this freedom. Hobbes finds freedom for Man in his choice to enter Society as well as in his obedience of the Sovereign, a sovereign who acts ultimately as the people would wish. Locke finds freedom in Man's choice of who or what the Legislator or Legislature is in Civil State as well as in the people dictating law through the same (legislative). Rousseau finds it in Man making the Law for himself and obeying it in Civil Society.

An investigation of this concept - the Social Contract - in which Hobbes, Locke and Rousseau put so much stock reveals it to be an act of submission. It is an act not just of submitting to reason and the abstract concept of the Law but also of submission to fellow members of Society as well as to authority. It is in this submission that freedom is to be found.

This submission or alienation as it is sometimes referred to represents a transfer and transformation of rights. It is a transfer of Natural rights from the individual to the State or Sovereign. Consequently, these rights are transformed from Natural

Legal rights protected under the Law, while the freedom herein represents a transformation of independence to liberty.

It is not only natural rights that are relocated and transformed in the transition from the State of Nature to the Contract State, the philosophers insist. Just as they are in no doubt that there were natural rights in this former state, so also are they sure there exists in it a unique sort of equality - Natural Equality. This is a temporary, transitory kind of equality. It is an equality based on the fact that nobody has a monopoly of either strength, opportunity or circumstance. a status based on the fact that Nature favours no one in particular and all at some point or other. Thus as the three philosophers agree, in different circumstances, different persons because of their different abilities and capabilities are the strongest and dominate. However, domination is never permanent as the strongest is never supreme for long.

The fluctuation of fortunes in the State of Nature caused by the presence of natural equality and natural freedom make it impossible to realize peace and order within it. Hobbes, Locke and Rousseau assert that peace and order can only be effected when and where a new sort of equality exists - civil equality. Hence peace and order are actualized when the Social Contract is entered and therefore within the Contract State true freedom and proper equality are found. This new equality comes to be when all individuals totally submit their natural rights to Society. By so doing, natural rights are converted into legal rights and thence a special sort of equality known as civil equality is created. Unlike natural equality, civil equality is not based on intelligence, circumstance or the whims of nature. It is instead an equality of opportunity based on the Social Contract, protected and secured by Law. Similarly, as in the case of natural rights versus legal rights; natural equality is phased out and replaced with civil equality while the independence present in the state of Nature is replaced with liberty.

Note therefore that with the Social Contract, the *status quo* is changed. While the old state was characterized by independence and natural equality, the new state is characterized by two new factors - liberty and civil equality. Man can now enjoy liberty which is the freedom to act as reason wills. This means that Man can now act not only for his own good but also without intentionally or accidentally harming his neighbour or his own nature since good and right are not only clearly defined but also accessible. This is in contrast to independence which characterized the State of Nature. Independence is a freedom of action intended to secure survival with self preservation as the only guide. This means that independence might as a matter of course involve the hurting of one's neighbour as well as one's nature since one acts not in consideration to reason but often against it and merely in response to impulse and instinct in a bid to survive. Liberty is in this state assured because of the new form

of equality - civil equality which is itself ensured not just by the opportunities offered by Nature and individual strength but also by the fact of Law as well as the security created by the knowledge that there exists an appeal for justice. There is a force to enforce right action and punish wrong action in the newly created Political Society. That is, the demands of civil behaviour and its restrictions ensure the practise of liberty and freedom in the Civil State thereby protecting the individual whose nature can now develop and grow.

4:4 End and Implications of The Social contract

i) Status of Individual

In their discussion and conception of the Civil Agreement, the Civil State as well as the rights, and duties of both the citizen and Sovereign; Hobbes, Locke and Rousseau are extremely similar. Indeed one might claim that the three represent one mode of thinking, the Western Mentality of perceiving the origin of Political Society and its survival warrant. For the three, Political Society is conceived in the State of Nature of this states unfriendliness and born of Mere Society's limitations. For the three, the individual is the most important facet of this state. It is also the individual who provides the impetus for change. Hence for the three, each individual identifies and desires to enter a more palatable state. This the Philosophers pinpoint as the Contract State.

The Philosophers insist that each individual contracts with the other for the sake of safety, security and ambition. To further secure these needs, the people establish an authority above the contract who can enforce this agreement. This authority is identified as the Leviathan, Legislature or Sovereign, an individual or body stronger than each individual in isolation but subordinate to all individuals communally. This being in turn delegates its duty to an agent who or which assists in the day to day running of the Contract State. This delegate is identified as government or the Sovereign representative by the three.

Hobbes, Locke and Rousseau caution the reader as well as Political Authority and its Agent that through out time, the People - which consists of each individual is the source of power in Political Society. Furthermore, the people do not and never loose their monopoly of power. Thus though each individual submits their particular power to the community, that is:

everyone of the members hath quitted their natural power, resign'd it up into the hands of the Community¹⁹

which is a submission of the,

right of governing myself to this man, or to this Assembly of Men²⁰

A vesting of power without exception to the Political Community who in turn vest it in a Political Authority, in which:

each individual puts his power in common under the supreme direction;⁴¹

This vesting and submission has reservations. Each day is a day of reckoning for Political Authority since lack of or a failure to perform its function properly could well lead to and often does lead to the same being relieved of its duties. Hence the Philosophers agree that when performing well, Political Authority is the centre of power in Civil State. When not working well, they concur that it can be dismissed or dissolved by its benefactors - its individual subjects or citizens.

It is impossible, Hobbes, Locke and Rousseau; agree for Man to totally revert to his former State and nature, that is for Man to become a being who is unsocial, sometimes anti-social and selfish. A being who either reasons not or prefers to follow impulse and instinct rather than reason. If this is so, - that Man cannot wholly regress and return to his state in the State of Nature; then, neither can Society. ⁴²The three therefore agree that Man cannot back out of Society; particularly Political Society which is entered by Agreement. Man can only progress, improving himself and Society, or debase himself and Political Society by failing to honour the Social Pact and so beginning a process of retrogression that stops short of a total reversion to the State of Nature. Consequently it is clear that for the three, Man's ultimate nature is that of a reasoning being. A reasoning being whose reason leads Man to contract and civility. Since Man cannot then but reason, Contract and the Contract Society cannot but be!

With the Contract State, the three philosophers agree that a new element is introduced to Man and Society. This is the element of Law. Law not natural but positive. This is Law which though based on the Law of Nature emanates from Man. It is this new element that defines the parameters and perimeters of behaviour within the new State. This element instructs and guides each individual in his pursuit of civility making him Civil Man. Law, the Philosophers agree acts as a tempering rod keeping both the people and their leaders from overstepping their boundaries. Note that in the Civil State, positive law is a demonstration of and channel of authority. Furthermore, it is characterized by equity and reason and is for the protection of the individual and society.

Hobbes, Locke and Rousseau are in agreement that the Contract State seeks not to extinct the individual but to preserve him. Consequently, the will and needs of the individual remain paramount. They comprehend the fact that it would be difficult to attend to the wishes, desires and private will of each particular individual⁴³. However they resolve this problem by an appeal

to good which they agree is standard not relative. Hence, they agree that the ultimate Will and desire of one individual reflects the true ultimate good of each individual in the Contract Society - and so the concept of the General Will is born. Rousseau actually tries to formulate a method of arriving to this ultimate good. The three philosophers on a less complex level are in agreement that the majority (a proper not a perverted majority) will usually express this will. Hobbes, Locke and Rousseau are quick to alert us to the danger of risking man's individuality and will. Hence they point out that a reliance on majority decisions should not be allowed to become detrimental to the individual. For this reason, the individual is free to seek the satisfaction of his needs elsewhere if they are not fulfilled within his own community. It should therefore never be forgotten that the individual enters and remains in Society to ensure his protection and security. His obedience of Law is purely for sake of his property - that is his life, liberty and material property.

Hobbes, Locke and Rousseau agree on the objective of the Social Contract. They agree that the Social Contract is aimed at some ultimate good and this good, for the individual. They agree that the *Summon Bon* of the individual should be protected, not questioned or sacrificed. They do not dispute what this ultimate good is. Rather, they identify it as the individual's self preservation. As a result the three insist on the preservation of the Civil State since upon its creation they perceive it as a metaphysical being with a need and desire to exist as well as preserve itself; in short an individual. With this in mind, they also agree that if attacked no body can be expected not to defend themselves. They therefore agree that no one can justly be denied their means of subsistence and so of survival. So Hobbes claims -

No man is bound by words themselves either to kill himself or another man.(More explicitly;) If the sovereign command a man though justly condemned to kill, wound or maim himself, or not to resist those that assault him, or to abstain from the use of food, air, medicine or anything without which he cannot live; yet hath that man liberty to disobey⁴²

Locke justifies this position by claiming that as a man has no right to, "take away his own life; he cannot give another power over it".⁴³ A position natural not just to the human individual but also to the metaphysical individual known as Civil State according to Rousseau.

They also alert us to the fact that besides the human individual who remains paramount in the Civil State, a new individual is created by human union - the State. This metaphysical individual, they insist, has needs and ambitions just like the human individual. In its desire to attain and is in its ambition to be; it is just as single minded as the individual citizen. Hence like other individuals it contracts to attain and maintain the peace. Like the human individual, when its survival is threatened it

reacts ferociously and aggressively as it also demands and has a right to self preservation as well as an instinct for survival equal to the human individual, and greater power. The Individual and Civil State have the same end in mind - the preservation and happiness of the individual. Consequently when unfettered by lies or corruption, the State and the individual work harmoniously. In such circumstances the individual can freely and without fear divest his rights to the metaphysical entity we call State as this divestment is only for his own good.

Hobbes, Locke and Rousseau are emphatic that the individual enters Pact and becomes a civil citizen only by his own will. That is, they insist that the Contract State and all the concepts therein are based on the individual's voluntary consent to enter and remain in the Civil State.

ii) Crime And Punishment

One ought to note that there are certain conditions attached to the right of Self Preservation. Although each has a right to and the sovereign a duty to preserve this right, any criminal act nullifies this right and the sovereign's corresponding duty. Indeed, as Hobbes says, a criminal act is an act against Society, a declaration of War against it. A criminal therefore enters a state of war not only against his own nature but also in respect to the rest of society and so with the sovereign representative. The three philosophers therefore agree that a criminal though obliged by nature - even his own nature to - protect himself, forfeits any promise of, or actual protection by Civil Law and Security in the Civil State. He or she must be punished. Hobbes justifies the Sovereign's right and duty to punish by saying that,

before the institution of commonwealth, every man had a right to everything, and to do whatever he thought necessary to his own preservation, subduing, hurting, or killing any man in order there unto. And this is the Foundation of that right of punishing, which is exercised in every commonwealth. For the subjects did not give the Sovereign that right; but only in laying down theirs, strengthened him to use his own, as he should think fit, for the preservation of them all, so that it was not given, but left him, and to him only, and (excepting the limits set to him of natural law) as entire, as in the condition of mere nature, and of war of every one against his neighbour.⁴⁴

Locke and Rousseau agree with Hobbes say that this need for such a central supreme authority is established in the State of Nature. And so Locke claims that an individual has a right to protect himself from a thief who attacks him using force thereby placing the innocent individual in a position whereby an appeal to law might be impossible immediately, while redress might find the innocent already injured or dead. Locke however finds the idea of insecurity in the Contract State unacceptable since as he claims, the purpose of the Social Contract is the creation of a Mutual Authority and judge on earth to reduce instances of "Malice, Violence, and Mutual Destruction".⁴⁵ Hence Rousseau explains:-

every malefactor, by attacking social rights, becomes on forfeit a rebel and a traitor to his country, by violating its laws he ceases to be a member of it; he even makes war upon it. In such a case the preservation of the state is inconsistent with his own, and one or the other must perish, in putting the guilty to death, we slay not so much the citizen as an enemy. The trial and judgement are the proofs that he has broken the Social treaty, and is in consequence no longer a member of the state. Since, then he has recognized himself to be such by living there, he must be removed by exile as a violator of the compact, or by death as a public enemy.⁴⁶

Consequently, the Philosophers agree that in an endeavour to punish criminals, all citizens are bound to support the Sovereign representative. This is because each citizen as a signatory to the Social Contract is bound to support and assist the Sovereign in attaining and maintaining the peace, and security in the Contract State promises. Subjects of the Commonwealth can therefore be called upon to assist in punishing a criminal by whatever means the law dictates - even death. No citizen has a right to disobey or ignore this call. Indeed response is mandatory as;

when therefore our refusal to obey, frustrates the end for which the Sovereign was ordained: then there is no liberty to refuse.⁴⁷

iii) War

It is from the perspective discussed above that the philosophers discuss the question of War and the citizen's participation or lack thereof. War; Hobbes, Locke and Rousseau concur, is often a necessity for the preservation of the Civil State. As such, it is the citizen's duty to positively participate in War as it is each individual's duty to preserve the Civil State and consequently individual freedom. And so Rousseau argues:

Every Man has a right to risk his own life in order to preserve it.

and as

The Social Treaty has for its end the preservation of the contracting parties. He who wills the end wills the means also, and the means must involve some risks, and even some losses. He who wishes to preserve his life at others' expense should also, when it is necessary, be ready to give it up for their sake. Furthermore the citizen is no longer judge of the dangers to which the Law desires him to expose himself; and when the prince says to him: "it is expedient for the state that you should die", he ought to die because it is only on that condition that he has been living in security up to the present, and because his life is no longer a mere bounty of nature but a gift made conditionally by the State.⁴⁸

Following this argument, unless one is able to present someone else to fight in his stead, is sick, a natural coward or for some other very good reason is incapable of going to War: each citizen is obliged to go to war as:

when the defence of the Commonwealth requireth at once the help of all that are able to bear arms, every one is obliged, because otherwise the institution of the Commonwealth, which they have not the purpose, or courage to preserve was in vain.⁴⁹

Indeed Locke argues that:

controversies that happen between any Man of the Society with those that are out of it, are managed by the public; and an injury done to a member of their Body engages the whole in the reparation of it.⁵⁰

If then reparation can only be achieved by War, each citizen has a duty to participate in War when called upon to.

Clearly none of the three Philosophers perceive a demand to participate in war as unusual or as a violation of the citizens' rights. Hobbes, Locke and Rousseau instead perceive it as the citizen's obligation, as a reaffirmation not a contradiction of the Social Contract. As the Social Contract promises protection and security for each citizen, one way of assuring this is by a call to the citizen to maintain and preserve the State through its defence in War.



Inviolate Rights And Loyalty

Despite the pursuance of self protection and Ambition, the three philosophers insist that citizens owe the Sovereign their total undivided loyalty. This loyalty has no limit except the demands of self preservation. Loyalty is therefore conditional on life, liberty and property rights which are integral to self preservation. Rights to life, liberty and property are therefore rights one should seek wherever, whenever and with whomever one might find them. Thus if not found with existing leadership, authority should be changed or loyalty transferred.

The Philosophers therefore although disagreeing on the concept of property agree on a number of things. First, they agree that it impossible to own property in the State of Nature in the conventional sense of the term. To the three, possessions provide one of the chief motives and explanations for Man's entry into the Political State. Upon entry into Society, property provides the reason why men remain therein. Hence Hobbes, Locke and Rousseau agree that with the Civil State possessions gain new meaning and status. That is possessions are converted into property and their existence assured rather than threatened by the Contract State. Secondly, the right to property notwithstanding, the three concur that the individual's right to property is subordinate to that of the Sovereign or Community as the case may be. This means that, although the individual has a right to acquire, own and dispose of property, the State has a prior claim and its needs come first. This is because according to Hobbes, Locke and Rousseau it is only by being part of a Community that the individual is assured of property as it is only these (State and Community) that secure Man's property and his continued enjoyment of the same. The demands of the State and the Community can therefore not be questioned or demed in regard to property. Hobbes and Rousseau insist that this claim

may be extended to life and liberty. So, if one has to die or imprisoned to maintain society or its liberty - so be it.

4:5 Identity And Conceptual significance of Terms.

i) The Sovereign

The Sovereign who assures peace and security, to whom loyalty is owed and property ultimately belongs to exists. Hobbes, Locke and Rousseau concur not only that the Sovereign exists but also is real and identifiable in the Contract State. Hobbes identifies the Sovereign with the Leviathan saying the Sovereign is : " that mortal god, to which we owe under the immortal God, our peace and defence". That who by;

authority given him by every particular man in the Commonwealth, he hath the use of so much power and strength conferred on him that by terror thereof, he is enabled to perform the wills of them all, to peace at home, and mutual aid against their enemies abroad.

Describing the Sovereign, Hobbes says this is the;

one person of whose acts a great multitude by mutual covenants one with another, have made everyone the author, to the end he may use the strength and means of them all, as he shall think expedient for their peace and common defense. And he that carrieth this person, is called SOVEREIGN, and said to have Sovereign power, and every one beside his SUBJECT.⁵¹

Locke agreeing with Hobbes on the existence of the Sovereign associates it with the "One Body Politick under the Supreme Government" through which the citizen;

authorizes the Society, or which is all one, the Legislative thereof to make Laws for him as the public good of the Society shall require; to the Execution whereof, his own assistance (as to his own Decrees) is due.⁵²

Locke identifies Sovereignty with the Legislature claiming that it is the distribution of this latter that determines the form of government. It is to the Legislature, he says, that Man quits his power to prosecute and punish. That is Man's; "rights to employ his force, for the Execution of the judgements of the Commonwealth, whenever he shall be called to it; which Indeed are his own judgements".⁵³ This is why Locke claims that: "the first and fundamental positive law of all Commonwealths is the establishing of the Legislative Power".⁵⁴

Rousseau also accepts the existence of a Sovereign and discusses it at length. This, he conceives as the: "public person, so formed by the Union of all other persons..... called by its members..... Sovereign when active".⁵⁵ A Body "formed wholly of the individuals who compose it".⁵⁶ That is, composed of the people. In this instance - the individuals who form the state

its citizens.

As can be seen, the three philosophers on the face of it disagree on who or what the Sovereign is. However, they each identify, it with a certain aspect of Civil Society. These at first glance, seem totally different. That is, Hobbes identifies the Sovereign with the Leviathan; Locke with the Legislature and Law. Rousseau with the People. Yet one needs to note that for the three the Sovereign exhibits certain characteristics. Firstly it is the Centre of Power. For the three, the Sovereign or at least its representative is above the Law of the State when it acts as Sovereign. Also, as the Sovereign is Omnipotent within the State, it is accountable to none but itself. Hence, Hobbes, Locke and Rousseau agree that for Sovereignty to be effective, it must be absolute or nothing.

Each of these Philosophers seems to perceive the Sovereign and its acts as ultimately an expression of the will of each individual and therefore fundamentally the will of the People. They see this "will" as expressed in the Law of the Land. Law, which, if truly the will of the people cannot be wrong. This is because the three hold the opinion that when the people's will has not been perverted or subverted, it is ultimately right and infallible. It is this untainted will that they see and desire reflected in Positive Law. At the same time they concur that if the Law is not convenient or harms the Sovereign or its ability to act, then the Law ought to be subjected to change, review or annulment. This is because they agree that anything that harms the Sovereign harms the people.

In common also is their perception of the purpose and job description of the Sovereign. The Sovereign they contend is an instrument of Civil Society. Its objective is the same as that of Political Society. That is, "namely the procuration of the safety of the people"³⁸. This is for the citizen "the mutual preservation of their lives, liberties and estates"³⁸. Which as Rousseau describes it is "to defend and protect with the whole common force the person and goods of each associate"³⁹.

Similarly they agree that when the Sovereign Person or its representative is not performing their duties adequately then they should be relieved of them. This is because this person is there only as a representative of the people: to fulfil their desire for peace and security. These same people the Philosophers agree should be able to install and, or replace that to whom they have entrusted this duty if it is not performed to their satisfaction as it holds its status only of their goodwill, by their permission. At the same time they agree that the Sovereign when not deceived or otherwise interfered with is above reproach. Furthermore

they agree that the Sovereign cannot or at least should not be judged and condemned in his actions as Sovereign and prosecuted as such. As said earlier, this would be like the people judging themselves and finding themselves wanting or guilty - this is said to be impossible. The Sovereign they also agree, is the source of Positive Law. This being so, Positive Law and custom they agree are not binding to the Sovereign unless the Sovereign so wishes. However, they concur that Natural Law is binding to the Sovereign representative.

Hobbes insists that the Leviathan is not party to the Social Contract while Locke and Rousseau insist the Prince is party to it. On the face of it this looks like a major divergence in ideas. A close analysis reveals otherwise. What is revealed is that what for Hobbes the Leviathan is not party to or committed to is Positive Law which emanate from him. Locke and Rousseau on the other hand while insisting that the Prince is bound to the contract, in the same breath insist that in his official capacity as a representative of the People the Prince is above Positive Law but always tied to Natural Law. Note that for Hobbes, the Leviathan simply by being the Leviathan is ideally always in his official capacity acting only as Leviathan and so is always above Positive Law.

Consequently - as is clear - there is some agreement in their ideas. The Sovereign for the three is party to the contract in the sense that it is committed to Natural Law but not subject to Positive Law. Also if the Sovereign does not assure the People of that for which they joined Society, if it does not ensure for them what they are promised under the Social Contract, then it can be dismissed relieving the subjects of their obligations to it. Subsequently it seem that the three admit that (at least symbolically) that the sovereign is that person in whom power is vested in Political Society. From this discussion it seems as if on one level the three hinge and define the Social Contract as an, and on an agreement to honour and enforce Natural Law.

ii) Government

Hobbes, Locke and Rousseau agree that though the centre of Power in the Civil State may be traced to the Sovereign, its operations are conducted through the medium of Government. While the Philosophers comply on the existence of government they seem to disagree on its function.

Hence, Hobbes sees government as a direct delegate of the Leviathan working for the 'mortal god' while Rousseau and Locke

an intermediate body set up between the subjects and the Sovereign, to secure their mutual correspondence, charged with the execution of the Laws and maintenance of liberty, both civil and political.⁶⁰

Thus Rousseau refers to members of government as "governors" - administrators of government. And so he calls;

government or supreme administration, the legitimate exercise of the executive power. and prince or magistrate the man or body entrusted with that administration.⁶¹

The three concur that since government is an instrument of Political Society, its ends are similar to those of the latter. However, they insist that to ensure the continued existence of Political Society, the powers of government and governors should be checked. Thus Hobbes says that while a representative of the Sovereign - has duties similar to those of the Sovereign - that is the procuration of safety and security in aid of the Commonwealth⁶².

Locke is explicit when he says that the end for which men enter Society and elect government is "to secure and defend their properties".⁶³ Talking about the extent of representatives of government he says;

the Bounds which the trust is put in them by the Society, and Law of God and Nature, have set to the Legislative Power of every commonwealth in all forms of Government....

is that government and governing takes place by fair and "promulgated established laws" aimed at the "good of the people" by the "consent of the people" which the governors cannot transfer to another party. That is, they cannot "transfer the power of making laws to any Body else, or place it anywhere but where the people have".⁶⁴ Locke insists that these limits and objectives are in aid of the fact that "the end of government being the good of the community" cannot be denied, altered or abandoned. So along with Hobbes, Locke says that the powers of governors and government ought to be limited claiming that:

Therefore in well order'd Commonwealths, where the good of the whole is so considered, as it ought, the Legislative Power is put into the hands of divers, Persons who duly Assembled, have by themselves, or jointly with others, a power to make Laws, which when they have done, being separated again, they are themselves subject to the Laws, they have made, which is a new and near tie upon them, to take care, that they make them for the public good".⁶⁵

Rousseau also identifies this problem of limit and balance perceiving it as a difficulty of government lying in the:

manner of ordering this subordinate whole within the whole, that in no way alters the general constitution by affirmation of its own, and always distinguishes the particular force it possesses, which is destined to aid in its preservation, from the public force, which is destined to the preservation of the state; and, in a word, is always ready to sacrifice the government to the people, and never to sacrifice the people to the government⁶⁶.

To resolve the issue of limit and balance in the Contract State, Rousseau like Hobbes and Locke tries to restrain the powers of governors. That is, he attempts to create a complex balance between the people which to him is the Sovereign and their governors saying:

The government gets from the Sovereign the orders it gives the people, and, for the state to be properly balanced

there must, when everything is reckoned in, be equality between the product or power of the government taken in itself, and the product or power of the citizens, who are on the one hand Sovereign and on the other subject.

And so he says,

none of these three terms can be altered without the equality being instantly destroyed. If the Sovereign desires to govern, or the magistrate to give laws, or if the subjects refuse to obey, disorder takes the place of regularity, force and will no longer act together, and the State is dissolved and falls into despotism or anarchy.

Clearly there is a place for everything and a thing for every place for only this situation creates a proper equation. In his words: "One mean proportion between each relation".⁶⁷

An analysis of the arguments offered by Hobbes, Locke and Rousseau for limit and balance in governance reveals that the conclusions reached are based on two considerations -

- * The Philosophers perception of who or what is the centre of power in a socially contracted State.
- * The objective of the Contract in a Social Contract State.

Reflection shows that the three Philosophers aim to the good of the individual and as a result of this that of the Community. So, although the centre of power is differently identified, although the justification for limit and balance is from different angles - with Hobbes claiming that balance should be maintained to secure the Leviathan's position, Locke demanding balance for the sake of Public good and good laws and Rousseau for the abstract, abstracted Sovereign - they have one thing in common. Ultimately the three intend for government to work for the people and the individual. Ultimately they believe that the Leviathan, the Legislature and the Sovereign express the will of the People for the good of each Individual. In all this, the three seek a solution each identifies individually and considers imperative. That is, how to ensure the preservation, growth, security and protection of both the individual and Society without destroying either. And so while for Hobbes government is a delegate of the Leviathan, that of the Legislature, in Locke and the Sovereign in Rousseau, they all agree that it is an agent. It is an agent that holds and is itself delegated power, one that performs delegated duty for which it is answerable to a higher authority. This higher authority is for each philosopher acknowledged as the People and consequently each individual citizen. The solution to the question of limit and balance in the Civil State is therefore found in the protection of the individual.

iii) Political Society

Common between Hobbes, Locke and Rousseau is their perception of Political Society. Political Society they agree is a

"relationship form" from and as result of the Social Contract. That is, a relationship flowing from and formulated under the Social Contract which defines the form of relationship between authority and its subjects, a society formed as a further step from Mere Society.

Hence similarity between Hobbes, Locke and Rousseau may further be observed in their perception and distinction of Political Society from Government. These two, they agree, are entered or formed - as the case may be, at different times,⁶⁸ in different stages, with different rules - although the rules may be related for what may seem to be different purposes. The Philosophers agree that Political Society is entered by contract; one person to another, to reduce the constant insecurity prevalent in the State of Nature. Government on its part is entered into by a different arrangement which the Philosophers refer to as Covenant⁶⁹ or Pact⁷⁰, Agreement or Trust⁷¹. Each of these terms refers to an arrangement entered into to create an administrative body to execute the decisions of the Sovereign, a body engaged in resolving issues and disputes within Political Society. Thus each of these Philosophers enters a discussion about the distinction between the two arrangements - one that clearly distinguishes the two. A discussion that reveals that government is not contract while Political Organization is. That Political Society is entered for the formation of an authoritative body for the resolution of disputes and contracted to assure security. In contrast, government is formulated mainly for administrative purposes in Civil Society. It is this whole process that consists the Social Contract.

iv) The "End"⁷² of Government And Political Society

The Philosophers agree that the objective of the Social Contract - as earlier said - is the pursuance of the individual's good and the preservation of Society. They agree these should therefore also be the aim of Government and Civil Organization. Consequently, they agree that any situation or circumstance that denies or robs an individual and therefore Society of these objectives is a violation and invalidation of the Social Agreement.

Subsequently, they also concur that the violation of the Social Contract, particularly the clause that relates to governance leads to any one of two consequences. The first is the dissolution of Society - Civil/Political Society. This option is one the three consider almost impossible. More often than not, they suggest that the form of government is altered.⁷³ They each consider this option more realistic. That is the form of government is changed from, for example Monarchy to Democracy. Note that for Hobbes and Rousseau such terms as Monarchy and Democracy are only titles of preference; they do not relate to particular

forms of government. Government they also suggest might be absorbed by another through conquest or institution.

Another alternative they suggest is related to the question of power and who legitimately exercises it. Hence they suggest that the centre of power is shifted or recalled to the people by the people as governors are changed. That is, a dissolution of government or a transfer of the trust of power to another person or body. It is this kind of evaluation and election they agree, that occurs more frequently.

v) Choice, Evaluation And Election - Answer To Dissolution of Contract

The issue of choice and election is another which they seem to disagree on - discord however is merely superficial. Thus while Hobbes in his work insists that once the Sovereign is appointed he cannot be expelled, one ought to note in which context he says this and more importantly, what he means. Observe that for Hobbes, the Leviathan in his duty as Sovereign, ideally - has a monopoly of power, is unprejudiced and unbiased in his dealings with his subjects and works for the greatest good of the Commonwealth. That is for the safety and survival of the individual therein. Hence for Hobbes,

The office of the Sovereign, be it a monarch or an assembly consisteth in the end, for which he was trusted with Sovereign power, namely the procuration of the safety of the people, to which he is obliged by the Law of nature,

When the Sovereign fulfils his duties and obligations then he as the Leviathan - the most powerful and conscientious person in the Commonwealth - cannot and should not be questioned or threatened. Hobbes is on the other hand explicit about what happens or should happen to a Sovereign who is not up to par. A leader who ceases to express and act on the will of his people, who acts only for his personal gain, ceases to be the Leviathan. This is because he has failed in his duty of protecting his people and their interests. Such a Leviathan allows for a shift of power and loyalty. In such a case the people can and often do "elect" a new "mortal god". That is; shift their loyalty and obedience to another power centre that is bound to emerge within or without the Commonwealth. By so doing, they give a new person authority to rule them and legitimize his activities. It is to this new more powerful centre that they now owe duty and obligation. Note that the new centre is more powerful because it is that to which the people are now subject. That with which they now covenant with. It is this procedure that can be conceived of as evaluation, choice and election in Hobbes' Civil State.

Locke suggests that not only should evaluation and election be done but that it should be done periodically. However although he demands periodic elections Locke does not make clear what period of time should elapse between one election and the next

nor the procedure. He does however introduce and utilize a few elements in a novel manner. The first of these is legitimacy and legitimate power which Locke claims is based on election⁷⁵. Second is his idea that government should be checked and balanced in government⁷⁶. Finally one encounters his idea of freedom of choice and debate as regards governors and form of government.

Emphasizing the aspect of freedom, choice and debate he warns that in all cases one ought to remember that:

the people having reserved to themselves the choice of their representatives, as the Fence of their properties could do it for no other end, but that they might always be freely chosen, and so chosen, freely act and advise as the necessity of the commonwealth, and the Public Good should, upon examination, and mature debate, be judged to require.⁷⁷

Rousseau develops the theories of Hobbes and Locke. He comes across as more specific on evaluation and an election timetable. Hence, on the periodic time frame for elections, he suggests every five years. It is these periodic assemblies he perceives of as giving legitimacy to governors. Rousseau explicitly states that If elected leaders choose to be or prove to be a disappointment elections should occur sooner. Furthermore, Rousseau indicates issues⁷⁸ around which evaluation of performance and voting should revolve.

Related to this is a discussion of what the decision for a leader should be based on. Hobbes, Locke and Rousseau patently agree that the choice of a leader should be based on majority will. So Hobbes claims that:

A Commonwealth is said to be instituted when a multitude of men do agree and covenant, every one, with everyone, that to whatsoever man or assembly of men shall be given by the major part the right to present the person of them all, that is to say, to be their representative, every one, as well as he that voted for it, as he that voted against it, shall authorize all the actions and judgements, of that man or assembly of men, in the same manner as if they were his own, to the end to live peaceably amongst themselves, and be protected against other men.⁷⁹

Locke in agreement with Hobbes says that since it is impossible for all individuals in a group to be in agreement, the consent of the majority shall be taken as expressing the wish of all. Thus he claims that in a Political State, "the majority have a Right to act and conclude the rest".⁸⁰ Rousseau although aware of the pitfalls inherent in the claim of justice to be found in majority decisions in a free state quite categorically, clearly and calmly states that "the vote of the majority always binds the rest".⁸¹

The three Philosophers are in agreement that a majority vote ideally expresses the majority's desire – the majority's will. This

will is for Rousseau, and indeed also for Hobbes and Locke - unless deceived - always right.

Locke and Rousseau who advocate for rule by a limited body in contrast a supreme individual are alert to the possibility of friction between leaders. They resolve this situation by appealing to the people with whom they agree all power ultimately rests. Thus in any dispute between leaders they agree that the people should act as umpire. This is because leaders are elected, (chosen if you wish) by the people. It is therefore in the same that resolution of disputes is to be found. Although Hobbes uses different terms of reference he agrees with Locke and Rousseau. That is, if leaders do not agree amongst themselves then the people should decide whom amongst them or outside them to entrust with power. For Hobbes therefore resolution is done by a transfer, a relocation of power and loyalty. For Locke and Rousseau the relocation takes place through election and thereafter a transfer of trust. Note that for the three, the people's decision is final and binding.

4:6 Contextual Meaning of Terms in Civil State.

(a) Authority

Authority is a concept derived from power. In the Contracted State individual and collective power is transformed into authority by an act that each individual participates in. That is, by each individual giving up their natural right and voluntarily submitting to one Person, each individual legitimizes power and gives it right. This form of legitimate power is known as authority. This is power appointed by the people to secure for them peace and security. This new power is as earlier said vested in Political Authority which operates within parameters defined by Law. However, the most important aspect of authority is that it acts with the permission and good will of its subjects.

Authority in the Civil State has a defined objective. Its aim is the maintenance of peace and security for the individual and the preservation of the State. This authority is not fluid as its centre is always the appointed Political Authority. Like the concept power, it relies heavily on might. That is on the ability to reward or punish. Authority, Hobbes, Locke and Rousseau inform us can be delegated. However they go further and warn that political authority can only be bestowed/transferred by the people who appoint it - its subjects. It is these individuals who appoint and dismiss authority.

Note that the Contract State has all the ingredients necessary for Authority. Because of the submission of all individuals to one person there exists a supreme person more powerful than the rest. Because the individuals have submitted to him by

own voluntary consent, this person has a right to make demands of them and make them obey. Furthermore he has the instruments to punish or reward. This figure which holds authority is variously identified by the Philosophers as the Legislature or as the Sovereign. Though not in agreement about the title of the legitimate power centre, Hobbes, Locke and Rousseau agree that a single source of authority exists in Civil State.

b) Legitimacy

It is from this figure and symbol of authority that Law and action gain their power and authority. That is, they are legitimized. It is therefore the Civil State that gives meaning to the term Legitimacy. The Philosophers agree that any action in accordance with Positive Law is in a Contract State Legal. Positive Law which must be accessible and promulgated is used as a measure of right and wrong. This Law is ideally just and reasonable as it stems from the people and is in conformity with Man's nature as well as with his needs as dictated by nature. Actions in conformity with it are therefore legitimate.

c) Obligation

As there exists an agreement, pact or covenant in the Civil State, all its members are obliged to act in a certain manner and this manner as befits their station in the State. Obligation gains a new perspective. Unlike in the State of Nature or Mere Society where obligation was one individual to another, obligation now encompasses the whole community. Unlike in the former State where one was bound by fear of immediate and limited reprisal (from one's neighbour), one now has to reckon with the wrath of the whole community.

One is now bound not only by fear of punishment but also by respect, reason and ambition. Hence one is compelled to comply with the terms and tenets of the Social Contract as expressed in the Law: in one's constitution. These are reasonable - as they proceed from men themselves and as are they backed by authority, men respect them. Further more if men wish to achieve the peak of their ambition in Society they know that the easiest and only way to do so is by obedience to law - and subsequently a fulfilment of one's obligations to the self and society. Note that these laws outline both the individual's and society's rights and duties. Observe however that for Hobbes, Locke and Rousseau whatever the case might be, one's most immediate and greatest obligation is to the self. Self preservation remains the paramount obligation for both the individual and the State.

d) Duty.

The horizons of duty are also expanded in the Civil State to include one's neighbour and community. Hence although one's first duty remains to the self, it expands to include other citizens and the sovereign power.

Obedience to political authority is therefore mandatory (where it does not conflict with self preservation). Each citizen therefore has a duty to maintain himself and the State. Each individual has the task of maintaining self preservation through the maintenance - as far as possible and as one is required - of peace and security. This is through an appeal to reason within one's self and to law and authority when an individual is threatened or in doubt. The Authority's duty becomes the attainment for and reward of the individual with peace and security as well as the punishment of those who dodge their duty. That is, a duty to ensure the respect of law and maintenance of security and peace for the individual.

4:7 **Conclusion.**

This thesis suggests it prudent to enquire once more whether Hobbes, Locke and Rousseau demonstrate and represent what might posit as one school of thought - the Western perception of the origin of State. In answer it suggests that if they do not seem to do so it is because they start from slightly different angles and so at first glance seem to differ. It may be posited that Hobbes expresses this school's opinion in a bare manner. Locke attempts to moderate this view, while Rousseau takes its position to that of an ideal. That is they develop ideas that already are, each starting from where the other stopped.

For the three of them, Political Society seems to be a Phoenix; continually rising from the ashes of its death, brought to life by the continual give and take process of the Social Contract which attempts to reach the perfection Civil Society offers. It will be interesting to compare this perspective with what investigation in Africa reveals.

END NOTES.

1. Vide Supra. 3:2.
2. The term 'Social Contract' might seem a misnomer since the three philosophers deny that the arrangement we refer to as such is a contractual relationship. Refer to section 2:1, 2:2, 2:3, and 2:4 for these arguments. However, note that for the sake of familiarity we shall continue to refer to the arrangement in this conventional sense now and then.
3. Of course one might be able to also detect and delineate a number of intermediate stages in between.
4. Mere Society

5. Or what is sometimes referred to as "Primitive" or Natural Man". Precivil in the sense of Man not yet in Civil Society.
6. "Contracted" and "State" significant here. Though Society (Mere Society) is a contractual state it is not yet a State as no Covenant, Compact or Pact has been entered to convert it from the merely social arrangement to the political organization a State implies. It therefore remains a state of limited contract, a contracted state until it is converted to the covenant state, a process that begets the metaphysical individual we refer to as Civil State which is inhabited by civilians.
7. A discussion limited to rights, equality and freedom shall be indulged in the course of this chapter.
8. Note that though Hobbes, Locke and Rousseau make this claim, they do not justify it nor show how universal consent is obtained in the first place.
9. Thomas Hobbes. Leviathan: John Plamenatz (ed.), Cox and Wyman Ltd. London, 1987, p.176.
10. John Locke. Two Treatises of Government: Peter Lasslett (ed), Cambridge University Press, London, 1967, II: 87.
11. Jean Jacques Rousseau. The Social Contract and Discourse: G. O. H. Cole(ed), E.P. Dutton and Company Ltd, New York, 1950. p.14.
12. *ibid.* p. 14.
13. Thomas Hobbes, *Op Cit.* p. 176.
14. John Locke. *Op Cit.* II: 95.99.
15. Jean Jacques Rousseau. *Op Cit.* p.15.
16. *ibid.* p.15.
17. Thomas Hobbes. *Op Cit.* p. 248.
18. *ibid.* p. 147.
19. *ibid.* p. 159.
20. Jean Jacques Rousseau. *Op cit.* p. 35.
Note that "People" here is equivalent to citizens. members of the Civil State.
21. *ibid.* p 36.
22. *ibid.* p.36.
23. John Locke. *Op Cit.* II:214.
24. *ibid.* II 212 per a further discussion of this idea.
25. *ibid.* II 124.
26. *ibid.* II:137.
27. Thomas Hobbes. *Op Cit.* p 249.

28. *ibid*, p. 244.
29. *ibid*, p. 247.
30. Jean Jacques Rousseau, *Op cit*, pp 34-35.
31. Thomas Hobbes, *Op Cit*, p. 147.
32. *ibid*, p. 146.
33. *ibid*, p. 262.
34. John Locke. *Op Cit*. II:87.
35. Jean Jacques Rousseau, *Op Cit*, pp 4-5.
36. *ibid*, p. 5.
37. *ibid*, p. 14.
38. *ibid*. p. 5.
39. John Locke. *Op Cit*. II : 88.
40. Thomas Hobbes. *Op Cit*, P. 176.
41. Jean Jacques Rousseau, *Op Cit*, p. 15.
42. Thomas Hobbes, *Op Cit*, pp 209-210.
43. John Locke. *Op Cit*, II:23.
44. Thomas Hobbes. *Op Cit*. p. 277.
45. John Locke. *Op Cit*. II:19.
46. Jean Jacques Rousseau, *Op Cit*, p. 33.
47. Thomas Hobbes. *Op Cit*, p. 210.
48. Jean Jacques Rousseau, *Op Cit*, p. 32.
49. Thomas Hobbes. *Op Cit*. P. 211.
50. John Locke. *Op Cit*, II 145.
51. Thomas Hobbes, *Op Cit*, pp 176-77.
52. John Locke. *Op Cit*, II:39.
53. *ibid*, II:88.
54. *ibid*, II:134.
55. Jean Jacques Rousseau. *Op cit*, p 15

56. *ibid*, p. 17.
57. Thomas Hobbes, *Op Cit*, 295.
58. John Locke. *Op Cit II* : 123.
59. Jean Jacques Rousseau, *Op Cit*, p. 14.
60. *ibid*, p.55.
61. *ibid*, p.55.
62. Refer to Thomas Hobbes. *Op Cit*. p. 215.
63. John Locke. *Op Cit*, II:136.
64. *ibid*, II:142.
65. *ibid*, II : 143.
66. Jean Jacques Rousseau, *Op Cit*, P. 59.
67. *ibid*, p. 56.
68. Refer to each individual philosopher's interpretation of the Social Contract in this thesis.
69. Hobbes.
70. Rousseau.
71. Locke.
72. "End" as in objective as well as in dissolution.
73. Refer to:
 Thomas Hobbes: *Op Cit*, Ch 24. pp. 284 -295.
 John Locke: *Op Cit*, Ch 19. II:211 - 242.
 Jean Jacques Rousseau; *Op Cit*, pp 84 - 89.
74. Thomas Hobbes. *Op Cit*. p. 295.
75. John Locke, *Op Cit*. II : 216.
76. *Ibid*, II : 222
77. *Ibid*.
78. Questions that Rousseau sets out to guide elections:
 "Does it please the sovereign to preserve the present form of government?"
 "Does it please the People to leave its administration in the hands of those actually in charge of it?"
 - Jean Jacques Rousseau. *Op Cit*. P.15.
79. Thomas Hobbes. *Op Cit* p. 177.

80. John Locke, *Op Cit*, II : 99.

81. Jean Jacques Rousseau, *Op Cit*, p. 106.

CHAPTER FIVE - THE CIVIL AGREEMENT AND CIVIL SOCIETY : An African Perspective.

5:1 Introduction.

Like Man whom research indicates is Universally the same though particularized by specific circumstances; the Kikuyu and Wanga Communities though superficially differing seem actually rather similar. The principles and philosophy behind certain practices and beliefs are basically the same though they may differ in their practise and rendition.

This section is dedicated to an investigation of the tradition and culture of the Kikuyu and Wanga. It is an attempt to discover how similar or dissimilar these two groups were. Furthermore, this section investigates the impact of Colonialism on these two units; an impact that was mirrored all over the country in other Communities. These experiences and their impact in modern Kenya are in turn - experiences reflected in the rest of Africa. By this discussion it is hoped that the role of the Social Contract and related terms in governance as well as in these peoples philosophy shall manifest itself. Consequently, problems and their causes in modern government are revealed and suggestions for their resolution offered.

5:2 Movement:- Individual To Unit.

i) Original State

In the course of the interviews a divergence of ideas as to the origin of Man was revealed. In both communities, it is clear that there exist individuals who embrace the mythological perspective while others adapt the historical perspective¹. Others, merge² the two perspectives to explain their individual realities. This notwithstanding, similarities are revealed as regards the respondents perception of Man in and out of this period as well as with reference to the State itself.

Each of the respondents suggests that Man, being an animal; tends to selfishness. He often seeks advantage for himself. In his search for advantage Man constantly creates conflict within himself and with others. He also encounters conflict from nature. On one level, (within him) Man often has to arbitrate in conflicts between his Spirit/Mind and his body as both Wanjiku³ and Masinde⁴ suggest. As If this is not enough; since Men are in agreement of what "good" is, whatever one individual perceives as desirable is what another wants. As such conflicts erupt between individuals, each party seeks to fulfil their ambition of comfort for the self and advantage over others. On the other hand Nature often sets Man back as it presents him with drought, famine, floods, earthquakes, disease and such to endure

As most of the respondents agree, Man is a superior being. He is able to reason, he is able to know (Kyuna and Okoko), able to formulate ideas (Njuho)⁵. Man therefore realizes that the State he is in is unsatisfactory and is able to identify another state which he sees as better. For the purpose of bettering his circumstances he is able and willing to join with other Men. By cooperation Man seeks survival and security which he identifies as the ultimate good. Thus, Man dictated by the need to survive and not necessarily by inclination or affection enters Society.

ii) Society

Man enters, polishes and practises his social skills within what is deemed the most natural of Social Units - the nucleus family. For a while the unit seems ideal for man; not for the affection within it but because of the level of cooperation and security that blood ties sometimes assure. However, even within the family itself there often occurs conflict. More often than not the father emerges as the arbitrator⁶ probably because he is often physically stronger, rarely incapacitated by birth, weaning and related factors.

Eventually the immediate family proves inadequate for all the needs of the individual within it as well as those of the unit itself. This necessitates a need to interact with other family units. An interaction for the purposes of trade and support from alien attack amongst other needs in a bid to survive and ensure security. Although these units cooperate⁷ when there is need within them or when there is danger from without them: conflict often arises amidst them. In such instances, Muriuki and Wanjohi suggest that fathers as heads of the smaller units naturally evolve or are actively appointed as representatives of the different families to resolve issues that might otherwise destroy the Social Units that grow from the family Unit (units such as clans and villages). Units that soon become integral to the survival of the individual.

With time it is clear that these Social units that have grown, within which authority is based purely on biology; whose expediency is limited to danger and the need for security are inadequate. For one thing, they are too fragmented hence no loyalty towards one whole unit is inspired. Indeed when an outside enemy lacks internal animosities rear forth. Furthermore the portfolios of their leaders are for a variety of reasons not only limited, but also restrictive of their function. For one their office does not encompass all possible eventualities. Secondly, because their method is not streamlined it harbours problems. Consequently organization is difficult. In instances where members have relatively equal clout, decisions are hard to reach or implement as there is no power centre to guide deliberations. Where a number of strong representatives vie for dominance,

conflict that breaks up or risks the break up of the Units results.⁸ Where one individual emerges as dominant, decisions are often biased as they favour his interests. Injustice is often perpetuated as the interests of either some or all the members suffer.

Such Units cannot survive for long as they fail to ensure the needs for which members join - survival and security. Amongst both the Wanga and the Kikuyu the solution that Man perceives as best is the same - the appointment of a Political Authority to head a Political Society. The alternative to this is chaos. As Outa succinctly puts it: although we know of war and danger now, it is nothing compared to what is or what could be without Political Organization.⁹

5:3 Transition And Development:- Political Society.

i) Social Contract And Civil State - Traditional Africa.

All the respondents agree on the need for Political Society. Each sees government as necessary for Man. Indeed some like Masinde and Kyuna claim that out of Political Society Man reverts to the beastly animal he actually is as his organizations as well as his better nature disintegrate.¹⁰

Certain aspects are revealed as necessary to Political Society in both communities. In the first place is Political authority. The respondents agree that in a Political Unit, authority stems from the people but is vested in one centre. The Wanga identify this centre as the "Nabongoship" (Kingship) while amongst the Kikuyu it is the "Kiama kia Athuri" (Council of Elders). Although the titles of these bodies seem to suggest completely different forms of political society - that is a monarchy and a democracy - the discussion below reveals otherwise.

It is important to note the although the symbol of Unity and Authority amongst the Wanga was the King; he did not rule but led. Furthermore he did not lead in isolation but in concert with the "Amaguru" who formed a Council of Elders. These were elders representing the different Clans who formed the Wanga Alliance. These individuals selected on the basis of a criteria that had the needs and survival of society in mind represented the various interests contained in the State at the King's court. Ideally they expressed the Peoples' choice and their will. One of their functions was to maintain a balance in the use of power by checking against the abuse of power at this stage in the power pyramid¹¹.

A similar system can be found in Traditional Kikuyu Society. Here the ultimate power centre was the Council of Elders. From

amongst the individuals who formed this Council one individual who proved himself superior to the rest was selected as Muthamaki - that is: King, Spokesperson, Chairman. Like the Nabongo in Wangaland, such a person regulated the affairs of government and spoke on behalf of its representatives. Also (like the Nabongo), he did not speak or act in isolation but always in concert with his Council who also checked his power.¹²

One notes that the qualifications for the office of the Nabongo and that of the Muthamaki are very similar. Individuals who held such office had to have proved themselves wise, brave and hardworking amongst other qualities. The only perceptible difference is that the Nabongo was always a descendant of the royal family; a qualification irrelevant to the Kikuyu system where no such family existed. However in both Societies the individual who took office had to have merited his position and was continually called to perform to the People's expectations.

It is interesting to note that in both Societies there is a single centralized power centre. Similarly, both Communities seem aware of the danger of power unchecked and unbalanced. Consequently, in both Societies one identifies a system of checks and balances in the form of elders and interest groups¹³. Also, and this is very important; in both groups political power is depicted as a trust. The public entrust their personal right to govern themselves to the family, the clan, the village and ultimately to political power centres they appoint to lead them in the State. Such an arrangement carries a warning with it. This is, since the people have by their own will bestowed authority to one centre, they can if they are dissatisfied, withdraw their mandate from such a centre back to themselves or to another centre which they perceive as more beneficial to them¹⁴.

An analysis of the interviews contained in this thesis as well as material on the Wanga and Kikuyu reveals that the appointment and institution of Political Society and government occurs in a similar manner in both communities. In the first place there is a contract between individual citizens to live in harmony. This contract is the basis of any and all Societies. This arrangement keeps individuals together before and after the institution of Political Authority and government. However, this arrangement proves inadequate as it lacks an objective referee who is powerful enough to instill fear and occasion obedience in the People. At some point the need for this referee becomes absolutely necessary maybe because of the problems being encountered in Society. Alternatively the institutions in place evolve to fill this gap in Society. When individuals in Society agree to appoint and empower a person with greater power and authority than each of them individually yet subject to all of them communally, a new arrangement is entered - that which is referred to the Social Pact, Social Agreement, Social Contract

or Civil Agreement.

By this agreement individuals appoint a person - who could be an Individual or an Institution to whom they surrender their individual rights (particularly their unlimited power of action). Note that the Public submits its power to a source within it. By this action of the whole to a particular Unit; a force which they themselves create, Political Authority is born.

It is interesting to note that both amongst the Luyia and the Kikuyu, Political Authority is not unlimited. Right from its inception it is limited both by the objectives of its office as well as by the source of its birth. Since the reason that individuals in Society join Political Society is to ensure their survival as well as the security of their lives and property; Political Authority cannot overlook or ignore the limits these objectives imply. Hence, each Political authority is bound to protect the life and property of each and every member to which it is aligned. Consequently it cannot - and both Communities are explicit about this - wilfully or wastefully attack or abuse the Individual's right to life which is considered sacred¹⁵. Each political authority therefore has a duty to ensure that each citizen has access to the means for their survival. That is: free avenue to all possible opportunities to work, get food, water, medicine and accumulate other acceptable forms of property.

These opportunities are objectives both the Kikuyu and Luyia Political Societies took very seriously. Hence no Individual no matter what kind of power or authority he or she wielded could abuse another's right to life. Hence such acts as the murder of a member of one's Community were not only frowned upon but were very harshly reacted to. Indeed life was so precious that when murder, incest or any other serious crime punishable by death had been committed; the People's representatives only reacted after very careful deliberation so that any course of action taken would be seen to be just. Consequently nobody could afford to take the right to life lightly as the premium on it was high.

To further secure this right to survival and security, Political Authority took its duty of ensuring access to food, water and medicine to heart. Thus each individual was encouraged to involve themselves in profitable employment. Manual labour such as farming and grazing was rewarded not only with nature's harvest but also with Social respect and dignity¹⁶. Lazy individuals were ridiculed. However their dependants who were too old or too young to cater to their own needs were not allowed to languish and suffer. Instead, Society in the form of one's family or neighbour ensured that the weak were taken care of. Such dependants of young received an education from their relatives and neighbours as they were taught the value of hard work.

Furthermore If an individual was too sick to fend for themselves, Society would excuse an appropriate individual from duty to look after them.

Labour was taken so seriously that nobody was exempted from work unless by reason of age, disease or an alternatively prescribed duty. Hence the young were left at home with the old. The adolescents went grazing, mature adults farmed or went to war or trade, the old taught the young and participated in administration as well as government. In this manner, Society ensured a busy productive schedule for all its members. Thus although nobody would be punished for satisfying their hunger on another's farm; Society did not encourage one to become a parasite always taking advantage of others by always eating of the other's sweat. Indeed as Otonyo and Njuho indicate labour was compulsory to ward off the danger of hunger.

Amongst both the Kikuyu and the Wanga these were not the only measures taken to ensure security and preservation. Warriors were also trained to restrain aggressive neighbours and citizens as respondents agree¹⁷. Indeed as Masinde points out, the Wanga went as far as to employ mercenary soldiers to secure the safety, of their members from foreign incursions. In both Communities bravery was highly regarded. Although the call to go to War was compulsory, an individual's decision not to go to war was respected. In return, Society charged one. As Wanjohi and Masinde indicated, one was referred to as a coward, one could not share the war bounty and - most importantly as one had failed to prove their loyalty to Society they were not allowed to lead it.

Any attack on property in its various manifestations was severely punished. Such an attack was seen as an offensive against Society's very existence. The definition of property encompassed both life, labour and material possessions. As property was considered extremely valuable it was vigilantly guarded. Opportunities to acquire material possessions were availed as long as one's ambitions (which Society encouraged) did not hurt Society or one of its members. One's possessions were therefore guarded against one's neighbour and even against Political Authority. However there was an understanding that the needs of Society even in regard to property came first. Thus although amongst both the Kikuyu and Wanga: murder, violent robbery, continued robbery, incest and such serious crime against the individual was punished by death; Society could also call one to War thereby risking the individual's life. The same Society could also take or borrow one's material possessions for the sake of its own security or survival for example through the taxation described by Otonyo¹⁸.

Clearly there was an evident understanding concerning governance in both communities. This understanding covered almost all Social possibilities while also giving room for the address of new or unexpected eventualities. By this arrangement there seems to have been an agreement that governors were to lead unhindered unless they attacked the individual or Society. Those governed were on their part expected to obey. Such an agreement is exhibited in an examination of the concept "Law".

Respondents in both communities agree that Law is an expression of Society's experience. It therefore depicts society's values, norms and ambitions. It was expected to guide both the Leaders and the Led in their interaction with each other and so generate civil behaviour in Traditional Society. Although it was not written down as Mulama and Kyuna point out, its custodians were clearly identified as the elders who formed government and were expected to be Society's leaders¹⁹. Each member of Society was expected to comply with its dictates.

Ideally, it issued from the people through time; from one generation to the next. This is because for one, it was accepted that men are the same everywhere through time. Consequently that which is identified as good by one group does not vary in another. In Traditional Africa this good was seen as survival and preservation. Ultimately it is this good that was expressed and guarded by Society's Spokesperson through Law. Amongst the Wanga this Spokesperson was the "Nabongo" and his Court of Elders. Amongst the Kikuyu it was the "Muthamaki" and "Kiama". This might be the reason both Ngone and Otonyo suggest that Law was the word of the King (Karuri and Mumia in particular)²⁰.

By this law all individuals in Society were made equal as each submitted to it. In return it defined and assured its adherents certain rights. Whenever its dictates or the rights it assured were threatened or abused it punished the wrongdoer no matter who he was. Indeed for purposes of ensuring obedience or compliance and the continued enjoyment of survival and security it engaged the Warrior Class as well as the Court of Elders in both communities. The latter defined its dictates and violations while the former disciplined violators.

Accordingly law protected the individual as well as Society from harm. In this process it defined legitimate and illegitimate action. Since its potency was the in people's trust in the working of justice, their belief that law expressed their will and choice, legal dictates ideally expressed the same. Legitimacy therefore tallied with the objective of law which itself was in harmony with the good of Political Society and government. That is, the good of the Individual and of Society. Compliance

to Law was therefore in harmony with individual will and consequently ensured freedom for civil individuals living in a Civil State.

Within such an organization duty and obligation were complementary. As Munene suggests, duty was defined by Society's representatives - the elders - on behalf of the people²¹. On the other hand, obligation as Masinde and Wanjiku point out was nurtured within the individual and so flowed from within²².

Within Traditional Political Society, duty covered wider horizons than in the Original State. It encompassed not only the self but also one's family, one's neighbours (other members of Society) and the reigning authority. Such duty ensured respect of oneself and of others. It was guided by a healthy dose of conscience and reason, as well as a knowledge of one's obligations. It therefore allowed a chase of ambition that did not hurt one's associates. Although the self remained an important focus of duty: one was so interlinked with a society that worked for the self that it was difficult to divorce personal interests from public interest. Consequently it was easy to fulfil one's duty and obligations to the self and Society as these were reciprocated.

Such States dominated the African scene before Colonialism. This new philosophy changed them a lot. It invaded not only the practical working of Political Society and the Social Agreement on which they were based but also the reason and justification behind these concepts - the People's Philosophy.

11 Disintegration - Colonial Society

Colonialism used the Church and manipulated Man's animal nature to weaken Society. Colonialism attacked and slowly destroyed the bonds of affection, need and common historical experience that tied the people together. Through the Church, individuals were offered alternative less demanding circles and targets of loyalty.²³ Old alliances based on family, village or clan relationships were broken up, ignored or belittled.

Within the new cliques the individual's nature was encouraged to greater independence from other human beings. Each individual's sense of self importance was encouraged while greed was fanned. Negative competition that encouraged and offered opportunities to take advantage of others were offered²⁴. Laziness and corruption were harboured through free gifts and favours. The individual was encouraged to think that he was so independent that he was accountable to none except - God

(whom he would deal with in the next world); the Church (which he interacted with once a week) and the White Master (who was taking advantage of him, one whom he eventually became hostile to).

With the inception of the new system, a number of factors changed in Society. In the first place there was a subtle shift in the conceptualization of the Social Pact. Although individuals and groups continued to enter agreements, none as comprehensive as the Social Pact as it had worked in Traditional Africa emerged.

Individuals whether out of need, ignorance or greed accepted the new centre of power in the form of Colonial Administration as they not only complied with its dictates but in some instances ensured compliance. However as Masinde claims it remained an alien force and never became the new society's accepted political authority²⁶. Hence although individuals admitted the power at the disposal of Colonial Administration, they knew it did not express their will - Society's General Will. A Society which had expanded to include the African, Asian and European. In actual fact this administration expressed only the interests of a particular group. Ergo, its end -that is the preservation and survival of the resultant Political Society - was unjust to a majority of its members as all the respondents agree. By this is meant that it sought the perpetuation of the whole without considering each individual particular. Instead, it was geared to the benefit of a section of the whole while ignoring the needs of the rest. Such an arrangement contravened the principles of the Social Pact.

Consequently though legally instituted, it was impossible for the colonial arrangement to last long as it lacked the good will of a majority of its members. In a bid to retain it, force and power; propaganda and fear; were used to restrain its members. Predictably, many of its members began to resent it; to consciously or unconsciously work towards its downfall. None of its members were dedicated to it. The White master was attached to the metropole and was busy using the new centres to maintain their homelands. The Asians' -immigrant workers- loyalty was to their families in Asia. Africans remained allied to dying societies within the physical region - Africa.

Within this confusion each individual saw their duty as self survival, each person was busy fulfilling their immediate concerns. This attitude which Masinde refers to as the bloating of the individual and individualism eventually began to destroy the system that had created it. Hence individuals not only rejected colonialism's imposed power but also denied its authority. Individuals overtly and tacitly subverted colonial administration. As Muriuki, Wamoin and Masinde state, individuals refused to obey

colonial administrators²⁷. No body felt any duty or obligation to the power centre. Ergo, the system began to disintegrate.

In this period the power of the people as the source of the authority of government and the reason for Political Society was demonstrated. Because Colonial Political Society was proving inadequate to their needs they began an attempt to reorganize it for greater efficiency to their needs. Also because this administration had proved unworthy of their trust they directed their trust to sources which they perceived as more sympathetic to them - newly defined reorganized states led by majority elected leaders. Independence had come to Africa.

In the Colonial period attitudes counteractive to the future Africa emerged and were nurtured in some instances. Individuals evaded work which was often perceived as proof of submission to the invader or undignified. Many individual adopted dishonest and corrupt practises as a way either of cheating the system or avenging themselves against it. A battle of upmanship was began as each individual attempted to take advantage of the other. Divisions amongst the people not only along lines of race and colour but also along lines of sex, tribe, class and politics grew and were encouraged by the governors who saw division as advantageous. A state of nature took a hold of the new Society ergo a state of war or its potential characterized relationships. Antagonism between individuals as well as interest groups could be discerned.²⁸

The law which emerged in this period was unjust and unfair. It expressed foreign ideologies and norms as it was manipulated to debase and enslave the African. In apropos it was an instrument of bondage rather than freedom. It did not seek to protect the individual or his rights - unless he was White. Rather it was designed to deny the citizen his rights often putting his survival and security at risk. It therefore did not express the People's will, the proper end of Political Society nor even the function of the Social Contract²⁹. To rectify this situation the African attempted to renew the Social Pact in that effort to break away from Colonialism that resulted in the newly independent African states.

iii) State of Nature - Independence And Modern Africa

With Independence no attempt was made to clarify what the Social Pact was. Neither were its expectations explicated. Yet the Social Agreement remains the basis of Political Society and governance. Although Society had grown and expanded during Colonialism although it has matured since then, no attempt was made then nor since then to analyze or clarify its function and end. Instead, one of two things was attempted - a return to a past that was seen as glorious and ideal or a jump into the future

A future as superficially observed in western life, society and philosophies. Ideas were taken from both sides wholesale and dumped upon society. Little attempt was made to synthesis, analyze or adapt these ideas. It was forgotten that Africa was actually a new unknown child in the sense that her new genetic inheritance was a mix from all over the world making her very special and unique indeed. A product of the past and the present that was headed to the future.

A lot of colonial inadequacies were carried over into Independent Africa. In many African communities inadequate unacceptable leaders - that is inadequate for the new phase were adopted as leaders in return for independence. Africa therefore began by compromises and half measures. Systems built for the Colonial system in all their negativity were adapted wholesale.³⁰

For example, instead of reviewing the law with the new society in mind, colonial law was carried over into the new era. A few of its more obviously unjust tenets were dropped. However, in its entirety it remained almost the same as Chitere and Masinde, even Wanjohi and Mulama to a degree note³¹. This means that it continued to be tailored to the needs of a certain class enhancing their superiority, giving these advantage over the rest. The flipside of this is that it limited the chances and opportunities available for the survival and security of other classes within it. Such law does not fulfil its true function which should ideally tally with the end of the Political Society which it serves. That is, it fails as it does not work for the protection and preservation of ALL its members.

Because of the shortcomings of law in such a Political Society, members do not feel any loyalty to it. They deny its authority and that of its wielders as they perceive this law unfair, unjust and perpetuating inequality in society. For this reason force and a demonstration of power is often needed to promote compliance and keep the people under control.

Individuals in such societies rebel very subtly. Since on one hand they are unsure of whether change will be beneficial to them and on the other hand uncomfortably aware of the dangerous power wielded by Africa's new rulers; since each individual is committed to self aggrandizement and personal advantage. Since such societies offer opportunity for the same, no one is willing to rock the boat as many balk at the suggestion of true change. In actual fact although individuals claim loyalty to their units, patriotism to their Nation States; they are obliged only to themselves.

This attitude is best portrayed in a look at duty and performance in Africa. As often as possible individual skip duty, under perform as well as urge others to do the same. In working and fulfilling their duties well individual's feel they are doing someone else a favour. So civil, parastatal and private employees are for example rude to clients. Each individual seeks an opportunity to satisfy personal ambitions. In this endeavour individuals grab and sometimes retain public utilities for personal gain³³. As a result the idea of public duty and obligation is dying a slow sure death.

The concept legitimacy is undergoing a similar evolution. Its definition is shifting so that it no longer reflects public opinion or the desire of the General Will, only the letter of law. A law that is alien and antagonistic to the individual. An unfeeling, inhumane law.³⁴

Although contracts between individuals as well as between larger units continue, the Social Pact is being killed. Often the power centre fails to act as a political authority since it fails to perform its duty as a just arbitrator. Accordingly, it fails to intervene or intervene fast enough when lower level contracts³⁵ are abused. Hence when powerful individuals or organizations abuse the rights of weaker persons, power centres do not fulfil their duty of arbitration. They do not check and restrain bullies and in so doing keep the peace, rather they ignore such happenings. Neither does the public take its duty of a monitor of government in its performance seriously. So, when appointed leaders fail in their duties, the public rarely cares enough to correct them, discipline them or transfer this trust by alternative delegation.

As a result, although on the surface a Social Contract exists in Africa: this is merely a superficial glaze. In reality Africa has reverted to the Original State. Each member of Political Society has failed themselves, their neighbour and the person of the State.

In the first place, the individual has allowed his nature to return to its basic animalistic nature in which greed, cunning, violence, fear and selfishness in contrast to reason and balance in the Psyche reign. For the sake of ambition and advantage or in response to fear, each individual is willing to sacrifice their Conscience and knowledge of right. Each is willing to suppress the demands of reason in favour of their own selfishness. They are willing to let their neighbours and the whole community suffer for their own personal gain. Each individual refuses to admit that one cannot perpetrate or harbour an evil which restricts and limits activities to others and harms only that other person. They prefer to forget the such an evil will

eventually hurt them. As individuals give asylum to evil and corruption; Political Units disintegrate around them. A State of Nature characterized by the insecurity war brings, similar to the State of War Njuho³⁶ in his interview describes; envelopes Africa. As Africa reverts to a State of War, War becomes rampant. War - against other States, between communities in States, against one's neighbours, within one self; riddle Africa.

Certain important concepts continue to loose their power to convince or guide the people. Individuals feel that those who head government are not their appointed leaders³⁷. As such these administrators/rulers do not have the people's interest at heart and so do not deserve their loyalty. Consequently although citizens obey the dictates issued they do so from a fear of being caught contravening them. They have no faith in the law they are subject to as they have no belief in its justice or fairness. They perform their duties in a shoddy manner, encourage corruption as they feel no obligation to the State, the Political Authority or their neighbours. As the individual's sense of self importance has reached its peak according to respondents,³⁸ each individual's duty and obligation is only to the self. Since individuals have little interest in issues not immediately relevant to them they rarely take the time to legitimize by approval or delegitimize by disapproval decisions taken by their "representatives"

5:4 Towards Perfection - Comment On Investigated States.

In such circumstances there is need to renew the Social Pact then educate the Public and rulers on its principles. A need to explain its demands. By so doing and by implementing it, the liberty and equality that have become so chimeral in Africa will become accessible. The freeing of the people through a proper definition and implementation of law, government, State and Contract as well as the identification of the proper function and utilization of authority, legitimacy, duty and obligation which will definitely introduce true liberty, equality, fairness and justice is required. Maybe one needs to view modern Africa as caught up in throes of a transition³⁹. A transition which through evolution leads her into the development and perfection found in a Civil Society that the Civil Pact offer.

This work suggests that this transition can be enhanced by a comparison of perspectives Western and African on the Civil Agreement. In so doing an attempt to develop a universal perspective is made. It is this discussion that is contained in the next chapter

END NOTES.

1. Mythological versus historical perspective. Using the Annex, refer to for example Ngone in response to question three(3) and compare with Muriuki in response to question nine(9) or even Masinde in question five(5) versus Outa's explanation in question three(3). This is not to say that these explanations are necessarily contradictory.
2. Chitere - Q14a and Q8.
3. Man's nature.
4. Wanjiku in Q3 who uses a Christian perspective to explain Man's nature.
5. In answer to Question 1 and 2 Masinde expresses his opinion of the conflicts that form a necessary part of Man's nature.
6. This opinion is most clearly brought to fore by Wanjohi in Q5 and Muriuki in Q13.
7. Cooperation in Mere Society is out of expediency. Therefore for example Muriuki's discussion in Q13.
8. And so for example, Wanjiku in response to Q5 tells us that the migration and spread of the Kikuyu all over the Central Province was due to the risk of friction between the nine daughters of Gikuyu while Chitere informs us that discordance between an older and a younger brother resulted in migration and the eventual formation of the Wanga Sub-group(Q14).
9. Refer to Outa Q7.
10. Masinde - Q3, Kyuna - Q1.
11. Consequently any important decision that the Nabongo made, for example inheritance of his position, declaration of War or legal decrees were made in consultation with the Elders.
12. Similarly, although the position of the Muthamaki was not inherited by bloodline; the Muthamaki did exert a lot of power and influence. This power and influence however rested on his acceptance by the Council of Elders and the degree to which he could convince the Body Politick that in speaking he spoke for the Council and this for the People His legitimacy therefore lay in the hands of his constituents especially the Council whose duty it was to make sure he did not exceed his office.
13. These interest groups included Young Men, Warriors and Women. Their role is well discussed by Masinde in Q31 and Muriuki in Q16.
14. Political Authority is a trust as is demonstrated by Okoko in the story of the theft of the "Omukasa" and the subsequent change of the trust of power that occurred(Q11). Similarly, Muriuki briefly discusses this issue in relation to the Mwangi - Maina power transfer in Kikuyuland(Q22b).
15. And so Kyuna in Q10 insists that since nobody has a right to kill another even the Council of Elders avoided doing the same - "giving two to the hyenas". This is a sentiment echoed by Masinde(Q16), Mulama(Q10) and Munene(Q22) who says that life was considered sacred.
16. So, while Otonyo insists that work was compulsory, the respondents also indicate that was rewarded Refer to for example Muriuki Q14 and Q15
17. Thus Chitere claims that the Wanga always had Warriors to secure their borders (Q20) while Masinde (Q6) reminds us of the existence of Mercenary Soldiers in this Community. Wanjohi (Q21) on his part discusses the ridicule that

cowards would face and the fact that neither they nor their families could share the War Bounty. Wanjiku in Q19 alerts us to the fact that Society actually dedicated time and other resources to train Warriors as a way of ensuring security.

18. Otonyo, Q18.
19. Munene(Q14) claims these custodians to have been the tribal Elders.
20. Ngonc Q8, Otonyo Q8.
21. Munene, Q15.
22. Wanjiku Q10a, Masinde Q7c.
23. For example Outa in Q15.
24. Negative and unfair competition is seen in the fact that individuals who were not fit to be Chief, Elder or King under the criteria set up in Traditional Africa were now forced on the People. Their selection was itself based on a criteria that indicated that they were easily disloyal to their Traditional Communities, more interested in themselves thus presenting an advantage to the Conqueror whose only interest was his own and the centre's (Metropole) needs.
25. Free gifts and favours - bracelets, sugar, clothing, sweets, position in Society, Land. These became a mark of the administrators pleasure with an individual as well as a means of inducing others to act as the Colonial Administrator wanted.
26. For Masinde. Colonial Power is always imposed power. Refer to Masinde Q21.
27. Annex - Masinde Q20, Wanjohi Q25, Muriuki Q24 and Q26a.
28. Ibid.
29. Consequently Masinde claims that Law in the Colonial period was not only imported but also alien. Masinde Q23.
30. Two distinct, important and inter-related ideas are addressed in this paragraph. First of all is the issue of Leadership. Three kinds of leaders enter the newly independent Africa:
 - * First of all are leaders the Freedom Movement. These were mainly guerilla fighters used to leading men in battle. They are used to seeking survival and victory. To be successful such leaders needed to be autocratic with no room for question or debate otherwise an uprising in the ranks would occur and so compromise the movement. Of necessity issues were either black or white (no pun intended) for these individuals. One was either a collaborator or a resister, a friend or a foe.
 - Secondly, one finds the Traditionally accepted kind of leader. This ideally was an older man whose age and hard work made him accepted as more experienced and wiser. For such a leader, one who had seen the kind of havoc that Colonialism had wrecked, the past and its values were often time seen as preferable. This kind of an individual was often conservative and willing to deal only with those he considered his equals (in the sense of age and achievements).
 - Thirdly was the Colonially acceptable leader. This was an individual whose orientation was mainly Western and Capitalistic. An individual whose leadership style was learnt on the knees of the Colonial Mother. Consequently, to achieve his objectives such and individual would not shy away from subtly using divide and rule tactics. While leader (1) and (2) had in their heart of hearts Society's welfare, this one had only his personal interest in mind.

Unfortunately, little or no grafting of these leadership styles occurred, whenever it did it seems as if only the negative aspects were merged. A good synthesis would have ensured that the good aspects of each style are nurtured to create appropriate attitudes for leaders in the new era.

The second issue is that systems that were often negative for example certain Colonial laws and policies were adapted for a good discussion of this refer to :

Masinde Q24 and Q27 as well as Chitere (Q11).

31. - Ibid. Also Mulama Q23 and Wanjohi Q27 and Q28.
32. - Masinde Q26 and Q28c.
33. - Masinde Q25, Chitere Q31c, Wanjohi Q28.
34. - Ibid.
35. - Agreements and promises to action or lack of action between private or individual citizens and cooperations.
36. - Njuho Q3.
37. - Wanjohi Q31. Chitere Q32.
38. - For example refer to :
Masinde Q28c. Chitere Q31c, Otonyo Q22c. Kyuna Q15b, Munene Q28. Wanjiku Q28c, Wanjohi Q30. Muriuki Q2a.
39. - Chitere Q32.

CHAPTER SIX - DIRECTION : IDEAS AND IDEALS - The Social Contract, Africa And The West

6:1 Action

This section concentrates on a Comparison then amalgamation of philosophies, Western and African. Hobbes, Locke and Rousseau are posited as representatives of the Western Perspective in their presentation of the Social Contract. The African perspective is gleaned from individuals in the Wanga and Kikuyu Communities whose views have been compared, and analyzed, then synthesized. This analysis reveals that though there are superficial differences between the West and Africa, such differences are not significant enough to warrant separate treatment. This thesis bases its argument on the following

propositions which research and analysis finds true:-

1. Man is the same everywhere.
2. Man's ideas when not tainted or corrupted remain similar (at least in particular communities in Africa).
3. If such ideals and ideas can be found to hold in Communities not regionally neighbouring each other:
4. It is possible that such ideas and ideals express an African perspective.
5. If such a perspective can be found to be similar to another - such as a Western perspective then it is probable that some ideals are Universal.

Consequently

6. It is posited that the idea of the Social Compact is such an ideal - a Universal idea.

This thesis tests this argument through a Comparison and analysis of the perspectives presented in Chapters two through to five. Details that have been established as integral to the Social contract; for example an understanding of the Nature of Man, the State of Nature, terms and components relevant to the concept - in both communities shall be investigated. It is important to note that the use of the terms "African perspective", "Western Perspective" and the claim of their existence is not an attempt to claim or prove Communal philosophy in either Society. Like on the idea of Man, this thesis accepts that though certain ideas exist in their universal perfection, in their actuality their forms vary due to the medium of their application. This medium could be in the form of individual thought or practise. This particularization that is universally brought about by environment and experience in their actualization that always produces that "view from somewhere" is referred to as tradition, custom, individual eccentricities or perspective.

6:2 Background.

i) The State of Nature

Both Western and African Theory cannot ignore the possibility or actuality of the State of Nature. For each individual investigated herein there is the hint of or free admittance of the existence or possibility a State of Nature¹. Perspectives about this State are surprisingly similar. The respondents admit that it is a State characterized by freedom and equality. This is a freedom to do as any individual wishes at any moment. An equality brought about by the caprices of Nature which favour no particular person wholly or at all times. Hence while some individuals are physically bigger and so stronger while others are intellectually brighter: none hold advantage over the rest for very long (though each seeks this) as nature often punishes them all indiscriminately. Punishes with famine, drought, floods and disease. Accordingly the freedom and equality present in this State are only apparently advantageous representing that imperative difference between liberty and independence. Just as one is free to harm another so is the other free to harm one. The State of Nature is therefore characterized by actual or potential insecurity and fear as Hobbes clearly states.

Muriuki² draws this picture clearly when he describes Kikuyu settlement in the Highland area in the Central Province and the attempts for dominance that characterized relationships between the early Pioneers and the Dorobos. Such animosity and friction was settled either by the dominance of one group or individual in War or the absorption of one through marriage. It is this State that Outa talks of when he says that out of Society- Political Society and Government - war the likes of which we do not know now would characterize human life³. A state which although Rousseau, Wanjiku and Locke claim Man social, have no choice but to admit to. Thus although Rousseau prefers to think of Man as peaceful, he has no choice but to admit that when vanity (self love) reigns in man, it leads to competition and fights between man. Indeed, Wanjiku who claims that relations were always peaceful between the daughters of Gikuyu has no choice but to admit that immigration was a result of the potential of violence and war between these families. It is this same potential or actuality of malice, violence and war that leads to Political Society Locke grudgingly admits⁴.

The State of Nature is therefore a State in which one is constantly engaged in battle. A battle to survive. A battle against nature which often in its twists seems to work against Man. A battle against fellow Man who interminably seeks advantage against one even to a point of harm. A battle even against the self which lacks discipline and which one is often engaged in trying to control for the sake of survival⁵. The State of Nature is therefore characterized by a battle for control of oneself, of

one's neighbour and of nature.

Both African and Western perspectives conclude that the State of Nature is not a State that Man can contentedly remain in.

Both perspectives find the solution to the State of Nature in Man's Nature. In the resources this latter avails him as well as the needs it harbours.

ii) The Nature of Man

Hobbes, Masinde and Rousseau agree that Man out of Society is a beast⁶. Masinde further claims that Man offers a study in contrasts. Hence Physical Man is brutish, selfish, unrestrained, and emotion led. Reasoning man is cold and unfeeling. The State of Nature does not offer man opportunity to merge and balance both reason and emotion. For this reason, Rousseau is able to paint a picture of Man who is either simple minded and brutish or intelligent and corrupt in different situations.

Man, both perspectives (African and Western) agree is characterized by self interest, ambition, a desire to dominate as well as access to reason. His self interest often translates into selfishness as he seeks his own personal survival and security. Indeed, it might be as a result of this often demonstrated selfishness that most of the respondents claim that Man is basically an animal with all the instincts and characteristics that go with this. However, although Man compares himself with other men and competes with them; although Man often fights with fellow man in an attempt to dominate; reason instructs him on a different game plan for survival. Man's desire for survival, his need for security allows him to obey reason so that he can acquire both (survival and security). Indeed, for survival and security Man sacrifices much which is apparently good - for example the freedom and equality contained in a State of Nature.

Reason directs Man to Society and Contract. Reason coupled with a need for survival and the desire to retain property keep Man in Society. It is this Stage of Man's development that certain theorists such as Locke and Wanjiku refer to when they claim that Man is not only Social but has always been in Society.

iii) Society

Research indicates that from a State of Nature Man moves into family and Society. This is a move prompted by a need for opportunity and security as Hobbes, Muruku, Wanjohi, Chitere and Masinde suggest. A move preordained by God as Locke

and Wanjiku claim. One that is only to be expected If one studies Man's evolution and revolutions as Rousseau hints⁷.

Whatever opinion one accepts, Society *per se* is revealed to be inadequate for Man's needs. Though Man's move from the State of Nature increases cooperation it does not remove the state of nature from Society. Conflict is not reduced; rather Society occasions more opportunities for the same. Since individuals are now more often in contact with each other; they find excuses for disagreement and violence. Furthermore, since the equality of a State of Nature still prevails; individuals are not obliged to obey those who emerge as natural arbitrators such as fathers and elders. Such individuals (arbitrators) lack the tools authority avails for effective intervention yet arbitration is a function this Society sorely requires. Further proof of this requirement can be seen in the many power centres⁸ which spring up. These centres lack centralization. Instead of assuring peace and security, they make it even more elusive as they do not answer to any one or follow any particular guide lines.

iv) Man's End

An investigation of perspectives African and Western reveals that though ideas on the origin of Man and his institutions vary; ideas on his earthly end do not. Hence from different angles, with different myth and theory - need, evolution, revolution, whatever - Man, Western or African eventually ends in Political Society and Government. These are perceived as Man's most ideal habitat. Within them Man is thought capable of being either his best or his worst. Out of Political Society and Government it is agreed that Man cannot assure his own preservation or security let alone develop his nature. Yet it is agreed that Man's ultimate good is these same objectives - preservation and security.

Whether in Africa or the West it is agreed that the only way to attain preservation and security is by entry into Political Society and Government and these can only be by Social Contract. Man it seems is destined to enter contract for his survival.

6:3 **The Essence of Contract And Civility.**

i) The Civil Agreement Process

It is clear both in Africa and in the West that the arrangement that leads to Civil Society encompasses a wide range of activities.

Such activities it is agreed include the following:

1. What may be perceived as a primary contract between individuals in Society. This is an agreement between individual persons in Society to cease hostility towards each other. Hence when one seeks a term for

contract in African language an equivalent or similar term is offered and defined. Such terms usually cover small units in their description. So, Wanjiku and Wanjohi as well as Muriuki and Okoko offer an equivalent term but are at pains to distinguish this from similar terms whose utility is similar. A similar case is seen in Hobbes who elaborately defines "Contract" and then takes time to distinguish it from similar terms⁹. Both in Africa and in the West one can identify points in history or theory when individuals consciously or unconsciously entered contract and Society with each other.

2. The Civil Agreement Process also includes an arrangement by which government and its by laws are convened. Various arguments are given as to why and how this happens. While it seems that Social Compacting is mainly a spontaneous event that cannot really be pinned down if one asks WHEN?, different individuals agree that it did occur. Such persons offer a variety of ideas on HOW and WHY. Some, like Rousseau, Muriuki and Chitere suggest that this arrangement was a product of need, experience and evolution¹⁰. An evolution of Man's character and Nature as well as of Society.
3. Agreed also is that this arrangement contains a mechanism to institute a supreme authority whose extent and limit of power is well defined. On this aspect of the Social Pact the African perspective just like its Western counterpart is detailed¹¹.
4. Included also are the rights, duties and obligations of individual members of the Political Society that result from the agreement. As these are governed by this agreement they are clearly specified by it and were eloquently discussed by the respondents used by this thesis in research. These respondents agree that these rights duties and obligations are an important component of Civil Society¹².

Although different sources were used to research on ideal, efficient or preferred forms of Political Society and government, each source describes the same sort of Social Arrangement. The theory, philosophy and ideals behind each discussion seem consistently similar. Though this arrangement sometimes recedes to the background when abused it is never extinguished. Hence each reintroduction is merely its revival in Political Society. It is an arrangement that can never be used to abuse individual rights or in any other way violate Society's existence. Hence it is constantly used to justify a re-negotiation of ex-

a re-entry into Civil living. It is this arrangement that this thesis discusses and posits as the one and only valid and proper Social Pact - the Civil Agreement.

ii) Ingredients of Civil Agreement

A. *SUBMISSION*

The Social Pact cannot be implemented or work unless each individual within it submits their individual natural right of governing themselves to the newly created whole that results of this submission - Political Society. Whether in the West or in Africa, all individuals (which translates to both Subjects and Political Authority) in entry to Political Society have to give up their individual rights if Political Society is to succeed. It is probably for this reason that Wanjohi claims that in the exercise of authority or even in demands to other people each Individual in Kikuyu Traditional Society was very careful as ultimately each person had to answer for any action done or caused to be done (maybe since this submission makes each individual accountable for their actions)¹³. Thus If one of the subject overexerted themselves they were called to account for their actions. The same case applied to public leaders who had to explain their actions and decisions to the Public. Consequently it is clear that both in the Western and the African perspectives submission which creates a sort of equality while clearing a slate for the Pact to work is seen as imperative.

This acquiescence has two components. In the first place it is total. Nobody, it is agreed: retains any special rights. Secondly it is conditional on some actual benefit for both the Individual and Society. This is the basis on which Locke argues that Man is not stupid. Man, he argues cannot abandon the State of War and relinquish his natural rights; in return for some lesser advantage or in exchange for suffering - no indeed¹⁴. What all the respondents agree to therefore is that submission is in exchange for some good. Ideally this good is identified as preservation and security.

B. *RIGHTS AND LAWS.*

An analysis of research material indicates that two kinds of rights and law are admitted by respondents. In the first place there are natural rights. These are designed to protect the individual and have no boundaries except need. They operated in the State of Nature. In the second place are civil rights these are found in the Civil State.

Respondents agree that the two are not quite mutually exclusive. Thus, individual submission and entry into Civil Society do

not obviate Natural Rights. In actual fact the Civil agreement transforms Natural Rights into Legal Rights by converting and grafting them into Positive Law. Hence in description and definition both theories agree on a number of things.

In the first place there is general agreement that Law as Ngone, Otonyo and Hobbes claim is the word of the Sovereign¹⁵. Ideally such word expresses what Rousseau calls the General Will; what Munene refers to as Society's experience and Masinde claims are Society's norms and values. That is, the Will of Society. Such will expresses what Society perceives as best both for its survival and that of its members. Hence as the respondents explain, law in a Civil State is carefully formulated. Through time, communities identify their norms and values, their Standards. These they formalize as law through their courts, councils and parliaments. These bodies ideally contain Society's representatives as Okoko, Otonyo, Chitere, Muriuki, Wanjiku, Rousseau and Locke agree¹⁶. In this way Law is said to be good as it reflects Society's ideals and these when untampered with can never be wrong. When it is acted upon, justice and fairness are seen to prevail in Civil Society since as Wanjiku suggests, each defendant is given a chance for defence and reformation while evidence is carefully reflected upon¹⁷.

It is the function of positive law to guide its subjects as Mulama and Rousseau agree¹⁸. If Law is to fulfil this duty effectively, it must be promulgated. Since in the past the art of writing was not well spread in Africa, communication of law was oral. Each generation was expected to learn the law and its dictates. This generation would - it was expected - make available the law and any adjustment to its particular application to the next generation. It is for this reason that Outa, Mulama, Munene and Chitere claim that knowledge of the law was by socialization in Africa past. Promulgation of law remains a demand of the Social Pact. In today's world Hobbes' suggestion that law should be published and made available to the Public remains a good idea.

Another idea that is held in common in both perspectives refers to revision in law. The Civil Agreement demands that any new law that is introduced should be made known to its subjects. Not only known but also that it should be clear that such a law or its revision emanates from the Sovereign and so has Society's authority. Different signs are used to indicate the manifest will of the sovereign in different Societies when the person of the Sovereign is unavailable. Hobbes suggests the Sovereign's Seal. Njitho recommends his rod or staff of authority - a rod he assures us was unique and well known in Traditional Society. There is general agreement that when a Sovereign's delegate who specifically indicates a particular standard as that of the Sovereign during special gatherings speaks, he is to be trusted. Today with the widespread art of writing and the availability

of gazettes, Law is gazetted and communicated through such and other forms of media as well as Society's representatives.

At the same time respondents agree with Hobbes that Law is not mere guidance, opinion or suggestion. It is a command - to do or not to do. Hence it is obliging to all individuals who are members of the particular State from which it emanates. Such individuals Hobbes indicates are all those above the age of consent - therefore those of decision making and taking ability who are mentally alert. For these, ignorance of the law is definitely no excuse once it is well publicized. Indeed as Rousseau points out If any such adequately equipped citizen abuses the liberty the law affords, he is to be disciplined. This is a view universally affirmed as is seen by the universal practice of - convening court, investigating actions that contravene social expectations and the addressing or redressing of such violations. However, it is also universally accepted that obedience to the Law's commands does not mean risking or sacrificing one's well being. Consequently it is also universally accepted that in circumstances where the law does not or cannot protect one; self defence is acceptable even encouraged. In actual fact Law is an integral component of the Social Contract as in its entirety it advocates and describes civil behaviour. Indeed it is nothing more or less than an instrument for the continual survival and liberty of both Society and the Individual in a Civil State. An instrument that not only gives to the individual but also demands of them. As Wanjohi explains, Law in the rights it describes also defines responsibilities. In a Civil State rights and responsibilities always go together. Law protects one but also demands that the individual adheres to it and protects it: demands not only of one in the form of the self, but also of the other in the form of one's neighbour, one's Society.

C. *LIBERTY AND EQUALITY*

There is no doubt that with entry into Compact and Civil State Man loses a measure of his independence. Because it is not one individual or a part of Society that does so but all individuals who sustain this loss, loss becomes the basis of much gain as it purchases liberty and equality.

One of the characteristics that Man is universally attributed with is reason. Universally it is also admitted that the State of Nature does not allow Man to practise reason or its dictates as in his bid to survive and outwit nature. Man often has to hurt other men. Civil Society ensures the cooperation of men against nature for the survival of all men. Such cooperation brings about a certain level of trust among men so that they no longer need constantly use brute strength and wit against each other. This in turn allows for an appeal to Law in times of conflict or doubt, a law that is based on reason. Consequently Man can

act by and be guided by reason. This changes him from mere brutal beast to Civil Man. That is, Man is able to realize himself as a reasoning being. This in turn means that Man can act in liberty - convert his independence which allowed him to hurt and harm willy nilly; to a liberty that allows him to control himself. A liberty that controls all individuals so that one need not fear their neighbour nor the State as neither is allowed a dangerous amount of power or licence. Such liberty both in the West and in Africa is found in obedience to Law. Law that in its reason offers succour for both the individual and Society. A practical Law that controls by addresses and redresses of violations thereby protecting its adherents. This demand and appeal for control could be the reason Wanjohi claims that control is the purpose and reason for Political Society and Government²⁰.

Equality is also found in a Civil Society and Civil Law. Unlike natural equality which is based on the unequal distribution of attributes, abilities and assets as well as the submission of all to Nature's whims; Civil Equality is based on the demand of the Law on each individual in a Civil Society. In such a State each individual is obliged to submit to and to obey the dictates of Civil Law. This law is fair and just. It expresses its demands and disciplines those who disregard it²¹. That is, it reveals and equally avails the map to liberty.

6:4 End And Implications of The Civil Agreement.

i) The Individual

Whether in the West or Africa, the individual is valued and well protected under the Civil Agreement. Like the term "person" as discussed by Hobbes in the *Leviathan*²² the term Individual is specific yet multifaceted. It covers both human persons as well as metaphysical persons such as the State. In discussions of the Social Contract both perspectives admit that individuals are special in their knowledge and comprehension of ideas²³. Unique in that they experience doubt, choice and decision. It is the individual's ability to choose, to make a decision with knowledge that leads him to the Civil State. An investigation of the concept individual is appropriate here.

Like Frankel²⁴ suggests, the concept individual and individuality implies the undertaking of certain responsibilities. Chief amongst these responsibilities is the respect of the rights and the individuality of other individuals. That is the admitting of the fact there exist other individuals who one may be dependant on yet individuals who also are different and separate from one. It also implies an acknowledgement of the fact that there is a difference between:

- 1) the abstract right to be free and individual

in contrast to

2- the effective power to exercise this right.

This is the difference between the promises of natural rights and their actualization whether in the State of Nature or in a Civil State as legal rights. Individualism it becomes clear is intricately associated with the ideas of liberty and equality that the Civil State advocates. That is the liberty to exercise one's rights or appeal to the protection of law as well as an equality of opportunity - opportunity to attain one's ambitions within an environment that generates room for growth. A habitat that allows the individual to make a choice to utilize or abuse their liberty and opportunities whether this individual is human or a metaphysical one such as an institution or State.

Research indicates that theory both in Africa and the West admits that the purpose of Contract and Society in any form is the attainment of the ultimate good for the individual. It is agreed that this good should be protected at all costs. There is no disagreement on what this good is. Both perspectives agree that "the good" is the preservation and security of both the State and each of its members. As long as one has not hurt another member of society and by so doing threatened the person of the Civil State, each individual who is party to the Civil agreement expects and should demand or receive security and preservation.

This clause goes further. In an attempt to support the individual, theories both African and Western agree that each individual is entitled to subsistence and property. Hobbes goes as far as to specifically insist on access to water, air, medicine and food²⁵. Muruki explains that the African perspective was so committed to such access that it insisted that one when hungry could eat on another's Shamba as long as they did not carry the food away. Wanjiku takes this idea further when she discusses the idea of God's granaries through which Society ensured that there was food for strangers who had no alternative access to the same²⁶. Both perspectives agree that injuring the individual is wrong. Each perspective therefore emphasizes the protection of the individual and the means for this (through the utilization of war technology, the army, police, warriors, courts or law). This protection is seen also in the severe punishment of crimes that are perceived as dangerous to Society such as murder, incest and treason. Seen in the communalization of such assets as water sources, forests and other natural treasure that are necessary for survival.

These same theories are however careful to retain balance between the individual, his individuality and the State. They are aware that an over-emphasize on either one, creates a monster that is difficult to control as dominance destroys the limits that

-equality and liberty in the Civil Arrangement specify. Such imbalance denies some party to the Pact the protection they deserve and threatens their survival. As Chitere, Wanjiku and Rousseau indicate in their various ways, the place and role of each individual in the Community as well as the circumstances that nurture and bear them should be well articulated but not exaggerated²⁷. Such balance and limit lead to a situation where the value of all important parts, as well as of the whole being (individual, community/society and State) are recognized and firmly established.

ii) Crime And Punishment

One purpose of the Civil Arrangement is the introduction of a just arbitrator and disburser of justice. Such a person is expected to ensure the protection of Society and its members. This is an idea held true in both African and Western Societies.

Respondents agree that by the Social Agreement each individual - barring extraordinary circumstances - submits their right to judge and punish other individuals (even those who intend one harm through malice or violence). In exchange for this submission each individual receives not only the support but also the protection of each and every member of Civil Society as well as the State itself. Hence when one is attacked; the attacker attacks not just an individual but the whole of Society. By this act also the attacker ceases to be a member of Society. Instead he becomes its enemy. An enemy to be punished for breaching the Social Pact²⁸.

As theory admits that inherently war or violence remain latent in all states, certain provisions are made. In the first place courts and the police in their various manifestations are characteristic of Civil Society. In both perspectives it is admitted that criminals must be disciplined or punished according to the magnitude of their crime. And so Wanjiku claims that for justice to be served; evidence must be carefully considered while Masinde and Mulama insist that both prosecution and defence must be given opportunity to present their case. Once the demands of justice are established; it is expected that they are to be followed to the letter, implemented not just by an abstract court in session but by each member of Society. And so Hobbes as well as Rousseau insist that it is the duty of every citizen to assist in the punishment of criminals. This is a concept supported by tradition as described by Mulama and Otonyo who claim that traditionally, the whole village was expected to attend court sessions. Tradition, as described by Wamukozi who indicates that Society sometimes punished by ostracization; indeed, tradition, as described by Murniki who claims that upon sentencing; it was the duty of one's own immediate family to be the first ones to implement the punishment. The first ones for example to come or throw the first stone if the sentence

is death. Rousseau claims that punishment is actually in aid of the criminal who is actually being shown, availed to; True Freedom.

The Social Pact works towards the reduction of crime for the sake of its members. By punishing crime it hopes to protect its members and restrain criminals. Consequently it demands that each one who is party to it brings forward relevant evidence or proof of crime. That each supports the instruments of peace instead of protecting and abetting crime or criminals.

iii) War

The Social Arrangement is pragmatic. Therefore it accepts War as characteristic both of man and his environ. Consequently, while the Civil Arrangement goes a long way to tame Man's nature as well as reduce instances of War between individuals in specific Political Society; it does not stop the new arena of conflict that emerges. With the creation of States, new metaphysical individuals emerge. Between them a State of War remains probable or actual. Like Njuho and Hobbes indicate, a State of War be it between the Maasai and Kikuyu, Britain and France, Iraqi and Kuwait is always imminent. To reduce the danger of annihilation that consequently threatens States as well as ease tensions within them; the Social Contract suggest a protective mechanism. In the West this mechanism is seen in the Army, in Traditional Africa it is the Warriors. The justification for the exercise and support of this protective mechanism is the same in both perspectives, the danger of war.

Military support is so highly regarded in both perspectives that unless one is specifically exempted by Society, one is obliged to support the War effort. Indeed for this particular purpose a warrior class is actually nurtured in Traditional African Society. When this class is unequal to the task; mercenary soldiers (as seen in the Wanga Kingdom) are accommodated. In Western literature, one finds abundant explanation and justification for the use of public coffers to maintain the army and, expand warfare technology.

The question of security is deemed so important that even on a personal level cowardice is discouraged in both perspectives. In both societies cowards are scorned particularly when their cowardice threatens the existence of Society. Involvement in War duty is perceived as proof of one's allegiance to the whole. It is an obligation which is justified by the claim that nothing is free. One cannot enjoy Society's protection yet not protect it. If the State promises one preservation and protection and delivers, one has no choice but to return the favour. If Society has fulfilled its part of the Contract one has no choice but to

do the same.

iv) Inviolate Rights And Loyalty

As implied above, loyalty to the State and the Sovereign are expected of each member of a Commonwealth. Unlimited loyalty for as long as the State assures that aspects integral to self preservation - life, liberty and property rights - are protected. Self preservation, it is agreed, is fundamental to loyalty. It should be sought wherever it can be found and reciprocated. For this same reason, when an individual proves unloyal to a State it punishes them as both have shifted their loyalties. Accordingly neither is obliged to preserve the other.

Because of the insecurity that characterizes the State of Nature; goods and assets have a temporary nature. It is therefore impossible to claim property in a State of Nature. In apropos, it is the need to acquire and retain possessions or be able to dispose of these as one wishes that leads Man to enter Society. Such property is in the form of life, liberty and material possessions.

Research indicates that a need to be master of one's property as described above is definitely the continued cause of Society. The right to life, liberty as well as material possessions should therefore not be unnecessarily violated. Indeed when or if this happens then loyalty to the State is also threatened. However, possession in the Civil State has reasonable limits. If, for the sake of the whole to which one is committed an individual has to risk their life in war; one goes to war. If one's liberty threatens the life and existence of another individual or of the whole of Society then they are to be restrained. Indeed as Rousseau and Hobbes eloquently argue; If the State requires one's material possessions or a part thereof for its survival, then one sacrifices it. The application of this principle runs through the Ideal that African respondents describe particularly when they describe Traditional African Society.

6:5 Identity And Significance

Sovereign

Whether in Africa or the West, both in the theory and practise of the Social Contract, a Sovereign exists and can be identified. In Western tradition and theory, the Sovereign is identified with a monarch - the Nabongo who is equivalent to Hobbes' Leviathan. In African practise is more Lockean and the Sovereign is identified with the Legislature. It is interesting to note

that whether sovereignty is identified with one or many, with an individual or group, with an institution or otherwise, its characteristics are similar.²⁹

In the first place whoever describes or defines the Sovereign associates it with certain aspects of Civil Society. Theory admits the Sovereign is the symbolic, often the actual power centre in a Contract State. When acting as the sovereign it is agreed that the person of the Sovereign is above the law of the State as it emanates from him. Whether in the West or in Africa it is allowed that ideally the Sovereign symbolizes and enacts the will of each individual in Society. Its acts therefore concur with the general will. As it is an organ of Political Society its duties and objectives should ideally tally with those of Civil State. These are identified as the preservation and protection of the life, liberty and property of the State and its subjects.

As the Sovereign is ultimately a representative of the people, it is expected to always remember that it owes its position to its constituents. Hence if it is unable or unwilling to fulfil its role: its subjects always have the liberty, indeed an obligation, to transfer their loyalty to a new centre which then becomes the new power centre. That is, particular sovereigns ought to realize that they are not indispensable. They can be replaced whenever they fail their duties.

Note that the Social Agreement is a give and take arrangement. Consequently whoever holds the office of the Sovereign does not only face demands and no returns or protection. In actual fact when the Sovereign performs his duty well he expects loyalty as well as cooperation from his subjects in return. Accordingly, the person of the Sovereign should never be judged for actions in office which he performed in his capacity as Sovereign, since in such acts he was merely fulfilling the general will. It is important also to note that in his actions the Sovereign is guided by the rule that positive law and custom are not binding to him as he is not party to the Social Contract in regard to this clause. He is however to be aware that he is bound to all the dictates of Natural Law and so should never use his power or position to abuse the inviolate rights of his Subjects. State or his Office

ii) Government

The idea of Government, like that of the Sovereign, is an accepted facet of Civil Society both in Western as well as African perspectives of the Social Contract. Government it is agreed is both a delegate of the symbolic Sovereign (that is of Political Authority) as well as of the effective Sovereign (that is the People). Consequently government is elected by the people

represent their interests by acting for their good. It is therefore that body which is interposed between the Sovereign and its subjects. It plays the executive role -executes decisions. Its end is similar to that of the Sovereign, that is; the defence and protection of the Commonwealth for the good of the Community it serves.

Though in its duties government is similar to the Sovereign; it is always a delegate and so merely executes delegated duties. Government NEVER exercises absolute power. This latter (absolute power) always remains vested in the person of the effective Sovereign - the People. The people vest power as a trust in the symbolic sovereign - that is to a particular Political Authority. This trust can therefore only be entrusted upon one by the people themselves. This means that although Political Authority exercises absolute power it does so on trust and can never transfer the same from itself to another body of its choosing. Such a transfer would signal a transfer of Sovereignty. It would be the exercise of a right that this institution does not have. A duty it cannot possibly perform as this right, power, duty, obligation, always remains with the people.³⁰

Government meets a variety of duties. These can be summarized as the legislation and governing of the State. That is the execution of law for the good of the members of a particular State. It is important to stress the fact that government cannot transfer these duties. Another important fact is that government like the symbolic Sovereign operates only with the consent of the people. Such powers as government and its representative exercise are ideally checked for the good of the State and its individual members by the Sovereign and the citizens.

Government itself checks the actions of the Political Authority as well as those of the People so that neither of them makes it impossible for the other to be. It therefore operates through such arms as the court, police and Civil Service as the case might be. Indeed government is itself symbolized in different institutions in different Societies. Amongst the Kikuyu it is seen in the institution of the Muthamaki who Muriuki claims acted as the spokesman for the Council of Elders. Of course individuals in this position sometimes usurped the role of the symbolic sovereign and acted in its place. Amongst the Wanga government was in the form of the Council of Elders Chitere says. In the kind of States that Hobbes and Locke or even Rousseau draw one cannot fail to see a Civil Service acting as government. This is inspite of the fact that for Hobbes if the system is a Monarchy then parliament where it exists is the delegate. While for Locke if the Parliament is the Sovereign in a Monarchy then the Monarch is the delegate. The point is, whatever system operates the Social Pact, there is always a delegate. This delegate in whatever kind of Political Society is what the Pact refers to as government.

iii) Political Society

Political Society and Government can be clearly distinguished from each other be it in the West or in Africa. The formation of Political Society is the first and most important stage of the Social Pact as it represents Man's acknowledgement of his limitation and those of the state he is in. It is the clearest illustration of what Wanjohi calls Man's attempt to control. It depicts an attempt to control the self, other men and nature.

Individuals form political society when:-

1. They contract with each other to enter Society
2. All individuals, by a majority (which for lack of other means is accepted as a general indication of the general will) institute a supreme Authority in Society.
3. This supreme authority becomes the Political Authority to which all individuals and the community submit to thereby acknowledging it as representative of their Sovereignty - as Government.

Political Society therefore is that arrangement which is entered to assure survival, security and protection. Government on the other hand is that body which is charged with the responsibility of actually executing the Sovereign's decisions; for example during disputes.

The distinction between Government and Political Society can also be otherwise drawn. Therefore, while Political Society is a contract which though not necessarily permanent is difficult to dissolve; government like Sovereignty is a trust that is easily dislodged and reinvested elsewhere.³¹

The boundaries of Political Society are normally geographically traced although political influence is sometimes used to delineate it. As Chitere claims, in the past its limits were conceded and protected³². Indeed such boundaries and their aegis were the focus of much dispute, sometimes even of war and fighting. Remember also that it is around the idea of the boundaries of Political Society that the concept of a State of War/Nature between Nations is developed.

1.1 The End Of Government And Political Society

Government and Political Society are apparatuses of the Social Pact that are mediums to its fulfilment. Consequently they like the Sovereign are directed to the same end as the Social Agreement. This is, the protection and preservation of the

Metaphysical Individual (the State) and subsequently of actual individuals(citizens). This end is or should constantly be evaluated by members of the State; if it is not being met there are various options to remedy the situation.

In the first place Political Society might be dissolved. That is, the contract between individuals in Society may be annulled so that all return to a State of Nature. Besides the fact that this is considered an extreme move; it is also both unnecessary and unrealistic as it is difficult to find any particular individual or community that desires the disorder that such a move would entail³³. The second option is the absorption of One Political Society to another. With this move there is the subsequent emergence of an alternative government to which allegiance is now owed. This is a more realistic move as is often observed when small Political Communities are assimilated by bigger or stronger ones. Such an example of absorption can also be seen in the assimilation of the Traditional Units in Traditional Africa into bigger Colonial Units. A third option is the dissolution of government. This could be as a result of a shift of the trust of governance from one Sovereign to another who is perceived as more able, more acceptable. It could also be discharging of this intermediate representative delegate/agent for incompetence. Again, this is a realistic more probable option.

It is such options that were practised in Africa when the people shifted their loyalty to their own elected/selected leaders at independence. In this manner the trust of Political Authority was reinvested anew and a different government instituted at independence.

v) Choice, Evaluation And Election.

While Hobbes seems to suggest that choice, evaluation, and election occur spontaneously other perspectives exist. Locke suggests that conscious deliberate attempts should be made to establish legitimate power as well as to dismiss it. This legitimization should be by periodic election (Rousseau suggests a five (5) year period). Interest in choice, evaluation and election of Political Leadership is not limited to the Western perspective.

While Wanjohi admits that ideally an election based on a true real majority is adequate; he and Muriuki also bring the traditional method of seeking consensus to our notice. A method not much different from candidate evaluation and a majority vote to indicate consent. Otieta and Masinde also discuss and bring this method of criteria satisfaction, selection and election to our attention³⁴.

It is generally admitted that the evaluation of leaders should be done by their subjects particularly through interest groups and other representative bodies. Though Locke and Rousseau indicate that leaders should concur with the people's opinion they do not specify the indicator of acceptance. The African perspective however highlights examples of how the people's opinion is expressed; for example, by the small *Kiama* in Kikuyu tradition through its spokesman. Muriuki and Wanjohi suggest that the small *Kiama* always provided an opposition in traditional Society. Masinde and Okoko give the role of Public Opinion expression to the Council of Elders and some members of the royal family who express such opinion and act when it is ignored³⁵. Interest groups consisting of clans, women and so on are also highlighted.

Universally, it is ideally accepted that the people's opinion is important and binding. Hence it is the people's prerogative, indeed their duty to resolve any disputes or disagreements amongst their leaders. Accordingly, it is the leaders obligation to accede to the People's Verdict as conclusive on any matter where their decision is called for.

6:6 Conceptual Significance And Meaning.³⁶

i) Authority.

Perspectives Western or African relate the term authority intimately with power. Hobbes and Masinde perceive of authority as a concept so dependant on power that though power can exist independently authority cannot. This thesis finds that the Civil Agreement hinges greatest on authority in its various manifestations. Subsequently, it finds that the Civil Society is a result of the practical aspect of authority: - the creation and empowerment of a Civil Authority. Indeed it can even be claimed that Civil Society continues to be because of the exercise of authority and its acknowledgement. It is therefore appropriate to discuss the concept of authority before discussing other terms linked to the Social Pact and the Civil State.

Authority seems to be a concept derived from power. In a Civil State it is individual and collective power transformed by the individual and collective act of voluntary submission of one and all. Research indicates that authority operates only when and where it is accepted. For this reason both Rousseau and Munene seem to indicate that consent is integral to the functioning of authority in any Community. It may also be for this reason that Kyuna claims that the individual who acts authoritatively is that one who has a right, to wield authority. This right, it is generally agreed, is granted or retracted by one's Society. Okoko like Locke and Rousseau suggests that this right is given or retracted during and through election (whatever form this

election might take). As the election of one implies an acceptance of the individual, so does obedience and support from the populace after election. Hence, it is sometimes suggested as Chitere does - that authority is that ability to take and enforce action.

The exercise of authority is not without limit. In the Civil State, this precinct is demarcated by Law, Civil Law. Furthermore, such authority has a clear, accepted and specific objective, the protection and preservation of the State and the individual. It is this objective that the Civil State seeks and to which both authority and the pact are dedicated.

Certain ingredients are necessary for the effective utilization of an Authority's power. In the first place there is need for its subjects to submit to it. This makes it easy for it to act as it receives obedience in response to all its reasonable dictates. Secondly there is a need for its centralization so that in any single Civil State only one single source is acknowledged and accepted. Such an arrangement reduces opportunity for confusion as well as conflict (remember that decentralization - a variety of power sources - is the cause of a State of War). It is for this very purpose that Hobbes and Rousseau suggest that in a Civil State even the Church has to submit to political authority. This same principle is seen in Traditional African Society. Hence in Wangaland all Social, Political, Theological and Economic leaders submitted to the Nabongo. Amongst the Kikuyu such leaders were absorbed into the Kiama. Finally it is necessary for Political Authority (which is the centre of authority) to have access and available use of the instruments of reward as well as those of punishment. This instills fear in those who intend others harm and motivates those who are hesitant about doing right. It also establishes the equilibrium of justice since as a proficient arbitrator; Authority is able to correct violations by punishing violators and redressing those who have been wronged. The Social Pact avails all these ingredients.

Since the Pact is aware of the power that comes with Political Authority it guards against its abuse. Hence it warns that though authority can be delegated - as is often seen in the working of government - it always remains vested in one power centre - the effective Sovereign. Consequently; although the Treaty admits that authority can be transferred, it insists that such a transfer can only be conducted by those who create and maintain authority. The People.

iii. Legitimacy

When one glances at the various discussions of legitimacy, certain points reveal themselves. It becomes clear that when Chitere

claims that legitimacy is to do with what is acceptable; while Okoko relates it to the legal, neither is misled. Indeed there is a relationship between legitimacy and legality. A relationship also between authority and legitimacy.

Analysis indicates that legitimacy contains two ideas, what this thesis refers to as the direct and indirect aspects of the term. The direct aspect is related to the element of belief as well as that of consent. Consequently, some acts are accepted by those to whom they are directed because they believe that they are right: maybe also because they know or believe such acts stem from them. For this reason Masinde claims that legitimacy is an activity related to the consent and participation of its constituents. It is sometimes expressed in Law - the kind of law that exhibits its subjects will - civil law. Maybe this is also why Munene claims that legitimate action is determined by a community often through its leaders. An opinion held by both Hobbes and Locke who however explain this differently.

Consequently, it is clear that certain components are necessary to the concept of legitimacy. Like with authority, there is a need for consent and acceptance. There is also a need for trust and a conviction of right in an act or its actor. There is also the need for the involvement of all actors (active or passive); a need also to define acts it condones or discourages. This function is fulfilled by the existence of Law in a Civil State and an individual to enact this function or symbolize it and declare its jurisdiction. Political authority executes this duty through the Legislature and Judiciary, with the help of citizens in a Civil State. Like with authority, the Social Treaty and the Civil State contain all the ingredients necessary for the efficient working of the concept "Legitimacy".

iii). Duty And Obligation.

Duty and obligation are closely related as attempts to define or discuss them show. Both are prescribed by Society through its tradition, culture and Law. Both are geared towards the good of the citizen and State. Knowledge of their dictates is based on a knowledge of the demands of reason as expressed by Society. Their performance is vital to the prevalence of the Social Pact and Civil Society. This performance in turn relies on a respect, acknowledgement and acceptance of the Source of defined obligations and duties.

The source of obligation and duty is twofold in a Contract State. On the first level is the self. That is because the self has certain ambitions it seeks to attain, it therefore defines both duties and obligations which it expects will make it meet its

expectations. When it seeks survival and protection in a Civil State, reason reveals that it cannot attain them in isolation. Furthermore, it is made clear that if it desires self preservation, it must comply with the dictates of the Social Treaty which define its duties in a Civil State. If one is to fulfil their obligations to themselves then they have to fulfil their duties and obligations to the State. Consequently Society becomes the second Source of duty and obligation in a Contract State.

Once again, one notes that certain ingredients are necessary for the fulfilment of one's duties and obligation. In the first place there is need for an assurance of the security to heed one's reason. Also, there is a need for a Source which prescribes duty, a centre which also ensures that one honours their obligation. In a Contract State such ingredients are found available. Each individual's freedom and security is assured. Each person can therefore feel free to chase the dictates of reason. A source to define legitimate and illegitimate action; indeed ensure performance also exists in the form of Political Authority. The Pact State is therefore ideal for the satisfaction of the duties and obligations of a Civil Individual.

In such a State duties are formally dictated while obligation is spontaneous. While the greatest obligation remains to the self in this state, each individual also has a duty to ensure peace and security both for themselves as well as for their neighbour and the State: an arrangement that is ideal for survival.

6:7 Conclusion.

An analysis and comparison of perspectives posited as Western and African unveils the fact that they are actually so similar as to be the same. Both perspectives advocate the Social Pact as the basis and justification of governance. Each sees Man as a being in the process of development. A development that is destined to lead him to Political State. They formulate Civil State as the best possible State for Man; and civility as the ultimate state perfection for Man. It is to this Civil Man and for this Civil Man that the Social Agreement is addressed and geared both intimate. This thesis suggests that a understanding and application of the Social Contract Theory is relevant today as the next chapter demonstrates.

END NOTES.

1. Vide Supra 2:2, 4:1(i) and 5:2(i).
2. Annex. Muriuki in questions 4, 5, 6, 7 and 8
3. Refer to Oula Q7

4. John Locke, Two Treatises of Government: Peter Lasslett(ed.), Cambridge University Press, London, 1967. II:19.
5. Annex. Masinde in response to questions 1, 2, 3 and 4.
6. Vide Supra - 2:2 and 5:2.
7. Remember that for Rousseau Man is engaged in a cycle whose end is his improvement as well as of his environment - perfection.
8. Power Centres that are determined by the needs and interests that govern this state. These spring around individuals or groups which hold advantage in particular instances.
9. For a good discussion of this refer to Annex. Hobbes opinion can be taken raw from:
Thomas Hobbes. Leviathan: John Plamenatz(ed.), Cox and Wyman Ltd., London, 1967. pp. 177 - 179 as well as pp. 196 - 203.
10. Vide Supra, compare 4:2 with 5:3(i).
11. Ibid.
12. Rights such as Life, fair and just legal hearing and judgement, duties such as taxation amongst others. Also refer to Annex as well as 4:4 for a further discussion.
13. Wanjohi Q6c.
14. Locke II:93.
15. Otonyo Q8, Ngone Q8 and Hobbes, ibid p. 180.
16. The discussion about the criteria for leadership whether in the form of elders, the Muthamaki or the Nabongo in African Philosophy clearly indicates that leaders were expected to be servants of the People. Leaders were expected to express the Peoples opinion and act on their wishes(the General Will). This is a position that is echoed not only by Locke and Rousseau in their discussion of Political Leadership in Socially Contracted Society but also by Hobbes in his discussion of the basis of the authority that the Leviathan wields.
17. Refer to: Jean Jacques Rousseau. The Social Contract and Discourses: G.O.H. Coled(ed.), E.P. Dutton and Company Ltd., New York, 1950,pp.34-35. Also refer to Mulama Q.9
18. Vide Supra - 4:3(ii) and 6:3.
19. And so the descriptions of violence and harm that characterize discussions of the State of Nature in both perspectives.
20. Annex - Wanjohi Q2.
21. Consequently those found guilty of wrong action in Civil Society are punished in accordance with the due process of the Law after a fair trial.
22. Thomas Hobbes. Ibid. p 176.
23. This comes across in each of the interviews conducted as well as the published works that are used for research. Interestingly, even when Man is referred to as stupid, dullwitted or beastly; an access to reason is also admitted as a unique attribute of this same Man by all the Respondents.

24. Frankel, Charles. The Love of Anxiety and other Essays: New York, Harper and Row Publishers, 1965. P.60.
25. Thomas Hobbes, *ibid*, p. 210.
26. Annex, Wanjiku Q17.
27. Refer to Chitere Q31.
28. Rousseau, *ibid*, P.33.
29. Vide Supra - 4:5(i),6:3(i).
30. *Ibid*.
31. This brings to mind the idea of periodic elections that is advocated by Locke, the five(5) year evaluation period that Rousseau suggests, Muriuki's discussion of the Rika System in Kikuyu Traditional Society which he equates to periodic election as well as Wanjohi's discussion of how many times elections have been conducted in Kenya since independence. For a fuller discussion of these views refer to Annex as well as to Chapter 4 and 6 of this work.
32. Annex - Chitere Q20.
33. Refer to Okoko's argument in his rejection of Coup d'etats. The results of this as he sees them are similar to a State of Nature. The alternative option seems to be a transfer of authority such as he gives in Q11.
34. Vide Supra 5:3 and 6:3.
35. Refer to Masinde Q31, Muriuki Q22b, Okoko Q11 and Wanjohi Q10.
36. For the whole of this section, vide supra - 4:6 and 7:3.

CHAPTER SEVEN

Correction or Adaption ? - The Future

Conclusion and Recommendations

7:1 Correction

This work has been dedicated to an investigation of several things:

- * What the Social Contract theory is.
- * How many versions of the Social Contract there are.
- * What; If at all, this theory has to offer the world today most especially Africa
- * Insight regarding the role of the individual that this theory offers.

It has found that the Social Contract is a theory universally consciously or unconsciously held; and used to justify governance. It is therefore used to justify or delegitimize various forms of government. Indeed its basic ideas are the basis of any and all form of good government. Furthermore; as has been found, just like Hobbes and Rousseau claim; except for name there is in fact very little difference in the various forms of Political Society. As this thesis has found out; in all kinds of Political Society systems there exists a power centre whose power emits from its subjects-the People. A power which they, the People, delegate explicitly or implicitly. Power which is held only with the People's permission. It is this permission that legitimizes or delegitimizes government. Permission which is the basis of Covenant - the Social Covenant.

It has been discovered that the Social Contract theory is a comprehensive theory widely used to explain and give meaning to a lot of terms and concepts as well as roles within ideal Political Society. Consequently with this knowledge in mind, this thesis was able to find out the source of terms such as authority, legitimacy, obligation and duty as well as their importance in Political Society. Terms which this thesis discovered reach their maturity only in Contract Society. Within this Society these terms are specific, clear, effective and efficiently utilized. At the same time other ideas sprang out of and found root in this discussion of the Social Pact. These include law, equality, liberty, rights and submission.

There is only one version of the Social Covenant as has been discovered by research. It is such a versatile theory that it is

variously practically used. However, due to its philosophical depth it is sometimes misunderstood or abused. It however warns that whenever it is used in any way other than which expresses it in its purity; in any manner that contravenes its principles; it becomes void and is consequently dissolved. The theory is therefore simple and straightforward. Accordingly no ambiguities or vagueness are contained in it. This makes it easy to follow when individuals are so inclined. Indeed its very simplicity and clarity makes it not only easy to underestimate as but also the victim of attempts to revision in order to make it more sophisticated. Attempts that are void as it cannot be improved. Instead, these attempts easily lead to its abuse.

As has been discovered; the theory holds a universal appeal and is useful not merely for a specific target group in terms of time (generation), age, sex, color, religion or whatever other basis one might think of. Just as it explained relations and realities to Hobbes and Locke in Eighteenth Century England, for Rousseau in Pre Revolutionary France; it also explained ideas and practise to individuals in Traditional Africa. Indeed it continues to explain successes and failures in modern governance both in Africa and the West. In actual fact, an investigation of the growth and development of African States from the past to the present seems to imply that the Covenant State is the only naturally acceptable form of Society for Man. It seems to be the only Community within which both Man and his institutions can bloom to their utmost. Consequently the application or abuse of the Social Contract explains contradictions, failures, crisis or successes not only in Africa but also universally.

Accordingly, this thesis submits that the Social Contract explains various forms of government; their effectiveness, appropriateness or inadequacy. As has been indicated in earlier chapters, the Social Contract Theory has not been well revisited in the recent past. Ergo, various portions or "versions" of it have been adopted to the detriment of its users since it comes as one complete package. Indeed attempts at its revision or short cuts have resulted in the kinds of crisis of government observed on the African Continent.

This work therefore finds that there is no need to attempt the construction of a new Social Compact theory. Indeed it is here submitted that, as the Social Pact is perfect in itself. It cannot be revised or corrected. Any such attempt would create a totally new theory. Solution to the crisis of Society, of the Government and of the individual in Political Society is to be found in an alternative idea. That is: the study and cultivation of the Civil Arrangement.

It is therefore in order to study as this work has done; the Social Agreement. A study that has attempted to explain the various

aspects and facets of the Civil Agreement Construct that might be difficult to understand yet integral to an understanding and effective practice of it. This study has investigated what it considers relevant and useful aspects of the Social Contract with a special focus on Africa in general, Kenya in particular.

It is hoped that this study will be useful in the search for National and Continental philosophies that are effective and humane. It is found that it is in this area (adequate, comprehensive philosophy) that African States have suffered the most in the past decades.

7:2 Civil Society.

The opinion of this thesis is that a leaning towards Political Society and government is a universal tendency for Man. Political Society and Government are states that the human being cannot help but desire for his own perfection. Political State is not however perfect in itself neither is the Man within it. As Man enters Political State to control both himself and others; the Political State can itself be easily corrupted. It however contains the ingredients of perfection. It is found that within it Man can achieve his ultimate good - become Civil Man and by his interaction within it develop the State to its best making it Civil State.

Civil Man represents that mean, a balance and limitation between reason and emotion that Aristotle identifies as perfection. For Civil Man there is only one perfect State, the Civil State. This Civil State is entered by the Civil Agreement. It is this Civil State that all Men seek to be: this Civil State that all men seek to create and enter - no matter what they call it. A State that accepts Man as Man acknowledging his abilities, potentials and limitations. Hence accepting and fully demanding of Man as a being with both reason and emotion. Accepting that when Man is led by emotion he is animal when led by reason he is God but that when he is led by a harmonious balance of both he is Civil Man.

The Civil State is entered by a process known as the Social Contract, herein referred to as the Civil Agreement, Pact or Covenant. This arrangement is the basis of all Political Societies world wide. An arrangement based on consent and voluntary submission in exchange for survival, protection and justice. The Civil State is therefore a composition of individuals in submission. Injustice in this State is the violation of the Civil Covenant. The attraction of the Civil State is the assurance of survival, protection and liberty. For this reason men seek Civility and stay in it.

7:3 Authority, Legitimacy, Obligation And Duty In Civil State

If or when by my own free will I get on a public bus for transport; I enter a contract with the bus owner. By this contract I am obliged to pay my fare. It is also the conductor's duty to come to me and charge me. If I have any sense of obligation I will most probably ease the Conductor's duty If he overlooks my charge by taking the money to him. Similarly If he has any sense of duty he will try to be as thorough and pleasant in his job as possible. The contract I enter when I step into the bus is not irrevocably binding. If upon entry I discover the bus is over loaded, the conductor is rude or the bus driver reckless; I am not obliged to travel on the bus. I can get off and find alternative means of transport.

There is a similar situation in a Nation State. Both leaders and the led have duties and obligations to each other. Amongst these duties are the leaders' obligation to be fair and just; to accept the equality of the citizens, to preserve life, liberty and property as well as perpetuate the Nation - State. The citizen is on his part obliged to obey all reasonable dictates, to respect life and property and to engage in profitable employment. Each individual in a Civil State is expected to be civil in their behaviour towards others to encourage civil behaviour and act civilly.

It is impossible for this relationship of duty and obligation to be maintained if there lacks an authoritative source of its description, definition and prescription. Authority in a Civil State is that rightful power that is able to get things working and working for the good of the State. That is: it is that which contains the ability as well as right to demand and get a response from its subjects. Note that "power" in authority is accompanied by "right". This right is what legitimizes power thereby transforming it into authority. Legitimacy and legitimized power (authority) emanate from several sources in a Civil State

The first and most encompassing is the Civil Agreement. This is the agreement - tacit or overt - that first of all creates Society. It also makes this Society Political; stipulating the expanse and conditions of association within this Society. It is therefore not only the Source of authority and legitimacy but also of duty and obligation. The other Source - which this thesis calls the direct Source - is the People. These through an indication of their Will are a legitimizing force. Also through constitutions that expresses the will and ideals, the norms and standards of a People one identifies another source of legitimacy. What is referred to as the indirect source in this work - the Law

An investigation of the Civil pact reveals that within a Civil State authority is an interactive relational term. By this is meant that authority is a concept that works two ways. First of all that authority results from the People (citizenry If you wish). It is only the People who can bestow power and allow its utilization thereby giving not only might but also right. It is therefore the people who bestow right and power. At the same time the saying that "a king without subject is no king" holds true in regard to the concept authority. Accordingly authority is only real when it has something to act upon. Hence power and right become authority only when they can act and are reacted to. One might take the time to note that though only the people legitimize authority; once legitimized authority now describes and defines (with the people's consent) legitimate and illegitimate, legal and illegal acts.

Within this relationship the focal point remains two forked - the Individual and the State. It is for these and from these that authority, legitimacy, duty and obligation gain meaning. Furthermore just like on the bus, the Civil Covenant is not irrevocably binding. If its objectives and practice are unsatisfactory, if one of its parties fails in their duties then the other cannot be bound to it and it is automatically dissolved. However if one abuses it, it is obliged to punish them as a means of setting the records straight - protecting itself and its dependants. This investigation has revealed that a lot of underdevelopment and corruption, a lot of decadence has been caused by a break in the flow of relational and operational terms in the Civil Pact.

This study of the Social Pact and relevant terms reveals that the basis of the governor - subject relationship is therefore social agreement. An arrangement that not only indicates authority, legitimacy, duty and obligation but also details, justifies and defines them.

7:4 The Individual.

The Civil Agreement theory accepts the human being as he is with his potential to good as well as bad; with the actuality of his goodness as well as his evil tendencies. It therefore claims that individuals join and stay in the Political State because of their evil intentions which inspire a sense of duty to the self. Reason therefore leads men to desire the survival of the State which will in turn ensure their own survival. The Civil Agreement therefore holds a promise of protection for the individual and his community as embodied in the metaphysical concept of the State. A promise which is to be attained through a sincere determination of the general will and its implementation as the Public Good.

Within a State that caters to the individual self in search of good, the individual is able to obey the Law. This is because such law is an expression of the individuals' will. Consequently such law seeks to ensure the survival of the individual.

For each individual who willingly; voluntarily enters the Social Pact the bond that is symbolized in Law and the State is binding always. That is for as long as the government is run competently and in conformity with the tenets and demands of the Social Agreement. Tenets that seek justice and good. Demands in conformity with reason and Man's humanity. That is, as long as the People's opinion and will is sought and implemented. Ideally this People's Will - General Will - is discovered in a true majority. Such will always considers the survival of the individual and the State; not just their mere survival but their ultimate good. A good which this thesis identified as the preservation of life, liberty and property. A freedom to chase and attain one's ambitions (of course within reasonable limits).

Within the Civil arrangement the Individual (whether actual or metaphysical) is admitted to be an important component of society. He is seen to be equal to all other individuals; with needs and duties that must be satisfied. That is; he has needs that the whole ought to cater for; in return he has duties to the whole which he ought not; indeed is not allowed to evade. Consequently, he has a role and place as that part which makes the whole. While it is true that he finds identity in the whole; it is also admitted that he has an identity of his own and that he contributes to the identity of the whole.

7:5 The Civil Agreement And The Civil State.

The Civil State is that unit within which the new Universal Civil Man who is both reasoning and emotional can be. It is a Universal ideal that is the voluntary product of its subjects who by constructing and legitimizing it benefit by its support and satisfaction of their needs as Civil Men. The objective of its People is to be Civil. That is to live in the liberty of reason and justice. It is a State with Civil principles and ideals. A State within which distinctions are absent unless it is between Civil Man, Bestly man and God-like man. The focus of its philosophy is the good of the Individual (human and metaphysical).

Within this ideal the crisis of the individual and identity, a crisis present in Africa and the West, is resolved - as the role and place of the individual Vis a Vis other individuals and the State is clearly stipulated. Consequently the hangovers detailed in Chapter One as characteristic of Kenya are resolved.

It is discovered that though these hangovers are stumbling blocks to development and growth, they are mainly illusionary. Hence although as the Afro hangover indicates there are beautiful traditions as well as admirable culture in the African past; that is an era past and gone. We cannot turn back the hands of time. The siren call of the West will also not provide the solution as the particular experience of individuals there is not the experience of Africans. The ideal is to be found in living in the present and seeking solutions that reflect our particular experiences within the framework of such universal ideals and ideas as the Social Compact.

The Colonial hangover which is a major cause for alienation and displacement is another bottleneck. This particular hangover has led to the apathetic or submissive attitudes observed all over Africa. Thus Africans seek identity in Traditional Africa or in the Modern West. Again, neither hold the key to liberty. The African has to learn to admit the richness of his own past as well as the opportunities availed to him by the West and learn to utilize both beneficently in his present world. Such utilization will direct the African towards his perfection as he seeks himself. It will clarify to him the fact that colour does not make a man neither does past glories. Indeed, the laying of blame or claim of past success leads nowhere except stagnation. It will lead him to the truth that Man is indeed universally the same. However, each man has the honour of experiencing their own particular experiences. Identity is therefore not given. It is found within oneself. One however has to work to express and exhibit it thereby freeing themselves from the "other" and finding the "I".

It is revealed that there is really nothing much to understand about the mythical transition of Government and Political Society in Africa. Although there is a lot of talk about transition from One-Party States to Democracies, from Dictatorships to the People States there can be only one transition, one conversion. Since there are only two kinds of Political Systems - representative of the people or non representative of the people - the only sufficient transition would be one that ensures free, fair and just representation of the African Citizen no matter what this kind of Political System would be called. Such a system is the kind advocated and embodied in the Civil Arrangement.

7:6 Recommendations.

The Social pact theory still contains a lot of mileage. As long as Man is human and seeks his survival amongst other men, it offers a lot of insights to man's character and solutions to his problems within Political State.

A re-education of the People on what this concept is about; what it seeks, how and why; seem in order. Consequently further research based on both African and Western perspectives which seem relatively similar seem imperative. Such study and implementation would definitely resolve the crisis of the individual and identity by specifically identifying the individual's needs and his role in the scheme of government and political society in specific regions today.

Such a project would be further enhanced and indeed would not succeed without dedication to the revival of character education in homes, schools and all other possible forums. This would be an education that is geared towards instilling character, discipline and integrity. An education that though identifying a place and role for the individual would not underestimate or overestimate it in regard to other individuals or the State. A project focused on traditional principles in today's world; one that rewards honesty, responsibility, hardwork, merit and other positive values.

It is felt that such ideas if implemented would end the bastardization of the Individual and of Society thereby refocusing and redirecting policy in the right direction. This in turn would rekindle the individual and Society's interest in Good thereby leading to comprehensive and sustainable development thus breaking the chain of alienation, underdevelopment and corruption.

Clearly, the Social Contract Ideal exists and is the basis of all Civil States and ideals Universally. Its essence is the search for the good of all its parties. It should therefore be the basis on which any and all national as well as continental policies and philosophies are reformulated. A theory that objectively seeks good for all treating each not as an object but as the subject of action.

7:7 Recap.

The Social Contract Theory is about transformation, control and perfection. This transformation occurs when man no matter what his colour or his societal background desires and actively seeks to control himself and his environment. Perfection is when both Man and Society achieve Civility. Man becomes Civil Man, Society - Civil Society. Any move away from civility in whichever direction is a degradation. Civility itself seeks merely unity and balance in action.

This thesis offers a discussion of the ideals that the Civil Agreement advocates; unites perspectives Western and African, and offers ways of attaining Civility as all seek perfection by means of development.

ANNEX : Field Interviews.

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Please note the following:-

*That except for "Interview 11" all the interviews are available on cassette tape.

*That an asterix besides an interviewees name means that they are Scholars and so were not necessarily above fifty years in age. This is because this thesis holds the opinion that the academic exposure Scholars experience is equivalent to many light years in real terms which makes them intellectually older than most individuals. making their perception of issues superior to most other individuals.

BASIC QUESTIONNAIRE.

1. Who or What is Man?
2. Is the nature of Man Universally the same or specific and particular to each individual?
Please explain.
3. What; according to you are the characteristics of Man?
4. Before the organization of the Kikuyu/Wanga Luyia into villages how did man live?
5. What name would you give this period or State?
- 6a. Do the Kikuyu/Wanga have equivalent words for the following terms :
 - Authority ?
 - Legitimacy ?
 - Obligation ?
 - Duty?
- b. What are the equivalent terms?
- c. What do you understand by these terms?
7. Are these terms related, how?
8. Would you say that you have a relatively good grasp of
 - a. Kenyan history?
 - b. Kikuyu/Wanga history ?
9. Where in your opinion did your ethnic group originate from?
10. How did they end up settling in their present area/homeland?
11. Did your ethnic group traditionally have a system of government?
12. If they did, how in your considered opinion did they come to have it?
- 13a. Was there a traditional agreement of government in your Community?
- b. Please describe it.
- c. What would you say were its principles?
14. Was it possible to distinguish between government and Political State in your traditional community?
Please explain your answer.
15. Was it possible to end/dissolve
 - a- Government
 - b- Political society
 in your traditional ethnic community ?
If yes; why. If no; why not ?
16. How did the terms
Authority, Legitimacy, Obligation and Duty
operate and relate in your traditional community?
17. How did the Colonial Community come to gain power in
 - (i) your Community ?
 - (ii) in Kenya ?

18. What was the effect of colonialism on
 - a- your Community?
 - b- The rest of the country?
19. What was the Source of Authority, Legitimacy, obligation and Duty in Colonial Society?
20. At the end of Colonialism and at independence was your Community absorbed into the new entity called Kenya?
21. What was
 - a- the Traditional form of government in your Community?
 - b- the Colonial form of government?
 - c- Modern form of government?
22. What was or is the place and role of the individual in
 - Traditional Society?
 - Colonial Society?
 - Modern Society?
23. What are the Sources of authority, legitimacy, obligation and duty in modern Society?

INTERVIEW 1 : **Dr. Nick Gatheru Wanjohi is a Lecturer at the Department of Government in the University of Nairobi. He hails from the Kikuyu ethnic group.***

1. *Who or What is Man?*
Man is a decision making being conditioned by rationality and environment. In contrast to other animals Man, is also capable of taking advantage of other beings to advance himself.
2. *What is the nature of Man and is this nature Universal?*
The nature of Man is that of a decision making being conditioned by rationality as well as selective in choosing what is best for himself. In a way this nature is Universal in that before Social constraints are put on a person, he will tend to do what he wishes regardless of others. However the attempt to control human behaviour is Universal. Without this kind of control Man's behaviour is the same, not because Man wants to hurt others but because he desires advantage for himself. In this kind of circumstance (unconstrained), survival for the fittest operates amongst human beings.
At the same time because the human being is also a reasoning being he is able to organize himself in such a way that he can institute mechanisms of controlling any behaviour that is likely to destroy humanity in the final analysis. Therefore norms and morals are instituted to regulate behaviour in order to ensure that the selfish nature of Man does not Ultimately destroy him. That is; collective responsibility is instituted to ensure the survival of human beings.
3. *Did the Kikuyu always live in villages or have they at one time lived out of villages. If they have lived out of villages how did they live?*
Most probably the Kikuyu once lived small units out of villages which is why the nuclear family is the source of the extended family and of the village. This means that probably at some stage or other the small family units might have lived separately. This kind of living however must have taken place centuries ago and so it cannot be proved nor am I sure how it operated.
4. *How did individuals live and relate in this "pre traditional" period?*
They lived in small villages though it is not clear how much their organization was changed or influenced in the course of immigration. The Kikuyu man is therefore a Social Man who has always lived amidst family, the clan or village and so on. Within the small communities the set up was that of a family to ensure security and ward off danger as

well as share benefits. Therefore one notices that sharing is almost a natural characteristic of very small human groups. However as these groups expand differentiation increases and sharing declines. These groups were peaceful within themselves but antagonistic towards enemies or even those neighbours they perceived as enemies - in their search for subsistence in the form of cattle, crops and so forth. This antagonism was sometimes translated into war with these enemies.

5. *What title would you give to the transitory period before the Kikuyu's entered Society (Village and Political Society)?*
If we were to utilize existing concepts that could have been called a family system of government. That is where a small community considers itself and manages itself as a government. Since nobody was considered bigger than the other, more important than another, it was likely that the family system of government was applied with the full recognition of the role each person in the family played. But it is also intriguing that the family system of government among the Kikuyus did not result in a feudal system with one of the sons emerging dominant and taking over from the father as one would expect - Indeed government amongst the Kikuyu remained largely decentralized.

6. *Do the Kikuyu have the equivalent of the following terms. Explain your answer.*

a- *Authority -*

The Kikuyu recognized authority and although they might not have had the exact equivalent to this term, they recognized the authority of

- the head of the family.
- of people they called "Athamaki"
- of elders
- of persons with special skills such as Blacksmiths, medicine men and so on.

b- *Legitimacy*

Legitimacy was taken for granted as long as an act was done authoritatively. If an act was illegal - that is; violated the terms and norms of society, then it was considered illegitimate. The idea of whether what one had done was legitimate or not was almost equivalent to saying that what one had done was legal. But I am sure you do not want to compare legality with legitimacy as one has the element of belief; that is legitimacy. That one believes that the person with authority has a right to be obeyed and that the one not in authority has a duty to obey. On the other side, legality does not necessarily involve the person obeying recognizing the person in power as having authority or the power in authority expecting they have a right to expect obedience.

Among the Kikuyu it was assumed that for one to exercise authority there must be something legitimate about the exercise. If this was not so, the person would be questioned as by whose authority he was acting by the elders. Note that actions were legitimized and questioned not by one person but by the institution of the council. There was the Council of elders, Council of young people, council of women and even council of children. Each of these councils exercised a lot of authority and legitimized action. However, I do not think they ever got to a point of defining legality and legitimacy. To them if one exercised authority, he was not questioned by Society. If it was legitimate; and therefore I must say, legal.

c- *I have heard you mention the terms duty and obligation. Were these working concepts with equivalent terms or were they concepts that worked but did not have equivalent terms?*

I do not know what one would call duty in Kikuyu. Again, I do not think there is one equivalent word. One would have to describe it, meaning, again, that it was assumed functionally that everybody had certain duties. These were duties that were learnt as the person grew but I cannot think of or remember a concept referring to duty or obligation. You could not tell a person to perform a duty if you did not have the authority to do so. At the same time everyone feared giving instructions that were not acceptable because they would be liable for questioning and sometimes punishment for such an order. Anyway, I do not think that these terms had actively existent equivalents. There are however some terms such as "Watho" that might be used. However I am not sure whether these terms have authentically Kikuyu equivalents or whether they are terms derived from other languages such as Swahili.

d- *Are the four terms in your opinion related?*

Yes.

To say that there is authority also means that there is the legitimate exercise of power as it were. To say that there is a legitimate exercise of power means that those who are exercising this power are doing so as a duty to the Community and that they have the obligation to do so as vested in them by the traditions in the Community. When there is authority and therefore legitimacy, it also means that those not in authority are also obliged to obey and pay

attention to the instructions of those in authority - always provided the instructions are legitimate, which means in this case that they are in keeping with the traditions and norms of Society.

7. *Would you say that you have a relatively good grasp of Kenyan History?*
Of Political History, yes.

8. *Where would you suggest the Kikuyus originated from?*

Having read different books, it seems opinion differs. Some people say they seem to have come from the South through Tanzania; passing somewhere between the Indian Ocean and Kilimanjaro. Then moving through Taita, Mji Kenda and then through Ukambani up to Muranga which became the new dispersion point. Recently I encountered a different opinion. This opinion holds that the Kikuyu did not actually come through that route but instead are part and parcel of the Oromo in Ethiopia. This School thinks that when the Kikuyu came from Muranga, they had just come down on the Eastern side of Mt. Kenya which found them in that area which is now Ukambani. They then searched for rivers found them and followed them to new lands. There are amongst the Kikuyu very many words, names and traditions which are similar to those of the Oromo in Ethiopia and Borana in Kenya. It is supposedly this migration that gave the Kikuyu some customs - circumcision, cattle and goat keeping. I am not sure which of the two schools is right.

9. *Did the Kikuyu in Traditional Africa have an organized system of government?*

Yes. But organized in the sense that the Kikuyu themselves know it and could describe it. An outsider however might not be able to recognize it unless one observed it very closely. For instance, If you have authority and power vested in the council it may look nebulous but no doubt a lot of authority and power was exercised by the Kikuyu collectively. Ordinarily within such a group one person would emerge as "chairman". Such a person would be one who distinguished himself as a fairly wise, articulate, persuasive orator. An individual who was also highly knowledgeable in the traditions and laws of the Kikuyu as well as one who had proved themselves brave. It is this kind of a person who regulated meetings. If he was not there, someone else took over.

Another important group consisted of the Warrior group who for all practical purposes were responsible for executing the decisions of the Council of Elders. They also assured that these decisions were complied with. Usually very few people needed to be forced to comply as many people believed in the authority of the Council of Elders. The few deviants who existed became the target of the Warrior group. There were also the Clan and "Mbari" (family) Societies. The Clan at some stage lost grip in the sense that it could not often meet as a clan. Instead it is the "Mbari" which took over because it was in closer contact with the people as it consisted of a small ridge with few members. A clan in contrast consisted of many members who were spread all over Kikuyuland. It would therefore be difficult to assemble it and discuss matters. The Council of Elders which involved members from all the clans therefore met, shared ideas and views, sometimes took collective decisions and executed them directly or indirectly. In case of danger they would come up and fight together. In case of famine they would support each other. But in day to day normal situations each extended family took care of its own affairs. At the sometime the whole Society was regulated by the traditions and norms of Society which not many people dared break or infringe.

10. *How did government come to be which the people responded to?*

First of all let us note that although among the Kikuyu we talk of a Council of Elders, it does not mean that one Council ever met representing all the Kikuyu. Different Councils from different areas met. Indeed in some areas there existed rival councils. However If there was danger, rivals met, agreed on how to act and respond. Each Mbari then implemented the agreed course of action.

Centralized authority was therefore not characteristic of Kikuyu Society. Which is why up to now, it is very difficult for the Kikuyu to accept one political leader. This is the background to Kikuyu's dissatisfaction with leadership. The reason why although Kenyatta tried he was not acceptable to all Kikuyus even in his home area of Kiambu. The idea of one Central leader is new and foreign to the Kikuyu and has not yet been fully accepted by them. This is unlike amongst most other Kenyan tribes for example the Maasai, Luyia or Kalenjin who have a tradition of a central or overall leader similar to a Chief.

11. *So there was never any sort of agreement whereby the Kikuyu came to recognize that the word of a Particular Council was the word of us all "which we ought to obey"?*
It was always taken for granted that the Council would never make decisions that were injurious to the Society. And,

also; the Council was responsible for making decisions which were going to be beneficial to the Society. Given that situation there was a natural arrangement that each side (the people and the Council) would perform its duty properly. In any case, it was only a matter of time before those people who were under the elders themselves became members of the Council and so elders. So at no time would anyone think of making proposals that were not going to be beneficial to the Society - at least not deliberately. And if one made such proposals they were immediately corrected or modified by others in order to approximate what would be considered to be in the best interests of Society.

12. *Was there a distinction between Society/State and Government?*

The two were the same. The formal executive power and judicial power which was vested in the Council was accepted by everybody. But this is not to say that the other people were not members of the Council of government. In any one family; although the wife might not sit in the Council of Elders, at least her husband or one of her sons was there while her other son was waiting to join the Council. There was therefore no one time you could separate State from the government. They were always one and the same except that some people especially women and children were not allowed to participate in the actual proceedings. But their complaints and demands were always listened to provided they were channelled through a member of the Council.

13. *How were these leaders of government elected?*

The elders were not elected. One became an elder after undergoing the rites of Manhood, became a warrior and made payment to join the Council of Elders. Whether he paid his dues or not, at least his agemates paid on his behalf. One thence increasingly became a member of the Council. One has to recall that there were junior and senior members of the Council. Although this is not emphasized it was always present such that those who were too old were not involved directly in the day to day running of the affairs of Society and their places were taken up by younger individuals. There was always a continuous stream of people always moving upward.

14. *Did government come to be by choice, chance, design or what?*

Not by chance but by necessity to hold Society together. That means there must be people to see that the norms and traditions - which means the law - of Society are not broken which would lead to the disintegration of the Community. This is why the Council of elders evolved - not elected or selected, evolved. I imagine that maybe a few elderly people kept meeting informally initially. Finally, they kept enforcing some regulation until that practice assumed the character of tradition and then from there because of continuity which was acquired time, the rite of passage and many other contributions: it gained currency as part and parcel of traditional government. But we cannot say there was no government.

15. *Did the Kikuyu then have an agreement of government?*

No - not in the formal sense of agreement. But there was a natural belief that people who were in charge of a decision were going to make decisions beneficial to the community and that those who were affected by those decisions were going to adhere to these decisions. This was always assumed. But there was never a time that they sat down and said: "Look, we are those who govern and you are those who are governed. Now, here we have a contract which we are going to enter". Government and its practise came from that long standing practise described before.

16. *What would you claim the principles of leadership and Government amongst the Kikuyu?*

The main principles that regulated leadership were - wisdom, courage and wealth. When I talk of wisdom, I am also placing here the ability to persuade, to educate others, to acquire new ideas and introduce them within the Community and that is why I talk of wisdom. There are many statements and proverbs in Kikuyu that prove that these were the principles of leadership amongst them. As such, it was incomprehensible that a very poor person who was not brave could ever become for example, a Spokesperson. Such a person (poor and not brave) would be acknowledged as a member of the Council of elders but not as a leader.

To become a member of the Council of elders did not automatically mean one was a leader. (Leader in this case meaning spokesperson). At the same time to be a spokesman did not mean one had special power. All it meant was that one had a status that enabled one to be listened to by the others. This did not mean that one had more power than the other elders. However, such a spokesperson had more influence because in the process of explaining or demonstrating your courage and wealth one was able to influence the thinking of others.

These principles or traditions of leadership remain the most respected among Kikuyu up to today. Hence if you do not demonstrate your wisdom, Kikuyu will always view you with suspicion even if you are very wealthy. Similarly if you do not have courage they will distrust you. And if you lack wealth, they really wonder whether you will be

able to fend for yourself and forage for others. As far as leadership is concerned, these traditions go back a long time.

17. *As leaders made decisions in government, what principles did they take into consideration?*
 The first principle was that any action taken should not be injurious to the community. The second consideration was fairness: Hence, for every bad thing done to somebody there was an equivalent in terms of remedy. Every offence had an equivalent punishment and payment to ensure that the injured party was as it were "cooled down" - "*Kuhoria*". Leadership concentrated on cooling tempers, resolving conflict not heightening them. In judgement then fairness was sought.
 Also, leaders were keen to make sure that one was not asked to do what they could not do. For example, rarely did they expect women to start building houses as at this stage the intensity and rigour of the job was considered too much for a woman. Everybody was given the kind of task or responsibility that matched their ability.
18. *Was it possible to End (dissolve) Government?*
 Never. This was never conceived or even tried. To do so would be suicidal because people lived collectively drawing a lot of support from collective living, sharing of consumptive activities and productive activities be these farming, herding or whatever. Thus if one was sick, and unable to work there always someone to take care of an individual's duties. Their organization was therefore important and so the Kikuyu could not perceive living without a government - once again: provided the government did not interfere with the citizen's job and was a fair government. Government was very important to the Kikuyu.
19. *Was there a distinction between the right of the government and those of an individual?*
 Individuals as members of the Society had rights which had to be respected by everybody else. For example one could not just kill anybody: life was sacred. Indeed if or when one killed another member of society the punishment was very severe. This was in order to ensure that people did not unnecessarily abuse the right to life.
 The right to basic needs was also recognized. It was not even comprehensible that a member of society should go hungry if there was food within the Community. It was this idea that was also the basis of the principle of sharing. It also made sure that the rights of some were never sacrificed at the altar of individuality.
 Other rights included what in modern language might be called the right of movement. All could freely move from one corner of Kikuyuland to the other and not be viewed as a stranger. Visitors were always welcome as long as they identified themselves by Name, Family and "Mbari" thereby also enabling the part of your family or clan that would be in that area to host one.
 The Kikuyu were careful to ensure that the rights of individuals were not insulted in any way.
20. *Does this mean that the individual was important but not so important that the Community could be sacrificed for the individual?*
 I do not think that such a situation ever arose. But if for example there was War: it is likely that those who went to fight would get hurt more than those who did not. This is a sacrifice every society faced. This does not mean that the individual is less important than the Community: it is only that for the Community to survive some individuals must perish. This does not diminish the importance of individuals in Society.
21. *Do you then think that it was the right of Society to demand for some of its individuals to go into War or did individuals have a right to refuse to go into War?*
 Some people did not go to war - even some who were warriors. Some individuals would choose to be left behind. This is why you encounter such terms as "*Kiguoya*" - coward - in Kikuyu. There are many references to cowards in Kikuyu which implies that not everybody went to war. However, once people went to war, plundered and brought back the loot: then those who had chosen to be left behind could not demand to share the spoils of war. This demonstrates the principle of fairness. As an individual had not contributed in the war effort they could not demand what had been gained by war.
22. *Was there constant conflict between the Kikuyus and their neighbours the Maasai before the advent of colonialism?*
 The conflict present was actually in the form of cattle rustling. At no time did they fight over anything else. They fought when their cattle met at the salt licks and one or the other wanted to take the other's cattle. These were therefore more often scuffles not wars. As neighbours they often found themselves in this kind of a situation. But this does not mean they hated each other. So although they sometimes antagonized each other. More often than not they cooperated with each other. This is why for example the Kikuyus being agricultural and the Maasai not so.

herders still assisted each other in times of drought. Thus since Kikuyu land was greener with more rainfall, when drought and famine struck the Maasai the latter always sought food from the Kikuyu and got it. Secondly, because there was a lot of Kikuyu - Maasai intermarriage, in practically all Kikuyu homes, one finds a Maasai name. This is a remnant of this system. Hence although the Kikuyu and Maasai fought each other, they also recognized the importance of co-operation and their interdependence. This is further seen in how the Maasai allowed the Kikuyu to move into their land as a means of food security. This view is true amongst the Maasai and Kikuyu up to now.

23. *What would you say was the effect of Colonialism on Kikuyu Society?*

Colonialism had many effects on Kikuyu Society. One of the most important effects was that it introduced centralization which was new to the Kikuyu. Unfortunately up to now the Kikuyu do not completely identify themselves with that system. The Kikuyu today would prefer to have a government that allows him to do his work while it minds its own business.

Colonialism also introduced the Chief which was a completely new concept in the Kikuyu Society. Before this there had never been a Chief or even an equivalent idea. The introduction of the chief separated government from the people. This is in contrast to the past where the two were one and the same thing. This disfunction is the reason why up to now no matter how much you sing the song the government is the people, the Kikuyu never accept it. They perceive the government as always hostile to them and as interfering with them while they prefer it not to do so.

There were other things which were introduced. Some were very positive. One of them was education. Initially the Kikuyu were a bit cautious in accepting education. But after a number of them accepted it, they realized its benefit. This transformed Society almost completely.

The third item was of course money economy. A number of individuals in traditional Kikuyu Society were traders. Caravan traders exchanging salt for spears or for food, gold, ornaments and so on. The money element made trading much easier as they could now buy and sell using money instead of bartering. It is because of this that you find some of the earliest stone buildings owned by African or even vehicles belonged to Kikuyus.

Another thing was the concept of labour and farming. The settlers at first used Kikuyus for labour. When the Kikuyus saw how much the settlers were making on the land they refused to work for them and began to cultivate for themselves. At one time they were producing and making more than the settlers. The colonial administration halted this situation by taking away Kikuyu land.

Of course the other introduction was in the judicial system. The adaption of English law and some Indian law led to a lot of changes among the Kikuyu. Only some Kikuyu traditions were retained. When conflict arose, between Kikuyu tradition and the new foreign law, it was the foreign law which prevailed. Kikuyu customary law operated only when it did not conflict with the new system of law.

One fundamental change that occurred was the introduction of title deeds of land. Before colonialism, the Kikuyu could buy land but bought land could be recovered by its original owner if the number of cows and goats repaid were equivalent to those originally paid. This was a very uncertain arrangement. It also prevented the permanent development of land. The new arrangement assured one of permanent proprietorship and enabled one to invest in land and develop it. With certainty of land transactions and value being put on land long term investments - coffee planting, water pumps, electricity and so on could now be carried out.

24. *What was the role and place of the individual in Colonial Society?*

The main effort of the government at this time was to separate the individual from the group and make him accountable for his own activities. This is why the administration would take away the individual and make him a labourer in another individual's (European) land. Such things as the identity card also gave identity to the PERSON as opposed to the Society. This individuality has taken many years to take root in Kikuyu Society mainly because they still feel there is more security when people work together. Even if there are elements of individual and personal ownership there are still, they feel, plenty of benefits when they work collectively. Colonialism encouraged individualism even in its use of language for example the terms used for people who performed certain duties. Christianity which at this time was seen as part of colonialism also emphasized on the individual rather than on collective responsibility.

All the same, the kind of individuality that is present in the West has not taken root among the Kikuyus. This is why even today clan meetings (really extended family meetings) are held and so on. The solitary individual who may be very wealthy but does not cooperate with others is viewed with suspicion and is not highly regarded.

25. *How do the concepts Authority, Legitimacy, Duty and obligation operate in Colonial Society?*

The operating of Colonial Society was Colonial. Legitimacy as seen and felt through the institution of the chief. The

Chief himself did not need to be a person recognized by Society. He did not need authority or legitimacy. He exercised power. It is from this that one sees the difference between power and authority, legality and legitimacy. With power, one may have legality but not necessarily authority or legitimacy. In order to tone down the coercive aspect of colonial power, the term authority was introduced in day to day language. This was in order to promote the feeling that what those in power were doing was good. And so the subjects had a duty to obey and the person exercising power a right to be obeyed. This however was just a camouflage hiding a coercive system that ruled using the power of force. This secured compliance but it did not mean the people had been fooled. The people knew they had their own system which they had rather operate under. It is also why at the beginning of colonialism when it was realized that there was a lot of resistance to colonialism institutions which were close or similar to traditional institutions were created. These included the Local or Area Native council, Native Court, Native Council of elders. This was an attempt to give a semblance of legitimacy to what was essentially a colonial system.

26. *Are you saying that people did not feel any obligation to Colonial government?*

Oh yes, Sure! And this is why they had always to be forced to obey it. And in fact up to now, among the Kikuyu. If you are not careful how you approach the exercise of power, you have to force them into compliance all the time. This is also because they have not been able to distinguish the present government from Colonial government. A lot of things which happened during Colonial times happen now. So, no matter how much you tell them that the government is theirs, it does not work as it does not seem so. The presence of an African as the new master who oppresses them as much as the Colonial Master does not mean that the government is theirs. Hence amongst Kikuyu one hears phrases such as "those people", "what are they doing" and so on - meaning the government. "They", "Those" "Them" the government is somewhere outside them - to answer questions, do things, many times oppress them. They do not feel that the government is theirs and that they are a part of it.

27. *At independence a new entity - "Kenya" - is created. Were the Kikuyu absorbed into this new entity and did they feel part of it as well as a sense of responsibility towards the new government?*

Perhaps the Kikuyu more than any other people always identify themselves with Kenya first. There is a background to this. During colonial times particularly 1956/57, all other tribes were allowed to form District Political Parties except the Central Province. The Central Province does not therefore have a tradition of tribal alliance in the form of Political Party or Organization. Also, the Kikuyu struggled for independence through armed force. Come independence, the first Party formed with their participation was a National Party. To talk to them of a District Party is something they still do not understand nor can they understand the meaning of a tribal Party. This is not pretence, they do not have a history of these kind of alliances.

Furthermore, they do not think of what Kikuyus ought to do but they talk often of what Kenya should be doing. This is the nature of the Kikuyu in regard to the whole Society.

Now, when it comes to government: they view it with a lot of suspicion - even the Kenyatta government. They even expressed this distrust to Kenyatta and a number of times told him so; told him that he was acting more like the governor than the Kenyatta they had known. Kenyatta himself was an old person who had assumed the governance of a newly independent state.

He was too old to start introducing new things. All he did was take up the structures of the old Colonial government and start using them - that is; he took the easiest way out. Kenyatta accepted whatever had enabled the governor to rule as acceptable and adapted it. What I am saying is not that the Kikuyu have a quarrel with the government; but I am saying that they view it with a lot of distrust. Very rarely do the Kikuyu trust the government - any government - they always watch the government cautiously. This is mainly because they have a tradition of suffering directly under colonial government more than any other ethnic group in Kenya. For example when one discusses the state of emergency it was felt most rigorously than anywhere else in Central Province between 1952 and 1959.

28. *How would you perceive Authority, Legitimacy, Duty and Obligation as operating in Post Independence Kenya?*

Immediately after independence Kenyatta exercised a lot of authority. He was acceptable, people believed in him and he could control them because they believed he held his position rightly. They believed he was going to rule them fairly and that they therefore had a duty to obey him and follow him - the majority of them at least. But somehow after 1966, especially with the passage of the Detention act, suspicion was created. People became unsure of Kenyatta - even the Kikuyu. This is why in 1969 after the murder of Mboya he tried to administer an oath of loyalty amongst the Kikuyu as he realized they had moved away from him and he had lost some of his credibility. The oath was an attempt to secure credibility and loyalty. When this failed the only instrument he now had was force. And therefore by 1971, Kenyatta had lost all authority.

and was now using power. So if you read the KANU manifestos of this period and other government documents they no longer talk of authority or the goodness of the government. Focus now shifts to matters such as the stability and security of the state. Those in power now feared that the people they ruled were dissatisfied and might have them displaced and replaced. Kenyatta continued with this policy until his death. From 1970 onwards one sees a change that is intensified in 1971 with the attempted coup of the same year. This coup moved Kenyatta away from authority to the exercise of power. This is just like Moi after 1982. He refers to authority as a camouflodge but to him it is the exercise of power, nothing else.

29. *So, are obligation and duty merely a myth in Kenya today*
 People do not believe they have any obligation to the government. In fact they think the government owes them. Even when people pay tax they do so because they are forced not because they believe it is their duty to do so. This again, is a product of the Kenyatta government which gave people the impression that the government was able to provide a number of things for them. The people therefore kept demanding more and more particularly in terms of Community and Social infrastructure. When a new government came in, it not only assumed that role but also believed it could provide for individuals. So now it has to provide for individuals - selectively - in order to appear to be doing something for the individual. As a result only its direct beneficiaries feel they owe the government anything.

30. *What would you say is the role and place of the individual in this set up?*
 This answer is only theoretical since when one talks of role and place it is assumed that the individual knows and accepts this role. This might not be so. Indeed many people do not know their role except in regard to themselves. They do not know their role to the rest of Society. This is so particularly in regard to what I call the disintegration of the family and clan system. Many people are neither attached to African nor Western system. Nevertheless the individual continues working and producing the basic needs of food for themselves and paying tax provided the government can reach it. The African's attitude to tax boils down to the fact that they do not have a tradition of taxation neither do they believe in the present government. The one person who could have influenced and changed this attitude was Kenyatta. If he had utilized the early years of independence in ensuring that the individual knew his role. By now we would have developed a tradition whereby each individual knows his place, role, duty obligation and what in return to expect from his government, fellow citizens and general humanity. But after 1969-70 as I have explained Kenyatta became isolated and failed to communicate with the people. The Public after 1970 would clap but were very careful with him.

31. *We have said that there seems to have been an agreement of government in Traditional Africa. An agreement that was unclear in Colonial Africa, what about in Post Colonial Kenya?*
 There was an agreement between people and government at independence. With this new agreement two elements were introduced.

i) A Constitution.

This was the first part of the contract. It consisted of an agreement between different groups of people. As far as this original constitution was concerned it was an agreement between the State and Individuals. It still exists. Note however that anytime this constitution was changed the agreement was also altered.

ii) Party Promises.

The second part of the contract consisted of promises the government had made as a Political Party. As soon as these governors took over power their manifesto - KANU manifesto - became part of the contract. This was a manifesto that promised the restructuring and reconstruction of the Country. These promises were part of the contract. If these promises were not fulfilled then people had a right even a duty to remove leaders from power after five years of non-performance and replace the government as the elected progovernment was then proved a government of liars. These party manifestos are formal contracts and promises which in governance have to be fulfilled.

There are different perspectives as to what performance and fulfilment of promises means. The government might think they have fulfilled their duty, yet I think that fulfilment should be based on local not foreign resources. That is on budget not on loans or aid.

In Kenya, people have had the opportunity to choose government only thrice since independence - 1963, 1966 and 1992. This last was the first true expression of Kenyan opinion - 64% (Sixty-four percent) voted no to KANU. KANU with a thirty-four percent (34%) vote is therefore a minority government. KANU was judged to have broken the Social Contract and in taking power, have further failed to obey the majority's opinion. So although KANU remains in power, a tension continues between the people and the Government.

Like in Post Independent Kenya under Kenyatta, in modern Kenya Power and legality are operative while authority, legitimacy, duty and obligation are elusive. Political legitimacy is widely distributed which shows that Kenyans would rather have anyone else governing them other than those in power as shown by statistics.

32. *What forms of government have been in existence in Kenya so far?*

In Kikuyu Traditional Society there was a kind of decentralized collective system of government. Consensus not consent was characteristic of this government. It was not a democracy although those who agreed or disagreed with a decision was made know. Majority opinion reigned and minority opinion was made known.

The Colonial Government was dictatorial. In the immediate post independent Kenya leadership and governance was mainly democratic based on the people's choice in election, the people's acceptance of a preferred constitution and manifesto.

In Post Post Colonial Kenya (Modern Kenya) no consent is required of the people. A manipulation of the population is often witnessed. The people have no choice about who will be president since the President of KANU is automatically made President of the Nation, if KANU wins and this has been so from 1963 to 1992. The leadership and government of this period has been autocratic revolving around an individual leader not around an institution.

INTERVIEW 2 : **Magdeline Wanjiku is a retired Social Worker from Kiambu. Farming is her current preoccupation. She is sixty years of age.**

1. *Who or What is Man?*

Man is the most valuable creation of God. He is part of God because God made him in his own image so that God could have a friend to visit and talk to. Therefore he is the most valuable part of God's creation. This can further be seen in the fact that God made everything else before Man for Man.

2. *What characteristics would you allot this creature?*

As Man is made in the image of God, he is supposed to have taken all the characteristics of God "supposed" to, but because of his shortcomings in body and nature he could not take them all at once and so had to be born again. The born again Man and the fallen Man are different as the spirit of God lives in one and not the other. The Born again Man is guided by God and is characterized by right behaviour as he has more will-power to resist evil. There are therefore two kinds of Man in terms of their nature. Man's own nature is determined by one's belief.

3. *Do you have a relatively good grasp of Kenyan history as well as of Kikuyu history and Traditions?*

Kind of, a little

4. *Where did the Kikuyu Originate?*

Somewhere near Mt. Kenya on the Northern Side. An old friend tells me how the man Gikuyu woke up to see the bird of luck one morning. The bird talked to him and told him that he would meet a lady he would marry that day. Indeed later that day Gikuyu met Mumbi and they eventually got married. Gikuyu made two huts, one for Mumbi and another for himself. It was Mumbi who would visit Gikuyu at night. With these visits they soon procreated and had the nine daughters well known in Kikuyu history. These daughters were named by their father.

5. *Originating around Mt. Kenya, how did the Kikuyu end up all over the Central Province of Kenya?*

When the time was right they were given husbands by God and so each of them started their own individual homesteads. Each of them developed different individual interests and habits. So as not to cause friction they lived separately eventually spreading in all parts of this area.

6. *Did the Kikuyu have a government right from the beginning?*

In the beginning they all knew one another as they were not too numerous. The men who actually had assumed the role of the head of family assumed with dispersion and settling what one might call the office of government. They all knew the relevant laws, ceremonies and so on as given to them by God and as practised amongst them. So straight away in beginning the Kikuyu had an organized way of doing things which are mentioned in the scriptures.

7. *How did this organization come to be?*

The bravest, most brilliant, most dignified, most active was admired by the rest and made a leader. The aspect of wealth also helped make clear the leader. In ceremonies and feasts songs were made about those particular individuals and soon it was clear who was the most respected and influential.

8. *Did Government occur by chance, design, choice, automatically or what?*

It happened by pattern because the person who could be a leader would have leadership characteristics which the people acknowledged. Also the "rika" - age group - mattered as leadership was determined by which section of Society was in government.

Government and leadership was a conscious action since they (society) had a day for establishing new leaders who by merit had emerged as appropriate.

The very first government must have occurred by design just like the leaders of the council became leaders by a conscious selection based on merit. Hence the first council must have been led by Gikuyu who sort of acted like a chief as he is the one who had given the young men his daughters in marriage. During this period and from this period the Kikuyu's were led by guidelines of behaviour and interaction as set down for them by Gikuyu who had himself received them from God.

9. *Are there equivalent terms to the following in Kikuyu?*

<u>English</u>	<u>Kikuyu</u>
Authority	"Wathani"
Legitimacy	"Kihoto" - a convincing argument.
Duty	"Ni Uchoro waku" or "Ni Wira waku".

This is a bit complex but these two statements basically express the idea that it is your duty to do x".

Obligation "Ni Mwihoko"

Note that there is a term for Kingdom in Kikuyu which is "Uthamaki".

10. *What do you understand by these terms?*a. *Duty And Obligation.*

Why it is your duty, you act because it is your duty, you act because it has been left to you to act. But when it is your obligation you act because someone might question your action or failure to act.

b. *Authority:*

It is left to one to act because you are the head. A person with authority is that one who heads - you have the final word.

c. *Legitimacy:*

It is rightful for you to do something.

11. *Where does authority come from? What is the source of authority?*

The author of authority is God, then as God lives in people, they can give you authority by choice and, or appointment. However there is also another kind of authority which does not involve choice. May be it can be called biological authority. For example in a home, the head is the father yet he is not chosen by the children, nor do they give him authority. He heads by authority bestowed on him by creation.

12. *Did the Kikuyus have principles which surrounded their way of government - what might be called an agreement of government?*

Yes because they knew how to act in different circumstances. Thus if one was a criminal they knew what to do with them - So there were known rules and laws made by the sittings of the elders and these were written in their minds, known and remembered by them. These rules and laws involved all kinds of things - pre marital relations, theft, and so on

19. *Could the Council of Elders call any person into War?*

Yes after the Council and Society had physically, mentally and spiritually prepared those it called to war. This was normally the Society's warriors. On the call to go to war a young man could not refuse to go as it was the duty he owed society - his skill, his obedience and his protection of it in return for its protection of him. It was his pride to go to war. The only exceptions amongst the Warriors were newly weds who were considered unlucky to the group on the battle field.

20. *Was there a distinction between Government and Nation in Traditional Kikuyu Society?*

Yes. The government consisted of the small groups that lifted the Muthamaki and gave him authority. The nation was distinctly different as it consisted of the people who owed the government respect and responded to it. It was possible to distinguish the civic leaders of an area and the "Itura" they belonged to. This the area would be known by the Civic leader's name. Therefore Kwa Wangige, Kwa Wandia, Gwa Karuri and so on. They had a sort of a federative government within which the various Athamaki acknowledged each other, were acknowledged by the people and interacted with each other to show good will. Clearly within this set up some councils were bigger making their spokesperson or Muthamaki more influential.

21. *Could an area or government be dissolved?*

No. Each area owned its council and so could not do away with it as it was its pride nor could they accept a new foreign one. Thus each elder who passed away was merely replaced.

22. *How would you relate authority, legitimacy, obligation and duty to Kikuyu Traditional Society?*

Authority was clear and present as knowledge of who led and what to do, of laws and of right, of leaders and the council, of who was the army existed. There were fair laws. They knew of God as a higher authority who had placed the elders in their position. Everybody knew their duties and obligation and what was right or wrong.

23. *How did colonialism occur? By free or forced agreement?*

In part it was by forced agreement as can be seen in the resistance fights that preceded colonialism - for example "Baraya Nyahoro" and so on. This shows the Kikuyu did not just accept colonialism. But in part the white man lured the Kikuyu into accepting him. In this acceptance the Kikuyu did not know that so much would be lost particularly land to the White Man. Colonialism also diluted Kikuyu traditions as the White Man told the Kikuyu that his culture and values were all wrong which was not true. The White Man also introduced Education - which was good and which also enlightened the people making them realize that they had been given a raw deal. And because of the feelings of injustice held by the Kikuyu, organizations demanding back the land grew - Kikuyu Association (K.A.), K.A.U., K.C.A. and so on. Still, the lure that had led the Kikuyu to leave what was theirs in exchange for foreign values led to moral disintegration that led to the destruction of a lot of good Kikuyu values.

24. *Were the source of Authority, Legitimacy, Duty and obligation clear in the colonial period?*

Authority was diluted as the white Man picked people whom he wanted and who sometimes were unacceptable to the Kikuyu and bestowed power on them thinking he had now given them authority. Legitimacy was now defined by Colonial Law which was not acceptable to the people and so the people resisted. There was no sense of duty or obligation as the White Men were strangers who had proved untrustworthy, greedy and grabbed from the Kikuyu.

25. *With colonialism was the extent of the new country clear? Was it possible to distinguish government and country?*

Yes. It was much easier to distinguish government and state as now we had a people who had been imposed upon and an imposed government.

26. *What was the effect of Colonialism on Kikuyu government?*

It caused disintegration. It at first totally removed Kikuyu government but after a while it re-established the Elder's Council as it became clear that the appointed "Chiefs" were ineffective without the councils. The Kikuyu bururi tradition and government however continued to exist undercover as was seen during the resistance period when it was easy to identify whom to approach for support and influence.

When and how colonialism overtook the Kikuyu? How did the Kikuyu react to the new situation? (1945-1963)

K.A.U - Kenya African Union demonstrates this. Unlike the first party - KCA (Kikuyu Central Association) which was tribal based and appealed to the tribe, the Kikuyu had developed to accept all other Kenyans. This integration is also demonstrated by the fact that the Kikuyu moved and settled all over Kenya. Although they were themselves often viewed with suspicion they responded to the first president's call to integrate. The Kikuyus viewed the emergency fight as a battle to benefit all Kenyans.

In this period, they also accepted the government, a shared government between all Kenyans. It was in this period difficult to express this feeling of acceptance and so it proved difficult to convince all the other tribes that the Kikuyu had encompassed in their acceptance the whole of Kenya; and all Kenyans. In this new government and state they accepted new authority, found it legitimate, felt duty bound and obligated to all.

28. *What was the role of The Individual In*

a) Traditional Kikuyu Society?

The individual was a member of a home, of the village and the clan. He was the most important part of the group. The person cannot go it alone. At the same time the individual was a responsibility of the whole and a source of the whole's goodness.

b) Colonial Society

Encouraged isolated individualism. The transition from traditional custom to the so called civilized way that disintegrated the old Society and left the individual alone slowly killing clanism occurred here.

c) Modern Kenya

The individualistic mind that was encouraged by the money economy has come to fruit. Note that during the independence fight an attempt to return to the old mentality of the individual in and as part of society was attempted. However it did not work well and could not be held together as it had been battered a lot by colonialism and after that by modernism.

29. *What were the forms of Government in the following periods*

Traditional Society Sort of federal.

Colonial Society Imperial dictatorial.

There was no election by its subjects. The top demanded and the bottom had to act accordingly come what may

Modern Kenya No comment.

INTERVIEW 3 : A lecturer at the University of Nairobi, Professor Godfrey Muriuki teaches in the History department. He is of the Kikuyu ethnic community.⁶

1. *What is your perception of Man?*

This is a difficult question to answer since I am not a Philosopher. If you look at it from a historical point of view one would say that Man is an animal. An animal who over the last couple of millions of years has developed beyond the other animals its closest relatives being the apes. What for example differentiates the apes and Man is that Man can think. He has a bigger brain and because of that he has been able to use the intelligence given to him to make his life better. For example, one can think in terms of basic things like development of Language which differentiates Man from other animals. One can think of man being able to make tools, one can think of Man being able to light a fire and one can go on.

So, I believe the difference between Man and other animals is that he can think and therefore I would think of what Man is as this animal who has the ability to think. This ability to think has led him into all sorts of development beyond other animals

2. *What then is the nature of Man?*

Again, this is a difficult question, for one who is not a Philosopher but again looking at it from the point of view of my discipline which is History. I see Man as not only a thinking animal but also as Sociable

Is the nature of Man essentially the same in all societies?

That kind of a person is not going back to his community or his home. They had rather stick it out at the frontier even if the frontier is a dangerous place to live in.

Where did the Kikuyu originate from?

Well, historically the Kikuyu are part of a much bigger group called the Bantu, and I don't want to bore you with the historical explanation. But, all Bantus originated from the Lake Chad area sometime before the Christian era. And what then happened is that they migrated from the Lake Chad area and came to what is today Eastern Zaire and the Western parts of Zambia. It is in this area which we call the secondary Milieu area of dispersion from which they expanded and migrated. Some to the South, others to the West and others to what is East Africa through Tanzania coming up along the Coast and into what is today Kenya.

In the course of migration, before setting into villages: the state whereby they are living as individuals or small villages; If you were asked to give it a name or title what might you call it?

Well, if you use the Kikuyu word, they lived in a homestead called *Muen*. As the population grows, then you move into the next stage which is the formation of a village otherwise called *Itura*. Then you find that the *Itura* expands and people then stretch. Normally if you look at the geography of Kikuyuland, they expand into a ridge. The settlement of the Kikuyu is ridge by ridge. A ridge becomes a *Rukungwe*. And then of course they grow from a ridge and expand into other ridges. A collection of these ridges is in Kikuyu called a *bururi* - literary meaning "country". So we have a Kikuyu country composed of various ridges.

Do the Kikuyu have equivalent terms for the following words:

a. Authority

The word for authority - and I had better be careful with my terms here - this is someone they would say

"Uri na uhoti" - "One with power"

The word "Uhوتي" in this sense means that he has the power to be able to make others obey.

"Ni aheto Uhoti".

That is "He has been given the power of authority".

I am assuming that you are using the word "authority" in a political sense. This is why I am saying

"Ni mundu Uri na Uhoti"

In other words, somebody who has been given authority by the community

b. Legitimacy

Legitimacy is difficult. I cannot think of - at the moment, one single Kikuyu word. But what in effect happened again looking at what I know of the Kikuyu is that you would have to look at that person who has been chosen by the community to carry out certain chores. And therefore, you would have to, for the word Legitimacy, you would have to tie that word to the word "Muthamaki"

In lieu of a straightforward word that would be equivalent to "Muthamaki"; and the idea of "Muthamaki" being that of someone who was specifically chosen to be a spokesman for that particular group and locality; then what he had is that community had bestowed upon him "Uthamaki". So the nearest I could come to your word "Legitimacy" is "Uthamaki".

c. Duty

Duty is again a difficult term. However, looking at the administrative structure of the Kikuyu, "Duty" is "Wira" "Wira" has many shades of meaning and it can also mean labour. But again the closest term can think of on my feet is "Wira".

d. Obligation (political obligation)

Again, it is difficult to get a word right away. But what one could do is use a proverb because I think this summarises the wisdom of the Kikuyu. The Kikuyu say that:

"Mundu Ndeyejaga Igoti"

meaning that you may be a very good barber but you cannot cut your hair at the nape of your neck. You need someone else to do it for you. The concept here is that we have a communal responsibility to each other. That our lives are intertwined. It is therefore necessary to have a degree of cooperation

Obligation is therefore maybe close to the word "mudano" meaning cooperation and understanding

Did these terms - authority, legitimacy, duty, obligation - have any meaning within the Kikuyu setting? If not, I think you will have to look at it this way - from a historical point of view. If it originally you had individuals these individuals for all sorts of reasons - were once members so that they came a family to be in with. That is

move from the family to the village to what you might call the community or the "Bururi". It is difficult because you are dealing with a society which does not have the ability or knowledge to write down their ideas. It is therefore going to be very difficult to identify at which period each of these concepts develop or come into being. This notwithstanding, one can speculate and this is how I picture it.

Once individuals came into the highlands they found the hunters and gatherers or the people we call otrotopus, the owners of the land. If you were an individual obviously you were outnumbered and therefore willy nilly you had to cooperate with them otherwise they could have ganged up against you. So originally there is a dire need to co-operate with whoever your neighbours were at that particular time. But as the incoming groups increase in number, they begin to have self confidence... As they gain self confidence then they are able to drive out or absorb the hunters and gatherers.

So in the initial stage then, there is need for the settlers to cooperate with the people they find. Now then these Kikuyu are followed by other Kikuyus. Even if one is an outcast and finds themselves in this frontier area they are forced to cooperate with the incoming group. This begins the need for cooperation, the need to work as a group. At a later stage the Kikuyu are not dealing only with hunters and gatherers but with other Kikuyu groups who come into the settled ridges. With this, competition for land to cultivate, for land for pasture and so on ensues amongst the Kikuyu themselves. Amongst them you begin to have quarrels about land, about resources.

This infighting amongst the Kikuyu calls for some mechanisms to resolve differences. It becomes necessary to have a system of government. This is to restrain infighting and maintain the peace threatened by external enemies, in the past the best example would be the Maasai. To resist external enemies cohesion is easily attained. Furthermore, to be able to resist the external enemy the need for a system of government was seen. Within it (system of government) the need to have somebody with authority - somebody to give "Uthamaki"; who was the Muthamaki was identified. A Muthamaki to co ordinate and organize you against your enemies.

It is difficult to say that at this date the Kikuyus began to have x,y,z. But one can see the process of evolution with the system of government becoming more complex as the population expanded.

13. *With the growth of government is there any form of agreement that is entered into?
What are its tenets and principles if at all?*

Again it is difficult to say because of the absence of any written records. It is difficult to say whether they sat down and agreed on what they were to do. But using one's knowledge of history one can postulate on what happened. Most probably in the beginning if there was conflict within the family the father would arbitrate. If it was inter family the heads of the two families would resolve the conflict. Now on the next stage - that of "Miaki" which is a collection of villages which borrow embers for fire from each other - If conflict arose the heads of the various families known as elders were consulted.

I do not think there was any sitting together and agreeing on a constitution - like in the case of the U.S.A. What is seen is most probably the result of an evolutionary process which developed out of necessity at various points in Kikuyu history and society.

14. *If you were to speculate, what might have been the terms of agreement as to how to resolve disputes and who was an elder?*

Oh, there was a very well worked out system of how one became an elder. Very straight forward and understood by everybody. One starts at the early age, at the age of people being children. What you find is that the older generation would be watching children to see which child seemed to indicate they had leadership abilities. Normally that child would act as an informal leader of his age group. But the critical thing was after initiation. This is because after initiation is when you were actually given specific duties by the Community. As a child your primary duty and obligation was to your family. Upon being publicly initiated and initiation was a community affair, you became the property of the community.

Hence boys became warriors. After serving a period of normally about fourteen years (14), then they were allowed to marry and become junior elders. After another period probably of about fourteen (14) years within which time your first child was born, one became qualified to be a senior elder. To attain this rank there were fees one had to pay.

Senior elders acted as what you might call a Legislative body. They were the ones who gave orders, who said what was going to be done. I give your terms, who issued various laws and lectures. And these decrees were carried out by the warriors. So warriors were what I would probably call the executive.

So you did not have a separate legislative powers but they had legislative powers in the sense that they are the ones who give orders. They were not a court of elders. They were not like the courts of law. They were also religious.

had religious functions which they also performed by taking an interest in or overseeing the various religious festivals. To be an elder one took a long time but the critical person in all this revolves around the word "Muthamaki" which translated means Spokesman.

At the Warrior stage, the warriors chose their own leader whom they called "Muthamaki". The elders also choose their spokesman also called "Muthamaki". So, there was a definite well agreed method of choosing who was an elder, who was a Muthamaki, and so on. They then divided themselves. Those who were very good in judicial matters normally formed the core of the "Kiama". Those who were good in religious matters formed the core of religious leaders.

15. *Would you say that there was a sort of selective election among the Kikuyu?*

The Kikuyus say "Muthamaki ndathuraguo, ni guciarwo aclaraguo" - *A leader is not chosen, he is born.* In other words the Kikuyu looked for people with in-born qualities of leadership. You will find a lot of evidence of this including in the early 1920s when they formed political parties. When for example they formed K.C.A., individuals did not compete for seats; instead, potential or actual leaders were identified. They did not have elections, it was by consensus; the reason being there were specific qualities they were looking for. If you take warriors for example, they were looking for a brave person to lead them. They would also be looking for a just person in the sense that he would be very careful to keep good relations amongst the warriors. It is these qualities which people in general looked for in a leader. If you were to be a Muthamaki amongst the elders, you had to be knowledgeable in Kikuyu Law. You must have served as a good warrior. You must be a just and honest person. You must show by action that you are a good man and a good leader proof of this was sought in you own home. They did not believe you could manage a "Bururi". If you could not manage your own "Mucii" (Country - home), a critical part of leadership amongst the Kikuyu is that it was acquired through demonstrated abilities as opposed to inheritance

16. *Were women part of the leadership committee?*

Femminist ideology had not taken root in Kikuyu Society. Officially, women did not seem, and I emphasize the word seem, to play a prominent role as far as the government of the Kikuyu was concerned or even in religious matters. But in effect what one found is that women constituted what you may call the "power behind the throne".

In most of the important decisions that concerned either the family or the Community in general, women in fact were always consulted and asked to give their opinion. They also had their own councils just like the men had their councils. Councils which could be very powerful.

The women were fairly or could be very powerful. Let me take one example. You will find that Kikuyu by and large was a farming community. At harvest, whether you had harvested beans, maize or whatever, no man without the authority of his wife could give away part of the harvest, without consulting his wife. This is because the wife was regarded as the custodian of the economic welfare of the family and the man could not interfere as he did not have the right to dispose of food without his wife's consent.

Also certain religious ceremonies demanded the presence of the women. Take for example the most important - circumcision. One cannot think of it without thinking of the woman playing her role. Take the other which was the handing over ceremony from one generation to another called "Ituka". You could not have "Ituka" without the women playing a role.

I regard them therefore as the power behind the throne. They were not vocal, they were self effacing, but they could be very powerful.

17. *Are you saying that everybody had their rights within this society?*

Not only rights but responsibilities. I think it is very important to note that rights and responsibilities went together.

18. *Could you give me an example of two or three rights that would be considered universal?*

Let us take the right to marry. Amongst both boys and girls marriage came only after one had fulfilled certain obligations. For the boys, after serving as warriors Religious ceremonies would be performed by individuals who were past child bearing age whether male or female.

19. *Was it possible for the Community to ask for the sacrifice of your life?*

Not that I know of. I have never heard of any occasion where we had to sacrifice human beings.

20. *Sacrifice in the sense of for example, a young man going to War for your people.*

What I thought you were talking about is human sacrifice, which was not acceptable. But as for committing oneself to the sense of commitment to the welfare of the community, yes, that happened quite a lot.

21. *Was the Muthamaki or elder, a man or a woman? Was it a man or a woman who was the Muthamaki?*

Yes, but with a difference - The Kikuyu system of government did not believe in force. It believed in consensus. Therefore the Muthamaki cannot or could not tell Warriors to go into war without consulting the Council of Elders. It is only after the Council had sat down, deliberated and agreed that the warriors should go to war that warriors would go to War. No individual "Muthamaki" would tell the warriors to go to war. In making such a decision the discussions weighed all possible options. But, the important thing is once a consensus had been reached everybody had an obligation to support that decision. Let me give you an example. Suppose you had a habitual thief in your family and the elders sat and decided that because your brother had become a habitual thief, he ought to be caned or burnt alive which is what in fact used to happen. Then, the first person to set the man on fire or cane him would be a relative of his.

Let me give you a very recent example. During Mau Mau, in many cases an individual was taken to a Council of Elders. He was accused; he defended himself, but once the Mau Mau Council decided that so and so should die, the first person who hit him was a family member.

19 *Decisions passed by consensus became Law?*

Yes, they became like law.

20 *If one did not like or agree with decisions that governed a certain area, could they move out and move into an area where they would be more comfortable?*

This is in fact precisely why Kikuyus in many cases expand. Individuals who felt aggrieved by their community moved away. A lot of the people who came to Kiambu for example or Muranga were in many cases disgruntled. You had a right to move in and out. The community also had a right to disown you. For example, if one was a witch or a thief, your community disowned you. They declared that you were no longer part of that community. If that happened one had to move away or be killed.

21 *Was it possible to distinguish between political government and Geographical State or the Community?*

It was very difficult.

b *Was it possible to end or dissolve the government?*

Well, I do not recall any instance where that happened, again obviously because they were an Oral Society: passing their history by word of mouth. So, it is difficult to pinpoint specific periods when this might have happened. But there is something important which I have not mentioned which is important. And that is, contrary to Western thinking, you find that in Kikuyuland there was always a government in waiting and a government in fact. That is a government in power and an opposition.

If you look at what we call generations, one finds that there was in any given period a generation in power and a generation at the wings waiting to take over. Roughly every thirty years there was change of what we might call government. The best and more recent example is that of the Mama and Mwangi. Every thirty years these interchanged government. But as to a situation where the government in power would be overthrown, that I have not found evidence of.

However, I know that if warriors found that the elders were not doing their duties they would begin to tell them it was time they went - that is resigned their positions. Even in this, a certain pattern had to be followed. In any case what was perhaps able to cushion a situation where you would have a coup d'etat is that in its legislative mechanism, no single individual could use power as they wished. The system of government insisted that decisions must be made collectively. One therefore finds it a little difficult to envisage a whole generation of corrupt elders. This notwithstanding if you look at the names of generations you will find names that indicate the existence of some internal squabbles.

What would happen if the "Muthamaki" proved inefficient?

He would be removed by his colleagues

22 *What was the place of the individual in traditional Kikuyu Society?*

The interesting thing is there was no emphasize on the individual. Emphasis was on the Society, the Community.

What could you tell us about the concept of Colonialism in Kikuyu Society?

It was a question we people cannot look at now. But then the main idea was that Colonialism was a system of power to be able to control the people. Go to that what was said

that the British government as the colonizing power had to use every mechanism in its power to be able to ensure that they were able to control the Kikuyu Community. So then, what you see is what I would call frontal attack on every aspect of Kikuyu Society that the British government thought needed to be destroyed, to be influence or to be modified to suit the objectives of the Colonial System. Hence the very first area to be hit was the system of government. The elders were removed and replaced with chiefs overnight. The warriors found themselves with nothing to do because the British now kept law and order. The system of education which in Traditional Kikuyu Society was through practical experience was changed and the British System imposed. I could go on and on but I do not think there is enough time.

- 24a. *With Colonialism do the Kikuyu and the British enter a sort of agreement regulating their relationship?*
No.
- b. *What about at independence?*
Yes. I think there was to a certain extent. We had to play to change the "rules of the game" having been disorganized by colonialism. The first generation of people who became literate discovered that the only way to survive in the Colonial set up was to adopt different tactics of survival. These included education and christianity. It is from this background that political parties are formed in the 1920s. It is these parties that now sought legitimacy amongst the people who we now call Kenyans. To the extent that we actually chose those people to be our leaders, then we can say we had accepted what I would call a new dispensation.
- 25a. *Did Colonial power have authority over the people?*
There are two things which one has to differentiate. One is authority, the other is power. Yes the Colonial government had power. They had the police, they had the army, they had Courts, they had prisons. To that extent they had power. But it is a different thing to have authority because as far as I know to have authority there must be a degree of acceptance. It revolves also around the question of legitimacy. One can argue that the colonial government had power but did not have total authority, total legitimacy in the eyes of the people.
- b. *Did the Colonized feel an obligation or duty to this new power?*
No. This to me is one of the problems the African has inherited. For example if you look at the literature of the Colonial period, one of the things the African did is that they did not regard the State as their own. For example, stealing. If you stole from a White Man, you were a hero. That culture of stealing, (of corruption) from the government - the so called "Mali ya Uma" - is still present in Kenya.
26. *What was the role and place of the Individual in Colonial Society?*
While in traditional Society the Individual was not the most important element but rather the Community, now through Colonial education, the colonial system first and foremost began to emphasize the role of the individual.
- 27a. *At independence does the new elected government have the authority of the people?*
Until we got into all sorts of problems, I would say in the initial stages yes. It had the authority of the people and was regarded as a legitimate government.
- b. *What about duty and obligation?*
I think the Colonial system had gone too far, had done too good a job for us to go back to the traditional system. Duty and obligation was absent on the main though in the immediate post Colonial period there was a generation of very committed Civil servants. They wanted to prove themselves, to show that Africans can run the government. So indeed there was total commitment. They felt they had a responsibility to the government to solve the many problems it faced. Nationalism had made Kenyans feel the need to integrate.
28. *What is the role and place of the individual in modern Kenya?*
Every body for himself and the devil take the hindmost.

Well, look; the whole concept of government and State, the differentiation come in from the Western World. So, I would say that yes during the Colonial period certainly differentiation is present.

b. *What about presently?*

In theory there is. In theory the constitution makes it clear that there is a state called Kenya and its government. The two are supposed to be separate entities. In practice, Kenyans, particularly the leadership find it difficult to separate the two. They do not know the boundaries between their personal welfare and the welfare of the Country called Kenya.

c. *Is this a problem inherited from traditional Kenya?*

No I do not think so. In the traditional system though we did not have the concepts State and government as they are described or practised today, there was a very distinct difference between the individual and the community. There was no way the interest of the individual would override those of the family, of your village of your country.

30a. *Is there a term for Society or community in Kikuyu?*

Yes. "andu a biruri" or "Muingi" [people of the country or the Population or People]

b. *What about for "Agreement"?*

It depends on the context, this might be "Kiriko". "Kiriko" is something you agree on.

31. *In all these stages would you say there has been a sort of a progressive Social Contract that includes more and more people?*

Not in our present status. If there is anything whatever Social Contract that existed has very serious cracks in it. If you look at the Colonial situation there was no contract because the British imposed their will on us. For a brief period after independence one can say there were elements of a Social Contract. But the Modern Post Independent period has rarely shown or indicated it. If it is there it has been ignored.

32a. *What kind of government was there in Traditional Kikuyu Society?*

Let me use one author who called it "Republicanism - run wild". Very egalitarian. In many respects very democratic. I think I would describe it as democratic.

b. *The Colonial system?*

That one was Autocratic.

Post Independence?

For a brief period it was fairly democratic

d. *And the present period?*

You pick your word. It is another autocracy, a one man rule version

INTERVIEW 4 : A Kikuyu Businessman aged fifty-two years; David Munene is currently living in Nairobi though he is originally from Kiambu.

1. *Who or what according to you is man?*

Man is a social being, more intelligent than other beings created. By this I mean that Man is able to think and even control other beings by virtue of his intelligence. He can therefore even tame wild animals. Man is also created with more capabilities than other animals and he is above these other animals because he can who know God who is termed to be next to Man.

1. The nature of Man universal or specific? Universal

2. Explain the characteristics of a human being. Do the nature of Man

Man is characterized by a tool making animal who attempts to simplify his lives and create and control his population through his movements, his tools, and so on. Man is also a being who attempts to reach those things available to him

for his own good as well as a being with a conscience that distinguishes good and bad.

4. *What is the origin of the Kikuyus?*

The Kikuyu originated in Ethiopia and later migrated to the Central Province, travelling through Isiolo, Nanyuki and finally to Muranga as history, myth, stories, facts and reflection show. Originally they seem to have been a small group concentrated in Muranga. Eventually they multiplied and migrated spreading into Kiambu, Nyeri, intermarried with the Kambas and so on.

5. *What caused the migration from Ethiopia and from Muranga itself?* May be conflict between the different people or groups.

6. *Did the Kikuyu always live in villages?*

No. Village living came later particularly with Colonialism which introduced reserves. Originally they lived in scattered homesteads.

7. *Do the following terms have equivalent words in Kikuyu.*

Authority -

"Wathani"

This means the putting of authority into action.

Legitimacy -

"Kihoto"

This was determined by the elders under the chief.

Obligation

"Karikanro"

Which had to be determined by the elders and clan who determined the sort of agreement that existed in the community. Note that this Concept extended further and involved more people unlike legitimacy.

Duty

"Mutugo wa Mutaratara"

This was what one was required to do, that is what was required of the people, and performed according to culture.

8. *Did the Kikuyu have geographical boundaries to their "Nation"?*

Yes, and Kenyatta describes it well when he says that the reach of the Kikuyu was from Garbatula to Ngong. Across the whole of Central Province including Embu and Meru.

9. *What about government?*

Not really although there was what one might loosely refer to as chiefs and chieftains for example as demonstrated by Karuri, Gakure of Muranga, Wambugu wa Mathangani from Nyeri, Magugu, Komange and Waruhiu of Kiambu. These leaders would meet with each other but had not formed any government as such.

10. *How did a Chief become a Chief?*

Originally he was appointed by the People. Later chiefs were appointed and given power by the Colonialists. This was to ease taxation and enable labour organization for the White Man. So before colonialism the leaders were actually not very powerful though with Colonialism they became very powerful as Chiefs.

11. *Why were certain Men accepted as Chiefs by the People in Traditional Kikuyu Societies?*

Then social behaviour which gave a person a certain standing. An individual's wealth.

12. *Was there what one might call law or a System of Law amongst the Kikuyu?*

Yes

13. *How did a law become a Law? How was law formulated?*

Elders sat down and decided as to what the law was and what people should do. A policeman could enforce it.

14. *How did the People know what the Law was?*

There was no written law. It was all in the mind of the elders. This law was itself inherited from the ancestors. It was therefore law passed from generation to generation. Change in the law or the establishment of new laws was a slow process. Justice was therefore based on the tribe's or Society's prior communal experience.

15. *How did the People know their duties and obligation?*

These were described to the people and allocated to them by the elders. The elders themselves were older men of approximately sixty-five (65) years and above. It was these men who dealt with and described law, duty and obligation.

16. *What was the role and place of the individual in Traditional Kikuyu society?*

The role and place of the individual was defined by one's skill and their enterprunership. Though part of a group one had to prove his own worth.

17. *How did the White Man end up ruling the Kenyan African?*

He found the locals scattered and so was able to easily claim the prime areas of the country and even displace the locals. Displacement of the local inhabitants created disorientation and aroused resentment as people felt that it was not fair to have their ancestral land; land on which one had been born and tended by farming or building on grabbed. This grabbing by the White Man was not restricted to Kikuyu areas and so did not only affect the Kikuyus. It happened also to the Maasar, the Akamba and so on. To reduce the danger of the African because of the people's resentment to the White Man, the White Man forcefully introduced his law.

18. *In the Colonial era what was the source of*

Authority the Governor was the source of power using the chief's authority

Did the African accept this new structure?

The Kikuyu were not satisfied with this new situation and so resorted to a demand for freedom through the formation of political parties and so on.

Legitimacy or Legitimate action -

Colonial law which was enforced by the chiefs and courts of law established in the reserves for example in Kiambu; the courts in Kiambu town, Kikuyu and so on.

The law from the governor was executed by the chief then later the District Commissioners. It is interesting to note that with independence the system of law that was established in Colonial times was not changed in post independence Kenya. We just adapted it.

Duty and obligation?

The White Man attempted to eradicate culture and tradition which had been the source of duty and obligation as he was not interested in these. His interest was merely to get what he wanted - tax and labour.

19. *What was the effect of Colonialism on Traditional Kikuyu society?*

First of all, it changed the Kikuyu system by placing Kikuyus in small foreign units, that is the reserve villages. In these villages people could not relate as they wished. Hence one had no choice as to who their neighbour was. Often this was not your old neighbour and so he was not really your neighbour as it easily was someone you did not know. Secondly there was no freedom of interaction or discussion (speech).

Thirdly the Kikuyu were forced to labour for the White Man. There was also an invasion of privacy as now families had to live right next to each other unlike in the past when there was distance between homesteads and so privacy in interaction. Another invasion of rights occurred in the form of grabbing of the property as the locals' farms were taken. It began and hastened the dying of Kikuyu culture and tradition.

20. *What was the place of the traditional sources of authority - the chiefs and elders?*

They had a new position. They were no longer respected. They no longer had authority only power backed by colonial force.

Was War accepted by Traditional Kikuyu Society? Could a warrior retire gracefully?

The idea of war was accepted by Society but it was entered into only when necessary. The idea of Society was to

refuse to go to war if or when society asked him to.

22. *Could any one rightly or justly kill another?*

Life was considered sacred. The only individuals who would be killed were those who were involved in violent robbery that resulted in the death of a victim.

23. *Common Resources - Could these be claimed by any one individual? (eg. rivers etc).*

No, not really. Natural resources even one's planted crops in certain instances were considered and treated as common.

24. *What was the place of the Individual in Colonial Society?*

Individualism grew, it was given new momentum and was heightened after Colonialism with very few exceptions.

25. *With Independence were the Kikuyus and other tribes integrated and absorbed into the new entity called Kenya?*

Yes although some of these other tribes had not understood why the Kikuyus had been fighting so had participated in suppressing the Kikuyu. These tribes did not therefore understand what independence meant as they had not experienced a harsh subjection.

26. *Did the Kikuyu accept the new government?*

Yes. They accepted the new government as a source of authority, legitimacy, duty and obligation.

27. *Did they accept the geographical extent of the new Nation-State?*

Yes. They accepted these new boundaries until the recent tribal clashes which has drawn them together as a tribe unlike before. Originally they accepted all other tribes as Kenyans and viewed all of Kenya as their home. Hence they bought land indiscriminately and did business nationwide - wherever and with whomsoever

28. *What was the Place of the Individual in Independent Kenya.*

Communalism was surely dying. Indeed there was no support as such even for the individual in independent Kenya.

29a *In the new Kenya who what was the source of Authority?*

The Prime Minister later the President *Legitimacy?*
The word of the President and sometimes the law
Duty and obligation.

b) *Are these sources acceptable?*

I am not sure as People do not say whether or not they accept them.

INTERVIEW 5 : A seventy- eight year old Kikuyu from Kabete, Michie Kyuna is a retired Shopkeeper.

1. *Who or what is Man?*

Man is a being who after being bred in Human Society is able to know. This being is particularly able to know bad and good while an animal does not distinguish these. [Note that for Kyuna, knowledge and intelligence are two fold - Academic knowledge gleaned from books and in school and a deeper intelligence of oneself, other men, the world and society which he refers to as knowledge of life. Kyuna perceives this latter as very important since it enables one to live and survive well in the world. Kyuna also argues that unlike an animal Man once born can know, and indeed knows his mother, his family, clan and all those whom he interacts with and retains a relationship with them.]

Are all People the same?

To me it seems not as some people are animalistic characteristics and so are not. A human being who does not know and is merciful. Those who do not know, learn, or feel merciful are not human.

3. *Where did the Kikuyu come from and how did they eventually spread all over the Central Province?*
According to history they originated in Mukurwe Wa Nyagathanga in Muranga from where they dispersed to Nyeri, Kiambu, Meru and so on. I am not sure why they speak in slightly different ways. This difference might have been caused by the water or food they partake or maybe even by the climate in the different areas. They moved away from Muranga because their number had increased.
4. *What kind of relationships might have been observed between Kikuyus themselves as well as between them and their neighbours in Traditional African Society?*
They were friendly and cordial between themselves and even with their neighbours. Hence they traded amongst themselves and with their neighbours. However now and then they were raided for cattle by their neighbours or they raided their neighbours. These were not really battles and so they were referred to as "Gutaha" which means to collect or fetch. Thus when need arose on one side, its warriors went to collect what it required from the other side. Indeed the friendly nature between Kikuyus and their neighbours can be seen in the fact that there was a lot of inter-marriage between them. Also they have names and words in common which shows they must have a common origin.
5. *Did the Kikuyu in traditional Africa have any form of government?*
No, they did not. However the most out going and aggressive man socially became a Society's leader. This was an individual who had proved themselves a brave warrior, a good speaker and a fair judge. The Kikuyus also had "Athamaki" who were the ones who conducted the trial of a wrongdoer and sentenced him. These leaders of traditional society were however not actively selected for example by the vote like in today's society. However through individual merit they emerged as superior to the rest.
6. *What were the Categories and Conditions of leadership in Traditional Kikuyu Society?*
One must have paid a token fee usually in the form of a goat and at each stage of progression after that. At the same time one must be an initiate of the tribe who has been a warrior and is married. With each goat payment one assumed different duties and was elevated to a different stage of leadership. The first goat allowed one to join the "Kia matimu". These were the newly initiated elders who had just resigned from war and warriorhood. They belonged to the Small Council which carried the axe - "itimu" to chop wood and roast meat for their elders in Council. On the next stage were those elders who had paid two goats. These individuals could listen to Council deliberations but not comment. The last level in this structure contained elders who had paid three goats which was the full payment. These were the elders - "Kiama Kia Athuri" meaning Council of Choosers - which had a right to debate issues and participate in decision making. Note that there was also the Council of Peace Makers - "Kiama Kia Maathu" - to which some individuals belonged to. These were older individuals who were meant to keep the peace in Society and who could stop any fight or disagreement by a request to keep calm. These walked around with a whisk. On the highest level were those who belonged to "Kiama Kia Maturaguru". These wore rings as a sign of their status. It was these old men who led religious ceremonies. Although there was no government there were "Athamaki". Men who were distinct in their behaviour and who were acknowledged as a source of authority. These men did not farm. It was often these who kept the peace and decided legal cases.
7. *Was there Law in Kikuyu Society and how was it known?*
Yes there was law. Law was demonstrated in wise sayings which demanded civil behaviour towards all people no matter how rich, brave, strong or anything else you were.
8. *In case of War who declared war?*
It was the prophets who indicated when war was viable. This was usually after the young men had been properly prepared for war. That is they had been well fed and trained. The prophets themselves did not use supernatural powers to determine the ideal time for war but human intelligence in the form of covert activities for example infiltration of enemies and the enemies' camp in disguise as traders and so on, a study of target area and an analysis of the enemies' preparation and strengths.
9. *Could an individual called to War refuse to go to War?*
No. Nobody could refuse to go to war as society had been preparing them for war and after all they were warriors.
10. *Could anybody be allowed to kill another?*
No. No one had a right to kill another indeed even the Council avoided sentencing any person to death.

"it is best that we do not give two to the hyenas". That is: have two dead members of the community since the Kikuyus disposed of the dead by abandoning them in the wild not to feed the hyenas with two of society's own.

11. *How did the White Man eventually end up Colonizing the Kenyan?* The White Man used religion to infiltrate, invade and subdue. He confused the leaders of the people with gifts and a pretence of humility. At first he asked for a place to stay as a missionary. Eventually the farmer followed the missionary. This latter one studied the Kikuyu and found that they had no government. With this knowledge he claimed he was a representative of his government which was now the African's government. With this claim he turned into an administrator and governor who gave rules and instructions. Acting as mediator, he asked for disagreeing parties to be referred to him or brought to him as the "King's" representative and as a result soon dominated the locals. In this period, he looked for a fine fertile area then opened a school to enable communication. He now claimed the fertile area as his. Eventually he began to warn his African neighbours that their cows should not venture on his area as this was trespass. Soon he had claimed so much land, the tables had been turned and it was now he allowing the African access routes on "his" land. Those who now ignored or resisted his prohibits were prosecuted and punished under his laws. The White Man had become the government.

12. *What was the impact of Colonialism on Kikuyu Society?*
It interfered with and eventually killed traditional Kikuyu culture particularly traditions that related to religion and respect of our dead ancestors. The Colonial Government also took out land. There was also the introduction of Coffee and its farming.

13. *Before Colonialism what was the extent of Kikuyu land?*
It extended up to Mt. Kirinyaga.

14. *After Colonialism and upon Independence were the Kikuyu willingly integrated into the newly formed society - Kenya?*
The Kikuyus demanded independence together with all other tribes and for all Kenyans. Independence was therefore for those who suffered under colonialism and those who did not. Each intelligent Kikuyu knew and accepted this.

15. *What was the role of the individual in :* *to Traditional Kikuyu Society*
An individual was important and significant only when they were married and had a family so had proved themselves otherwise how would they be able to relate to and understand the whole of society.

to Modern Kenya

In Kenya today the individual is considered important in isolation. He does not need to have a family or prove himself to society. This is clear when one observes that many responsible jobs and positions have been granted to single men, people without families.

16. *Are there equivalent terms in Kikuyu for the following words.*

<u>English</u>	<u>Kiswahili</u>	<u>Kikuyu</u>
Authority	Mamlaka	Uhoti, "Kuhota" has a right.
Legitimate	Kisheria	"Watho"
Obligation	Wajibu	"hadu - haku"
Duty	Kazi	Wira waku

INTERVIEW 6 : Hudson Njuho is a retired farmer from the Tumu Tumu area of Nyeri aged eighty years. He is of Kikuyu origin.

Verbs: Man / U

The difference from an animal Man / u to an animal, he is just that a Man / U is a 'human' with a brain.

because he thinks, has ideas and can know while an animal cannot know. An animal's knowledge is limited only to fight or flight.

2. *Are all People the same universally universal or is the nature of Man different and specific?*
People are the same the world over. This is because all of them are created by God; all are born the same way; and at one time or another, each one of them dies.
3. *What was the original state of Man?*
Man has always been social and so has always lived in small units straight from the time of Gikuyu. Though I cannot be sure, if we are to look at the nature of Man and Social organization today, I would say that Man has always lived in Social Units. Unlike animals, although Man lived in isolated units he was not always constantly fighting. Note however that in the early period, there were conflicts between the different social units. These conflicts were particularly apparent when the Units belonged to different tribes for example between the Maasai and Kikuyu for cattle. Although people lived in peace in their tribal units, they were also constantly afraid that their cattle would be raided by the other tribe. For this reason, Kikuyus initiated young men into warriorhood.
4. *Where did the Kikuyu originally come from?*
Mukurwe wa Nyagathanga. It is from here they dispersed into Nyeri, Kiambu and so on.
5. *Was there - in traditional Kikuyu Society - a distinction between government and geographical state?*
Yes. Because amongst the Kikuyu there existed Kings ("Athamaki") - for example Waiyaki in Kiambu, Kinyanjui and so on. These Kings were in their different areas respected and obeyed by the people.
6. *How did a Person come to be a "Muthamaki" - a King or Spokesperson?*
Such a person distinguished himself in his manner of talking as well as in the subject and content of his discussion. That is in talking he used persuasive language which expressed his wisdom. He was therefore able to influence people. This person was also progressive therefore he improved his family by providing for them and making sure they were taken care of or organized them well enough to ensure this. At the same time this was a person who had proved himself brave in war.
(At this point Njirho distinguished government and country - Government he says; consisted of the Athamaki who were elders and who at one time had been warriors and the current warriors. The Country's population, he says consisted of the men and not the women whom he claims were to be married off. The country extended up to where any Kikuyu lived.)
7. *Could the government be changed or dissolved?*
Yes but not by the Kikuyu. It could only be dissolved by invasion. For example, when the Maasai might invade and kill all the able young men and an area's leaders.
8. *How would a new government be formed in such an instance?*
The survivors would form the new government after the invaders left.
9. *How did colonialism affect Kikuyu Society?*
It introduced the art of writing and education. As a result even the Athamaki now had more secure ways of passing their messages. Messengers were no longer sent with the staff rod of authority as a sign of credibility. Letters and seals could now be used. There was also the introduction of clothes and dressing.
10. *What was the role and place of the individual in Traditional Kikuyu Society?*
Like Adam, a single individual on his own was not important. Man became important when he had a wife - a family and in Society.
11. *Was there a Contract between Government and State in Traditional Kikuyu Society?*
Yes, as demonstrated in agreements between the Athamaki as well as between the Athamaki and those under their influence even if, for example, this consisted of a simple agreement to donate goats for a ceremony and so on.
12. *Did the Muthamaki have special rights - even a right over the life of his subject?*

No - in one sense. A leader could not kill those under him unless a person had badly misbehaved. In this case the "Kiama" (Council) would mete a standard punishment of death. Such a sentence was meant to finish the criminal off and rid society of his badness.

[Note that Hudson Njuho insists that the "Athamaki" were special spokespersons in the Kiama. These were influential persons as they were respected and their opinions listened to. They had, he says, special symbols of their authority which included a rod signifying their authority. Furthermore, such an individual did not "touch the soil with his hands" - farm. He also had special messengers who served him and he interacted with elders of his calibre whom he visited and vice versa. During the visit of such an individual - a Muthamaki: his counterpart or the junior he was visiting and his Community made special arrangements to accommodate him and his entourage.]

INTERVIEW 7 : A seventy- eight year old widowed Housewife, Nyambura Ngone is from Muranga.

1. *Who is Man?* Declined to answer.
2. *Are People the same the World over?*
No people are not the same because they differ in terms of their nature, their mental abilities, their character and their physical characteristics.
3. *Where did the Kikuyu come from?*
They came from Mukurwe wa Nyagathanga in Muranga where nine girls were born of Gikuyu and Mumbi. It is from these girls that the Kikuyu are descended.
4. *How did the Kikuyu end up all over the Central Province of Kenya?* The girls moved, settled, got married and gave birth thereby distributing the seed of Gikuyu.
5. *Did the Kikuyu have a government?*
I found Karuri, Mbaria and Njoroje leading the Kikuyu. It was actually Karuri who had given Wangu wa Makeri leadership. There was also Nderi wa Wang'odu and other such leaders. These leaders exerted influence over large areas of Kikuyuland.
6. *How did these leaders become leaders?*
Some of these leaders were made so by the White Man. Others distinguished themselves and so merited leadership positions. These leaders had subjects, delegates and messengers.
7. *Were there boundaries to the Kikuyu Nation?*
Yes. These extended as far as the influence of the Kikuyu leaders reached.
8. *Was there Law in Kikuyu land?*
Yes this was why for example Karuri could send into a home for girls to go and plant trees in areas which he had designated.
9. *Did the Kikuyu accept the White Man or not?*
No, which is why the Kikuyu fought the White Man.
10. *Why did the African fight the White Man?*
He fought to retain self dignity and respect. To get a chance to get educated, so that one could work as they wished. To stop discrimination in public utilities and stop insults being hurled at Africans. We fought for our freedom and for our rights.
11. *Was the new President accepted as the leader of the people at independence?*
At independence Kenyatta was accepted unanimously as a national leader. This was because he had brought both the

message and method of Freedom.

12. *Did the different Kenyan tribes accept each other as Kenyans?*

Yes. Kenyatta requested that killing, discrimination and favouritism stop. He asked that the distinction that had been created between those who resisted and fought in contrast to those who did not; be erased. Because the people trusted him and believed him, they agreed to this. Hence, Kenyans joined together for progress. At this point therefore there was unity and integration in Kenya amongst the people.

INTERVIEW 8 : **Of Kisa origin(this is an Aba Luyia sub group),Dr. Eric Masinde Aseka is a Lecturer at the History Department in Kenyatta University.***

1. *Who or what is Man?*

Man is a unique animal of rare quality in the sense that he is a rational being able to programme his life and endeavours. Unlike other animals which respond merely to instinct, Man has a component of intellect which has enabled him to develop a means of communication in the form of language. Man also has been able to utilize his intellect to rationalize and increase his needs as well as meet them through production and exchange. He is also able to try and obviate conflict and to understand mysteries by way of religious orientation in his thinking. This relates to the different realms of his being in that he has an aspect of his being that is spiritual, an aspect that is mental and another that is physical. The physical being tallies with his body, with his senses so that he relates to the world through his senses. And so his body, his world conscious derives from his intellect. Whereas his mental ability emanates from his mind which is an aspect of the Soul. So man rationalizes through the operative mechanisms of that intellect. But there is a third component of his spiritual dimension which has an intuitive capacity, which has a capacity to receive messages – that is knowing without reasoning. This is an aspect of the spirit. So inspiration enters Man through that intuitive faculty of his that I call an inner ear, the conscience. The conscience enables us to tell right and wrong. But then in addition to the intuitive faculty of the spirit and the conscience is the faculty of communicating with other spirits in prayer, worship and praise. The spirit therefore has three dimensions, the soul has three dimensions and the mind which is the engine of the intellect has the will which is the seat of self with ego, and emotion such as desire. The Body has five dimensions. Man is therefore that being who can co-ordinate these three separate dimensions of his being and direct them towards the realization of his needs or aspirations.

2. *What is the nature of this three dimensional Man?*

Man goes beyond the physical. His nature is such that the physical part of Man is subject to the internal aspect of Man. There are realms in Man called Spirit and Soul which are intangible. What controls Man is the Soul within which we have aspects conflicting to control Man. There is first the human intellect and secondly human emotion conflicting within the Soul. When any of the two dominate a person, the individual becomes unbalanced. There is in Man a need to balance reason and emotion. The will provides this balance. This therefore is the nature of Man – a reasoning, emotional, willing being that requires balance within it.

3. *How would you perceive of Man as living before he entered Society?* Man is by nature a Social being. Therefore to remove Man from a Social Setting is to make him beastly. The Sociability of Man is what makes man human. Human Society has a constraining impact that makes one operate within acceptable conventions – the dos and don'ts of Society. Society offers the discipline required to make Man human. Left to himself with all the liberty possible and lack of Society and its discipline means giving Man that which will make man respond to instinct. This instinct is sometimes instinct that will dehumanize man, instincts that are sometimes overdrives. These overdrives are checked by Society. So before Societies were established as forms of communities, men were beastly. Man needs a person to share with, to be appreciated by and so on. Society offers this as it is a multiplication of these partnerships. The advent of Man is that he was Solitary and would have been wayward and lonely if he had stayed like this. To actualize himself, to be happy, to enjoy pleasure, he needed someone to augment him and this led to families; eventually to Society. Society is therefore a culmination of what began as an individual need to overcome solitude.

4. *What would you say is the origin of Political Society?*

Its origin is based on the trichotomous nature of Man. Politics has a basic drive of the realization of power and the pursuit of self interest as well as the retention of power to actualize interests. In this pursuit people come into conflict because each self is driven by ego and so conflict is the antagonism of self. This brings about the need to manage these conflicts through mediation or reconciliation or constituting some form of consensus since interests sometimes by sheer coincidence might be configured in some certain way. These interests might form an alliance - that is, in the pursuit of interests there are no permanent friends or enemies but there are permanent interests. Alliances allow for a pursuit of interests. This is in a bid to make Society offer a conducive atmosphere for people to realize their potentialities whatever these may be. Politics therefore emanated from the different identities defined by the different contents of self configured by ego.

5. *What according to you is the origin of the Luyias?*

There is no purity of race or tribe in human beings. This is because human communities intermingle the way clouds do. The reproductivity of the human being across the ethnic and racial divide makes nonsense of the idea that any tribe is purely anything. What we see is actually a historical resilience of language. The Luyia are a people who have emerged over the years in that interlucustrine region. The region is a mere fertilization ground of different cultures that included the Maasai, Kalenjin, Luo, Baganda and so on. These ethnic groups were not themselves pure in any way. However the original people in this area were the Bahima. These, from the 13th century, intermingled with various in coming stock from Uganda, Tanzania and so on. This resulted in a variety of Luyia subtribes in terms of language and custom in some instances. The Luyia as Were says are therefore a historical hybrid of many cultures and traditions which is why they do not have a standard language.

6. *How did the Wanga emerge as the dominant Luyia sub tribe?*

Although there have been claims that the Wanga had Kings and Kingdoms, this is not true. The Wanga Kingdom was actually a Kingdom of clans and so only the framework within which other clans were able to offer allegiance to other clans led by the Aba Shitsetse. These in turn merely asserted their dominance over other clans that were not Aba Shitsetse themselves. The Aba Shitsetse themselves were an immigrant clan from the Aba Tiriki. The Wanga Kingdom was therefore a clan Kingdom that found centralization in the ritual and heritage of Nabongoship, the Nabongo himself being the Political head of the Wanga State. They too being an allegiance of clans allied with other groups for example the Kisa, the Marama, the Samia and so on. These alliances were necessary to stand against the incursions of the Luos, the Bukusu, the Kalenjin and so on. In this period the Maasai entered an alliance with the Wanga rulers entering service as mercenaries who fought for the Wanga. The Wanga also used the Merchant Capital and guns of the Arab Swahili to dominate the region. With the coming of the British they tried to ally with them. The Wanga was therefore a nation known to ally with friendly external factors against hostile neighbouring groups. The British did not understand this set up and so assumed the Wanga to be an established dominant group. They therefore gave the Wanga an upper hand in British dispensations and imposed Wanga Chiefs on other Luyia subgroups. This was in spite of the fact that these other groups had their own Chief though not as powerful as the Wanga Chief. This impositions did not work and the British eventually had to prop up the Wanga Chiefs with force. The British used the Wanga for their own convenience as was later clear and as Mumias by the time of his death (1949) realized.

7. *How do you perceive of and define the following terms.*

(a) Authority

I look at authority in executive terms. Executive because there are ideas, concepts which one implements and the end of such concepts is the concept of Power. Power which is an abstract concept. The concept of Power derives from knowledge and therefore power itself as a concept has to have its legitimating force. What legitimates power is ideology, and ideology is defined by knowledge. Power, ideology and knowledge have an interesting relationship. Power when it has been defined in abstract terms may be circumscribed in terms of office. That power has then to be translated in the form of the exercise of authority. And therefore there are positions which we can say are powerful because of the potential power which they are supposed to wield. But we have known of people who are weaklings who have occupied powerful positions and have been unable to generate any authority. So authority is the demonstrative manifestation of power. Authority is therefore the executive dimension of power. There can be power without authority but one could also argue that there can hardly be authority without power. Authority cannot be wielded without power because of the intricate relationship between them. And so we have the mechanism of delegation in authority as no individual is able to exercise the full gamble of authority. So we have lower offices carrying out functions that have been delegated to them by higher offices. This delegation goes up to the grassroots level. Authority

is able to be exercised where it is acceptable. Where it is contestable, it is challenged and can be outmanoeuvred, be disputed and destroyed through oppositional resistance. This is because it is not considered Legitimate.

b) Legitimacy Legitimacy, therefore, is a function of consent, of participation. This is because participatory behaviour kind of generates consensus, identification with a cause and therefore minimizes the terrain of resistance. And so legitimacy itself has an important relation with acceptance or rejection of authority. Consensus and acceptance legitimizes authority. So there is a descending order; Power - Authority - Legitimacy. An order that also has a linkage in its relationship with other concepts such as duty and obligation.

c) Duty and Obligation

Because of the directional flow of a holder of authority exercising authority, he does it because that office has certain duties prescribed for it. He has therefore a duty to carry out certain duties prescribed for it. He has therefore a duty to carry out certain duties without fail. Failure to do so leads to his position being challenged and to the rising of opposition. This might illegitimize his holding of that position. So that duty which is given out in the form of delegation is a call towards certain activities to which people will either act in rebellion or in tandem. But if the position and activities of the person in authority are legitimate; that is his authority acceptable then the people will be obliged to perform in response to him. This is the direct relation between obligation and duty. Duty which is formally circumscribed and obligation which comes out of spontaneity as a mutual acceptance of that. There is therefore a harmonious flow of duties which are tasks allocated and an obligation to carry out these tasks.

8 *How would you perceive of if at all - Authority, Legitimacy, Duty and obligation working and relating in the "Wanga Kingdom"?*

There was a growing Political Centralization. At the head of this was a Nabongo. The Nabongo had a certain power that emanated from his office. The translation of this power to a force felt on the ground is authority. So the various Nabongos exerted different levels of authority. The Nabongo's exertion of their position to their subjects is the way in which they issued certain dictums to be carried out in which degrees by certain subjects, collectivities and so on. Some of these calls were carried out. Those which were contested were delegitimizing to the Nabongo. So even among the Wanga one can talk of the rise and fall of Kings whereby those calls that were contested were delegitimizing to the Nabongo. Those deemed rightful were carried out to the letter so they legitimized the position and authority of the Nabongo.

This legitimizing itself in the entire Wanga formation was brought about by a need for Security in the entire Wanga Body Politic. They conceived the Nabongo to occupy an institutional office which actually offered the social security without which Society would disintegrate. Nabongoship was actually a unifying factor for the purposes of collective security, individual security and the longevity of society. This made the Citizens have certain obligations to the Nabongo while the Nabongo had certain duties to perform, certain tasks to allocate. The duties were downward skewed for people to fulfil and he to fulfil to the people. The people, in receiving these services, had certain obligations to fulfil to themselves and to their ruler. That is the sense in which I see the dispensation of power through the prism of authority enjoying the medium of legitimacy to be translated into duties and obligations.

9 *How did the "Nabongo" become the Nabongo?*

The Nabongo became one because the previous one had passed away or fallen ill. That is, by reason of demise or incapacitation. This lent credence to the coronation of another Nabongo by customary procedure. Thus only the Nabongo's life blood (ideally) could succeed him. There would be a council which actually chose the rightful Nabongo according to custom from among his sons.

10 *What were the principles of interaction between this leader and his people?*

There was a given etiquette to be observed. The Nabongo was to act in a kingly manner and his subjects reverently towards him. The Nabongo was to dispel his duties and the people to oblige him. A give and take situation that did not allow for the relationship to be disturbed when working well.

11 *Was there Law amongst the Luyia?*

Yes. Customary Law. This law defined Land tenure arrangements, Marriage and so on. The question is not whether there was an elaborate system of operationalized social relations. So yes, there was Law.

12 *Who would dispense the Law?*

Unless there was need to appeal to the Central intervention of the Nabongo, the Clan heads and Councillors,

"Amaguru" as they are referred to dispensed law. These Councils operated on egalitarian principles. Everybody was given a chance to air their views and be heard. This was a directly democratic system though there was a general dominance of elders as opposed to the youth. This was because the elders were perceived to be wiser.

13. *How did Law become accepted as Law?*

We first ought to note that there was no written law or legal academies. Rather, law emerged from Societal expectations, standards and a valuation of situations whereby conflicts, disagreements, desires and so on were validated against broad Societal welfare expectations. What did not tally with collective responsibilities and expectations was discouraged. It was therefore these that built into norms, into dos and don'ts that resulted in conventions and regulations. Non conformists were regarded as misfits and conformed or removed. Sorcerers, rapists, murderers, those involved in incest and so on were uprooted and dismissed. Regulations were made from this and defined to foster an environment of moral rectitude, of moral responsibility. Law played a utilitarian role to avoid the emergence of social disorder and disgraceful conduct by individuals or groups of people. Law therefore became a means of sorting out differences and obviating conflict. The question of precedent was always present and was used as an indicator of the norm of handling an occurrence. If there was no precedent consensus was sought on the best manner to handle a case in the "Eshina" - that is Elders ad hoc courts.

14. *How did the People know that X was the law?*

Our traditional societies were not an article regulated by the impulse of instinct. And so there were systems in place and operational institutions manned by competent practitioners and spokesmen. These institutions historically developed and reflected the challenges they encountered along the way. They responded to cultural orientation. They also responded to challenges by adapting and dismissing behaviour and ideas in response to new exigent realities. Law is a Social Consciousness that reflects a people's desire to institute and maintain social order - amicable social relations. Its evolution drew from a form of consensus gerontocratically determined. Prestige and wisdom were deemed to rest in the elders who became a source of wisdom and authority. Their word therefore exercised great authority in contrast to that of the youth. Certain norms of handling crisis were established. The institutions which reached these decisions apart from being representative of different views had a spokesperson who had the job of conscientizing the rest. The people also knew what was expected of them and they knew that their allegiance to customary law was expected. People knew and were conscious of their community and citizen rights. They were aware of the penalties of transgression, of the changes in regulations and in the system. These People too became custodians of the same law because they reported transgressors and accused misfits expecting redress in response to their complaints. Society was aware of the centrality of law in fostering social tranquility and forging a Community Conscious apart from meculating or exerting a constraint on individual behaviour that would lead to immorality or religious apostasy.

15. *Why did People Accept the Law?*

People accepted law because it was part and parcel of their cultural heritage. They accepted it because they realized they could not do without it. Law is a systematic edifice rooted not only in the cultural process but also in the broader social experience. So customary law was one out of the many Mosaics of Social Artifacts of Community that developed in pre Colonial Kenya. It was one dimension of a Pre Colonial era which was multi faceted.

16. *Did the Nabongo or any of the Clan leaders or elders have power of life over the subjects?*

The Luyia Community avoided the death penalty except in cases of incest, witchcraft, or very serious offences.

17. *Could the Clan demand that one goes into War for Society?*

Yes because it was a question of Collective responsibility. Thus leaders who excelled and were respected in the Councils and Society were superior ex warriors. Bravery was a virtue. There was therefore mainly no problem in mobilizing warriors.

18. *Could an individual refuse to go to War?*

Some individuals refused to go to war since in every Community there are Cowards. This was why the warrior group was formed and certain rituals such as Circumcision and the Age set were encouraged. Circumcision was meant to encourage bravery in young men and drive them into brave experience as was seclusion in forests among wild animals. This encouraged a daredevil attitude in Society particularly in regard to enemy Societies. Bravery was rewarded by Status in Society - leadership and the prestige that went with the exploits that one ventured into.

Conquest and victory in War was anticipated, impressed and ennobled upon the Warriors and Society so that the number of those who opted not to be involved was reduced. Such Cowards lacked wives, were not listened to in meetings and so on. Because adventure and bravery in the military was a highly respected the option of Cowardice which was present was socially very costly as a coward risked being marginalized and depreciated in the name of saving their lives.

19. *What led to Colonialism?*

The British were cunning and hypocritical and beguiled the Luyia who were, still are, very hospitable. The British at first posed as innocuous travellers equal to the Community they had encountered. Thus the Luyia in their hospitality welcomed imperialism and all its ills thinking they were welcoming visitors and allies.

Thus, Mumia did not receive the British as a Superior People but as allies and co-rulers. The British then abused this hospitality and in time began showing their true colours and instilling their Superiority by force. Mumia, a collaborator at first began resisting because he realized that his glory had been taken away and he had been demeaned. The British used a simple imperialist stratagem of tricking African rulers into providing alliances to enable the conquering of other African tribes and then the relegation of both allies and resisters into a political vacuum - a reconstruction of Africa. This experience was not unique to the Wanga. It was common all over Kenya and Africa. Each of the "Ally Communities" ended up discontented.

20. *Did the Luyia accept British authority at Colonialism?*

African people did not accept British Authority even when exerted through puppets such as Mumias. Africans resisted and thus, for example, to ensure compliance the British in Western Kenya had to seek the help of Maasai warriors, Sudanese soldiers and so on. British imperialism was contested until the African realized that British warfare because of fire power was superior. However even after this realization you find a lot of quiet individual and collective acts of resistance and sabotage to British decrees such as the Aforestration Policy in the Maragoli hills, in the eradication of the weed called the Mexican Marigold, the contestation of the goldmines in Kakamega in the 1930s and so on. We therefore see the British realizing the potential danger of the Young Kavirondo Association which both Luyias and Luos were involved in and its taming under Bishop Owen. We see Luyia resistance to British Authority in their involvement in the Mau Mau movement where they were represented in the Mau Mau Council. And so, for example thirty (30) oath takers were arrested and detained in Bunyala Forest in Busta. We also find individual resisters such as Chief Mukodi in Bunyala and K. A. U. offices being opened in Malakasi in Maragoli land. Rebellion to British authority occurred all over in Kenya, amongst the Maasai, Miji Kenda and so on.

21. *Even though British authority was contested, did they hold legitimate power?*

Colonial power is not legitimate power as the consent and participation of the ruled is not sought. The consent of the African had not been sought. Participation is expressed in consent British power was therefore not legitimate. If people are alienated then their proclivities and the expression of their potentialities is not realizable. The British were imposing themselves upon Kenyans. This is why we call their system of rule imperialism which is actually an aggression - cultural, economic and political that subordinates other people.

22. *Did the concepts Duty and Obligation in this context have any place? That is, was there duty and obligation between the rulers and ruled in Colonial Society?*

No. The People were cowed. The rulers did not feel obliged and the People did not feel a duty to the rulers. This is why there was no sense of a duty to develop. This is also why the Africans paid the bulk of taxes yet what development form the taxes took went into the White highlands and the Metropole. Yet the Europeans paid very little tax. The bulk of education expenditure was spent on European and Asian children while the education of the African was to a great extent ignored. Agricultural extension was done in the White settlement areas in contrast to the African Areas. The only duty the White Man had was to his Metropolis Bosses back in London, to the Imperial state. It was to these they had a duty, and on their behalf, an obligation to effect certain administrative activities on the ground to secure the security and compliance of the African. They had no duty to the African. It is because of this that the African resisters against the White Man and why they had to constantly be coerced because imperialism and colonial activities were extremely oppressive.

23. *What was Law and its source in Colonial Society?*

Law in Colonial Society expressed a very obvious disarticulation of systems. In PreColonial Society which was a

Gerontocratic system, it allowed the articulation of ideas from the elders. Values and norms emanated also from the elders. This was ruptured by Colonialism: an allied administrative society operating on the basis of a foreign legal system. Hence land was alienated using a foreign jurisprudence (Indian law). In contrast to the holistic organic womb of African PreColonial Society that had grown over time; justice, religion, law and the like were redefined and distorted yet they were the institutional foundation of African order. A dualism of African traditional systems interrelating with an imposed alien system was inception. This bred a dislocated bastardized Social order whose reproduction was in the form of a Neo Colonial order whose goals were not in the interests of the African. It undermined the African personality, culture, social institutions and so on. This created ambivalences, conflict and neostresses in African terrains. This explains the dilemma of Africa today which is caught up in this maelstrom of confusion. Its vitality has been nipped by external agents of imperial control.

4. *With independence did the Luyia integrate and feel united with the rest of Kenyan Society within this new entity - "Kenya"?*

As a Historian I challenge any view that there was any good integration. What kind of integration? For who? Whose scheme? I personally am of the view that a Kenya framework has hardly evolved. The framework which we have is a colonial framework which has continued in a Post Colonial Setting. It is Neo-Colonial. The Luyia lost land. The D.C. Aka in 1913 traversing and remembering the annals of Harry Johnstone who had claimed Trans Nzoi fertile uninhabited land opened it to European settlement. Uasin Gishu had already been opened in 1903-04. European settlement was extended and Luyia boundaries reduced. A lot of this alienated land is now in Trans Nzoi and a big portion of this land - around Kipkanyon River is in Uasin Gishu. The original inhabitants of this land were Bukusu and Tachoni. I put it to you that the Tachoni have been left out of their ancestral land. They have been alienated from their land and are now dispersed over Kakamega, Bungoma, Transnzoi and so on. So the Tachoni remain placed next to Webuye, a very small community scattered all over because their expansion towards Trans Nzoi was disrupted.

Come the Million Acre Scheme, these guys were not considered seriously. I am not saying that there was no raw deal for any other community; the Luo lost land at around Muhoroni Chebele... which meant the displacement Luos. The Kipsigis lost land at Sotik and of course to the tea factories like Brooke Bond. The Kikuyu lost land - extensively - for example the tea and coffee farms in Lamuru, Kiambu and so on. Even the Maasai lost land. The 1904 and 1911 Agreements were travesties of justice that caused massive alienation of land starting in 1902 in the name of crown land ordinances. Land that belonged to the People as their own now became crown land. These lands were alienated and today they remain State Land. A lot of this land had been given to the European Settlers in the form of 99 or 999 years leaseholds. These had for many of them been granted free of charge, yet when they were departing they sold them at exorbitant prices.

At independence, land reforms were not seriously inception in this country. So that in 1953 the Assistant Director of Agriculture set a land reform process which brought about the adjudication of land, the allocation of titles to individuals and its registration. This was a colonial project that began in 1953 in an attempt to create an African middle class that would be able to access loans from Banks. This project continued after independence. Even today we operate on the basis of this project - a project began by colonialists as a colonial project. We have never undertaken a serious land reform project in Post Colonial Kenya. Yet we talk of Kenya economically taking off; yet agriculture is the main sector of this economy and it operates on the basis of a colonial Land Policy. What a shame! There can be no Agricultural take off unless there is a serious reform in the tenurial arrangement that define inequality in Land distribution. Secondly, the Kenya Company Law that we have in place today is the British 1948 Company Law. The British amended theirs in 1967. Kenya today is still operating on that obsolete British Company Law. And yet we say we are independent and our constitution cannot be changed - look at these absurdities. This is what we have on the ground. Colonial Laws still very intact.

What were incorporated in the definition of what we have as Kenya today are the Comprador Comprador colonial elite - Political elites. In what way were the peasants incorporated? They continue to be marginalized. Many of the peasants are still falling back on mediocre petty preoccupations - hawking, prostitution, witchcraft and so on. But certain key Luyia, key Kikuyu, key Luo - Comprador elites - the people who have politicized ethnicity have taken to tribalism as an ideology. They particularize issues to raise emotions in order to create tribal alliances so to say. The ordinary Kenyan - be they Kikuyu, Luo, Maasai, do not benefit from tribalism. Tribalism is an ideology that is being heightened. A tribe in itself is innocuous, but the politicization of ethnicity is criminal. This is the issue in Kenya. So what we have in place is an edifice where by tribal boss men - Kenyatta, Ngala, Mboya, Odinga, Masinde, Muliro and so on created tribal alliances instead of creating a Socially cohesive society governed by mutual equity. A society that would admit that the irrationality of having ten thousand (10,000) acres of land to one man is criminal, that such

a person should be prosecuted. Put a ceiling, a premium on ownership. In the Kenya we have today it makes no sense to own so much to an individual. Say that the maximum one can have is two hundred (200) acres. Kenyan society because it has been opened to abuse now has White settlers in Black skins. So, the Luyia continue to be alienated. Not just the Luyia, but also the Kikuyu, Luo, Maasai and other tribes, by the treacherous Comprador elites who have taken over the running of the state yet are not willing to execute a just social scheme - just to all Kenyans.

25. *How do the following terms operate in independent Kenya and what are their Sources - Authority, Legitimacy, Duty and Obligation?*

The Colonial framework continued into Colonial Kenya. This is the linchpin of any discussion into Post Colonial Kenya and Neo Colonialism. The Governor was replaced by the President. The etiquette, mannerism, symbolisms and paraphernalia are all colonial. The Legislative Body (Parliament) is the body that defines the Law - legislating the Law. The Law is not a progressive instrument but a Conservative one. An instrument of legitimizing ownership and the powers that be. An instrument of the ruling class to maintain the status quo. Viewed this way one understands why the present dispensation with the institutional arrangements of the ministerial positions and institutions are not geared towards actualizing programmes that are within the expectations of the masses. Because those people occupying those positions are people who felt socially and economically deprived under Colonialism, with the departure of Colonialists they went in to fill the shoes of the Colonialists. They went in to acquire Political Power before establishing a community of interests and values or even economic power. This latter they now sought to maintain (Political Power) using the State as a means of accumulation. The State therefore became predatory to the masses. Through taxation, the people ended up worse than in the Colonial State as they were led by People without values or restraints. Individuals who are insecure because of the nature of the alliances which they have created (tribal). The result is that the Masses are alienated and only manipulated through the use of money. It is no longer a question of issues.

26.a *Within this set up what is the source of authority - If any?*

The Source of authority is manipulation and coercion. Post Colonial authority is coercive because the State is in power. There is a power resident in the State. This power ought to be legitimized by the people through and in a process of participation; but because of the leaders' insecurity they do not allow participation. This is because leaders are not sure of their remaining in office through a just participatory process. To circumvent the participatory aspect of power and authority they impose their own version of power. Power which is a relational term is therefore imposed through coercion.

b. *What is the Source of legitimacy?*

There is no legitimacy because if they were seeking legitimacy the system which they operate would be fair and open. It would be accountable and transparent which would mean no rigging.

c. *What about duty and obligation?*

Well, the duty and obligation of the Post Colonial elite is first and foremost to themselves Self interest. This is because these leaders rose to a position of power before they established a community of values. They do not therefore see themselves as answerable to the people. Indeed they are often guilty of things that are harmful to the people. If this was not so they would not grab Public Property and would instead protect the interest of the general public. The citizens on their part do not demonstrate any obligation to the state. The terrain of obligation and duties have to do, and goes with moral standards and values, none remain in Kenya. Politics has been reduced to a dirty game as the leaders of the people remain without morals and standards which is a dangerous situation.

27. *What is the Source of Law in modern Kenya?*

Law is basically foreign. We have customary law which ought to influence certain conflict resolutions for example Marriage, Land and so on. But this is often not possible as often the practitioners of it are westernized since in thinking and practice they are Western. Split personalities. So we see the first conflict in the operation and definition of law in Kenya being intellectual.

Secondly, the interpreters of law are western educated themselves split personalities. The whole issue is paradoxical. Also the incorporation of Customary law into Western law has been slow and haphazard. It has yet to be properly instituted. The result is that absurdity and confusion has been bred as to which values remain or are to remain in our changing communities. The legislature and judicial system, machinery or institutions remain a Colonial legacy. We retain British laws for example the Land and

Company laws. Parliament is a colonial institution. The Constitution is itself an artifact of compromise between Imperialists and Nationalists umpired at Lancaster by a metropolitan state and contains Western technocratic input from the United States of America, ironically hired by the Nationalists. To therefore say that Law is an expression of organic realities in Kenya today is untrue. Instead it is a transplant of the Western conceptions of justice on a withered Mosaic of African Social Systems. This law has an imperialist, modernist as it is sometimes called definition or view which embraces justice, equality, private property and democracy as fundamental tenets of governance. These categories of modernity have influenced the definition of law to such an extent that Kenya has begun to conceive of justice in terms of individual liberties relegating collective interests to the sidelines. So, the facade of equality of individuals before the law has come home to roost. Yet these individuals are economically unequal. In a society where the propertied are able to transform their property into influence to manipulate the legal process, equality before the law is not very practical. Law therefore helps to justify the status quo that is dominated by the propertied. Those in parliament go there not to acquire but to protect their wealth and so enact laws to preserve their positions. Law conservative and antithetical to popular interests. The law is used to ensure that the poor get a raw deal.

A new definition of justice has been introduced to the Kenyan legal process. "Justice" can be bought by the rich and easily denied to the poor as the lawyer and his rich client manipulate the legal system. A drama in perpetuating Social injustice is being enacted, one with no profound social justification. A drama founded on a reactionary pedigree of the individual with all his appetites and impulses.

28. *What is the place and role of the individual in*

a) Traditional Luo Society?

The individual was deemed significant in every sphere because society is a subdivision of the multiplicity of individuals. Without the individual there is no Society. So the individual was recognized and Society was predicated upon the concept of Social justice. One who inflicted injury on the individual was therefore made to compensate; otherwise he was excommunicated. Thus, for instance: since one had a right to life, killing a member of one's own Society was frowned upon. The individual was given an opportunity to actualize himself, to be heard, to dissent or assent.

b) Colonial Society

Colonial Society was based on the overblowing of the individual. The collectivity disappeared with the obsession with individuals. European Society actually elevated the individual to a level beyond the collective. And when therefore they established Colonial rule, because of this individuation, they tended to emphasize the cooptation of the individual to enjoy certain benefits as a means of manipulating the entire Society. Individualization was therefore actually a means of undermining the whole Society so that these individuals ended up being sell outs.

c) Post Colonial Society

Individuation continues. The collective is lost. Otherwise we would not be talking of the growing gap between the "haves" and "have nots" or the disruption and desecration of public spaces by individuals whom the law cannot or does not punish. It is simply because there is a Mafia like collegiality in carrying out travesty against humanity so far as the general setting which allows for the protection of collective rights and properties are concerned. The individual using Patron Client relationships has created a voracious attitude towards public utilities. Serious networks of destruction preying on public utilities have been created. Public interests have been shunted to the side show, sacrificed at the altar of individualism. The collectivity of individual interests at the expense of collective interests has won.

29. *a) Was the concept of equality present in Traditional Luo Society?*

No, there can never be equality in Human Society. Equality is chimerical. Each individual is different from the other in terms of character. Equality is present only in terms of opportunity.

b) So, was this kind of equality of opportunity apparent in Urvialand?

Yes. Each person had an opportunity to work and improve themselves. Each could express themselves and achieve what they were entitled to.

c) What about Colonial Society?

Colonial Society restricted one's nature so that no matter what your inclination and ability one could not go beyond a certain point which explains the distribution of wealth and Social classes in this period. There were discriminatory

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c) What about Colonial Society?

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economic, social and political policies.

d) *In Modern Kenya?*

There is a kind of opening to a certain level but there is still a problem. The problem is that as an individual one does not enjoy much leeway. If you are ready to comply with evil you succeed to a certain point as your compliance is in tandem with the interests of the powerful group. But if you run in conflict with them you will be sacrificed at the altar of individualism.

30. *What form of government was present in*
 a) *Luhya Society?*
 b) *Colonial Society?*
 c) *Post independence?*

Gerontocratic.
 Autocratic.

A mixture of all sorts from Oligarchic to guided Democracy and Panarchic which is a calling for all to be involved in elections and an assumption that by this participation all will be represented and gerontocratic. A hocus - pocus.

31. *Was there female representation in government and leadership?*

Yes in the form of the "Omuhai". This was a mature female. An accomplished woman who had been able to manage her home, lead and guide other women in her area in responsible behaviour and progressive economic activities. This kind of a person was respected and listened to by both Men and Women.

32. *What are the Luyia terms for -*

Authority = Obvunyali.
Legitimacy = Ohuyia Miriwa.
Duty = Okono ire ohore.
Obligation = Akohayanzi ohola.

33. *Could government be dissolved in Traditional Luyia Society?*

A leader could be replaced but not government as government was a collective exercise through ad hoc meetings.

34. *Could communities be absorbed or wiped out?*

Yes absorbed and Luyized.

35. *What was the extent of traditional Luyia Kingdom?*

There really was no Luyia or Wanga Kingdom as such.

36. *Is the nature of Man Universal or Specific?*

Certain aspects of Man are Universal but the trajectories and expression of these attributes differ because of Climate Socio-cultural circumstances and so on

INTERVIEW 9 : Dr. Preston Chitere is a Lecturer of Sociology at the University of Nairobi. He is of Wanga origin (a sub-group of the Aba Luyia ethnic group).⁸

How would you define Man?

There are different ways of looking at Man. From a religious perspective; Man is created by God. From the point of view of African Religions they also recognized some higher powers. The Wanga in particular recognized God whom they called "Were" who was responsible for their well being and I presume also their creation. A God to whom they offered sacrifices to appease in times particularly of trouble. From an academic stand point we also look at Man Scientifically. This takes us to the theory of survival for the fittest as propounded by People like Darwin which suggests that Man evolved from very simple forms to the complex form we have now attained. If you look at it that way then we can see Man and the other animals as having evolved with Man perhaps evolving much faster.

How would one in your opinion distinguish Man from other animals? Man has from a scientific stand point a developed brain capacity; has evolved culture which is far superior to that of other animals. Other animals or even other social forms like insects communicate by instinct but Man has evolved a culture. It is culture which Man has evolved and which makes him what he is. Man has also evolved a way of passing that culture from one generation

to another which is unique. Culture is broadly defined in sociology. It involves technological as well as Material advancement.

3. *Is Man's nature universal or is it particular to a certain kind of individual, race, sex or class?*

The evolution of Man, from again a Scientific stand point perspective shows that if you take a White Man and a Black Man from Africa, we differ mainly because of the context which we find ourselves. Where we have lived and where we have been brought up, - that is the basic difference. But otherwise, brought up in the same culture; same social milieu there would be little difference between one individual and another. If there is (a difference) it would be biological rather than social.

4. *Before the organization of the Wanga into Social and Political units how did they live?*

Looking at some Luyia mythology and folk tales; the life in the far distant past was very precarious. There were a lot of wild animals that people interacted with, these made living more difficult as they tended to injure Man. So I think there was a lot of emphasis on brave people hanging together, being close to one another. This led to a need for a more cohesive group.

5. *What term would you give to this far distant past?*

Well, it is a past that was characterized by a lot of communalism. People living together; being part and parcel of a community, valuing their blood relations and if others came to seek help from their community they would find a way of assimilating them.

6. *What according to you is the origin of the Wanga?*

The Wanga according to their folk tales (again) and Mythology say they originated from Egypt. They probably did not come down along the Nile but may have gone through the Sudan, Zaire; then through Rwanda - Burundi. This is because there is a lot of similarity of names in Rwanda and those in Wanga. Presumably they may have come through Uganda, maybe have had some connections with the Kingdoms in Uganda then come through the Lake Area into the current Kakamega district. From there this person called Wanga quarrelled with his brothers and he left moving into the current Mumias area.

7. *Did the Wanga have an organized system of Government?*

Yes. They had an organized system of government which was traditional, based on a king called "Nabongo" Nabongo was from a particular clan - a ruling clan. Apart from the ruling clan there were also other clans. The various clans had a function in the Kingdom. Each of these clans provided a function which they performed in support of the Kingdom and each recognized the King as the sole authority. Functions such as the burial of the king, ... praying to the Gods (Religious Worship), being in the King's court where certain elders sat with the king and deliberated as they sought solutions to problems.

8. *How did government come to be among the Wanga - was it by chance, design or what?*

The Wanga government can be seen to have evolved over time because the Wangas came through areas where there were similar Kingdoms. Starting from the Rwanda area - Bahuma - coming to Uganda - Baganda. They might even have passed through Ankole. It could be that our ancestor was a brother of one of the kings and may be they quarrelled and he decided to move on. So as they come now to present Wanga and they continue that social arrangement, it also changes. Like we were threatened by the Bongomek from Mt. Elgon. They came to Wanga and started to be dominant as we were using them as soldiers to protect the kingdom in case of attack. So one can see the issue of bringing in foreigners as soldiers evolves. Maybe in the beginning they did not have foreigners as soldiers. Also note that within the kingdom there exists a lot of competition for kingship.

9. *Do the Wanga have equivalent terms for the following*

Authority	Legitimacy
Dut	Obligation

10. *a) What was the source of authority in Wanga Kingdom?*

It was the King.

b) Why did the people obey the king?

Because they saw him as legitimate because he had been chosen by the people

c) What is authority?

Authority is the power or ability of a leader to take action or actions that are seen as legitimate by the subjects.

d) Legitimacy?

What the people see as right.

e) Obligation?

What is expected of a citizen or subject.

f) Duty?

The right or what one feels obligated to do but also what others expect him to do.

- 11 *How was the king's authority legitimized?*
First of all a king becomes a king by birth, from the right family; because it is an inheritance. Through this inheritance, the people's perception, people continue to see him as legitimate.
12. *Was kingship open to any child within the king's family or clan?* Among the Wanga I have not heard of a female king. Therefore the king had to be Male. The king had many wives, there was a Council in Court which sat to deliberate on who was to succeed when time came but the king if he was still there also gave his preference. Usually according to Wanga custom like customs in other Kenyan tribes you would expect the first wife's first son. But that did not always happen. So it depended also on the behaviour of those children and the father's perception of the likelihood that they could serve in the capacity of King. So if he was not satisfied with that house and the eldest son in that house, he could go for another house. But he was not the sole decider. The court also decided and had to agree with him.
13. *What qualities would the people expect or look for in a king or an elder?*
A person who could keep the group together. Somebody the people could come to. A generous person who gives out gifts and receives gifts and the people who visit him well a good host. A person willing and satisfied to serve. Somebody of the people responding to the people's needs.
- 14a) *Did the Wanga dominate whole of Western Province in leadership?*
The Wanga did not rule other Luyia groups, in earlier times the Wanga were a self contained kingdom. It (the kingdom) had its own clans which constituted the kingdom. The Wangas related to other Luyia groups by reciprocating through mutual exchanges. Through such exchanges the people would recognize their presence and come for their help whenever they needed it. But, we did not rule the Luyias as such. We did not have authority over other Luyia sub tribes. Maybe you can also look at it that in those earlier days the various Luyia groups were coming from different directions and settling. Maybe by the time the British came the groups were just settling and so were still fighting each other. So it was now the British who came and who by virtue of wanting to gain control and because they found a kingdom which impressed them, which according to them was more civilized, more enlightened, got the Wanga to move on and rule through what Lugard calls direct rule. The Wanga could now appoint governors in other parts of Luyia land. But initially we did not have governors in other parts of Luyia land. We were a self contained kingdom and related to other Luyias through exchanges as need arose. For example the person called Tiriki and the one called Wanga were relatives. Tiriki may have been an elder brother, Wanga a younger one. It seems that they disagreed over a family matter. As Wanga was younger he decided to leave the place they were living together and moved to the present location of the Wanga. On this location he found people who welcomed him, somebody called Mumma. Mumma took him in as a herdsboy. Later these people discovered that he was a king because of a symbol they found on him and decided to kill him. Before they could kill him some of his brothers whom he had left behind him followed him. Mumma's people could not therefore kill him and instead gave the new people a place to settle. Gradually the visitors (Wanga and his brothers) assimilated the Mumma. It was impossible as can be seen for the Wanga to rule the Tiriki because they had disagreed with Wanga breaking and running away. All that could perhaps happen between them would simply be exchanges and reconciliatory efforts.
- b) *Was authority maintained until the coming of the British?* Yes.
We related for example with the Marama through exchanges, sometimes intermarriages. The Bukusu came with cattle in exchange for something we had, or if they had a fight with other groups they would come to the Wanga and the Wanga would assist them. But we did not have Wanga governors among them.

15a) *Was there Law in the Wanga Kingdom?*

We had laws but they were not written down. Like in any other African society they were unwritten laws.

b) *How did the People know that X was the Law?*

Like in any African Community the people were socialized. The people grew up knowing that doing that is not right. Given that there was a court, if someone did what was not right he would be summoned to court, there would be a case and the necessary sanctions taken.

c) *Who would decide what law was?*

Again, like in any African community, it was the elders. We had a King and a Court. The Court consisted of elders and it is they who eventually agreed on what was right and wrong or if a particular law had to be waived or reformulated depending on the issued at hand.

d) *So Law could be changed and abolished?*

If laws are so fragile as to be easily changed you cannot hold a group together. A group can only be held together if there are laws that people understand and which are observed. If a law is going to be waived there must be very strong reasons why it is waived otherwise it has to be applied. This way people knew that if they did not observe it they would face the necessary sanctions.

16 a) *Did the Wanga have Warriors and how did one become a warrior?*

Yes we had a warrior class. One became a warrior by proving they had a capability to be a good fighter.

b) *Was everybody obliged to go to war if the King so demanded?*

The Kingdom in those days was very small and its survival depended on its ability to defend itself against its enemies so whenever there was a war or need for war: like in any small group the tendency to come together to act was high. Given that the King would order for them to come together and face the enemy their ability to do so and the probability to do so was much higher. But such a kingdom would not survive especially given that there were many other groups around which could absorb it unless it was able to act and act collectively.

17 *What would you consider to have been the duties and obligations of the citizens subjects?*

As a citizen or as a subject you have your loyalties to the kingdom. You give what is expected of you, so: you can go to work, cattle, forms of food and so on. The kingdom also gives back to you. It protects you and also makes you participate in the affairs of the state.

18 *Was there equal participation for Men and Women in the state?*

I would not say that all Men participated but clans participated because in this community clans were the basic units of society. Each clan had to participate and there were many clans each as earlier said had its function in the kingdom which it conducted through its elders at the state court.

19 *Who defined duty and obligation in the Wanga kingdom?*

That was defined by the Court or by the King in consultation with the Court or the Court in consultation with the King.

20 *Was it possible to distinguish between State and Government among the Wanga?*

The geographical locality was clear to the Wanga. They were all the time defending their area from infiltration. There was a government and the government was the Kingship or a Council, a Council of Elders which sat with the King.

21 *Was it possible to dissolve the Political government or the Wanga State?*

A kingdom is something that lives in People's minds and hearts. The Kenyan Authorities might not recognize the Wanga Kingdom but in the hearts of Wangas it is there and even the King is there. He may not have function in Kenyan government but he is there and the people know him and recognize him.

The government could change in terms say of a change of elders or the king could die and a new king could come who would be totally different. I have not heard of a situation where kings were displaced. They usually came in as the other ones died. That way the government kept changing.

22 *Would you say there was an agreement of governance between the People and the Wanga king?*

You cannot really talk of an agreement for the English people to agree with the King or Queen. You are all in a Kingdom and you are socialized in terms of songs, in terms of folk tales -everything you do. You are made to know that you are a certain kind of person who belongs to a certain kind of kingdom. You internalize that, it becomes part and parcel of you.

23. *Were there, therefore no expectations between the Monarchy and the People?*
Expectations are there. What as a subject you are expected to do and what you expect from your king. For example you might have a family problem. You will expect that if you put it to the king and the king deliberated it with the court there will be a solution. Or, if you were attacked by a neighbour who took your property; you would expect that if you went to the king and court the neighbour would be summoned for the case and there would be fair judgement of the case. So the Subject has expectations and also the Kingdom has expectations of him.
24. *What principles do you think guided government and the interaction of king and subject?*
There was generosity, also fairness and justice. There was fairness and equality as People looked at families and clans as having their own rightful role to play.
25. *How did Colonialism come to be amongst the Wanga?*
... When the first Whites came and heard of a kingdom they called at the kingdom. These were people like Thompson on his way to Uganda, Bishop Hannington and the like. But the Wanga were not keen to accommodate them. They were friendly to them, they helped them in whatever they wanted but they were not keen to have them settle in Mumias. In fact many Wanga died resisting this settlement and even gradually shifted their district headquarters to Kakamega. So, we were not coerced and we were at the same time trying to be independent, to get the Whites away from us. Maybe our people foresaw the type of result it would have if they settled in Mumias. There was some resistance, maybe silent although the White man also assisted the Wanga to deal with some of the difficult groups the Wanga were dealing with. So because the White man was assisting the Wangas to maybe expand at that time, and of course conquer the groups that were not in good terms with them the Wanga could not openly oppose them.
26. *What was the effect of colonialism on the Wanga?*
Well, the Wanga expanded their kingdom considerably during that time. The Wanga king was gradually appointed Paramount Chief initially over all Luyia and up to Navasha. So the White man helped the Wanga kingdom to even set up governors over other Luyia sub tribes. Initially they wanted to take the King to Britain; had the King gone maybe Kenyan history would have been different. But he did not go...
27. *Was Wanga Law preserved in the Colonial set up?*
Not really, though it somehow remained. The laws were unwritten so people continued to live according to their Law but also new laws were brought in. These new laws like in other African Communities undermined the indigenous law of the community. Now you find clans now beginning to grow wings. Those other clans start to challenge the ruling clan.
- 28a) *What was the source of Authority in Colonial times?*
The British did not abolish Wanga kingdom. In fact they renamed the king and put him as a Paramount king. Now he was paramount not only over the Wanga but over the whole of Luyia land and even parts of Luo land and he becomes even more known. As a paramount chief he had chiefs all over and he administered the Law. The chief continued to be the source of authority over the whole of Wanga Land and the whole of Western Province.
- b) *What was the source of Legitimacy?*
In Wanga it still continues to be the People, but in other parts of Luyia land it depended on how he related to these People and how he got accepted by them. But also the British Law was a source of Legitimacy. If People did not accept the Wanga king or did not agree to his suggestions or orders he could apply this latter law.
- c) *Who now defined rights and obligation?*
A lot of changes had occurred. Before there were elders whom the People were obligated to and who were obligated to them. But in Colonial times although that obligation continues it begins to also change now that people are also moving out and coming into contact with other cultures and also the colonialist who also had certain expectations. They also begin to develop certain expectations of the colonialist.

29. *At the end of Colonialism did the Wanga feel absorbed and integrated into this new entity - Kenya?*
Well the Wanga even supported the freedom struggle. Kenyatta visited Mumia before he was detained in the 1940s and talked with him. The Wanga even raised funds to support the Nationalist movement. As independence comes we are integrated. We elect Members of Parliament like everybody else.
- b) In the new state what was the source of Authority?*
The Constitution.
Of Legitimacy?
Maybe elections.
Who now defines duty and obligation?
The elected leaders and also the citizenry.
30. *Has this continued to be the way of things in Present Kenya?*
At independence, Kenyans had a lot of expectations. They had thought that they were being oppressed by the colonialists. So it was a relief to have our own elected leaders. But things have not worked to the People's expectations at least the majority of those expectations.
- 31a) *What was the role and place of the individual in Traditional African society?*
The individual had his rightful place in the group where he was born and where he grew up. The individual had his rights and also his obligations to the group. Societies were egalitarian even if somebody had a lot or had nothing he at least was seen as a person in that given community and he interacted with others in a more or less brotherly egalitarian manner.
- b) In Colonial Societies?*
In the Colonial Society we begin to differentiate people. Some people become more important than others. The White man being more important followed by the Indian and the African last. But some Africans also begin to pick and then they are used by the White Man to suppress or at least retain the system the way the colonialist wanted it.
- c) From Independence to Modern Kenya?*
The People had a lot of expectations but when you get to the Majority of Kenyans today these expectations have waned. The individual looked at the new Kenyan nation as a place where he would grow by bringing up his family, by acquiring wealth, by being able to participate in the management of the Nation in decision making and participation in all other aspects of the new Nation. But our African leaders not only in Kenya but all over Africa have usurped that expectation of the individual. By actually continuing what the colonialist basically began by creating a differentiated system where only a few people can make ends meet while a majority cannot. Where really the individual is alienated, he does not fully participate in the society that has nurtured him, that has brought him up. So the individual feels lost in the vast process that is going on around him.
32. *Is there any form of Agreement between the People and Government in modern Kenya?*
The Kenyan leader comes into that position by making promises. Sometimes by buying themselves into such leadership positions. When they get into a National level these leaders find a scenario where a majority of leaders are not able to fulfil what they promised their constituents. So there is always an uneasy relationship between the leader and his people. A situation where the leader finds himself unable to meet his obligations. He may have promised too much and when he gets there he is unable to fulfil his promises. That is, if he is a rightful person, a straightforward person. But a majority of leaders are also not straightforward, they want to get to use their positions to acquire. That creates a sort of a dependency relationship between the leader and the people because each time the leader and the people meet the people expect to be given certain things. In traditional society perhaps this was not there. You could walk into a leader's place and you were fed. If the leader visited you also fed him. It was a mutual relationship. But today if an M.P. goes into any place he is expected to buy beer, give money and so on. So you begin to wonder if he is really a leader from People's hearts. I am not saying that all leaders are like this; there are some who have come up the hard way who the people recognize and accept, who can get anything from the people. But maybe also we are talking also of a transition. Perhaps what we see in Kenya today, in Uganda, in Burundi, is a state of transition. A state from which leadership will gradually mature, where things will gradually settle down. Maybe not in our generation but in the next.

- 33a). *Was it possible to distinguish Government and State in traditional kingdom?* Yes.
- b). *Colonial society?*
Yes.
- c). *Modern Kenya?*
Yes.

INTERVIEW 10 : A Wanga from Mumia, Morris Okoko Mukolwe is a sixty (60) years old Industrial Worker.

- 1 *Who or what is Man?*
A thinking being that recognizes as well as experiences good and bad and thinks about it.
- 2 *Are all human beings the same?*
No some are good some are bad. Thus although all think, their reflections are diverse and different with some reflecting and acting on good others on bad.
- 3 *What is the origin of the Wanga?*
The Wanga came from Uganda, drifted to Tiriki and from there to Mumias.
- 4 *Why did they move to Mumias from Wanga and from Uganda to Tiriki?*
Did they move in large groups or as individuals?
They moved as individuals in some cases before they were joined by family, friends or other people who knew them. These individuals moved sometimes because of disagreements about land or family quarrels. For example, Wanga himself moved from Tiriki because he had quarrelled with his brothers. They might have moved from Uganda because there was war or may be because of a population explosion that caused scarcity of resources. Thus they followed the rivers to the lake and after that went in search of land and opportunity.
- 5 *Have the Wanga always lived in villages?*
[Did not clearly answer this question. However, he did indicate that villages have existed for a long time. The early villages he says were heavily guarded because of the danger of attack from enemies. He also suggested that villages had grown from people living in family units and the need to be organized in such a manner that one was able to attack or resist enemies in case of war.]
- 6 *Having moved to Mumias, did the Wanga live peacefully within themselves and with their neighbours?*
Yes, relatively, although there often occurred instances of War.
- 7 *What term would you use to refer to this period?* Family living
- 8 *Are there terms equivalent to the following in Wanga*
- | | | |
|----------------|------------------|--------------|
| <u>English</u> | <u>Kiswahili</u> | <u>Wanga</u> |
| Authority | Mamiaka | Ovwani |
- This concept exists because amongst the Wanga there are ideas such as the choosing of one child amongst many is given power over the rest to guide and lead the rest by the father particularly when the father is about to die.
- | | | |
|------------|----------|---------|
| Legitimacy | Kisheria | Amalako |
|------------|----------|---------|
- This concept exists as the Wanga had laws of their own which they called "Amalako". Actions which were in line with Amalako were legitimate.

Duty	Kazi	"Ni Mbirimo"
Obligation	Wajibu	"Okwaniri"

9. *How did Mumia begin leading the Wanga and eventually all the Luyia?*
The first "Nabongo" (King) was selected by the immigrant pioneers who needed a leader as they settled down.
10. *Are there terms for Country and, or Government in Wanga?*
Yes.

<u>English</u>	<u>Kiswahili</u>	<u>Wanga</u>			
Country	Nchi	Itshialo	Government	Serikali	Obvuluchi
11. *Could the Government be dissolved?*
This might cause a problem as it would affect the lives of citizens and their property and as a result might activate War. However transfers of power were known to happen as well as changes in authority that had not been anticipated. There is for example the instance of the "Omukasa" (bracelet signifying authority) being stolen by the sisters to the king who was the older brother and given to the more popular younger brother who now became the ruling Nabongo. This action went against the wishes of the dead king but eventually the younger brother managed to retain power and authority.
12. *How was a new leader elected or selected?*
The old leader and his advisors (tribal elders) would select the incumbent from amongst the royal family. Most of the time it was the eldest son of the king.
13. *How was the authority of new leader legitimized?*
The elders of the tribe indicated their acceptance of the leader in his new position through ceremony. The new leader now wore a different kind of cloth - a kind of bark cloth. Most of all the new leader was given the "Omukasa" - the bracelet which was mainly worn on ceremonial occasions to indicate his position.
14. *Were the elders on the same level - capacity with the Omwami or was there a top - bottom hierarchy?*
The elders (who were the king's advisors) were under the "Omwami" - the King.
15. *How did the colonists come to rule Wanga land, by Agreement or force?*
The Colonist came by trickery. He first of all came in the guise of the Missionary through whom he gave the people gifts - clothes, soap, sugar and so on. In this manner he convinced people to go to hospital, school and so on. In the end he built police posts from which he ruled the people. This was during the time of Nabongo Muma.
16. *Did the Nabongo accept the position of the colonists?*
No. However their original approach did not seem dangerous and anyway his father had foretold of their coming and asked that they should not be badly treated.
17. *How were the Abu Wanga related to the Baganda?*
They had originally come from here and had continued to have active diplomatic relations and consultations.
18. *What was the place and role of the individual in traditional Wanga society?*
The individual was important both by himself and in society since it was accepted that each individual though different from others in terms of ability and skill had something to offer his community.
- 19a. *Were all individuals equal in traditional Wanga society?*
No but each individual was judged by the merit of their actions and behaviour.
- b) *What about in colonial times?*
Equality was not present.
- c) *And today?*
Each individual is important.

20. *What was the extent of the Traditional Wanga kingdom?*
At first from Western Province to Naivasha then to River Yala and Bukusu; Bukusu to Kakamega. Within this area Nabongo Mumia ruled.
21. *Could the Nabongo kill a person?*
Life was considered sacred amongst the Wanga. Hence if a person did wrong, the Nabongo fined him or sent him into exile.
22. *Was there Law amongst the Wanga and how was it made known to the people?*
There existed law which was promulgated through the Nabongo's advisors and village elders.
23. *Do the Wanga's accept their citizenship as part of the New Kenya or do they still see themselves as part of their Nabongo's kingdom?*
Currently there is a Nabongo - Mumia II. However he falls subordinate to the Nation's President as from independence the Wanga are part of the larger Kenya.

INTERVIEW 11 : Aged fifty-one(51) years Thomas Mulama is from the Itsukha sub-group of the Aba Luyia group. He is from Kakamega and is an elder in his area.

1. *Who or What is Man?*
Man is an animal, the difference between Man and these other animals is that Man is intelligent and so can tame these other animals. Man also lives in society - his "Boma" and is able to heal animals when they are sick.
2. *Are all Men universally the same or is Man particular and different?*
All men are universally the same because in form ("Maumbo") they are similar.
3. *What is the origin of the Luyia?*
The Luyia Itsukha are part of the Tiriki who themselves are part of the Nandi. Both the Itsukha and the Idaho are descended from two Tiriki ladies who moved to the Itsukha and Idaho areas in marriage.
4. *How did man live before he entered village and society?*
Before setting in villages men would simply claim bits of wilderness and settle in them as there no claims to land. These men were sometimes accompanied by their wives and even sometimes their other relatives. It is onto these pieces of reclaimed wilderness that people today have settled and call home.
5. *How did society and village come to be?*
After the first settlers, other people eventually followed them after seeing that the land was good. As a result villages came to be.
6. *Why had individuals moved from old to new areas in the first place?*
The original move might have been precipitated by the need for opportunity. Opportunity for example in the form of fertile land, wild game and so on.
7. *Was there any form of government in these first, original villages?*
There was in these villages a form of government because in any group of individuals there is always need for government and a leader. This leader is normally elected by the people themselves.
8. *What principles guided the election of leaders in traditional Luyia societies?*
By the first place the individual who had settled in an area first would be the acknowledged leader. These individuals did not lead alone. They usually had assistants who normally took over when the leader died. Secondly when the older generation could no longer lead they selected and elected a younger Man take over leadership. This younger Man was one recognized by the older generation as good, one whose behaviour and manner of speaking was deemed impressive. A man who was able to influence the people because they listened to him and were willing to obey him. These leaders were ideally male as women were not allowed to debate issues in the Elders Council ("Baraza ya

Wazee").

9. *Was there Law in Traditional Luyia society?*

Yes there was Law. This law was dispensed by the village elders under the village leader in the presence of the culprit. This law was customary law ("Kienyeji") and was not written down. Cases were tried and sentences passed before the whole village - the male, female and children in the village. Although I do not know how law was made known, I know that there was law because otherwise there would have been disorder in society. This law was similar to Biblical law as it forbade the same things that are forbidden in the Bible - stealing, killing, adultery and so on.

10. *Did anybody have a right of life over another in traditional Luyia society - for example the leader? Could the leader kill lawfully?*

The law concentrated on discipline (adhabu) and the prevention of wrong action. This was unless a person killed another upon which vengeance was swift and harsh; murder often led to the total annihilation of an area, a murderer's family their property and all that were involved in the action. As a result murder rarely occurred.

11. *What was the role and place of the individual in traditional Luyia society?*

An individual was not important on his own. He was important only when part of a "Boma", a home and a village which he belonged to.

12. *Why did the African seek independence from the White Man?*

The African sought independence from the White Man because he realized he had reached of age. That is, after being taught and learning from the White Man the Black Man realized that there was a bad side to Colonialism and that he deserved independence.

13. *Was the White Man's law different from the Traditional Black Man's?*

Yes because it was written and it introduced new aspects to the law. It had new laws such as trespass and penalties such as jail.

14. *Did the African obey this law and why?*

Yes they did, mainly because they feared jail which was a new concept.

15. *Did the African accept the authority of the White Man?*

Originally yes as they accepted their ways - their form of education, their religion, their dressing, new laws, foods and so on. Later with education they discovered that they and their people were being persecuted and so preferred self rule - "tup tawale". So the African rejected the White Man's authority. By the time they rejected the White Man's authority they felt he was taking advantage of them and mistreating them so they felt no affection or respect for him.

17. *What was the traditional extent of Luyia land?*

It extended from Nyahera to Ugenya, Namwera to Gisu and Uganda. From Kapenguria and Pokot to Inja and Narvasha. Originally all this land was under Mumia who ruled as King - "Mfalme". He as king had instituted chiefs and elders in the different areas to rule on his behalf. These instituted the Law which was enforced by the Warriors. These warriors also had the duty of protecting the people. The chiefs, elders and Warriors all ultimately reported to Mumia.

18. *Why did people listen and obey Mumia?*

They listened to him and obeyed him because they respected him and because he had been a pioneer.

19. *Do the Luyias currently have a "Nabongo"?*

No. Nobody has replaced him.

20. *Did the Luyias merge with the rest of the tribes at independence?*

Yes. This is because with christianity the Luyias learnt that all people were human and so welcomed all and were united by christian principles.

21. *What was the role and place of the individual in Colonial times?*

The person was important only within the family.

22. *What is his role and place today?*
One is still important only as part of a family.
23. *How do you perceive law today?*
Law today remains that which came with the colonist.
24. *Could one be called to go to War in Colonial times?*
Yes and one was called by force. In traditional Africa Warriors went into war willingly to protect their families and get cows. Today if one was called to war one would have to go so as to protect the country.

INTERVIEW 12 : A Carpenter by trade, Habakuk Otonyo Wamayende is seventy-three years (73) years old. He is a *Aba Wanga* from South Wanga, Mumia.

1. *What is Man ("Binadamu")?*
Man is an animal. Man and Animal are the same as both have blood.
2. *Are all Men the same the world over?*
Yes. All men are the same as God made all of them. The only difference is between Man and animal who differ in physical appearance ("sura")
3. *Where did the Wanga originate from?*
The Wanga came from "Ebukwe" from where they travelled to their to present site. They moved from Ebukwe to escape battle and hunger.
4. *When did they form government before or after settling in Mumias?*
Government was formed upon settling in Mumias. This government was restricted to the Luyia.
5. *What kind of government was it?*
The government of the past was similar to that of present times the only difference between them being in their actions ("vitendo"). For example, for any individual who was a Luyia to be called a full fledged member of society they had to undergo initiation. The men had to be circumcised and the women had to have a few of their front teeth removed. These were signs of belonging to the group.
6. *Who was the leader of these People?*
Nabongo Mumia. This Nabongo had a father - Shundu. Shundu ruled before Mumia who took up leadership upon Shundu's death. These leaders acted like Kings.
7. *Did these Kings rule alone or did they have assistants?*
They ruled much like Presidents. That is they were assisted by people who were their juniors in the sense that these juniors had less power, less authority.
8. *Was there Law in this State?*
Yes, there was law. Law has always existed. There is no place without Law. For example the Nabongo Mumia had his Law and if or when People misbehaved they were judged under his law by himself. Often judgement was in the form of reparation payment. Once the Nabongo had pronounced judgement one had to obey and act accordingly.
9. *How did the Wanga People know this law?*
When the People were born they found the law already operational. They then obeyed it and the traditions of their people which had been there from the beginning. Indeed from the time Man was formed (or made) he was given law. It is this same law that was to guard and guide ("kuchunga") Man and animal from the time of Adam to the time of the Nabongos.

10. *How did one become King?*
Kingship was inherited from one's own father. It was not by election. Like in Baganda the new king came from the first home and was the first son.
11. *Was Mumia the king over all of Luyialand or only of his subgroup?*
He was king over all of Luyia land.
12. *How did Mumia end up ruling all of these sub-groups?*
His great wisdom made all Luyias respect him and appeal to him in case of trouble or problems for a solution. For example therefore, if it did not rain he would be able to call a particular Rainmaker and give him permission to order the rain to fall and indeed it would rain. Such actions extended his influence. Within his kingdom were individuals with different powers and all these individuals submitted to him.
13. *Could one distinguish between State and Government in the Wanga kingdom?*
----- Declined to answer. -----
14. *What was the source of Authority in Traditional Wanga Society?*
The Nabongo Mumia. This is because it is he who ruled up to Naivasha appointing representatives and providing military units and support to the various Luyia centres like Fatchwoni, Marama and so on. The Nabongo was therefore King of kings "Mfalme wa Wafalme" in Kenya just like the Kabaka in Uganda. A king who had his own army and representatives.
15. *Who or what established legitimacy and law?*
The word of Mumia ("kutoka mdomo yake") Thus although previous law might have demanded one thing he could change it. So, for example he replaced the death penalty for murders with fines and repatriation instead of revenge and vengeance.
16. *Could the Nabongo kill any one in his sphere of influence?*
Yes, just like the Kabaka the Nabongo could kill any individual who had committed a crime that deserved death.
- 17a) *Would People go to war in these olden times?*
Yes.
- b) *Which People?*
Young men of eighteen to thirty years (18-30yrs).
- c) *Could one refuse to go to war when called upon to do so?*
Anybody who refused proved that they did not respect or obey the king and therefore would be prosecuted
18. *What duties and obligations prevailed within traditional Wanga society?*
Farming was the first duty. In the early part of the century there had been a famine caused by the locust invasion. This famine caused many deaths and also made it possible for slave traders (the Arabs) to penetrate Luyia land as people sold even their own family members in return for food. The Nabongo and his law therefore demanded that each person no matter who they were or how they were feeling, farm. The law demanded that the state becomes self sufficient and secure in terms of food as the king did not want a repeat of the famine. It was therefore the duty of the subjects to work and obey the king. The Nabongo's duty was to look after and into the good of the People. To listen to the People's problems and try and solve them. It was also the People's duty to give up part of their harvest to the Nabongo so that he could be able to entertain all those who visited him as well as store food in case of another famine or drought.
19. *How did Colonialism come into Wanga Land?*
The colonialists cleverly, quietly and slowly moved into Western Kenya tricking Mumia and usurping his power

20. *What were the sources of the following in Colonial times - a) authority*
 It was from the White Man through Mumia. So, whatever the White Man wanted he told Mumia who in turn informed the elders who now passed the message to the People.
- b) Law and Legitimacy?*
 The White Man's law which was a new, very harsh and unjust law. A law that treated us like slaves and the White Man's inferior. A law that demanded instant obedience and submission by the African. A law that made and allowed the White man to dominate the African. It was very bad law, it made us suffer for example through dictating very bad working conditions for us and yet paying us very poorly. An inconsiderate law.
- c) Did the African know all this at the time?*
 The African knew but what could they do?
21. *Did the Wanza feel part of the new State - Kenya and were they absorbed into it at "Uhuru"?*
 Yes because they had been the originators of independent kingdoms and now at independence were united with more people than their original number.
22. *a) What was the role and place of the individual in ancient times?* Individuals earned respect from their families. It was the family that respected one and gave him a feeling of importance and a place in society. This was particularly so when a Man or Woman began a family. They taught these children respect and were respected by them. When the time came these same children had their own children and the cycle began again. Respect and importance started at the bottom. Wealth also attracted respect and honour
- b) What about in Colonial times?*
 We respected the White Man because they were stronger than us. At this time, amongst the Africans those who were wealthy no matter whether they were physically stronger or weaker were respected.
- c) Today?*
 Wealth ("Mavumo" or harvest). This is unlike in traditional African society where we were taught to respect all individuals no matter who they were particularly if they were older than you – the age of your father. Today young people often disrespect older people and act like they do not desire respect or dignity ("Kuti"). This is the reason our society is not well – we do not respect each other. Respect breeds respect yet today many children do not respect anybody and society is falling apart – it is not doing well
- 23a. *In modern times where does authority stream from?*
 There are two kinds and sources – the father and the teacher. In the past it was one source and it was honoured. Today we have allowed teachers to have all the authority yet we forget that the teacher only gives the child a formal education. At the same time if a teacher disciplines a child too much the child's parents protest. We also have the authority of the government since the Nabongo's reign of time has gone.
- b) What about Law and legitimacy?*
 The government and the government bases its law on Biblical dictates.
- c) Duty and obligation?*
 This is mainly from the government as nobody can involve themselves in activities without the government's knowledge or consent. Indeed even when I want to punish my child for a wrong action I have to take into consideration what extent is allowed me by the government. So, no matter how angry I am, I will not exceed an allowed limit. Today it is unlike in the past. Before the colonialists came we had our own laws and ways of redress. We no longer make our own laws and prescribe penalties. From the time of the White Man we stopped and had to use their law.

INTERVIEW 13 : A Maragoli (Aba Luyia sub-group) aged Fifty-Two years, Tito Wamukozi is an employee of the University of Nairobi.

1. *Who or What is Man?*

2. *What difference if any is there between Man and Animal?*
Man lives in a home, an animal in a forest.
3. *Are all men the same or are they different from each other?*
They are all the same though they differ in temperaments as some like People others do not.
4. *How did the Maragoli originally live (before villages)?*
In the beginning they were herders and husbands men keeping goats cows and so on whose skins they used as clothes.
5. *Did they live peacefully amongst themselves?*
They would fight amongst themselves mainly because of property. For example if one's livestock had been attacked or stolen. For recreation, they practised wrestling.
6. a) *What is the origin of the Maragoli?*
They seem to have come from Sudan.
b) *Why did they move from Sudan?*
They were looking for a place to settle. Their original homeland was overpopulated. They also desired a place where they could comfortably graze their animals. In Kenya their ancestor Mrogoli and his wife Khayetsa found space. Here they settled and gave birth to the four sons who began the Maragoli Luyia.
c) *How did these sons end up living in different villages.*
Their father allotted the different areas to his sons. Places where they could settle and grow.
7. a) *Did the Maragoli have any form of government?*
Yes they were ruled by chiefs.
b) *How did government come to be?*
c) *How did one become a chief?*
He was elected by the elders.
d) *Did these chiefs rule over all Maragoli including Mrogoli's sons?*
Yes, there was one most powerful chief
8. a) *Did the Maragoli have law in the old days?*
Yes they had their own law. This law distinguished the Maragoli and other Luyia sub groups from other tribes. The purpose of this law was to protect and guide the people.
b) *What was the source of this law?*
The elders who in turn took it to the chief who expressed it to the People.
c) *Who prosecuted wrong doers?*
The elders who had different powers. They mainly penalized by ostracization or used magic and curses.
d) *How did People know what was law?*
By socialization and observation. When an individual had done wrong and he was punished, others learnt and did not repeat the same action.
9. *What was the role and place of the individual in traditional Luyia society?*
10. *Could a person be killed?*
If some body had committed a crime that deserved death they would be punished by death.

11. *How was government recognized?*
 Certain prominent elders were acknowledged as leaders. Their word was listened to and respected. Such elders had young men around them who acted as their warriors.
12. *How did Colonialism first come to Luvya land?*
 The Colonialist first came as a traveller through Mumia. Looking around the White Man liked what he saw - shambas which he admired and land which he thought free and available. He slowly crept into the system and took it over because he was educated while the locals were not. Also at Kamosi he was able to kill a Lion that had disturbed the local people for a long time. While the African was unable to kill the animal with his spear the White Man was able to do so with his gun. This impressed the African and inspired both fear and respect. As a result he allowed the White Man to rule.
13. *Did the African accept the White Man's authority?*
 Yes because they had seen that he was more powerful than they were. Because of his strength they thought that he would be able to protect them.
14. *Did the White Man have his own law which the African accepted?*
 The White Man had his own law which he used to institute new leaders. This law was different from African law as the African mind was limited to herding, building and so on. The White Man was able to introduce clothes and so on with his law.
15. *Was the old African authority acceptable in Traditional African Society?*
 The African had previously accepted and liked rule by his fellow brothers - the elders. But they saw the White Man's rule as more versatile than that of the elders, it seemed that the White Man would be able to develop the country and so accepted White Man's rule.
16. *Why then did the African seek Independence from the White Man?*
 The White Man introduced education, money, clothes and so on. The African thought that this was much more than their old leaders had offered. The African leaders were leaders only because they were called leaders but the White Man at his coming brought with him new things and so could be actually seen to be a leader. And so the White Man ruled the African. However, upon reading, upon learning and being educated the African realized that he was being ruled. That he was getting a raw deal. The White Man, the African saw was taking the best of his land - big shambas, big houses and so on yet the White Man was a guest, the African the owner of these resources. The African felt threatened. He was afraid that the White Man would grab everything so he rejected him. By this time the African had become educated, others had been to war and so could now fight back.
17. *Did the Maragoli feel integrated with other Kenyans at Independence?*
 Yes and they were happy because they were united with other Kenyans and the African was now ruling himself. In the beginning they had been afraid of the gun. When they realized that even the African could use a gun they also realized that they could rule themselves and made it clear to the White Man asking him to go away.
18. *What was the source of authority and legitimacy at this time?*
 The law came from Britain with the late President Kenyatta. He had been given instructions as to how to rule and he came with them.
19. *Where did the President's authority come from?*
 Kenyans themselves who had seen and felt that it would be best if they ruled themselves.
20. a) *What was the source of duty and obligation?*
 b) *What about Law and legitimacy?*
 Law was from Britain but legitimacy was from the African as the African felt ready and capable of ruling himself.

21. *In the past did the individual have any importance?*

Colonial Times?

Today?

(These questions either not clear or were misunderstood the Respondent did not answer.)

22. *Did the Maragoli know of Nabongo Mumia before the coming of the White Man?*

Yes. It could be said that he was the brightest Luyia of the time. This is why the White Man first went through his region.

23. *Was he acknowledged as a leader in Pre Colonial times?*

He ruled almost half of Luyia Land as people listened to him and obeyed him. This was especially so after the White Man went to his place as all Luyias began to fear him as they did not quite understand who or what the White Man was. Mumia was therefore a leader in his region only in the beginning. His influence was limited to this region but after his hosting of the White Man he gained in status and importance.

INTERVIEW 14 : Roy Outa is a Civil Servant in Nairobi. Fifty-one (51) years old, he is an Aba Luyia of Banyore origin.

1a.) *Who or what is Man?*

This question can be interpreted in two ways. There is Man the human being and Man in the sense of gender. Man who is in charge of their family - a male.

b.) *What unique characteristics does Man the human being have?*

A man thinks, he is organized and has his own way of doing things. He has organized his society in such a way that he can live in it. He has a brain to organize his ideas.

2. *Are these characteristics universal in Man or unique to Luyias, the Male sex.....?*

All human beings are like this.

3. *Where did the Luyias come from?*

Different groups of Luyias came from different places, from Kisumu, from Uganda and so on. There has been a lot of movement among the Luyia. For example where I come from we are subdivided. We have relatives who originated from Idauo location. What actually happened was that a Man and his brother went hunting. Mistaking his brother for an animal he killed him. The man was afraid that if he stayed he would be punished and so he immigrated away from Idauo to But the Banyore themselves came from Uganda.

4. *Have human beings always lived in villages?*

Yes.

5. *In the villages has there always been a sort of government or not?*

There has always been government. We the Baluyia had the Nabongo. He was head of the clans and so we have always had a sort of government.

6. *How does Man always been in government?*

Man is an organized being. Man always wants to put people together and to administer the community so that unlike animals, there is a sort of organized system. Animals will move anyhowly, do anything; but Man is formed in such a way that he wants to feel he can rule other man, he wants to live in a State and administer each other.

7. *What do you think would happen to Man if he was not in Society?*

There will be a very disorder.

ganized way of doing things. So although I could say there is fighting now, it would be more. If man was where he had no government he would live just like anything, like an animal, a wild animal fighting with each other.

8. Do the following terms exist in Luyia -

a. *Authority*

This is 'Omuluchi' in Luyia. It is whereby certain people are put in place to administer a certain community. So these people have authority.

b. *Legitimacy*

Here you would think of the People themselves who are in that area, the actual community - the legitimate community. There is such a word.

c. *Duty*

In Luyia this word is closer to the Swahili word "Kazi" but the word "Omulumu" is also used. This is being able to, being in a position to be responsible. That is one has a sense of responsibility to the community as part of that community.

d. *Obligation*

There is also a word for this - that is, that one is under an obligation to serve their community.

9. *Are these terms related?*

It is not easy to differentiate between them. All of them work together to form a government. People who are in an area are under authority. If they are administered as the legitimate people of the area it is the authority's responsibility to administer them. These People have a duty to the authority to obey the rules, the laws made by the authority. Even our People in traditional Africa had this kind of a tradition and laws which if one broke would call for punishment of the offender.

10. *What was the source of authority amongst the Luyia?*

People used to sit together organize themselves and decide what to do about certain situations. This was mainly before the coming of the colonialist. Clans would meet and agree that they would live by certain laws. They would make an authority. That is they would appoint a certain person similar to a chief to be in charge of a village. This person would be considered a leader. So the source of authority would be the people who would organize themselves under a chief and they would rule one another.

11. *By clan making rules do you mean all individuals comprising it or specific individuals?*

Certain individuals who would be appointed to make rules and laws. They were mainly men of a certain age.

12. *Who would define duty?*

Once rules were made by the community the Chief would appoint his assistants and these would sort of oversee what was happening in the community.

13. *Was there law among the Luyia?*

Yes.

14. *What kind of Law?*

It was law made by the community. This law was used to guide the community. It was not written down. A person who broke the rules made by the community would be punished by excommunication. If his crime was very serious, by sacrifice of an animal and cleansing if the crime was not so serious.

15. *If this law was unwritten how did People know about it?*

It was passed one person to another - generation to generation.

16. *Was it possible to distinguish between Geographical State and government in traditional Luyialand?*

Yes it was possible. This is because it was possible to identify the different Luyia groups and the different areas they were from. These Luyias could claim that they were from place x. Such areas were kind of States for the different communities. Yet, although these States had people speaking in different dialects they were all 'Abaluyia' - which means "neighbour". They all acknowledged each other and all of them as falling under the umbrella that of the Luyia. This is because they could to a certain degree understand each other. They also had similar customs, traditions and

method of administration.

13. *Did they all have one leader at a time or many leaders at the same time?*
 Many leaders at the same time although they acknowledged the Nabongo as a sort of a Luyia leader. But otherwise different states had different leaders and government. This is not in the sense of modern government but they were governments all the same. These governments were tied together by the tradition of being "Omuluyia" - a neighbour whose language was similar.
14. *Could the state or government in these different areas be dissolved?*
 No, it was not possible.
15. *How did Colonialism come into Luyia Land?*
 It started with churches. These came and changed our traditional way of living. They put people into homes and made Christians very free with each other, freer than with their relatives. Colonialism brought foreign ideas. With Colonialism our way of worship - "Msambwa" was suppressed. We no longer decided the law, we only obeyed it. The law we now obeyed was from a foreign land unlike our Traditional Law which our Traditional Chief made with the Community.
16. *Why did Kenyans resist Colonialism?*
 Freedom. They wanted to feel that they were ruling themselves. They did not want somebody else ruling them, somebody who did not understand them or their ways. It was an attempt to go back to the old traditional ways, to the Kingdoms although in a more advanced way. Africans wanted to have their own rules and laws.
- 17a) *What was the place and role of the individual in Traditional Luyia Society?*
 As an individual one had certain rights. One could air their views although one had to air them through Luyia leaders.
- b) *What about in Colonial Society?*
 He had no place as the individual did not have much freedom
18. *Were Luyias integrated and absorbed into the entity "Kenya" at independence?*
 The Luyias felt they were Kenyans, that they were part of a bigger state. This feeling has continued since.
19. *What is the place and role of the individual in modern Kenya?*
 The individual can make suggestions which can be tabled, debated in parliament and made into law.
- 20a) *Could one refuse to go to war if called to do so in traditional Luyia society?*
 Those who were to go to war were selected. It was not just anyone, it was mainly those physically strong. Once asked they could not refuse.
- b) *What about in modern Kenya?*
 If there was war one would have to defend their country if asked to do so. It is one of our duties as citizens unless you are sick or something like that. Even if you are a woman you would unlike in olden times, have to go.
21. *Did each individual have a right to life in traditional society?*
 Everybody had a right to life. That is why it was such a big offence to kill. The chief could not just kill anyone otherwise the elders would sit, discuss and agree on a penalty for him.
22. *What is the source of the following in modern Kenya*
- a) *Authority*
 The parliament which can sit and make laws
- b) *Legitimacy*
 The citizens.
- c) *Duty and obligation*
 The authority once laws have been passed.

- 23a) *What qualities were sought in leaders in traditional Luyia society?* Physical strength, that is a brave person who could fight. A poor person could hardly be elected leader therefore wealth, and wisdom.
- b) *In Colonial society?*
A religious person.
- c) *Modern Kenya?*
Wealth. Most of the time this wealth is misused. Leaders use wealth to gain certain positions in society and then use these positions to guard their wealth.
24. *Is there any distinction between Government and State in modern Kenya?*
Yes. Government is the arm of administration while the State is the geographical area.
25. *Is there an agreement of governorship in modern Kenya?*
Yes.
26. *What form of government was there in*
- Traditional Luyia Society?*
A kind of a socialism.
- In Colonial Kenya?*
Democracy for the Colonist, subjection for the Africans.
- In independent Kenya?*
Democracy.

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