

Acknowledgments

My sincere thanks goes to my supervisor
THE ORIGINS AND EVOLUTION OF THE KENYA CIVIL
SERVICE - THE PROBLEM OF ITS IMPARTIALITY
ILLUSTRATED BY THE EXAMPLE OF THE 1983 GENERAL
ELECTIONS.
into what it is. I am also greatly
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 piece of work.

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PAGE

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Instances of neutrality.....	81
or lack of it with Specific reference to the 1983 elections	
Conclusion	84
Bibliography	87

4

CONTENTS

PAGE

List of abbreviations and

4

Table of Cases

Introduction

5

Chapter one, Historical Background.....

10

Chapter two Structure and Functions
of the civil service

22

Chapter three Instances of neutrality.....
or lack of it with Specific
reference to the 1983 elections

31

Conclusion

44

Bibliography

54

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INTRODUCTION

5

A

The civil service in Kenya developed on the same lines as that of Britain; and in Britain the civil service in its present form dates back from reforms effected between 1855 and 1870. These reforms

List of Abbreviations

- names of Stafford Northcote and Charles Trevelyan, who abolished the principle of departmental patronage
- the service should be by open
- ried out by an impartial body free from
- these purposes the British civil
- is 1854 being borrowed
- administration of India
- ists to
- the holders of
- employed in a civil service capacity,
- said wholly and directly out of
- C.L.R. Columbia Law Review
 - D.O. District Officer
 - D.C. District Commissioner
 - I.B.E.A.C. Imperial British East Africa Company
 - K.A.D.U. Kenya African Democratic Union
 - K.A.N.U. Kenya African National Union
 - K.A.U. Kenya African Union
 - K.I.A. Kenya Institute of Administration
 - K.L.R. Kenya Law Reports
 - K.P.U. Kenya People's Union
 - P.S.C. Public Service Commission

The term therefore covers all the staff of Ministries and departments from secretary to the daily rated employee. It does not include

CASES

KOINANGE MBIYU v Republic (1954) 24(2) K.L.R. 130

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No nation on the globe has had as much influence as Britain in terms of public institutions and organisational styles mainly through the process of colonisation. If any factor was to be accorded special credit for the widespread influence, it would be the white-Hall tradition of the civil service. This tradition held the civil servants to be a separate estate from the political order, a profession whose fundamental principle was neutrality, and whose tools were in

5

INTRODUCTION

The civil service in Kenya developed on the same lines as that of Britain; and in Britain the civil service in its present form dates back from reforms effected between 1855 and 1870. These reforms are associated with the names of Stafford Northcole and Charles Trevelyan, who abolished the principle of departmental patronage hitherto prevailing. Entry into the service should be by open competitive examination carried out by an impartial body free from all political influence and for these purposes the British civil service was set up in 1855.

The term "Civil Service" was first used in 1854 being borrowed by Sir Charles Trevelyan from the British administration of India^I. The term is normally taken to relate to

"these servants of the state, other than the holders of Judicial offices who are employed in a civil service capacity, and whose remuneration is paid wholly and directly out of money voted by parliament²"

The term therefore covers all the staff of Ministries and departments from chief secretary to the daily rated employee. It does not include armed forces personnel and Judicial officers; whether or not a person is a civil servant in Kenya is a matter of history rather than logic.

No nation on the globe has had as much influence as Britain in terms of public institutions and organisational styles mainly through the process of colonisation. If any factor was to be accorded special credit for the widespread influence, it would be the white-Hall tradition of the civil service. This tradition held the civil servants to be a separate estate from the political order, a profession whose fundamental principle was neutrality, and whose tools were in the nature of data and other politically silent values. The purpose of this institution was to practically implement decisions whose policy highlights had been laid by elected persons in control of the government of the day.

Like the Westminster parliamentary tradition, the white hall style was one of Britain's key legacies left for the emergent states. Kenya was among the new nations which with very limited modifications inherited the white hall style of civil service.

separation of powers as first developed by Montesquieu³ a french Arist who based his expose than on the British Constitution of the first part of the 18th Century as he understood it. He realised that if power was concentrated in one person or place there was bound to be arbitrariness.

67

The civil service is established under the theory of political neutrality - A concept borrowed from the English service where there are Multiplicity of political parties. This theory is mainly seen in terms of party politics (though even in a one party state the civil servants have a duty to be neutral among the members of the party). Whether the civil servants are or can be neutral is an empirical fact, the answer to which this dissertation will among other things attempt to provide.

To say that governments are neutral was a view advanced by the sociological law school, one of its most articulate spokesman was Max Weber (German). He thought that the legislative, Judiciary and the executive are all value free institutions. The administration is seen as a development oriented institution completely free from all other influences. One of the basic assumptions of this development administration has been the belief of a "scientific" neutral administration. This theory has it that the administration is capable of implementing decisions decided elsewhere without being influenced by their content. The administration can therefore be a servant to all the people impartially. This is based on the western myth that that value-laden decisions are actually in the domain of the politician, while the public servant purportedly works in a fact-filled environment with no room to influence policy choices and decisions. This myth has been transplanted in the third world countries. While this may have been possible in the public bureaucracies of the Western countries, with a tradition of separation of powers development the administration where in reality never free from value-laden decisions. With the concentration of authority in the hands of the administration and because of the absence of social and political accountability for the use of such enormous state power, they found themselves playing the almighty role in the allocation of scarce resources. It is therefore clear that the public servant in the third world was involved in policy decision as well as implementation and he could not be neutral. Thus among the various misapplication of the Weberian concept of bureaucracy in the third world, the value-free concept of administrative system appears to be one of the most counter productive myths that has ever been transplanted.

This concept of neutrality has origin in the concept of separation of powers as first developed by Montesquieu³ a french Jurist who based his expose than on the British Constitution of the first part of the 18th Century as he understood it. He realised that if power was concentrated in one person or place there was bound to be arbitrariness.

27 8

The concept has it that each of the three governmental organs, the executive, the legislature and the Judiciary have distinct powers and functions, and they do not overlap and each organ should not perform the duties of the other organ. The doctrine of separation of powers⁴ assumes that power corrupts and if concentrated in one person or place it would be misused. The doctrine was based on the skeptical idea that only the division of powers among the three governmental organs i.e. executive, legislature and Judiciary could counteract the inevitable tendency of concentrated authority to overreach and threaten liberty. Applied to the civil servants, the doctrine means therefore that the work of the civil service is to implement policies decided elsewhere, he cannot engage in this decisions making, law making and law adjudication processes. For instance to become a member of parliament he has to resign his job as a civil servant. Also theoretically, he is not supposed to join any political party. This brings about the idea of the independent civil service i.e. a civil service that can perform its duties without fear of being victimised.

The aim of this dissertation is to trace the origins of the civil service in Kenya and see how it has evolved through the years. This will involve reflecting on Kenya's administrative heritage and we shall give special reference to the functional sanctity of the "political neutrality" concept, a concept ^{on} which the civil service is built and one which embraces the idea of impartiality. A few remarks will also be made of the constitutional implications of the operational reality of the concept this will be one in the course of the chapters.

Chapter one, will consider the historical background. In this Chapter, an examination will be made of the origins of the civil service. We shall attempt to find out the purposes for which it was set and the way it developed and carried out its functions. The significance of the colonial times for our purposes lies in the fact that colonization was not a method of bringing light to a God-forsaken Continent where the sun was bound never to shine, but it was a process necessitated by the expansion of Capitalism in Europe. Colonization therefore involved selling wholesale those institutions that would make colonialism work; one of these institutions was the civil service and the British succeeded in selling it in total.

8

The civil servant does not function in a vacuum, he operates in a definite mode of production and within certain production relations. It is therefore important to look at the mode of production that existed during the colonial period, because the administrators' tasks and attitudes can only be understood in the light of the existing social economic and political realities. If these haven't changed the tasks and attitudes of the civil servant will not have changed in any significant way.

The civil service during the colonial period was the major organ through which the policies of the colonial bosses were implemented. It was basically authoritarian in nature and was plagued with racist ideologies. It was this type of service which Kenya inherited at independence. There were a few changes however. At independence, the civil service became one of the key devices for the purpose of balancing the central exercise of public power. It was no longer to exercise any policy-making process, its previous unlimited discretionary powers were removed and it was placed under the control of an independent supervisory body - the Public Service Commission (P.S.C.). Nevertheless, its hitherto institutional structure and most of the traditions that are endowed with public institutions, for instance, political neutrality, impartiality, integrity, honesty, anonymity, dedication and loyalty were retained.

Chapter two will examine the structure and functions of the civil service both colonial and post colonial. Chapter one and two will reveal that a distinction between the colonial and post colonial time is not always easy to draw.

Chapter three will then examine the political activities of the civil servant and discuss this at some length in connection with the concept of neutrality. An attempt will also be made to relate this to concrete instances where the civil service has been expected to be neutral and attempt to answer the question - Has he been neutral?

The writer of this dissertation is aware that the civil servants are endowed with a multiplicity of functions ranging from registration of association, licensing of public meetings etc. but emphasis here will be in his role as a supervisor in general elections with

specific reference to the 1983 general elections; 1969 "little general elections" will be mentioned briefly as a comparison of the role of the civil servant in a multiparty state and in a one party state. Can any difference be detected?

In summary therefore the paper will be an attempt to answer questions including the following:

- What are the origins of the civil service?
- For what purpose was it set up?
- Has its role changed after independence?
- Has there been a close interaction between civil servants and politicians?
- Has the civil service ever been neutral?
- Is it practical to expect a civil service built on Kenya's

Constitutional framework to be neutral?

trend of development of economic imperialism in the early stages when the Europeans merely wanted to trade with the Africans, they did not annex their lands. Colonial annexation only arose at a particular historic period in the development of capitalism, namely in the 19th century, when the industrial Revolution had sufficiently developed in Europe to create a demand for independent sources of raw materials that could not be obtained in home countries; overseas markets for surplus commodities and later outlets of surplus capital where natural resources and cheap labour guaranteed greater profits than in the developed capitalist economy.

The colonial administration was charged with the responsibility

1. This chapter attempts to provide a historical background of the Kenya Civil Service. This will help us to see clearly the role of the civil service during the colonial era, its status and functions and whether these have essentially changed in the independence era.

Before going into the history of the civil service it is important to mention the reasons why Britain found it necessary to colonize Kenya. It is a historical fact that Britain colonized Kenya (and indeed any other colony) for economic reasons. It therefore followed that the institutions that she introduced were those that would help in strengthening her economic position. This included the courts, legislative bodies etc. The civil service was no exception to this. In fact the civil service was deemed to carry out a most important role as the implementor of colonial policy.

The conquest of Africa reflects the whole trend of development of economic imperialism in the early stages when the Europeans merely wanted to trade with the Africans, they did not annex their lands. Colonial annexation only arose at a particular historic period in the development of capitalism, namely in the 19th century, when the industrial Revolution had sufficiently developed in Europe to create a demand for independent sources of raw materials that could not be obtained in home countries; overseas markets for surplus commodities and later outlets of surplus capital where natural resources and cheap labour guaranteed greater profits than in the developed capitalist economy.

The colonial administration was charged with the responsibility of making sure that these objectives were realised.

The historical origins of the Kenya civil service date as far back as 1895 when most of what is known as Kenya today was declared a British protectorate¹. The British government had to take over the administration from Imperial British East Africa Company (I.B.E.A.C.) which had proved incompetent to effect the exploitation of Kenya's natural resources. The British government had therefore to take over the reins of colonisation mainly to protect her interests in East Africa against other prospective and potential exploiters, particularly Germany which had already gained control over German East Africa (later to become Tanganyika and Tanzania at present.)

Initially the main task of the colonial service was to pacify the In order to facilitate the exploitation of the available natural resources, the British colonial government sponsored and built the Kenya-Uganda Railway, from Mombasa to Kampala. This railway would enable the rich Kenya-Uganda Highlands to be sucked dry. This essential task was completed in 1928 when the railway reached Kampala.

The colonial administration also helped to exploit the agricultural potential of Uganda and the Kenya Highlands. In any case the railway had to pay its construction costs. Moreover, British East Africa was to supply raw materials for British administration overseas. Exploitation of agricultural products of Kenya was therefore a positive move towards this end. To make the proposition a reality settler farming had to be encouraged at all costs.

Between 1890 and 1905 Kenya was ruled through the foreign office. This was an old tradition of the mechanics of British Imperialism territories freshly acquired were first entrusted to the foreign office and when it was decided to take a more aggressive stand they were transferred to the colonial office.

During the foreign office period, the main preoccupation was with setting up of a skeletal administrative structure which would facilitate the smooth construction of the railway. The commissioner of Zanzibar was the central figure in this administration structure. The whole protectorate was divided into a few large provinces under sub-commissioners (later designated provincial commissioners P.C.s) who were responsible to the Commissioner. The personnel brought at this time was of very low quality. A foreign office official admitted this by remarking,

"As long as civil servants were enlisted from the gutter a high standard of administration could not be expected"

We can therefore say that one of the first tasks of the colonial administration was to build a service designed to meet the needs of the imperial power. In other words the civil service in Kenya had its origin in the creation of a machinery by British to consolidate her colonial administration. The service was essentially one which was constructed to prosecute the Imperial policies in Kenya, and its orientation and personnel were therefore suited for the purpose.

Secretary of State for the colonies at the colonial office in London.

Initially the main task of the colonial service was to pacify the areas which by conquest, cession or treaty had come within British East Africa. This involved compelling or persuading a number of hostile tribal states to intervene in cases where peace was disturbed.

In the light of this, it is proper to argue that the early civil service grew out of military occupation. This explains why in many cases, the first public officers were military personnel from the colonial regiments and occupational forces³. Apart from keeping peace and order⁴ the colonial civil service was also concerned with the collecting of revenue⁵. The main body of the civil servants comprised the provincial commissioner, P.C. District Commissioner, D.C. and the police, the Governor being at the top of these branches which constituted the administrative service which was essentially a colonial policy-making body.

In Kenya, the initial framework of the civil service (which was synonymous with the colonial administration in all respects) was one of sub-Commissioners and D.C.s who established posts among the major concentration of the foreign and indigenous population north and south of the advancing railway from 1894 onwards, examples were Machakos, Nairobi and Fort Terban.

This was the origin of the provincial administration which to this day remains as a distinctive scaffolding of the country's rural administration. The D.C. acting through tribal police and a subordinate hierarchy of appointed chiefs (where none existed), sub-Chiefs, and headmen were responsible for law and order in the African areas. They were also responsible for the collection of taxes and assisting the settlers to recruit labour for their farms. The chain of command was precise, clear and simple, The D.C.s and D.O.s were responsible for peace, welfare and good order of their dominions, as seen above, and they supervised and co-ordinated the functions and activities of all local officers including the police. They maintained liaison with the local traditional authorities and generally helped to bring order and administration to the people. In discharging this responsibilities the D.C.s and D.O.s were answerable to the P.C.s, who held general responsibility for and supervision of all government and local authorities activities in their provinces. This chain of command structure was upward through to the Regional Governor and the Secretary of State for the colonies at the colonial office in London⁶.

In 1905, responsibility in London was transferred from the

fore. It should be noted that the structure of this chain of African command still exists as of today the only difference being that the provincial commissioners are today answerable not to the Governor but the president of the Republic of Kenya via the Head of the the Civil Service. The president is the ultimate head of the here were hierachical chain of command in the civil service. in what actually

By 1905, the colonial civil service policy can therefore, be branded as negative. It being of merely preventing trouble and as bringing pa Britannica⁷. The African chiefs for instance wielded a lot of power and in some cases considerable prestige. They were responsible for maintenance of law and order and collection of taxes. Most of them were authoritarian and on occassions used excessive force in carrying out their duties. Through "community development" activities they compelled the people to participate in the implementation of welfare projects. the African workers at

The service was not concerned with economic and social, forced development as a major objective of administration.¹⁰ Economic purposes were lacking in strength and purpose, in the interests of the indegenous majority. Right from the beginning, therefore, colonial administration was not concerned with development matters. What was taking place in the colonies was largely influenced by the official imperial policies back home. In the case of Britain, colonies (as already mentioned) were essentially seen as sources of raw materials, to be consumed by the British Industries. The official policy initially discouraged investments in colonies, that they were likely to compete with "home markets"⁸. In the colonies themselves there was fear that industrialisation might head to undesirable social consequences⁹. What happened in the colonies was also largely influenced by the attitude of the powerful socio economic groups such as settlers. In Kenya, the white settlers object^S dictated policies to the colonial government. ing Commission which reiterated

The central administration through its executor tool the civil service, had no positive ^{ble} towards the promotion of economic services, except to create conditions under which private enterprise could flourish and to intervene when necessary to ensure fairplay to the "unsophisticated peoples of Kenya". but its views were in the end endorsed.

In 1905, responsibility in London was transferred from the foreign office to the colonial office. Meanwhile the East African protectorate order in council of 1902, had provided a basis on which a legal and administrative structure could be erected. By 1903, there were already 15 district government departments and all the major services had been established by 1910. Although there were some departments supplying professional services in what actually became the settler Reserves, the administrative policy was as a whole overwhelmingly oriented towards the settler occupied areas and was catering for interests of the settler economies. Like any other superstructure it could not get far without labour. The African had to provide labour required in the European Farms and other working places. They were registered and issued with an identification card, "Kipande". This made it very difficult for workers to work anywhere else without the rare permission of their employers. This was designed to retain the African workers at their places of work even against their wishes. It was well, forced labour and the administration made sure it worked¹⁰.

While the Kipande system curtailed the workers freedom to work in places of their own choice, another method of making the Africans work was the imposition of hut tax in 1907 and later poll tax. These taxes had only provided revenue for the colonial government but they indirectly forced the African to work, since it was only at the settler's farms where they could get the money to pay the tax.

The administrative officess were also expected to act in Judicial capacities, a role they were deemed to carry until 1967 when the magistrates court Act¹¹ was passed.

Up to 1930's the main object of the settlers as exemplified in their words and actions was to establish a white man's colony... With a European dominated government but this failed. The first blow to the settlers' hopes of "white man's colony" was probably delivered in 1929 by the Hilton Young Commission which reiterated an earlier declaration as the paramount~~ing~~ of African Interests. This had come in the form of the Devonshire White Paper of 1923. Although the genuiness of this may be questioned, the report nevertheless produced a political storm especially between the settlers and the colonial government, but its views were in the spirit of social democracy to enforce economic policies on people who were unwillingly to co-operate¹³.

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These events greatly influenced the type of the civil service which evolved in 1920's and 1930's. Its powers and responsibilities. The virtually continuous warfare that existed in these two decades between the settlers and Asian interests, placed the civil service in a strong position. Its responsibility for law and order remained unshaken but in addition, it had to hold the rung in the conflict between the rival factions in a wide range of matters of public concern and maintain the continuity of the colonial administration government. In particular, the provincial administration grew in size and authority during this time. This was decisively ended by the rise of nationalist movements and the effects of world war two. In 1930's the growth of Kenya Independent school association under the leadership of late Ex-senior chief Koinange, his son the late Mbiyu Koinange, and the late president Mzee Jomo Kenyatta showed that the Africans were determined to have an acceptable educational system of their own.

The increasing strength of nationalist organisation culminating in the formation of K.A.U. in 1940 finally forced the more foresighted officials to recognise that African grievances over land, economic opportunities and lack of social services must be met if the majority of the population was to continue to accept colonial rule.

From 1944 on wards, the administration was involved in a policy of accelerated services which included a policy of transform the so called "Reserves". The Beechar Reports of 1945, on the development of African education and swymerton plan of 1954 to intensify the development of African agriculture and the removal of the restrictions hitherto placed were important landmarks in the process.

The process of decolonization which was started in post war period forced a change in the official imperial attitudes to the colonial territories. It set aside resources to be used in the "development" of colonial territories. The task of absorbing the resources fell on the colonial bureaucracy. But as late as 1945, the attitudes of the British government was at best still confused. There were those who felt that the colonial people were not interested in development and therefore "it was contrary to the spirit of social democracy to enforce economic policies on people who were unwillingly to co-operate"¹³. substantially furthered by the incoming K.A.N.U. government after independence. These changes can be summed up as follows:-

The civil service that emerged in 1950 was substantially different from its predecessors, although its essential components remained largely unaltered. It became much more complex. Departments being arranged with half fully fledged Ministries in 1954. In general the service now assumed responsibility for the provision of services to African populated areas and on an expanding scale, a beginning was made in breaking down segregated services. At the same time the emergency which was declared by the government in October 1952, led to an equally rapid expansion of provincial administration by the posting of a D.C. or Assistant to every division, each of which was to have separate administrative headquarters. The result was the convergence of two streams of new officials in the African areas; the professional and technical staff who ^{were} ~~was~~ mainly specialists accepting directives from their superiors; and the provincial administrators who were formally superior to the field officers had little direct control over the latter's department activities. Provincial and District teams merely provided co-ordination which varied according to the personalities and circumstances.

During this period, the chief characteristics of the provincial administration as a control mechanism emerged. It was called to control the Mau Mau uprising, against the colonial government. P.C.'s and D.C.s were responsible for issuing permits for public meetings. They were empowered to impose curfew or other restrictive orders under the preservation of order by Night Regulations¹⁴. Under the Outlying Districts Ordinance^{14a} the Governor or the administrator to whom he delegated his powers could declare districts "closed". All these powers were carried intact into the independence era. They are exercised pursuant to the public order Act, penal code, Chief's Authority Act and the Agricultural Act of 1958¹⁵.

The civil servants duty was at this time to be servant of British Government and to be loyal to the British Governor; and make his externally imposed policies work, but not to be the servant of the people, whose spokesman were challenging the whole idea of a dual economic system in which African development was still supposed to take place outside the European dominated areas.

By 1960, it was clear that the old character of colonial civil service was to disappear, with the decisive electoral victory of K.A.N.U. in 1961, a fresh series of changes occurred initiated by the outgoing colonial government, and substantially furthered by the incoming K.A.N.U. government after independence. These changes can be summed up as follows:-

the face of comparative weaknesses of party politics the provincial administration assumed greater and greater significance during the

the government and the people; for instance, in the Harambee movement.

17.8
Firstly, it completed the setting up a Ministerial system on the White Hall model. The various technical departments were integrated into Ministries, under Permanent Secretaries and headed by Ministers. Secondly, it started, however, belatedly training Kenyans to replace the key administrative cadre i.e. to facilitate the Africanization programme.

Thirdly; it gave impetus to the integration of services that were formerly given on racial lines for example educational and medical services.

Fourthly, in the independence constitution the British Government set up the public service commission¹⁶ and the police service commission¹⁷.

1964 may be regarded as the transition period. It saw rapid Africanization at all levels. By May 1964 all civil secretaries were Africans, as well as a majority below them. Under the Kenya independence constitution Kenya was divided into the Nairobi area and seven regions each with an elected Regional Assembly (except North Eastern Region), with a power to legislate on a number of subjects which the most important were educational, up to secondary level, certain Agricultural services, and local government matters.

The executive authority within the Region was vested in the financial and establishment committee of the Assembly (composed of the chairmen of the other Assembly Committee with the vice president of the region as chairman). The constitution provided for a single public service commission for the whole country and a single civil service, but the administration was decentralized to the regional level; all officers within a region being responsible to the civil secretary, the senior civil servant in the Region.

The majimbo constitution affected the public service commission in many ways, the most striking being that provincial administration was theoretically broken up among the new regional administration. The majimbo constitution however, threatened the integrity of the state and the capacity of the central government to carry out its plans. For development; within a year of independence, it was replaced by a fully unitary constitution based on the Westminster Model, and some of the incidentals of the majimbo constitution like the police service commission were eliminated.

In achieving this reversal the provincial administration, played a key part and in 1964, it was restored to its former status and placed directly under the office of the president. In the face of comparative weaknesses of party politics the provincial administration assumed greater and greater significance during the years that followed as a symbol of actual unity and a link between

the government and the people; for instance, in the Harambee movement. The decision to retain the colonial structure was influenced by a number of factors the most important being the plural, nature of the party system and organizational movement of the ruling party KANU. As there was no viable alternative institution, which the political executive could use for purposes of penetration and control ^{about} from the civil service, and especially the provincial administration; thus the provincial administration continued to play the role it had played prior to independence¹⁸. This meant that the old problem of relationship, between the provincial administration and the Ministries in the field was carried forward to the new era.

By Mid 1965, a strongly centralized administration, fully staffed by Africans both as policy makers and as the managerial level had emerged. There was a significant change of attitude from the paternalistic high-headed approach of the colonial period. The new civil service though structurally colonial had to accept the existence of a parliamentary majority and a cabinet elected by the people. It had to see itself as a servant of the people through their chosen leaders. It had to become more accessible to rely on persuasion than force, as was in colonial era. But it remains true to a large extent the structure and functions of the colonial civil service were carried into the post-independent period with little basic changes. The civil service today, therefore embodies most of the characteristics it had acquired within the colonial era which stems from special historical conditions of Kenya and which it derives from the traditional pattern of British civil service organ (the White Hall tradition as which it was modelled in the last years of colonial rule).

The reasons given to justify the conservative nature of the Kenya civil service appeared logical during the early years of independence but their validity and relevance has grown obscure and questionable after twenty one years of independence.

In her overseas possessions in general Britain consistently dispensed into competition in politics and preferred to vest in the administrative organ the complete powers of governmental decision-making. The Governor-general was for all purposes the supreme ruler and with the assistance of the provincial district and divisional administrators, completely carried the government of the territory in the name of the sovereign. The colonial civil service in a primary sense differed from the White Hall counterpart; whereas the latter operated like a team of anonymous technocrats, the former was a strong policy-making organ charged with decision making in essentially political matters. This back-ground had contradictory detailed government code of Regulations. A central feature of the

implications for the organisational method of the post-independence era. Inter alia the following questions had to be asked. How was an authoritarian civil service of the colonial days to be reconciled with political participation in a free nation? How could the policy-forming tradition in the civil service be transformed into the political technician at independence? By what process of altitudinal change was the civil servant to be reduced to anonymity and mere policy implementation as opposed to policy making? It was evident that a change was needed. Normative provisions were laid down and these were to be translated into reality. Whether any significant change has occurred is a debatable question¹⁹.

After independence, the two years that followed saw a preoccupied search for a constitutional framework which would at once command the support of the nationalists and serve to protect certain rights and interests which had prevailed in the colonial period. At the dawn of independence there was fear that these interests which were basically foreign would not be protected. The matter figured prominently in the constitutional preparation and the constitution turned out to be first and foremost a document for keeping governmental powers in check and safeguarding minority interests and rights (This explains the inclusion of provision like section 75 which protects private property).

One of the key devices instituted for the purpose of balancing the central exercise of public power was the civil service machinery. It was no longer to exercise any initiative in policy-making. Its hitherto uncontrolled, untrammelled discretionary power were removed and it was placed under the control of the public service commission. It was the duty of the commission to appoint persons to hold or act in office in the public interest, to exercise disciplinary control over person holding or acting in such offices, such as that of the Attorney General, The Controller General and Auditor General.²⁰

The public service Commission comprised a Chairman, Deputy Chairman and five other members, all appointed by the Governor General acting with the advice of the Judicial Service Commission²¹.

Restrictions were imposed to ensure that the P.S.C. members were neither political figures nor public officers already indebted for their appointments in the political leadership²². Their tenure of office was secured to enable them to discharge their duties independently like the supreme court judges they could only be removed from office "for inability to exercise the function of their offices ---- or for misbehaviour-----²³". The principles on which the P.S.C. made appointments and exercised disciplinary control were spelt out in a detailed government code of Regulations. A central feature of the code, was the virtual proscription of political activity among civil servants. No officer, without express government permission was to

publish in any manner anything which may be reasonably regarded as of a political nature, whether under ^{his} own name, or under ~~his~~ pseudonym or anonymously. This was provided in the Republic of Kenya Code of Regulations G 7(b). According to Rule G(1) Civil servants were not permitted to stand as candidates for political elections unless they first resigned their posts. Rule GG 12(1) prohibited them from joining or forming any political association, on the ground that such political association was not consistent with the duties and obligations of a public servant who is required to carry out the government's policies unbiased by any political view he may hold. Rule GR 13(1) barred them from making speeches or voting at political meetings.

Although these requirements have been maintained by personal circular No.5 of 1975, this circular has allowed civil servants to join KANU if they so wish. The effect of this has therefore been to amend the code, and thereby make the political neutrality of the civil servants even more of a myth than a reality.

The civil service was visualized as a neutral tool of implementation. This entailed a rather extreme approach to the separation of powers concept. A real demarcation was being drawn between the legislative and executive functions of the government and the civil service was seen as a special department within the executive organ completely apart from the ordinary process. It is now recognised however that the various organs of government ~~do~~ operate in close interaction and a rigid conception of the doctrine would not be justified. In this respect the role of the Attorney General serves as a perfect example to show how such a separation is not possible in the day to day affairs of the government. The Attorney General plays the dual role of a politician and a civil servant. He is basically a civil servant according to S.26(1) of the constitution which provides that,

"there shall be an Attorney General whose office shall be an office in the public service".

He has ^{no} the political constituency, yet he is a member of parliament and of the Cabinet. He is the chief government adviser, especially to the head of state. He is also supposed to be a close confidant. He heads a government department. — He is the permanent secretary as well as the minister of the department. His department is really a service department. It drafts all government Bills and advices

all government departments in legal matters. It controls the department of the Registrar general. ~~It controls the departments in legal matters. It controls the department of the Registrar General.~~ It controls the Registration of Societies. This makes the Attorney General control all organisations including political parties. From the above example it can be seen that the Attorney General's position is anomalous. He is half between a civil servant and a politician. Bearing in mind the role the independent government was to play, the civil service was going to be a key institution for the reorganisation and restructuring of the society, there was need for fairly intimate interaction between the executive leadership and the civil service if the independent government was to play a key role in national development. In circumstances like this, it was unlikely that the civil service would be free from political influences.

First, a constitutional amendment²⁵ vested in the president wide powers in relation to the civil service whereas, the members of the P.S.C. were previously required to be appointed by Governor-General acting on advice, and they were to be appointed by the president on his own discretion.

While the P.S.C. had been required to operate independently of the executive, now it could with presidential authority

"delegate any of its powers to any one or more of its members to any office of the public service".

The provisions relating to the offices of Attorney General, Controller and Auditor General and the permanent secretaries were also changed. They were now to be appointed by the president under sections 189-191.

A ^{Further} ~~broader~~ constitutional amendment of 1966²⁶ gave the president "powers of constituting and abolishing offices for the Republic and of making appointments to any such office and terminating any such appointments" at his pleasure.²⁷ The apparent effect of these changes was to relegate the P.S.C. to a nominal auxiliary role. The tenure of office no longer depended on the observance of the code of Regulations as such, but merely on presidential pleasure. The president became in theory, the employer of all civil servants and he could discontinue their services at will. This of course was to have political significance in the way the civil service was to develop. Could it be expected to be free from politics in those circumstances?

would not happen to the Africans. They were mainly employed as office messengers and if they had some "education", they would have the

STRUCTURE AND FUNCTIONS

Professor Mutungi has STRUCTURE AND FUNCTIONS as follows:-

STRUCTURE

The structure of the civil service during the colonial period reflected the kind of society that existed. It was coloured and built on racial lines. The job classification was based on racial lines and the salaries structure was evident of this classification¹. This classification was no coincidence or accident, it was a colonial government deliberate move based on principles of segregation and racial discrimination and disharmony. It was part and parcel of the separationistic apartheid policy of social, economic and political development which formed the backbone of the entire colonial policy in Kenya.

The different races had therefore as of necessity to be left alone and had their own lives separately. No attempt was made by the British to promote racial harmony, even in the area of administration. Indeed they are reputed to have come to the conclusion that

"----- the Kenyan administration at the commencement of its history came under influences which caused it to conclude at an early stage, that there did not exist amongst the Kenyan tribesmen any such organisation of native rule as could usefully be employed as a subordinate agency of administration -----²".

Even in the other areas these segregation was evident. The different races were forced to go to different schools³, and under which Africans and Asians had different educational systems from the Europeans. The Europeans lived in different residential areas of the towns, for example in Nairobi they lived generally in the Western part of the city, Asians lived in Ngara and Parklands and the Africans lived in the Eastern part of the city. (These racial trends exist even as of today)

The different races enjoyed the different social and health facilities. In the only general hospital (King George now Kenyatta Hospital) there was an Asian and an African wing.

Schools for Asian and Europeans was made compulsory. This meant that while these two communities were getting better equipped for the middle and top public and private jobs, the same ¹ ~~would~~ not happen to the Africans. They were mainly employed as office messengers and if they had some "education", they would have the high privilege of working in an office as filling clerks.

Professor Mutungi has summed up the situation as follows:-

"----- the practice produced stereotypes where the Europeans was the obvious and unquestionable top administrator, the Asian a "dukawalla" Shopkeeper, who cheated and exploited whenever the opportunity presented itself, the African was dull, unintelligent fit only to serve in the manual jobs such as a house servant and labourer".⁴

It is therefore no coincidence that the Europeans and Asians served in top executive jobs in the public service. It is because they had the necessary qualifications unlike the Africans who had no alternative but to opt for simple and limbo jobs of office messengers, sweepers and subordinate staff.

It can be said therefore that until the end of the world war II, the public service in Kenya followed the general pattern in other walks of life. It was divided into three watertight compartments; European, Asian and African. Each had its own separate establishment, salary scale and other terms of service. The three classes were not equal but separate, but unequal and separate.

Some changes occurred after the war, The services began to be called A, B, and C, instead of European, Asian and African. A limited scope of promotion from scale to scale was permitted. As a result a small number of Africans were promoted to the B scale and a few Asians to the A scale.

In 1953, the police service commission recommended the establishment of non-racial service for the first time in the history of Kenya. In the following year, the Lidbury Commission made a similar recommendation for other branches of the public service. The recommendations of both the Commission were accepted by the government although the results of a long history could not be obliterated overnight, yet the foundations for a uniform service were laid. With the coming of internal self-government came the motion of Africanization.

It might be of interest to look specifically at the African component of the colonial bureaucracy. The first generation of the African civil servants that emerged in the 1930's were more often than not products of missionary schools. The Missionary Schools inculcated them with "modernity" values, which made them admire and appreciate the values introduced by colonial penetration. They became loyal and acted in the course of performing their duties. They were trained in bureaucratic traditions - to function according to established rules and procedure.

A large number of the people recruited in the late 1940's had full primary education, ^{but} the group before them filled the subordinate posts, whether in the field or at the headquarters. The third generation emerged in the 1950's, products of high school, who like their predecessors found themselves appointed to the senior positions of the service. The official policy was still that all responsible posts were reserved for Europeans⁵. It was in the Mid 1950's that Africans began to fill some posts hitherto reserved for Europeans, but the progress was slow. An African would be qualified on academic experience, but be denied the job on grounds of experience, or vice versa. As a result the few who managed to penetrate the barrier became very insecure and responded by being submissive to and depended on their white bosses; a feature which was later to condition the behaviour of senior African administrators on the eve of independence and after.

The racial structure of the colonial bureaucracy thus denied the African the opportunity before independence to learn the art of self governance. As late as 1960, no African anywhere in East Africa was occupying a strategic position in the civil service, despite Africanization policy initiated at the eve of independence. Those who managed to get important positions were not involved in decision making and were more concerned with the transfer of power from the whites than with development.

Even though the colonial structure has been eliminated or blurred officially in the independent Kenya, civil service, the customs of referring to certain grades as belonging to one part or the other of the service continues to prevail. Indeed it can be said that the civil service is divided vertically into Ministries and departments and horizontally into classes and grades. Moreover allowance, leave terms, travel arrangements, entitlements to houses and other conditions of service are applied on the basis of status; one set for the senior branches and the other for the more junior branches of the service.

The colonial civil service structure was basically built around the main government structure, with the Governor at the apex, with a supporting secretariat, field administration and service departments. The administrative structure formed the main framework of the government as the principal instrument of policy formulations. It is conceded

that apart from the Africans manning most of the top posts (replacing whites) there has not been any significant change in the structure of the civil service after independence. The system is highly bureaucratic and hierarchical thus providing an autocratic and authoritarian administrative structure. This kind of structure was valuable during the colonial period in maintaining stability, in a system which was inherently pre-occupied with insecurity. But the retention of such a structure may be questionable in the circumstances of independent Kenya. In providing a chain of command from the governor to the chief, the colonial government was in command of all activity in Kenya. At the lowest point of the ladder of this hierarchy was the Headman, who was given wide discretionary powers under the Headman's ordinance 1902⁶. It is notable that this chain of command exists even as of today, with the president at the apex, and the chief and Headman at the bottom.

It may not be too far fetched to say at this point that, it is impossible to expect a civil service that has roots in a racially biased society, to be impartial. It may be important as far as race and colour are concerned, but as far as the classes in society are concerned it is doubtful whether it can be impartial. Besides our government still continues to be guided by the capitalistic mode of production which was set in motion by the colonialists, and the government institutions of which the civil service is one, must reflect that mode of production. A great overhaul of the structure of the civil service is therefore unnecessary as long as our institutions and lawyers, even our governmental system itself remains structurally and ideally unchanged.

The principal features of the civil service are as follows:

a) Subordinate Staff

These are the daily rated workers or monthly employees with either provident fund term or similar returning benefit; terms but not pensionable terms - office messengers, sweepers, grass cutters etc. fall in this category. During the colonial period, these people were not required to be literate, but today "0" level Division four, have already been discussed in chapter one, those who were were formerly clerical, but who are now clerical or civil service functions. In this respect their functions differed radically from

b) Clerical Staff

This grade is open to candidates with "O" level certificates of education although even "A" levels are seeking employment here. The staff mainly consists of clerical officers and copy typists. Most of their duties include mainly the general office clerical duties; particularly filing matters. These groups form the highest number among all the categories of the civil service.

c) Artisan and Technical Staff

Not many people with literary training were attracted by these grades. Most chose to be clerks. These carry out maintenance and general repair work. They are to be found mainly in the Ministries of Works, Transport and Communication, Agriculture, Water Development and Housing.

d) Executive Staff

These are normally higher and senior clerical officers who have undergone some training at the Kenya Institute of Administration (K.I.A.) or have attained skills and experience. They are involved in semi-administrative chores. They include customs officers, store keepers, office managers and departmental supervisors etc. Sub-professionals in engineering, medicine, agriculture, forestry and other technical departments are also included here.

e) Administrative and Professional Staff

The holders of these posts, have a degree or membership of a professional body, for instance certified public accountants (C.P.A.). They hold administrative posts or such positions as engineers, lawyers, doctors, architects, surveyors etc.

We have already talked of the job classification, and it suffices here to say that today all the jobs are occupied by the Africans, apart from a few expatriates playing advisory roles, particularly in the technical fields. Most of the Asians in the service render professional service like architects, doctors, surveyors, etc.

FUNCTIONS

The functions that the civil service performed in the colonial era, have already been discussed in chapter one. These we have seen were nowhere defined, that while the major tasks of civil service was maintenance of law and order they also assisted in the recruitment of labour and performed judicial and even sometimes legislative functions. In this respect their functions differed radically from

of the government therefore depends on the efficiency of the civil service and its ability to respond in practical terms to its policy decisions.

those of their British counterparts, who were essentially professional technocrats charged with a passive role of policy implementation. The civil service in colonial Kenya was in essence therefore a politician, a judge and an administrator. Their functions were nowhere defined. It was these state affairs that was passed on into the independence era.

The constitution which is the supreme law of this land (Sec.3) is silent on the functions of the civil service. Recommendations were made by the public service salaries Review Report (1967)⁷ that the status and functions of the civil service be set out in a written law. The Ndegwa Commission (1971) was of this view too⁸. The two Commissions advised that civil service be given legal identify with their duties, responsibilities and functions defined in an Act of Parliament. It was suggested that this would enhance the status of the civil service. The public service Commission was of the view that introduction of legislation is not an appropriate means to achieve an otherwise deserable objective. The Commission considered that the provisions of the Constitution, the public service commission Act (9) and the Public Service Code of Regulations were sufficient (The code spells out the terms of service for public servants). The government however was of the view that while the legislation was unnecessary to define the status of the civil service, it was essential to have legislation under which the responsibilities and functions could be defined in detail¹⁰. However so far the government seems to have done nothing.

Finer has termed the civil service as one of utmost importance. He says,

"The modern functions of the civil service is not merely the improvement of the government without it indeed, the government itself would be impossible¹¹".

The civil service is the executive arm of the government. It implements the policies of the political heads of the administration once a policy has been formulated and made into law; it is the duty of the civil service to implement the policy by carrying out the provisions of the law. The civil service manages the day to day affairs of the state machinery by administering public services and keeping the wheels of the government moving. Therefore the civil service by virtue of being part of the machinery of the executive branch of the government policies is very important the effectiveness of the government therefore depends on the efficiency of the civil service and its ability to respond in practical terms to its policy decisions.

It has been said that the civil service is the custodian of the government's reputation. If it is unable to carry out the government's policies, faithfully and efficiently it not only frustrates these policies but it might also seriously undermine, the government's stability.

The most important activity of the civil servant is administration, meaning the whole gamut of office work in mechanical copying and recording of the routine or machinist, through the various shades of clerical work and office supervision and management to the higher policy-making tasks of administration. The leading civil servants are the administrators whose functions is to advise the political Ministers and to run the administrative organization which is essential to the fulfilment of the tasks of government. They are the recipient of the store of experience of their departments, able without acting politically to understand the political assumptions of the particular field of activity and to manipulate the administrative means needed to achieve the ends determined by the Minister as well as to make him aware of the administrative limits within which the policies he may be inclined to choose as workable.

Below the administration are the middle grades responsible for running the administrative machine often in offices distributed throughout the country. Management is one of their important functions. Below them are the clerks in various fields, the office keepers and the messengers who carry out the ordinary routine duties of the offices.

It is also the duty of the civil service to keep political heads of the government informed about the running of the government. This is done by an adhoc or periodic briefing and submission of reports to the Minister. The responsibility of furnishing information to the Minister lies with the permanent secretary, who is the administrative link between the civil servants the Minister and the team of civil servant in his Ministry. The Permanent Secretary is also expected to brief his Minister on matters brought to the National Assembly. He provides materials for answers to questions or for debate. He has a duty to advice his Minister on matters pertaining to his duties.

The role of the civil servant is especially important in Kenya, because the only political party has proved itself incapable of formulating new policies. It is also important because the civil

Once a policy has been formulated the permanent secretary is expected to see that all necessary data is collected for the adequate consideration of the matter. The permanent secretary makes effective contribution to the elaboration of the policy or plans and the determination of the best means of carrying them out. His advice is not only on the formulation of policy, but also on the execution and effect of any proposed policy. He also has a duty and responsibility for interpreting to his staff the precise nature of the Ministers policies. In short therefore it is through the permanent secretary that the civil service implements government policies. They can therefore be seen as managers responsible for the organisation, directing the staff, planning the progress of work, setting standards of attainment and measuring the results of the work. Their success is therefore the success of their government departments and ultimately the success of the civil service generally.

It was hoped that, as the nation emerged from its colonial tutelage it would wish to restyle the former functions of the administrative services previously concerned with law and order and more to an organization commonly based as developmental and social administration. To become a complete success, a thorough job analysis and reclassification of responsibility is required. In the event such a process of administrative re-orientation is already underway but it is conceded here that the extent has not been sufficient especially after two decades of independence.

A good civil service in a developing country must have the capacity to identify and solve specific kinds of problems, problems of inducing and sustaining social and economic change in addition to the already formidable task of efficient management of the service for which it is now responsible. This means that it must be highly change oriented. It must reward initiative and experimentation it must have clearly defined goals and at the same time it must retain a clear consciousness of its own role as a servant, not the master of the public. If its efforts to induce change are not to be self defeating, It can no longer hide under the cloak of passive executor of government policies but, it must be development oriented.

The role of the civil service is especially important in Kenya, because the only political party has proved itself incapable of formulating new policies. It is also important because the civil service is the nearest link between the public and government. Their ^{elective} leaders fall short of this requirements.

INSTANCES OF NEUTRALITY OR LACK OF IT

In conclusion therefore it can be said that the civil service needs to be restructured and reorientated if its to meet the challenge of the 80's. The structure and functions too do not seem to encourage neutrality.

Here we shall attempt to show how the civil service has grown to be a political institution. This will of course include discussing the concept of neutrality at even greater depths.

In simple terms the term neutrality means that the civil servant must not be involved in the politics of the party or otherwise. The main reason advanced for this contention is based on the belief that a civil service which is riddled with politics loses its integrity and impartiality and the permanence of its status is seriously undermined. Moreover, the public is bound to lose confidence in a service which is more interested in pursuing party political interest than in serving the members of the public.

Some of the worst things that can not only hamper national unity, but also make co-operation difficult between individuals are tribalism, religious differences and political ideologies. It is advocated that the civil servant must not treat members of the public well or badly according to whether he agrees or not with their political philosophy. The role of the public servant is to render selflessly his services to the people. He must ignore all the political ideologies of the day. This is particularly important in a multi-party state. Sympathisers of the opposition and the ardent supporters of the ruling party must receive equal, satisfactory and polite treatment from the civil servant.

Political neutrality also means that the civil servant must not express his views in public. It is not enough that his views should not influence him in the discharge of the public duties, but he should refrain from pursuing party, political interests. He must keep his political counsel to himself. Although he is perfectly entitled to have his own ideas there must be a distinction between his beliefs and actions, and to this extent his freedom of expression is limited to him are questionable, since he is an ordinary citizen whose rights include that of expression as guaranteed by the constitution.

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INSTANCES OF NEUTRALITY OR LACK OF IT
WITH SPECIFIC REFERENCE TO THE 1983

GENERAL ELECTIONS

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and national level, be appointed to political posts and may freely discuss political issues affecting the nation. This however is

The civil servant cannot be neutral as regards the policies of the ruling party. In fact he must strive to familiarize himself with the policies of the party in power. Neither can he be neutral as regards facts, as a man he is entitled to have his own ideas and ideals. Kiapi² submits that a person is capable of having his own ideas and in that sense cannot be neutral, and yet be able to undertake neutral actions³. Such a submission is not practical. He further suggests that the public servant subordinates his interests to the interests of the general public. To this one might comment that the public in a class structured society has divergent views and it is possible that the civil servant is inclined to a certain view from the class he identifies with and to this extent he cannot render his services selflessly to the general public.

Political neutrality is very essential in multi party states because the political attitudes of the civil service may have deleterious results. It can interfere with his impartiality to the public, it may spoil his loyalty to his Minister, it may create conflicts with his Minister in the interpretation and implementation of policies. It may also affect his dedication to his duties.

While delivering a speech on the establishment of a democratic one-party state, president Nyerere of Tanzania remarked,

"----- once you begin to think in terms of a single National movement instead of a number of rival factions parties it becomes absurd to exclude a whole group of the most intelligent and able members of the Community from participating in the discussion of policy simply because they happen to be civil servants. In a political movement which is identified with the nation, participation in political affairs must be recognised as the right of every citizen, in no matter what capacity he may have chosen to serve his country"⁴.

In Tanzania there is virtually no distinction between civil servants and other citizens in the exercise of political rights. Civil Servants may join the ruling party, stand for elections at local and national level, be appointed to political posts and may freely discuss political issues affecting the nation. This however is

subjected to the requirements that in the exercise of their political rights they must not disrupt the administrative machinery by indiscreet disclosure of confidential or secret information. Neither must they be disloyal to their Ministers. In the day to day running of the country, the provinces of the civil servant and minister remain distinct.

President Nyerere considered the distinction between party and party government not a logical one. Any party government must necessarily be governed by its party⁵. One might use this argument to say that to allow civil servants to join KANU and yet insist they are not politicians is absurd, because KANU and the KANU government are one and the same thing. The rule that civil servants and politicians are separate is outdated and not relevant to our political circumstances. It tends to suggest that civil servants cannot make good politicians or even be patriotic and worse still it lead us to forget that both the civil servant and the politician alike are the servants of the people. Besides in a country like ours people do not always make a distinction between a civil servant and a politician. To the ordinary citizen, To the ordinary Mwananchi both represent the government and the distinction only exists in the minds of the elite.

In his transcendent position of trust as the rich source of national direction the late president Kenyatta relied on popular support and the availability of a loyal civil service. His successor president Moi though he lacks the charisma Kenyatta possessed has always relied on the civil service to great deal of extent. The civil service has served as the principal device for effectuating development programmes, such as supervision of Rural projects, communication of vital information etc. The head of the state has consistently attached special significance to the civil service, which has been a leading agent of governmental legitimization. A civil service in such a position was unlikely to remain neutral and it has been highly politicised.

J.B. Ojwang⁶ has highly noted that the process of civil service politisation has occurred at two levels, party and personal. At the party level it has been effectively nurtured in the tenets of the ruling party and would be reluctant to give co-operation to any other organization; at the personal level it has accepted the reality that the president's will is the supreme law in public administration. The informal process of politisation started with the provincial

administration wing of the civil service. One reason for this wing was historical. During the colonial period, this wing was a powerful sophisticated and decentralized machinery through which the government administered direct control. In 1964 before the colonial inertia had had time to cease the provincial administration was transferred to the office of the president and with the authoritarian frame of the colonial times it became the president's most effective instrument among the masses.

Secondly, the provincial administration was seen as the most effective and dependable machinery by which the government can implement rural development projects, such as water schemes, co-operatives, communications etc. As such programmes are directly relevant to rural living standards they became an important factor in the relationship between the leadership and the masses. The civil servant in this respect serves the cause of political legitimization of government.

The political involvement of the civil servant began to unfold just at independence, when the government began to use it to carry out important policy decisions to the exclusion of political debate. It soon became clear that even the political party was tending to atrophy in democratic character, and that its role was progressively shifting to the national leadership in collaboration with the civil service apparatus. In the communication of political will the civil service was gaining decided ascendancy, while the ordinary parliamentarian or party officials was certainly being relegated to secondary role. This prompted views from elected parliamentarians that included the following:-

"The KANU functions only when an election takes place. Then all that remains of it is the song KANU yajenga nchi ---"⁷.

"I said that there is a political government but the power has been usurped by the civil servants ----"⁸.

The pace of politicisation became clearer than ever before with the emergence of K.P.U. in 1966. By the formation of an opposition party after an interlude of a one party state rule a new political framework was constituted. What role was the civil service going to play in such a context? This question was answered in the "little general elections"⁹ that followed under the amended constitutional law necessitating fresh elections for those who defected from KANU

to join the emergent party (K.P.U.). In the ensuing electioneering the civil service showed itself to be a partial entity and a strong ally of K.A.N.U. Senior officers contrary to the code of Regulations participated in political rallies their presence symbolising "the association of KANU with government"¹⁰. The office of the registrar of societies had refused to register the K.P.U. as a political party until nomination day.¹¹ The effect was that the new party could until then neither set up a national organisation nor hold public meetings.¹² The civil service managed state radio also refused to report K.P.U. members in their limited electioneering, except in so far as KANU statements referred to them. In the uneasy 3 year lease of life of K.P.U. the civil service served as the main device by which the government curbed K.P.U. and its activities. Public officers would stop its meetings and generally discomfit its members.

These developments were taking place outside the official policy of the government for more than a decade after independence, the regulations on political activities by civil servants remained the same. But in 1975 an official acknowledgement of the change of status as regards political activity of the civil service was given at a KANU meeting chaired by the late president, Kenyatta. At that meetings a resolution was passed that in future all senior civil servants would be required to join KANU. The resolution further stated that all public officers earning a good salary should be compelled to join KANU life members.¹³ To translate these political ideas to reality the permanent secretary in the office of the president and the Head of the Civil Service issued an official circular¹⁴. He noted that while the code of Regulations as it stood before prohibited membership by the civil servants of political association it had been decided that they may, if they so wish become members of KANU.

In so far as the circular only permitted members to join KANU and not any other organisation, when Kenya was a Defacto one party state, it meant that it was in violation of the Bill of Rights Section 70(b) and 80(1) of the constitution. The prospects of what the civil servants would have done in the event of another party been registered were deciviely ended by the 1982 costitutional amendment which turned Kenya into a De Jure one party state¹⁵.

With this broad background in mind, we shall now look at the 1983 General elections and see whether the civil service has changed almost 15 years after the 1969 "little general election". Has it ceased to be impartial?

THE 1983 GENERAL ELECTIONS

For elections to be fair and democratic the administration must refrain from interfering. It must not support any candidate financially or orally. The president who is the chief executive and the chief administrator must also refrain from such support otherwise the civil servants who we have seen owe their loyalty to the president and theoretically hold offices at his pleasure, will be inclined to support these candidates the president supports. The president as the head of the party as well as the government wields tremendous power which is likely to be misused. This a common occurrence in the emergent states. The 1983 elections which were called a year earlier following a dissolution of parliament by the president on grounds that some members of the government had proved unworthy of their offices, were riddled with acts of maladministration. However unlike the 1979 elections, in 1983 the president kept a low profile¹⁶. He seemed not sure of who to trust due to the climate prevailing then. This made the elections appear fairer on the surface, but on a closer scrutiny one finds that the administration was involved as always. The elections were held amidst the "traitor" issue, following allegations by the president, His Excellency Daniel Arap Moi, and other members of Parliament that someone was being gloomed by foreign countries to take over the presidency. The person named was Mr. Charles Njonjo then the Minister for Constitutional Affairs and M.P. for Kikuyu. Some of the contestants from various constituencies were named as the traitors friends and the issues featured prominently in some of these constituencies. It is interesting to note that the administration was prepared to brand as "traitor" these the government branded so. In a situation where it should have left the electorate to choose for themselves, the administration was actively involved and was used to frustrate the efforts of some of these contestants.

Acts like bias, corruption, oathing, turning away voters, irregularities at the counting halls etc. which are common grounds in election petitions were complained of in many parts of the country. The number of election petitions pending is an indication of these acts. In the past numerous elections have been nullified on those grounds and there is no reason to believe that it will be different this time.

The president while presenting his nomination papers assured the Wananchi that he will see to it that civil servants conduct themselves impartially¹⁷. The Supervisor of general elections Mr. Z.N. Nyarangi also called on the civil servants to be neutral¹⁸. Whether these calls were actually heeded is our task to find out, and therefore a brief look will be made at the way the administration conducted itself during the campaign period (Sept.1 - Sept.26 1983).

LAIKIPIA WEST

This was a seat which was being contested by the then Minister for Lands and Settlement and Physical Planning Mr. G.G. Kariuki and two others, the most active opponent being Mr. Joseph Mathenge. Mr. Kariuki was quoted as telling voters that there had been attempts to victimise him by some bad intentioned people¹⁹. He told a meeting at Rumuruti that the local chiefs should not openly support him because they would be arrested²⁰. The obvious implications of this is that, that Mr. Kariuki believed that the administration was working hard against him. Ironically Mr. Mathenge one of his opponents had made similar claims in 1979. Then Mr. Kariuki had been a close friend of the then constitutional affairs Minister Mr. Charles Njonjo. Mr. Njonjo was said to have a lot of influence, hence Mr. Mathenge's claims could have been justified, not to forget the open support the president gave to Mr. Kariuki proclaiming him as a close friend and a man worth trusting²¹. It is possible that, with the falling of Mr. Njonjo and the connection of Mr. Kariuki and Mr. Njonjo in the traitor issue, it is only right that the administration should have changed its mind. It would also appear that Mr. Kariuki contrary to the president's assertion in 1979 had turned out not to be quite the trustworthy gentleman.

This incident shows the ease at which the administration falls for the current political tides. Despite the fact that the relatively unknown Mr. Mathenge was seen to be getting support as time went by political deservers noted that Mr. Kariuki still enjoyed a massive following. The results on the polling day were therefore somewhat surprising. It is hard to believe that even though Mr. Kariuki (who was an old politician and had represented his constituency since independence) could have lost the elections, he could have lost by so many votes. Mr. Kariuki could accuse presiding officers of forcing people to vote against him and in favour of one of his opponents and he claimed that his agents were not allowed in any of the polling stations as required by law. His action of boycotting the elections against what he called "determination by the administration to impose another"²² puts some substance into his claims; further a comment like one made by the Returning officer while dismissing Mr. Kariuki's claims do not often come from impartial officers. The returning officer intimated that Mr. Kariuki had panicked on seeing the following one of his opponents commanded in the various polling stations.

Results: Mr. G.G. Kariuki 8 996 votes in support of the other candidates. Mr. Joseph Mathenge 17 645 votes in support of any candidate its involvement is not only supervising but taking

KILIFI NORTH

Dr. Chibule wa Tsuma one of the contestants had accused the area's D.O. Mr. Kithome of openly campaigning against him. In a press statement copied to officers commanding Mariakani Police Station and to the Supervisor of elections, he said that the D.O. of Kaloleni was using chiefs and Sub-chiefs to pull down his position. He also alleged that there was a rumour that a number of polling stations would be reduced in the area that he enjoyed most support²³. The D.C. of the area Mr. Samuel Komo had cancelled all Tsuma's licences following an argument on palm wine, where Mr. Tsuma was said to have been in support of tapping of wine insisting it was the only means of subsistence for the people of the area. The D.C. disagreed with this. Although the D.C. relented and asked Mr. Tsuma to return licenses only for 3 of the scheduled 12 meetings, it is hard to see why he should have cancelled Tsuma's licenses following an argument on palm wine. What did palm wine have to do with the elections. The act goes to show that the administration are only of having straight records. When the Ejoja issue took a serious discussion Mr. Kamotho maintained a studious silence - a silence which was taken as indicative of support of Mr. Ejoja. The significance of

too human and therefore not past bias. Although Dr. Tsuma emerged the decisive winner it would be wrong to brand his allegations as merely being ^{and} ~~fr~~ateful. It is interesting to note that the relative inefficiency of even partisan administration does not always work, the way they would like. In Kilifi North the electrorate for instance defied the wish of the administration, in Laikipia West however, it worked.

Results: Dr. Chibule wa Tsuma 14 139 votes
Mr. Japheth Baya 3 159 votes.

KANGUNDO

Thousands of the residents of the area, were involved in an oath cleansing ceremony. The ceremony was aimed at freeing the participants of an oath administered in the area 20 years ago in favour of a certain candidates²⁴. All the election campaign meetings in the area were cancelled to enable Wananchi to attend the ceremony. The ceremony took place in all the four locations in the constituency. A candidate Mr. Isaac Nzioka took part in the ceremony. Another candidate Mr. Paul Ngei was said to have expressed disappointment at the administrative involvement in the ceremony²⁵. The conclusion to be drawn from this is that the administration was in support of the other candidates. Even if the administration was not in support of any candidate its involvement in not only supervising but taking part in the ceremony casts a doubt as the impartial nature of their actions, since it is obvious that the ceremony was not unqenormously consented to by all the candidates.

KANGEMA

On nomination day Sept. 1 1983 following an eruption of violence 13 people were arrested²⁶, all of them supporters of Mr. J.J. Kamotho, who was then Minister for Higher Education. Mr. Kamotho was fighting against Mr. J.N. Michuki and Mr. I.N. Kariuki.

In 1979 Mr. Kamotho managed to win a stiff competition on convincing the people of Mr. Michuki's misbehaviour as a civil servant in the struggle for Independence. At that time, Mr. Kamotho was also known to be close to the president and he managed to convince the people that he would get a cabinet post and cabinet post he did get. Kamotho's downfall started with the falling of Mr. Njonjo. When the issue of the traitor first arose Mr. Kamotho maintained that Mr. Njonjo was not a traitor and that they themselves could not boast of having straight records. When the Njonjo issue took a serious dimension Mr. Kamotho maintained a studious silence - a silence which was taken as indicative of support of Mr. Njonjo. The significance of

claiming that there had been a clerical error in the processing of this for our purposes lies in the fact that the administration had ceased considering Kamotho as special. It was his supporters that were taken to court following an eruption of violence on nomination day. It was clear that the administration thought Mr. Kamotho's supporters were responsible for the violence. Mr. Kamotho's supporters on the other hand blamed Mr. Michuki's supporters for the violence. Whatever the truth was, it is clear that this is one of instance where the administration has allowed itself to be swayed by political waves. Because supposedly Mr. Kamotho was not in the good books of the government, then this automatically led to the administration falling into disfavour with him. The irony of it all was that Mr. Michuki had made similar allegations in 1979¹⁴ of administrative bias. This goes to show only too clearly that the administration is not a neutral institution, it moves with the political currents and often supports the candidates the chief executive supports. That Mr. Kamotho managed to get so many votes can only be interpreted as the will of the electorate to vote in who they wished even to the extent of defying administrative wishes.

... was then quite unknown was elected into the Cabinet. It is obvious

Results

- 1983 Mr. J.J. Kamotho 15 630
- Mr. J.N. Michuki 18 014

KERIO NORTH

Mrs. Sei's nomination papers were rejected by the returning officer Mr. Samuel Ambuka, on the grounds that her certificate on the Swahili proficiency test had been erroneously cancelled. Despite strenuous efforts to make sure that the error was corrected, the D.C. refused to accept the nomination papers. Interestingly enough there is a precedent of sorts where a returning officer has been known to change his mind about disqualifying a candidate. The weekly Review cited such an example²⁷ where this had taken place. On nomination day (1st Sep. 1983) the returning officer for Nyando announced that Mr. Okuthe B.G. La, who was a candidate for Nyando seat had not met all the requirements for elections. Two hours later, however the same officer announced reversal of his earlier decision

claiming that there had been a clerical error in the processing of Bale's papers which had led to his disqualification. Mrs. Sei's case falls in the same category. The education language Board had erroneously cancelled the swahili part of the language proficiency certificate. Why then did the administration insist she had not qualified? The history behind this refusal is interesting. On August 10, 1983, the Daily Nation carried a report that Mrs. Sei and another candidate in the area had stepped down in favour of Mr. Nicholas Biwott, as Cabinet Minister. The decision that Mr. Biwott was to be unopposed was reached after a meeting of about 100 elders in which Mr. Biwott was present, but neither of the other two candidates Mrs. Sei and Mr. Joseph Barsulian were present. The following report in the Nation, another report appeared where Mrs. Sei denied that she or the other candidate had stepped down in favour of Mr. Biwott²⁸. Three days later Mr. Joseph Barsulian declared he had no intention of stepping down for Mr. Biwott²⁹.

In 1979 a Mr. Kurgat is said to have stepped down in favour of Mr. Biwott. On entering to parliament unopposed Mr. Biwott who was then quite unknown was elected into the Cabinet. It is obvious therefore that the elders wished history to repeat itself in the 1983 elections. They wished that Mr. Biwott be unopposed and the administration was quite prepared to endorse their view, hence the insistence that Mrs. Sei had not qualified. Unfortunately history did not repeat itself, so that although Mr. Biwott, did go back to parliament and retained a cabinet post he did not do so unopposed.

JOINT CAMPAIGN MEETINGS

GITHUNGURI³⁰

All odds seem to have been against Mr. Arthur Magugu, then Minister for Finance. The major obstacle was in relation to Thome land buying companies to which Mr. Magugu was said to be the "advisor". There seems to have been a misappropriation of the Company's Funds. Dr. Josephat Karanja the other candidate challenged the provincial administration in central province to probe the company with the same zeal it had been probing other land buying companies but the P.C. Mr. David Musila refused to rise to the bait. The shareholders had among other things claimed that the administration supported that candidate. Numerous instances of forced

they had heard nothing of their money since 1979, and there was mystery surrounding a piece of land near Safari park Hotel, opposite the Kenya Breweries. Attempts to contact the Minister were fruitless. Some of the members had gone to see the D.O. of Kasarani in relation to the matter. All these show that Mr. Magugu was indeed losing support.

His action of campaigning door to door further show his loss of confidence. There were other allegations too. Mr. Waira Wachira a former M.P. of the area alleged that Mr. Magugu was buying votes for Sh.200 each and he was doing so with the support of the administration who Kamau charged were also holding night meetings in favour of Mr. Magugu. Mr. Magugu was silent about these allegations. Although Mr. Magugu emerged with a decisive majority over Keriri Dr. Karanja, it would not be wise to discard all claims against the administration as fanciful. Indeed one may wonder why the administration allowed Mr. Magugu to campaign door to door, where they were known to have arrested other candidates for conducting unauthorised meetings. The action can only be interpreted as aimed at ensuring that Mr. Magugu went back to parliament.

Results

Dr. Josephat Karanja	14 379
Mr. Arthur K. Magugu	20 534

JOINT CAMPAIGN MEETINGS

An issue worth mentioning is as regard to Joint Campaign meetings. The supervisor of General elections Mr. Z.N. Nyarangi called on returning officers not to force candidates to hold joint campaign meetings where the climate did not warrant it³¹. Mr. Robert Matano a candidate for a Kilifi seat had also been opposed to the idea of joint campaign meetings. His complaint was that some candidates might use other people's popularity at some joint meetings³². On September 16, 1983, the weekly Review carried an editorial castigating the administration among other things of forcing the people to listen to candidates who they did not wish to listen to especially where the administration supported that candidate. Numerous instances of forced

CONCLUSION

joint campaign meetings were reported, however, the following example will for our purpose serve to show that the administration had interests of certain candidates in mind.

KIRINYAGA

A Mr. Keriri made allegations that separate campaign meetings had been cancelled to be replaced by joint ones³³. All the candidates had agreed on having separate meetings. After a few meetings Mr. James Njiru, then an Assistant Minister for Health discovered that a few people were attending his meetings, he approached the administration with a request to do away with the separate meetings. The D.C. cancelled all previous arrangements for separate meetings, saying that it made the work of the administration easier. Mr. Keriri thereafter made a resolution not to attend any of the joint meetings and threatened the D.C. to use this incident against him in a petition should he loose the elections. In the absence of proper reason for the cancellation of separate meeting, it is difficult not to believe Mr. Keriri.

The above instances serve to illustrate that the administrative involvement in elections has not diminished, but it seems to be on the increase and to talk of neutrarity of administration is becoming more of a myth as the days go by.

While the latter was a passive technocrat-filled service, the former was a policy making institution and therefore, it formulated and implemented value laden decisions. We have further appreciated the fact that there was no clear demarcation of functions during this period. The civil servant was essentially, a politician, a lawmaker and a judge.

Apart from the colouration of the personnel the role of the civil service hasn't changed. It therefore continues to be a major formulator especially in the circumstances where K.A.N.U. the ruling party has been found ineffective and incapable of policy formulations. This has especially been true of the provincial wing of the civil

CONCLUSION

44

Chapter one provided a historical background of the Kenya civil service. In that chapter we found that, the major tasks of the colonial civil service were maintenance of law and order. It was also involved in the collection of taxes and recruitment of labour. It was not concerned with development issues. In so far as it was used to suppress the Africans against an inherently oppressive system where the African was seen mainly as an object, the civil service could not have been said to be neutral.

Rather than being a servant to the people, the colonial civil service was a master, it was authoritative in nature and in so far as it was being used to help imperialism realise its objectives it could not have been expected to be neutral. The major task of the service was to help colonialism work. This had to be done at the expense of all else. The colonial civil service was not therefore concerned with concepts like neutrality. The task of the civil servant was to be a servant to the British government and to be loyal to the British governor and make his externally imposed policies work, but not to be the servant of the people, whose spokesmen were challenging the whole idea of a dual economic system in which African development was still supposed to take place outside the European dominated areas.

Our discussion has also led us to the finding that the colonial civil service differed radically from its counterpart in Britain. While the latter was a passive technocrat-filled service, the former was a policy making institution and therefore, it formulated and implemented value laden decisions. We have further appreciated the fact that there was no clear demarcation of functions during this period. The civil servant was essentially, a politician, a lawmaker and a judge.

Apart from the colouration of the personnel the role of the civil service hasn't changed. It therefore continues to be a major formulator especially in the circumstances where K.A.N.U. the ruling party has been found ineffective and incapable of policy formulations. This has especially been true of the provincial wing of the civil service, which has been used by the head of state as a tool of political legitimation.

The party has served as a device of political control and direction. The main role of the party has been the processing of public loyalty to the leadership and the creation of

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Our government continues to be guided by a capitalistic mode of production which was introduced by the colonialists. In the circumstances it is unlikely that a vital institution like the civil service could have changed in any significant manner.

The civil service has also moved more and more under, the control of the president through the various constitutional amendments. This has had the effect of politising the service. The requirement that civil servants should not be involved in political activity has been rendered illusory by the requirement that they be members of K.A.N.U.

The real problem for the Kenyan civil service is that he is expected to be "neutral" in a highly political situation. He is allowed to join KANU per circular No.5 of 1975 yet he is expected to remain outside politics. President Nyerere of Tanzania has rightly observed that the party and the party government are one and the same thing. To talk of political neutrality when one is a member of ruling party and the only party for that matter is sheer nonsense.

On examining concrete instances, in this case the 1969 little general elections and the 1983 elections we arrived at the conclusion that the civil service has never been neutral. In the circumstances when Kenya was a two-party state it was the civil service that was used to curb the growth of the emergent party (K.P.U.). In this situation where the civil service was expected to be the neutral administrator it came out as a partial entity. In 1983 elections almost 15 years later and in the circumstances of one political party, not much has changed. The civil service continues to be partisan in its services and the 1983 elections were riddled with acts of maladministration like all the preceding elections. The conclusion to be drawn from this is that the civil servants tend to move with political tides and they are inclined to the executive especially the chief executive to whom they owe their jobs.

One may be tempted to ask why? The answer lies in the fact that the prime mover in independent Kenya's political and constitutional dynamics has consistently been governmental stability. First and foremost the party KANU has served as a device of political control and direction. The main role of the party has been the processing of public loyalty to the leadership and the creation of

role

an atmosphere conducive to stability. Such a ~~veto~~ tends to be inconsistent with neutralist principles of public organisation. The civil service is the most vital public tool of policy implementation. Such dominant political conceptions as stability and loyalty could hardly reckon with a tool in its position as the country's single reservoir of the most enlightened and influential personnel. Much interplay has therefore taken place between KANU and the civil service, a factor strongly favouring the growth of governmental stability. Without explicit acknowledgement the government has actively pursued this goal.

The politicisation of Kenya civil service has had important political and constitutional implications; first, the stage was effectively set for prolonged one party rule. The machinery of government was particularly pre-empted for the ruling party and placed out of the reach of any alternative party. This has had to events culminating with the making of Kenya into a De Jure one party state in 1982 a move which was in accord with governmental stability and one which the civil servants expressed minimum disapproval. Secondly, the balance of governmental powers is distinctly placed in favour of the executive organ. With the unconditional support of the entire civil service edifice, the head of state enjoys a degree of influence far transcendent above either the legislature or the Judiciary.

In summary therefore we can say that although the civil servant is supposed to be a neutral servant of the people, and is not supposed to indulge in politics, the practice has been otherwise. That in fact political neutrality does not make sense in the circumstances of one party state. That what is needed is a cadre of administrators who are willing to state their opinions and value programmes and projects. Expressing individual values does not mean that the public servants ought to become necessarily committed functionaries. If therefore we are to come out of the cloak and put the civil servant in his proper place, it would seem that attainment of development goals which should be our major objective are strengthened where the machinery has freedom to express its values and beliefs without fear or favour.

administrative

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- 223. Section 188(1) "Commission".
- 24. Sept. 24 1975 "Civil Servants and K.A.N.U."
- 25. No. 28 of 1964. This amendment, amended Sections' 186(2) and 188(1) of the Independent Constitution.
- 26. No. 16 of 1966
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14. The president also expressed his support of Mr. Ohiki Aanya, Henry Wariithi and Davidson Muguru Weekly Review 17 August 1979 p.16 and also Mr. Justus Ole Vitois and Mrs. Julia Gijamba Weekly Review 29 Sept. 1979 p.25
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