

PREFACE

The subject "DEMOCRACY AND THE REPRESENTATION" cannot be thoroughly treated within the 12,000 word limit imposed OF PEOPLE IN KENYA. This therefore means that some points which would otherwise require detailed discussion have not been dealt with adequately. Some which are relevant to the discussion have been omitted entirely. Nevertheless, I think I have accomplished my point.

I am grateful to the University of Nairobi for making available to me various scholarly works on the subject. I must thank my cousin, Grace Njeri Mbugua, for her private time to **By** the whole work for me.

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## P R E F A C E

Any work dealing with such a controversial subject as democracy cannot be thoroughly treated within the 12,000 word limit imposed for the L.L.B Dissertation. This therefore means that some points which would otherwise have required detailed discussion have not been dealt with adequately. Some which are relevant to the discussion have been omitted entirely. Nevertheless, I think I have established my point.

I would like to thank my supervisor, Professor Date Bah for his invaluable criticisms and comments. I also cannot forget to thank Mr Willy Mutungā, Mr Kivutha Kibwana and Mr Gutto, all of the Faculty of Law, for making available to me various scholarly works on the subject. Lastly, I must thank my cousin, Grace Njeri Ndung'u, for taking her private time to type the whole work for me.

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## I N T R O D U C T I O N

Kenya has a reputation for being one of the most democratic countries in Africa. The purpose of this paper is to test the validity of this generally accepted assertion. We shall be trying to examine the nature of democracy that is and as it is practised in our country. We have decided to do this in three steps.

In chapter one we are going to discuss generally, the concept of democracy. Our purpose here will be to show that the word democracy is used variously to serve ideological ends. We especially discuss the meaning attributed to this concept by the Western liberal scholars and what and what interests this meaning is supposed to promote. Our contention is that the meaning attributed to it in Kenya is similar to that highlighted by Western liberal Scholars. Finally we shall discuss what we consider ought to be the real essence of democracy in any country.

In chapter two we shall mainly discuss Kenya's Social, economic and political organisations within which democracy is supposed to be practised. In this chapter our main emphasis is the social and economic base. Our main thesis in this chapter will be that our social and economic organisations are to a large extent a replica of the colonial economic structure, which was discriminatory of the majority of the people - the Africans. We shall be arguing that at time of independence there was little radical transformation of this structure which virtually remained the same. We shall further argue that the present system is geared towards maintaining the status quo which as we hope to show does not serve the interests of the people, that is, the Africans, who are indeed in the greatest majority. Therefore, from our understanding of democracy as discussed in chapter one we shall in effect be saying that our country does not pass the democratic test.

In chapter three we shall examine the institutions within which democracy is supposed to be practised in Kenya. We shall concentrate mainly on the relationship between the Legislative and the Executive. Special reference will be given to the

powers conferred on the Executive by the Preservation of Public Security Act and the ruling Party KANU. Here we should keep note of the fact that the people are said to rule themselves, though indirectly, through the elected Legislature. However our thesis in this chapter will be to show that the Executive is so powerful that the Legislature has little if any control over it.

In conclusion we shall be arguing that the social, economic and political organisations obtaining in our country are such that true democracy as we understand it is not likely to prevail.

... that which is democratic must be of the people, by the people, for the people."

Our government is called a democracy because its administration is in the hands, not of the few, but of the many; as regards the law, all men are equal; as regards the value set on men, each is preferred for public honors as he is distinguished, and not because he belongs to a particular class or rather because of his personal merits; but is not barred from public honors on grounds of poverty."

... wrote in his book, Democracy, that  
... the poor side, the result is a democracy. The Bill of Rights of the American party, British others, and grant the poor an equal share in civil rights and in affairs of government, the officials being appointed by lot."

... whenever the voters use their power to elect, whether they be a minority or a majority, this is an election, and when the poor rule, it is a democracy.

... when all free men (citizens) are sovereign, it is a democracy, and when the rich are, it is an oligarchy, but there are many who are free and few rich."

It should be noted that the word vote was used by Plato and Aristotle to mean the majority because during their time the poor people formed the greater majority of the population, however the slaves were not counted as voters. They were considered as individuals and were not counted as voters.

## CHAPTER ONE

### THE CONCEPT OF DEMOCRACY

The word democracy is said to have originated from the ancient Greek City states. But it has been used to mean different things, at different times and in different places in the course of its history. It is because of the resultant ambiguity in meaning that raises the necessity for us to look at the concept of democracy as an opener to our discussion. We shall begin by quoting several ancient views on this concept.

Cleon living about 422 B.C. had this to say about democracy.

"... that shall be democratic which shall be of the people, by the people, for the people."<sup>1</sup>

In this great funeral oration, Pericles said:

"... Our government is called a democracy because its administration is in the hands, not of the few, but of the many; ... as regards the law, all men are equal; ... as regards the value set on men, each is preferred for public honours as he is distinguished, and not because he belongs to a particular class but rather because of his personal merits; not is a man barred from public career on grounds of poverty."<sup>2</sup>

Plato wrote in his book, Republic, that

"When the poor win, the result is a democracy. They kill some of the opposite party, banish others, and grant the rest an equal share in civil rights and in offices of government, the officials being appointed by lot."<sup>3</sup>

Aristotle in his book, politics, wrote that

"... whenever the rulers owe their power to wealth, whether they be a minority or a majority, this is an oligarchy, and when the poor rule, it is a democracy."

He further wrote that,

"When all free men (citizens) are sovereign, it is a democracy, and when the rich are, it is an oligarchy; but there are many who are free and few rich."<sup>4</sup>

It should be noted that the word poor was used by Plato and Aristotle to mean the majority because during their time (and still today) the poor people formed the greatest majority of the population. However the slaves were not counted among the poor. They were considered as underhuman and therefore did not have citizenship status.

Conditions in which individuals acquire the power to rule are the result of a competitive struggle for the people's

What is clear about the above ancient views is that democracy was considered to be a government in which the people, that is, the citizens rule themselves either directly or indirectly. One would therefore agree with James Bryce<sup>5</sup> when he wrote that the word democracy has been used ever, since the time of Herodotus to denote that form of government in which the ruling power of a state is legally vested, not in any particular class or classes, but in the members of the community as a whole. In other words the term democracy has for a very long time been used to mean the rule of the many as opposed to monarchy which is the rule of one, and to oligarchy, which is the rule of ~~many~~ a few, that is, of a class privileged either by birth or by property.

But these attributes of democracy raise a lot of questions. For example, what do we mean by the rule of the people? Are the people able to rule themselves directly or even indirectly through their representatives? It is in the attempt to answer these questions that different writers on the subject, and consequently, different countries have come up with what they consider to be the best theory of democracy.

For example, Joseph Schumpeter has argued that the classical theory of democracy, that is, the rule of the people, is only possible in small primitive communities in which face-to-face relations prevail and political theory issues are simple. He considers the classical <sup>theory</sup> of democracy as,

"that institutional arrangement for arriving at political decisions which realise the common good by making the people itself decide issues through the election of individuals who are to assemble in order to carry out its will."<sup>6</sup>

He argues that there does not and cannot exist any common will towards a common good and also that the ordinary citizen is not competent to fill the role demanded of him by the theory. After dismissing the classical theory as unrealistic, he offers an alternative theory which he thinks is more realistic to the conditions of a modern state. In his theory it is the competition for the people's vote that is the all important characteristic of a democracy. Thus, he says that democracy is

"That institutional arrangement for arriving at political decisions in which individuals acquire the power to decide by means of a competitive struggle for the people's vote."<sup>7</sup>

It is apparent from this view of democracy that the presence of free and competitive elections is enough to qualify a state as democratic. We shall consider the implications of this theory later in our discussion.

Schumpeter's view of democracy has been subscribed to by the majority of the contemporary liberal writers. The prevailing view among them is that high levels of participation and interest are required from a minority of citizens only and that the apathy and disinterest of the majority of the people play a valuable role in maintaining the stability of the democratic system as a whole. According to this argument maximum participation by all the people is not only impossible but also dangerous to the stability of a democratic system. This fear has been expressed forcefully by Professor Robert Dahl<sup>8</sup> who argues that there is an inherent danger in an increase in participation on the part of the ordinary man. According to him political activity should be a monopoly of the minority. He refers to this as polyarchal democracy. He argues that the lower economic groups are the least active politically and that it is also among these groups that authoritarian personalities are most frequently found. He therefore concludes that if these lower economic groups are allowed to take active participation in the political process of a state, the democratic system might be jeopardized. Having warned us of the danger involved in mass participation in politics, he argues that the only political role for all the people should be the exercise of their right to vote. He sees this as the only way in which the people can be said to control their elected rulers. This control is exerted through the shifting of the people's vote from one set of rulers to another.

Dahl's theory of polyarchal democracy has found support from G Sartori who stresses that in a democracy it is not just minorities that rule but competing ~~minorities~~ elites. He makes a distinction between the democratic ideal and the democratic practice. He terms the classical theory as idealistic and impracticable. He says that

"the ingratitude typical of the man of our time and his disillusionment with democracy are a reaction to a promised goal that cannot possibly be reached."<sup>9</sup>

He sees the classical theory's requirement of mass participation

as such an ideal which is impossible and dangerous because it promises what is impossible. Like Dahl, Sartori believes that mass participation in the political process would necessarily lead to chaos. The classical theory must therefore be abandoned and another put in its place. The alternative is found in Schumpeter's theory! ~~XXXXXXXXXXXX~~ But it should be noted that Schumpeter's theory of democracy is not in total disagreement with the classical theory. His theory at least recognises the people's sovereignty, which according to him, is exercised through the vote. He acknowledges that the people should rule. From his theory it would appear that the people are seen to rule in that they are given the opportunity to elect the actual rulers in free and competitive elections. According to him, it is the competition for votes in free elections which is the most important factor in a democracy. The people are seen to control their elected leaders, and thus rule themselves, in that they can switch their support from one set of rulers to another. Because of this possible change of allegiance, it is argued, the elected leaders are forced to reckon with the interests of the electorate. It is this type of democracy which is practised in the liberal states of the west. The question is whether the type of democracy provided for by Schumpeter's theory is such that the power of government would really be in the hands of the people.

One weakness of the contemporary liberal theory of democracy is that it is an analysis of democracy as practised in the western liberal states. It is an analysis of democracy as it is and not as it ought to be. It is therefore a subjective rather than an objective theory. What ought to be a true democracy is considered as impossible and therefore an ideal. They argue that in a practical democracy it is the competing elite and not the people that rule. The people cannot rule because not only are they incompetent to make political decisions but also because they are incapable of knowing what is good for themselves.

"Thus, the typical citizen drops down to a lower level of mental performance as soon as he enters the political field. He argues and analyses in a way which he would readily recognise as infantile within the sphere of his

real interests. He becomes a primitive again."

Schumpeter further argues

"Hence, if for once he does emerge from his usual vagueness and does display the definite will postulated by the classical doctrine of democracy, he is as likely as not to become still more unintelligent and irresponsible than he usually is. At certain junctures, this may prove fatal to his nation."<sup>11</sup>

Because of his incompetency the common man's role in a democracy must therefore be reduced to the mere casting of his vote. But if a democracy is a system in which the people are allowed to elect their rulers in free and competitive elections, why is it that some states are denied by others the title of democracy even though they may hold elections regularly?

It is submitted that the reason why there is lack of recognition of one country by another despite the fact that they both have regular elections is that there is more to democracy than just the election of leaders. What then are the essential requirements, the presence of which would entitle a country to be recognised as democratic? It is submitted that there are three essential requirements. These are: the democratic base, the democratic content and the democratic form.

#### THE DEMOCRATIC CONTENT

Here we are concerned with the essence of democracy. What is it that democracy tries to achieve? To be able to answer that question, we need also to know the essence of government. We cannot talk of democracy in the abstract sense. It is Governments which are termed as either democratic or undemocratic. Most of the writers on this subject consider that it is the process of government which is the factor to determine whether a state is democratic or not. According to this view the important question is: How is the country governed? For the purpose of this paper we are going to consider the governmental process as being only one of the factors to be considered in determining whether a country is democratic or not. The other factor to be considered is the essence or object of Government. If a system of government leads to results which are contrary to what the object of Government ought to be, then it is undemocratic. In other words we shall be answering the question as to why a government ought to be instituted over people.

It is submitted that the essence of government ought to be that which was offered by Abraham Lincoln. He said,

"The legitimate object of government is to do for a community of people whatever they need to have done, but cannot do at all, or cannot do so well, in their separate and individual capacities."<sup>12</sup>

We know that ordinarily, an individual will not knowingly do that which is prejudicial to his interests. He will not do what is oppressive to himself. Therefore, a government should abstain from doing that which has a tendency to injure or prejudice the interests of the people who it is supposed to serve. But there is also a general presumption of man's nature that he is a selfish animal. Therefore if one man or a group of men are entrusted with absolute power to manage the affairs of government, the individual or the group will more likely than not, do so in his or its own group interests and to the detriment of the rest of the people. The power to govern must therefore be vested in the people as a whole. Every individual is obviously the best judge of his own interests. Therefore the people as a whole should be able to govern itself so that every individual interests are taken care of. But we also realise that it is impossible to satisfy every individual interests in a community. Some people will have interests which in their nature are necessarily prejudicial to the interests of others. This is especially the case in a capitalist society where the interests of the owners of the means of production (the bourgeoisie) are directly opposed to those of the workers. Because of these contradictions in society, the object of government should be to promote the interests of the majority of the people in that society. It is these interests of the majority that Rousseau referred to as the common good or the common will.

So far we have only pointed out what we consider ought to be the democratic content of government. But this by itself is not enough to constitute a democracy. We have simply discussed what the objects of democracy ought to be. But all the governments in the world claim to govern in the interests of the people. In practice they do not, the main reason being that the social, economic and political organisations of these countries are not conducive to the realisation of the interests

of the people or even the majority of the people. It is the social, economic and political organisation which we shall refer to as the democratic base and form. It is submitted here that unless the base and form of government are conducive to the realisation of the interests of the majority of the people, there cannot be a true democracy.

### THE DEMOCRATIC BASE AND FORM

We have already said that for democratic content to be possible the power to govern must be vested in the people as a whole. But we also realise that the people as a whole cannot be able to manage the day to day affairs of government. The impossibility of direct self-government was recognised as early as the time of the ancient Greek states. For example, in Athens the task of daily affairs of government was delegated to a council of five hundred men. Similarly in a modern state, we must make do with a representative form of government. The people must freely elect representatives who are to carry on the affairs of government on their behalf. Because the role of a representative is as it were, that of an agent, the people should be able to revoke their authority whenever they are satisfied that the representative government is not doing a good job. For example, should they feel that the elected government is not representative of their interests, it should be in their power to remove it and institute another in its place. This raises the need for free and regular elections. But free elections and removal of elected representatives does not necessarily ensure that representatives are responsive to the people's demands. After all the removal of one set of rulers and replacing it with another does not guarantee that the people will get any better alternative. They might vote in, another government which, like the previous one, betrays their confidence. This will necessarily be the case in a capitalist society. The truth of this submission becomes clear when one understands the nature of a capitalist system. The essence of the system has been plainly and clearly stated by C.B. Macpherson thus:

" ... the characteristic and essential relationship between people in a fully developed capitalist society is that most people have not got enough land or capital

of their own to work on and consequently have to work on someone else's."13

He continues to say,

"For in the nature of the capitalist market society there must be some who own the capital on which others must work. Those without capital on which to work have to pay for access to other's capital. They have to pay for access to what I have called the means of labour. They have to submit to a net transfer of part of their powers to other persons."14

What Macpherson is saying is that exploitation is the nature of things in a capitalist system. The ownership of the means of production is in the hands of a small minority group while the majority of the people are excluded. If the majority of the people are to survive in such a system, they must sell their labour to the small group which monopolises the ownership of the means of production. Furthermore, as a penalty for using others' capital, they are underpaid. This is what Macpherson means when he talks of "a net transfer of part of their powers to other persons".

Can the people in such a system be said to rule themselves simply because they have a right to vote? This question is important because unless the vote carries with it enough power to ensure compliance with the people's interests, the people cannot be said to have any voice in the affairs of government. The truth is that the people in a capitalist society do not, and cannot, by merely casting their vote, influence the decisions of those in power. This is so because democracy in a capitalist society is based on the presumption that the status quo must be maintained at all costs. The political parties vying for the people's vote will not normally disagree on whether the system should remain or not. They all take it as a matter of course that capitalism is the basis of any government. Therefore by voting one party out of power and replacing it with another, the people will not have in any way affected the system. They will simply have affected the actors in the theatre of government. Otherwise the system after the elections remains intact. This point has been expounded on by Macpherson as follows:

"In short by the time democracy came in the present liberal-democratic countries, it was no longer opposed to the liberal society and the liberal state. It was by then, not an attempt by the lower class to overthrow the liberal state or the competitive market economy; it was an attempt

by the lower class to take their fully and fairly competitive place within those institutions and that system of society. Democracy had been transformed. From a threat to the liberal state, it had become a fulfilment of the liberal state."

He further continues to say that

"What the addition of democracy to the liberal state did was simply to provide constitutional channels for popular pressures, pressures to which governments would have had to yield in about the same measure anyway, merely to maintain public order and avoid revolution. By admitting the mass of the people into the competitive party system, the liberal state did not abandon its fundamental nature; it simply opened the competitive political system to all the individuals who had been created by the competitive market society. The liberal state fulfilled its logic. In so doing, it neither destroyed nor weakened itself; it strengthened both itself and the market society. It liberalised democracy while democratising liberalism."<sup>15</sup>

From Macpherson's analysis it is clear that the type of democracy found in a capitalist state is not intended to change but to serve the system upon which it is founded. Democracy in a capitalist society therefore, means democracy of the owners of the means of production because they are the ones who benefit from the system. One could therefore say that in a capitalist society the society is organised in such a way that the achievement of the interests of the majority is impossible. In other words although the form of government may appear democratic, there is no democratic substance in it. Thus, it was correctly observed by Lenin,

"In a capitalist society, under conditions most favourable for its development, we have in the democratic republic more or less complete democracy. But this democracy is always ~~NE~~ squeezed within the narrow limits of capitalist exploitation, and there always remains essentially a democracy for the minority, only for the possessing classes, only for the rich. Freedom in capitalist society always remains approximately what it was in the ancient Greek republics, freedom for slave owners. Owing to the conditions of capitalist exploitation, the wage slaves of our time remain so crushed by need and poverty that they have no time for democracy, no time for politics."<sup>16</sup>

What Lenin said at the beginning of this century is very much true today. The poor people are usually so busy trying to earn a living that they have no time for politics. This fact is ignored by liberal writers like Dahl and Sartori (Supra) who attribute the apathy of the masses of the people to inherent

ignorance. With the apathy of the masses, prevailing, the bourgeois class is left to dominate both in economic and political fields. Under these circumstances the elected "representatives" usually come from the propertied bourgeoisie which will naturally be interested in the maintenance of the status quo.

Lenin summarised the situation as follows: *ment and a society*

"Elections held in such circumstances are lauded by the bourgeoisie, for very good reasons, as being free, equal, democratic and universal. These words are designed to conceal the truth, to conceal the fact that the means of production and political power remain in the hands of the exploiters, and that therefore real freedom and equality for the exploited, that is, for the vast majority of the population, are out of question. It is profitable and indispensable for the bourgeoisie to conceal from the people the bourgeois character of modern democracy ..."<sup>17</sup>

Lenin then rightly dismissed capitalist democracy as a dictatorship of the bourgeoisie. He correctly argued that for a true democracy to come into existence, the capitalist democracy would have to be reversed.

"The dictatorship of the proletariat alone can emancipate humanity from the oppression of capital, from lies, falsehood and hypocrisy of the rich ... that is, make the blessings of democracy really accessible to the workers and poor peasants."<sup>18</sup>

The dictatorship of the proletariat would therefore necessarily amount to a complete overhaul of the capitalist society. This is the fear expressed by Dahl and Sartori (Supra) when they say that the involvement of the masses in the political process would result to chaos. For the bourgeoisie it would be chaos because the system of the ownership of the means of production would have to be reorganised to cater for the interests of the majority. It is submitted here that for this to be achieved the private ownership of the means of production would have to be replaced by communal ownership, so that there would be no classes based on private ownership of the means of production. Once the conflicting classes are removed, it would be possible to have a system of government which would possibly cater for the interests of the majority of the people, if not all the people. It is this kind of society (classless society) which we have referred to as the democratic base. This might all sound very idealistic. But we should remember that before Western Capitalism was imposed on us most African societies were largely communal in nature. There was no private ownership of the means of

production - the land, and consequently there were no conflicting classes. In those societies the interests of the majority of the people were easy to achieve. Therefore our argument above should not sound as though it is very far fetched. It is still very possible to have a government and a society which caters for the interests of the majority of the people.

We also argued that if the structure is to be maintained, there must be such conditions as are conducive and not inconsistent with the realization of the true end of government as above stated. We specified these conditions as three categories. These are the democratic base, the economic content, in other words shall be guaranteeing the organization of the people's society and ensuring the consent to which it can be said to offer an atmosphere in which the objectives of democracy can be achieved. My argument will be that a society can not offer an atmosphere favourable to the realization of the interests of the people or at least the majority of the people, then such a society or government should be said to be undemocratic even though its form of being may appear to be democratic.

We shall begin by examining the colonial history of Africa so that we can be in a position to appreciate and understand our present day situation. As Colin Leys has put it

"... is a neo-colony, politics must be primarily understood in terms of the interests of economic and social forces externally generated by colonialism; otherwise it remains vitally uninteresting."

Our study should will discuss the fact that Colonialism is a term brought about and covers the majority of the African people, that is, the indigenous people. However for the benefit of the few readers who may wish to dispute the above stated fact, we shall give a brief outline of the colonial economic history of Africa.

Colonization of Africa began in 1807 when Britain declared a protectorate over what was then known as British East Africa protectorate. This area was considered suitable for white settlement. Therefore, after the completion of

CHAPTER TWO

In chapter one of this paper we argued that democracy is not an end in itself but a means to an end, the end being the common good of all the people or at least the majority of them. We also argued that if true democracy is to be realised, there must be such conditions as are conducive and not inconsistent with the realisation of the true end of democracy as above stated. We classified these conditions into three categories. These are the democratic base, the democratic content. In other words we shall be analysing the organisation of the Kenya Society and examine the extent to which it can be said to offer an atmosphere in which the true ends of democracy can be achieved. Our argument will be that if a society does not offer an atmosphere favourable to the realisation of the interests of the people or at least the majority of the people, then such a society or government cannot be said to be democratic even though its form of doing things may appear democratic.

We shall begin by examining the colonial history of Kenya so that we may be in a position to appreciate and understand her present day situation. As Colin Leys has put it

"... in a neo-colony, politics must be primarily understood in terms of the interplay of economic and social forces originally generated by colonialism; otherwise it remains ultimately mysterious."<sup>1</sup>

Not many people will dispute the fact that Colonialism in Kenya brought chaos and poverty among the majority of the African people, that is, the indigenous people. However for the benefit of the few sceptics who may want to dispute the above stated fact, we shall give a brief outline of the colonial economic history of Kenya.

Colonisation of Kenya began in 1895 when Britain declared a protectorate over what was then known as British East Africa protectorate. This area was considered as suitable for white settlement. Therefore, after the completion of

the Uganda Railway in 1901 it was considered necessary to encourage white settlement and farming in the protectorate so as to make the railway pay.

Once the decision to encourage white settlement and farming was taken, certain legal and policy implications followed. For example the protectorate authorities would have to ensure that they had the necessary legal power to grant land to the settlers and on sufficiently attractive terms. It should also be realised that at this time the would-be settlers were not likely to have the necessary ability and capital to farm their large holdings effectively. The administration therefore had to provide both labour and in some cases capital if they were to expect a good response from the would be settlers. The policy of white settlement therefore meant that a generous portion of the protectorate's land had to be alienated to the settlers resulting in loss of the same lands by the indigenous people. If a particular area was found to be suitable to white settlement that was to be alienated regardless of repercussions to the indigenous people. <sup>2</sup> It was also decided that the Africans had to be made to work for the white settlers. How this was done, and its consequences on the Africans will be looked at later.

For governmental purposes the Indian Land Acquisition Act of 1894 was extended to cover the protectorate. This Act allowed administration to acquire land compulsorily for the construction of the Railway, for government buildings and for other public purposes. <sup>3</sup> For the purpose of providing land to settlers the colonial administration promulgated the Land Regulations of 1897. By these regulations the protectorate's commissioner was empowered to sell freehold of crown land, not being KNE the private property of the Sultan of Zanzibar. This power was confined to the sultan's dominions. <sup>4</sup> In the rest of the protectorate, the commissioner could offer certificates of occupancy, valid for 99 years. <sup>5</sup>

However the right of occupancy only, proved unpopular to the prospective settlers and in 1901 the East African (Lands) Order-in-council was promulgated. This order-in-council vested Crown Lands in the whole of the protectorate in the Commissioner in trust for Her Majesty. The commissioner was empowered to make grants or leases of Crown

Lands on such terms and conditions as he might think fit, subject to the directions of the secretary of State in England. Crown lands were defined as "all public lands within the East Africa Protectorate which for the time are subject to the control of Her Majesty's by virtue of any treaty, convention, Agreement or of Her Majesty's Protectorate, and all lands which have been or may hereafter be acquired by Her Majesty under the Land Acquisition Act 1894 or otherwise howsoever."<sup>6</sup>

In 1902 the Commissioner promulgated the Crown Lands Ordinance which provided for outright sales of land and leases of 99 years duration. The rights and requirements of Africans to which regard was to be paid in dealing with crown lands were seen in terms of actual occupation only. When land was no longer occupied by Africans it could be sold or leased as if it were waste and unoccupied land.<sup>7</sup> To complete the claim of sovereignty over the protectorate, the Crown Lands Ordinance of 1915 was promulgated. This ordinance redefined crown lands so as to include land occupied by the so called native tribes, and land reserved by the Governor for the use and support of the members of the native tribes. The native tribes or a member of such tribes had no power to alienate such reserved lands or any part thereof.<sup>8</sup> Thus, not only did the protectorate government now have control of all the land occupied by the Africans, but also that it was now clear that the African people were completely deprived of all the rights over the land which was traditionally theirs. Furthermore land reserved for their use could be cancelled and alienated to the settlers when occasion demanded. This means that by 1915 the disinheritance of the African people was complete. This ordinance had the more far reaching consequences on the African people than any other colonial legislation. It should be realised that at this period land was the sole means of production both for the settlers and the Africans. Therefore the 1915 ordinance openly and clearly declared that it was the prerogative of the colonial government to decide who should own the means of production. Whoever had the land had the most important asset in the protectorate. Thus by 1915 the dual policy of colonial agrarian economy can be said

to have been inaugurated. On one hand there was the policy to provide land to the white settlers and at favourable terms while on the other the African people had to be confined to specific areas in order to give way to European settlement and agriculture. For example the Native Authority Ordinance, 1912 provided that an administrative officer who found a member of a tribe for whom land had been reserved cultivating unalienated crown land outside the reserved land might order him back to his tribe's reserved area.

Hand in hand with the policy of European settlement was the question of labour. While the European settlers were considered to be the agents of economic development they were never intended to soil their hands as other white settlers had done in other colonies. One of the most important administrators in the protectorate summed up the opinion of the day as follows:

"White people can live here and will, not ... as colonists performing manual labour, as in Canada or New Zealand, but as planters etc; overseeing natives doing the work of development."<sup>9</sup>

Therefore while the white settlers were seen as the agents of colonial economic development, the actual work was to be done by the African people, who were seen as mere tools, their role being to provide cheap labour for sale on European farms. But the African people initially saw no reason to go to work on European farms, their tribal economic organisations being sufficient to cater for their needs. This fact had deceived the settlers to think that the African did not want to work for them because they were living under very easy conditions and therefore were lazy

"The natives live under such easy natural conditions that there is little in these conditions to induce them to overcome the natural tendency of the African to avoid manual labour."<sup>10</sup>

It was therefore advocated from the very beginning that the protectorate administration should apply legislative, administrative and financial pressure on the African people in order to induce them to go to work for the white settlers.<sup>11</sup> Therefore as early as 1901 a Hut Tax was imposed as a financial inducement to the Africans to go out and work for the white

settlers. In 1906 a Master and Servant ordinance<sup>12</sup> was promulgated imposing penalties of imprisonment or fine for negligent work, on those Africans who were working for the Europeans. Administrative pressure was spasmodically imposed by the use of administrative officers and village headmen as recruiting agents. However what actually forced many Africans to go out of the reserves and work for the settlers was population pressure in the reserves. The reserves were regarded as the major source of cheap labour and therefore the conditions had to be made as tough as possible so that the young men could go out to work.

"It stands to reason that the more prosperous and contented is the population of the reserve the less the need or inclination of the young men of the tribe to go out into the field. From the farmers point of view, the ideal reserve is a recruiting ground for labour, a place from which the able bodied go out to work returning occasionally to rest and beget the next generation of labour."<sup>13</sup>

Thus the Africans were compelled to work for the settlers partly by force, partly by taxation and mainly by preventing them from having access to enough land or profitable cash crops to enable them pay taxes without working for wages. By depriving them of the land the administration transformed the majority of the Africans from being owners of the only means of production to labourers whose only asset was their labour power. To earn their living they had to sell their labour to the settlers for which they had to accept any price offered. What M.A. Buxton wrote in 1927 was an echo of what the protectorate's first commissioner, Charles Eliot, had said in a confidential report in 1904. He wrote as follows:

"Your lordship has opened this protectorate to white immigration and colonisation, and I think it well that in a confidential correspondence at least, we should face the undoubted issue ... There can be no doubt that the Masai and many other tribes must go under. It is a prospect I view with equanimity and a clear conscience."<sup>14</sup>

Thus, although it was publicly proclaimed by the colonial government that whatever they were doing was in the interests of humanity and civilisation, there was no doubt in the colonisers that the whole project was in the best interests of their own race and that if these interests were to be

realised, the interests of the African people had to be suppressed and where necessary, extinguished. Thus a highly elaborate system of economic discrimination was evolved whereby Africans paid the bulk of taxation while the Europeans received virtually the entire benefit of government services e.g. railways, roads, schools, hospitals etc. in addition to being subsidised through the customs tariff and having privileged access to profitable markets.<sup>15</sup> For example in 1926 Africans paid 60% of the total taxation in Kenya according to official estimates.<sup>16</sup>

As a result of the distortion of the economic structure, African production which had accounted for 70% of exports between 1912-1913 dropped to less than 20% in 1925 and later declined to subsistence farming to support their increasing population.<sup>17</sup> This decline on the part of the African people is not difficult to explain. By mid 1920s more than half of the able bodied men in the largest agricultural tribes, Kikuyu and Luo were estimated to be working for Europeans.<sup>18</sup>

Few people then would disagree with the contention that the colonial political-economy was organised in such a way that it benefited the Europeans at the expense of the African people. The colonial history of Kenya is therefore a history of the ascendance of the Europeans settlers and the decline of the African people. To put it in Marxian terminology it is the history of the formation and entrenchment of capitalism. For a clear understanding of post independence Kenya political-economy we shall therefore examine what attempts were made during the period of transition to and after Independence to transform the economy to suit the interests of the African people.

From 1940 onwards the colonial government seems to have began realising that a wind of change was blowing over the colony. This was mainly as a result of agitations by the Africans. Before this period Africans were not allowed to have an african representative in the then Legislative council (Leg'co). They were usually represented by a white officer known as the native commissioner. However in 1944 the first african was allowed to sit in the Legislative Council.<sup>19</sup> From that time onwards there was a steady increase of Africans on the Legislative council. At the same time there was a

change of attitude towards the African Reserves. Prior to this period reserves were seen primarily as sources of cheap labour. By in the 1940s labour for the settlers was not a problem. Infact there were far too many resident labourers on the European farms. The policy was therefore geared towards finding ways and means of pushing the excess squatters out of the settlers farms and back to the reserves. Also, owing to the experience of the interwar period the government began to see the reserves as essential productive units. If their production potential was to be realised, the administration would have to adopt laws and policies accordingly.

"The main thrust of the action taken was to attempt to Europeanise the African agrarian economy by increasing the growing of cash crops, providing a controlled marketing system, taking action against bad land use, and finally by beginning a tenurial revolution through the consolidation and registration of land-holding under a modern system of law."<sup>20</sup>

It was argued that there was enough land in the Reserves and that the problem was that of bad land use. It should be noted that, by this argument the African people's claim over their stolen lands was by strong implication rejected. From this period onwards there was a shift in emphasis from land ownership to land use. It had always been argued that African land tenure system was unsuitable for modern economic farming, it being being very much communal in nature. It was therefore thought that a revolution in the African tenure system would solve the problems of the African people. It was anticipated that after the system of private ownership of land had been introduced, those who might not get their own pieces of land would later be absolved as labourers by those who would be lucky to acquire private holdings. Furthermore it was argued that landlessness was a normal step in the development of a country. Mr Synnerton, the mastermind of the plan put it as follows:

"Former government policy will be reversed and able, energetic or rich africans will be able to acquire land and bad or poor farmers less, creating a landed and a landless class. This is a normal step in the evolution of a country."<sup>21</sup>

As Mobuddin has put it, what Mr Synnerton was recommending was a creation of a capitalist society in which mobility

upwards would depend on the possession and the use of private property - in this case and at this stage - agricultural land. This would result in the formation of a class of African landed gentry with vested interests in the economic system and thus reliable supporters of the colonial regime.<sup>22</sup> Therefore, what is apparent about the Synnerton plan is that it was not a genuine attempt to solve the problems of the African people. What was really intended was to create an atmosphere of political stability which would ensure the security of European investments in Kenya.

"In the long term the greatest gain from the participation of the African community in running its own agricultural industries will be a politically contented and stable community."<sup>23</sup>

The same political objective of the Synnerton plan was emphasised by C.M. Johnston who was the special commissioner for Central Province, when he said in 1955:

"We have embarked on what amounts to an agrarian revolution in Kikuyu, Embu, and Meru Districts ... I would say that the job need not be a dull one, and it will have the effect of creating a solid middle class Kikuyu population anchored to the land who has too much to lose by reviving the Mau Mau in another form; therefore as citizens of Kenya it should have an appeal."<sup>24</sup>

In fact a landed African class was already in the making. This consisted of chiefs, headmen and teachers who had begun to acquire land through private sales as early as 1940.

Thus in 1941 the Kiambu District commissioner reported that

"hundreds, possibly even thousands of acres have changed hands by irredeemable sale during the past ten or fifteen years and most of this has gone into the hands of a very few people, including chiefs, tribunal elders, and the educated minority."<sup>25</sup>

Thus Mr. R.J.M. Synnerton could assert with some confidence that his plan's success would ultimately depend on the progressive African farmers, that is, those whom Sir Phillip Mitche<sup>11</sup> had referred to as "the substantial and growing body of Africans who must be distinguished from the backward masses of the ignorant tribesmen."<sup>26</sup> The Synnerton plan therefore simply confirmed and consolidated their position as land owners while it also confirmed the landlessness of many others.

Realising the class divisions that were emerging among the Africans, a group of settlers under the leadership of Michael Bhindell began to advocate a multi-racial form of government where farmers of all races could be able to work together as good neighbours. This meant not only provision for increased African representation in the Legislative Council but also gestures intended to improve racial relations. There was therefore the discussion of the possibility of ending racial exclusiveness of the white highlands and allowing qualified African farmers to purchase farms there.<sup>27</sup> Thus, the New Kenya Group under the leadership of Michael Blundell analysed the problems in the Kenya Colony just before independence, as follows:

"The inherent problem of Kenya lies in the wide gulf between the living and the cultural standards of the well-to-do and those of the poorer majority, but this is magnified into a racial problem by the fact that in our country racial and economic differences lie together. The only solution in our view is vigorously to tackle the basic problem of low living standards so that there may rapidly emerge from the poorer majority people having similar interests and similar ideals to those economically more advanced. To this end, we advocate the allocation of considerable financial resources to enable such people to be trained and where deserving financed for entry into the fields of commerce, industry and improved farming as well as into professions."<sup>28</sup>

In fact, by the time independence was granted, most of the African politicians had accepted their role as guardians of the colonial economy whose continuation meant the continuation of the exploitation and oppression of the majority of the African people. At this time

"the basic issues were the form of government independent Kenya should assume, and the rate and style of africanising the economy. It was simply a question of the Africans taking over the existing system and not that of changing it."<sup>29</sup>

It is in this light that one should understand the words of Kenyatta when in 1962 he tried to assure the European and other immigrant races that there was no cause for alarm because their property, however acquired, would not be interfered with by the African government. He said that

"KANU will recognise and respect rights in private

property. As I have often stated the African people are not robbers ... We go to London not only to bring independence to our country but to bring peace and brother-hood among its peoples. We desire to to bring love where there was hatred, peace where there was violence and confidence where there was suspicion ..."30

In essence what Kenyatta was saying is that the future African government did not intend to introduce a different system in the relationship of the ownership of the means of production. Rather than try to change the system the small class of Africans who were now in influential positions simply joined hands with the white community and the Asian community as partners in progress in Independent Kenya. To confirm this position section 75 of Kenya's Independence Constitution was firmly entrenched, ordaining the sanctity of private property. It should be noted that although many other forms of property have come into being, land remains the most important asset owing mainly to the fact that Kenya is an agricultural country. Unfortunately the government land policy remains what it was at the time of independence, namely willing buyer willing seller policy. Furthermore there is no limit as to how much property any one individual can accumulate. This has resulted in a situation where the rich continue to be richer while the poor become poorer.

One could therefore conclude that the capitalist order which was initiated under the colonial government was confirmed at the time of independence and today remains the mainstay of Kenya's political-economy. Like all capitalist systems ours caters for the interests of the minority while the greatest majority of the African people continue to live under miserable conditions with little hope of a better future.

Therefore, to the question whether Kenya's political economy offers a favourable atmosphere in which the interests of the majority of the people can be realised, the answer is unfortunately a negative one.

To use its political cover to suppress radical opposition and criticisms from the members of Parliament. In this respect we shall also consider the position of the ruling party KANU in the political process. In effect therefore, we shall be analysing the relationship between the Executive and the Legislature. Our thesis here is that whatever are the rules governing the relationship

## CHAPTER THREE

### THE ROLE OF THE LEGISLATURE

It is obviously impossible for all the people in a modern state to govern themselves directly. The possible way through which the people are said to govern themselves is a representative government. In Kenya the people are supposed to elect their representatives who are supposed to represent them in the National Assembly. The National Assembly and the President make the Parliament whose main functions are supposed to be (a) the making of laws, (b) controlling of public finance (c) criticising of the Government and requiring it to account for its actions. It is in this respect that the people are said to rule themselves indirectly. If the Parliament is to carry out these onerous tasks effectively it would be vital to guarantee each individual member of parliament maximum freedom and protection from interference by the Executive whom they are supposed to criticise and hold accountable. It is in recognition of this fact that certain fundamental rights have been provided for in the Constitution. Also to ensure the protection of the MPs the National Assembly (Powers and Privileges) Act provides that no civil or criminal proceedings should be instituted against any member for words spoken before or written in a report to the Assembly. This guarantee is provided by section 3 of that Act. The purpose of this chapter is to try and find out whether, as a matter of fact, the Members of Parliament are guaranteed this protection which is so vital to them. It is only by being guaranteed protection from the executive power that the Members of Parliament can freely and without fear, be able to criticise and hold the Government accountable to the Parliament. We shall therefore analyse the various ways in which the executive has tried to use its political power to suppress radical opposition and criticisms from the Members of Parliament. In this respect we shall also consider the position of the ruling party KANU in the political process. In effect therefore, we shall be analysing the relationship between the Executive and the Legislature. Our thesis here is that whatever are the rules governing the relationship

between the Executive and the Legislature, the Legislature has proved to be of little use as far as controlling and regulating the activities of the Executive is concerned. But it should be noted here that the Executive is also comprised of some elected Members of Parliament. The President and his Cabinet Ministers are all Members of Parliament. Therefore for the sake of clarity we shall refer to the Executive not in their capacity as elected members but as comprising the whole of Government. We shall here divorce them from their role as elected representatives. We shall be arguing that the people cannot be said to be ruling themselves through their elected members, that is, the Parliament, however indirectly. To prove our case we shall try to illustrate this contention by citing critical instances when instead of being the watchdogs for the electorate, the MPs have been at the mercy and goodwill of the Executive.

Sections 100 and 101 of the Kenya Constitution require that before any money is withdrawn from the Consolidated Fund, the Government must be duly authorised to do so by Parliament. In June 1964, in spite of this constitutional requirement the Government without the due authority of the Parliament drew moneys out of the Consolidated Fund.<sup>1</sup> In reaction to this, all that Parliament did was to register verbal disapproval of what the Government had done. Considering the seriousness of the constitutional breach, the verbal reaction of the parliament can only be seen as a manifestation of weakness on the part of the parliament. But what else could the parliament have done?

One of the things that Parliament can do when it is completely dissatisfied with the actions of the Government is to remove it from office by passing a vote of no-confidence. The constitution closely defines the procedure for bringing about a vote of no-confidence. First of all the resolution is required to be supported the votes of a majority of all the members of the National Assembly, excluding the ex officio members.<sup>2</sup> Secondly, such a resolution may not be brought in parliament unless seven days' notice of the intention to do so has been given:<sup>3</sup> Where those conditions are satisfied, the president is required within three days of the passing of

the resolution either to resign from his office or to dissolve the Parliament. If the President fails to resign and does not dissolve the parliament, the parliament will automatically stand dissolved on the fourth day after the passing of the no-confidence vote.

Kenya being a one party state, it would serve no purpose for the parliament to pass a no confidence vote because there would be no other political party which would provide an alternative government. To pass the vote would simply amount to asking the present KANU government to go out and seek a new popular mandate from the people. The above constitutional provision is based on the assumption that there is an organised shadow government in parliament ready to take over from the KANU Government any time. However this is far from being the case in Kenya. It therefore seems clear that the provision requiring that the President should resign where Parliament passes a vote of no confidence in his government has little merit in our present Kenya situation. This fact is strengthened by the fact that the President being also the party president has a close control over the party which in turn has a close control over parliamentary candidature. By virtue of that control it is unlikely that the parliament would wish to pass a vote of no confidence in the president's government. At any rate it would be very difficult to master the high vote required for such a resolution.<sup>4</sup> The seven-day notice required before such a resolution is brought in parliament makes it all the more inconvenient for the Members of parliament to take that course of action.

"The possible invocation of party discipline within the period of notice would probably discourage any M.P who thinks of bringing a motion of no confidence in the Government."<sup>5</sup>

Furthermore the President may refuse to resign and instead dissolve the parliament in which case the members of parliament would be required to contest in an election. Because every candidate for parliamentary elections is required to be sponsored by KANU which is the only party, the President and his Government would take this opportunity to discipline the rebels by refusing to sponsor them as candidates.<sup>6</sup> One

could therefore conclude that a vote of no confidence is not likely to be a useful device by which the Parliament could control the executive.

So far we have proceeded on the presumption that the members of Parliament are free to do what they deem right when carrying out what they think to be the desires of the electorate. We shall now examine the protection that is accorded to the members of parliament from interference by the executive. It should be noted that the executive commands all the coercive resources of the state e.g. prisons, detention camps, police etc. In view of this fact it is necessary for the parliament to have certain immunities against the executive power if it is to carry out its functions freely. Section 57 of the Kenya Constitution provides that parliament may, for the purpose of orderly and effective discharge of the business of the National Assembly, provide for the powers, privileges and immunities of the Assembly and its committees and members. Pursuant to that provision, Parliament enacted the National Assembly (Powers and Privileges) Act, section 3 of which provides that,

"No civil or criminal proceedings shall be instituted against any member for words spoken before or written in a report to, the Assembly ..."

It is clear that the Members of Parliament are protected against civil and criminal charges for what they may do or speak in Parliament. However it is not equally clear whether they are protected from the executive powers conferred by the Preservation of Public Security Act which Act allows for detentions of persons in certain circumstances.<sup>7</sup> Because the privileges are intended for the protection of the members of parliament from the executive power it can be argued that the privileges should also protect them from the powers of the executive under the Preservation of Public Security Act. If this were not the case the whole purpose of parliamentary privileges and immunity would be defeated. However from past experience it is apparent that the Members of Parliament have little protection from the executive power. This is illustrated by the cases of Shikuku, Seroney and Anyona. In October 1975, Mr Martin Shikuku who was and still is

the MP for Butere constituency alleged in Parliament that KANU was dead. One of the Assistant Ministers requested the then Deputy Speaker Mr Seroney who was in the chair to require the honourable M.P. to substantiate. The Deputy Speaker replied that one could not be required to substantiate what was obvious. In other words he also agreed with Mr Shikuku's allegation that KANU was dead. Subsequent to this incident the two Members of parliament were picked up from Parliament buildings by security men and were detained under the Preservation of Public Security Act.<sup>8</sup> Under similar circumstances Mr George Anyona who in 1977 was the MP for Kitutu East constituency was picked up from Parliament buildings by security officers on 14th May, 1977. It was speculated that his detention was prompted by certain remarks which he had made in Parliament about some prominent Kenyans—namely, the then Attorney General, Mr Charles Njonjo, Mr Omolo Okelo (who was then a cabinet minister) and Mr Bruce Mackenzie (a one time minister for Agriculture).<sup>9</sup> The fact that these men were all picked up from the Parliament buildings is a clear indication that Parliamentary privileges were being disregarded by the executive. One can easily imagine the impact of these detentions on the other Members of Parliament. The Weekly Review afterwards reported thus:

"As Kenya's Parliamentarians went back to business last week after five weeks of recess, the mood among many backbenchers seemed to be one of caution with respect to controversial issues."<sup>10</sup>

Thus, the impact of these detentions has been to discourage the Members of Parliament from expressing freely, their views in Parliament, on issues that might affect the people whom they are supposed to represent. What is noteworthy about the detentions of these men is that none of them could be said to have done anything that could reasonably be interpreted to amount to a threat of Public Security. It would therefore appear that whether a situation requires the enforcement of the Preservation of Public Security Act is for the President to determine. This places the executive in a very powerful position over the Members of Parliament. One might wish to argue that the current President is not the type who would detain people because he released all those who had

been detained by the late President, Mzee Jomo Kenyatta. But even he himself has made it very clear that he will not **hesitate to detain** those who might prove a headache to him. He is reported to have said,

"... I will brook no nonsense. Memories may be short but every **mwana**chi vividly remembers that place-Manyani."<sup>11</sup>

#### THE ROLE OF THE PARTY, KANU

One of the ways of controlling the Parliament by the executive is through the party machinery. It must be remembered here that a parliamentary candidate requires the blessings of a political party before he can qualify to contest elections.<sup>1</sup> On the other hand the party can at anytime withdraw its support of a candidate even after he has been elected a member of parliament.<sup>13</sup> Because of this strong party position issues discussed in Parliament are often twisted by the executive so that those who are against a Government motion are made to appear as though they are opposing the president and the party. Consequently they are regarded as being disloyal to the party whose sponsorship has enabled them to be in Parliament. A good example of such misuse of the party by the executive is the debate on the select Committee's Final Report on the murder of J.M. Kariuki. On March 2, 1975 the then member of Parliament for Nyandarua North Constituency was murdered under very mysterious circumstances. The manner in which the Government and even the press handled the matter left a lot to be desired. On March 14, 1975 Parliament appointed a select committee to study the circumstances leading to the death. The committee finalised and tabled its report in Parliament on June 3, 1975, after holding a total of 46 sittings in the course of which 123 witnesses were interviewed.<sup>14</sup> The report implicated the police network as well as other public figures in the Government. The National Assembly adopted a motion calling on the Government to discontinue the services of the officials implicated in the report and to bring criminal charges against them.<sup>15</sup> Of course the Government simply ignored the report and till this day, July, 1980, nothing has ever been done about it. However, what is important for the purpose of our discussion is the manner in

which the debate on that report was treated by the executive. The House was divided into two groups, one of which supported the then Attorney General, Mr Charles Njonjo and the other supporting the findings and recommendations of the report as chaired by Elijah Mwangale. The issue of who killed J.M Kariuki had nothing to do with the ruling party, KANU. But at the end of the debate those who supported the findings and the recommendations of the Committee came to be regarded as disloyal not only to the Government but also to the party, KANU. As a result of the debate Masinde Muliro, a cabinet minister, and his Assistant minister, John Keen and another Assistant Minister, Peter Kibisu lost their jobs and became back benchers. One realises that Government policies are usually also the Party policies. Therefore an M.P who criticises Government policies will also be seen as opposing the party. This, the M.Ps can do only at the risk of being expelled from the party.<sup>16</sup> We have already noted the importance of the party in determining the candidature and tenure of a Member of Parliament. Therefore most of the ~~KANU~~ MPs will want to keep out of such controversial issues as the one discussed above. It is submitted here that by placing the M.Ps at the mercy of the Party which is as a matter of fact an arm of the executive, the parliament, has been reduced to a mere rubber stamp institution. Thus, Mr J.B. Ojwang has rightly observed.

"In Kenya's one-party political situation today, and by virtue of certain constitutional provisions which have formally elevated party dictates to the status of constitutional norm, the national executive - which is also the party executive - is so placed as to be able to demand and rely on receiving the loyalty of Parliament."<sup>17</sup>

Before concluding our discussion we shall now examine a few recent incidences which go a long way into confirming Mr Ojwang's observation.

During last year's General Elections (1979) Mr Oginga, Odinga, Mr Ochieng Oneko and other ex-KPU leaders were barred from contesting the elections on the ground that they had sued the ruling party KANU.<sup>18</sup> But as a matter of fact the suit was not directed against KANU. This was explained by Mr Ochieng Oneko.

"We have filed a suit against Mr Matano as an individual, Mr Henry Gathigira, Editor-in-Chief of The Standard and the paper for respectively making and publishing a standerous and damaging statement."

He continued to explain

"The question of KANU does not come in at all and the reason for dragging the party into the whole picture is only known to the people concerned."

Similary Mr George Anyona was barred from contesting in the elections and his case was dismissed by the High Court.

Commenting on Anyona's case the President left no doubt that KANU's ruling was final and cannot be challenged in a court of law.

"The ruling party, KANU is supreme and no one should challenge it in a court of law."

If what the president said is true then it means that the party is at liberty to do anything without anybody holding it accountable. It means that the party can expell a member of Parliament from the party at will. Because the executive controls the party it means that the M.Ps must always watch out what they say even while in Parliament.

It is therefore submitted that under the present institutional framework, the Parliament which is supposed to be the institution through which the people rule themselves, does not serve the purpose for which it was originally intended.

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CONCLUSION

Kenya has a reputation for being one of the most democratic countries in black Africa. The purpose of this paper has been to examine the nature of democracy that is practised in Kenya. We have approached the discussion in three ways.

In chapter one we tried to discuss generally the concept of democracy. We noted that the term democracy is usually used in an ideological context so that for different people in different places the term may be used to serve certain ends. We saw that the Western liberal democrats emphasise the form of government so that democracy is seen as an institutional arrangement for arriving at political decisions. In other words democracy is a political process for arriving at decisions. On the other hand the Socialists will emphasise the ends served by the political process. For them as long as the political process does not help in the realisation of the interests of the majority of the people, it cannot qualify as a democracy.

For the purpose of our discussion we have adopted a middle course. We have argued that both the form of government and the ends achieved through that form of government are important in determining whether a country is democratic or not.

We have argued that for true democracy to be realised both the society and the form of government must be organised in such a way that it is conducive to the realisation of the interest all the people or at least the majority of the people. It is from that premise that we have tried to analyse the situation in Kenya. We have done this in two ways. First of all we have examined the political economy of the country and secondly we have considered the political organisation.

In our examination of the political economy we gave special emphasis to the colonial economy which we endeavored to show that there was little if any drastic changes at the time when Kenya got her independence in 1963. Our thesis on this issue is that since the colonial economy was all to the detriment of the majority of the people, the Africans, and since this political economy was adopted almost wholesale by the Independent Kenya government, the conditions are such that our economy is not

conducive to the realisation of the interests of the majority of the people. In other words there is no socio-economic base which is very necessary for a true democracy.

In chapter three we have concentrated on the form of government that is found in our country. We have especially considered the relationship between the executive and the legislature. In theory the people are said to rule themselves through their elected members. Therefore these members (elected) ought to have maximum freedom to express their views on all matters that may affect the people. In essence the members who comprise the legislature are supposed to control and demand that the government should do or refrain from doing certain things. This function of the legislature is based on the assumption that the legislature is in a such a strong position as to be able to control the activities of the executive. However our examination has revealed that the reverse is the case. Instead of the legislature being able to control the executive, we have found that the legislature is often at the mercy of the executive. This situation is perpetuated by the Preservation of Public Security Act and the ruling Party KANU both of which are instruments in the hands of the executive and which can be and have often been used to the detriment of the Members of Parliament. The executive is therefore free to do almost anything that it deems necessary. Under this circumstances it would be very difficult to justify the assumption that the people rule themselves through their elected members.

Through the whole discussion we have left no doubt that we have adopted Abraham Lincoln's definition of democracy, namely, a government of the people by the people and for the people. Our finding is that the situation in Kenya does not meet any of those requirements. Although the institutional framework appears to cater for democratic practice, the substance of the rules and the socio-economic organisation is not conducive to the realisation of a true democracy.

CHAPTER ONEFOOTNOTES

- 1) Herbert Aptheker, *Marxism and democracy*, 1965. Humanitarian Press, New York. p. 1
- 2) *Ibid.*, p. 1
- 3) *Ibid.*, p. 1-2
- 4) *Supra.* p. 2
- 5) James Bryce, *Modern Democracies*, Vol. 1, Macmillan and Co. Ltd, 1921, p. 23
- 6) Joseph Schumpeter, *Capitalism, Socialism and Democracy*, (1952) 4th Ed. p. 250
- 7) *Ibid.*, p. 269
- 8) R.A. Dahl, (1956), *A Preface to democratic theory*, University of Chicago Press, chapter 33.
- 9) Sartori, G. 1962, *Democratic theory*, Wayne State University Press, p. 54
- 10) Joseph Schumpeter, *Supra*, p. 269.
- 11) *Ibid* at p. 262
- 12) Herbert Aptheker, *Marxism and Democracy*, 1965, Humanities Press, New York at p. 3.
- 13) C.B. Macpherson, *The Real world of Democracy*, University Press at p. 42
- 14) *Ibid* p. 47-48
- 15) C.B. Macpherson, *Supra*, p. 10-11
- 16) ~~LENIN~~
- 16) Lenin, *State and Revolution*, chapter 5, section 2, paragraphs 8-10
- 17) Lenin, *On the Dictatorship of the proletariat*, Progress Publishers, Moscow, 1976, at p. 155-156
- 18) *Ibid*; at p. 157
- 19) No. 8 of 1965
- 20) W.A. Dexter, *Kenya Days*, London 1927, p. 10 quoted in *Kenya*, Chilver and Smith, *History of East Africa*, vol. II p. 246
- 21) Quoted by Wolff R.D. at p. 60
- 22) W.A. Brett, *Colonialism and underdevelopment in East Africa*, S.E.A. p. 20 chapter 6.
- 23) See *Proprietorship in Kenya 1925-1937*, Department of Statistics, *Kenya*, British East Africa.
- 24) C.C. ... *Kenya: A history of economic life*, in

FOOTNOTES TO CHAPTER TWO

- 1 Colin Leys, *Underdevelopment in Kenya*, H.E.B. Paperback p. 252.
- 2 In this way the Masai people were moved from one place to another depending on the interests of the settlers. In 1904 they were moved from central Rift valley to Laikipia from where they were subsequently moved to a dry area near Ngong south of Nairobi.
- 33 One wonders whether the colonial administration or any other administration had the competence to make or extend any law, thus affecting the indigenous people of the protectorate.
- 4 The ten mile Coastal Strip of Kenya was then part of the Sultan's dominions.
- 5 Sections 1 and 10 of the Land Regulations 1897.
- 6 East Africa (Lands) Order-in-council, section 1.
- 7 This ordinance must have deprived many Africans of their land considering the fact that many of them were and still are pastoral people while many others practiced shifting cultivation. (No. 21 of 1902, Sections 30-31)
- 8 No. 12 of 1915, sections 5, 54 and 56.
- 9 John Ainsworth, *E.A. Quarterly*, 1906, quoted in Wolf R.D., *Britain and Kenya 1870-1930* Yale University Press 1974, p. 54
- 10 R.D. Wolff, *Ibid* p. 99.
- 11 For a detailed account of the colonial labour policy, see the following works: R.D. Wolff, *ibid*, E.A. Brett, *Colonialism and underdevelopment in East Africa*, M. Dilley, *British Policy in Kenya colony*, Norman Leys, *Kenya 1924*, Van Zwanenberg, *Colonial capitalism and Labour in Kenya*.
- 12 No. 8 of 1906
- 13 M.A. Buxton, *Kenya Days*, London 1927 p. 10 quoted in Harlow, Chilver and Smith, *History of East Africa*, vol II p. 246
- 14 Quoted by Wolff R.D. at p. 66.
- 15 E.A. Brett, *Colonialism and Underdevelopment in East Africa*, H.E.B., 1973 chapter 6.
- 16 See Proportionate taxation in Kenya 1925-1927, Department of Statistical Research, British East Africa.
- 17 C.C. Wrigley, *Kenya: Patterns of economic life*, in

- 17 Harlow, Chilver and Smith, *ibid* p. 243
- 18 Norman Leys, *Kenya, 1924* p. 179.
- 19 The African was Eliud Wambu Mathu who by the standards of those days had a good missionary education.
- 20 Y.P. Ghai, *Public Law and Political change in Kenya, O.U.P., 1970* p. 110
- 21 R.J.M. Synnerton, *A plan to intensify the development of Agriculture in Kenya, Government Printers, 1955* at p. 10
- 22 A. Mohiddin, *Notes on the colonial origins of Sessional paper No. 10, 1965* at p. 11
- 23 R.J.M. Synnerton, *ibid* p. 8.
- 24 An address to members of the Kenya Regiment in June 1956, quoted by M.P.K. Sorensen in *Land Reform in the Kikuyu Country, O.U.P. 1967* at p. 118.
- 25 Kiambu District Annual Report, 1941. See also MPK Sorensen, *Counter revolution to Mau Mau: Land consolidation in Kikuyu Country 1952-1960.* at p. 2. This paper is to be found in East Africa Institute of Social Research Papers 1963.
- 26 Phillip Mitchell, *African Afterthoughts 1954.*
- 27 Michael Blundell, *So rough a wind, 1964* p. 84.
- 28 *Challenge to New Kenya, the manifesto of the New Kenya Party launched at the end of 1959.*
- 29 A. Mohiddin, *Notes on the Colonial origins of sessional Paper No. 10 of 1965* at p. 11.
- 30 *East African Standard, 9/2/1962* at p. 12.
- 31 *The Weekly Review, Jan 2, 1975, Daily Nation, June 1, 1975*
- 32 *The Weekly Review, June 10, 1975, Standard, June 9 and 20, 1975*

*Sitting in the Legco as a first African*

FOOTNOTES TO CHAPTER THREE

- 1) Kenya House of Representatives, Official report, vol. 3 pt. 1, June 25, 1964 Cols. 618 ff.
- 2) Constitution, Section 59(3)
- 3) Constitution, Section 59(3)
- 44) The resolution is required to be supported by the majority of all the members of parliament. Section 59(3) Ibid.
- 5) J.B. Ojwang, "Executive Power in Independent Kenya's Constitutional context.", L.L.M. Thesis 1976 at p. 151.
- 6) Section 34(d) of the Constitution requires that every parliamentary candidate must be sponsored by a political party. KANU is the only political party in Kenya and the president of the party is also the Country's president.
- 7) Part III of the Act (s. 4(1)(a)) confers upon the President power to detain persons when he deems it necessary for the preservation of public security. What may amount to a threat of to public security is widely defined and may include virtually anything. It is for the President to determine whether a situation demands the application of this Act.
- 8) The Weekly Review, October 20, 1975.
- 9) The Weekly Review, May 16, 1977.
- 10) The Weekly Review, June 20, 1977 at p. 4
- 11) He was obviously saying that he would not hesitate to send those who opposed him to Manyani which is a notorious detention camp established during the colonial days. On this particular occasion the President was bitter about the fact that some people had challenged a ruling of KANU in a court of law. See the Standard, October 19, 1979.
- 12) Constitution, S. 34(d). In case of Kenya KANU is the only party, in which case the candidates must all obtain KANU's blessings.
- 13) It is not clear whether by virtue of that expulsion the member is required to vacate his parliamentary seat. However by virtue of s.40(1) of the Constitution it is unlikely that the member would be allowed to continue holding his parliamentary seat.
- 14) The Weekly Review, June 9, 1975, Daily Nation, June 4, 1975
- 15) The Weekly Review, June 16, 1975, Target, June 8 and 15, 1975

- 16) The Weekly Review September 29, 1975.
- 17) J.B. Ojwang, note (5) above at (vii)
- 18) The Standard, October 5, 1979, Daily Nation, October 5, 1979.
- 19) Daily Nation, October 6, 1979.
- 20) Sunday Nation, October 20, 1979. It would appear from the President's reaction that the court's ruling would have made little difference even if the High Court had given Anyona a go ahead ruling.

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