THE STATE OF CONSTITUTIONALISM IN UGANDA: 1962-2018

By

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Submitted in fulfilment of the requirements for the Degree of Doctor of Philosophy in Political Studies to be awarded at the Nelson Mandela University

December 2018

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Co-Supervisor: Prof. Gavin Bradshaw
DECLARATION

I, Turyatemba Alex Bashasha, of Registration Number: 214107280, hereby declare that this Thesis for Doctor of Philosophy in Political Studies is my own work, and that, it has not previously been submitted for assessment or completion of any postgraduate qualification to another University or for another qualification.

November 30, 2018

Signature

Date
ABSTRACT

This Thesis examines the state of constitutionalism in Uganda between 1962 and 2018. The central question which it seeks to answer is: ‘why did Ugandan governments persistently fail to adhere to the basic requirements of the doctrine of constitutionalism between 1962 and 2018?’ In answering this question, which has challenged and continues to challenge many academicians, politicians, government officials, researchers and the international community alike, the Thesis adopts the Theory of Neo-patrimonialism as a theoretical lens through which the behaviours of the post-independence presidents of Uganda are examined. The Thesis discovers that, indeed, Neo-patrimonialism is a fundamental framework for analysing and explaining constitutionalism in post-independence Uganda. Against this backdrop, the Thesis concludes that, the collective behaviours of Uganda’s post-independence presidents viewed through the lens of neo-patrimonialism are more fundamental in understanding the failure of democracy and good governance in Uganda than the country’s structural problems of constitutionalism. The originality of the Thesis is in: (a) its being the first comprehensive investigation into why Ugandan governments have persistently failed to adhere to the basic requirements of the doctrine of constitutionalism for the entire period of 56 years (1962-2018) of post-independence Uganda; and (b) its being the first study to apply the Theory of Neo-patrimonialism in explaining the volatile nature and state of constitutionalism in Uganda. The contribution of the Thesis to the existing knowledge lies in its; (a) generation of detailed and well-researched information about the volatility of constitutionalism in Uganda between 1962 and 2018, (b) recommendation of strategies that should be adopted to effectively enhance constititutionalism in Uganda, and (c) authentication of the validity of the claims that despite its shortcomings, Neo-patrimonialism is a Theory which not only continues to define and drive African politics but its application can suitably be used to explain the volatile nature of constitutionalism in post-independence Uganda and the rest of Africa.
DEDICATION

This Thesis is dedicated to my beloved Father, the Late Yoweri Bashasha, and my dear Mother, Joy Nabutoono Bashasha, who longed to see this achievement.
ACKNOWLEDGEMENT

I wish to express my gratitude, appreciation and great admiration to my Promoters: Prof. Gary Prevost, Prof. Joleen Steyn Kotze, and Prof. Gavin Bradshaw. Their consistent and untiring professional guidance and encouragement were very instrumental in helping me to transform this Thesis into its present form. Moreover, apart from guiding me academically, they sourced for me relevant materials for this research. I will forever be grateful for their precious and priceless contribution towards the success of my Doctoral Studies.

My sincere appreciation also goes to the Nelson Mandela University Librarians and other Library staff, for their cooperation, help and understanding, whenever I visited the Library. I wish also to sincerely thank my family, particularly my dear Wife, Scovia Musabye, Sons and Daughters, for their love, support and patience, during the protracted period of absence from home. Lastly, I would like to most sincerely thank the Almighty God for the gift of life and provisions, all of which have enabled me to successfully pursue and complete this Thesis and Ph.D Studies generally. May His Name be glorified always!

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<tr>
<td>CA</td>
<td>Constituent Assembly</td>
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<tr>
<td>CAO</td>
<td>Chief Administrative Officer</td>
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<td>COPS</td>
<td>Competitive One-Party System</td>
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<td>CRC</td>
<td>Constitutional Review Commission</td>
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<td>DP</td>
<td>Democratic Party</td>
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<td>FRONSA</td>
<td>Front for National Salvation</td>
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<td>GoU</td>
<td>Government of Uganda</td>
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<td>IMF</td>
<td>International Monetary Fund</td>
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<td>KKHSOU</td>
<td>Krishna Kanta Handiqui State Open University</td>
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<td>Kabaka Yekka</td>
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<td>LEGCO</td>
<td>Legislative Council</td>
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<td>National Consultative Council</td>
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<td>National Resistance Army</td>
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<td>NRC</td>
<td>National Resistance Council</td>
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<td>NRM</td>
<td>National Resistance Movement</td>
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<td>NRM/A</td>
<td>National Resistance Movement/Army</td>
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<td>OAU</td>
<td>Organisation of African Unity</td>
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<td>POPS</td>
<td>Plebiscitary One-Party System</td>
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<td>RUPMUUNNY</td>
<td>Republic of Uganda - Permanent Mission of Uganda to</td>
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<td>UN/DESADPAM</td>
<td>United Nations/Department of Economic and Social</td>
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<td>Affairs Division for Public Administration and</td>
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<td>Development Management</td>
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<td>UNCEPA</td>
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<td>UNESC</td>
<td>United Nations Economic and Social Council</td>
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<tr>
<td>UNLA</td>
<td>Uganda National Liberation Army</td>
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MEANING OF THE KEY OPERATIONAL TERMS USED

**Absolutism:** A “government with no limits to its power and under which the people have no guaranteed or constitutional rights” (Cimitile, 1995:1).

**Abuse of Authority:** The “use of an existing authority for purposes that extend beyond or even contradict the intentions of the grantors of that authority” or “the furnishing of excessive services to beneficiaries of government programs, violating program regulations, or performing improper practices, none of which involves prosecutable fraud” (Cimitile, 1995:1).

**Accountability:** A “political principle according to which agencies or organizations, such as those in government, are subject to some form of external control, causing them to give a general accounting of and for their actions; an essential concept in democratic public administration” (Cimitile, 1995:1). The concept is also defined as the process and exercise of “answerability for choices and actions” (UN/DESADPAM, 2004:11).

**Administrative Morality:** The “use of ethical, political, or social precepts to create standards by which the quality of public administration may be judged; such as the standards of honesty, responsiveness, efficiency, effectiveness, competence, effect on individual rights, adherence to democratic procedures, and social equity” (Cimitile, 1995:4).

**Authoritarian/Autocratic Leader:** A “controlling, bossy, and dictatorial” leader who makes “decisions independently with little or no input from the rest of the group” (Khan et al., 2015:87).

**Bureaucracy:** A “formal organizational arrangement characterized by division of labor, job specialization with no functional overlap, exercise of authority through a vertical hierarchy (chain of command) and a system of internal rules, regulations, and record keeping; the administrative branch of government (national, state, local)” (Cimitile, 1995:6).
**Citizen Participation:** The “involvement of citizens in a wide range of administrative policymaking activities, including the determination of levels of service, budget priorities, and the acceptability of physical construction projects, in order to orient government programs toward community needs, build public support, and encourage a sense of cohesiveness within neighbourhoods” (Cimitile, 1995:7).

**Civil Society:** The “realm of organised social life that is voluntary, self-generating, self-supporting, autonomous from the State and bound by a legal or shared set of rules” (UNESC, 2006:9).

**Clientelism:** A neo-patrimonialism feature which denotes the “exchange or brokerage of specific services and resources for political support in the form of votes” (Erdmann and Engel, 2006:20) and “the distribution of public resources through public sector jobs, licenses, contracts and projects, by the patron in order to consolidate his or her rule” (Soest, 2007:12).

**Competitive One-Party System (COPS):** A neo-patrimonial type of rule which is inclusive and similar to but more competitive (as its name suggests) than the Plebiscitary One-Party System. Under COPS, parliamentary or party primaries or elections, two or more candidates are allowed to contest. The inclusiveness and competitive nature of COPS makes the regime relatively stable, which enables it to fend off military intervention. To ensure sustainability in power and institutional longevity, COPS have very often been headed by “nationalist founding fathers” like Kenneth Kaunda of Zambia and “Houphouet-Boigny of Ivory Coast” (Bratton and Van de Walle, 1994:482-483).

**Concentration of Political Power:** A neo-patrimonialism feature which implies that political power is concentrated in and dominated by one individual, the president, or big man or patron, “who resists delegating all but the most trivial decision-making tasks” (Bratton & van de Walle, 1997:63; Soest, 2007:625). These neo-patrimonial presidents or patrons usually stay in power for very long periods, sometimes preferring to rule for life (Young, 1994:x)
**Confirmatory Study:** A deliberate and systematic research exercise conducted by the researcher to test an already generated or existing “Theoretical Model (based on theory, previous research findings or detailed observation) through the gathering and analysis of field data” (Postlethwaite, 2005:2).

**Constitution:** A “collection of written or unwritten fundamental rules and principles that restrain the government (and other political actors) from exercising arbitrary power” (Lumumba, Mbondenyi and Odero, 2010:48)

**Constitutionalism:** The idea that “government can and should be legally limited in its powers, and that its authority depends on its observing these limitations” (Waluchow, 1998:6298). It is also understood as a doctrine which emphasises that “governments must act within the constraints of a known constitution whether it is written or not” (Mbondenyi and Ojienda, 2013:3). Constitutionalism is also referred to as a “government which operates within the limits of the Constitution and makes it easy for orderly and peaceful changes of government and for the rule of law to prevail” (Kanyeihamba, 2010:9).

**Content Analysis:** A “research method which allows the qualitative data collected in research to be analysed systematically and reliably so that generalisations can be made from them in relation to the categories of interest to the researcher” (Haggarty, 1996:99). It also refers to the analysis of “the contents of documentary materials such as books, magazines, newspapers and the contents of all other verbal materials which can be either spoken or printed” (Kothari, 2004:110).

**Corruption:** The “conduct that amounts to: influencing the decision-making process of a public officer or authority, or influence peddling; dishonesty or breach of trust by a public officer in the exercise of his duty; insider dealing/conflicts of interests; [and] influence peddling by the use of fraudulent means such as bribery, blackmail, which includes the use of election fraud. It is a form of behaviour that deviates from ethics, morality, tradition, law and civic virtue” (UNESC, 2006:11).
**Democracy:** Defined by Larry Diamond as “encompassing “not only a civilian, constitutional, multiparty regime, with regular, free and fair elections and universal suffrage, but organizational and informational pluralism; extensive civil liberties (freedom of expression, freedom of the press, freedom to form and join organizations); effective power for elected officials; and functional autonomy for legislative, executive and judicial organs of government” (UNESC, 2006:6). The concept is also taken to mean a “political system in which decision making power is widely shared among members of the society” (Cimitile, 1995:9).

**Democratic Governance:** A “process of interaction among three sets of actors, from the State, civil society and the private sector, which implies that governance is based on fundamental and universally accepted principles, including: participation, accountability, transparency, rule of law, separation of powers, access, subsidiarity, equality and freedom of the press” (UNESC, 2006:7).

**Doctrine of the Separation of Powers:** A principle that “suggests that the principal institutions of state— executive, legislature and judiciary—should be divided in person and in function in order to safeguard liberties and guard against tyranny. The doctrine of the separation of powers suggests that the principal institutions of state— executive, legislature and judiciary—should be divided in person and in function in order to safeguard liberties and guard against tyranny. According to a strict interpretation of the separation of powers, none of the three branches may exercise the power of the other, nor should any person be a member of any two of the branches. Instead, the independent action of the separate institutions should create a system of checks and balances between them” (2011:2).

**Dual Federalism:** A “pattern in which federal and state governments are struggling for power and influenced with little inter-governmental cooperation” (Cimitile, 1995:10).
**Electoral and Participatory Democracy:** A situation “where the population participates in deciding on their leaders through their voting power and also through their voice in deciding how and with what policies they are led and in determining the direction and quality of their development” (UNCEPA, 2018:1).

**Equality:** The “idea that all persons have an equal claim to life, liberty and the pursuit of happiness” (Cimitile, 1995:10).

**Equity:** A “criterion for allocating resources on the basis of fairness” (Cimitile, 1995:11).

**Free and Fair Elections:** ‘Free’ elections mean that “all those entitled to vote have the right to be registered and to vote and must be free to make their choice”, and should freely “decide whether or not to vote and vote freely for the candidate or party” of their “choice without fear or intimidation”; a ‘Fair’ election “means that all registered political parties have an equal right to contest the elections, campaign for voter support and hold meetings and rallies. This gives them a fair chance to convince voters to vote for them. A fair election is also one in which all voters have an equal opportunity to register, where all votes are counted, and where the announced results reflect the actual vote totals” (Civics Academy, 2018:1).

**Goal Congruence:** The “agreement on fundamental goals in the context of an organization, refers to agreement among leaders and followers in the organization on central objectives; in practice, its absence in many instances creates internal tension and difficulties in goal definition” (Cimitile, 1995:12).

**Good Governance:** A “sound public sector management (efficiency, effectiveness and economy)” characterised by “legitimacy (government should have the consent of the governed); accountability (ensuring transparency, being answerable for actions and media freedom); competence (effective policymaking, implementation and service delivery); and respect for law and protection of human rights” (UNCEPA, 2018:1).
**Hierarchy:** A “characteristic of formal bureaucratic organizations; a clear vertical "chain of command" in which each unit is subordinate to the one above it and superior to the one below it; one of the most common features of governmental and other bureaucratic organizations” (Cimitile, 1995:13).

**Institutional Hybridity:** A neo-patrimonialism feature which denotes a situation where “informal patrimonial norms and practices” co-exist with “formal legal-rational rules” (O’Neil, 2007:2). There is also co-existence of both patrimonial institutions on the one hand, and “legal-rational institutions” on the other, but the former utilise and/or freely ride on the latter. These co-existences, notwithstanding, actual powers to govern and make decisive decisions within the state lie outside formalised structures and state institutions because informal institutions, norms and practices in neo-patrimonial states tend to overshadow those of formal legal-rational institutions (O’Neil, 2007:2-3).

**Institutional Incompatibility:** A neo-patrimonialism feature which refers to a situation in which there is lack of “a common set of predictable rules” on the one hand, but also when there exist multiple and often contradictory sets of “formal and informal rules” and institutions (O’Neil, 2007:3).

**Intergovernmental Competition:** A “fiscal structure characterised by many competing governments” (Cimitile, 1995:14).

**Intergovernmental Relations:** All “the activities and interactions occurring between or among governmental units of all types and levels within the American federal system” (Cimitile, 1995:14).

**Interpretivist Paradigm:** a research perspective that believes that “realities are multiple and socially constructed”, and that, “contextual factors need to be taken into consideration in any systematic pursuit of understanding” (Kivunja and Kuyini, 2017:34). Kivunja and Kuyini add that, under the Interpretivist paradigm, researchers make every effort to “understand the viewpoint of the subject being observed” or studied, and make “meaning of their data through their own thinking and cognitive
processing.” In this paradigm, “theory does not precede research but follows it so that it is grounded on the data generated by the research act. Hence, when following this paradigm, data are gathered and analysed in a manner consistent with grounded theory”, and the “outcome of the research will reflect the values of the researcher, trying to present a balanced report of the findings” (Kivunja and Kuyini, 2017:33-34). Thanh and Thanh observe that, because an Interpretivist Paradigm allows consideration of multiple perspectives, this not only “leads to a more comprehensive understanding of the situation” being studied but it “will significantly facilitate researchers when they need ‘in-depth’ and ‘insight’ information from population rather than numbers by statistics” (Thanh and Thanh, 2015:25).

**Juridical Democracy:** The “restoration of the rule of law and the requirements of administrative formality in which a corps of professional administrators would implement detailed legislative policies through formal administrative procedures instead of receiving broad delegations of power and developing governmental policy themselves in conjunction with special interest groups” (Cimitile, 1995:14).

**Legislative Oversight:** The “process by which a legislative body continually supervises the work of the bureaucracy in order to ensure its conformity with legislative intent” (Cimitile, 1995:15).

**Liberal Democracy:** A “fundamental form of political arrangement, founded on the concepts of popular sovereignty and limited government” (Cimitile, 1995:15).

**Libertarianism:** A “normative political theory that gives top priority to the value of freedom of choice over other competing political values” and “understands a person to possess freedom of choice so long as no other agent coercively interferes with his or her choices. Since the state characteristically acts by defining laws and coercively enforcing them, libertarians’ hostility to coercion typically leads them to conclude that only a very minimal state is legitimate, namely, a state whose only purposes are to protect citizens against acts of coercion (murder, assault, theft, and so
on) and against acts of fraud in a system of free enterprise” (Duncan, 2010:1).

**Liberty:** The “idea that individual citizens of a democracy should have a high degree of selfdetermination” (Cimitile, 1995:15).

**Limited Government:** A “central concept of American politics, holding that because government poses a fundamental threat to individual liberties, it must be carefully limited in its capacity to act arbitrarily; the Founders of American government believed it was to be achieved through separation of powers, checks and balances, federalism, and judicial review” (Cimitile, 1995:15).

**Literature Review:** A “comprehensive summary and critical appraisal of the literature that is relevant to your research topic. It presents the reader with what is already known in this field and identifies traditional and current controversies as well as weaknesses and gaps in the field” (Sage, n.d:2).

**Literature Search:** The “process of identifying texts that are appropriate using electronic or manual searches. Often treated as if it were synonymous with literature review” (Sage, n.d:2).

**Military Oligarchy:** A neo-patrimonial rule type where the regime is exclusive in that elections are suspended, and most, if not all, decisions are made by exclusive small groups of elites behind secretive and closed doors. Albeit that a military oligarchy has a noticeable leader or president, he always has no concrete and exclusive powers in the real sense because key “decisions are made collectively by a junta, committee, or cabinet that may include civilian advisers and technocrats in addition to military officers. ... a relatively professional civil or military hierarchy implements policy, and executive institutions are maintained” but in form, not in substance (Decalo, 1990:231-24). Under military oligarchies, “political participation is severely circumscribed because there are no elections of any kind,
especially in the early years of military rule” (Bratton and Van de Walle, 1994:473).

**Narrative Analysis:** The analysis “aimed at extracting themes, structures, interactions and performances from stories or accounts that people use to explain their past, their present situation or their interpretations of events” (Walliman, 2011:139-142).

**Neo-Patrimonialism:** A “dualistic situation” in which post-colonial states are characterised by both patrimonialisation and bureaucratisation (Bourmaud, 1997:62). It is also a system of government which combines “strong presidents, clientelistic linkages between citizens and politicians, and the use of state resources for political legitimation” (Sigman and Lindberg, 2017:1) In other words, neo-patrimonialism involves “‘systematic concentration of political power’, ‘award of personal favours’, and ‘misuse of state resources for political legitimation’” (Bratton and van de Walle, 1997: 63-68; Soest, 2007:624).

**Normative Theory:** A Theory which “provides a value-based view about what the world ought to be like or how it ought to work” (Velasquez, 2018:1).

**Personal Dictatorship:** A neo-patrimonial rule type, where the ruler or president has absolute powers, with very few, if any, checks and balances. The strongman governs/rules by decree; and the existing formal state institutions’ participation in governance only exists in name but not substance. The regime does not permit political competition, and it accomplishes this either through physical elimination or indefinite incarceration of opponents. Personal dictators often don’t want to leave power and sometimes declare themselves life presidents (Bratton and Van de Walle, 1994:474-475).

**Plebiscitary One-Party System (POPS):** A type of neo-patrimonial rule which espouses an inclusive authoritarian regime. It is headed by a ruler who “orchestrates political rituals of mass endorsements for himself, his
officeholders, and his policies” (Bratton and Van de Walle, 1994:477). Albeit that a POPS is more inclusive, it is nevertheless associated with undemocratic tendencies because it precludes sincere political competition, prohibits opposition parties from operating freely, allows only a single candidate from the official political party to appear on the ballot, and the elected leader is always entangled in a legitimacy crisis particularly shortly after elections (Bratton and Van de Walle, 1994:477).

**Political Pluralism:** A “social and political concept stressing the appropriateness of group organization, and diversity of groups and their activities, as a means of protecting broad group interests in society; assumes that groups are good and that bargaining and competition among them will benefit the public interest” (Cimitile, 1995:18).

**Positivism:** An “epistemological stance that maintains that all phenomena, including social, can be analysed using scientific method. Everything can be measured and, if only one knew enough, the causes and effects of all phenomena could be uncovered” (Walliman, 2011:175).

**Presidentialism:** A neo-patrimonialism feature which refers to a situation where, one man, usually the President, is stronger than the law. In this case, both formal and informal institutions and rules place the President “largely above the law and not subject to the checks and balances that democratic executives face in mature democracies” (Van de Walle, 2007:1-2).

**Public Management:** A “field of practice and study central to public administration, emphasizing internal operations of public agencies, focuses on managerial concerns related to control and direction, such as planning, organizational maintenance, information systems, personnel management, and performance evaluation” (Cimitile, 1995:19-20).

**Public Sector:** The “core central level government departments and agencies, public enterprises (including mixed enterprises with 50 per cent
or more public investment)” and “public service workers such as teachers and health workers” (UN/DESADPAM, 2004:11).

**Qualitative Research:** A type of research which “involves an interpretative, naturalistic approach to the world” with the aim of providing “indepth, detailed information, which although not necessarily widely generalised, explores issues and their context, clarifying what, how, when, where and among whom behaviours and processes operate, while describing in explicit detail the contours and dynamics of people, places, actions and interactions” (Makue, n.d: 137; Tewksbury, 2009:50). As Shodhganga (n.d:102) observes, “qualitative research can be construed as a research strategy that emphasises on words rather than quantification in the collection and analysis of data.”

**Quality of Government:** The “impartiality of institutions that exercise government authority” (Rothstein, and Teorell, 2008:165).

**Research Design:** A description of “a flexible set of guidelines that connects theoretical paradigms to strategies of inquiry and methods for collecting empirical material. It situates researchers in the empirical world and connects them to specific sites, persons, groups, institutions, and bodies of relevant interpretive material, including documents and archives” (Darko-Ampem, 2004:134). A research design is also conceptualised as “a framework or plan used to guide data collection and analysis for a study” (Jawar, n.d:124) or “the logic that links the research purpose and questions to the processes for empirical data collection, data analysis, in order to make conclusions drawn from the data” (Ponelis, 2015:539).

**Research Methodology:** A combination of research paradigms, approaches, techniques, methods and procedures adopted to systematically and successfully study a given phenomenon or research problem. As Kepha observes, in a research methodology, “we study the various steps that are generally adopted by a researcher in studying his research problem along with the logic behind them” (Kothari, 2004:8).
**Research Methods:** These are techniques and tools that are used to do research. They represent the avenues or ways through which information or data are collected, sorted, and analysed in order to come make interpretations and conclusions (Walliman, 2011:1, 8).

**Research Paradigm:** A “framework that guides how research should be conducted, based on peoples’ philosophies and their assumptions about the real world and nature of knowledge (Collis and Hussey, 2009; Shodhganga, n.d:100).

**Research problem:** A “general statement of an issue meriting research. It is usually used to help formulate a research project and is the basis on which specific research questions, hypotheses or statements are based” (Walliman, 2011:176).

**Research:** The process of carrying out or conducting of a systematic and “orderly investigation of a subject matter for the purpose of adding knowledge. Research can mean ‘re-search’ implying that the subject matter is already known but, for one reason or another, needs to be studied again. Alternatively, the expression can be used without a hyphen and in this case, it typically means investigating a new problem or phenomenon” (Postlethwaite, 2005:1, 33).

**Rule of Law:** A situation “where every activity, every conflict and every exercise of power respect the provisions of accepted laws, rules and regulations” (UNCEPA, 2018:1).

**Scientific Research Method:** A “strategy of collecting and analysing data represented as concepts, which typically—though not always—are used as independent and dependent variables in theories” (Jacques, 2014:324).

**Social Contract:** An “actual or hypothetical compact, or agreement, between the ruled and their rulers, defining the rights and duties of each” (Editors of Encyclopaedia Britannica, 2018:1).
**Spoils System:** A “system of hiring personnel based on political loyalty and connections; can also extend to government contracts and the like; usually takes the form of rewarding party supporters with government jobs” (Cimitile, 1995:21).

**Thematic Analysis:** A qualitative method widely used in research “for identifying, analysing, organising, describing, and reporting themes found within a data set” and is widely known for producing “trustworthy and insightful findings” (Nowell *et al*., 2017:2).

**Theory:** A “substantiated (evidence based) explanation for the way something is as it is” or a “body of rules, ideas, principles, and techniques that applies to a particular subject” (Western Sydney University, n.d:2).

**Transparency:** The “unfettered access by the public to timely and reliable information on decisions and performance in the public sector, as well as on governmental political and economic activities, procedures and decisions” (UNCEPA, 2018:1). Transparency is also conceptualised as the “availability of and free access to information about governmental political and economic activities, procedures and decisions; and Accountability: answerability for choices and actions” (UN/DESADPAM, 2004:11).
CHAPTER ONE
INTRODUCTION AND GENERAL OVERVIEW

1.1 Context of the Study and Research Questions
This Thesis examines the state of constitutionalism in Uganda between 1962 and 2018. The central question which it seeks to answer is: ‘why did Ugandan governments persistently fail to adhere to the basic requirements of the doctrine of constitutionalism between 1962 and 2018?’ In answering this question, which has challenged and continues to challenge many academicians, politicians, government officials, researchers and the international community alike, the Thesis seeks to answer four specific questions. First, ‘what were the political developments that shaped the volatile process of constitutionalism in Uganda between 1962 and 2018?’ Second, ‘what are the factors that have influenced the contested state of constitutionalism in post-independence Uganda?’ Third, ‘what are the challenges that have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda?’ And lastly, given that the Theory of Neo-patrimonialism is postulated to be the unchanging reality which “has persistently characterised the way in which ‘Africa works’ since independence” (Kratt, 2015:1), and is acclaimed to being “the foundation stone for the system which drives African politics” (Francisco, 2010:1), and it has “defined African politics since independence” (Lindberg, 2010:123; Hyden, 2000:18; Beresford, 2014:2; Erdmann and Engel, 2007:106; Ikpe, 2009:682; Bratton and Van de Walle, 1994:472), ‘to what extent can it be applied to explain the volatile nature of constitutionalism in post-independence Uganda? Answering these four critical questions forms the central focus of this study.

1.2 Background to the Study
Constitutionalism is a fundamental conception which for long has received worldwide application, particularly in the fields of political science, philosophy, and law. Charles M. Fombad gives credence to this view when he observes that, “from antiquity down to the modern era, philosophers,
political scientists and jurists have always recognised the imperatives of constitutionalism” (Fombad, 2011:1). The worldwide application of the notion of constitutionalism is based on the realisation and appreciation that it can be used as an effective legal and political medium through which national governments and political leaders are controlled, limited and restrained from arbitrary use and abuse of state power which would otherwise lead to abuse of office, disrespect for human rights, compromise(d) rule of law and independence of the judiciary, and generally degenerate into poor governance of government organs and agencies (Waldron, 2010:13; Maduro, 2005:332-333; Kioko, 2009:8; Magaisa, 2011:51; Fombad, 2014:416; Rothstein and Teorell, 2008:165).

Albeit that the inception of constitutionalism in Europe and North America dates far back to the medieval period (Fombad, 2011:1), the notion became more pronounced in the developing world between 1945 (in the aftermath of the World War II) and during the first half of the 1960s after most developing countries had attained their independence (Muma, 2018:29). Since then, as Chen observes, constitutionalism is “still a work in progress in many parts of the world, particularly in Asia, Africa and Latin America” (Chen, 2014:2).

In Africa, aspirations for constitutionalism gained momentum “with the arrival of independence, primarily in 1960”, when “many African states discerned the need to draft new constitutions that ensured effective democracy, human rights protection, and the participation of citizens in the democratic process” (Muma, 2018:29). Nevertheless, as Fombad reports, “most post-independence African constitutions were quickly transformed into instruments of oppression under the pretext of pursuing the coveted but elusive goals of national unity and economic development” (Fombad, 2011:2).

Muma observes that, while many of the African countries’ constitutions were subjected to several amendments and alternations, particularly after the restoration of multi-party political dispensations after the 1990, these did not culminate in the effective realisation of “substantial transformation
towards constitutionalism, democracy, and effective protection of human rights and fundamental liberties... Some of the constitutions adopted were only superficially different from the provisions they had replaced” (Muma, 2018:29). Therefore, as Chen observes, most, if not all, African counties (just as the other Third World economies in Asia and Latin America), have still “not grown out of the syndrome of ‘constitutions without constitutionalism’” because “the ‘achievement’ of constitutionalism is yet to come” (Chen, 2014:2). This stance is bolstered by Harbeson and Rothchild (2009) who observe that with the exception of Botswana and Mauritius, democracy underpinned by strong institutions and constitutionalism remains elusive on the African continent regardless of the ongoing reforms in political order.

In Uganda, the political and constitutional trajectories have not been any different. Following the country’s attainment of independence on 9 October 1962, most, if not all, Ugandans eagerly awaited and yearned to reap the fruits of good governance and constitutionalism that were perceived would accrue from the political leaders’ strict adherence to the 1962 Independence Constitution. Regrettably, these ideals were never realised to this present day. This resulted in poor quality of politics which has continuously limited citizens’ participation and serrated procedural democracy. Therefore, after independence, Uganda experienced a volatile political and constitutional experience, which not only has been characterised by political belligerence, instability, constitutional crises, and repeated episodes of civil war, but has greatly undermined the respect for the principle of separation of powers in particular, and constitutionalism generally.

While clarifying the paradox that abounds with regard to the existence of constitutions and inexistence of constitutionalism, Charles Uwensuyi-Edosomwan observes that while “there can be no constitutionalism without a constitution, there can indeed be a constitution without constitutionalism” (Uwensuyi-Edosomwan, 2006:3). Conceivably, and perhaps, indisputably, Uwensuyi-Edosomwan’s argument is of practical relevance to the Ugandan case. Indeed, Uganda has never fully practiced
or experienced real constitutionalism since independence. While the country has had four constitutions under self-rule, namely, the 1962 Independence Constitution (1962-1966), the 1966 Pigeon Hole Constitution (1966-1967), the 1967 Republican Constitution (1967-1971), and the 1995 Constitution (1995 to the present), the political leaders that governed under them did not permit the country to realistically taste the true nature of constitutionalism. This regrettable experience gives credence to Uwensuyi-Edosomwan’s argument that “indeed, it is perfectly possible to have a constitution in place yet the constitution may just be a mere statement of unenforceable right” or one “which facilitates the assumption of dictatorial powers” (Edosomwan’s, 2006:3). This failure of Uganda to have a real taste of constitutionalism was/is also exacerbated by the fact that, out of the 56 years (1962 – 2018) Uganda has been governed under self-rule, the country was not governed under any constitution for nearly 25 years (between 25 January 1971 and 8 October 1995), which, equally gives credence to Uwensuyi-Edosomwan’s (2006:3) argument that “there can be no constitutionalism without a constitution.”


Indeed, a pattern can be observed where at every regime change, the process was neither constitutional nor driven by the consent of the citizens, but rather, characterised by violence, including military coup d’états, civil war, irregular means of taking over political power and/or outright vote
rigging at elections. Golooba-Mutebi supports this stance by affirming that post-independence Uganda has been a period characterised by “putsches, dictatorship, contested electoral outcomes, civil wars” and military invasions, many of which were “violent and unconstitutional” (Golooba-Mutebi, 2008:1). These chaotic political events in post-independence Uganda inevitably led to repeated episodes of poor quality of government, which was a defect that damaged both the integration of the diverse political forces and accommodation and tolerance as methods of work (Charron, 2009:585). It is therefore no exaggeration, as Tusasirwe in Peter and Kopsieker (2006:85) states that, post-independence Uganda has been a period that can best be described as “the triumph of violence over constitutionalism.” Against this backdrop, the motivation of this Thesis is to investigate and explain why Uganda has had a volatile path to constitutionalism between 1962 and 2018.

1.3 Conceptualising ‘Constitutionalism’ and ‘Neo-patrimonialism’

In this Thesis, the concepts of ‘constitutionalism’ and ‘neo-patrimonialism’ occupy a central position. Before going any further, therefore, it is critical that these concepts are clearly conceptualised to enable the reader understand clearly what they mean and how they relate to each other. A key question which then comes to the fore, is: when we talk of the concepts of constitutionalism and neo-patrimonialism in relation to this study, what do we exactly mean? This question is answered in the following two subsections.

1.3.1 Meaning and Nature of Constitutionalism

It should be noted from the very onset, that, while the concept of ‘constitutionalism’ is often widely used in both academic and non-academic discussions, applying a universal meaning to it has been and continues to be highly contentious. This is because, as Sweet (2009) underscores, attempting a universally agreeable definition for the concept may practically be impossible, because different writers conceptualise it differently. According to Waluchow (1998:6298), constitutionalism is the idea that “government can and should be legally limited in its powers, and
that its authority depends on its observing these limitations.” Relatedly, the concept is understood as a doctrine which emphasises that “governments must act within the constraints of a known constitution whether it is written or not” (Mbondenyi and Ojienda, 2013:3). Yet Kanyeihamba (2010:9) perceives it as “a government which operates within the limits of the Constitution and makes it easy for orderly and peaceful changes of government and for the rule of law to prevail.”

On the other hand, Mosota in Lumumba, Mbondenyi and Odero (2010:48) define constitutionalism not only as the “practice of politics in accordance with the Constitution” (which he defines as “a collection of written or unwritten fundamental rules and principles that restrain the government (and other political actors) from exercising arbitrary power”) but also as “a driving force for the attainment of the best form of governance.” This therefore means that, as Uwensuyi-Edosomwan (2006:3) observes, constitutionalism is not an end in itself, but a means to an end known as ‘good governance’ which is realised through prevention of “arbitrariness in governance and maximization of liberty with adequate and expedient restraint on government.”

Considering therefore that constitutionalism as a concept is highly contested, and bearing in the mind that it is not merely ‘an idea’ and ‘a doctrine’ but also ‘a practice of politics’ and ‘a means to good governance’, it is argued, for purposes of this Thesis, that the scope of constitutionalism is not only limited to (a) “separation of powers in government” and (b) “the limitation of the state versus society in form of respect for a set of human rights” (Kioko, 2009:8), but it also encompasses, inter alia: (c) the “rule of law” (Magaisa, 2011:51); (d) “an independent judiciary”; (e) “control of the amendment of the constitution” (Fombad, 2014:416); (f) “quality of government”, which is manifested in the level of “impartiality of institutions that exercise government authority” (Rothstein and Teorell, 2008:165); (g) having in place governments that account (or are held accountable) to entities or organs that are clearly distinct from themselves; (h) holding elections freely at different intervals; (i) having political groups that freely
organise in opposition to the ruling governments; and ensuring that the legal guarantees of fundamental human rights are effectively enforced (by an independent judiciary) (De Smith, 1964). Therefore, in investigating and explaining why Uganda has had a volatile path to constitutionalism between 1962 and 2018, the foregoing constructs are kept in perspective.

1.3.2 Conceptualising Neo-patrimonialism and how it Works

As already highlighted, the concept of neo-patrimonialism is very central to this Thesis. As already noted, the Theory of Neo-patrimonialism is postulated to be the unchanging way which “has persistently characterised the way in which ‘Africa works’ since independence” (Kratt, 2015:1), and is acclaimed to being “the foundation stone for the system which drives African politics” (Francisco, 2010:1), and it has “defined African politics since independence” (Lindberg, 2010:123; Hyden, 2000:18; Beresford, 2014:2; Erdmann and Engel, 2007:106; Ikpe, 2009:682; Bratton and Van de Walle, 1994:472). Considering all these acclamations, this Thesis seeks to determine the extent to which the Theory of Neo-patrimonialism can be applied to explain and enhance the holistic understanding of the volatile nature of constitutionalism in post-independence in Africa, and post-independence Uganda in particular.

It should be noted, however, that, worldwide, the concept of ‘neo-patrimonialism’, just like constitutionalism, is highly contentious. This is so because albeit that the concept is universal (Soest, 2006:7), it is conceptualised differently by different scholars (Erdmann & Engel, 2007, in Therkildsen, 2010:2; Erdmann and Engel, 2006:5). As Erdmann and Engel posit, the concept (neo-patrimonialism) is variedly conceptualised as “‘big man politics’, ‘personal rule’, ‘politics of the belly’ or ‘modern patrimonialism’” (Erdmann and Engel, 2007, in Van de Walle, 2007:1; Erdmann and Engel, 2006:17).

Similarly, the conceptual meanings attached to neo-patrimonialism are varied. For instance, Nawaz (2008:2) defines it as “a system of governance where the formal rational-legal state apparatus co-exists and is supplanted
by an informal patrimonial system of governance.” Erdmann and Engel define it as a hybrid phenomenon which represents a “relationship between patrimonial domination on the one hand and legal-rational bureaucratic domination on the other” (Erdmann and Engel, 2006:17) or “a mixture of two, partly interwoven, types of domination that co-exist: namely, patrimonial and legal-rational bureaucratic domination” (Erdmann and Engel, 2006:18).

According to Francisco (2010:1), neo-patrimonialism, as a concept, is defined as “the vertical distribution of resources that gave rise to patron-client networks based around a powerful individual or party.” Yet, Bratton and Van de Walle (1997) in Sigman and Lindberg (2017:1) conceptualise it as a system of government which combines “strong presidents, clientelistic linkages between citizens and politicians, and the use of state resources for political legitimation.” In other words, neo-patrimonialism involves “systematic concentration of political power, ‘award of personal favours’, and ‘misuse of state resources for political legitimation’” (Bratton and van de Walle, 1997: 63-68; Soest, 2007:624).

The foregoing variations in the conceptualisation of the concept notwithstanding, there is consensus among different scholars that ‘neo-patrimonialism’ is a concept which comes from two words, namely; ‘Neo’ – which means new or recent or modern (Erdmann and Engel, 2006:30), and ‘Patrimonialism’. Patrimonialism is a term which was coined by Max Weber to denote “an ‘ideal type’ of traditional rule in which authority is based on ties of personal loyalty between a leader and his administrative staff” (Weber, 1947, in Kelsall, 2011:76).

It should be noted, however, that, as Mushtag Khan observes, Weber lived long before the advent of “modern postcolonial developing countries.” Besides, it is evident that “in modern developing countries, patrimonial rule is not based on traditional legitimacy but rather on modern forms of exchange between patrons and clients” (Therkildsen, 2005:37). In the neo-patrimonial relationship, “clients agree to provide political support to the patron in exchange for payoffs that the patron can deliver by using political
power to capture public resources” (Khan, 2005:713-715). Patrons, in this case, typically comprise office-bearers who (mis)use “public funds or the power of being in office to build a personal following allowing them to stay in power” (Therkildsen, 2005:37). Thus, as Soest notes, the appendage of the word ‘Neo’ on ‘patrimonialism’ to make ‘Neo-patrimonialism’ “stands for the formal institutions and rational-legal rule of the state, which coexist along with patrimonial relations” (Soest, 2010:3).

Against this backdrop, neo-patrimonialism is conceptualised as a “dualistic situation” in which post-colonial states are characterised by both patrimonialisation and bureaucratisation (Bourmaud, 1997:62). According to Bratton and Van de Walle, neo-patrimonialism “refers to situations where the ‘patrimonial logic coexists with the development of bureaucratic administration and at least the pretence of legal-rational forms of state legitimacy” (Van de Walle, 1994, in Bach, 2011:277). Gray and Whitfield (2014:5) affirm that neo-patrimonialism was “created to describe the exercise of authority in newly independent states that had formal institutions created on models from the modern Western countries, which approximated Weber’s type of rational-legal form of domination.” It is thus not surprising that, as Medard (1982:162-191) states, neo-patrimonialism “is a by-product of a specific historical situation that resulted in a contradictory combination of bureaucratic and patrimonial norms.”

Neo-patrimonialism involves inherent instability, arbitrary discretion and is a new form of personalisation of state authority with strong autonomy but weak capacity. Under neo-patrimonial rule, the dualistic situation is fluid because it is fraught with conflict amongst sycophantic lieutenants, betrayals and treason; indicative of why “neo-patrimonial elites fracture over access to patronage” (Bratton and Van de Walle (1994:462). Under neo-patrimonialism, those powerful enough to rule rely on leadership which is merely personal as it was in the old time days of absolute “warlordism where the same structure that gave it power also diminished it” (Hansen 2003). In practice, neo-patrimonialism is personal rule that survives on distribution of state largesse to favourites and kinsmen making the state a
source of illegitimate private accumulation. Bratton and Van de Walle contend that:

“When rule is built on personal loyalty, supreme leaders often lose touch with popular perspective of regime legitimacy. They lack institutional ties to corporate groups in society that could alert them to the strength of their popular support” (Bratton and Van de Walle, 1994:462).

The said lack of institutional ties to corporate groups in society is a contradiction that eventually translates into the nemesis of the whole neo-patrimonial arrangement. Neo-patrimonialism is, thus, a perverse system of sectionalisation of the state in which economic and political benefits accrue to the leaders and their sycophantic subordinates. In organised connivance, neo-patrimonial political leaders and their subordinates dominate public space. It is done through strict maintenance of informal networks of reciprocity; in a skewed manner utilise state machinery for personal gains; and prejudice guides functional motives which biases in turn adversely affect expected outcomes. It is therefore worthy to note that neo-patrimonialism pervades constitutional arrangements because the personalised relationships are dependent on the rulers’ ability to harness resources for private gains – a practice that usually leads to “the economy of plunder”; as a result, the would-be free standing bureaucratic state institutions are degraded and reduced to parochialism of patronage and corruption (Bayart et al., 1999:71-79).

Neo-patrimonialism breeds a sub-culture of public power being concentrated in the hands of a dominant individual. In practice, it is a sinister aspect of managing public space that usually leads to divided nationalism and the general population is degraded to a poorly governed society whose component element cannot affect policies of state. Rulers’ neo-patrimonial tendencies lead them to disregarding constitutionalism. Their commercial and political circles support each other, the quality of government is degraded, the doctrine of separation of powers principle is ignored with impunity and the dividends of the social contract tradition deferred (Bayart et al., 1999:71-79). Against this backdrop, and as pointed
out earlier, this Thesis seeks to determine the extent to which the Theory of Neo-patrimonialism can be applied to explain and enhance the holistic understanding of the volatile nature of constitutionalism in post-independence in Africa, and post-independence Uganda in particular.

1.4 Statement of the Problem
Whereas Uganda attempted to establish a democratic system of governance between 1962 and 1971, 1981 and 1985, and 1996 and 2018, practicing constitutionalism, as explained by, among others, Tripp (2010), Bussey (2005), Forrest (2004), and Mamdani (1983), has been largely unimpressive. Besides, as Afro-Barometer (2012) reports, Uganda has consistently ranked low on indices that measure good governance and democracy. For instance, during the forementioned periods, the three arms of government did not necessarily operate autonomously under the principle of the separation of powers, a problem which not only thwarted constitutionalism but also greatly compromised the constitutional foundation upon which democracy and good governance are built.

Moreover, while a number of studies have been conducted and various scholars have written about the political and constitutional history of Uganda prior to and since independence (Kyema, 1977; Gingyera-Pinycwa, 1978; Karugire, 1980; Kanyeihamba, 2002; Karugire, 2003; Moncrieffe, 2004; Bainomugisha and Mushemeza, 2006; Golooba-Mutebi, 2008; Kanyeihamba, 2010; Opiyo, Bainomugisha and Ntambirweki, 2013), none of these exclusively and comprehensively focused on investigating and/or examining why Uganda experienced the volatile path to constitutionalism between 1962 and 2018.

On the other hand, the quest for securing theoretical paradigms that would/can suitably be applied to investigate and explain the volatile nature of constitutionalism in post-independence Uganda has been and continues to be work in progress. And while a number of studies had been conducted and concluded that Neo-patrimonialism is a Theory which suitably can be applied as “the foundation stone for the system which drives African politics” (Francisco, 2010:1) and that it has “defined African politics since
independence” (Lindberg, 2010:123; Hyden, 2000:18; Beresford, 2014:2; Erdmann and Engel, 2007:106; Ikpe, 2009:682; Bratton and Van de Walle, 1994:472), no studies had been conducted to specifically apply the Theory of Neo-patrimonialism in explaining the volatility of constitutionalism in Uganda for the entire period of 56 years (1962 to 2018) since the country attained independence. Therefore, this study was conducted to generate well-researched findings to fill the above information and knowledge gaps.

1.5 Objectives of the Study

1.5.1 Main Objective of the Study

The main objective of the study is to investigate the volatile state of constitutionalism in post-independence Uganda in order to determine and explain why Ugandan governments persistently failed to adhere to the basic requirements of the doctrine of constitutionalism between 1962 and 2018.

1.5.2 Specific Objectives of the Study

The specific objectives of the study are:

a) To explore the political developments that shaped the volatile process of constitutionalism in Uganda between 1962 and 2018.

b) To explore the factors that have influenced the contested state of constitutionalism in post-independence Uganda.

c) To determine the challenges that have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda, and

d) To determine the extent to which the Theory of Neo-patrimonialism can be applied to explain the volatile nature of constitutionalism in post-independence Uganda.

1.6 Justification of the Study

As noted earlier, a number of related studies have been conducted and scholars have written about the political and constitutional history of Uganda. For instance, while Gingyera-Pinychwa (1978) wrote about ‘Apolo

On the other hand, a few related studies have been conducted on neo-patrimonialism in Uganda. The key defining feature of all these studies/scholars, however, as noted earlier, is that, none of them exclusively and comprehensively focused on investigating and/or examining why Uganda experienced a volatile path to constitutionalism for the entire period of 56 years (1962 to 2018) since the country attained independence. Against this backdrop, conducting this study was justified to generate well-researched findings to fill the aforementioned information gap.

On the other hand, as noted earlier, the quest for securing theoretical paradigms which would/can suitably be applied to investigate and explain the volatile nature of constitutionalism in post-independence Uganda, has been and continues to be work in progress. But, while a number of studies had been conducted and concluded that Neo-patrimonialism is a Theory which suitably can be applied as “the foundation stone for the system which drives African politics” (Francisco, 2010:1) and that it has “defined African politics since independence” (Lindberg, 2010:123; Hyden, 2000:18; Beresford, 2014:2; Erdmann and Engel, 2007:106; Ikpe, 2009:682; Bratton and Van de Walle, 1994:472), no studies had been conducted to specifically authenticate the suitability of the Theory of Neo-patrimonialism in explaining the volatile nature and state of constitutionalism in Uganda from
1962 to 2018. The justification of this study, therefore, hinged as well on the need to do research to fill the aforementioned knowledge gap.

1.7 Methods and Techniques of Research

To achieve the above objectives and adequately answer the research questions given under section 1.1, the study adopted an interpretivist paradigm and a qualitative research approach. The study also adopted the Theory of Neo-patrimonialism as a theoretical lens to view and explain Uganda’s political processes and the resultant volatile nature of constitutionalism from 1962 to 2018.

Considering that the study is largely historical, which aimed at exploring and explaining the political developments and factors that have shaped the volatile process and contested state of constitutionalism in post-independence Uganda, it adopted desk research and literature review as the main methods of data generation. Hence, most of the research materials used are in the forms of journal articles, books and book chapters, news papers, reviews, constitutions and other legal instruments, institutional reports, encyclopedia, and written narratives, among others, which were accessed from a wide range of literature available in official archives, libraries of academic institutions, bookstores, research centres, media houses, organizational websites and a multiplicity of other other internet sites.

On the other hand, the study used content and thematic analyses as the main methods of data analysis. Content analysis was used because it is “a systematic and objective means of describing and analysing documents” and it “allows the researcher to test theoretical issues to enhance understanding of the data” and “to distil words into fewer content-related categories” (Elo and Kyngas, 2008:108). Yet, thematic analysis was used because, as Nowell and others opine, it is a very appropriate “qualitative method that can be used when analysing large qualitative data sets” (Nowell et al., 2017:1) like the ones of this study. Braun and Clarke (2006) in Nowell et al. (2017:1) stress that “thematic analysis should be a foundational method for qualitative analysis, as it provides core skills for conducting
many other forms of qualitative analysis.” Moreover, as Sage states, thematic analysis is not only “a popular method for analysing qualitative data by identifying patterns of meaning” but “it is a versatile and flexible approach that can be used with a range of different qualitative approaches” (Sage, n.d:5). Against this backdrop, data processing, analysis and interpretation, were done thematically in accordance with the research questions and study objectives given under sections 1.1 and 1.5, respectively.

1.8 Arrangement of the Thesis

This Thesis is arranged in eight chapters. Chapter One gives an introduction and general overview. It specifically begins by giving an introduction and context of the study. It then gives the background to the study, conceptualises the concepts of ‘constitutionalism’ and ‘neopatrimonialism’, states the research problem, stipulates the objectives and justification of the study, describes the methods and techniques of research adopted, gives an outline on how this Thesis is arranged, and concludes with a summary of the key issues covered in this Chapter.

Chapter Two presents the theoretical and philosophical perspectives that underpin constitutionalism. It discusses the origins and development of the doctrine of constitutionalism, the Social Contract Theory as the theoretical framework within which constitutionalism is grounded, the conceptual relationship between constitutionalism and good governance, the contemporary thinkers’ contributions to the doctrine of constitutionalism, and how constitutionalism was understood and exercised in the formerly colonised countries. After these, the chapter then discusses: rule of law and protection of constitutional arrangements; political pluralism and general principles of political morality; the philosophical and theoretical rationale and bases of constitutionalism; the philosophical underpinnings of constitutionalism under impartial states; and it concludes with the principle of separation of powers and notion of quality of government.
Chapter Three discusses the Theory of Neo-Patrimonialism and its relevance to constitutionalism in post-independence Africa. It discusses the key components and main features of neo-patrimonialism; plots the origins of neo-patrimonialism in Africa; explores how neo-patrimonialism has been and continues to be practiced and manifested in Africa; explains how neo-patrimonialism has negatively affected good governance, democracy, constitutionalism and rule of law in Africa; and examines why neo-patrimonialism has continuously been adopted and applied by the political leaders across the entire African continent since independence.

Chapter Four analyses the political developments that shaped the volatile process of constitutionalism in post-independence Uganda. This chapter is critical because not only does it inform the reader about the various political developments that shaped the crooked constitutional path in Uganda but it serves as the basis for establishing and analysing: the factors that have influenced the contested state of constitutionalism in post-independence Uganda; the challenges that have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda; and the extent to which the Theory of Neo-patrimonialism can be applied to explain and enhance the holistic understanding of the volatile nature of constitutionalism in post-independence Uganda, which are dealt with in Chapters Four, Five and Six, respectively. This Chapter therefore serves as the basis for Chapters Four to Six, and it directly addresses the first research question and first study objective as given under sections 1.1 and 1.5, respectively.

Chapter Five explores the factors that have influenced the contested state of constitutionalism in post-independence Uganda. Accordingly, the chapter addresses the second research question and second study objective. Chapter Six examines the challenges that have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda. Accordingly, it addresses the third research question and third study objective.
Chapter Seven applies the Theory of Neo-patrimonialism to explain the volatile state of constitutionalism in Uganda since independence. It delves into neo-patrimonialism in post-independence Uganda with special focus on how it has been applied by the nine presidents who have ruled Uganda since 1962 to the present. In addition, the Chapter examines whether the application of the neo-patrimonialism has, in any way(s), undermined good governance, democratisation, separation of powers, and constitutionalism in general, in Uganda. Chapter Eight, which is the last chapter, summarises the key findings of the study, draws conclusions, recommends strategies that should be adopted to promote constitutionalism in Uganda, dissects the originality of the study and its contribution to the existing knowledge, stipulates the significance and limitations of the study, and concludes by giving the impetus for conducting further research.

1.9 Chapter Summary and Conclusion
This chapter has given an introduction and general overview on the study. The purpose of the chapter was/is to give the study its appropriate foundation by setting the tenor of the debates and discussions through describing the context of study and research questions, background to the study, conceptualisation of the concepts of ‘constitutionalism’ and ‘neo-patrimonialism’, statement of the problem, objectives and justification of the study, methods and techniques of research adopted, and concludes with an outline of how this Thesis is arranged. Before discussing the Theory of Neo-Patrimonialism in Chapter Three, and embarking on answering the research questions and addressing the study objectives which are done in Chapters Four to Seven, respectively, it is paramount that the theoretical and philosophical perspectives that underpin constitutionalism are discussed: this is the task which the next chapter addresses.
CHAPTER TWO
THEORETICAL AND PHILOSOPHICAL PERSPECTIVES ON CONSTITUTIONALISM

2.1 Introduction
This chapter presents the theoretical and philosophical perspectives that underpin constitutionalism. It discusses the origins and development of the doctrine of constitutionalism, the social contract theory as a theoretical underpinning of constitutionalism, the conceptual relationship between constitutionalism and good governance, the contemporary thinkers' contributions to the doctrine of constitutionalism, and how constitutionalism was understood and exercised in the formerly colonised countries. After these, the chapter then discusses: the rule of law and protection of constitutional arrangements; political pluralism and general principles of political morality; the rationale and bases of constitutionalism; the philosophical underpinnings of constitutionalism under imperial states; and it concludes with the principle of separation of powers and the notion of quality of government.

The main purpose of this chapter is to acclimatise the reader with the basics of constitutionalism, particularly, what it means, its origins, how it developed, its theoretical and philosophical underpinnings, and how it relates with the key tenets of good governance like constitutional democracy, the principle of separation of powers, rule of law, political pluralism, and quality of governance, among others: this is because, good knowledge and understanding of these is very critical for analysing, assessing, and understanding the nature and state of constitutionalism in post-independence Uganda, which are elaborately discussed in the proceeding chapters.

2.2 Origins and Development of the Doctrine of Constitutionalism
While the meaning of the concept of constitutionalism has already been given in Chapter One under section 1.3.1, it is vital to note that conceptualisation and practice of constitutionalism can be traced in the works of classical theorists like John Locke’s (1690) *The Second Treatise of*
At the core of the social contract theory are principles and justification for the existence of public power and authority. The beginning of the scientific movement in Western Europe implied that human history is a continuous process that from time to time shows developments that bring about profound changes in state-citizens relationships. The earliest recorded move towards formal constitutionalism was in revolutionary France (Richards, 1979:24). However, for the present purposes, the gist of the analysis suggests that freedom from domination by nature or social institutions is necessary for genuine human development. Anything that subordinates people against their will to the forces of a natural or social environment is inimical to the existence of a truly human social life and therefore is to be resisted.

Stage-by-stage, classical political thinkers have contributed towards the development of constitutionalism as articulated in the context of various themes, including “the search for justice; the nature of sovereignty; the state of nature and early political society; the origin and role of property; and liberty and equality” (Brown, 1990:8-10). Brown’s (1990) argument helps to explain the value of the social contract theory in contemporary times: There was the need for citizens to have a legal means of expressing and correcting their grievances against the state, corporate legal entities and individual wrong doers. In this regard, constitutionalism provides the possible means by which the quality of governance and democracy could be improved through appropriate and functional state institutions. In modern times, science and technology have provided unprecedented ways for the free flow of information, goods and services, together with
complicated dynamics around human inequality. This is articulated by Rawls (1971) who shows that citizens require improved terms in the social contract to assert their rights, duties and responsibilities.

The history of the doctrine of constitutionalism as opposed to absolute monarchy was a recurring theme in classical political theory, most notably during the late 17th century England and 18th century America. It was expounded in writings of, among others, John Locke, Thomas Hobbes, Montesquieu, and the framers of the United States of America’s Constitution, particularly James Madison, and later on in the works of figures like Benjamin Constant, Alexis de Tocqueville and John Stuart Mill (Brown, 1990). For Montesquieu (1748), as indicated in his discourse in *The Spirit of Laws*, constitutionalism is concerned with a view of political liberty and the doctrine of separation of powers, namely, the legislative and judicial branches of public power, that are necessary in for social justice. In this regard, Gatmaytan (2009:32) outlines the five core elements of constitutionalism as the recognition and protection of fundamental rights and freedoms, separation of powers, an independent judiciary, the review of the constitutionality of laws, and the control of and the amendment of the constitution. These core elements of the doctrine of constitutionalism define channels through which citizens’ liberty is promoted, protected, and fulfilled.

By political liberty, Montesquieu (1748) means “a tranquillity of mind arising from the opinion each person has of his safety.” Montesquieu’s argument emphasises that citizens’ minds cannot be at rest if two or three kinds of governmental power are held in the same hands because it will undermine representative democracy. Montesquieu further elaborates that although most kingdoms in Europe are not representative democracies, citizens enjoy moderate governments, because “the prince, who is invested with the first two powers, leaves the third to his subjects.” However, in Turkey, where these three powers are united in the Sultan’s person, the subjects groan under the weight of a most frightful oppression as a glaring effect of constitutional failure. This comparison explains the value of
constitutional theory as the foundation of citizens’ liberty, equitable participation in their own governance procedures and continued defence of the terms of the social contract.

Machiavelli explains the impact of power on corruption by demonstrating, using historical examples from the Livy’s *History of Early Rome*, how power corrupts (cited in Bondanella and Musa, 1979:23). Machiavelli postulates that only special leaders could resist corruption arising from the exercise of power and does not emphasise the institutional restraints such as separation of power designed to help curb the abuse of power. Rousseau (1984:78) expands the understanding of how power corrupts, emphasising that politics should be a process of rising above self-interest to secure the common good. Rousseau asserts that the primary role of political institutions is to encourage and ensure that leaders work toward the common good.

To John Locke (1977:xii), the common good, including political liberty, flourishes when there is no abuse of power. Experience has shown that every man vested with power is liable to abuse it. Locke shares the idea that government depends on the consent of the people with Hobbes (1977:14-15), wherein people agree with each other to surrender their natural freedom to a sovereign. Locke (1690:xii) goes much further to postulate that there must be limits to the power of government to protect the rights and freedoms of the individual. He relies for this on dividing up government into branches so that no one branch can be dominant over the other. This is the basis of the principle of separation of powers in a constitutional government.

**2.3 Theoretical Underpinnings of Constitutionalism: The Social Contract Theory**

The Social Contract Theory derives from a social contract. In political philosophy, a social contract is “an actual or hypothetical compact, or agreement, between the ruled and their rulers, defining the rights and duties of each” (Encyclopaedia Britannica, 2018a:1). As KKHSOU elaborates, the Social Contract Theory holds that:
“The state is the outcome of a contract or an agreement made by people among themselves. This theory considers the state of nature as the original condition of mankind. In the state of nature, there was no organization or authority to regulate human behaviour and their relation with one another. To escape from such a deregulated life, people felt the need of some sort of authority or civil society where everyone could lead a life of stability and peace. So, the people entered into contract or agreement which was deliberate and with this the state came into existence. Thus, according to the social contract theory, the state is a human institution and an outcome of a contract among people. The state is created by the people for their welfare” (KKHSOU, n.d:78).

In view of the above, Social Contract Theory is perceived as a modern liberal and libertarian political theory of governance, meaning that, by consent, rational and moral people form governments for the sole purpose of protecting their rights and can dissolve them when public authorities fail (Mill, 1865; Jones, 1977).

The original proponents of the Social Contract Theory were Thomas Hobbes and John Locke (both English philosophers) in the 17th Century and French philosopher Jean-Jacques Rousseau in the 18th Century. These, nevertheless, were later followed by Baruch Spinoza, Samuel Pufendorf, Emmanuel Kant, John Rawls and David Gauthier, among others (Friend, n.d:1; Encyclopaedia Britannica, 2018b:1; Ndete, 2012:268). Albeit that each of these philosophers is quite unique in their conceptualisation of the Social Contract Theory, Desmond Ndete observes that all of them hold the view that “the people, by whose contrivance governments were instituted,

1 According to Dunleavy and O’Leary (1990:5-7), the liberal component in democracy derives from liberalism, an individualist creed that evolved in the 17th and 18th Centuries in Europe. This tradition holds the ideal that people are free to pursue their own interests so long as they do not violate the rights of others. All interactions are consensual and voluntary. Once the social contract is instituted and government becomes established, it is expected to be impartial in the execution of governance and set up certain procedural rights and safeguards to secure individuals’ basic rights from violation, whether by individuals or government itself

2 Libertarianism is “a normative political theory that gives top priority to the value of freedom of choice over other competing political values” and “understands a person to possess freedom of choice so long as no other agent coercively interferes with his or her choices. Since the state characteristically acts by defining laws and coercively enforcing them, libertarians’ hostility to coercion typically leads them to conclude that only a very minimal state is legitimate, namely, a state whose only purposes are to protect citizens against acts of coercion (murder, assault, theft, and so on) and against acts of fraud in a system of free enterprise” (Duncan, 2010:1).
ought to determine how they should be governed” (Ndete, 2012:267). Ndete adds that:

“The constitution of the state should truly be ‘The Constitution of the People’. This will promote democracy, and, as Alexis de Tocqueville, rightly opines, ‘Democratic laws generally tend to promote the welfare of the greatest possible number; for they emanate from the majority of the citizens, who (although) are subject to error, ... cannot have an interest opposed to their own advantage”’ (Ndete, 2012:267).

Against this backdrop, Social Contract Theory is a political, philosophical and normative theory which provides “the theoretical foundations of modern constitutionalism” (Encyclopaedia Britannica, 2018:1). John Rawls avers that, “the application of the concept of hypothetical agreement” which is inherent of the Social Contract Theory is paramount because it would ensure that national constitutions, other state laws, and/or public policies, “are made on the basis of the crucial hypotheses that the citizens are parties to the contract (and so each has a stake in the state” and has the “right to participate in state affairs, directly or representatively, that they are rational, that they are members of a well-ordered society, etc” (John Rawls in Ndete, 2012:277). It is thus not surprising that, as Ndete remarks, Social Contract Theory provides a “satisfactory framework for balancing the authority of the government and the obligations of the citizens based on the supposition that they are parties to a pact” Ndete, 2012:277).

In view of the above, this Thesis draws on the works of John Rawls (1971, 1993) which establish a link between the constitution as a social contract, on the one hand, and liberalism, justice (fairness), and the quality of government3, on the other. A government based on the rule of law4, separation of powers5, popular consent through representative assemblies,

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3 Quality of government is “the impartiality of institutions that exercise government authority” (Rothstein, and Teorell, 2008:165).
4 Rule of law is “where every activity, every conflict and every exercise of power respect the provisions of accepted laws, rules and regulations” (UNCEPA, 2018:1).
5 Separation of powers is a doctrine or principle which “suggests that the principal institutions of state—executive, legislature and judiciary—should be divided in person and in function in order to safeguard liberties and guard against tyranny. The doctrine of the separation of powers suggests that the principal institutions of state—executive, legislature and judiciary—should be divided in person and in function in order to safeguard liberties and guard against tyranny.”
religious tolerance, freedom of conscience, protection of the rights of private property and guarantees of freedom of the press and other individual liberties are the core ideas of constitutional liberalism. Constitutional liberalism seeks to both create and contain official power. In contrast, in most of post-independence Africa, national bureaucrats tend to entrench rhizome-like social networks; patrimony; and tendencies towards personal rule by agencies of family connections, narrow-minded alliances, and friendships. Doornbos (1990:179) strongly contends that,

“There is a problem with the African state, and this concern has recently led to much discussion as to what its proper role should be, as well as fostering a variety of proposed and actual interventions by international organisations and consultants to help ‘solve’ the problem.”

Doornbos’s (1990) emphasis is on a concern about the elements of the social contract specified as capacity and performance, styles and orientations and the measure of representativeness and legitimacy that African governments enjoy within the society at large. In this study, therefore, the persistent failure of the Ugandan governments and/or presidents to adhere to the basic requirements of the doctrine of constitutionalism between 1962 and 2018 is viewed as a breach of the social contract which the governments/presidents had/have with the Ugandan masses. This state of affairs is not only undesirable and regrettable but ought to stop.

2.4 The Conceptual Relationship between Constitutionalism and Good Governance

Constitutionalism underlines the rights and duties of citizens and illustrates the value of social stability and competent governance in such a way that powers of state are separated with clear limits, checks and balances. Presumably, this is why Bireete (2013:1) contends that, “constitutionalism is the idea that government can, and should, be legally

According to a strict interpretation of the separation of powers, none of the three branches may exercise the power of the other, nor should any person be a member of any two of the branches. Instead, the independent action of the separate institutions should create a system of checks and balances between them” (2011:2).
limited in its powers, and its authority depends on observance of these limitations.” This argument is consistent with Gatmaytan’s (2009:31) three principles of constitutionalism, namely, the limited government principle, the supremacy principle and the entrenchment principle.

Bireete’s (2013) contribution means that government itself should be subjected to the governance of law and required to abide by institutional mechanisms and recognize individual rights and freedoms and that, limitations on state power cannot be subject to change by recourse to routine political processes. Its relevance is the promotion, protection and fulfilment of good governance. For this same reason, the term good-governance refers to efficient, effective accountability and is sensitive to a citizen’s participation rights based on rules in areas of state-society managerial perspectives that go hand-in-hand with respect for human rights. So, the essence of constitutional government is delineated governance founded in a prescribed division of powers but complimentary authority among public officials. Consequently, the contentious social contract-related issue is official institutions providing arenas for the political negotiation on various issues driven by conscientious and organised groups in society.

For explanatory purposes, Kanyeihamba (2010:263-266) clarifies that for good governance to be realised, constitutionalism must be respected in society where the legislature, the executive and the judiciary are independent but complimentary. In addition, the argument means that the legislature is the body within a state that is entrusted with making decisions that define new laws and alter existing ones, while the executive is the body in the state that is entrusted with the practical administrative functions of government in accordance with the constitution and laws of the state. Kanyeihamba further asserts that the judicial function consists of the interpretation of the law and its application by rules or discretion to the facts of particular cases. This clarification explains why the judiciary must not only be independent but also impartial in executing its functions. The major role of the judiciary is to determine the legality of the different
kinds of acts and behaviour of as well as the rules or laws government will enforce in society. As Kanyeihamba (2010:263-266) states,

“The relationships between the three organs of government, on the one hand, and between the organs and citizens, on the other, are guided by two formulae of good governance and freedom, namely, the doctrine of separation of powers and the theory of the rule of law.”

These vivid attributes of good governance compliment efforts to ensure the liberty and the fundamental rights of the individuals under the conventional rule of law arrangement. The relationship between the doctrine of constitutionalism and good governance is a liberal idea fostering legitimacy of government, guarding against diffusion, discouraging oppression and tyranny, and promoting efficiency of public administration. The international IDEA Framework (2001:26) summarises this relationship and shows how “citizenship, law and rights; representative and accountable government; civil society and popular participation; and democracy beyond the state” are important variables fostering the quality of democracy. This analysis justifies the value of trustworthiness among public officials as an issue of central concern. This standard regulates all civil states’ internal policies and the sovereignty of citizens and institutions of governance built along procedural international legal norms, especially the principle of separation of powers.

In a viable democracy, none of the three organs of state can usurp the authority and power assigned to either of the other because they all operate in harmony and promote cooperation. In that broad way, “Liberty can only be found in societies where there is no abuse of powers” (Kanyeihamba, 2010:273). In the same vein, Clare Stansfield (2013:29), in her Political Ideologies: the Development of Modern Liberalism relates the doctrine of constitutionalism to good governance and specifies its outcomes as equality of opportunity, positive freedom, enabling state, developmental individualism and qualified welfare. This can be realised in a society where the separation of powers is promoted, protected and fulfilled. Stansfield’s contribution gives more meaning to the relationship between
constitutionalism and good governance by emphasising the creation of a constitutional environment conducive enough to the individual to flourish. In that regard, like Kanyeihamba (2010:269) on rule of law, Dyzenhaus (2013:58-81) argues that the rule of law is the rule of the liberal principle which has been adopted by practitioners as a benchmark for good governance following the social contract tradition.

To be specific, Governance Pro (2010:1-2) categorically states that good-governance has eight major characteristics, namely, rule of law, transparency, responsiveness, consensus orientation, equity and inclusiveness, effectiveness and efficiency, accountability, and participation. The essence of the argument is that good governance is an idea difficult to achieve in totality. This constraint is attributed to the fact that good governance typically involves well-intentioned people who will freely bring their ideas, experiences, and other vital human strengths and shortcomings to the policymaking table. The emphasis is that good governance is achieved through an ongoing discourse that attempts to capture all the considerations involved in assuring that stakeholders’ interests are addressed and reflected in policymaking and implementation initiatives. For example, the colonial policy initiatives were linked to globalisation through colonial administration structures reflected in the well outlined arrangement involving the allocation of financial and technical resources for development and welfare (GoU, 1946:47).

Furthermore, in *A Development Plan for Uganda*, colonial development plans and programmes identified improved transport as part of “the fundamental problem” involving maintaining steady public administration without resorting to calls for outside assistance. The colonial policy initiatives were the foundations of stabilisation and the law and order drive later adopted by post-independence governments towards improvements in the social services and transport sectors in Uganda (GoU, 1946:67-72). At the time of this study, the effective intervention was more pronounced in the budget proposals emphasising building standard gauge railway and maintaining major trunk roads in Uganda. Improved transport has been a
priority because the country has struggled to adjust to the rule of law even in the traditionally hard to reach remote areas. Improved transport facilities are considered vital to linking the country to regional and global markets and governance. The railway and roads networks in Uganda have improved, making the different formerly remote areas accessible, and the development boosted economic growth and tourism. Based on the colonial administration’s five-year development plans strategy, adopted by self-rule governments up to 1975, changes towards improved quality of governance played a major role in transforming Uganda’s economy socially, economically and politically.

2.5 Contemporary Thinkers’ Contributions to the Doctrine of Constitutionalism

This present section links contemporary thinkers’ contributions towards the development of the doctrine of constitutionalism with the notions of quality of governance and procedural democracy. Its focus is on constitutionalism in this age of intensified globalisation and global governance mechanisms with a specific focus on ideas on human rights, good governance, effective states, tackling inequality and intellectual property rights, and taking into account international finance and trade institutions encompassed in the World Bank, International Monetary Fund (IMF), UN, and IDEA. The globalisation process came with the advancement of ideas that allowed the best form of government-society relationships. Influential drivers of globalization, such as the World Bank, tie developmental aid to good governance parameters such as respect for human rights.

According to Thomas Baker (2004:58), constitutional theory helps overcome the challenging state-citizens’ relationship that has proved problematic, especially when good governance indicators are invoked. Baker asserts constitutional law shapes history, re-invents nations, regulates state institutions, and promotes an audience of even dissenting opinions. Furthermore, constitutional law elaborates, revises and sometimes overrules previous understandings; it resembles a kind of civic
religion for nations. The context is constitutionalism shaping the quality of civic government. Contractual political theories, like those of John Locke, Thomas Hobbes and Montesquieu, emphasise an idea that government can and should be legally limited in its powers and that its authority depends on the observance of those restraints. The focal term is constitutional restraints because it is used in reference to in-built institutional checks and balances on the actions of state agents, especially when dealing with the citizens or public authority and resources.

The presence of institutional checks presupposes that the state is built on institutions. The problems of many countries in Africa is that there is a general lack of viable state institutions, whereas countries such as the United States have powerful institutions that suffer from political decay (Fukuyama 2004:5, 7, 455). This, according to Fukuyama (2004:7), means that government institutions that were supposed to serve public purposes had been captured by powerful private interests, such that democratic majorities had difficulty asserting their control. The problem is not just that of money and power; it also has to do with rigidities of autocratic rule and the ideas supporting autocratic rule.

Fukuyama’s (2004) observation has implications for constitutionalism because any state must have an acknowledged means of constituting itself. These ways specify the limits placed upon the three arms of government so that they can serve the broad common good rather the interests of a few. Baker (2004:58) argues that “It helps us to understand...decisions and helps us to cope with the elaborate and often conflicting opinions.” Therefore, constitutionalism is closely linked to balancing multiple interests in the realm of governance. Quality of governance is closely associated with the social contract tradition and promotion of democratic system of governments and citizenship rights. According to Mamdani (2004:109), the hallmark of the modern state is the civil law whereby the citizens’ rights are guaranteed by law, and that constitutes a limit on civil power. This would ensure that the social contract between the government and the governed does not result in arbitrary use of power, as Locke
Rawls’s (1971) *Theory of Justice* develops the main idea as a theory of justice based on the works of classical social contract theorists including Locke’s *Second Treatise of Government*, Rousseau’s *The Social Contract* and Kant’s *The Foundations of the Metaphysics of Morals*. From these foundations, Rawls (1971:4-10) articulates his own contribution to the social contract tradition and asserts the following:

“The are the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association. These principles are to regulate all further terms; they specify the kinds of social cooperation that can be established. This way of regarding the principles of justices I shall call justice as fairness.”

At the core of Rawls’ (1971) argument is the articulation of the principles of justice in a society that is well-ordered and designed to advance the good of its members who are governed by basic public institutions. His conception of quality of governance is the effective regulation of public justice where everyone accepts and knows that others accept the same principles and public institutions harmonise diverse interests of members in society. Rothstein and Treorell (2008), in their “What is Quality of Government? A Theory of Impartial Government Institutions” gives credence to Rawls’ (1971) idea of basic public institutions as a requirement for good quality of government.

One way Rawls’s (1971) proposition can be attained is to entrench political equality. This is amply demonstrated by Rothstein and Treorell (2008:170), who posit that political equality is a basic norm for legitimatizing democracy in general. Rothstein and Treorell claim that as long as the principle of equality in the access to power is not violated, for example, by giving one specific political party the right to rule or by refusing to give some specific groups of citizens the right to stand for office or take effective part in the public debate, every country may adopt particular equitable modes of organising its constitutional paradigm. The result will be quality of governance, which enhances the quality of life of citizens. Rothstein and Treorell (2008:169) pose the question and provide the answers: “What is
required for the quality of life enjoyed by citizens? Quality of governance. What is quality of governance? That which promotes the quality of life.”

Jessop (1990:176-177) argues that “in practice democratic rights are often eroded by a number of very serious obstacles resulting from deliberate political action and/or the unintended effects of particular institutional arrangements.” For example, Kanyeihamba (2010:6-9) discusses the colonial foundations of structural power in the state in Uganda. He elaborates how traditional kingdoms that had assumed “voluntary and special relationship with colonisers through signing agreements” were amalgamated with non-kingdom areas through annexation. These varied procedures account for the subsequent patterns of public sector administration involving inclusion of some while marginalising the rest.

A close look at Jessop and Kanyeihamba’s observations calls for a discussion on and debate about the definition of the closely related concepts, namely, struggles for democracy and quality of governance. These were some of the values associated with the social contract tradition that has guided the rise and growth of African nationalism, ignited partly by exclusive colonial economic policies and development plans (Ayandele, Omer-Cooper, Gavin and Afigbo, 1984:147-173). Ayandele et al.’s (1984) contribution explains the centrality of politics as being a vehicle of socio-economic and cultural transformation closely related to governance. This explanation is confirmed by Krahmann (2003:323) and Hendricks (2007:54) through linking changes in foreign fund donors’ attitudes associated with conditionality for aid in Africa since the 1980s to the concept of good governance. Krahmann and Hendricks argue that a bloated centralised bureaucracy with weak institutions, lack of transparency and accountability, disregard for rule of law, and a general absence of democratic practices have been identified as the culprits for the continued crisis of the post-colonial state.

Central to Krahmann and Hendricks are the definitions and uses of good governance as tools for desired changes in state-citizens’ relationships. Their points of view focus on defining correctly and applying the concept of
good governance as a very important variable in fostering and assessing the quality of democracy. An approach by the International IDEA (2001:24) gives a prominence to “mediating values.” For desired changes in state-citizens’ relationships, the concept of good governance found fertile ground for acceptability in political science parlance because it emphasises citizens’ participation and rights, authorisation of officials through fair and free electoral choices, and the building of public institutions that are socially representative. Complementary attributes include transparency and accountability of all officials in a variety of institutions, responsiveness to public needs, and promotion of equality that finds expression in solidarity amongst citizens with inter-linkages to popular struggles for democracy abroad. Common to these notions is the changing locus of political authority under the social contract arrangement because conscientious citizens can form governments and dissolve them (Goodman 2010:1). The focus of Goodman’s (2010:3) argument is its effects on individuals’ liberty, in so much as “moral people form governments for the express purpose of protecting their rights...legitimate governments are created by consent, but fundamental rights are not grounded in consent.”

To clarify the issue of political authority, International IDEA (2001:20) asserts “democracy is a political concept, concerning the collectively binding decisions about the rules and policies of a group, association, or society.” The relevance of this assertion is that such decision making can be said to be democratic to the extent that it is subject to the controlling influence of all members of the collective considered as equals under the social contract arrangement. Consequently, Rothstein and Treorell (2008) link democracy to good-governance and the quality of government institutions by holding the view that the three have a direct correlation with understanding economic growth and social welfare in developing and transitioning countries. Based on the analyses of political theory, Rothstein and Treorell propose a more coherent and specific definition of the quality of government. Their emphasis is on the “impartiality of institutions that exercise government authority.” To place the theory of impartiality in a larger context, they contrast its scope and meaning with the threefold set
of competing concepts of quality of government namely, democracy, the rule of law, and efficiency/effectiveness. These have been emphasised in matters of global governance especially by the UN, the World Bank, and the IMF (Hendricks, 2007:54-71).

2.6 Constitutionalism in the formerly Colonised Countries

In that constitutional self-ruling government context, the concept of post-independence countries specifically refers to those nations generally found in the global South, states whose formal origins were European colonialism. The central focus in this subsection is to analyse political development perspectives and the construction of a social contract in the former colonies. Categorically, post-independence nation-states have had exclusive power structures of alienation of their citizens shackled onto progress (Davidson, 1992:290). This was a structural problem inherited from their former colonial masters who generally regarded the native populace as their subjects to be exploited (Ayandele et al., 1984:5). The colonial origins of these post-independence nation-states have had largely debilitating influences on constitutionalism, especially in Sub-Saharan African countries. For example, Mamdani (1993:522-543) discusses the trend “from colonial reform to state-defined nationalism,” whereby national governments assumed public authority but retained largely repressive laws and procedures of the imperial nature.

In the same vein, Harberson and Rothchild (2009:124) use data from World Bank Governance Matters Surveys to demonstrate a distinctively more mixed picture of Sub-Saharan democratisation, stateness and governmental performance. Their findings demonstrate that post-independence Africa became a continent of many paradoxes and contradictions, which is congruent with Oloka-Onyango and Nansozi’s (2007:xi) proposition that “constitutional reforms in Africa were a bastardised process.” Harberson and Rothchild’s (2009) proposition parallels Kanyeihamba’s (2010:240) view that “the social and economic analysis of the personalised state began to reveal interesting phenomena.” It was indicative of Africa’s post-independence curse involving “the new
leadership of Africa ... chose to survive longest by riding on the backs of the peasants, the poor and the ignorant. Those who questioned the new priorities were threatened with unleashing the military forces against them” (Kanyeihamba, 2006:83).

In constitutional terms, Kanyeihamba’s observation was given credence by Oloka-Onyango (2007:233) arguing that “Africa needs to be understood as a continent of tensions,” a contention Davidson (1992:243-265) describes as “pirates in power.” From that panoramic view, post-independence African rulers have found it easy to change constitutions and limit fair competition for political power and citizens’ participation. Using Uganda as a microcosm for the African situation, Kanyeihamba (2010:227-247) observes that “the metamorphosis of the NRM” involved corruption, intolerance of critical press and opposition groups and neglect of constitutional governance became increasingly prominent. Therefore, as time passed, those post-independence African bureaucrats managing states enacted laws regulating public order management procedures that largely infringed upon the rights of their citizens, contrary to the requirements of representative democracy (Kanyeihamba, 2010:253-254).

Those procedural hardships involving oppression by and injustices of public authorities bleached the principles of the social contract tradition.

This argument explains the strategic relational approach, and it accounts for the structuralist perspective this study adopts from Jessop (1990). Its importance is to demonstrate why in the perverted post-independence African situation, the populations suffered generally bad socio-economic and political outcomes of bad governance. For example, Nuwagaba and Rutare (2014:17) illustrate how the bad quality of governance in Uganda between 1999 and 2003 was responsible for the low prices of agricultural products, unfair terms of trade on world markets, high costs of imports, poor marketing infrastructure, inadequate education system, unacceptable levels of unemployment and generalised disempowerment of citizens. The gist of Nuwagaba and Rutare’s analysis is the disturbing data on poverty as the cause of bad human conditions in Africa by the UN Development
Programme (2011), in World Development Report Indicators, and the Chronic Poverty Research Centre (2005), in Chronic Poverty in Uganda: Policy Challenges, where the country is rated among the poorest and least developed countries. Consequently, Nuwagaba and Rutare (2014:17-18) are concerned about the poor quality of life caused by chronic poverty affecting over seven million Ugandans. They state the following:

“...despite strides made in lowering the rate of poverty Uganda remains one of the poorest countries in the world ranking 161st out of 187 least developed countries, with a human development index (HDI) of only 0.446...the number of people living in absolute poverty has increased in real terms...effective demand is lacking.”

To reverse such dismaying, Nuwagaba and Rutare (2014) strongly call for good governance that stimulates conditions for a healthy population equipped with skills and a high earning capacity to improve their production and effective demand.

2.7 Rule of Law and Protection of Constitutional Arrangements

Rule of law refers to generally observed dispositions to exercise public power pursuant to publicly known rules (Gatmaytan, 2009:31). Therefore, rule of law is one of the tenets of the social contract and protection of constitutional arrangements. In this regard, Reynolds (1987:79) asserts that, “Constitutionalism is the practical science of designing and balancing institutions of public power and authority so as to prevent monopolies of power or emergency of tyranny.” Reynolds’ contribution gives more credence to Rothstein and Treorell’s (2012:12) work about defining and measuring quality of government; they concur that rule of law involves a set of stable rules and rights applied impartially to all citizens. Its deeper meaning is that, democratic governments are obliged to encourage institutional tendencies towards impartiality, inclusiveness and responsiveness in the course of executing their duties. Its implications led Olukoshi (2007:11) to assert that good governance programmes cover the institutionalisation of the culture of rule of law and the enthronement of a system of minimal government that are centred on the provision of security
and state accountability among others. Rule of law thus embodies the crucial principles of equality before the law and fairness.

Discussing law and the state, meaning the intersection of the juridical and the political structures, Jessop (1990:68) contends that the state is a functional unity of legality and illegality and should not be reduced to a purely juridical structure. He focuses on the activity, role and place of the state whose variables stretch beyond law and juridical repression. Not only do some of its activities escape juridical regulation, but it also transgresses its own legality and allows for a certain rate of violation in other cases. He emphasises that “... the monopoly of violence enjoyed by the state means that it can modify the law or suspend its operation when necessary to secure class domination.” However, once that monopoly of legitimate violence is applied irregularly, it attracts severe unintended consequences and in extreme cases, riots, armed rebellion and/or revolution, which are aimed at restoring respect for the doctrine of separation of powers as an institutional dividend. Therefore, rule of law gives the social contract theory its practical meaning in state-citizens’ relationships as regulated by public institutional arrangements following the doctrine of separation of powers.

Kanyeihamba (2010:269-273) clarifies that “closely associated with the doctrine of separation of powers is the theory of rule of law.” His clarification is that rule of law is a collection of ideas and principles propagated in so-called free societies to guide law-makers, administrators, judges and law-enforcement agencies. Therefore, the overriding consideration in the theory of the rule of law is the idea that both the rulers and the governed are equally subject to the same law of the land. Kanyeihamba (2010:269-273) further clarifies, “The theory is particularly important in the developing countries where the activities of government often appear out of step with legal norms and the constitution.” The constitution implies the social contract whose terms legally govern both the ruled and the rulers. So, changes in the legal order of a given society determine processes and trends of socio-economic development in that society.
Elucidating the major tasks involved in strengthening the weakest segments of post-independence society, Kothari (1993:152-164) asserts that:

“History has shown very clearly that one cannot constructively transform a society from the outside. All genuine social transformations have been initiated from within the society, even though the genesis for transformation lay in the cross-fertilisation of ideas and experiences from different societies.”

This Thesis argues that the ability of a given society to carry out meaningful and appropriate transformation involving enforcement of limits and control of state-actors is dependent on a number of factors, most importantly, respect of the rule of law. Rule of law promotes rights to citizenship, relevant quality education and gainful work. Rule of law restores commitment to political pluralism, strengthens civil-political and socio-economic processes, fosters fulfilment of orderly decentralisation of power and control, weeds out corruption, and ensures quality social service delivery for all. In political science parlance, diversity management implies political pluralism, which is the focus of the next section.

2.8 Political Pluralism and General Principles of Political Morality
Political pluralism refers to civil tolerance of multiple and alternative centres of power and control in a given society, which explains the controversies of the state. Political pluralism governs freedom of choice, relative beliefs and convictions or is simply the protection and appropriate management of diversity in the interest of freedom. Some call it “the broad social interest,” “the public interest,” “the common good” or just “the general will” of the people. In view of this, Dunleavy and O’Leary (1990:7) proposes that constitutional devices “should be used to make the state accountable; institutional and social pluralism to divide and fragment its organisations and capabilities”; and that they are very central in promoting “extensive popular participation in political formulation and implementation to dissolve the state in the citizenry.”
Franco (2003:492) articulates the idea of pluralism as value or tradition which covers “a complex whole that does not point in a single direction, nor is it self-consistent...a somewhat miscellaneous composition... a multi-voiced creature consisting of a variety of beliefs, many pulling in different directions or competing with one another.” Dunleavy and O’Leary (1990:13) define political pluralism as:

“This... the belief that there are, or ought to be many things. It offers a defence of multiplicity in beliefs, institutions, and societies, and opposes ‘monism’ - the belief that there is or ought to be, only one thing. Pluralism begun as a philosophy that argues reality cannot be explained by one substance or principle. Similarly, political pluralism recognises the existence of diversity in social, institutional, and ideological practices, values that diversity.”

Relatedly, Mamdani (1993:519-553) discusses pluralism in the light of the right of association, focusing on the right to organise in general, and specifically, to form or join political parties, professional associations, and trade unions and participate in local governments. Therefore, freedom of association has been viewed as an intrinsic component of representative democracy (Fung, 2003:516). The essence of Fung view is that associations form a principal part of the structure of civil society in which individuals deliberate with one another to form public opinions and criticisms of official policies and state actions. The core of Fung’s contribution is that:

“Associations enhance democracy in at least six ways: through the intrinsic value of associative life, fostering civic virtues and teaching political skills, offering resistance to power and checking government, improving the quality and quantity of representation, facilitating public deliberation, and creating opportunities for citizens and groups to participate directly in governance.”

When discussing institutions, social pluralism and culture, Dunleavy and O’Leary (1990:25-26) assert that, “The ways in which a mass public controls its government and politicians has less to do with Parliament and constitutional constraints and more to do with elections, party competition and interests group activity.” Their central argument is that a fundamental safeguard of democratic liberties is the cultural dispositions of a politically aware citizenry who are competent to organise themselves. Consequently,
for the social contract to take firm roots in society, diversity has to be managed properly through reconciling a plurality of ideas and the activities and interests of organised groups and associations.

Focusing on Uganda since British colonial rule was established, Mamdani (1993:519-553) emphasises the nature and constraints of legal pluralism and the role of political parties and other social movements in the development of national democratic processes. He argues for the separation of constitutional powers, without which a healthy social and ideological diversity, implying a healthy political pluralism, is not sustainable. The relevance of Mamdani’s contribution is corporatism, also defined as a distinct form of political representation and state intervention (Jessop, 1990:120). Under a pluralist arrangement, a determinate sovereign authority is also required to coordinate the different programmes and policies in a fully-fledged corporatist system. Mamdani further argues that “if corporatism is to form the dominant element in a state form, the corporations would need to be all-embracing and enjoy representational monopolies in relation to their members’ various factions.” Thus the core of his argument is that:

“Many different institutions, organisations and agencies are involved in the struggle for hegemony; and hegemony in turn involves (indeed requires) the pluralisation of social forces rather than polarisation around basic class cleavage...For democratic politics is not just a question of securing an electoral majority in the contest of ‘one-man-one-vote-one-value’ but also raises the question of formulating policies that will prove realistic in terms of overall balance of forces and structural constraints confronting a party or coalition in office.”

In that understanding of organisations, institutions, and agencies involved in the struggle for authority, it can be argued that political pluralism is the matrix within which struggles for hegemony occur. For Mamdani (1993:549-555), political pluralism, translated into the broader Ugandan context, influenced the basis of claims for individual rights of citizenship especially given the tendency for mass expulsions of immigrant populations that punctuated every major political crisis in the country.
The essence of Mamdani’s (1993) contribution is that, “The whole point of a constitutional exercise is not to limit our choices to those currently available, but to expand the ground for participation so as to broaden continuously the range of choices available to us.” Promoting general principles of political morality is the grounds for participation, and it brings in citizenship rights’ awareness creation for which education is possible partly through activism and the mass media. The mass media and politics is another area where pluralism applies. Pluralist approaches to mass media derive from arguments for a free press. Dunleavy and O’Leary (1990:40-41) contend that the combination of a free press, increasing journalistic professionalism and countervailing powers in the media creates a system that generates the information necessary for effective citizens’ control over politicians. Such a system is a powerful tool and extension of the accountability principle of governments. This argument leads to discussion about the concept of quality of governance.

2.9 Philosophical and Theoretical Rationale and the Bases of Constitutionalism

Rawls’s (1971:3) contribution towards knowledge about the liberal thought is the role of the “justice as fairness” principle, and his articulation of the content of the principle of public justice is through institutional democracy and equal liberty of conscience. Equal liberty of conscience in a given society, political justice coupled with equal political rights, and equal liberty of persons and its relations to the rule of law form the foundations of constitutionalism and good governance. Furthermore, Rawls (1971:171-343) discusses public institutions and illustrates distributive shares as variables related to the utilitarian traditions embedded in the ideal of social institutions, economic systems and the role of the market. Then Rawls demonstrates duty and obligation from the standpoint of the theory of justice, the most important natural duty of which is to support and to further just institutions. Given the value and sense of public and effective senses of justice, it is important that the principle defining the duties of individuals be simple and clear and that it insures the stability of just arrangements.
Rawls (1971) describes the role of justice in social cooperation, accounts for it as the basic structure of society, presents it as the main idea of fairness, and carries it to a higher level of abstraction in the traditional conception of the social contract theory. According to him, justice is what equal and free persons before the law would agree as the basic terms of social cooperation in conditions that are fair to that purpose. His assertion is that justice as fairness is the guiding principle for managing major social institutions responsible for distributing fundamental rights and advantages of social cooperation. This assertion covers the political constitution and the principle economic and social arrangements. Therefore, his theory of justice as fairness hinges on the idea of one’s own worth in one’s effort towards accessing the primary social goods in broad categories like human rights, fundamental liberties, equality in accessing opportunities, income and wealth linked with a necessity for impartiality in government.

The rationale of justice as fairness is that once the principles of right are at hand and regulate society effectively, each individual might be able to develop and plan his or her life in a way that does not require violation of others’ rights for fulfilment. Thus, each person has the responsibility to fashion his or her satisfying life in a just society by exercising political liberty and freedom of speech, assembly, conscience and thought as determinants of a person’s integrity, property and freedom from arbitrary arrest as defined by the concept of rule of law. In the next section, the principle of separation of powers and the notion of quality of government is discussed.

2.10 The Principle of Separation of Powers and Notion of Quality of Government

The principle of separation of powers was articulated by Montesquieu (1748) in his discourse *The Spirit of Laws*. It is with a view of political liberty that the doctrine of separation of powers becomes necessary. By political liberty, he means “a tranquillity of mind arising from the opinion each person has of his safety.” His political thought partly reworked the theory of ‘feudal balance,’ emphasising the merits of a political system with more
than one source of official authority (Dunleavy and O’Leary 1990:14). Its meaning is that there is a prescription of institutional connection between the executive, legislative, and judicial organs of government.

Explaining Montesquieu’s tripartite division of power, Dasgupta (2012:1) asserts, “Structurally considered government consists of three branches having for their functions (i) legislation or law making (ii) their execution or administration and (iii) interpretation of these laws.” Technically, this separation of the power principle is based on a division of governmental functions, namely, the legislative, executive and judicial roles, to check possible excesses of one or the other branch. Conventionally, the doctrine of separation of powers calls for adhering to good governance matrix, and not only does it ensure the checks and balances of power, but also, it guarantees that laws passed can be tested in the courts for their legality, and the judiciary can function without interference from either branch of government to ensure good governance.

According to UN Development Programme (1997), the characteristics of good governance include participation, rule of law, transparency, responsiveness, consensus orientation, equity, effectiveness and efficiency, accountability, and strategic vision as the values to be promoted by liberal democratic institutions of political authority. Saul (1997:339) is in agreement with this view and emphasises it as an issue and key to constitutionalism by situating it in a popular democratic perspective. Its meaning is further explained by Holmberg et al. (2008:3) who argue for the promotion of quality of government, a term they define as the traditions and institutions by which authority in the country is exercised in tandem with the social contract theory. Holmberg et al. emphasise the processes by which governments are selected, monitored, and replaced in civic and orderly ways. In addition, it covers the capacity of government to effectively formulate and implement sound policies. Its essence is respect for citizens’ rights, and in turn, the state for the institutions that govern economic and social interactions among them; therefore, the principle of separation of
powers and the notion of the quality of government go hand in hand to sustain institutional practices.

2.11 Philosophical Underpinnings of Constitutionalism under Impartial States

The notion of an impartial state implies that when implementing public laws and policies, government officials should not take into consideration anything about the citizen or a particular case that is not stipulated in the legislation or guiding principles (Rothstein and Treorell, 2008:170). This procedure requires that officials of the state act impartially and not be moved by considerations, such as family relationships and personal preferences, so that people are treated fairly and in the same manner irrespective of personal connections and idiosyncrasies. The notion of impartiality of the state is consistent with the idea of rule of law as an important underpinning of constitutionalism. Alder (2009:129) contends that the notion of rule of law entails equality of all before the law.

Conventionally, public authority is official and practiced through institutions and constitutionally regulated agencies. These institutions and agencies are expected to be impartial so as to promote good governance. According to Holmberg et al. (2008:1), global governance institutions like the World Bank and the UN emphasise good governance and sound institutions from the perspective of economic development. Their contribution to the debates on institutions is the aspect of impartiality of government institutions whereby officials in positions of public authority, exercising state power, are expected to strictly follow written policies, laws and regulations governing relations with the citizens. This argument explains the authors’ central focus on the quality of government as a concern of great importance because it determines issues of health, environmental sustainability, the economy, social policy and life satisfaction. For the Human Resources Research Council & Pennsylvania State University (2009:2), “Institutional arrangements in Africa remain fragmented, despite four decades of institutional building resulting in delinking the state from society, failure to coordinate resources with broad
social interests, and exclusionary policies and practices.” This observation clearly defines the problem under debate and supports investigating alternative institutional practices for an impartial state with the aim of promoting good governance.

The term ‘good governance’ was used first by the World Bank in a report on Africa in 1989 entitled *Sub-Saharan Africa: From Crisis to Sustainable Growth*. The report identified “pitiable governance” as the main cause of the failure of Structural Adjustment Programmes (SAPs) and for the recorded poor levels of economic growth in low-income countries, especially in Africa. The failure of SAPs was blamed not on the programmes themselves but on unfortunate governments, corruption, official secrecy, inefficient policymaking, lack of accountability, and disregard for the law. To qualify their study, the World Bank (1989) broadly defines the concept ‘good governance’ as embracing the idea of an efficient public service, respect for human rights, an independent judiciary and legal framework, economic liberalism, protection of private property, political pluralism, participation, administrative accountability, transparency and respect for the rule of law. These variables suffered greatly during the years of the global Cold War when bipolar ideological conflict was raging.

Governance is thus a relatively new paradigm that became popular in the last two decades of the last century and focuses on three actors, namely, government, civil society and the business community. Each of the actors has its respective duties and functions to create a good governance environment. The emergence and meaning of governance, and good governance in particular, coincided with the end of the Cold War and associated collapse of the communist economic bloc and political systems because they showed how potentially damaging big and inefficient state apparatus could be to economic development (Kjaer and Kinnerup, 2002:2).
2.12 Chapter Summary and Conclusion

This chapter has explored the theoretical and philosophical perspectives that underpin constitutionalism which embody a philosophy based on the classical liberal idea of the social contract and linked to the notion of measuring the quality of democracy. The chapter has elaborated how constitutionalism is a phenomenon which is theoretically rooted in the Social Contract Theory. Besides, the chapter has delineated the study’s relationship with other associated concepts, made possible through discussing the key elements of constitutionalism, contemporary thinkers’ contributions to the doctrine of constitutionalism, constitutionalism in the Global South, the relationship between constitutionalism and good governance and rule of law, political pluralism, the philosophical and theoretical rationale and bases of constitutionalism, the principle of the separation of powers and the notion of the quality of government, and the institutional practices of an impartial state. The chapter has underlined that, knowledge of above summation is very critical because it forms the basis for analysing, assessing, and understanding the nature and state of constitutionalism in post-independence Uganda and Africa, which are elaborately discussed in the proceeding chapters. The next chapter discusses the Theory of Neo-patrimonialism, which in Chapter Seven is applied to explain Uganda’s political processes and its volatile nature of constitutionalism since independence.
CHAPTER THREE
THE THEORY OF NEO-PATRIMONIALISM AND ITS RELEVANCE TO CONSTITUTIONALISM IN POST-INDEPENDENCE AFRICA

3.1 Introduction
This chapter discusses the Theory of Neo-patrimonialism and applies it to understand and explain the state of constitutionalism in post-independence Africa. This is because, as Kratt observes, neo-patrimonialism is the unchanging reality which “has persistently characterised the way in which ‘Africa works’ since independence” (Kratt, 2015:1). In addition, neo-patrimonialism is seen to be “the foundation stone for the system which drives African politics (Francisco, 2010:1), and it is said to have “defined African politics since independence” (Lindberg, 2010:123; Hyden, 2000:18; Beresford, 2014:2; Erdmann and Engel, 2007:106).

Moreover, as Ikpe, and Bratton and Van de Walle observe, neo-patrimonialism in Africa is perceived as a concept that “can be applied to a number of different regime types, whether they be multi-party democracies, single-party systems, personal dictatorships, plebiscitary, or military oligarchies” (Ikpe, 2009:682; Bratton and Van de Walle, 1994:472). Against this backdrop, this chapter is paramount because, considering that Uganda is an African country, understanding Neo-patrimonialism within the African context is crucial in aiding our understanding and explanation of Uganda’s political processes and their consequential volatile nature of constitutionalism since independence.

After this introductory section, and building on the conceptualisation of the Concept and Theory of Neo-patrimonialism which has been done in Chapter One under section 1.3.2, this current chapter discusses the key components and main features of neo-patrimonialism. It then delves into: neo-patrimonialism in Africa by plotting its origin on the continent; exploring how neo-patrimonialism has been and continues to be practiced and manifested in Africa; how neo-patrimonialism has negatively affected good governance, democracy, constitutionalism and rule of law; and why it
has continuously been adopted and applied by the political leaders across the entire African continent since independence in the early 1960s.

3.2 Main Features and Manifestations of Neo-patrimonialism

As noted earlier, the concept of ‘neo-patrimonialism’ is highly contentious. This is so because albeit that the concept is universal (Soest, 2006:7), it is conceptualised differently by different scholars (Erdmann & Engel, 2007, in Therkildsen, 2010:2; Erdmann and Engel, 2006:5). As Erdmann and Engel posit, the concept (neo-patrimonialism) is variably conceptualised as “‘big man politics’, ‘personal rule’, ‘politics of the belly’ or ‘modern patrimonialism’” (Erdmann and Engel, 2007, in Van de Walle, 2007:1; Erdmann and Engel, 2006:17).

Similarly, the conceptual meanings attached to the neo-patrimonialism are varied. For instance, Nawaz (2008:2) defines it as “a system of governance where the formal rational-legal state apparatus co-exists and is supplanted by an informal patrimonial system of governance.” Erdmann and Engel define it as a hybrid phenomenon which represents a “relationship between patrimonial domination on the one hand and legal-rational bureaucratic domination on the other” (Erdmann and Engel, 2006:17) or “a mixture of two, partly interwoven, types of domination that co-exist: namely, patrimonial and legal-rational bureaucratic domination” (Erdmann and Engel, 2006:18). On the other hand, Francisco (2010:1) defines it as “the vertical distribution of resources that gave rise to patron-client networks based around a powerful individual or party.” Yet, Bratton and Van de Walle (1997) in Sigman and Lindberg (2017:1) conceptualise it as a system of government which combines “strong presidents, clientelistic linkages between citizens and politicians, and the use of state resources for political legitimation.” In other words, neo-patrimonialism involves “‘systematic concentration of political power’, ‘award of personal favours’, and ‘misuse of state resources for political legitimation’” (Bratton and van de Walle, 1997: 63-68; Soest, 2007:624).
Against this backdrop, neo-patrimonialism is conceptualised as a “dualistic situation” in which post-colonial states are characterised by patrimonialisation and bureaucratisation (Bourmaud, 1997:62). According to Bratton and Van de Walle, neo-patrimonialism “refers to situations where the ‘patrimonial logic coexists with the development of bureaucratic administration and at least the pretence of legal-rational forms of state legitimacy” (Van de Walle, 1994, in Bach, 2011:277). Gray and Whitfield (2014:5) affirm that neo-patrimonialism was “created to describe the exercise of authority in newly independent states that had formal institutions created on models from the modern Western countries, which approximated Weber’s type of rational-legal form of domination.” It is thus not surprising that, as Medard (1982:162-191) states, neo-patrimonialism “is a by-product of a specific historical situation that resulted in a contradictory combination of bureaucratic and patrimonial norms.”

Although the theory of neo-patrimonialism is characterised by many features and manifestations, the major eight ones are: presidentialism; concentration of power; clientelism; (mis)use of state resources for political legitimisation and corruption; institutional hybridity; institutional incompatibility; sharing state resources along nepotistic and ethnic motivations; and adoption of either and/or personal dictatorship, military oligarchy, plebiscitary one-party systems, and competitive one-party system neo-patrimonial rule types. These are elaborated as follows.

### 3.2.1 Presidentialism

As Van de Walle observes, neo-patrimonialism is characterised by presidentialism – in which one man, usually the President, is stronger than the law. In this case, both formal and informal institutions and rules place the President “largely above the law and not subject to the checks and balances that democratic executives face in mature democracies” (Van de Walle, 2007:1-2). Van de Walle adds that, “by monopolising access to resources, incumbents co-opt or coerce the opposition, thereby tilting the political playing field to their advantage” which greatly weakens the

### 3.2.2 Concentration of Political Power

In neo-patrimonialism, political power is concentrated in and dominated by one individual – the president, or big man or patron – “who resists delegating all but the most trivial decision-making tasks” (Bratton & van de Walle, 1997:63; Soest, 2007:625). These neo-patrimonial presidents or patrons usually stay in power for very long periods, sometimes preferring to rule for life. To plot their long-term stay in power and/or achieve their life presidency dreams, or what Young (1994:x) refers to as “life president power management”, neo-patrimonial rulers often keep on rotating their political elites to prevent their opponents – real or imaginary, from developing their own power bases which may become or act detrimental to the patrons’ long-term or life presidency ambitions (Snyder, 1992:392; Snyder and Mahoney, 1999:108-109). As Soest put it, concentration of political power in neo-patrimonialism manifests itself in the “long tenure of presidents and a short tenure of key government members” (Soest, 2007:625).

### 3.2.3 Clientelism

Generally, neo-patrimonialism is characterised by clientelism, which “means the exchange or brokerage of specific services and resources for political support in the form of votes” (Erdmann and Engel, 2006:20) and “the distribution of public resources through public sector jobs, licenses, contracts and projects, by the patron in order to consolidate his or her rule” (Soest, 2007:12). This implies that patrons, who in this case are mainly Presidents, give all sorts of favours to the masses or friends or relatives in exchange for political support. Such favours usually take the form of appointment of some members of the society, including relatives and friends, to ministerial or cabinet and other executive positions, enacting laws and policies that favour some segment of the society to the detriment of others (ethnic favouritism), and creation of governmental agencies (and filling them with President’s or regime loyalists) yet these are not provided
under national constitutions, among others (Sigman and Lindberg, 2017:5).

### 3.2.4 (Mis)use of State Resources for Political Legitimisation and Corruption

Soest (2007:624) observes that “in a neo-patrimonial system, patrons are typically office-holders in state institutions who misuse public funds or office in order to stay in power.” The (mis)use of public resources and funds could take the forms of embezzlement and misappropriation of funds to secure adequate funds to bribe voters, use of state resources like cars and other logistics during campaigns, bribing electoral officials when conducting or preparing elections, and bribing judges to tilt electoral case rulings in their favour, among others. It is therefore not surprising that neo-patrimonial regimes are characterised by all sorts of corruption (Soest, 2007:8).

### 3.2.5 Institutional Hybridity

O’Neil (2007:2) notes that neo-patrimonial states are characterised by institutional hybridity whereby “informal patrimonial norms and practices” co-exist with “formal legal-rational rules.” There is also co-existence of both patrimonial institutions on one hand, and “legal-rational institutions” on the other, but the former utilise and/or freely ride on the latter. These co-existences, notwithstanding, actual powers to govern and make decisive decisions within the state lie outside formalised structures and state institutions because informal institutions, norms and practices in neo-patrimonial states tend to overshadow those of formal legal-rational institutions (O’Neil, 2007:2-3). Chabal and Daloz (1999) and Bratton and van de Walle (1997) in Cammack (2007:600) agree to this when they observe that, in neo-patrimonial or hybrid states,

“Decisions about resources are made by ‘big men’ and their cronies, who are linked by ‘informal’ (private and personal, patronage and clientelist) networks that exist outside (before, beyond and despite) the state structure, and who follow a logic of personal and particularist interest rather than national betterment. These networks reach from the very top through dyads connecting the big man, MPs, chiefs, party officials, and government bureaucrats to villagers.”
3.2.6 Institutional Incompatibility

Neo-patrimonial states are also characterised by institutional incompatibility. This is manifested not only in the lack of “a common set of predictable rules” but also in the presence of multiple and often contradictory sets of “formal and informal rules” and institutions (O’Neil, 2007:3). For instance, in neo-patrimonial states, corruption is enormous and in many cases, the culprits continue committing the vice with impunity and unabated albeit that there are significant laws outlawing it. Moreover, as Commack (2007:600) notes,

“The idea of democracy – acceptance of a ‘loyal opposition’, a tolerance of dissent, effective checks and balances, a rotation of parties to power through fair elections, a vocal and organised public – is anathema if these result in the big man and his associates being ousted from office.”

3.2.7 Modern State whose Resources are shared along Nepotistic and Ethnic Motivations

In a typical neo-patrimonial state/government, state resources are shared along ethnic, familial and friendship lines. As Fukuyama noted, neo-patrimonial governments have “the outward form of a modern state, with a constitution, presidents and prime ministers, a legal system, and pretensions of impersonality, but the actual operations of the government remains at core a matter of sharing state resources with friends and family” (Fukuyama, 2014:287-288). Fukuyama adds that the original sin committed by the human race is:

“The tendency of people with political power to extend benefits to close family members as a means of securing loyalty. Much of what passes for corruption is not simply a matter of greed but rather the by-product of legislators or pubic officials who feel more obligated to family, tribe, religion, or ethnic group than to the national community and therefore divert money in that direction” (Fukuyama, 2014:185-86).

3.2.8 Proliferation of Four Variant Neo-Patrimonial Rule Types

Bratton and Van de Walle observe that post-independence political transitions of African states are characterised by four main types of neo-patrimonial rule, namely; “personal dictatorship, military oligarchy, and
plebiscitary and competitive one-party systems” (Bratton and Van de Walle, 1994: 472).

3.3 Neo-patrimonialism in Africa

3.3.1 Overview

Since the early 1960s when most African countries attained independence, post-independence African rulers have been expected to respect the rule of law, be democratic and accountable, and above all, abide by constitutionalism. Yet, in reality, African rulers have continued to manifest obtrusive tendencies of neo-patrimonialism. For instance, as Bratton and Van de Walle observed, African rulers/chief executives have tended to not only establish informal structures and networks of decision-making on matters of public administration but have selectively, with bias, determined who should participate in politics (Bratton and Van de Walle, 1994:459). As Berhanu (2007:111) contends, the quality of politics in the post-independence African state has resulted in the personalisation of African governments, which, as a result, has effectively alienated the populace from the processes and structures of governance – thereby negatively affecting rule of law, constitutionalism and separation of powers in the arms of government.

In their classic work “Neopatrimonial Regimes and Political Transitions in Africa”, Bratton and Van de Walle (1994) observed that since the 1980s, the evolution of political transitions in Africa has taken a neo-patrimonial framework. They argue that while neo-patrimonial practice pervades all polities, it is the core defining feature of African politics, and that neo-patrimonial “personal relations are a factor at the margins of all bureaucratic systems” which “constitute the foundation and superstructure of political institutions” in Africa. This is manifested in the fact that “the interaction between the ‘big man’ and his extended retinue defines African politics, from the highest reaches of the presidential palace to the humblest village assembly.” It is therefore not surprising that neo-

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6 See sub-section 6.4.3.5 for details on each of these four types of neo-patrimonial rule.
patrimonialism is now widely used as a framework for analysing African politics (Bratton and Van de Walle, 1994:458-459).

3.3.2 Situating the Origin of Neo-patrimonialism in Africa

Albeit that the concept of neo-patrimonialism has practical relevance for Africa, it is worthy to note that its origin in Africa is explainable within the context of the African continent. This view is in line with Erdmann and Engel’s supposition that:

“The historical root of neo-patrimonial rule in Africa is the colonial legacy. The colonial state was never a modern state, but rather a “traditional” one with some of the characteristics of old empires. The legal-rational sphere was confined to the centre of power at the colonial capital and its reach to the population of European decent and some small immigrant groups. The vast majority of the population was under indirect rule, governed by intermediary authority. This was the realm of patrimonial rule, of kings, chiefs, and elders. It was only during a short period that lasted hardly a decade after the World War II (during the “second colonial occupation” that the colonial powers made an effort to build up a legal-rational bureaucracy that included and extended to some degree Africans. The period was too short and the resources too small for there to have been a major and lasting move to an “autonomous” legal-rational bureaucratic culture. After independence, with the Africanisation of the bureaucracy and the establishment of authoritarian rule, the bureaucracy was extended and at the same time challenged and invaded from above and below by informal relationships. Thus, the state in Africa has always been a hybrid one, a mixture of patrimonial and legal-rational domination” (Erdmann and Engel, 2006:19).

Relatedly, Kratt (2015:1) avers that neo-patrimonialism in Africa “derives from the political, economic and social structure devised by the colonial rule.” This view is buttressed by Berman’s argument that colonial states were grounded in the alliances with ‘big men’ who treated the acquired public offices as rewards for their collaboration with the colonial masters’ interests. In real terms, this colonial era plunged the entire African continent’s political order into international patrimonial system, a trait

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7 Bayart (1993:60-86) discusses residual but persistent effects of colonialism on post-independence African states as a manufacturer of “little men” and “big men” meaning that under the neo-patrimonial condition created by rulers’ personalized procedures has sustained inequality in state formations and services delivery with fictive outcomes in societies on the continent.
which has persisted in post-colonial societies (Berman 1998:305) to this present day.

The notion of neo-patrimonial rule in Africa was first applied in Cameroon by Jean-François Me´dard in the second half of the 1970s when he attempted to account for why Cameroon was ‘underdeveloped and lacked institutionalisations’, on one hand, yet, at the same time, it remained “simultaneously a ‘strong, authoritarian, absolute ... and impotent’ state, where political-administrative authority” was “converted into a private patrimony by a bureaucracy and a party closely controlled by President Ahidjo” (Me´dard, 1979:39; Bach, 2011:276). Since then, neo-patrimonialism was adopted in most, if not all, African countries. It is therefore not surprising that neo-patrimonialism is now widely used as a framework for analysing African politics (Bratton and Van de Walle, 1994:458-459).

3.3.3 Neo-patrimonialism and how it has been Applied and Manifested in Africa

As noted earlier, Kratt opines that neo-patrimonialism “is the unchanging way which has persistently characterised the way in which ‘Africa works’ since independence” (Kratt, 2015:1). This view is strengthened by the argument that neo-patrimonialism has been the key defining feature of African politics since early 1960s when almost all African states attained independence (Lindberg, 2010:123; Hyden, 2000:18; Beresford, 2014:2; Erdmann and Engel, 2007:106). Generally, neo-patrimonialism has been and continues to be applied and manifested in Africa mainly through eight features, as follows.

3.3.3.1 Presidentialism

When African states attained independence in early 1960s, it was envisaged that their rulers or presidents would bring about the long-time awaited development and improve the quality of political life in view of enhancing democracy and good governance, rule of law, separation of powers in government, and generally improve adherence to constitutionalism. Yet, as Berhanu (2007:111) contends, these ideals were never realised because
when neo-patrimonialism set-in, the quality of African politics culminated into personalisation of governments by African presidents. This, in turn, effectively alienated Africa’s populace from the very processes and structures of governance that would have resulted into democratisation and adherence to constitutionalism. This dilemma was exacerbated by a wave of leaders between the 1960s and 1990s who did not want to leave power after they had captured it.

These post-independence African rulers simply ignored the legally-binding constitutional instruments and instead personalised their rule. They suffered from a political hangover of presidentialism, which was characteristic of, and exacerbated by, the enormous political powers they assumed above state laws and used to abuse national constitutions. Jomo Kenyatta and eventually Alap Moi of Kenya, Julius Nyerere of Tanzania, Kamuzu Banda of Malawi, Kenneth Kaunda of Zambia, Mobutu Sese Seko of Zaire, Robert Mugabe of Zimbabwe, Maumar Gaddafi of Libya, Teodoro Obiang of Equatorial Guinea, José Eduardo dos Santos of Angola, and Paul Biya of Cameroon (Chutel, 2017:1) are but some of the African leaders who either amended constitutions, owing to the enormous powers and political support they wielded from loyalists, to remove term and/or age limits or simply decided to abrogate constitutions and/or rule by decrees, all of which affected the rule of law, stifled the democratisation process of African states, and inevitably affected adherence to constitutionalism.

3.3.3.2 Clientelism, (mis)use of state resources for political legitimisation and corruption, and sharing resources along nepotistic and ethnic motivations

Since independence, and across the entire African continent, it is common knowledge that the relationships between presidents and other key politicians with their respective populations, has historically been and continues to be based on clientelism. Presidents and other key politicians give favours to some key individuals or masses in the form of money, jobs, social services, contracts, and tenders, among others, in exchange for votes, other forms of political support, and loyalty. In addition, neo-patrimonialism has been applied and manifested by many African
rulers/presidents (mis)using state resources for political legitimition and sharing them along nepotistic, ethnic and familial ties. For instance, in Zaire (current Democratic Republic of Congo), Mobutu Sese Seko is renowned for having been one of the most notable African leaders who plundered their countries under neo-patrimonial tendencies. As Declan Walsh reports, Mobutu, for the 32 years (1965-1997) he was president of Zaire, squandered exorbitant amounts of money estimated in the range of US $4 billion to 14 billion – which he lavishly spent on himself, his family and his loyalists, to the detriment of the local masses (Walsh, 2003:1). In his article Nation Suffered as Dictator Drained Riches, John-Thor Dahlburg reports that:

“During Mobutu’s years in power, Zaire’s treasury was plundered, foreign aid--including U.S. taxpayer money channeled through the CIA and other agencies--siphoned off, economic assets such as copper mines and cocoa plantations embezzled from, and bribes demanded and obtained. The former army general appeared to consider his country--the repository of vast deposits of diamonds, timber, copper, cobalt and other natural resources--to be his private plantation” (Dahlburg, 1997:1).

As Walsh reports, Mobutu had colossal investments in Spain, Beliguim, France, U.S., Switzerland, Zaire and in many other counties (Walsh, 2003:1). In Zaire, Mobutu is reported to have owned “11 palaces, a luxury yacht on the Zaire River and a private gold mine that reportedly holds 100 tons of gold spread over 32,000 square miles”; the palace he built “in his tribal homeland northeast of Kinshasa” was constructed of marble, with “sprawling grounds stocked with lions and elephants, a moat filled with crocodiles, computer-controlled fountains and its own airport” (Dahlburg, 1997:1). Moreover, as part of his routine in misusing state resources for personal and family gains, “Mobutu encouraged lavish follies, including palatial houses in Switzerland, Belgium and Spain; luxury yachts; glittering parties on the French Riviera”, and it is reported that, “in one year, he sent the state airliner 32 times to Venezuela to ferry 5,000 long-haired sheep back to his ranch in Gbadolite” (Walsh, 2003:1).
Bill Berkeley reports that, in addition to Mobutu taking care of himself and his family, he used huge sums of his ill-gotten money to reward his allies and buying off of political opponents, including Nguza who he allegedly paid US “$10 million to break with the Union Sacrée and become Prime Minister” (Berkeley, 1993:1). In 1993, a Zairean lawyer is reported to have said that all politicians in Zaire were poor, and to survive, they had to engage in politics and be on the side of the big man in power, Mobutu, to earn a living (Berkeley, 1993:1). Describing how Mobutu’s government used to function in 1993 (4 years before he was toppled), Herman Cohen remarked that:

“Zaire’s central government is "basically a clan a family of cousins acting like the Mafia in Sicily, making these illegal deals, siphoning the money off cobalt and copper revenues. Mobutu requires a huge cash flow. He has to keep the family afloat. In effect, he has about three thousand to four thousand dependents, including women and children. It’s essentially his own tribe. The attitude is, 'We’ve got to all hang together. If we don’t, we’re dead’" (Herman Cohen in Berkeley, 1993:1).

It should be noted, however, that clientelism, (mis)use of state resources for political legitimation and corruption, and sharing resources along nepotistic and ethnic motivations were/are not limited and synonymous to Mobutu and Zaire alone. Admittedly, this trend has been and continues to be a key defining feature of most, if not all, African presidents since the 1960s. For instance, in Kenya, when Jomo Kenyatta was president (1963-1978), not only did he amass a lot of wealth but his tribesmen, the Kikuyu, and other friendly tribes, particularly the Embu and Meru tribes, benefitted most from state resources, particularly land, than the rest of the tribes in Kenya (Atanda and John-Mark, 2011:175). This trend was extended by Daniel Alap Moi during his 24 years’ tenure as president of Kenya (1978-2001). During his regime, Moi allegedly became one of the wealthiest presidents in Africa, and his tribesmen, the Kalangins, also became a super tribe in Kenyan politics as they accumulated a lot of wealth, and were very influential in all aspects of political, economic and social aspects of Kenya (Markussen and Mbuvi, 2011:4). It is therefore not surprising that to this present day, Kenyatta’s tribe, the Kikuyu, and Moi’s tribe, the Kalangins,
remain the most determinative and richest tribes in Kenya and are seen to be the key determinants of Kenya’s politics.

At the time of his death in 2011, and having been president of Libya for 42 years, Muammar Gaddafí was presumably the richest president, not only in Africa but worldwide. As Gus Lubin reports, Gaddafí was “ten times richer than King Abdullah of Saudi Arabia — easily the richest man in the world” and “was supposedly worth over $200 billion with assets in bank accounts, real estate and corporate investments around the world”; part of this money was largely spent on buying support and loyalty from many of African fellow presidents (Lubin, 2011:1).

Relatedly, information abounds which shows that many contemporary African leaders have amassed a lot of wealth, presumably due to their neo-patrimonial tendencies and presumably to the detriment of their populations. By 2016, as Zambian Observer reports, Jose Eduardo dos Santos of Angola was worth $20 billion, Mohammed VI of Morocco was worth $2.5 billion, Teodoro Obiang Nguema Mbasogo of Equatorial Guinea was $600 million, Uhuru Kenyatta of Kenya was worth $500 million, Paul Biya of Cameroon was worth $200 million, King Mswati III of Swaziland, Goodluck Jonathan of Nigeria, and Robert Mugabe of Zimbabwe, were worth $100 million each, Idriss Deby of Chad was worth $50 million while Jacob Zuma of South Africa was not only estimated to have had a net worth of $75 million but was also the highest paid politician in Africa (Zambian Observer, 2016:1). All these are but some examples highlighting the likelihood that corruption and (mis)use of state resources for private gain by African leaders is presumably a reality.

3.3.3.3 Proliferation of Corruption across the entire African Continent
Worldwide, corruption has been and continues to be one of the most critical challenges facing humanity. As Karl Kraus describes it, “corruption is worse than prostitution” because while “the latter might endanger the morals of an individual; the former invariably endangers the morals of an entire country” (Karl Kraus in Nduku and Tenamwenye, 2014:1). Corruption is a vice which not only affects development but squarely
undermines democracy and good governance in Africa. As Kofi Annan underscored, “corruption undermines economic performance, weakens democratic institutions and the rule of law, disrupts social order and destroys public trust, thus allowing organised crime, terrorism and other threats to human security to flourish...And it is always the public good that suffers” (Annan, 2003:1-11; Nduku and Tenamwenye, 2014:24). Hanson (2006:1) observes that while corruption is a universal phenomenon which abounds in almost all societies worldwide, Africa is uniquely among the most corrupt of all these. Barney Warf gives credence to this view by affirming that:

“Corruption is a highly visible aspect of African politics, with a number of high-profile scandals standing out. For example, Mobutu Sese Seko, long-time tyrant of Zaire (now Democratic Republic of the Congo), amassed a fortune of US$5bn, equal to the country’s entire external debt, before he was ousted in 1997. The widespread corruption overseen by Kenya’s Daniel Arap Moi is seen in the millions of dollars lost in massive cash subsidies for fictitious exports of gold and diamonds in the Goldenberg scandal. Nigeria’s Sani Abacha and South Africa’s Jackie Selebi are also among public officials implicated in major corruption scandals” (Warf, 2017:1).

Expounding on how corruption is firmly entrenched, deep-rooted and perpetuated in Africa, Rita T. A. Kufandarerwa observes that:

“It is the top African echelons who are mostly the perpetrators of corruption. Former Nigerian president Sani Abacha was estimated to be worth $20 Billion at the time of his death. How a president, a public servant ends up being a billionaire can only be attributed to corruption. In South Africa, Jacob Zuma was found to have unduly benefited from the taxpayers’ money in the infamous Nkandla debacle. In Congo, Joseph Kabila and his family are among the richest people in the continent owing their wealth to diamond mining. Paul Biya in Cameroom is also amongst the richest people in Africa and corrupt dealings have been synonymous with his name. In Zimbabwe, top government officials are notorious for their lavish lifestyles. Money has been stolen from the government coffers without any apology or remorse” (Kufandarerwa, 2017:1).

Hanson (2006:1) observes that, as a fully entrenched vice, “corruption in Africa ranges from high-level political graft on the scale of millions of dollars to low-level bribes to police officers or customs officials” and is
deeply rooted in all government and non-government institutions. In 2002, African Union estimated that Africa lost $150 billion annually to corruption (Hanson, 2006:1). Yet, as estimates by African Development Bank show, Africa “losses in excess of US$300 billion annually through corruption, an amount that is 25% of its GDP and higher than donor and aid inflows” (Nduku and Tenamwenye, 2014:21-22). In an effort to situate the neo-patrimonial causes of corruption in Africa, Patrick Loch Otiendo Lumumba notes that:

“In Africa, some of the identifiable causes of corruption include the negative colonial legacy, poor leadership, politics of the belly, omnipotent state, greed and selfishness, clientelism and patronage nepotism, absence of popular participation of the public in government, weak institutions of governance, lack of accountability and transparency, lack of political will, weak ethical values, centralist nature of the state and concentration of state power, weak judicial system and constant insecurity and conflicts” (Patrick Loch Otiendo Lumumba in Nduku and Tenamwenye, 2014:22).

Yet, albeit that the causes of the vice are known, no effective measures have been effected by African states governments and other stakeholders to effectively mitigate corruption on the continent (Kofele-Kale, 2006:697; Warf, 2017:1). This view is bolstered by the 2016 report by Transparency International which indicates that “there is no corrupt free country in Africa”, and shows the most corrupt countries in Africa (in ascending order) as being ‘Somalia, South Sudan, Sudan, Libya, Guinea-Bissau, Eritrea, Angola, Democratic Republic of Congo, Chad, Central African Republic, and Zimbabwe, among others (Fadamana, 2018:1). It is therefore not surprising that, as BBC (2018:1) reports, sub-Saharan Africa is regarded the “most corrupt in the world.” Presumably, this is the reason why the African Union “declared 2018 the year for combating corruption” (Louw-Vaudran, 2017:1). Against this backdrop, corruption in Africa is undoubtedly very wide spread. This is a clear manifestation that, just as it has been since the 1960s, neo-patrimonialism is currently deeply entrenched in Africa.
3.3.3.4 Concentration of Political Power

The concentration of political power aspect of neo-patrimonialism, exhibited in many African presidents’ desire to stay (very) long in power and/or attain life presidency ambitions, has abounded in Africa since independence. Bienen and van de Walle (1992:693) and von Soest (2007:625) agree to this claim when they observe(d) that, on average, African presidents stay much longer in office than their counterparts in Asia and South America. For instance, in Zambia, between 1964 when the country attained independence and 2005, only three individuals – “Kenneth Kaunda, Frederick Chiluba and Levy Mwanawasa” – had served as president. These president’s average length of stay in power, as Van de Walle and von Soest report, “amounts to 14 years, which stands above the 11.6 years African state leaders on average managed to stay in power from 1980 to 2005” (Van de Walle 2005:74; Soest, 2007:625). Kenneth Kaunda, in particular ruled for 27 years. To achieve this, he:

“entrenched his power with a corps of personal advisors, which in turn reduced the influence of the cabinet and other units of the ruling United National Independence Party. He not only gained from particular legitimacy as Zambia’s founding President who had led the struggle for independence, but also augmented his control of the political process by promulgating the one-party state in December 1972” (Scott, 1980:152; Tordoff and Molteno, 1974:252; von Soest, 2007:625).

The neo-patrimonial tendency of African presidents staying in power for a very long time or seeking life presidency has been and continues to be widespread across the entire continent. For instance, Lynsey Chutel reports that, in 2017: José Eduardo dos Santos left power after being de facto president of Angola for 38 years; Robert Mugabe was forced out of the Zimbabwean presidency after ruling for 37 years; and Yahya Jammeh left Gambia after being president for 22 years (Chutel, 2017:1). During the same year, other long serving African presidents include(d); Teodoro Obiang of Equatorial Guinea – who had served as president for 38 years, Paul Biya of Cameroon (35 years), Denis Sassou Nguesso of Congo (33 years) (ABC News, 2017:1), Omar al-Bashir of Sudan (28 years), Idriss Deby of Chad (27 years), Isaias Afwerki of Eritrea (24 years), Abdelaziz Bouteflika of
Algeria (18 years), Ismaïl Omar Guelleh of Djibouti (18 years), Paul Kagame of Rwanda (17 years), and Joseph Kabila of the Democratic Republic of Congo (16 years), among others (Chutel, 2017:1).

On the other hand, the neo-patrimonial concentration and centralisation of power in the hands of presidents in Africa has manifested itself in the regular and frequent reshuffle of government cabinet ministers. For instance, in Zambia, the service tenure of key cabinet ministers was only 2.4 years between 1964 and 2007, and on average, “the most important cabinet members exercised their functions for only half of a legislative period on average” (von Soest, 2007:625). This tendency of elite circulation or frequent change of ministers (Burnell, 2001: 241), “has shown a high degree of consistency, and endured during Zambia’s one-party Second Republic (1972 to 1991), and the multiparty Third Republic (since November 1991)” (Erdmann and Simutanyi, 2003:14). For example, in a key reshuffle of his cabinet ministers in April 1993, “President Chiluba removed from office those reform-minded ministers whom he perceived to be a threat to his rule”, while other ministers resigned from government due to frustrations” (Erdmann and Simutanyi, 2003:14). As von Soest (2007:626) reports, this trend of short-lived tenure and frequent reshuffle of cabinet ministers in Zambia continued even when President Mwanawasa was re-elected in September 2006.

3.3.3.5 Proliferation of Four Variant Neo-Patrimonial Rule Types
Bratton and Van de Walle observe that post-independence political transitions of African states are characterised by four main types of neo-patrimonial rule, namely; “personal dictatorship, military oligarchy, and plebiscitary and competitive one-party systems” (Bratton and Van de Walle, 1994: 472). The proliferation of these four variant neo-patrimonial rule types is in part due to the fact that African rulers have different backgrounds, values, and aspirations; hence, they don’t lead or rule in the same ways. Beside, different African countries have had variations in the institutional structures which in a historical perspective evolved differently in relation to their needs and political turmoil they experienced (Bratton...
and Van de Walle, 1994:468). On the other hand, variations in African neo-patrimonial rule types is also dependent on the variations in the political dynamics which African countries faced in the immediate aftermath of independence. As Bratton and Van de Walle observe,

“The circumstances in which different leaders consolidated power partly determines the degree of pluralism that came to characterise the existing regime. When a dominant party emerged early during the period of competitive party politics at independence, that party was typically able to install single-party rule, at least until the first leader retired. In the absence of a dominant party, ensuing regimes have been characterised by instability and a greater reliance on coercion, notably through military intervention” (Bratton and Van de Walle, 1994:468).

These four types are elaborated as follows.

**(a) Personal Dictatorship**

Under the personal dictatorship neo-patrimonial rule type, the ruler or president has absolute powers, with very few, if any, checks and balances. The strongman governs/rules by decree; and the existing formal state institutions’ participation in governance only exists in name but not substance. The regime does not permit political competition, and it accomplishes this either through physical elimination or indefinite incarceration of opponents. Personal dictators often don’t want to leave power and sometimes declare themselves life presidents. Personal dictators usually emerge from the military or the strongest political parties but they consolidate themselves in power by weakening and/or exercising total control over formal state institutions like the police, army, judiciary, and legislature, among others. They control the acquisition and flow of government revenue and disburse it selectively according to “familial, ethnic, or factional clients.” Personal dictatorships exclusively take charge of the policy making process instead of relying on technocrats; and they implement directives through their personal emissaries instead of relying on formal state institutions. Notable examples of personal dictatorship type of neo-patrimonialism rule in Africa include “Idi Amin of Uganda, Bokassa of Central African Republic, Macias Nguema of Equatorial Guinea, ...
Mobutu Sese Seko in Zaire and Hastings Banda of Malawi” (Bratton and Van de Walle, 1994:474-475).

(b) Military Oligarchy
In the military oligarchy type of neo-patrimonial rule, the regime is exclusive in that elections are suspended, and most, if not all, decisions are made by exclusive small groups of elites behind secretive and closed doors. Albeit that a military oligarchy has a noticeable leader or president, he always has no concrete and exclusive powers in the real sense because key “decisions are made collectively by a junta, committee, or cabinet that may include civilian advisers and technocrats in addition to military officers. ... a relatively professional civil or military hierarchy implements policy, and executive institutions are maintained” but in form, not in substance (Decalo, 1990:231-24). Under military oligarchies, “political participation is severely circumscribed because there are no elections of any kind, especially in the early years of military rule” (Bratton and Van de Walle, 1994:473).

Military oligarchies were very rampant in Africa between the 1970s and 1980s. This is because, as Belay Beyene Chekole observes, “African politics was dominated by military rule”, and use of “military forces in Africa was the main option of government change” throughout the entire period (Chekole, 2016:625). Notable examples of countries in Africa where military oligarchies flourished between 1970s and 1990s include Nigeria, Central African Republic, Ghana, Uganda, Lesotho, Sudan, Mauritania, Burundi, Burkina Faso, Chad, Niger, Mali, Rwanda, Ethiopia, Liberia, Comoros (Thomson, 2016:241; Bratton and Van de Walle, 1994:473; Chekole, 2016:625-626).

(c) Plebiscitary One-Party System
A Plebiscitary One-Party System (POPS) type of neo-patrimonial rule is an inclusive authoritarian regime. It is nevertheless headed by a ruler who “orchestrates political rituals of mass endorsements for himself, his officeholders, and his policies” (Bratton and Van de Walle, 1994:477). He mobilises and controls voters through one-party plebiscites mechanisms
which usually results into higher voters turnouts. Between elections, POPS puts in place a mechanism that is used to distribute patronage to the masses to meet their economic and regional concerns while at the same time addressing the regime interests. Albeit that a POPS is more inclusive, it is nevertheless associated with undemocratic tendencies because it precludes sincere political competition, prohibits opposition parties from operating freely, allows only a single candidate from the official political party to appear on the ballot, and the elected leader is always entangled in a legitimacy crisis particularly shortly after elections (Bratton and Van de Walle, 1994:477). Bratton and Van de Walle add that, in Africa, POPSs are:

“usually headed by first-generation leaders, whether civilian or military. If civilian, the leader is usually the ‘grand old man’ of nationalist politics who won independence in early 1960s; if military, he commonly came to power in the first round of coups in the late 1960s or early 1970s. This latter group of leaders typically tries to civilianise and legitimise the regime by abandoning military rank and uniform and attempting to construct mass mobilising political parties” (Bratton and Van de Walle, 1994:477).

Notable examples of countries in Africa which at one time or the other experienced POPS since independence in the 1960s include “Presidents Eyadema in Togo and Bongo in Gabon.” Other include Burundi, Angola, Algeria, Equatorial Guinea, Congo-Brazzaville, Djibouti, Ethiopia, Congo-Brazzaville, Madagascar, Gabon, Togo, Cameroon, Sierra Leone, Somalia, Kenya, Uganda, Malawi, Zaire, Rwanda, Mozambique, Central African Republic, Comoros, Mali, Niger, and Guinea-Bissau (Thomson, 2016:241; Bratton and Van de Walle, 1994:473, 477).

(d) Competitive One-Party System

A Competitive One-Party System (COPS) is a neo-patrimonial type of rule which is inclusive and similar to but more competitive (as its name suggests) than the Plebiscitary One-Party System. Under COPS, parliamentary or party primaries or elections, two or more candidates are allowed to contest. The inclusiveness and competitive nature of COPS makes the regime relatively stable, which enables it to fend off military intervention. To ensure sustainability in power and
institutional longevity, COPS have very often been headed by “nationalist founding fathers” like Kenneth Kaunda of Zambia and “Houphouet-Boigny of Ivory Coast”. Rulers under COPS consider themselves secure because they are favoured by the “rules of the political game” particularly the powers of incumbency, they allow for some degree of pluralism, give the opposition freedom to criticise them both in public/press and civic associations, and allow them to contest for presidential, parliamentary and other forms of elections (although often with little, if any, success due to the enormous strength and supremacy of COPS in national politics (Bratton and Van de Walle, 1994:482-483).

Since the 1980s, a number of countries in Africa have been governed under COPS. Notable among these include Zambia under the regime of Kenneth Kaunda, Ivory Coast under Houphouet-Boigny, Tanzania under Hassan Mwinyi, and Kenya under Alap Moi. Others include Sierra Leone, Seychelles, Benin, Cape Verde, Sao Tome and Principe, Guinea-Bissau, Ethiopia, Gabon, Algeria, Scychelles, Cape Varde, Zaire, Madgarscar, Kenya, Malawi, Uganda, Mozambique, Togo, and Camerron (Thomson, 2016:241; Bratton and Van de Walle, 1994:473, 482-483).

3.4 How Neo-Patrimonialism has affected Constitutionalism, Good Governance and Democracy in Africa

Although neo-patrimonialism has affected constitutionalism, good governance, and democracy in Africa in many ways, the following five are noteworthy.

3.4.1 Over Concentration of Power in the Person of the Ruler and fostering Use of State-induced Repressive Methods

While post-independence rulers in Africa since the early 1960s were expected to respect constitutionalism by, among others, strictly adhering to their national constitutional provisions, be impersonal and impartial when handling public affairs, respect rule of law, and separate private lives from organisational duties, their (African rulers’) informal political practices
have infringed upon these expectations. As a result, not only have most African rulers exhibited glaring democratic inadequacies but have also ignored constitutionalism through their adoption of neo-patrimonialism as the main core of African politics.

As Bayart (1993:260) contends, “The state of Africa rests upon autochthonous foundations and a process of re-appropriation of institutions of colonial origin which gave it its historicity.” It should also be kept in mind that neo-patrimonialism and its associated state-induced repressive violence in post-independence Africa survive on relationships between the person of rulers and their capacity to control the military. The military institution in turn exerts coercive influence over domestic elites and domestic political actors’ acquaintances with foreign powers. This explains the observed and observable repression and state-inspired violence through which neo-patrimonial rulers unleash armed forces against their labelled internal opponents in most African states. Ultimately, these have compromised, if not completely contravened, respect for human rights, freedom of expression and peaceful demonstration, rule of law, constitutionalism and democracy in general.

3.4.2 Promotion of Nepotism and Ethnicity in Distribution of Goods and Services

Under constitutionalism and good governance frameworks, government rulers and/or presidents are supposed to execute their day-to-day official duties in an impartial and non-partisan manner, and are also supposed to foster recruitment of masses into government/public jobs and award tenders on merit. In this regard, not only have many African rulers exhibited glaring cronyism and egoism before everything else, but have also encouraged democratic inadequacies by, among others, establishing informal structures and networks of decision making which contradict the constitutional structures of governance; selectively determining who should participate in politics; distributing and awarding of jobs, tenders, ministerial positions, promotions, and sharing of the national cake along
ethnic/tribal, nepotistic and familial lines (Bratton and Van de Walle, 1994:459).

3.4.3 Promotion of Corruption and other Crooked Means of Wealth Accumulation

Neo-patrimonialism in Africa has propagated a breed of African rulers who ostensibly combine perverse management of positions of public office with private accumulation of wealth. These, as Bayart et al (1999:14-15) observed, have set precedents in diverting public resources for their private benefits, and as such, have progressively become authoritarian and illicit wealth accumulators by diverting public resources. This has been exacerbated by African rulers’ tendencies and malpractices of incubating and fostering (or failing to effectively curb) corruption and other forms of ill-gotten wealth.

Corruption is a vice which not only affects development but squarely undermines democracy and good governance in Africa. As Kofi Annan underscored, “corruption undermines economic performance, weakens democratic institutions and the rule of law, disrupts social order and destroys public trust, thus allowing organised crime, terrorism and other threats to human security to flourish...And it is always the public good that suffers” (Annan, 2003:1-11; Nduku and Tenamwenye, 2014:24).

African presidents like Mobutu Sese Seko, who allegedly looted Zaire of more than $4 billion – a staggering amount conceived to adequately be able to repay Zaire’s foreign debt, have persistently been not only a disappointment but have fostered what Bayart (1993:91) calls “private bourgeoisie” syndrome, a situation where African leaders/patrons and their cronies have consistently acquired and amassed personal wealth through illegitimate and wanton confiscation of public resources. All these have flourished and continue to flourish in Africa because of the deeply entrenched neo-patrimonial nature of African regimes which undermine constitutionalism, democracy and good governance by adopting neo-patrimonialism as the nucleus of “the politics of the belly” and because the state authority resides in personal relationships rather than bureaucratic
systems as it should be (Bratton and Van de Walle, 1994:459). This view is buttressed by Berhanu (2007:111) who contends that the quality of politics in the post-independence African state has resulted in the personalisation of African governments, which, as a result, has effectively alienated the populace from the processes and structures of governance, thereby negatively affecting rule of law, constitutionalism, and separation of powers in the arms of government.

3.4.4 Presidentialism and abuse of Separation of Powers in Government Organs

As noted earlier, neo-patrimonialism in Africa is associated with presidentialism – a scenario in which formal and informal institutions exalt or place the president or ruler above national laws, including the constitution. This arises because, in a neo-patrimonial system/regime, informal structures and practices tend to overshadow formally established state institutions. It also arises because of the neo-patrimonial tendencies of misrule, clientelism, cronyism and domination of public authority which have characterised most, if not all, post-independence African leaders (Berhanu, 2007:111). As a result, power is concentrated in a single entity – the presidency, which undermines constitutionalism with regard to the doctrines of separation of powers and accountability as there are no other rational bureaucratic entities to limit the centre under checks and balances.

3.4.5 Alienation of Africa’s Populace from the Processes and Structures of Governance

Berhanu (2007:111) contends that while “The de-colonisation of Africa in the post-World War II period” – the 1960s which were designated the ‘de-colonisation decade’ – was “expected to bring about an overall situation of betterment on the continent”, the contrary was registered in reality. Generally, the quality of politics under self-rule culminated in the personalisation of African governments, which in turn, effectively alienated the populace from the processes and structures of governance. Consequently, the social contract that the masses had with the post-independence rulers was never implemented because neo-patrimonialism
crystallised the observed political crisis on the African continent. It is therefore not surprising that, as Fombad (2011:1008) observed, Africa was by the 1990s experiencing a ‘third generation of constitutions’ – a process which led to disorderly changes in the countries of the Global South (Africa inclusive) which are characteristically defined as badly governed regions (Galeano, 1973:308). This view is bolstered by Cooper’s (2002:161) critique that despite the numerous expectations which Africans had in their post-independence leaders at independence, one does not yet see, due to neo-patrimonialism, an example of an African government which “both guarantees civil rights and choices of leadership and has a long term record of delivering economic growth and wide spread opportunity.” This anomaly is directly a result of neo-patrimonialism which has pervaded and continues to pervade all governments and/or regimes in Africa.

3.5 Why Neo-patrimonialism was adopted by Post-Independence Leaders in Africa, and why it flourishes even up to the present

The adoption of neo-patrimonialism, and its persistence up to the present day, is a result of a number of factors. Most notable ones of these include the following.

3.5.1 The Inheritance of Patrimonial System of Governance from Colonialists at Independence by Post-Independence African Rulers

Before independence, colonial states in Africa were grounded in the alliance with ‘big men’ who treated the acquired public offices as rewards for their collaboration with the colonial masters’ interests for individual enrichment. At independence, African rulers inherited this system of government operations because it had already been firmly entrenched, and it was easier to adopt and sustain. This is what Bayart (1993:60-86) regards as the residual but persistent effect of colonialism on post-independence African states which are portrayed as manufacturer of ‘little men’ and ‘big men’ to sustain the neo-patrimonial system of governments and rulers. This effect continues unabated to this day.
3.5.2 The Low Quality of Local Communities’ Civic Competence

Almost in all African countries, the quality of local communities’ civic competence has remained low, and very low particularly in the countryside. These low levels of civic competence in African local communities accrued largely from the adverse effects of the colonisers’ imperial rule – a disaster that never encouraged improved culture of popular participation in matters of institutional governance (Ayandele et al., 1984:332-334). As a result, these local communities, which constitute the majority of the African countries’ populations, have largely remained timid and/or incompetent to demanding for good governance, improved competence and civic education for themselves, respect of their rights and freedoms, and have less, if any, ability to demanding strict accountability, respect for separation of powers in government, and are in most cases not aware of what their constitutions provide for them. It is this kind of ignorance and timidity on the side of the local population which neo-patrimonial leaders took on at independence and which they have enjoyed to keep to date because the native populations are easier to manipulate and manage than the highly informed elites.

3.5.3 The Global Nature of Neo-Patrimonialism

Neo-patrimonialism is a global trend where a wide range of local client-networks agree to provide support to their international patrons in relationships that compromise formal institutional arrangements. This situation in turn produces a perverse outflow of resources from the poor to the rich through rampant corruption, fragility of states and ill-conceived policies which tendencies affect service delivery adversely amongst the deprived populations. Aid donation and support of International Financial Institutions like the World Bank and International Monetary Fund (IMF) have been and are similarly squandered like the Structural Adjustment Programmes of the 1980s and 1990s by which intervention local economic growth slumped and poverty grew (Green 2008:306-309).

3.6 Chapter Summary and Conclusion

This chapter has discussed the Theory of Neo-patrimonialism and used it to explain the volatile state of constitutionalism in post-independence
Africa. Building on the conceptualisation of the Concept and Theory of Neo-patrimonialism discussed under section 1.3.2 of Chapter One, this current chapter has revealed that the Theory of Neo-patrimonialism is mainly underpinned by eight key features and manifestations of neo-patrimonial behaviours and practices of rulers. These include: presidentialism; concentration of power; clientelism; (mis)use of state resources for political legitimation and corruption; institutional hybridity; institutional incompatibility; existence of a modern state whose resources are shared along nepotistic and ethnic motivations; and the adoption of either and/or personal dictatorship, military oligarchy, plebiscitary one-party systems, and competitive one-party system neo-patrimonial rule types.

With regard to neo-patrimonialism in post-independence Africa, the chapter, after giving an overview, has revealed that the origin of neo-patrimonialism in Africa is explainable within the context of the African continent. It has discovered and proved that, indeed, neo-patrimonialism has had, and continues to have, practical relevance for post-independence Africa particularly in explaining and illustrating how and why neo-patrimonialism (has) affected constitutionalism on the continent. In addition to detailing and proving how African rulers/presidents have applied and manifested the aforementioned eight features and manifestations of neo-patrimonialism in different countries, the chapter has revealed that neo-patrimonialism has affected constitutionalism, rule of law and democracy in Africa mainly through: over concentration of power in the person of the ruler and fostering the use of state-induced repressive methods; promotion of nepotism and ethnicity in the distribution of goods and services; promotion of corruption and other crooked means of wealth accumulation; presidentialism and abuse of separation of powers in government organs; and alienation of the post-independence Africa’s populace from the processes and structures of governance.

The chapter has also revealed that African political leaders/presidents adopted and continue to adopt neo-patrimonial behaviours and practices because: they inherited a fully-entrenched patrimonial system of
governance from the colonialists at independence which they did not and could not easily do away with; the nature of the education introduced and left behind by the colonialists no longer adequately meets African development needs and challenges, and does not guarantee the acquisitiation of jobs, which has continued to enhance neo-patrimonial dependency between the patrons/rulers and masses; the quality of local communities’ civic competence is low which enhances manipulation and management of native populations by the highly informed elites; and neo-patrimonialism being a universal phenomenon which has been and continues to be adopted and used worldwide, particularly in the developing world economies elsewhere.

The centrality of the chapter hinges on the understanding that, considering that Uganda is an African country, understanding Neo-patrimonialism within the African context is crucial in aiding our understanding and explanation of Uganda’s political processes and their resultant volatile nature of constitutionalism since independence. In the next chapter, the key political developments that shaped the nature and state of constitutionalism in Uganda between 1962 and 2018 are discussed.
CHAPTER FOUR
POLITICAL DEVELOPMENTS AND CONSTITUTIONALISM IN UGANDA BETWEEN 1962 AND 2018

4.1 Introduction
This chapter explores and analyses the key political developments that shaped the volatile process of constitutionalism in Uganda since independence. Accordingly, the chapter deals with the first research question which states that: ‘What were the political developments that shaped the volatile process of constitutionalism in Uganda between 1962 and 2018?’ This chapter is critical because not only does it inform the reader about the various political developments that shaped the crooked and ragged constitutional path in Uganda but it serves as the basis for establishing and analysing: the factors that have influenced the contested state of constitutionalism in post-independence Uganda; the challenges which have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda; and the extent to which the Theory of Neo-patrimonialism can be applied to explain and enhance the holistic understanding of the volatile nature of constitutionalism in post-independence Uganda, which are dealt with in Chapters Five, Six and Seven, respectively. As such, this current Chapter serves as the basis for Chapters Five to Seven.

Specifically, this chapter is structured and chronologically arranged in ten sections. After this introduction, the chapter delves into the political developments from the British imperial rule to the time of Uganda’s self-rule; explores the social movement mobilisation period prior to independence; and then treads towards understanding the problematic colonial rule legacy. After these, the chapter explores the impossibility of Uganda’s constitutional mission between 1962 to 1971; analyses the 1971 to 1986 period of terror, trauma and bloody resistance; the weaknesses of the judiciary; the role of civil society; the NRM regime and how it brought in citizens, uncertainty and constitutional rights’ awareness since 1986; and concludes with a summary of the main themes explored and discussed in the chapter.
4.2 Political Developments from Late British Imperial Rule to Ugandan Self-Rule

In this sub-section, some salient facts leading to the comprehensive constitutional developments during late colonialism Uganda are described, specifically, the late colonial period that extends from 1945 when the first African became a member of the Legislative Council (LEGCO) to 1961 when the Council’s first direct elections were held (Ayandele et al., 1984:351; Kanyeihamba, 2010:18-29). In constitutional terms, it was a remarkable period because formal adjustments in traditional structures of socio-economic and political governance were effectively transformed under the weight of the invading imperial power “that had necessitated emphasis on law and order” (Oloka-Onyango, 1994:477). The year 1961 is also important because first, elections for the LEGCO returned an African majority in it. Second, the Democratic Party (DP) led by Benedicto Kiwanuka formed the majority party and the UPC led by Apollo Milton Obote formed the opposition (Ayandele et al., 1984:363; Kanyeihamba, 2010:22-24). Therefore, the events registered during the period extending from 1945 to 1961 greatly shaped Uganda’s constitutional history.

The essence of these two Ugandan pre-independence history facts is ill-prepared government leaders. Instead of Uganda’s leaders dismantling colonial procedures and patrimonialism, they embraced them. Leaders never concentrated on building viable nation-state institutions. That inadequacy eventually came to influence Uganda’s rugged constitutional path. This argument justifies the current examination. For example, Omara-Otunu (1987:8) explains, “After independence, in most fields, power was transferred to Africans, who had not been in a position to accrue a

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8 To elaborate on the issue of ill-prepared leaders, a reflection of the backgrounds of the top-most rulers of Uganda since independence will suffice. Mutesa suffered from divided loyalty because he was both the Kabaka (king) of Buganda and served as the ceremonial president of Uganda. A.M. Obote was a high school dropout but as circumstances availed opportunities, twice happened to manipulate events to the top-most job in the country. Idi Amin, formerly serving as Sergeant in the colonial British East African King’s African Rifles, eventually carried out a successful military coup d’etat in Uganda and ruled for eight years. Aided by the TPDF, the UNLF era (April 1979 to December 1980) was characterised by chaotic successions of the rule of Y.K. Lule, G.L. Binaisa and Paul Muwanga. Obote II was overthrown by two semi-illiterate Okellos in July 1985. Then, guerrilla leader Museveni captured power after the five years of ‘bush war’ atrocities, which brings the record to the present.
record of comparable achievements which could command the respect of a cross-section of the population.” This glaring leadership inadequacy was an important fact and a bad omen that ultimately proved to be very costly in terms of trial and error techniques for public affairs management, associated with bad governance outcomes and clumsy nation-building projects in most of the post-independence African region.

To substantiate the above, Ayandele et al. (1984:375) assert that, “The status and stature of independent African countries were suddenly transformed: in international bodies and on the diplomatic scene they became the equals of their former colonial masters.” For instance, according to Tidy and Leeming (1985:210), “For most of African societies, the colonial period was short, lasting for only two generations...The leaders of the resistance to the imposition of colonial rule have thus often become the heroes of new nations of post-colonial Africa.” Identifying those inter-linkages between overlaying factors in Uganda helps with understanding the exact roots of Uganda’s post-independence ungainly constitutional history. Ill-prepared rulers had prejudiced the processes of negotiations for independence, biases that culminated into emergent Ugandan self-rule gone badly.

To reflect briefly on the earlier period, the 1900 Buganda Agreement was adopted as the basis of formal British administration in Uganda. It introduced considerable modifications to the traditional Baganda political system of governance by turning chiefs into real colonial agents. It transferred land from peasant owners to a handful of colonial chiefs. Therefore, the 1900 Buganda Agreement remained an undesirable constitutional fact that gave the colonially made Baganda chiefs a great deal of personal land, imposed a tax on huts and guns, and designated those Imperial agents as the sole tax collectors, thereby alienating the majority elements of the locally deprived population. According to Doornbos (2010:61), elsewhere in the areas with centralised traditional cultural kings, the Toro Agreement was signed in 1900. Whereas the Toro Agreement was almost like the Buganda Agreement, it was less generous
without large scale private land tenure. Other similar colonial Agreements signed were the 1901 Ankole Agreement and the 1933 Bunyoro Agreement. The core of this selective colonial constitutional policy and land management arrangement for Uganda was political expediency, which was extraneous to those affected areas. Nonetheless, these legally binding treaties effectively subjugated local populations’ resident in centralised kingdoms alongside those traditional communities living in the rest of the districts as Unitarian entities. This colonially inspired discriminatory aspect of conferring public power, wealth and related privileges became a real nemesis to nation-building efforts, especially after the country attained formal independence in 1962.

Subsequently, with that fragile and injurious composition of imperial rule over the territory they named Uganda, rebellions were inevitable. The British colonisers made yet another mistake by adding insult to the injury. This blunder came to be known as the “Lost Counties”, placing Ganda chiefs in Bunyoro from 1901, and led to the Kanyangire revolt, literally meaning deep seated and non-violent refusal that was planned in strict secrecy (Tidy & Leeming, 1985:127, 203). Other relevant examples of local social movements and rebellions for constitutionalism, equality of opportunity for all, procedural democracy and improved quality of governance were “the Uganda National Movement led by Augustine Kamya”, “the Bataka Movement in Buganda”, “the Kumanyana Movement in Ankole”, and “the Rwenzururu Movement” in the Mountain Rwenzori sub-region (Doornbos, 1978:117-131; Omara-Otunu, 1987:51; Syahuka-Muhindo, 1994:273-317; Zie, 1994:425; Kivejinja, 1995:426).

4.3 The Social Movement Mobilisation prior to Independence
The vital and common factor in Ugandan social movements and rebellions was that, they were locally popular and organised political activities, secret engagements protesting against colonially inspired sub-imperialism, and emerged in the context of the constitutional evolution of the national society. As Mamdani (1990:365) observes, the colonial state power that originally confronted the entire ‘native’ population, and later the mass of
the peasantry, was organised along pre-bourgeois lines. The gist of his argument is that “this personalised and fused political authority was not an oversight, or just a detail of the colonial system, but the actual basis of a series of extra-economic compulsions through which the peasantry was systematically exploited.” Therefore, the implications of those social movements and rebellions were that predominantly peasant populations articulated their interests clearly, built capacity to organise in secrecy, nourished capability for sustaining focused protests and later influenced national governance trends (Doornbos, 1978:165-179). Their relevance was later reflected in Article 3 of the 1995 Constitution of Uganda, providing for its defence as a duty of all citizens (GoU, 2006:30-31). The framers of the cited Article were aware of those popular and historical struggles that shaped ordinary Ugandan’s resolve to justify their liberty and ultimately, the country’s constitutional path.

Given the British colonial interests involving systematic economic exploitation of the whole territory they conveniently called Uganda based on their Foreign Jurisdiction Act of 1890, they initiated Uganda Orders in Council of 1902, defining the territorial limits of their royal Protectorate with clearly mapped internal boundaries dividing Uganda into four administrative regions (Omara-Otunu, 1987:xiv). This colonial legislation was one of the major enactments that laid the foundation of the Uganda Protectorate and assisted in its growth as a constitutional state subject to the United Kingdom’s sovereignty. From the constitutional history point of view, the 1902 Orders in Council was the first fundamental law for the Uganda Protectorate. It was a legal instrument, established an officially permitted framework of governance for the whole colonially defined territory, and put in place basic elements and structures of government with far reaching constitutional implications. Its essence was an advanced stage of colonialism with those grand legal orders giving the Commissioner all the necessary official power to rule as one-man until 1920, marking the genesis of the notorious orders from above syndrome in Ugandan government agencies (Omara-Otunu, 1987:9). Later, the Executive and LEGCO outcomes re-designated the top British colonial representative in
Uganda as Governor. As the end of colonial rule became imminent, deliberate efforts towards preparing a nucleus of Ugandan elites to assume the responsibility of self-rule were made led by a new dynamic Governor, Sir Andrew Cohen (Ibingira, 1972:33; Kanyeihamba, 2010:8-22).

When citizens regaining constitutional liberty in Uganda are considered, the processes leading to that intended quality of politics and associated eventuality must be traced back to the 1920 Orders in Council. This British legislation not only created the resident colonial Governor for Uganda Protectorate government supported by LEGCO but also encouraged the emergence and practice of a semblance of separation of powers principle. Stage-by-stage, in October 1945, the colonial scheme approved the nomination of three of the Prime Ministers of Buganda, Bunyoro and Busoga as African members of LEGCO to represent the Central, Western and Eastern regions respectively as means of extending representation to the bulk of the population (Ibingira, 1972:33-34; Kanyeihamba, 2010:16). Gradually, the numbers of Africans in LEGCO kept increasing as more official members were brought in “to provide the Council with the accumulated wisdom and specialised knowledge” (Ibingira, 1972:34).

Therefore, technically, the negotiations for Uganda’s national independence and self-rule other than the greater British Eastern African bloc had begun with the incorporation of black Africans in LEGCO. This process made LEGCO a platform for indigenous political and constitutional demands. This qualitatively improved political practice, culminated in the British colonialists’ commissioning of the J.V. Wild and Munster Commissions in 1959 and 1961 respectively, to look into the possibilities for Uganda’s independence constitutional framework (Ibingira, 1972:52, 90, 98, 165). By taking responsible positions in LEGCO, Ugandan elites started becoming politically enlightened about procedures associated with the civil constitutions, participatory approaches to wider public affairs governance, and improved tactics for political organisation, leading to the formation of active political parties in early 1950s (Ibingira, 1972:34,76-104). These constitutional developments fostered improved socio-economic services
and other procedural democracy dividends because the late colonial administration policy, especially under Governor Andrew Cohen, put theory into practice, training Ugandans for the greater responsibilities of government which lay ahead (Cohen, 1957:112; Kanyeihamba, 2010:26).

By the phrase “the greater responsibilities of government,” the explanation developed under which the Ugandan independence constitution was negotiated at Lancaster House in London and covered a number of public management issues. Major among them were the nature of the self-government constitution itself, especially the constitutional status of Buganda in post-independence Uganda where the former viewed others from the rest of the Protectorate as aliens. Related to this oversight, was the constitutional status of the other three Western Uganda Kingdoms, namely, Bunyoro, Toro and Ankole, with Busoga standing out as a territory enjoying semi-federal status (Ayandele et al., 1984:361-364). That trend overlapped with the unclear constitutional status of other unitary districts coupled with issue of the head-of-state in relation to the head of Parliament in central government.

Furthermore, there was the role of Parliament as a National Assembly in addition to defined safeguards for the rights of minorities; citizenship, as associated with Human Rights protection, for example, “citizenship by registration” (Article 12 of the 1995 Constitution). Matters were further complicated by the then long standing question of Bunyoro’s “Lost Counties” (Ibingira, 1972:165-185). Whereas the said main issues were important public management matters, the question of the military and national defence policy were left out. The armed forces, their form and role vital component institutions of state in post-independence Uganda, were never considered. Procedurally, the military was a key cog in the negotiated

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9 See Kanyeihamba (2010:60) for details about how the Lord Molson Commission had recommended that the two counties Buyaga and Bugangaizi, formerly annexed by Buganda as reward for its collaboration with the British against king Kabalega of Bunyoro, be transferred to Bunyoro before Uganda achieved independence. It was not followed until a referendum was held in 1964 to bring about constitutional independence. Kabaka of Buganda, as President, refused to assent his signature to the relevant enabling law, and A.M. Obote assented to it as Executive Prime Minister.
self-government arrangement that was never well thought out. This deliberate oversight sooner or later came to be one of the costliest misadventures in the constitutional history of the country. According to Omara-Otunu (1987:1), the military organisation of the traditionally centralised states of Bunyoro and Buganda mirrored the hierarchical administrative structure and cultural status upon which British colonial policy of indirect rule was established. Omara-Otunu thus opines that “an understanding of the military of today requires a grasp of its roots and the forces that have shaped its development” (Omara-Otunu, 1987:7).

Nevertheless, towards independence, indigenous political actors acquired attitudinal changes involving the desire for increased levels of participation in the elections for the members of LEGCO in 1961. Subsequently, according to Ayandele et al. (1984:363), DP with its leader B. Kiwanuka emerged winner of the 1961 elections and therefore assumed a leadership role in the whole territory of colonial Uganda, Buganda included. This liberal democracy development never augured well with either Kabaka Mutesa II of Buganda or Obote who originated from the non-centralised traditional society of Lango in the northern part of the country (Omara-Otunu, 1987:49-50; Kivejinja, 1995:22-24; Kanyeihamba, 2010:70-71). Consequently, the subsequent unholy alliance that formed Uganda’s first independence government was problematic and predictably precipitated the successive constitutional crises. It was a well calculated and deceptive coalition of Mutesa II’s Kabaka Yekka (KY) faction bent on pursuing Buganda’s assumed superior cultural status in post-independence Uganda and Obote’s Uganda People’s Congress (UPC) as an earlier defeated opposition party targeting effective control of state power (Ayandele et al., 1984:363-364). In due course, the illusory partnership outmanoeuvred Kiwanuka’s DP, a shift that laid bare the fragile foundation for weak constitutionalism in the country.

The military factor played a critical role in the establishment and sustenance of British colonial rule in Uganda, ensuring security for the
then lucrative ivory trade and thus shaped her constitutional history. For example, Omara-Otunu (1987:13-27) argues that:

“It is to the histories of the Arab and European efforts to control Central and Eastern Africa that the establishment of the military in Uganda can be traced...Military rule was thought to be the only way of creating and enforcing authority and order over people among whom familiarity with the British seemed to have bred contempt.”

Omara-Otunu’s account is important because it helps us to understanding how the Ugandans serving the colonists became the backbone of the military institution in Uganda. Omara-Otunu (1987:19) further contends that, “In September 1895 the Uganda Rifles Ordinance was approved by Parliament.” By that British legislation, troops were to swear allegiance directly to the British Sovereign and by extension, the Protectorate Government. This debate explains why those colonial troops were liberally used to subdue the Ugandan indigenous communities arbitrarily. The commercially minded invaders had effectively employed the military services of those soldiers composed of the Swahili from along the East African coast and the Indian troops supported by the Sudanese who had earlier served in Emin Pasha’s expeditionary ventures. The contrast between their loyalty to the Imperial British East African Company and the ruthlessness aimed at the local population was glaring. That distinction made national defence too important an issue. Pre-independence Ugandan constitutional negotiators side lining the issue during the two conferences in London explains the origins of ill-prepared and incompetent post-independence officials.

The resultant independence constitutional arrangement for post-colonial Uganda had not only critical issues but also problematic concerns for the successor government that deserved further interrogation. Basically, those fragile constitutional outcomes of the two conferences, the first at Lancaster House-London between 18 September and 9 October 1961, and the second at Marlborough House in June 1962, were debated and passed by the British Parliament (GoU, 1994:2). They were inconclusive and delivered neither monarchy nor republic for post-colonial Uganda. Whereas the
implications were conspicuous, the political actors of the day conspired to assume the reins of public power on premises of unprincipled compromises. It was that kind of high-level dishonesty that greatly affected the 1962 Constitution of Uganda based on deceptions, exclusion of the demands for broad social interests, controversial national defence engagements and uncoordinated local security arrangements. Those already delicate constitutional matters were further weakened by complicated rival legislative levels. The central government of the National Assembly was to be generated through different selection procedures governing the four Kingdoms as Federal States, the semi-Federal territory of Busoga and the elections in the other ten constitutional districts provided for under Article 2 of the independence constitution. With full participation of the British Colonial Office, confused exclusionary executive power bargains had begun in the country. In short, the 1962 Ugandan constitutional mission was impossible.

4.4 Towards Understanding the Problematic Colonial Rule Legacy

Systematically, this current subsection elaborates the problematic end of British colonial rule in Uganda. It is guided by critical understanding of the processes, patterns and practices of the actors of the time whose decolonisation strategy was mired with not only skewed negotiations but also elitist manoeuvres. As Winch (1990:65) suggests, “Understanding something involves understanding the contradictory too.” Similarly, the organised efforts for self-rule superficially started in the country. However, the scheme was part of the sub-regional changes at that time. To understand the constitutional history of Uganda, one has to take into account what happened in reality, discard the bad practices, identify and adopt relevant lessons, apply the experience, and build the future on the good practices. Many have concluded that the Ugandan independence event, whose deadline had been fixed for 9 October 1962, was rushed. The negotiators made unrealistic commitments and omissions bordering on blunders that inevitably complicated the country’s post-independence constitutional path (Omara-Otunu, 1987; Oloka-Onyango, 1994; Kanyeihamba, 2010).
In retrospect, the British decolonisation strategy for Uganda was intertwined with their general tactical disengagement plan for that period coordinated by the Colonial Office that aimed for closer union in East African region (Ayandele et al., 1984:345-374). The British intended to create a federation of territories so as to keep the diverse indigenous nationalities culturally intact but centrally coordinated under the independence constitution of convenience. Their decolonisation scheme for Uganda was further complicated by the wider sub-regional considerations as the colonial system began to crack after World War II conflict in which the Uganda Protectorate contributed 77,000 service men (Ayandele et al., 1984:347). These considerations included post-independence turmoil in Sudan; the Mau-Mau insurgency in Kenya, an uprising which threatened the base for British military operations; the Social Revolution in neighbouring Rwanda that sent many refugees and cattle into the Uganda Protectorate; the assassination of Burundi Prime Minister designate; and the political chaos in the Belgian Congo where Katanga Province attempted secession. So, Imperial Britain had to rush Uganda into self-rule to avoid being caught up in a difficult political situation in the colonial possession with neighbouring, potentially war-prone territories. This narrative explains why the question of Ugandan independence had to be settled outside the country, specifically at Lancaster House in London (Kanyeihamba, 2010:50-51).

The slanted preparations for Uganda’s self-rule never considered involving directly the popular local communities in those arrangements, but selected groups of elites only. That pre-independence exclusive negligence against the popular and broad social interests of Ugandan citizens’ came to prove a very costly approach to the country’s post-independence constitutional arrangements. The explanation adduced was that successive post-independence Ugandan rulers adopted systemic assumption that dominantly peasant local communities with limited understanding of the civil law procedures could be ignored with impunity (Mamdani, 1990:366). Nevertheless, self-rule was an important matter that required not only involvement of the elitist rulers of the day but also, constitutionality, their
actions with regard to citizens’ broad social interests, liberty and fundamental human rights. Moreover, as elaborated in previous subsection, in the pre-independence Ugandan society of the day, there were some locally organised popular struggles for protracted civic actions against all forms of domination to uphold constitutionalism, an aspect that partly formed the basis of the current analysis. Therefore, stage-by-stage, the absurdity of exclusiveness inhibiting procedural democracy in post-independence Uganda will be explained. This present discussion is an effort aimed at emphasising the value of bringing in citizens in addition to asserting their sovereignty, particularly at local government levels, as vital components of procedural democracy, a practice clearly not followed by the British.

The theme of bringing in citizens in on matters of governance remained a challenge because successive governments after independence inherited colonial institutions that were never dismantled. That dispute partly finds explanation in the way colonists quickly introduced the Western-style of centralised authority in Africa through either their collaborators or armed occupation, and similarly, the decolonisation process was rapid. In that regard, Ayandele et al. (1984:375-395) argue as follows:

“The attainment of political independence by the bulk of the African continent within the last twelve years is a major event for both Africa and the world. With speed comparable to that with which the European powers had partitioned the continent in the last decades of the nineteenth century, Britain, France, and Belgium transferred sovereignty to their African subjects almost overnight.”

So, the problematic of subjects turning into citizens swiftly explains the constitutional inconsistencies and poor stature of independent African governments. Consequently, like in other European colonies in Africa during the post-World War II period, the self-rule idea was used by the emergent Ugandan elitist and nationalist groups to mobilise local good will and agitate for the right of self-determination. For example, according to Omara-Otunu (1987:17) and Oloka-Onyango (1994:464), European colonialism was hostile to the social contract arrangement because in
Uganda, functions of the Imperial British Crown emphasised retaliatory expeditions and justice for the colonial state that made it largely punitive and coercive.

In the event of their eventual departure, those anti-people governance procedures were inherited by successor governments. Its meaning was the observed awkward Ugandan nation-state constitutional foundation. This innately bad anti-popular governance approach further explains the genesis of the subsequent ignominious and shameful unitary governance procedures exhibited in the poor quality of politics adopted by the post-independence rulers (Museveni, 1989:1). With that unfortunate origin of Uganda’s formation, the observed poor quality of government and its adverse impact on citizens’ liberty were inevitable, thanks to international law governing community of states. The contentious Ugandan post-independence state was sustained despite the existence of a number of chaotic changes in administrations and four sets of poorly implemented constitutions.

For instance, Oloka-Onyango (1994:482 & 488) highlights the issue of successive Ugandan rulers’ applications of the infamous “detention orders under the Emergency Powers (Detention) Regulations in the interest of the state, an inherited right from the colonial rule days. Another factor of concern is the idea of modernisation that emphasised the technological superiority of Europe. It needed the maintenance of a new kind of internationally recognised legal framework and the generally agreed orderly interactions following the country’s imposed entry into the complex socio-economic and political global web. Omara-Otunu (1987:13) observes that:

“Imperialism created a new mode of relations between the conquering and the conquered peoples...the colonising and the colonised were drawn into a new network of global economic relations. Uganda’s importance in this new process derived from her strategic position in relation to Egypt, for the River Nile, regarded as life-blood of Egypt, flowed from her.”

That exotic invasion of the African continent by the emblems of superior European technology was generally little understood by most of the
Ugandans at the time. Those invaders quickly forged the territory into one country governed under the auspices of the British Imperial Crown (Ibingira, 1972). For Ayandele et al. (1984:377-378), “The colonial rulers implanted the ideas of modernisation to which every independent African nation-state is inexorably committed...ideas of modernisation constitute the colonial heritage which the educated elite, to whom the ex-colonial powers transferred power and authority, cherish most.”

Therefore, the justification for the present chapter is its focus on explaining the perplexing trends of conventional constitutionalism and associated dynamics little understood by the majority of ordinary citizens in post-independence Uganda. This aspect of ordinary citizens’ limited knowledge about constitutional rights precipitated the observed continued bad governance in the country. For instance, commenting on the 1995 Ugandan Constitution making process, Oloka-Onyango (1994:514) argues that:

“Rather than treating the exercise simply as the preserve of experts and politicians, it is the time for a complete refashioning of the conceptions of power and its control that we have been subjected to right from colonial times. It is time for us to think of novel and dynamic ways of recons tructing the traditional arms of government.”

Oloka-Onyango’s (1994) wise counsel helped with the systematic interrogation of the country’s post-independence leaders’ failure to adhere to the terms of the social contract. In that specific way, the intricate challenges of fostering the doctrine of separation of powers Uganda can be investigated. Furthermore, the country’s tricky constitutional situation, fraught with glaring contradictions, is clarified. Its essence is the insight it throws upon the two Ugandan independence preparatory constitutional conferences in London, which never discussed matters of national defence conclusively. Its practical meaning and legal effect can be found in Article 16 of the 1962 Constitution of Uganda which partly defines an alien as “A person who is not a Commonwealth citizen, a British Protected person...for

10Ayandele et al.’s (1984:377-378) argument is that “in essence the educated elite constitute an oligarchy which has merely stepped in the white man’s shoes and is running the new nation-states in their own interests...knowledge means power and the major events in independent Africa have been determined by, or centered on, the educated minority.”

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the purposes of the British Nationality Act 1948.” Negotiated in London, the 1962 Constitution of Uganda provided for a Westminster model of government with executive powers vested in the Prime Minister while the independent President retained Executive Authority.

Article 34 partly provides for the establishment of the Office of President as an institution where he/she is “a Supreme Head and Commander in Chief of Uganda…takes precedence over all persons in Uganda and shall not be liable to any proceedings whatsoever in any court.” It constituted a mistake that later came to prove very costly to the country. Successive actors in the presidency assumed exaggerated positions over and above the Uganda society as a people. Furthermore, Chapter VI of the 1962 Constitution provides for “The Executive of Uganda” whereby Article 61 vests executive authority in the President who under Article 62 “shall appoint a Prime Minister…the member of the National Assembly who is the leader in the Assembly of the party having a numerical strength which consists of a majority.” Whereas this cited provision was intended to promote procedural democracy, transparency, and good governance, the political actors of the day manipulated the processes. This argument explains why those Ugandan politicians of the day relied heavily upon subversive tendencies like patronage and clique formation as the only means for forging artificial majorities in the National Assembly.

The long lasting legacy of the colonial situation and associated over-centralised rule was distinguished as a violation of human rights. The elitist origin of public administration was hostile to the social contract tradition at the central and local government levels and responsible for the observed systemic alienation of citizens, even after formal independence. Mkandawire (2003:4-5) discusses how stage-by-stage, colonial rule structures penetrated the components of subjugated societies and propagated procedures of exclusion leading to systemic growth and development of domination as the means by which officials dispensed authority. It was that factor of systematic and legal alienation of the subjugated peoples of Uganda during the pre-independence period that
Ibingira (1972) correctly calls *The forging of an African Nation*, a process by which radically changed procedures in public sector management were introduced.

Consequently, in Uganda, the immediate post-colonial era technically referred to as the neo-colonial arrangement, never changed the status quo. The Imperial British Crown and its sovereignty were still factors recognised as the sources of all official authority and bases of acquisition of citizenship in the country (Section 8 of the 1962 *Constitution of Uganda*). This finding explains why nationalist forces of decolonisation in the form of political parties and trade unions were restless and worried about nation-state building and the re-organisation of the wider society.

Colonial legacy was based upon the colonial superstructure where Africans seldom participated in the debates, and they had no say in determining the shape of government as a whole (Ayandele et al., 1984:345). That imperial arrangement regarded citizens and subjects as completely different. The imperial categorisation of human relations regulated by the coded laws was the foundation upon which stood contemporary African and Ugandan constitutional and procedural democracy arrangements. Its self-government rulers took to understanding their official positions as those of direct replacements of the colonial order that regulated human interactions of “subjects as second class citizens” (Ayandele et al., 1984:152).

Whereas balkanisation and partitioning of Africa was the colonial order then, as it withdrew, hasty independence arrangements made matters of centralised public affairs management hypocritical and offensive. This argument is based on Ayandele et al.’s (1984:387-388) assertion that the political system inherited by the educated elites from the ex-colonial rulers became increasingly unstable. Ayandele et al. give some reasons for this instability as “ex-colonial powers withdrew too quickly, too soon, before Africans were fully prepared for self-government...the political systems and organs of government left behind by ex-colonial powers are really unsuitable for, and unworkable in Africa.” The gist of the colonial powers contribution is the truth that the administrative systems at the local level
and the civil service for which the educated elite literally provide the skill had come to stay.

4.5 Uganda Constitutional Mission Impossible (1962 to 1971)

Despite this present sub-section generally being looked at as one period where the trends of constitutional manoeuvres were favouring the UPC Party, critically it describes how the 1962 Ugandan constitutional mission was impossible. The focus is that in Uganda, there was never genuine national dialogue. Contrary to Article 36(1) providing for regular general elections for national rulers and the Assembly, there were no general elections throughout this period. The period was characterised by organised political bickering, the vice that threatened the social contract arrangement in the country. As the national independence project proceeded, four procedurally unworkable but interlocking patterns emerged.

First, from 1962 to October 1963 was a phase when the Queen of England remained the Head of State of Uganda, putting Uganda under Her Majesty’s dominion; Mutesa II was the Kabaka (King) of Buganda and at the same time, President of Uganda; and Obote was his Prime Minister (Kanyeihamba, 2010:67). Second, the 1963 to 1966 phase was characterised by chaotic and perplexed self-rule: rulers exhibited incompetence and ill-fated attempts to solve some of the inherited constitutional dilemmas. Third, was the 1966 to 1967 phase, defined by constitutional crisis involving irregular suspensions and obliteration of the 1962 arrangement by Obote, the Prime Minister; the promulgation of the interim ‘pigeon-hole constitution’ of 1966; and the introduction of the Republican Constitution of 1967. Fourth, was the 1967 to 1971 epoch characterised by systematic institutional decay; one-party rule by the UPC; decomposition of the one-man rule; and the inevitable and successful military coup d’état of 1971 by Idi Amin.

From 1962 to October 1963, Her Majesty the Queen of England remained as Head of State, exercising sovereignty over post-colonial Uganda through the Office of Governor General and overseeing the “flag-independence and
neo-colonialism” superstructure (Mkandawire, 2003:1). It was that neocolonial nature of political arrangement that attracted criticism of the situation that “independence constitutions were like negotiated treaties” (Oloka-Onyango, 1994:479). That subservient status of post-colonial Uganda explains why all real effective and institutional public power was still held by the British Crown with its Imperial Armed Forces in charge of the situation. This argument explains why Oloka-Onyango (1994:478) observes, “Uganda’s baptism into the status of an independent nation was attended not only by the design of the new Coat of Arms, an inspiring National Anthem and a catchy motto, it also witnessed the promulgation of a Constitution.” In essence, the 1962 Constitution was more of a divisive tool than a legal instrument promoting national unity and hence, operating under its auspices, was mission impossible.

Similarly, Article 96 reinforces the neo-colonial status of Uganda. It provides for appeals to “lie as of right direct to Her Majesty in Council from final decisions of the High Court of Uganda on any question as to the interpretation of this Constitution.” The neo-colonial situation of impossibility postponed those problems. Subsequently, those constitutional concerns were further complicated by Mutesa II’s dual capacity that made him made him the Kabaka (King) of Buganda and the Constitutional President of post-colonial Uganda (Article 34 of the 1962 Constitution of Uganda). This problematic dual capacity was constitutionally provided for under Article 36 regulating “Elections and tenure of office of the President and Vice President and succession to Presidency.” In part, Article 36 (1) states, “The President and Vice President shall be elected...from among the Rulers of the Federal States and the constitutional heads of the Districts by the members of National Assembly for a term of Five years.” Unfortunately, given former Buganda’s role in furthering British colonisation in other parts of the country, her King Mutesa II happened to be selected as the first Constitutional President of post-colonial Uganda with Obote as his Prime Minister. This combination of the two strange bed-fellows in connivance against other stakeholders
attempting to manage the complex distribution of public power in a sprouting nation-state inevitably became disastrous.

For instance, Article 3(2) of the 1962 Constitution states, “The territory of the Kingdom of Buganda shall comprise those counties of the Kingdom of Buganda that on the 8th day of October were comprised in that territory excluding the county of Buyaga and Bugangaizzi.” This finding explains why Buganda erroneously tended to assume its independence as a Federal State on the 8th of October 1962, a contest that continues as a theme at the time of this study. It was an issue that proved a constitutional curse rather than a blessing. As President of post-colonial Uganda, King Mutesa II’s loyalty to Buganda’s interests tended to overwhelm that which he exhibited for the rest of the country. This conflict of interest originated from the ill-fated 1962 Constitution of Uganda, specifically Articles 2, 3(2-6) and 36(1) providing for the territory of Uganda, boundaries of territories and election and tenure of office of the President, respectively. These complications were technically carried forward from the time of the British colonial administration in the country. Such technical hitches could neither be resolved easily nor conclusively addressed during the immediate post-colonial administration in the country. Attempts at tackling those conflicts using civil means like the 1964 Referendum were obscured by the bad quality of politics at play. Later, constitutional dialogue between the Buganda Kingdom government and Uganda Central government proved inadequate.

Political manipulation was possible by the UPC Party allying with Buganda Nationalist Party, the KY, literally meaning ‘the King of Buganda Alone’ to defraud the DP (Kanyeihamba, 2010:57-59). That defrauding the DP was possible through Obote manipulating the Buganda nationalism idea held by its delegates at the Constitutional Conference in London perpetuated the Buganda in Uganda question. According to Kivejinja (1995:22), the Buganda Kingdom delegates were too anxious to have their top man, namely the Kabaka, remain the final arbiter of everything in Buganda. Kivejinja (1995:22) further asserts, “They also conceived of Obote as the
UPC boss.” Those Buganda Kingdom delegates hated Benedicto Kiwanuka for being a Roman Catholic and mere commoner struggling to outshine the ‘royal Kabaka’ by promoting the DP to retain the reins of power in independent Uganda. This observation explains why Obote exploited the circumstances, tantalising the Kabaka with ill-fate promises. The matter turned out to be a big lie that blurred subsequent concerns of constitutionalism in Uganda.

In reality, it was that observed unprincipled public affairs management model and political manipulation by deceptive procedural democracy which culminated in Obote becoming Mutesa’s appointed Prime Minister of post-colonial Uganda (Article, 62(1) of the 1962 Constitution). This executive illusion and unprincipled political manipulation meant, according to Kanyeihamba (2010:70), that “The marriage was bound to prove disastrous.” For that same reason, the situation of constitutional impossibility is made clearer under Article 62(11), which provides “The President shall remove the Prime Minister from office if a vote of no confidence in the Government of Uganda is passed by the National Assembly.” Consequently, when the conspiracies in the UPC/KY alliance, the anti-Obote factions and allegations of corruption within the ruling coalition threatened the actors’ private interests (Kivejinja, 1995:36-37; Kanyeihamba 2010:82-85), the opportunity availed for the President to act according to the favourable provisions of Article 62(11). However, the outcome was what Kanyeihamba (2010:65-104) interprets as “the dramatic years,” practically meaning constitutional chaos, confused self-rule gone badly, escalation of the poor quality of politics, and the exaggeration of inherited dilemmas.

Events of 22 February 1966 involving the armed invasion of Kabaka/President’s royal palace by the Uganda Army (UA) served to prove that the post-colonial constitutional arrangement was an oversight and mission impossible. Dismantling the colonial state came with a host of new challenges (Toyin, 2005:516). It all begun with the enactment of first amendment of the 1962 Constitution, dubbed “Act 61 of 1963” of 9 October
1963. Titled “An Act to effect changes in the Constitutional position of Uganda, to amend The Uganda (Independence) Order in Council, 1962,” Section 3 of this Act provides for “Uganda to cease to form part of Her Majesty’s dominions” (GoU, 1994:177). Having successfully broken that imperial dominion status, “The Prime Minister on the twenty-second day of February 1966, suspended the then Constitution of Uganda and took over all the powers of government” (Preamble of Constitution of Uganda, 15 April 1966). In paragraph two of the cited Preamble, it is stated, “the Government on the twenty-fourth day of February 1966, approved the actions taken by the Prime Minister in order to ensure a speedy return to the normality which existed before the occurrence of the events which led to the suspension of the Constitution.”

Therefore, Obote as a political actor exploited the occasion to claim political power of state embedded all-in-one, namely, the Prime Minister and Government. Consequently, chaotic procedures of accessing preferred positions of state resources and privileges in addition to reckless methods of work while exercising executive authority obscured regard for the broader interests of society. Therefore, contrary to the expected, Obote preferred working through informal structures and patronage (Kivejinja, 1995:25-30; Kanyeihamba, 2010:86-87). Nevertheless, protection of the social contract, constitutionalism and procedural democracy demand public officials working through established institutional policies and formal structures of state, an arrangement that matters for economic growth (Mkandawire, 2003:1). That observed bad governance situation was further complicated by exclusive polarisation of political actors’ personal interests, leading to their failure to build viable public institutions. In addition, there was an elitist approach to consolidation of the first Ugandan post-independence regime coupled with deliberate trends of confused self-rule gone badly. Those patterns encouraged an awful quality of politics that complicated the inherited constitutional dilemmas (Oloka-Onyango, 1994:479). This argument explains the absurdity of a feeble national population failing to hold culprits personally and legally responsible. That
irrationality accrues from citizens tolerating the practice of unprincipled politics and compromised representation.

For instance, the 14 collaborators, among whom was Obote, mentioned by their names and offices in the Ninth Schedule of the 1966 *Constitution*, illustrates elite opportunism cited in the third paragraph of the Preamble. In characteristic UPC Party style, it states, “We the people of Uganda here assembled in the name of all the people of Uganda do resolve and it is hereby resolved that the Constitution which came into being on the ninth day of October 1962, be abolished and it is hereby abolished accordingly.” This violation happened on 15 April 1966 when members of the National Assembly found a new draft *Constitution* in their pigeon holes while Obote came surrounded by troops to Parliament (Omara-Otunu, 1987:xviii; Kivejinja, 1995:427). That kind of high level intimidation forced parliamentarians to adopt the new draft *Constitution*. Technically, the draft *Constitution* was a direct threat to the social contract doctrine and its illogicality demonstrates why the *Constitution of Uganda 1966* correctly acquired derogatory references like “the pigeon hole or Interim Constitution.” Furthermore, the approach adopted by its author shows the unconstitutionality of his actions with impunity as the all-powerful Obote, the Prime Minister and Government. He was among the leading post-independence political actors responsible for the “Dramatic Years” earlier mentioned. Surprisingly, no legal proceedings were ever launched against him, and his unconstitutional actions are a trend that dented growth of procedural democracy and rule of law in Uganda.

The background to the situation, the kind of irrational reaction and reasons that helped those constitutional fraudsters survive in positions of public power for another six long years, deserves explanation. Its essence was the inevitable and successful military *coup d’état*, a disaster that also deserves interrogation. Without doubt, the elevation of Buganda to a special status within independent Uganda was unnecessary because it became a source of tension, making the constitutional crisis unavoidable. The aftermath of the 1964 Referendum involving residents of the “Lost Counties” of Buyaga
and Bugangazzi, in favour of returning them to Bunyoro rather than Buganda sub-imperialism, made Mutesa II Kabaka of Buganda and the President of Uganda unhappy, and thus they refused to sign the relevant Bill. This conflict of interest gave Obote the opportunity to accede to it, injuring Buganda’s ego (Third Amendment Act No. 36 of 1964).

In that regard, analysis of sections from Omara-Otunu’s (1987:45-91) contribution towards understanding the *Politics and the Military in Uganda 1890-1995* reveals a number of interesting developments. Analysis of the developments reveals that many were hostile to the social contract doctrine. For example, there were the skewed transformations within the military, the contemporary global Cold War political climate, and the inflated expectations of the general populace. These irreconcilable variables were generated by the quick arrival of national independence and complicated by the efforts of the UPC Party fraudulently elected to power with a forged majority. Therefore, the National Assembly deliberations followed biased directions and attempts at translating the promises made during its campaign into actions proved impossible.

Omara-Otunu’s (1987) further discusses the failure of the UPC Party to honour its pledges associated with the coalition arrangement they had with the KY, a Baganda nationalist party. In that respect, Mutesa II’s insistence on retaining the British Army Officers in the top ranks of the Uganda Army (UA) against Obote’s move towards ‘Africanisation’ of the national defence institution complicated matters. Mkandawire (2003:6-7) vividly discusses how “Africanisation” became a highly politicised process that was to be achieved at virtually any cost. Consequently, instead of encouraging cooperation to foster benefits of their coalition, there developed a fierce struggle for political supremacy beyond the sphere of the national defence policy. Toyin (2005:505) elaborates on how post-independence African political actors ended up fragmenting the nations they sought to protect. It was that sort of regression that complicated the conflicts between the Buganda Lukiiko, being a local government legislature, and Obote’s
sophisticated political-military manoeuvres at central government level. For example, Kanyeihamba (2010:90-91) states that:

“Analysing the events of the period and the provisions of the 1966 Constitution, the Independence Constitution of 1962 was never suspended nor abolished. What happened was that only those parts which dealt with executive powers and Head of Government were altered in order to merge the post of the President with that of the Prime Minister and create an Executive President...In suspending the Constitution, the Prime Minister had failed to observe the rules which ascertain the will the sovereign within the state.”

The gist of Kanyeihamba’s (2010) explanation is that Buganda’s reaction to those events was predictably caustic. Within the Buganda Kingdom’s leadership, there was a sense of utter disappointment. Kivejinja (1995:22) vividly clarifies that the coalition promises turned out to be pure lies, and Buganda unleashed wrath against its once beloved Obote, turning him into the most hated individual Uganda has ever bred. In the rest of the country, everything was still uncertain. Obote had seized the initiative and had embarked on intensifying political-military and diplomatic manoeuvres as techniques to outwit the opposition. By the calculated method of physically intimidating and psychologically manipulating the members of the National Assembly that promulgated his interim Constitution, Obote’s decree was lent the necessary legality, making it a direct step towards a civilian-led dictatorship in Uganda (Oloka-Onyango, 1994:484). An unlawful means of changing the 1962 Constitution had given birth to a new lawful legal order. Thanks to the 1962 constitutional confusion, distribution of power had increased local antagonism amongst Federal States and Districts, which threatened the bases of the would-be real power. After four years of independence, that kind of struggle for power had seriously weakened Obote’s position as Prime Minister. He took the initiative, responded effectively by suspending the 1962 Constitution, which had proved unworkable, and swiftly introduced the 1966 Constitution, through which he had the chance to promote patronage.

Inevitably, those constitutionally awkward developments led to the 1966/1967 crisis involving the total abolition of the 1962 federal
Constitution arrangement, the dismantling of the Buganda Kingdom administration, Kabaka losing his privileged royal status, the position of the Prime Minister being abolished, and the establishment of a unitary and highly centralised state. Kivejinja (1995:112) states that:

“This crisis gave the new Commander-in-Chief the chance to show his power to the proud and stubborn Baganda. To bring the rebellion to a quick halt, Obote gave instructions for the soldiers to comb the entire length and breadth of the kingdom to shoot on sight.”

In that specific way, constitutionalism, rule of law, procedural democracy and the social contract became remote philosophies; hence, Obote’s irrational policies could not transform the structure of Uganda’s economy. To weaken Buganda nationalism further, Obote neutralised the Buganda kingdom’s army, wiped out its name from the administrative maps of the country, and divided its territory in only four districts (Article 80 and Schedule 2 of the 1967 Constitution). In Buganda, government lost the privilege of selecting Members of Parliament representing its territory indirectly. Central government illegally occupied Buganda’s local government parliamentary building (Bulange) and made it the headquarters of the Ministry of Defence. Similarly, Kabaka’s other palatial residences in the outlying counties of Buganda were transformed into national army barracks. These actions by Obote made him stand out as the ruler that bothered less about constitutionalism.

A key question surrounds the silence of the 1962 Constitution on Uganda’s national defence institution. Practically, there was the Uganda Rifles Ordinance as established by Act of British Parliament (1895), so the negotiators of Uganda national independence should not have neglected the issue of how the civil authorities were to handle the military. Technically, it became a glaring underestimation. That ironic character of the 1962 Constitution, the silence about it, explains the misuse of the military outcome, an aspect of Obote’s actions that can be attributed to its stillness. Obote’s bold abrogation of the Independence Constitution, coupled with the abolition of the interim ‘pigeon-hole constitution of 1966’ and the
introduction of the Republican Constitution of 1967, with impunity, gave him the chance of assuming full executive powers in direct violation of constitutionalism. Those phases were used by Obote to register insubstantial claims of a nation-building project based on one-man’s rule. So, authoritatively, Obote declared himself President without general elections up to the time of his dramatic overthrow (January 1971). He transformed Uganda into a republic without republicanism (Article 2 of the 1967 Constitution).

Whereas all those constitutionally unexpected developments were true, the matter of current concern is the explanation behind these anomalies going on for so long and in so appalling a manner that there was no equal counter reaction. The one obvious reason is the approach to transforming national public and civic authority dispensation adopted by Obote that placed all executive power into his hands as the unquestionable President. Moreover, Obote expanded the executive powers at the expense of both the legislative and judicial powers. The analysis of those events reveals that by violating the principle of separation of powers, Obote proved national institutions for democratic rule to be grossly weak. It should be emphasised that by so doing, Obote paved the way for further consolidation of his one-party rule without any civic resistance. That practice was unconstitutional and was never challenged in courts of law. His major challengers remained the royalist Buganda monarchy but not the opposition DP nor the private business community. By unleashing patronage on his hangers-on in parallel to military ruthlessness in the Buganda region, Obote clearly sent real shock waves throughout the other parts of the country as the only uncontested contender for the top-most job. Civil society groups, private business communities and political organisations had been effectively disorganised. Having a disorganised opposition, dominantly peasant population and Asian-led private business community is another explanation behind the prolonged bad rule in the 1960s Uganda.

Therefore, in effect, Uganda’s precarious constitutional stage had been reached. Obote was left alone to hold on to power by manipulation and one
man’s rule with impunity, while appearing to be presiding over what appeared to be rule of constitutional dispensation. Reflecting at the background to events of January 1971, Kivejinja (1995:106-138) discusses it as in terms of “the era of Obote’s autocratic rule, 1966-1971.” The one-man’s stage-management style of Obote together with adventurism ensured the military coup d’état of January 1971 as inevitable. That calamitous constitutional development extended from 8 September 1967, the day the Republican Constitution was adopted, to 25 January 1971, when Idi Amin carried out a successful military coup d’état.

Unfortunately, that the 1966 and 1967 versions of the Constitution were irregular in almost equal proportions meant effective suppression of dissenting views. Both Constitutions were similarly autocratic in spirit and were never applied to the letter. They shared the same autocratic spirit because the former was born after the armed invasion of the Buganda Kingdom, while the latter abolished all kingdoms and thus declared Uganda as republic without involving its citizens. All effective and centralised power was concentrated in the President as head of state, commander in chief of armed forces and head of government. Traditional authorities and local governments were neutralised. In practice, informal structures of patronage, driven by state-security concerns, the UPC Party’s zeal, and presidential declarations and pronouncements overruled constitutionalism. Under that unofficial arrangement strategy, the outrageous contributions of the 1966 and 1967 Constitution of Uganda by Obote and his group managed to contain dissenting views and banned opposition parties, and the country was subjected to one-party, one-man rule.

The 1966 Constitution abolished the federal arrangement and thus marked the clear beginning of national political and constitutional instability. By deploying central government military force against Buganda, Obote declared the superiority of central government over inferior local ones and established a powerful executive president with the power for appointing all public servants as advised by a responsible public service commission.
Its unintended consequences were setting dangerous precedents like disregarding constitutional arrangements in the country. Henceforth, any armed individual or group could take on the central government and capture state power with impunity. By time the 1967 Constitution was pronounced, all civic means of power bargains had been neutralised. For example, its outstanding aspects were the legislative powers illustrated by Articles 63 & 64 providing the “Powers to make laws for Uganda” and “Legislative powers of the President” respectively. Nevertheless, contrary to the social contract tradition, claw-back clauses were prominent because “the President could also dismiss the National Assembly and legislate in its absence” (Article 64(2&3)). How that constitutional absurdity was tolerated in the country for that long is at the heart of the issue of a disempowered populace and explaining that the focal purpose of this study.

The coming to the fore of the 1967 Constitution of Uganda promoted neo-patrimonial practices and had many adverse implications for the social contract tradition. One obvious one is Obote taking advantage of a disempowered general populace with limited awareness of their constitutional rights. For example, the question of citizenship upon which many other rights depended was vague, covering all those from the British Commonwealth countries under the 1962 Constitution (Chapter II of 1962 Constitution); the 1967 Constitution fixed it onto the basis of birth in Uganda, parents and grandparents being born in Uganda and extended citizenship to women married to Ugandan husbands (Chapter II of the 1967 Constitution). Another issue of his shrewdness was systematic exploitation of the otherwise latent greed for easy access to wealth and privileges. The clique of Obote’s cohorts and its quest for patronage and other related privileges was attributed to greed and their limited understanding of the concept of politics (Kivejinja, 1995:100). Thus, Obote ignored formal institutional procedures and relied upon his closest colleagues in those cliques of UPC Party leaders to irregularly survive by changing the constitutional order irregularly.
The complex distribution of powers including culturally inherited royal status was done away with by a stroke of a pen and raw display of ruthless military might. Only a politician of Obote’s standing could declare, “the institution of King or Ruler of a Kingdom...by whatever name called...is hereby abolished...effect from 24th May, 1966, in relation to the Kingdom of Buganda” (Article 118 of the 1967 Constitution). Consequently, traditional Kings, their councils, powers and Kingdoms recognised in the 1962 and 1966 Constitutions were abolished alongside constitutional heads of districts, marking the end of the long tolerated doctrine of separation of powers.

Under Obote I, Parliament was also empowered with authority to change the District Councils and to allow members of the district councils to be appointed rather than be elected. By so doing, the process of centralisation of power that had begun in 1966 was completed with the promulgation of the 1967 Constitution. Government, a term which came to be synonymous with “Obote the-one-man, the one leader, one Parliament, of the one country” (Kivejinja, 1995:143), was empowered to employ preventive detention during states of emergency or as government deemed necessary (Article 21 of the 1967 Constitution). Kivejinja’s point of great concern is that “By having the quickly framed constitution concentrate all power in him, Obote did not realise that he was preparing dinner for a monster.” Kivejinja’s wise counsel is that the UPC Party leadership of the late 1960s saw no need to take stock and to try to make an effort to patch past mistakes in order to give the nation a fresh start. This constitutional negligence paved the way for the Idi Amin-led successful military coup d’état, his eight-year long reign of terror, followed by more traumatic years of calamitous rule and generalised bloody resistance, as discussed in the next subsection.

4.6 Terror, Trauma and Bloody Resistance (1971 to 1986)
Terror, trauma and bloody resistance are the most appropriate terms that describe the causes and effects of dreadful governance in Uganda between January 1971 and January 1986. Although there were general elections for
President and Members of Parliament on 10 December 1980, organised under the multi-party arrangement, little that was constitutionally progressive was registered for the duration of utter confusion. The point of departure for this current discussion is that by 1969, Obote had shelved all constitutional means of running the government. Apart from concentrating all effective power in himself with Idi Amin as his point man, “one thing [that] is clear [is] that the leadership was so confident of its full mastery of the game that Obote left the country for the Commonwealth Conference with unprecedented arrogance” (Kivejinja 1995:136). Contrary to those expectations, on 25 January 1971, the military dictatorship seized power in Uganda by force of arms, ushered in reign of terror by decrees. Typical of them is Legal Notice No. 1 of 1971 drafted by learned lawyers and judges as a statute suspending the 1967 Constitution and proclaiming a new era. Omara-Otunu (1987:92-101) narrates that “Amin’s Coup: The Military Takes Over (1971),” meaning that there was indeed nothing constitutional about his eight-year long reign of tyranny and generalised terror.

Idi Amin was an epitome of Ugandan neo-patrimonial ruler par excellence. Commenting on that period, Kanyeihamba (2006:30) observes, “Ugandans have experienced the worst abuses and violations of human rights observed and respected in other countries of the world.” Some of the details are documented by Lawoko (2005) in The Dungeons of Nakasero describe the very tragic events which Uganda underwent during Idi Amin’s rule. In that regard, Mkandawire (1997:16) is, “Conscious of the role of brute force and military repression that has been guided by nothing other than self-aggrandizement and megalomania.” Precisely, Amin’s government was a ‘spoils system’ which completely defeated the ideal of a limited government. It was a regime characterised by absolutism and complete lack of accountability, transparency, juridical democracy and democratic governance in the bureaucracy and entire public sector. These, collectively, not only negated political pluralism, liberal democracy and individual persons’ liberty, but they greatly undermined equity, equality, and quality of government during Amin’s regime.
The general Ugandan population was an outsider with no active role to play (Kivejinja 1995:206). However, the dramatic end of Idi Amin’s rule had lasting lessons. Investigating constitutionalism in Uganda highlighted the dangers that had predictably culminated from self-rule gone badly. Some of those lessons include vanity of a clique attempting to monopolise public power in any form; the raised citizenship and participation rights awareness that the variegated Anti-Amin rebellion involved was a total of 28 distinct groups. In addition, it ignited spirited possibility of Ugandans working together as a people having a common future as is demonstrated at Moshi, Tanzania, in 1979. Furthermore, it set in motion conscientious liberating energies of every citizen to contribute towards good governance (Omara-Otunu, 1987; Kivejinja, 1995:370; Lindemann, 2010; Kanyeihamba, 2010). Those great lessons for the country were registered in tedious processes and organisational patterns of various struggles thereafter. The sporadic armed resistance the various groups staged against Obote’s second attempts at usurping top-most administrative positions and power proved that the Idi Amin’s terror and outrageous rule had made indelible marks on Ugandan society. That new-found national consciousness led to more determined and focused political and armed struggles for constitutionalism in Uganda. Demystifying the gun became a household mobilisation slogan during the years immediately after the overthrow of Idi Amin.

The socially qualitative change towards citizens’ enlightened and focused struggles was good for constitutionalism. Armed insurgency-driven demands for procedural democracy, rule of law, and asserting the social contract tradition in post-independence Uganda were clearer during the formation of the UNLF at Moshi, Tanzania (Omara-Otunu, 1987:145; Kanyeihamba, 2010:136-145). The Front for National Salvation’s (FRONASA) firm stand that sovereignty of the country lay with its entire population, not only rulers, is a case in point (Kivejinja, 1995:216-238). This clearer articulation of the question of sovereignty of Ugandans set aside that group of political actors. Their largely progressive national effort towards bringing in the citizens was strongly assisted by the TPDF in 1979.
when FRONASA was assigned the Western Uganda axis of that liberation war. The TPDF’s field operations’ personnel directly instructed the FRONASA faction of the larger UNLF activists on how to correctly mobilise the populace into specific and well-coordinated and active formations. It was this technique and initiative earlier agreed upon during the Moshi Conference (Doornbos, 1987:10) that eventually distinguished FRONASA from other components of the UNLF/A.

The qualitatively radical strategy worked not along any sectarian lines, but rather, within permanent residents’ local settings framework. Fundamentally, basic units of the Ugandan society were restructured right from their immediate neighbourhood communities, formed a new, and actively operated within the popular ten-homes cells’ formations of residents referred to as Mayumba Kumi in Swahili language. Essentially, that strategy was possible because, unlike the pre-Independence Conferences in London where Obote played a major role at the Moshi Unity Consultation, he as an individual opted out of the whole arrangement. His not being in attendance was attributed to his characteristic conceit; nevertheless, he was reluctantly represented by his UPC Party elements (Kanyeihamba, 2010:139). The times had changed, and this broader attempt at involving a cross section of stakeholders to important national decisions regarding formation and administration of the UNLF was made without Obote. Y.K. Lule was selected as UNLF’s Chairman and after the fall of Kampala, sworn in as President. Under Legal Notice No. 1 of 1979, Article 1 of the 1967 Constitution providing for it, the supreme law of Uganda was restored effectively. Governance through public institutional framework was also restored in the country but was still vulnerable to growing authoritarianism and a great deal of practical factionalism (Mamdani, 1990:369).

To understand the basis of that argument and the emerging constitutional limitations, one has to reflect on the proceedings of the Moshi Unity Conference (Kanyeihamba 2010:139-158) where UNLF/A government were born. Its outcomes included “The rise and fall of the UNLF government; Confrontation at Mwanza; and Removal of Yusuf Lule from the Presidency.”

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Consequently, the UNLF instituted the National Consultative Council (NCC) as its Interim Legislature, the National Executive Council as its Cabinet, and the Military Commission to oversee matters of defence and national security. However, according to Kivejinja (1995:244-245), internal squabbles, factional power struggles and former exiles’ greed for official positions were endemic and problematic. Moreover, there were hidden intentions by the Obote-backed Kikosi-Malum (Swahili for Special Unit) sympathisers of the UPC Party to re-install him as President by decoy. Those irreconcilable limitations of the UNLF administration led to the quick failure of the Lule government after 68 days when the NCC moved and passed a vote of no confidence in him. Its constitutional meaning was that whereas the NCC as a legislature could not remove Lule as President, based on the mutual confidence principle, it had the mandate to remove him as the Chairman of the NEC and UNLF.

The repercussion was weakness of the Constitution in face of military threats rendering the presidency vacant. By the time the relevant case, namely Kayira and Ssemwogerere V. Rugumayo, was brought before a constitutional court, the fear factor had greatly influenced the course of procedures. In addition, the legal process had already been overtaken by events; in the Chief Justice’s wisdom, the reverse of the decision would have had grave implications.12 This argument summarises the country’s constitutional matters throughout the UNLF reign when state authority was a contested area. G.L. Binaisa, who on 20 June 1979 was appointed President of the UNLF, similarly fell on 13 May 1980 because he had irregularly replaced Y.K. Lule. All those ill-fated schemes were the orchestrated intrigues and unconstitutional actions of Paulo Muwanga’s Military Commission (Omara-Otunu, 1987:xx). Oloka-Onyango (1994:492) explains that “The transition from the Binaisa government to the Military

12 Oloka-Onyango (1994:490-491) discusses the wider repercussions involving possible nullification of successor President Binaisa and most importantly, the fear associated with embarrassing the ‘powerful Military Commission’ that had taken over power by unconstitutional means. This fear factor aspect was still a major influence in the constitutional history of Uganda. Because the activities of Lugard’s band of mercenaries throughout the Obote’s civilian dictatorship and Amin’s reign of terror all demonstrated how the military was the most effective institution, that determined the course of events in the struggles for power.
Council then to the sham election of 1980 simply compounded the fact of judicial impotence in the face of naked military force.” The “crisis of confidence,” as documented by Kivejinja (1995), was the unfortunate state of constitutionalism in Uganda, a defect that continuously degraded public institutional practices.

4.7 Weaknesses of the Judiciary

As an institution of government, throughout those days, the Judiciary never directly challenged the political basis of power. Under constitutionalism, the Judiciary is obliged to stand by the citizens who, in turn, must have a right to genuine political participation. Their government must be controlled by state institutional limits on what it can do and not do. In that respect, Gatmaytan (2009:22-23) documents how the Honduras Supreme Court ordered the removal of President Manuel Zelaya from office by the Army after he attempted to amend the Constitution to remove term limits for President. He further clarifies that Article 239 of the Honduras’ Constitution also prohibits a President from serving more than one term and provides that anyone who attempts to circumvent the ban should be removed. Therefore, based upon Gatmaytan’s contribution, courts can use constitutionalism to constrain constitutional change for example, in post-independence Uganda, where the frequency was unprecedented.

This argument explains why in country where the Judiciary was fearful of usurpers of power after the 1980 general elections, frustrated and discontented groups resorted to armed violence and confronted the Obote II and the two Okellos (Lutwa and Bajilio) governments. Museveni (1992:134) explains that:

“According to this plan, those elements opposed to Obote’s seizure of power within the UNLA would not be in position to challenge this array of Obote-Tanzania strength...Some of us watched this circus in amazement because we knew that the people of Uganda, provided they were well led, were capable of administering a deadly counter-blows in defence of their democratic rights.”

Arguably, it was this violent contest for effective control of power that led to increased state instability and trauma stretching from February 1981 to
January 1986. The unconstitutional return of the Obote II and the two Okellos’ regimes on top of post-independence Ugandan government positions meant continuation of neo-patrimonialism. Superior military backing of the otherwise weak political-power bases in the early and mid 1980s was a legal absurdity. By usurping power without legal challenges and governing so badly that they instigated armed rebellion as political actors, Obote II and the two Okellos behaved like the restored Bourbon family in France and Orleans’ monarchies who learnt nothing and forgot nothing (Richards 1979:73-75). It inevitably led to the demise of their regimes, ushered in the period of anarchy and interregnum where the executive operated as if it was the sole arm of government (Oloka-Onyango, 1994:493).

Although there were the other arms of government, the possibility of the executive operating as if it were the sole arm of government deserves critical assessment. A closer look at the constitutional history of Uganda reveals that the times had changed and the demand for democracy was increasing. The dramatic defeat of the Idi Amin regime in April 1979 was not accidental, but a new stage in citizens’ protracted struggles to regain their humanity and work towards democracy and good governance. In fact, it marked a defining moment for constitutional history in Uganda with wider implications for African regional and international law and norms. For the first time in post-independence Africa, an armed invasion of a state by another materialised against the OAU, which generally agreed on non-interference in domestic affairs of states. In that regard, the 1980s marked the growth of attempts to bring in increased demands for democratic participation and procedures in Africa. Ddungu (1994:365-366) maintains that:

“In Uganda of the mid-1980s witnessed, the fall of a regime as result of a protracted guerrilla war. This was the first of its kind in post-independence Africa...Alongside this also was an attempt to introduce other organisational forms...Resistance Councils is the name given to these new forms of popular democracy in Uganda.”
Ddungu’s (1994) emphasis is that the institution of Resistance Councils was the first attempt to crack the regime of dictators in form of absolute grand chiefs introduced by the colonial powers in the village society in Uganda (Ddungu in Mamdani 1990:365).

4.8 Role of Civil Society

The importance of the role of civil society was seen in the democratic activation of the popular local communities and ordinary citizens as a people who realised their historic role at the base of their national society. People started demanding for and participating actively in matters affecting public affairs, and the powers of the central government could be checked and redirected, thereby promoting efforts towards good governance in Uganda as a nation. The old questions of the post-independence epoch involving the executive operating as if it were the sole arm of government under one-man’s rule was no longer acceptable. The qualitatively changed levels of citizens’ constitutional rights in people’s awareness made the Obote II and the two Okellos attempts at usurping state power to be not only isolated but also futile. Civilian dictatorship was sorted out effectively and relegated to the past, while the Buganda Kingdom question remained in abeyance. It was arbitrarily handled by the NRA Council sitting in the northern Uganda town of Gulu in 1993 and later formalised by an enabling Act of Parliament regulating restitution of traditional authorities, kingdoms and other cultural institutions in the country.

In that sophisticated way, the question of Ugandan military institutional policy persistently dominated the centre of constitutional changes in the country. Omara-Otunu (1987:173) asserts, “The development of the military in Uganda throughout its history has been influenced by political considerations.” So, since colonial times, the military as an institution of state was being addressed directly after the fall of Idi Amin. This unswerving approach was possible through armed insurgency, practical defiance of the disruptive soldiers’ intimidation of the civilian population, and the populace asserting citizenship rights to genuine participation. These unique developments effectively changed constitutional dynamics in Uganda,
thanks to the victorious TPDF that encouraged active mass media activities (Mamdani 1990:369), coupled with the FRONASA faction with the purpose of recruiting in the liberated zones through the Mayumba Kumi local councils structures (Museveni 1992:22), the pro-UPC Party Kikosi Malum division assuming top control and administration of the variegated Uganda National Liberation Army (UNLA), and the irregular disbanding of the defeated UA. This multicoloured nature of approach to changes in the country’s military organisational dynamics later proved tricky with regard to promoting constitutionalism during the immediate post-Amin era. According to Mamdani (1990:369), effective power lay in the hands of Tanzanians when the machinery of government was under the auspices of the UNLF by different factions of returned exiles recruiting armed militants in order to prepare for the next round of battle.

As the actors’ non-cooperation approach and sequential uncoordinated events unfolded, those qualitatively changed dynamics influenced constitutional developments in Uganda. In many aspects, the 1967 Constitution was found inadequate. New socio-political forces rather than the traditional and characteristically hostile political parties were being outwitted. It was this attitudinal change in oppositional politics in Uganda that led to armed resistance against the Obote II regime after the December 1980 general elections. Executive conceit aimed at some active political participants definitely attracted defiance of and rebellion against Obote’s ill-fated attempts at usurping state power. After the fall of Kampala in April 1979, the TPDF-backed UPC Party regime could not hold back the determined armed resistance once the former withdrew (Kivejinja 1995:258). Similarly, the two Okellos’ July 1985 coup d’état was bound to fail. Omara-Otunu (1987:173) observes, “A civilian regime in a post military era is always haunted by the possibility of another coup, and this inevitably shapes its attitude towards the army.” What he does not explain is the quality of the army as an institution of state whose role was regulated by constitutionalism. For that reason, those patterns of chaotic change of government in Uganda in the 1980s were unconstitutional, and legal action was never taken against the perpetrators. However, it meant that the
patterns of chaotic change of government were predictably indicative of the true Ugandan history of pre-independence popular struggles for and belief in democracy and constitutionalism.

Considering popular struggles for democracy and constitutionalism in Uganda in the 1980s by means of armed insurgency complicates the debate about nation-state-citizens’ relationships. By the time Museveni’s NRM/A forcefully captured state power in Kampala in January 1986, the armed insurgency approach to establishing procedural democracy, respect for human rights and good governance were high on the agenda in constitutional debates, especially during the Nairobi Peace Talks (Omara-Otunu, 1987:186-203). Mamdani (1990) contends the following:

“The struggle for rights acquires the most significance where the issue of state power appears to be clearly settled, most notably as a result of a protracted armed struggle, itself evidence of both the limited development and organisational weakness of the so-called ‘civil society’ or non-state actors.”

Consequently, the issues and concerns at hand were whether anything constitutionally good could come out of armed insurgency. Afterwards, legal Notices No. 1 of 1986 and No. 6 of 1986 established the NRM/A as a legal regime in Kampala and regulated the conduct of the NRA as a regular national army. By so doing, it was the first time in Uganda the armed forces were subjected to the generally agreed checks on the conduct of soldiers in the Ugandan public administration framework aimed at establishing constitutionalism. Thus Museveni (1992:37) explains as follows:

“The NRM government is a revolutionary government in law and fact. It does not owe its legitimacy to the old order which we overthrew by force of arms. In a revolutionary situation, sometimes practice may be concretised and take form before it is fully legalised. Our Resistance Councils for example, were established in liberated areas long before we took power but they are now established all over the country.”

Museveni (1992:279-282) justifies their unconstitutional approach to capturing state power by force of arms while working towards establishing constitutionalism. He presents their “Ten Point Programme,” among which was the restoration of democracy. By restoring democracy, the NRM was
emphasising four of its components, namely, rule of law, popular participation, human rights-based social progress and good governance. Basing citizens’ participation on residency was an attempt to strengthen community solidarity (Ddungu 1994:372).

4.9 The NRM Regime: Key Political and Constitutional Developments during the First 32 Years of Museveni’s Presidency (1986 – 2018)

Since 26 January 1986 when Museveni took over the presidency, to the present (2018), a number of key political and constitutional developments have taken place in Uganda.

In the immediate aftermath of his assumption of the presidency, Museveni declared a transitional period of four years from 1996 to 1989. This transitional period was nevertheless later extended until 1996 when the first presidential elections were held since 1985. During this period, there were neither presidential nor parliamentary elections; parliamentary oversight/checks and balances over the executive arm of government, were therefore not in existence. Key political decisions and policies were made and implemented by and under the ‘High Command’ which was the highest military organ then (Tusasirwe, 2006:88; African Elections Database, 2011:1).

Upon coming into power in January 1986, the NRM leadership was very aware of the real problems in Articles enshrined in the 1967 Constitution. Instead, “through Legal Notice No. 1 of 1986, amendments were introduced to the 1967 Constitution, mainly those necessary to bring it into line with the intended structure of government” (Tusasirwe, 2006:88). The spirit of Legal Notice No. 1 of 1986 was suspending Article 3 of the 1967 Constitution providing for “Alteration of the Constitution.” Similarly, modified Article 63 providing for “Powers to make laws for Uganda” was modified. Thus the Bush-war historical National Resistance Council (NRC) became the new legislature; later in 1989, it was expanded by directly electing other of its members representing constituencies on individual merit not political party basis. That bold fact made the NRM political organisation the monopolist...
but legal and broad-based regime. As such, the NRM remained the leading political element and actor in the broad coalition governing the country. It introduced certain seats in the NRC for representation of special interest groups including the military (NRA), women, youths, workers and disabled persons (Mamdani, 1990:370). Apart from the workers’ representatives whose autonomy in their organisations was recognised, the rest of the fore mentioned special interest political groups were incorporated into the NRM ruling structures of power. The Ten Point Programme the NRM/A earlier designed in 1982 during Luwero Triangle Bush War days was still their guiding public policy document immediately after the capture of Kampala. Its importance was the influence it had on constitutional transformation that brought about a glimmer of hope for a democratic rule during the Consituent Assembly.

On 8 October 1995, a new Constitution, also known as ‘The 1995 Constitution’ was promulgated, which, among other things, prescribed a continuation of one-party system of government under the NRM, provided for a maximum of two five-year presidential terms (10 years), and an upper age limit of 75 years for presidential elections eligibility (see Articles 105 and 102 of the Constitution of the Republic of Uganda 1995 (before amendment)). In 1996, Museveni stood for president under the presidential elections and won with 4,458,195 (74.3%) of the final valid votes. His rivals, Paul Kawanga Ssemogerere and Muhammad Kibirige Mayanja, secured 1,416,140 (23.6%) and 123,291 (2.1%) of the total 5,997,626 final valid votes cast, respectively (Uganda Electoral Commission, 2007:1). In 2001, Museveni stood again and won with 5,088,470 (69.4%) of the total 7,327,079 valid votes cast. His rivals, Kiiza Besigye, Aggrey Awori, Kibirige Mayanja, Francis Bwengye, and Chaapa Karuhanga, secured 27.7%, 1.4%, 1.0%, 0.3% and 0.1%, respectively (Uganda Electoral Commission, 2001:5).

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13 A Human Rights Watch (2000) report evaluates Civil society and the media in Uganda and addresses the country’s situation as “Hostile to democracy: The movement system and political representation in Uganda,” meaning that it was, in fact, a one-party system in disguise.
After standing and winning the 1996 and 2001 presidential elections, Museveni’s mandatory two presidential terms were to be over in 2005; implying he would not be eligible to stand for the 2006 presidential elections. And so, in 2005, Museveni, together with the NRM political organisation successfully campaigned for the removal of the presidential terms limit and restoration of multi-party democracy in Uganda through a referendum. In the 28 July 2005 referendum, the referendum question was: “Do you agree to open up the political space to allow those who wish to join different organizations/parties to do so to compete for political power?” (African Elections Database, 2011:1). Albeit that the referendum voter turnout was only 47.3%, the ‘Yes’ votes were 3,643,223 (92.44%), while the ‘No’ votes were 297,865 (7.56%) of the 3,941,088 total valid votes cast. Considering that the results of this referendum were in Museveni’s and NRM’s favour, coupled with NRM’s continued domination of the parliament with the majority MPs, the 1995 Constitution was successfully amended by removing the presidential terms limit and restoration of multi-party system of governance (African Elections Database, 2011:1).

During the 2006 presidential elections which were held under the multi-party dispensation on 23 February 2006, Museveni stood again under the NRM ticket and won with 4,109,449 (59.26%) out of the 6,934,931 total valid votes cast. The other candidates Kizza Besigye of the Forum for Democratic Change (FDC), John Ssebaana Kizito of the Democratic Party (DP), Abed Bwanika (Independent), and Miria Obote (wife to former president Milton Obote, stood on the UPC ticket). These secured 37.39%, 1.58%, 0.95%, and 0.82% of the total valid votes cast, respectively (African Elections Database, 2011:1). In 2011, Museveni stood again for the fourth presidential term under NRM and still won with 5,428,369 (68.38%) of the total 7,938,212 valid votes cast. The other contenders were Kizza Besigye of FDC who secured 26.01%, Norbert Mao of DP with 1.86%, Olara Otunnu of UPC with 1.58%, Beti Olive Kamya Namisango of Uganda Federal Alliance with 0.66%, Bidandi Ssali Jaberi of People’s Progressive Party with 0.44%, Samuel Lubega Mukaaku Walter, an Independent with 0.41% (Uganda Electoral Commission, 2011:9).
On 18 February 2016, another presidential election was held under multi-party dispensation. Museveni again stood on the NRM ticket and won with 5,971,872 (60.62%) of the 9,851,812 total valid votes cast. Museveni’s closest rival Kizza Besigye of FDC secured 35.61%, followed by Amama Mbabazi (Independent) with 1.39%, Abed Bwanika of People’s Development Party with 0.90%, Venansius Baryamureeba (Independent) with 0.54%, Maureen Faith Kyalya Waluube (Independent) with 0.43%, Joseph Mabirizi (Independent) with 0.25% and Benon Buta Biraaro of Farmers’ Party of Uganda with 0.26% (Uganda Electoral Commission, 2016:1).

After being in power for just over 30 years, and in the immediate aftermath of being sworn-in for his fifth presidency in May 2016, the NRM, and presumably, Museveni himself, realised that he would reach the mandatory maximum presidential upper age limit of 75 (having been born in 1944) in 2019. This meant that the last two years of his presidency would be above the mandatory upper age limit. More important, it meant that Museveni would be ineligible to stand for president in the 2021 presidential election. This ostensibly would be sad news for the NRM as they may want the current President and NRM Party Chairman Museveni to be their flag bearer for the presidency in 2021. Against this backdrop, the NRM covertly and overtly mobilised the masses countrywide, urging and requesting them to embrace the idea of allowing their respective MPs to support the bill in parliament which proposed the removal of the upper age limit, among other things. As a result, a bill seeking the removal of the 75 upper presidential age limit out of the constitution, also known as ‘The Constitution (Amendment) (No. 2) Bill, 2017’, was tabled in parliament by the Igara West MP, Raphael Magyezi. The bill was discussed and finally passed on 20 December 2017. Of the 394 MPs who were in parliament at the time of the voting, “a total of 317 MPs voted in favour of the motion to lift the upper age limit of 75 years while 97 members voted against. Two members abstained from the vote” (URN, 2017:1). Shortly after, President Museveni signed the bill into law on 27 December 2017 (UNR, 2018:1).

Albeit that the passing and ascension to the bill greatly infuriated the opposition, it profoundly appeased Museveni and the NRM. As Daniel
Mumbere noted, Museveni, “while delivering his end of year address, commended the legislators who voted in favour of the age limit amendment, calling them ‘liberators of Uganda’”, and he is reported to have said that, “I salute the 317 MPs who defied intimidation, alignment, and blackmail and opted for a flexible Constitution to deal with destiny issues of Africa” (Mumbere, 2018:1). During the same address, Museveni praised the 317 MPs “saying they enabled him ‘to avoid a more complicated path that would have been required.’ He likened them to his bush war fighters that helped bring him to power 31 years ago and the 232 MPs of the 7th parliament who removed presidential term limits in 2005” (UNR, 2018:1).

The same bill, however, restores the two “presidential term limits which had been removed in a 2005 constitutional amendment that paved the way for President Museveni, in power since 1986, to contest again after his two five-year terms had expired” and also extended the tenure of MPs’ terms in office/parliament from five years to seven years (UNR, 2018:1). Related, the parliamentary legal committee which scrutinised the bill recommended the extension of the tenure of the presidential term of office from five to seven years (to match that of the MPs), subject to the approval of the citizens of Uganda through a referendum (UNR, 2018:1). Ostensibly, this extension of the presidential term of office to seven years had Museveni’s approval. As Elias Biryabarema reports, Museveni had explicitly expressed his approval for the extension of the term of office to seven years shortly before the bill was passed in parliament (Biryabarema, 2017a:1). Relatedly, Museveni is reported to have stated that, : “for these African countries with all these problems … five years is just a joke … and leaders in Africa have much more to do and need adequate time between elections to develop the continent” (Goitom, 2017:1).

It is therefore not surprising that shortly after passing and signing the bill, the issue of extending the presidential term of office to seven years was debated and approved by the Uganda cabinet, and plans are already under way to popularise the issue and hold the referendum this year (2018) to effect it (Daily Monitor, 2018:1; Kiggundu, 2018:1). If this succeeds, the
implication is that Museveni will be eligible to contest for presidency for two more terms after 2021 of seven years each, hence, a total of 14 more years. In the unlikely event that the idea does not succeed in the referendum, it will mean that Museveni will be eligible to contest for 10 more years (two more terms after 2021 of five years each) if he is fronted by the NRM and chooses to accept (Goitom, 2017:1).

4.10 Chapter Summary and Conclusion
This chapter has explored and analysed the political developments that have shaped the volatile process of constitutionalism in Uganda since independence. In other words, the chapter has dealt with Uganda and its disturbing constitutional history. It has explained how Ugandan citizens were/have been continually denied the opportunity of enjoying their liberties as a dividend of constitutionalism. The discussion was guided by efforts towards understanding the decolonisation processes, patterns and practices, a strategy mired by not only skewed negotiations but also elitist manoeuvres. The chapter has shown that, during the late colonial period, which extended from 1945 when the first African became a Member of the LEGCO to 1961, is when the Council’s first direct elections were held. Subsequently, the 1962 Ugandan independence constitutional mission was impossibility incarnate. As a result, the country was engulfed in terror, trauma and bloody resistance, the terms that described the dreadful governance between January 1971 and January 1986.

The chapter has revealed that the attempts by the NRM to bring in the citizens as active participants were hampered by constitutional alterations and restrictive democracy. These encumbrances are testimony that post-independence Ugandan leaders not only failed to adhere to the requirements of the doctrine of separation of powers but also greatly undermined constitutionalism, procedural democracy and good governance. Ultimately, weak institutional reforms denied Ugandans civic opportunities of facing real challenges to procedural democracy and experimenting with different institutional arrangements.
By successfully exploring and analysing the political developments that shaped the volatile process of constitutionalism in Uganda since independence, this Thesis has achieved the first objective of the study\textsuperscript{14}. On the basis of the political developments generated under this chapter, the next chapter will explore the factors that have influenced the contested state of constitutionalism in Uganda since the attainment of its independence in 1962.

\textsuperscript{14} The first objective of the study was: ‘To explore the political developments that shaped the volatile process of constitutionalism in Uganda between 1962 and 2018.’
CHAPTER FIVE
FACTORS INFLUENCING THE CONTESTED STATE OF CONSTITUTIONALISM IN POST-INDEPENDENCE UGANDA

5.1 Introduction

In the previous chapter, the political developments that shaped the volatile nature of constitutionalism in Uganda have been discussed. In addition, the country’s rough self-rule despite the nine successive changes in political regimes was elucidated. It was noted that, albeit that some of the regimes had well-structured systems of the supreme power and enabling municipal laws, constitutionalism was mostly ignored in favour personal rule procedures. That narration led to interrogating the spiral of factors influencing rugged constitutionalism. There were cycles of political confrontation and violence, what Doornbos (1987) calls “the Uganda crisis and the national question” and which Reyntjens (2005:597-598) interprets in terms of “privatisation of public space and criminalisation of states and economies in the region.” Those inadequacies compounded the observed irregular state-society relationships.

This current chapter explores the factors which have influenced the contested state of constitutionalism in post-independence Uganda. Accordingly, the chapter addresses the second research question which states that: “What are the factors that have influenced the contested state of constitutionalism in post-independence Uganda?”

The central argument of the chapter is that, while Ugandan presidents have had a solemn duty to predictably uphold constitutionalism since independence in 1962, they have persistently failed and/or deliberately ignored to do so. This is because, after independence, a spiral of six factors crystallised and blended into each other when the post-independence Ugandan presidents ignored the generally agreed upon constitutional policy framework. These factors, jointly and in almost equal proportions, ostensibly complicated the observed Ugandan irregular constitutional path together with its rulers’ habits of exhibiting persistent failure to uphold constitutionalism.
5.2 Reasons for the Uganda’s Contested State of Constitutionalism since 1962

Broadly, this sub-section explores six sets of critical factors which have influenced the contested state of constitutionalism in Uganda since 1962. These include: the gambit of weak, illiterate and powerless communities; a system of exclusive structures of governance; lack of appropriate means of enforcing the rule of law; chronic political repression dynamic; weakened Ugandan state institutions; and external influences, elaborated as follows.

5.2.1 The Gambit of Extremely Weak, Illiterate and Powerless Communities

In Uganda, as elsewhere in Sub-Saharan Africa, “not only is the percentage of illiteracy staggeringly high but the electorate is untrained” (Ayande et al., 1984:388). Therefore, the gambit of extremely weak, illiterate and powerless communities was an important and predominant factor. As a factor, it was at the base of the spiral influencing fragile constitutionalism in the country because it stood out prominently at the hindering the capacity of the populace to further their broad interests in ordered groups and political-material identity, civic-activity organisation, public institutions, social pluralism and culture (Dunleavy and O’Leary 1990:25-56).

In Uganda, British colonialism had introduced sophisticated characteristics of the European mode of criminal administration that was alien to the natives (Kanyeihamba, 2006:11). A case in point was the 1900 Buganda Agreement framework to facilitate the introduction of state engineered land ownership and management reforms favouring administrative elites that had largely unintended consequences (Doornbos, 2010:61).

By refined coercion, Uganda’s population was effectively penetrated and its associated dynamics conformed to the paternalistic craze of the colonisers whose rule was based on the theory of the superiority of the imperial race and its culture and laws (Kanyeihamba, 2006:13-14). Kanyeihamba (2006) explains that whereas the African traditional law emphasises
compensation, reconciliation and the settlement of disputes amongst the conflicting parties and their families, the colonisers introduced an adversarial punishment and deprivation of property style of rule in the name of the impersonal state. Despite their illiteracy, the native society public affairs management was a procedure that encouraged unity through compromise, arbitration and cohesion of the community. Therefore, the lack of regular administrative infrastructure, institutions, and the machinery for officially permitted adjudication was criticised for being inferior to the colonisers’ and when it was interfered with, the subjugated communities were rendered powerless. This argument explains why the post-independence rulers also adopted an elitist approach and moved towards looking down upon local communities as weak, illiterate and powerless, thus, undermining constitutionalism.

To succeed in their colonisers’ goal of subjugating the indigenous peoples as well as the latter’s heritage, the people and their heritage had to be weakened simultaneously. The colonisers coerced diverse ethnic-cultural entities into one subdued country they preferred to call Uganda. This colonial domestication of the indigenous peoples estranged them from effective participation in matters that affected their lives. The distorted arrangement where the indigenous communities lacked proportional reaction became the foundation for public affairs management in the country. Therefore, it was difficult for the post-independence rulers to reform even under the negotiated constitutional bargain. Coupled with it were the eventual qualitatively transformed spatial distribution of socio-economic activities and settlement patterns, trends which deformed traditional human interactions.

In practical terms, the results of those deformations were registered as a rural-urban divide and exotic modes of production. The culturally warped socio-economic activities were associated with metropolis growth centres of public administration, plantation agriculture, commerce and trade that developed at the expense of remote and not-easily accessible areas. For example, by independence time in 1962, urbanisation had taken such firm
root in Uganda that gazetted towns under central government administration were 18 in number (Section 126 & Schedule 10 of the 1962 Constitution of Uganda). However, there still remained a big disparity between what laws governing urban areas prescribed and what happened in practice.

The essence of this argument is that those socio-economic transformations attracted migrant labour and encouraged high population growth rates together with other related exotic civil-political and cultural attributes. In that sophisticated manner, the colonisers succeeded in introducing far reaching civil-political and socio-economic organisational changes to facilitate the intensification of metropolis growth centres (Mkandawire, 2003:3). The idea of the intensification of metropolis growth centres parallels Carneiro’s (2008) debate about changes in the mode of subsistence; thus, “those made landless by war but not enslaved tended to gravitate to settlements which, because of specialised administrative, commercial, or religious functions, were growing into towns and cities.” In Uganda, all these variables combined to contribute towards the observed gambit of weak, illiterate and powerless historic local communities. Individuals were detribalised effectively and progressively fixed into the sphere of self-excommunication outside their cultural families in pursuit of modern life-support amenities. European colonialism brought with it the complex ways of European civilisations according to which qualitative changes were possible by the ever increasing processes of formal education, urbanisation and industrialisation (Mbiti, 1987:2-12). In the case of post-independence Uganda, this largely disturbed outcome led to nine regime changes, all focusing on elitist governance policies blurred under illusory slogans like fighting poverty, disease and ignorance rather than upholding constitutionalism.

In the conventional nation-state framework, the gambit of the weak, illiterate and powerless local communities’ factor greatly influenced constitutionalism in Uganda. It stands out more clearly over and above others when one considers that notion in relation to the country’s post-
independence situation. The very notion of a nation-state may be controversial, even contested, but it remains the most common political mechanism to organise people into boundaries and governments (Toyin, 2005:499). Its relevance is that the statistical trends of Uganda’s population dynamics as a nation-state were first formally defined and recorded more evidently by the British colonial administrators. The colonisers not only defined the geographical extent of the boundaries but also articulated the nature and quality of government of the country. In essence, elaborating on this dynamic, Ibingira (1972:4) argues that:

“The concept of Uganda as a nation-state, therefore, is a direct result of Uganda’s colonial experience after the British arbitrarily carved out the boundaries of today’s Uganda, including within its borders a diversity of tribes who must evolve a common destiny in an indivisible sovereign state.”

The gist of this controversy is the aspect of the complicated indigenous ethnic and cultural mix outcomes that later undermined proper diversity management in the country (GoU, 2004:57, 64). Toyin (2005:505) asserts that, “Colonially created countries are artificial.” So, even Uganda was an artificial unit of that colonial nature, evolving a common destiny as a people and requiring a generally agreed upon constitutionalism. As Article 10(a) and Third Schedule of the 1995 Constitution state, “Uganda’s indigenous communities as at 1st February, 1926” were identified as existing in 65 ethnic groups (GoU 2006:212-213). This diverse ethnic-cultural background of Uganda, without a generally accepted language of communication, complicated the coordination of public affairs management and undermined cooperation.

Therefore, the gambit of the weak, illiterate and powerless communities’ factor served those imperial rulers of the country throughout the pre-independence period for the British Crown, which was by law the sovereign ruler of the Uganda Protectorate (Ibingira, 1972:13-28). A closer look at Ibingira’s contribution reveals that under colonialism, state-subject relationships were characterised by practical domination for the benefit and pleasure of the British Crown, embracing almost the whole field of
government. So, their indirect rule through their appointed chiefs compromised kings as a cardinal principle and was the basis of country’s constitutional development. In addition to that, the object of their imperial governance was blurred by claims of serving a dual purpose of the rulers and the ruled; the reality was that it was “gun boat diplomacy or the use of Gatling or Maxim guns” (Toyin, 2005:506). Hence the effect of the “Native Authority Ordinance of 1919” whose purpose was to define more clearly the authority of the African colonial chief, his duties and powers and his privileges and rights (Ibingira, 1972:22-24). This exploitative kind of colonial arrangement disempowered the general populace. In effect, it was a systematised process of degradation that was possible through keeping the general population out of governance procedures.

Ultimately, the colonial law did not help the multifarious tribes of Uganda to evolve as a people capable of upholding constitutionalism. Worse still, it encouraged Buganda to continuously crave for secession after denying other constituent areas their own histories through Bagandan sub-imperialism. Moreover, it encouraged extravagance in exercising official power and skewed public affairs management procedures. These defects undermined future efforts of nation building by resulting in a chronic crisis of the nation-state in a global world. As Toyin (2005:502-515) observes, the colonial rule established the foundation of contemporary Africa in terms of the origins of its boundaries and origins of autocratic power, the sources of destructive ethnicity and wars, economic dependence on external powers, the creation of monocrop economies, the establishment of police forces and armies as instruments of coercion and state autocracy, and the creation of a civil service that is prone to corruption.

At the time of the present study, weak state institutions are still prominent in Uganda. The nation-state idea remains a resource for exclusive elites to access official power and accumulate personal wealth, while the broader social interests’ function of public authorities is relegated to accidental side effects. For example, the then ruling NRM party that had earlier closed political space for other forces for many decades finally tasked a technical
commission, popularly known as the Constitutional Review Commission (CRC) to carry out a constitutional review in 2003. The task of CRC was mainly to re-assess those Articles in the 1995 Constitution relating to “political systems and democratic governance to accommodate the decision of opening up political space” (GoU, 2004:2). In its work, the CRC took “the Government’s proposals into account, with the knowledge that they emanate from an institution, which plays a central role in the implementation of the Constitution” (GoU, 2004:7).

Therefore, the CRC, as a body tasked to review the country’s Supreme Law, was never independent. This undue external influence on the CRC greatly affected the outcome of its report upon which the Government White Paper tabled to the Legislature for debate was based. The NRM party and the government took advantage of its central role in the implementation of the 1995 Constitution to amend it in its favour, contrary to the ideals of its original framers. Comparatively, what Obote and the UPC Party had done to the 1966 Constitution by transforming it to the 1967 Republican version was being replayed by Museveni and his NRM Party by amending the 1995 Constitution to come out with 2006 and 2017 editions favourable to them. Therefore, the post-independence Ugandan state building effort and ruling political parties’ control of the government and ‘public interest’ had less to do with parliament and constitutional constraints. Ideologically, similar to the Obote I government in the 1960s, Uganda’s public administration under Museveni, his ruling elitist NRM Party and the state institutions once more become blurred. This indistinctiveness was more evident even at the grassroots, local government level, while the civil society groups tactically opted for passive withdrawal from public participation as a safe and preferred technique for their survival (Barya, 2000x:20-21).

Mkandawire (2003:8) observes that after independence, African states still lacked the necessary collective cohesion to carry out sustainable and concerted efforts at remodelling their societies, a deficiency that encouraged weak social cohesion. In post-independence Uganda specifically, weak social cohesion was exhibited in the unfortunate incidences in powerless
local communities. For example, the observed organised socio-economic deprivation resulted from a series of civil wars “with no less than fifteen cases since independence in 1962” (Lindemann, 2010); internal displacement persons and malnutrition, coupled with enclaves of abject poverty, undermined the country’s ability to practice good quality politics and building viable institutions with the potential to promote and fully realise constitutionalism (Green, 2008:102, 225).

5.2.2 A System of Exclusive Structures of Bad Governance
Consolidation of formal rule in Uganda was finalised during the colonial period when authoritarianism and institutional structures of exclusion were entrenched. However, construction of post-independence state institutions remained unfinished business after more than half a century of self-rule. Traditionalists strongly valued their specific cultural institutions of which the heritage was gradually being eroded by the radical changes brought about by the invasive trends of socio-economic and political progress tailored along the European procedural democracy model, which were created during the age of enlightenment (Mkandawire, 2003:5-6). Therefore, the two overlapping and antagonistic cultural systems were part of the factors influencing constitutionalism in Ugandan society. The antagonistic cultural systems were important factors because they prejudiced public institutions’ management, private property rights, and economic production relationships through political mobilisation, active participation of the enlightened minority and procedural democracy. Administratively, the inherited public sector procedures maintained the inappropriate imperial authoritarian and neo-patrimonial character of keeping law and order and not fostering the broad social interest.

In the case of post-independence Uganda, the observed persistent constitutional troubles exhibited in incidences that culminated in the 1966 and 1967 crises were direct outcomes of authoritarianism. This concept emphasises the existence of strong governments that would concentrate on the long-term interests of the nation unencumbered by the myopia of the population at large and specialised or particularistic interests
(Mkandawire, 2003:8). As a factor impinging on constitutionalism, authoritarianism was also the genesis of civilian dictatorship leading to military tyranny in Uganda (International Crisis Group, 2012:3). This situation was not unique to Uganda, but had parallels in other Sub-Saharan African countries (Toyin, 2005:505; Kanyeihamba, 2006:16-17).

For example, the genesis of the Museveni era finds explanation in the, “Why we fought a protracted people’s war” argument (Museveni, 1992:129-141). He acknowledges that although armed insurgency was successful, it was equally a regrettable counter-reaction carried out by his NRM/A against the Obote II government and the two Okellos’s Junta that had earlier relied upon armed forces to dominate political space using the UNLA. Doornbos (1987:2) describes that background as “years of disruption and trauma.” The armed insurgency method of regime change later exhibited its defaults in upholding constitutional rule in the country, a finding that is based on the hybridisation of the concept of governance whereby the NRM as a political group methodically controlled the military for decades. That technique of political management was useful by the NRM for sustaining the privileged positions of power. Centres of real public authority remained accessible through the way of armed force rather than civil law (Tripp, 2010). In addition, it uncovered a system of ruling by sustained graft, exclusive informal structures and bad governance that progressively engulfed the country. Qualitatively, the armed insurgency method of capturing state power in 1986 gave the NRM a unique historical advantage. Armed violence became the basis of political domination over other political forces. By restrictive democracy and revolutionary rhetoric, the NRM was able to disguise itself as a group of benevolent national liberators.

Kanyeihamba (2006:30) asserts that the most notable achievement of the NRM government is in the area of the affirmative action for special interest groups such as women and other disadvantaged persons’ participation in decision-making platforms. That largely populist approach had its origin in the NRM political organisation’s rhetoric as a revolutionary linkage between
the individual and the state, which included access to information and participation.

Kabwegyere (2000:102) observes that, “The concept of the ‘movement’ most fully conveys what was needed and what happened.” Therefore, on the surface, the movement’s political system “is broad-based, inclusive and non-partisan” democracy with emphasis on accountability and transparency (Article 70 of the 1995 Constitution). Given the realities of the times under review, to be accepted in Uganda as a social force and political organisation, the NRM needed to be buttressed by subterfuge. Since Ugandan rulers ignored the generally agreed upon policy frameworks and deliberately took to working through informal structures, deception was accepted as the only possibility if one wanted to survive. That survival strategy accrued from demobilisation of the civil society through fronting ploys. Individual citizens and civil society organisations acknowledged the demands of repressive circumstances of state inspired fear and learned how to live with the situation (Barya, 2000:20-22, 41). Ultimately, they developed apathy regarding liberty, the protection of human rights, popular participation, individual merit, and accountability, especially of openly undisciplined state agents.

That constitutional gamble by the NRM Party and the government came into the open during the Constituent Assembly (CA) process whereby delegates became clients of the movement organisation and turned into a fearful, rigid and intolerant caucus. In their classic former NRA guerrillas’ style of suppressing dissenting views, the NRM government adopted the crisis management method of political action even against the NGOs. To elucidate, Barya (2000x:32) argues that:

“Government views the NGO Forum as a competitor to a forum it wishes to establish and control. The main reason for this refusal to register the NGO Forum seems to be the perennial fear by government that such a powerful civil society organisation could become a power centre and probably an alternative political base especially in, light of government’s ban on and abhorrence of political parties and political competition.”
Unfortunately, this approach reduced a revered national treasure, namely, the 1995 *Constitution* to a partisan instrument with outstanding contradictions that later rendered it less sanctified by the same caucus through political arrogance and misconceptions (Kanyeihamba, 2006:26). This obscurantism closely parallels Toyin’s (2005:516) view of “the crisis of a modern African state, in terms of the institutions of governance, leadership, popular cultures and economic management.” This exposure of a system of exclusive structures of bad governance led to the conclusion that a cluster of selected studies had emerged and were reviewed accordingly. The true meanings and implications of that system of organised exclusion of other socio-political forces were revealed. Barring them was possible through persistent structures of appalling supremacy hostile to constitutionalism. Logically, it called for civil society actions and organised social movements’ activities and the realisation that qualitative transformation required, among other things, the promotion of participatory democracy, most particularly at local government levels, so as to enforce the rule of law and accountability.

### 5.2.3 Lack of Means of Enforcing Rule of Law and Accountability

Uganda’s intriguing and rugged post-independence constitutional history is perplexing because citizens lacked the means to enforce the rule of law, and accountability of the officials remained problematic. As a country, Uganda had attempted to put in place generally agreeable laws, but her citizens lacked the necessary capacity to make them effective. This factor weaved through the overlapping layers of the problem, rendering a number of legislations that would have protected citizens’ liberties ineffective. At the base of the traumatic experience involving the poor state-citizens’ relationship in Uganda lay organised misery orchestrated by rogue state agents and the chaos left by the dictatorships of Idi Amin Dada and his brutal successors (Museveni, 1992:36; Cooper 2002:7), as well as the nationals’ inability to stand firm in their demands for the rule of law. This problematic situation undermined the promotion of fundamental rights and freedoms for the individuals living in Uganda. Ugandan citizens lacked the
capability to enforce the rule of law and the accountability of the officials. That constraint not only remained another contentious hindering factor but also influenced the growth of the awful constitutional situation. In that sense, “Africans’ lack of confidence prevents them from fulfilling their potential” (Guest, 2004:10). The ruling elites tended to use patronage, coercion, scapegoating opponents, and other resources to reinforce their position, narrowing the channels of access even further (Cooper, 2002:6).

For example, had Ugandans understood well and appropriately invoked Sections 17 and 27(1) of the 1962 Constitution; Articles 17, 19, 25, 26 and 27 of the 1966 Constitution; Articles 8(2) (b), 18 and 27(2) of the 1967 Constitution; and Article 29 of the 1995 Constitution, they would have stemmed the calamity that befell their country throughout the post-independence period. Empirically, these series of basic laws were suitably inserted into those versions of the national constitution by elitist rulers to gain a favourable standing of the state as a recognised member of the international community. However, at the domestic level, they were momentary decoys and only useful to legitimise those irregularly constituted specific regimes. Those laws provided for the freedom of conscience, movement, religion, expression, and assembly and association, the conditions necessary for conventional protection of group interests, civil rights and liberty. Ordinarily, they covered the rights of political-civil activities and trade union organisations respectively and defined bases of conventional rule. Missing was governments’ goodwill and the necessary tolerance for diverging political views. Nevertheless, different unfavourable factors reinforced each other and ultimately hindered genuine enforcement of the rule of law and accountability of officials. As a result, sustaining civil institutions and appropriate political activity as essential components of the creation of a liberal democratic society in Uganda suffered (Barya, 2000:2). It is concluded that at documentation level, Ugandan constitutions

15 Harthon J. Hall (1946:iv) contends, “speaking generally, and judging by European standards, the Africans of Uganda are indolent, ignorant, irresponsible, and not frequently suspicious...” in a Foreword to A development plan for Uganda, December 1946. With the illiteracy levels still high, the quality and attitudes of Ugandan populace has not changed much since 1946.
were fine; the problem lay with defective implementation. That problem remains a persistent constraint to good governance accrued from the days the country was created as a British colonial possession.

Since it attained formal independence, Uganda’s extant legal framework systematically provided for instruments closely resembling the relevant international and regional conventions and treaties governing state-citizens’ relationships. This argument explains why it remained a recognised member of the UN; the former OAU and now African Unity; and other sub-regional arrangements like the East African Community. This argument means that like the rest of Sub-Saharan Africa, Uganda’s external sovereignty remained assured despite the borders being a source of trouble after being arbitrarily fixed at the Berlin Conference of 1884-5 (Guest 2004:9-10) and while its internal sovereignty was left to the ruling elites. For example, the versions of national constitutions and their revised editions reflect establishing a specified number of cabinet ministers appointed by the President and approved by the legislature. In that regard, Article 113(2) of the 1995 Constitution, in part, provides that “Cabinet Ministers shall not exceed twenty-one except with the approval of Parliament.” Interestingly, Oduka (2016:12), in a newspaper column entitled “This Week in Politics” reveals how the President “came dangling a list of 80 men and women...to help him drive his ambitious vision of taking Uganda to middle-income status by 2020” and suggested adding on another eight names in the due course. This finding elaborates how neo-patrimonial rulers manipulated elitist legislators and thus influenced poor decision making and dented procedural democracy in Uganda because “the President always has his way” (Oduka 2016:12).

A close examination of that finding discloses classic post-colonial state-society relationships. Nationalist rulers feared the possible growth of alternative centres of power as discussed by Mkandawire (2003:8-9). In
Uganda, its meaning was that government actors never took written constitutions seriously. That revelation implied institutionalised hegemony and “clientelism,” defined as an informal relationship between people of different social and economic statuses, including a mutual but unequal exchange of favours that could be corrupt (Transparency International Uganda, 2008:81-82).

Patrimonialism promoted the search for personal glory and factional enrichment (Reyntjens, 2005:602). For that same reason, Ugandan citizens’ lacked appropriate means of enforcing the rule of law and accountability of officials, which is a significant factor; no post-independence government in Uganda took those constitutions seriously. Therefore, the conclusion is that there was not only a poor quality of law enforcement personnel but also timid public institutions. This deficiency complicated rulers’ failures to adhere to constitutionalism that coupled with a general lack of awareness of the law in the populace was cumulative. Ostensibly, the issue could have been resolved through consciously activating interest in specific social movements, democratisation and institutional stability, increased human rights awareness education campaigns, and judicial activism, but these checks and balances did not happen. Moreover, lack of good will on the part of the post-independence Ugandan state agents to enforce the genuine rule of law reinforced the tendency of the rulers to ignore the generally agreed upon constitutional policy frameworks by working through informal structures. All these, collectively, have greatly undermined the growth and full realisation of constitutionalism in Uganda since independence.

5.2.4 The Chronic Political Repression Dynamism
The chronic political repression dynamism in Uganda has its origins in the national pre-independence epoch when punitive force and coercion were the only official methods of exerting political influence over the populace. Ultimately, the brief effort towards preparing the country for responsible self-government with state institutions during the late days of British colonialism (Cohen, 1957; Kanyeihamba, 2010:22-29) never brought about the expected results. This unfortunate outcome was attributed to a number
of factors of which the most important were the bad quality of politics, bickering and unconstitutional methods of governance during the immediate post-colonial period. Predictably, this constitutional deficiency could have been resolved through judicial activism and the promotion of representative and civic measures against errant state agents but only if the principle of the separation of powers was protected, promoted and fulfilled. However, “new confrontations shaping the country’s future had followed each other” (Doornbos, 1987:2). Therefore, the observed Ugandan post-independence civilian dictatorship, military tyranny, calamitous rule, civil wars and armed insurgency were inevitable. Doornbos (1987:2-3) captures well Uganda’s chronic political repression dynamism by arguing that:

“Uganda’s politics had come to be marked by diminishing expectations...Commonplace attitude had come to view the course of Ugandan politics engaged in a downward spiral: retrogressing from one missed opportunity to another it seemingly succeeded in reaching new depths of hostility, destruction and self-destruction at each interval...There had been an ouster of Idi Amin in 1979...factional struggles along familiar lines of petty politics appeared to resume...the installation of the Lule and Binaisa governments were marked by heightened fatigue and increased pessimism...Obote who had been a master in playing out ethnic and other factions against each other, now found that his skills in this respect acted as a boomerang.”

A close examination of Doornbos’ (1987) narrative reveals a downward spiral of the chronic political repression dynamic that gradually factored in regression as a destructive feature as far as constitutionalism and procedural democracy were concerned. This finding is important because it explains how the irregular formation of a NRA-led government in Uganda in 1986 signified a historic transition. This changeover involved a popularly based guerrilla movement overthrowing one of the notorious and illegitimate military regimes, thereby bringing about a power-balance shift in Uganda and the “no-party democracy” (Doornbos, 1987:15; Mugaju and Oloka-Onyango, 2000).

It is therefore not surprising that since 1986 to the present, it is over three decades now, and a single political grouping (NRM) has continuously held
the reins of power representing over 57% of the country’s self-rule period. Constitutionally, this is an important development because the NRM’s 32 years in power have been a period characterised by a paradigm shift involving attempted liberation from calamitous rule to rebuilding the state institutions and then to domination of power by an individual. In fact, Acemah (2016:35) argues that “an entire generation of Ugandans has been hoodwinked and misled to believe that the future and prosperity of our country depends on one man who claims to have the monopoly of vision.” Similarly, Tripp (2010:75) raises concerns about the subversions of what in form appear to be democratic institutions and the extent to which the NRM sought to enshrine non-democratic provisions in laws and in the Constitution. In that context of controversially veiled one-man rule, the NRM contribution to the state of constitutionalism confirmed that post-independence Ugandan rulers ignored the generally agreed upon policy frameworks and deliberately took to working through informal structures.

Among the other outstanding constraints to constitutionalism and to procedural democracy in post-independence Uganda is political intolerance of alternative parties with adverse effects on national diversity management. Intolerance of dissent greatly undermined organisational capacity and resulted in the country having ungoverned enclaves of negligence. Moreover, as time passed, there was a loss of legitimacy of the state-government involving depleted institutional capability. This inadequacy exaggerated the urban and economic growth-centres bias, an appalling trend which in turn culminated into a distortion involving the rural-urban life settings dichotomies (Mkandawire, 2003:9). Thus, in post-independence Uganda, that argument finds explanation in the observed socio-economic and political policy confusions, services delivery distortions, and destructions of institutional authority hostile to constitutionalism (International Crisis Group, 2012:9). Those inexcusable outcomes were partly associated with factors like the geo-political patterns of the end of global Cold War era and the ill-fated Structural Adjustment Programmes interventions which were adopted from the IMF and the World Bank in the late 1980s and 1990s.
The dilemma of down-sizing the public service was not unique to Uganda, because, as Mkandawire (2003:10) asserts, “The 1980s and 1990s was a period of wanton destruction of institutions and untrammeled experimentation with half-baked institutional ideas” in Africa. Mkandawire further observes that the continent was the lowest governed part of the world during that same period. However, the main constraint to constitutionalism and procedural democracy in Uganda was “no resolution to growing tension” that compounded bad domestic governance practices stretching over five decades 17 of “cumulative institutional impoverishment” (Mkandawire, 2003:12). Therefore, a variety of constraining variables combined to account for its self-rule gone badly, undermined constitutionalism, and occasionally messed up procedural democracy in Uganda.

5.2.5 Weakened Ugandan State Institutions

Constitutionalism and procedural democracy are complementary variables that demand conventional public power exercised through institutions backed up by the ideology of collective action and predictable institutional frameworks. Mkandawire (2003:12) is very clear about the predictability of institutions as an important driver that encourages private investment. In tandem with this argument, Mkandawire (2003:1) observes, “Both the nature and purpose of the desirable institutions and the appropriateness of existing institutions have occupied the minds of African thinkers and policy makers during the entire post-colonial period.” Mkandawire’s contribution is indicative of the importance of systematic analysis of Ugandan state institutions, their weaknesses and how those defects developed gradually during the different phases of her nation-state building, a terrain that is contested because of the segmentation of society. Therefore, this analysis of the factor of cumulatively weakened post-independence Ugandan nation-state institutions is justified. The quest for decolonisation was the first of such stages worth discussing further.

The Master Plan for the de-colonisation of Uganda was engineered by Andrew Cohen and implemented by Crawford as British Colonial Governors who aimed at furthering the equitable distribution of official power and technically fostering broad social interests as the basis of the intended self-government for Uganda. The framers of the decolonisation of Uganda Master Plan intended to unravel the ills of colonialism, a practice of subjugating a people by another, as the central issue of the native question where the former outnumbered the latter. Mkandawire (2003:2-3) argues that the colonial encounter is a crucial experience defining the initial conditions of post-colonial state. European colonialism in Africa left behind institutions that new states had to adopt, adapt and discard. It defined the geographical reach of the new states, and it shaped the mind-set of the colonised peoples and the ideological and cultural responses to it. The outcomes of European colonialism in Africa and their constitutional implications were various. For example, many of the post-colonial governments attempted to “either circumvent or dismantle the inherited local administrative structures or to so manipulate them as to totally change their content and even form...In some instances this led to bloody confrontation as in Uganda...One consequence was corruption” (Mkandawire, 2003:4-5).

Consequently, post-colonial governance policy implementation went wrong right from 1962, partly because of weakened Ugandan state institutions coupled with the advancing pursuit of individual rulers and sectional groups’ interests. For those same reasons, there were ill-fated tendencies by central government leaders. They exercised exaggerated fear of traditional authorities and developed thinking along ethnic lines. These limitations in national leadership explained the origins of observed conflicts they had with Buganda nationalism on the one hand while on the other was factionalism within the then ruling UPC Party (Kanyeihamba, 2010:79-94). At the central government level, rulers attempted to pursue an idealised unified and strong central government policy framework without clearly defining the terms of inclusion in the wider national programme. These institutional weaknesses combined to form a complex web or spiral
of limiting factors that adversely influenced the intended Ugandan national building project. This finding is congruent with Mkandawire’s (2003:4) observation about the inevitability of divisive political plurality in post-independence Africa.

In the case of Uganda, it was paradoxical that the subsequent national rulers failed to adhere to the preparations for self-government where public authority was expected to be exercised with high degrees of predictability. For example, according to the Duke of Kent (1962:6-9), Uganda’s self-government was inaugurated on 1 March 1962 by the British Colonial Office and included a ministerial system earlier introduced in 1955 to support functions of the executive arm. The LEGCO of 60 Members with a Speaker had been in existence and functional by 1958. Its numerical strength had reached 102 in 1961. A rudimentary local government framework had been established by the colonial administration. Therefore, the country’s post-independence rulers’ failure to build viable state institutions in Uganda was a contradiction partly emanating from the internal weaknesses of those specific actors exhibiting incompetence at worrying levels. This unfortunate outcome became a factor that compounded uncertainty in public affairs management in the post-independence Ugandan society.

As time passed, living under constant uncertainty became the governments’ way of administering public affairs. The governments were persistently unpredictable, and this trend resulted in citizens worrying about public authorities’ capriciousness. Empirically, that unpredictability of public authorities explains the observed situation of ambiguity in the state-citizens’ relationships with adverse effects including fearing to demand better socio-economic services. Eventually, the unpredictability of Ugandan post-independence state actors undermined the foundations of the social contract tradition and economic productivity in corporate firms, in families and on farms. At national level, the tax bases progressively narrowed as compliance degenerated. In retrospect, traditionally, to be human in Africa is to belong to the whole community (Mbiti 1987:2); the sustenance of
African society partly depended on the absence of seriously organised-criminal activities.

European colonialism in Africa was accompanied by increased levels of organised criminal activities associated with “changing man and his problems” (Mbiti 1987:216-228). Organised criminal activities linked to that said world revolution had a tendency of disrupting communities, the family institution and even land management procedures. Kanyeihamba (2006:12) asserts, “Inevitably, it is for these three subjects, criminal law, the family and land that African customary law developed the most effective and complex codes of rules and values.” In contrast, British colonialism in Uganda undermined traditional social organisation arrangement and subjugated peoples and their culture and laws. Therefore, by 1 May 1962, the time A.M. Obote assumed Premiership under a coalition of the UPC and KY parties as the post-colonial ruler, he assumed a position of official responsibility and over-centralised public authority.

Thus European colonialism in Africa changed the inherited colonial processes of intended inclusion and decision-making, and governance procedures, as a result, ceased to be participatory partly because nationalist rulers felt at odds with the methods18 of late colonialism (Mkandawire, 2003:8-9). That distortion of the pre-independence preparations for self-government culminated in policy confusion and a client-patron relationship approach to governance. These constraint variables adversely affected constitutionalism by inhibiting the building of viable public institutions in Uganda. That deformation finds explanation in Mbiti’s (1987:216) contention that:

“Without warning and without physical or psychological preparation, Africa has been invaded by world revolution. Now a new and rapid rhythm is beating from the drums of science and technology, modern communication and mass media, schools and universities, cities and towns...The man of Africa must get

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18 Methods of late colonialism included entrenching divide and rule procedures during the transition to self-rule. That technique served the masters even after their departure because national neo-colonial cliques formed and fostered/protected their patrons’ interests. That finding explains why most of the post-colonial African independence constitutions fell short of the citizens’ expectations and were thus either abrogated or overthrown in military coup d’états.
up and dance, for the better or for the worse on the arena of world drama.”

Leaders promoting informal rather than formal structures of governance were found to be part of the main strand winding through officials’ malpractices exhibited by all post-independence Ugandan regimes. For example, clique formation and deliberate adulteration of the 1962 federal Constitution were a continuation of the shoddy processes that preceded its framing and promulgation. These irregularities rendered it trashed and a final outright abrogation was passed with ease in 1966. Kivejinja (1995:14-20) associates those unfortunate outcomes with the country’s hastily done “sweeping changes” as recommended by the pre-independence Wild Committee. Those sweeping changes made “the stooges who had comfortably served the colonial government to form independence time political parties.” Thus, national leaders’ unity of purpose was made more complicated.

For instance, Kivejinja narrates the existence of the ‘split-politics of Mengo’, whereby Buganda was procrastinating on joining national politics. Buganda was harbouring an attitude of non-cooperation in any national political endeavour, when on the side-lines of that kingdom stood the aggrieved Catholic Democratic Party (DP) that was ominous. Worse still, “Obote who had failed elsewhere” seized the opportunity for politics as a fulltime job and took to fragmenting the Uganda National Congress earlier formed in 1952 (Omara-Otunu, 1987:42). Kivejinja (1995:19-22) demonstrates that:

“Factorisation and the omission of one word from each organisation were used. Uganda People’s Union + Uganda National Congress = Uganda (People’s + Congress) - (Union + National), or the UPC. The first score had been achieved...thus forming the government that would usher in independence at the agreed time.”

Honesty in national politics was the first casualty of self-government. Therefore, the resultant fraudulent “victory of the UPC/KY” alliance outwitted the DP by manipulating those elections in Buganda kingdom where the king decided on indirect elections provided for under Section
43(3) of the 1962 Constitution, contrary to “elections of elected members” of the National Assembly that was abided by within the other regions (Omara-Otunu, 1987:49). The said “outcry, feelings of being insecure and betrayals,” as Kivejinja (1995:23-60) narrates in detail, were the features of the weakened post-independence Ugandan state institutions. That institutional weakness finds explanation in the fact that as time passed, many began to lament having misplaced their confidence, and this culminated in the observed erosion of the people’s sovereignty.

The quest for national unity, which ensued by manipulation rather than dialogue, extended from 1966 to 1971, a period when the Ugandan nation-state crystallised to become what Davidson (1992) calls ‘another curse.’ This stage-management was in the guise of the imposed republican constitutional gamble. It was possible by means of insubstantial state-building policies, including the Move to the Left, the Common Man’s Charter, and the reckless abolition of monarchies all bound to be ill-fated. In essence, the leaders’ neo-patrimonial practices explain the disorder characteristic of the country in general that eventually culminated in the disastrous military dictatorship of Idi Amin; the turmoil under the UNLF/A interlude; the five year-long bloody civil war period; and the NRM’s no-party democracy ideology (Kasfir 2000:60; Wapakhabulo 2000:79). It was significant because the NRM government used it to unfairly strengthen itself through the local government system and continued to fuse the ruling party structures with the state (Tripp, 2010:112).

The Ugandan leaders’ neo-patrimonial practices were other ill-fated developments that weakened the institutional framework in the country. For example, in the early 1960s, the country witnessed a series of unprincipled defections from opposition DP legislators, in the form of “crossing the floor to the government benches; and also crossing from the alliance; termination of the UPC/KY Alliance; the major wave of cross-over to the UPC; and north-south polarisation” (Kivejinja, 1995:83-85; Omara-Otunu, 1987:68). These national malpractices of conspiracy greatly undermined procedural democracy and constitutional measures, the
checks and balances of power, because the inept opposition groups made
political manipulation worse. Kivejinja (1995:100, 142) contends that, “as
there were no national issues put forward, most of the time was spent on
non-issues such as discussing individuals and personalities...The crisis of
confidence in these ‘ruling tribes’ was a bitter one.” By implication, post-
independence Ugandan rulers ignored the generally agreed upon policy
frameworks and principles of constitutionalism.

The finding explains the inevitability of forceful reaction to the earlier cited
disastrous military dictatorship of Idi Amin and the turmoil that befell the
country under the UNLF/A interlude. These ill-conceived trends of
deliberate mismanagement of national affairs by leaders undermined the
role of civic opposition groups. This situation was indicative of the origins
of the NRA insurgency and similarly aggrieved opposition groups which
took to armed resistance against the mismanagement of national affairs.
For decades, constitutionalism and procedural democracy had failed, so
insurgency and armed resistance were justified even well after the doubtful
“return to political parties” in 1980 (Kivejinja, 1995:278).

From the above discussion, it is evident that the reasons for weakened
Ugandan state institutions were cumulative. They included, among others,
clique formation and deliberate adulteration of constitutional arrangements
that led to shoddy processes in national public sector administration. This
state of affairs was further complicated by Buganda, whose Royal elites
harboured an attitude of non-cooperation toward any national political
endeavours that estranged them. In addition, the disadvantaged Roman
Catholic section of the Ugandan society resorted to forming the DP in 1956
as a political platform to further parallel interests antagonistic to both the
Protestants and Buganda Kingdom favoured by the colonial establishment.
Interlocking and diversionary socio-economic and political patterns and
malpractices encouraged intolerance against and planned the
disorganisation of political opposition groups. Most unfortunate for the
country were queer developments in the form of unprincipled alliances, the
formation of the Protestant leaning UPC Party in 1960, and the continued manipulation of the army by ruling parties.

All the above perilous trends combined to perpetuate civil strife and wars that weakened the state institutional framework in the country. The origins of the method of armed insurgency by aggrieved opposition groups who took to armed resistance find explanation in the illegality of the strong officials identifying influential army personnel with the party in power and undermining constitutionalism (Tripp, 2010:153).

5.2.6 External Influences

Uganda’s constitutionalism was originally and greatly affected by external influences, particularly colonialism and neo-colonialism. It should be recalled that, because Uganda’s independence preparations were carried out in London, its two preparatory conferences neither thought out matters of broad social interest nor considered issues of citizens’ liberty carefully. Besides, the selection of the 48 elitist individuals as a Constitutional Committee not only deviated from the normal direct elections procedure, but was a defect that affected the expected adequate citizens’ representative principle set by the British Foreign Affairs Ministry on behalf of Her Majesty’s Government (Ibingira, 1972:89, 102).

The centre of Ibingira’s argument is, “What the Constitutional Committee recommended was not internal self-government or full responsible government but rather Representative Government.” That initial compromise on the notion of the principle of national sovereignty led to neo-colonial procedures as the final outcome arrangement. For Doornbos (2010:21) the external recognition of African states’ ‘sovereignty’ has in some sense resulted in novel forms of indirect rule, not unlike how the establishment of colonial rule was once based on the recognition of traditional kings or chiefs as ‘sovereign’ rulers and the ‘treaties’ concluded with them. Ibingira (1972:103) observes that:

“While it is true that people cannot know how to exercise responsibility unless opportunity is given them to exercise it, it is equally true that it is hazardous and uncertain in the extreme to
suddenly entrust responsibilities to people who have never exercised governmental responsibilities.” (Ibingira 1972:103)

Consequently, during the post-independence period, behind the emblems of national sovereignty and independence, there was a strong degree of interaction and connectedness between donor and domestic policy structures comprising many or most aspects of the constitutionalism agenda. Barya (2000:6-7) ably puts Western donors’ influence on Ugandan constitutional policy in context. He argues that Western donors’ influence led to economic liberalisation, SAPs, enforced political accountability as a basis for continued foreign aid and the country being used as a buffer to Islamic fundamentalism. These interlocking Western donors’ interests complicated the factor of external influences because the Ugandan state was pressurised to pursue policy adjustments, some of which hostile to citizens’ liberty.

Doornbos (2010:13) discusses external influences as an important point. In this connection, he argues that it is the external dimension of (state) sovereignty and the international recognition it implies. The gist of his argument is that, one of the reasons bottom-up state-building often goes unnoticed is because there is a great deal of focus on international diplomacy and protocol. He observes that the external recognition dimension of statehood has nothing or little to do with how effective, strong or legitimate a particular type of local statehood is, and that, very often, the external role comes not without self-interest. Toyin (2005) discusses the history of globalisation as an incorporationist ideology with powerful forces behind it, most of them external to the African continent. He argues that it is not a new phenomenon. Toyin traces convergence of colonialism and neocolonialism in many of their manifestations. Those manifestations include the days of the slave trade, the trafficking of not only goods but also ideas, universal cultures and values, and interactions between nations and the changes that come with them. Globalisation has virtually enhanced the information flow and the benefits of improved means of communication and technology, but the physical boundaries of states are not disappearing.
Global governance mechanisms, including the UN and its agencies, the IMF, and the World Bank together with the World Trade Organisation continue to sell the idea of a unified world even though the majority of Africans face rising levels of poverty. The gist of this argument is the metaphors and images of global Western world expansion that sound familiar. In the 19th Century, it was against the background of spreading civilisation in Africa that the so-called ‘Dark-Continent’ was seen to deserve a global Western world’s civilising mission through colonial rule in this region (Cooper, 2002:16). After decolonisation, the global Cold War rivalry was introduced, which encouraged repressive regimes on the continent as long as they never found themselves “on the wrong side of the conflict” (Cooper, 2002:134). This was the period when, according to the elite theory, the division of the continent was effectively achieved with “governing elites and non-governing elites” forming opposition groups (Dunleavy and O’Leary, 1990:136-137). This differentiation amongst newly independent African national societies, Uganda inclusive, proved disastrous because the rulers did not regard the existing national constitutions, like the 1962 and 1967 constitutional confusion and experience in Uganda, as important.

National rulers were never restrained by the agreed upon public sector management systems, the patterns and laws intended to make them accountable to their citizens, but connived with their global patrons whose approach compounded the limitations of political parties’ competition. This argument explains why at the end of global Cold War rivalry, Structural Adjustment Programmes (ASAPs) were encouraged and Uganda adopted them wholesale with all their paralysing effects (Cooper, 2002:116). Consequently, in the post-SAPs era, the emphasis was on looking at Africa at large through the lens of a repressive, backward continent requiring good quality of governments. Therefore, if the idea of ‘progress’ dominated discourse in the colonial era, the themes of post-SAPs Africa revolved around the promotion of procedural democracy, good-governance, human rights and dignity. In that regard, Urban (2002:32) counsels, “Decisions and actions must be taken in recognition that every human being is a subject of human rights, not an object of charity or benevolence.”
Therefore, in the present study, evaluating the external influences in Africa generally and Uganda in particular, and the role their component units played in a global system, especially through donor lenses as one-time ‘windows of opportunity’ allowing scenarios of externally guided reconstruction (Doornbos 2010:16), is required. This argument justifies the current appraisal of the constitutionalism and procedural democracy arrangements Uganda inherited from departing British colonial rulers and is in tandem with Robert Guest’s (2004:9-12) contention that:

“The colonialists left deep scars. But they also left behind some helpful things, such as roads, clinics and laws. If colonialism was what held Africa back, you would expect the continent to have boomed when the settlers left. It didn’t...Since independence, Africa’s governments have failed their people. Few allow ordinary citizens the freedom to seek their own fortunes without official harassment.”

Using the goal of understanding Uganda’s bad constitutional experience within the sub-regional, continental and international frameworks, Guest’s (2004) contention is vilified. Uganda, and indeed the rest of Africa were, through European colonialism, incorporated into the largely unfair global governance and trade systems built on the state theory as conceived and propagated by them (Dunleavy and O’Leary 1990:30-32; Green 2008:104).

Another external underlying factor was the end of the Cold War. The ending of the global Cold War brought about increased levels of the globalisation phenomenon equipped with the latest technologies of managing digital information. This changed the dynamics of human interactions and involvements which raises basic questions about the nature, content and role of the state in a globalised society. This development is in contrast to the historical precedents of state building from below as “the condensation of all power relations, a surveillance system, or as an autonomous machine” (Dunleavy and O’Leary, 1990:6). In a whole range of situations of the prominent external presence within African state, constructs had acquired a new kind of permanency. As a result, it becomes difficult to conceive of African forms of statehood without a whole range of external influences.
such as the NGOs and international business corporations as factors figuring as part of it (Doornbos, 2010:19-20).

The gist of Doornbo’s (2010) argument is the rigid external stand about the recognition of African states, as exemplified by the UN Security Council and other UN agencies. It implied an adherence to strictly non-negotiable limits as to how far the dynamics from below towards alternative forms of statehood may be taken, even in situations of the internal failures of institutions of governance such as in Somalia since 1991. Davidson (1992:12) explains it in terms of “Africa and the curse of the nation-state.” His argument is that because post-colonial states were alien transplants, based usually on either British or French modes rather than old indigenous institutions, they failed to achieve legitimacy in the eyes of the majority of their citizens and soon proved unable to protect and promote the interests of those citizens, save for the privileged few.

In the same vein, through the lens of the International Community of Nation-States, post-independence Uganda falls in the bracket of those typical Sub-Saharan countries with rigid state systems. Building representative institutions was curtailed by self-seeker groups that took to authoritarianism and personalised politics, of which the trends of bad governance threatened the means of fostering common good (Mkandawire, 2003:20-21). Mkandawire contends that:

“Despite the recent trends towards democratisation, many African countries are yet to resolve basic problems of governance to ensure that elected representatives reflect the will of the people, protect civil and political rights, accept the principle of alteration of power and presidential term limits, and create channels through which civil servants and governments can be pressured to deliver public services” (Mkandawire, 2003:20-21).

Against this backdrop, it is not surprising that Uganda stood and continues to stand out clearly as a part of the least developed countries in the wider global society where constitutionalism is ostensibly eluded. Uganda’s post-independence experience and practical considerations in the interest of constitutionalism have attracted and continue to attract external actors to influence trends and patterns of political developments in the country. This
argument is congruent with Mugaju’s (2000:145) conclusion when he asserts that “Uganda’s political culture suffers from what may be described as a democracy deficiency syndrome.” Mugaju observes that whereas Uganda’s post-independence rulers ignored the generally agreed upon policy frameworks and deliberately took to working through informal structures, international norms governing states prevailed on them and continued to call for procedural democracy and constitutionalism (Mugajum 2000:144). Therefore, to date, national actors have a duty to promote democratisation drives and tackle the constraints of constitutionalism in the country together with estimating the prospects for the predictability of the government and the possibility of good governance and sustaining procedural democracy.

5.3 Chapter Summary and Conclusion

This chapter has explored the factors that have influenced the contested state of constitutionalism in post-independence Uganda. The central argument of the chapter is that, while Ugandan presidents have had a solemn duty to predictably uphold constitutionalism since independence in 1962, they have persistently failed and/or deliberately ignored to do so, which, inevitably, has rendered the state of constitutionalism in post-independence Uganda contentious. The chapter has explored six sets of critical factors which have influenced the contested state of constitutionalism in Uganda since 1962. These include: the gambit of weak, illiterate and powerless communities; system of exclusive structures of governance; lack of appropriate means of enforcing the rule of law; chronic political repression dynamic; weakened Ugandan state institutions; and external influences.

The chapter has shown that the gambit of weak, illiterate and powerless communities was the foundation curl that hindered the capacity of the general populace to further their broad interests and political-material identity. In succession, it was a system of formal rule by exclusive structures of poor governance that were finalised during the colonial period. That factor not only encouraged but also entrenched authoritarianism and
repressive institutional structures of exclusion in Uganda. In that state, the affairs of citizens lacked the necessary civic competence and means of enforcing the rule of law and the accountability of officials. Thus, constitutionalism remained problematic and perplexing, especially with a chronic political repression dynamic whose origins were the national pre-independence epoch. As a result, governments resorted to punitive force and coercion as the only official methods of exerting political influence over the populace.

The chapter has also showed that; the system of exclusive structures of governance which post-independence Ugandan leaders adopted, the lack of appropriate means of enforcing the rule of law, the chronic political repression dynamism, and the weakened Ugandan state institutions, collectively resulted in poor governance and the observed volatility of constitutionalism in Uganda exhibited in increased extents of absolutism and abuse of office by the political leaders and their supporters/accomplices, compromised administrative morality and juridical democracy, weak legislative oversight, and lack of effective accountability and transparency mechanisms in the hierarchy of government organs, bureaucracy and the entire public sector. All these negatively affected the quality of government and public management, and greatly curtailed the effective exercise of conventional public power through the requisite democratic institutions. Besides, matters were further complicated by the external influences in the forms of colonialism and neo-colonialism after pre-independence conferences in London. The logical conclusion drawn from the chapter is that, the aforementioned factors, jointly and in almost equal proportions, complicated the observed Ugandan irregular constitutional path together with its rulers’ habits of exhibiting persistent failure to uphold constitutionalism.

By successfully exploring the above factors that have influenced the contested state of constitutionalism in post-independence Uganda, this
Thesis has successfully achieved the second objective of the study. The next chapter will explore the specific challenges to the full realisation of the doctrine of separation of powers in post-independence Uganda, which together with the factors discussed in this current chapter, have rendered the realisation of doctrine of constitutionalism in post-independence Uganda not only problematic but very difficult, and in some cases, almost impossible.

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19 The second objective of the study was: ‘To explore the factors that have influenced the contested state of constitutionalism in post-independence Uganda.’
CHAPTER SIX
CHALLENGES TO THE DOCTRINE OF SEPARATION OF POWERS AND GOOD GOVERNANCE IN POST-INDEPENDENCE UGANDA

6.1 Introduction
Kioko (2009:8) observes that adherence to the doctrine of separation of powers is a very key component, not only to promoting good governance but enhancing the full realisation of constitutionalism in any country, Uganda inclusive. This is so because such adherence is seen to be the driving force which fosters the attainment and full realisation of the rest of the aspects of constitutionalism like “the limitation of the state versus society in form of respect for a set of human rights” (Kioko, 2009:8), “rule of law” (Magaisa, 2011:51), “an independent judiciary”, “control of the amendment of the constitution” (Fombad, 2014:416), “quality of government”, which is manifested in the level of “impartiality of institutions that exercise government authority” (Rothstein and Teorell, 2008:165), having in place governments that account (or are held accountable) to entities or organs that are clearly distinct from themselves, holding elections freely at different intervals, having political groups that freely organise in opposition to the ruling governments, and ensuring that the legal guarantees of fundamental human rights are effectively enforced (by an independent judiciary) (De Smith, 1964). Yet, while the previous chapter has explored the factors which have influenced the contested state of constitutionalism in post-independence Uganda generally, it has not specifically explored the factors and/or challenges that have hindered the full realisation of the doctrine of separation of powers in post-independence Uganda in particular.

This chapter therefore explores the specific challenges to the full realisation of the doctrine of separation of powers and good governance in post-independence Uganda. Accordingly, the chapter addresses the third

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20 Albeit that the primary focus of this chapter is to explore the challenges to the full realisation of the doctrine of separation of powers in post-independence Uganda, the concept of good governance is brought in because it greatly bears on the former and vice versa. As such, a proper exploration and analysis of the challenges inhibiting the full realisation of the doctrine of separation of powers in Uganda would inevitably necessitate paying particular attention to the notion of good governance, since the two go hand-in-hand and are inseparable.
research question, which states that: ‘What are the challenges that have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda?’ The overall aim of the chapter is to uncover the specific challenges to the full realisation of the doctrine of separation of powers in post-independence Uganda, which together with the factors discussed in the previous chapter, have rendered the realisation of doctrine of constitutionalism in post-independence Uganda not only problematic but very difficult, and in some cases, almost impossible.

6.2 Challenges to the Full Realisation of the Doctrine of Separation of Powers in Uganda since Independence

This sub-section explains the Ugandan self-rule dilemma involving the political-military leadership challenges of enforcing the doctrine of separation of powers. It focuses on understanding the challenges of reconciling the three arms of Ugandan government whose functions has persistently failed to effectively work in harmony since independence. This trajectory is persistent with regard to Ugandan post-independence leaders’ failures to respect the principle of separation powers that has been and continues to be a national predicament hindering procedural democracy. Conventionally, according to the social contract tradition, public power of the state is official rather than personal. It is arranged in three arms of government as way of each branch checking the other two. Principles and procedures of democracy provide for sovereignty of the citizens whereby “the legislative function is essentially prospective, prescriptive and general...The judicial function is essentially retrospective determinative and specific...The executive function is essentially to execute” (Wells, 2006:105-106). Wells further illustrates that:

“A symbiotic relationship between the architect and the builder is no threat to construction standards; but it would be a serious threat to have the builder altering the architect’s designs, or for either the builder or the architect to be in cosy relationship with the building tribunal” (Wells, 2006:105-106).

Wells’ (2006) illustration gives guidance into post-independence Uganda where poor governance conditions have been so challenging that enforcement of the doctrine of separation of powers as constitutionalism
requires has not been applied efficiently, almost across all regimes since independence. For instance, the International Crisis Group (2012:35) argues that, “Museveni’s governance trajectory resembles those of Obote and Amin – without the blatant brutality– beginning with policies of tolerance and inclusion that gradually change to exclusion and repression.” Mazrui and Engholm (1969) interpret it in terms of “violent constitutionalism in Uganda,” and the International Crisis Group (2012) calls it, “Uganda: No Resolution to Growing Tensions.” As a result, violent constitutionalism and growing tensions in post-independence in Uganda have since independence been challenging because, consecutively, its rulers (have) ignored the generally agreed upon conventional state policy frameworks which would foster the respect for the doctrine of separation of powers, and constitutionalism generally. Instead, the leaders have deliberately taken the approach of working through informal structures and “relied upon personal rule, rather than constitutional and institutional restraints, and turned increasingly to patronage and coercion to govern” (International Crisis Group, 2012:35). It was that undemocratic approach to governance that created stresses and tensions in Ugandan national public affairs management systems, precipitating a sort of paralysis at certain junctures.21

As Kanyehaimba observes, the challenges to the full realisation of the doctrine of separation of powers in post-independence Uganda have manifested themselves in the way in which the judiciary has persistently tended to be the weakest arm of government and the legislature a mere rubber stamp of the executive (Kanyeihamba, 2010:234-235). This subsection explores eight reasons for this unfortunate trajectory, namely: the chronic use of state-inspired violence by the executive arm of government; the heterogeneous nature of Ugandan citizens and their inability to effectively agitate for the proper enforcement of the law; the continuous failure of the governments to harmonise the relationships between the

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21 Episodes of Ugandan national paralysis are explained by Museveni (1992:28-33) as the “price of bad leadership” because “Uganda has been very unfortunate in having particularly bad leaders.”
executive, judiciary, and legislative arms of government; the persistence of high levels of poverty among the masses; the persistence of Uganda’s fragmented institutions of governance; the curse of low levels of civic competence among the Ugandan ordinary citizens; the constitutional dilemmas and Uganda citizens’ choices with regard to them; and the persistence of high levels of corruption in all the three arms of government, elaborated as follows.

6.2.1 Chronic use of State-Inspired Violence by the Executive Arm of Government

In the context of post-independence Uganda, chronic state-inspired violence refers to procedural aggression and brutality orchestrated by state agents against its citizens. Since independence, official hostility and antagonism touching citizens have been exhibited in continuous cycles of organised violent behaviour against nationals and at times, neighbouring states, leading to the observed challenges to separation of powers. Unfriendliness and bitterness have been employed by successive Ugandan regimes, the variables that have adversely affected the nature and quality of the leaders.

22 It was remarkable that no central government regime in Uganda had ever handed over power to another without violence. Thus, from 1962, the year of Uganda’s independence, to 1966 the Constitution was proved unworkable and thus abrogated by Obote, supported by his loyalist army officers. The Buganda Nationalism Question, with its associated sub-imperialism and central government declaration of state of emergency in the central region, remained persistent challenges and causes of state-inspired violence (Kanyehamba 2010:65). Villages astride the Rwenzori Mountain and the Congo border were locations of military occupation. The years stretching from 1967 to 1971 registered civilian dictatorship and autocratic rule (Kivejinja 1995:138). State-inspired violence became the order of the day; episodes of conspiracies, detention of those with dissenting views without trial and one-party rule (Omara-Otunu 1987:78-101). Subsequently, the period extending from January 1971 to April 1979 was an era when Uganda experienced the reign of terror of Amin’s forces, murder, tyrannical rule and total collapse of both state and government structures (Kivejinja 1995:186-215). Then considering the period between April 1979 and January 1986, total calamity set in. The TPDF armed invasion was uncompromising, and intolerant and egoist UNLF/A rulers proved incompetent. The UPC Party was manipulated by Obote II government; later, the Okollo’s junta staged a military coup d’état and a civil war in the central north-western regions. These challenges complicated state-inspired violence situation. Finally, the largely peasant-supported NRM/A captured power in January 1986, while RPF/A organized desertion from the NRA invaded Rwanda in October 1990. By the end of the 1990s, both armies had invaded DRC (Mararo 2005:190-191; Kanyehamba 2010:224-225). Thus, the NRM party ruled Uganda continuously to the time of this research. Kanyeihamba further counsels “the failure of the NRM to tolerate opposition will in the end destroy the NRM itself.”
Leander (2001:29-31) articulates vicious cycles of violence involving states and their citizens. She attributes that bad state of affairs to a number of reasons, including the risk of mutual escalation in the attempt of governments whose authority and legitimacy was threatened, to defend themselves by violent means and repression. In addition, there has been an evolving political economy of war, which has led to a radicalisation of violence, and violence became an important means of social control and an economic resource in and by itself since Uganda attained its independence in 1962. The situation was further complicated by predatory behaviour of state directed at the civilian population and a growing criminalisation of authority. Thus, as a theme, violence emerged as a strategy to secure economic and political power under those unstable conditions. The relatively high gains from illegal, often transnational activities blurred the boundaries between political action and organised crime. Therefore, for the purposes of this study, state-inspired violence has been is a major challenge to not only to the full realisation of the doctrine of separation of powers but also to constitutionalism because it has remained the dominant form of social relations orchestrated by the executive arm of the government to the detriment of the judiciary and legislature.

Inevitably, the Ugandan post-independence state resorted to command and control techniques where unfriendliness and bitterness were important political tools against real and suspected opponents. The outcome was challenging to the doctrine of separation of powers because it instilled real fear in the general populace and inhibited initiative in their representative institutions. Moreover, as Omara-Otunu observed, “military take-overs of political power in a number of post-colonial states in Africa” particularly in Uganda between 1966 and 1986 “have stirred a more general interest in the wider role of armies in political processes in the continent, and in the nature of the relationship between the military and the political establishment” (Omara-Otunu, 1987:5). In the same vein, Hansen and Twaddle (1994:5) show how in post-independence Uganda, civilian authorities, particularly the judiciary and parliament, have continuously been made to appear inferior to the military and executive establishments.
This tendency is contrary to Article 208(2) of the 1995 Constitution of Uganda which provides that the army shall be subordinate to civilian authority.

6.2.2 The Heterogeneous Nature of Ugandan Citizens and their Failure to Enforce Rule of Law

From the time Uganda was a British Protectorate to the time of this study, legal status of citizenship in Uganda had been conforming to the attendant political changes. The diverse human communities forcefully brought under one colonial rule were never homogeneous. Coupled with that, lack of socio-economic and cultural homogeneity were the challenging and dynamic civil-political situations that qualitatively affected resident peoples’ interaction with altering regimes (Omara-Otunu, 1987:1-7).

During the British Protectorate administration, the characteristic colonial state of affairs blurred the principle of separation of powers (Ayandele et al., 1984:153-154).

According to Ayandele et al. (1984:307), the colonial period were years of “turmoil, exploitation and despair ... colonial governments were active throughout the area forcing men to abandon their fields and villages to work for European economic ventures.” In the case of Uganda, subjugated communities conformed to that largely repressive colonial legal regime. After the country’s political independence in 1962, some cosmetic legal-political alterations created conditions of instability by which residents were further alienated from both state-government dividends and rule of law enforcement procedures. The challenge was the development of elitist socio-economic forces pursuing domination of centres of power contrary to the nationals’ expected quest for democracy under self-rule. This tendency towards exclusion was responsible for the observed bad human conditions.

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23 Omara-Otunu (1987:1-7) gives background information on theories of related to the composition of ethnic and linguistic factors influencing composition of contemporary Ugandan human communities, progression to colonial modernisation, decay and disruption of administrative and political organisations during self-rule described in phrases such as “fragility of state” or “fragility of civilian administrations.”

24 Ayandele et al. (1984:153-154) discuss colonial Warrant Chiefs as all-powerful official agents of state trying cases, passing by-laws, administering colonial development projects and maintaining government stations.
which forced citizens to constantly struggle for the pursuit for freedom, justice and human dignity (Gitonga, 1988:2). Ultimately, the core of the challenge was Ugandan nationals’ ineptness to organise effectively as a people, leading to the recorded “political and constitutional instability.” They had failed to stand squarely in defence of their fundamental freedoms and human dignity. It was that kind of weakness that undermined citizens’ abilities to assert and coordinate pluralist community-based power even under the local governments and a decentralisation arrangement.

This argument is based on Dunleavy and O’Leary’s (1990:13) contribution that pluralism is or ought to include many things. In society, pluralism offers a defence of multiplicity in beliefs, institutions and organising interest-specific groups and opposes ‘monism,’ which is the belief that there is or ought to be only one thing. The essence of this argument is that Ugandan nationals needed to overcome their lack of ability to recognise their roles in building and sustaining social pluralism and civil institutions of governance guided by the constitutional principle of separation of powers. Whereas the condition of weak citizens remained a challenge, underneath was the opportunity for them to reclaim the benefits accruing from constitutional separation of powers of state. Upholding the principle of separation of powers is a value that emphasises practical checks and balances of power through organised and active citizens’ groups working in concert (Green, 2008:14).

Under self-rule, the challenge at hand remained that worrisome condition of Ugandan citizens’ failure to enforce rule of law. Gitonga (1988:22) argues that if freedom of the people is the cornerstone of constitutional democracy, for democracy to survive, the people must value freedom sufficiently to treasure and nurture it. Gitonga further asserts that the people must be prepared to defend democracy “with the requisite sacrifices of sweat, tears and blood!” His contribution to the debate finds relevance in Article 3 of the

25 Gitonga (1988:2) discusses the quest for liberation of mankind from all manner of servitude, injustices, discriminations and humiliations.
Constitution of Uganda 1995, which partly provides that, “All citizens of Uganda shall have the duty at all times to defend this constitution, and in particular, to resist any person or group of persons seeking to overthrow the established constitutional order” (GoU, 2006:31). However, despite the largely enabling constitutional and legal frameworks, Uganda citizens’ lack of appropriate skills to stand squarely and coordinate defence of their fundamental freedoms and human rights is still challenging.

For example, at the time of this study, the courts of law in Uganda were still threatened by sections of the executive who happened to come into conflict with the law. Arising from brutal acts of irresponsible command of the Uganda Police Force, “troubled Kayihura faces legal and public opinion court” (Asiimwe, 2016:8), in that the army general was facing a private criminal case over accusations of brutal assaults on opposition demonstrators and had the support of his bosses in the executive. Some of those incidents were so nasty that Kiyonga (2016:4) quotes Chief Justice of that time, a Katureebe, as saying, “All political leaders must address this issue of hooliganism. Where do they want our country to go?” Indeed, the mass media had it that “Chief Justice Bart Katureebe appealed for protection of the courts and court officials following an incident at the Makindye court in which a mob” of the Inspector General of Police supporters “laid siege to the premises and threatened to lynch prosecution lawyers” (Asiimwe, 2016:8).

Elsewhere, police brutality and threats to courts of law were variously reported as “Unacceptable,” “Police chief in the dock,” and “How pro-Kayihura crowd sealed off Makindye court” (Asiimwe, 2016:8; Kiyonga, 2016). True, the challenge was that the “NRM officials enjoyed impunity...The government acts outside the law” (International Crisis Group, 2012:31). For this same reason, “more thinking, more action and more sacrifice, therefore, continue to be called for in the move towards the creation of democratic society” (Gitonga, 1988:2). These elusive aspirations reflected another challenge involving the continuous failure to harmonise relationships between the three arms of Ugandan government.
On the other hand, the heterogeneous nature of the Ugandan population/diversity dynamic was a hindrance that continuously influenced execution of structural government roles. Diversity of local communities was challenging because it was a multidimensional dynamic that adversely affected situations during general elections and subsequently influenced observance of separation of powers doctrine. Under such complicated circumstances of prejudice, the outcome tended to compromise Ugandan rulers so chosen. For instance, it inhibited judicial activism, delayed judicial reforms and discouraged judicial reviews (Kanyeihamba, 2010:278-295). In their turn, the national rulers bent conventional public policy implementation by promoting and protecting the parochial interests of the localities rather than emphasising nation-state institutional building efforts. A case in point was the fusion of the ruling party, state institutions and government departments, a trend that became not only a curse that undermined constitutionalism but also a challenge to procedural democracy and the doctrine of separation of powers inclusive.

As time passed, tyranny, chaos and disorder set in, finally attracting the NRM and its armed “No-party democracy in Uganda” attempts with the intention of precipitating that constitutional blight under “the personalised state.”

28 Kanyeihamba (2010:278-295) discusses “the status and role of the judiciary in governance…the ideal judiciary…the meaning of the independence of the judiciary…and executive, political and military assault on the judiciary.”

29 This argument finds bearing in a Presidential Speech by Apollo Milton Obote, namely, “Communication from the Chair of the National Assembly by the Hon. Dr. A. Milton Obote, the President of the Republic of Uganda, on the occasion of the ceremonial opening of Parliament on 20th April 1970.” The tenor of his speech explains why Uganda departed “from the style and standard of other countries and to make a serious attempt to discover her own style and standard.” That deliberate deviation from the generally accepted democratic norms of running matters of state proved costly. Opposition parties were neutralised effectively, one-party rule established and constitutional checks and balanced eliminated. Thus, Obote argues “one constitutional aspect of the beat of Ugandan drum is the decision to discard the Westminster inheritance of a divided House of Parliament.” That “beat of Ugandan drum” became the genesis of the “means for organizations of citizens to manage, direct and control…business.” Ultimately, the largely disturbing fate of non-Ugandans residing in the country was sealed and practically unfolded in the constitutional chaos of the 1970s, early 1980s and 1 October 1990 when the RPF/A ‘deserted the NRM/A’ and invaded Rwanda.


6.2.3 Continuous Failure of the Governments to Harmonise the Relationships between the Executive, Judiciary, and Legislative Arms of Government

Another challenge to the full realisation of the doctrine of separation of powers in post-independence Uganda involved the continuous failure of officials to harmonise the relationships between the three arms of government (executive, judiciary, and legislature). This institutional confrontation was observed in persistent and unfortunate incidents of conflict of interests amongst different social forces in Uganda. In addition, unrelenting hostility was variously exhibited as a result of changing the status of the federal states, traditional authorities and the institution of kingship between 1964 and 1970 (Kivejinja, 1995:6).32 For this reason, the Buganda nationalist expression in the state of Uganda remained challenging. This resulted in dual federalism, poor intergovernmental relations, increased intergovernmental competition and lack of or reduced goal congruence between Buganda kingdom and the central government because the rulers never recognised the fact that “state and nation can be mutually reinforcing but need to be distinguished as separate entities” (Dobratz et al., 2012:44).

In addition, there were resistance movements for asserting democratic struggles in favour of recognition and popular participation (Syahuka-Muhindo, 1994:273-317)33, as well as agitation by the trade union movement attempting to assert constitutional rights for workers benefits and guarantees for pluralist participation (Oloka-Onyango, 1994:480-496).34 Consequently, state institutional confrontation in what over a considerable period of time crystallised as “political question doctrine” is traced.35 In practice, under the country's self-rule the “political question doctrine” was applied by the executive to undermine judicial autonomy. Kivejinja (1995:6) contends that “the institution of kingship had stood since time immemorial as a repository of the people's will.” Tripp (2010:111) echoes the same argument. Syahuka-Muhindo (1994:273-317) on “The Rwenzururu Movement and the Democratic Struggle” for protecting popular interests. Mamdani (1994:519-563) on “Pluralism and the right of Association.” Oloka-Onyango (1994:480-496) describes the concept of “political question doctrine” in Uganda as the volatile political situation accruing from intense contradictions between the executive and the other two arms of government. In practice, it is the invoking of systematic misuse of executive power to erode judicial autonomy. Oloka-Onyango further argues, “The ghost of ex parte Matovu still needs to be overcome as some elements in the judiciary appear
doctrine” was a technique by successive holders of executive power invoking systematic misuse of authority to erode judicial autonomy. Conventionally, this challenging practice was contrary to the Bill of Human Rights introduced in and recognised by all the four sets of the national constitutions the country had thus far. Political question doctrine was elitist exploitation of the emergent political situations by the executive arm of government. When invoked, it led to citizens’ constitutional rights to civil liberty and freedoms remaining in balance throughout the period of the country’s self-rule.

According to Kanyeihamba (2010:116-117), misuse of executive powers was possible through the application of express deportation orders regularised under the “Deportation (Validation) Act of 1966,” practicing of Emergency Powers (detention without trial) Regulations of 1966, incidents of direct assault on the judiciary and/or guided administrative decisions and court proceedings disregarding citizens’ liberties. Furthermore, Kanyeihamba (2010:96-97) shows how Obote as Prime Minister resorted to extra-constitutional powers in 1966 and established an extra-legal Obote I government, provoking the Buganda Kingdom establishment and legislature to resolve not to recognize the interim 1966 Constitution. This confrontation led Obote to unilaterally overthrow the 1962 federal constitutional arrangement and assaulted the judicial powers that had been constructed under it. This challenging development severely curtailed the latitude of the judiciary as it introduced direct control of judicial officers by the executive, which in turn, threatened citizens’ civil liberties. The infamous detention of a one Micheal Ssempebwa Matovu accruing from his spirited opposition to the unconstitutionality of Obote’s 1966 actions set the precedent of the observed “political question doctrine” in Uganda.

36 This situation reminds us of Robert Bolt’s (1960:12) quote by Sir Thomas More: “Well...I believe, when statesmen forsake their own private conscience for the sake of their public duties...they lead their country by way of short route to chaos. And we shall have my prayers to fall back on.”
Accruing from that ‘Matovu’s ghost case’ precedence, it was concluded that even under constitutional dispensation, serving holders of executive power would override citizens’ human rights and liberties. This tendency put constitutionalism in post-independence Uganda at a crossroads. Some specific cases attracted not only executive powers’ bias but also its wrath. Executive rulers’ affinity to hold on to power encouraged impartial procedures that turned controversial legal situations into “political questions” to the convenience of the former. In relation to this, Oloka-Onyango (1994:484-517) and Kanyeihamba (2010:249-297) present five glaring examples are noteworthy.

The first one involved ‘Grace Ibingira vs. Uganda 1966, challenging the illegal detention of the five cabinet ministers opposed to Obote’s political machinations and methods of personalised rule.’ The second one involved ‘Brig Shaban Opolot vs. Attorney General 1969, challenging the holders of executive power who had in effect dismissed him as Army Commander for refusing to execute the illegal order to attack Buganda Kingdom Headquarters.’ The third example involved ‘the introduction of Legal Notice No. 1 of 1986, legitimising the extra-constitutional assumption of power by the NRM group of armed political fighters and promising a fundamental change because they were not ready to be subjected to judicial oversight and control.’ The fourth one involved ‘Maj. Gen David Tinyefuza vs. Attorney General when the former attempted to leave the military service by means other than “being removed from the army on appointment to civilian position by the head of state” not provided under Armed Forces Act; and, the fifth example involved ‘Brig Henry Tumukunde vs. Attorney General involving the Army Council under the influence of its High Command, forcing him to leave Parliament as their representative’37 (Oloka-Onyango, 1994:484-517).

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From the above examples, it is concluded that, in all these cases, the essence of the “political question doctrine” was invoked and plaintiffs lost. Therefore, all serving holders of executive power in post-independence Uganda had entrenched “arbitrariness and authoritarianism” (Kanyeihamba, 2010:279). In fact, that tendency set aside the executive power-holders of the day as not only all-powerful but also very dangerous to possible opponents. The unfolding trend of the “political question doctrine” was one that was began in the mid-1960s. Neutralisation of Brig. Shaban Opolot as the UA Commander by Obote I, coupled with the detention without trial of Matovu, were cases in point. Gradually, the 1970s registered the “Suspension of Political Activities Decree” by Idi Amin coupled with the tragedy of the abduction of Chief Justice Benedicto Kiwanuka from his official chambers in the High Court and eventual disappearance (Kanyeihamba, 2010:65-128). Ultimately, in 2005, under the NRM regime, the Kiiza Besigye and his co-accused stood out more prominently because “the High Court was besieged by armed personnel” (Kanyeihamba, 2010:289). This incident was not only another rude reminder of the “political question doctrine” challenge but also a dilemma to the doctrine of separation of powers principle in post-independence Uganda.

Therefore, despite the history of struggles for national independence coupled with bloody civil wars accruing from unfulfilled expectations of self-rule, challenges to respect and full realisation of the doctrine of separation of powers in particular and constitutionalism in general, persisted. By the time the NRM forcefully appeared on the scene of governing the country, radical harmonisation of the relationship between the arms of government was necessary. However, the national predicament involving disrespect for separation of powers principle haunted the NRM. So, “the Constitutional Review Commission chaired by Professor Fredrick Ssempebwa was established on 9 February 2001 by Legal Notice No. 1 of 2001” (GoU, 2004:1). This situation became “necessary because experience had shown

38 Kanyeihamba (2010:65-128) discusses “the dramatic years and the age of militarism in Uganda.”
from operating the current Ugandan Constitution since it came into force in 1995 that it had several defects and several areas of inadequacy” (GoU, 2004:2).

The challenging issue was that the said constitutional “several defects and several areas of inadequacy” not only impinged upon proper public management and administration of the country, but inevitably affected democratic governance, which in turn, threatened citizens’ liberty. Consequently, a Government White Paper accruing from the Constitutional Review Commission (CRC) Report recommended among others, harmonisation of “relationship between arms of government...with a clear separation of roles for the three organs of government” (GoU, 2004:8-12). Since the NRM government then still followed the “no-party movement political system,” most of the recommendations on “clear separation of roles for the three organs of government” were accepted with many reservations. This study found out that that kind of official response was indicative of the challenging nature of building impartiality of government. It was challenging because the former guerrilla fighters now in positions of civil management of public affairs were failing to adjust to the demands of procedural democracy. This argument is justified by “if the multi-organisation/multiparty system is chosen, steps will be taken to adjust the existing laws with the new political system” (GoU, 2004:16).

Furthermore, the CRC spotted the nature of the dilemma involving executive authority in relation to the role of parliament and the judiciary. Therefore, it recommended that “the President should not exercise any legislative powers.” However, whereas government accepted this recommendation, it observed that “the President should exercise limited powers in matters related to investment, environment, public health, and historical and archaeological sites” basing on provisions of Article 79(2) (GoU, 2004:17). This said Sub-Article provides, “except as provided in this constitution, no person or body other than Parliament shall have power to make laws in Uganda except under authority conferred by an Act of Parliament.” No wonder, therefore, that “corruption and patronage”
together with “the carrot and the stick” approaches became useful tools in the hands of the NRM regime to manipulate the majority members in the National Parliament. Connected with these “corruption and patronage” ways of characteristic NRM tactical administration was government rejection of the CRC recommendation that “a Member of Parliament who accepts the office of Minister should vacate his or her seat in Parliament.” Government argued,

“Participation of Ministers as Members of Parliament facilitates useful interaction by Ministers in Parliament with Members of Parliament as representatives of the Executive and promotes cohesion between the Executive and Legislature ... minimises costs of administration ... vacation of seats by elected Members ... would increase the cost of public administration through by-elections...and would create further costs after every Cabinet reshuffle” (GoU, 2004:18).

This spirited defence of the NRM government position partly explains the challenge of respecting, promoting and fulfilling the principle of separation of powers in post-independence Uganda. Relatedly, on a number of occasions, the executive has exercised overt dominion over the legislature in Uganda. A case in point is when the issue of lifting the presidential age limit came up last year (2017). As elaborated under Section 4.9, when the executive branch realised that President Museveni would reach the mandatory maximum presidential upper age limit of 75 (having been born in 1944) in 2019, and therefore would be ineligible to stand for president in the 2021 presidential election, cabinet met and agreed that the age limit provision should be scraped from the Constitution through a constitutional amendment. Shortly after, the executive summoned NRM MPs and told them they were duty bound to support the Bill. In addition, the executive gave each of the MPs colossal amounts of money which was used for popularising the proposed amendment in their constituencies. Most importantly, the executive required Parliament to debate the proposed Bill

40 International Crisis Group (2012:25) is very clear about “Museveni’s Approach” and governance strategy. His problem stemmed from his choice to govern through the patronage system he had constructed over two decades. He had to protect his most important ministers, many of them ambitious and greedy on their own account.
and amend the Constitution before Christmas. It is thus not surprising that the Bill was hurriedly discussed and finally passed on 20 December 2017 by 317 out of the 394 MPs who attended Parliament that day (URN, 2017:1). Shortly after, President Museveni signed the Bill into law on 27 December 2017 (UNR, 2018:1). Thus, throughout the whole process of the age limit constitutional amendment, it is very clear that the legislative arm of the government was used to serve the interests of the dominant state organ – the executive.

Relatedly, shortly after being sworn-in as President in May 2017, time had come for the Speaker and Deputy Speaker of Parliament to be elected. It was, thus, resolved by Cabinet that NRM MPs in Parliament should elect Hon. Rebecca Kadaga and Hon. Jacob Ollanya, as Speaker and Deputy Speaker, respectively. Fearing that some errant MPs would vote otherwise, the President/head of the executive decided to physically and personally attend the voting session in Parliament. Fearing the intimidation which the President’s presence caused during the voting process, most MPs decided to vote for the above mentioned two people in their respective positions. Shortly after their election, the Speaker and Deputy Speaker (both members of the NRM) were sworn-in by the President. Meanwhile, the few errant MPs who voted against the executive’s wish were later required to appear before party disciplinary committee (Watera, 2016:1; Mubiru, 2016:1). Against this backdrop, this is a clear manifestation that in Uganda, adherence to the doctrine of separation of powers is very difficult because parliament and judiciary are dominated in varied forms by the executive.

6.2.4 Persistent High Levels of Poverty among the Masses
In terms of post-independence Uganda, the challenge of persistent high levels of poverty afflicting most of the general populace involved a spiral of dilemmas, in turn complicating efforts toward separation of powers.

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41 A series of National Development Plans initiated by the British Protectorate Government since 1946 to the NRM’s Vision 2040, show that poverty levels in the general populace of Uganda remained high.
Contrary to the conventional arena of the state as a progressive provider of public goods and services to its citizens together with other people within its territory, post-independence Uganda experienced increasingly authoritarian and repressive regimes. This argument concurs with Mengisteab’s (2008:37) contention that,

“The post-colonial African state has long been viewed as a major culprit in Africa’s social-economic crisis precipitating the problem of poverty. Its failure to coordinate policy with broad social interest and to reconcile its governance system with the institutions and cultural values of its citizens is a major factor.”

The culpability of the post-independence African state, therefore, remained a challenge to the doctrine of separation of powers, and Uganda was no exception. For most of Uganda’s self-rule time, governments have tended to be on rampage against society, a tendency that was complicated by the adoption of the liberal market economic policies by the NRM government. Its brand of liberal market economic policies were associated with debasing public institutional framework coupled with the erosion of broad social interest. These developments increased socio-economic marginalisation of the rural and urban poor communities (Nuwagaba and Rutare, 2014:8-13). As an issue of relevance, persistent high levels of poverty complicated the situation of ignorance and disease, which was recognised as hindrances to citizens’ liberty since Uganda had attained self-rule in 1962 to the time of this study. So, given the spiral of the causes and effects of poverty, the majority of the Ugandan population was greatly affected by those vices.

The debate is that rather than becoming involved in progressive thinking, poor Ugandan nationals spent most of their time worrying about elusive

42 Article 2 of the International Covenant on Economic, Social and Cultural Rights; Uganda is a signatory to this covenant
43 Nuwagaba and Rutare (2014:8-12-13) discusses prevalence of poverty and its indicators in rural and urban communities together with government being cognisant of the declining quality of life because of the highly monetised economy.
44 Obote (1961) described what is required “in order to break through the barriers of ignorance, poverty and disease which stand between us and a prosperous life.” By 1997, the NRM government adopted the Poverty Eradication Action Plan as an intervention towards addressing those nationally persistent vices.
means for survival. That distress complicated the poor human security situation in post-independence Uganda. That suffering was further compounded by shoddy public institutions that encouraged systematic exclusion of underprivileged sections of society. Furthermore, there were inadequate state interventions and poor quality of governance accruing from leaders’ failure to promote the principle of separation of powers (Nuwagaba and Rutare, 2014:3, 14-19). Green (2008:81) shows how promotion of separation of powers is possible by way of constitutional checks and balances. Different institutions of state exert regulated control on each other in such a way that rule of law determines the degree to which regimes respect the human rights of their citizens.

Therefore, with respect to high levels of poverty, ignorance and disease, people who were socially and economically marginalised lived under absolute poverty and could not even appreciate the value of procedural democracy let alone constitutionalism.45 The gist of Kothari’s (1993:52-53) argument is that:

“Those who are engaged in such a systematic onslaught on the poor and deprived sections of society do not seem to realise the costs of what they are doing. As the sense of insecurity among the people grows alongside persisting poverty, unemployment and increasing injustice and discrimination, it pushes the poor and the unemployed into a culture of protest, anger and desperation contributing further to an overall condition of insecurity which is then exploited by sectarian politicians and is sought to be put down by a criminalised police and para-military establishment” (Kothari, 1993:52)

Nuwagaba and Rutare (2014:105) show how in Uganda poverty and politics are symbiotic. He contends that the politicians who are careful to avoid antagonising the interests of the poor consider them their allies. In that “poverty feeds politics as politics sustains poverty. It is apparent the poor are conscious of their predicament and their role in politics ... urbanisation of poverty.” In that regard, people’s power, the workings of elected

45 Kothari (1993:52-53) argues, “It is this wanton criminalisation of poverty spurred on by the politics of the elite that poses the most fundamental crisis of survival. It also poses a serious crisis in the system and its stability.”
legislators, are often overlooked but are essential in the construction of effective, accountable states (Green, 2008:83). The central debate therefore was the challenge facing the generally poor populace to organise around their broad social interests and build a viable Ugandan constitutional state system that was both effective and accountable.

6.2.5 Persistence of Uganda’s Fragmented Institutions of Governance

Whereas constitutionalism goes hand in hand with constitutional rights awareness and institutionalisation of state agencies, in Uganda, persistence of fragmented institutions of governance remained an outstanding challenge to promoting the doctrine of separation of powers. Historically, the executive arm of government, led by the presidency, has persistently manipulated governmental systems and transformed them into personal rule. Incumbent presidents have either ignored or twisted constitutional arrangements through both patronage and coercion (International Crisis Group, 2012:35). It was this characteristic mannerism that brought about chronic misuse of the military system to influence political developments. Therefore, the focus of this sub-section is describing the origins and development of institutional tensions that frustrated implementation of the constitutional framework in post-independence Uganda. At the dawn of Ugandan national independence event:

"British Protectorate officials and the indigenous politicians were focused on negotiating the constitutional transfer of political power to an elected government ... when the British Government still envisaged that, in terms of global strategy, Uganda would remain within its defence sphere" (Omara-Otunu 1987:44-45)

Those foundational arrangements for Ugandan constitutional self-rule reveal the challenging origins of real constraints to the doctrine of separation of powers. Subverting the generally agreed upon constitutional arrangement fragmentation of institutions of governance was resorted to as the rulers' useful instrument. It created tensions and issues related to irreconcilable political interests of the strong military-economic groups against the broad social-cultural interest making the country difficult to
govern (International Crisis Group, 2012:1). No serious thought was given to the fair and just preparations for the imminent national self-rule but only ad hoc, political pressure-based and hasty arrangements that were activated for convenience purposes. As a result, Obote I administration recklessly abolished monarchism in Uganda (Omara-Otunu, 1987:72-77), while Museveni and the NRM government attempted to divorce the reinstated traditional cultural leaders from national politics but with disastrous results (International Crisis Group, 2012:13-18). However, the Ugandan families’ setup was gifted by nature’s endowment as means of basic sustenance. Therefore, families and their clans’ lineages were self-perpetuating as the nucleus of public life, a fact that was never considered during negotiations for national independence.

For example, in the context of impending colonial masters’ hand over of political power to nationals, in January 1962, seven of the Uganda Non-Commissioned Army personnel were instantly selected for commissions. They were assisted to travel to Nairobi, Kenya, and joined another five stationed there to attend the “Officers’ Selection Board” at the Headquarters of the King’s African Rifles of the East African Command (Omara-Otunu, 1987:45). Meanwhile, on the political scene an amalgamation of United Kingdom Secretary for state for colonies officials hosted mostly inexperienced and largely amateurish political party heads as the Ugandan constitutional conference delegates. That delegation was composed of a mixture of lopsided traditional cultural leaders and some selected District and Urban authorities’ representatives not elected representatives of local communities (Kanyeihamba, 2010:31-55).

46 International Crisis Group (2012:1) describes how Uganda had been difficult to govern since the British Protectorate days, and the post-independence rulers made attempts at centralising power by relying on military force, which made matters worse.

47 Omara-Otunu (1987:72-77) shows how Obote accused Mutesa of being unable to keep separate his two roles as Head of State and Kabaka of Buganda, and on 24 May 1966. The attack on Mutesa’s Palace led to the eventual abolition of monarchism under 1967 Constitution.

Therefore, that was the genesis of persistent fragmentation of public institutions of governance in post-independence Uganda. This finding explains how that group of the newly commissioned army officers of the King’s African Rifles had neither true organic linkage to nor respect for the group of politicians gathered in London. As a matter of concern, there was very little time given for transition from British colonial domination to Ugandan responsible self-rule. Hastily formed, that fragmented governing political-military oligarchy inherited the King’s African Rifles personnel as the core of the “Home (Internal) Affairs Ministry” as a safeguard to possible internal dissidence, not a national defence institution. This explanation serves to show how tricky self-rule was destined to be. It unfolded as a difficult task for those post-independence Ugandan rulers to uphold that deliberately fragile constitutional arrangement. However, the main contestation is because the same members of the constitutional conference delegation became national rulers to implement their decisions and were in the know about the delicate bargain they had arrived at in London, why did they end up failing to respect, promote and fulfil the demands of the doctrine of separation of powers! This national predicament involving decision-makers arriving at deliberately wrong conclusions has remained the real challenge up to the present day (International Crisis Group, 2012:10-13).49

6.2.6 The Curse of Low Levels of Civic Competence in the Ordinary Citizens of Uganda

The curse of low levels of civic competence in Uganda accrued from the effects of British Imperial rule, a disaster that never encouraged the culture of popular participation in matters of institutional governance (Ayandele et al., 1984:332-334).50 The central argument in this sub-section is the low

49 International Crisis Group (2012:10-13) gives a deep description of the tensions accruing from careless decision making with regard to the return to multi-party politics, the NRM as a military system and formation of a weak parliament that ended up becoming a rubber stamp for the executive.

50 Ayandele et al. (1984:332-334) articulate how colonial intervention in Uganda was largely disruptive especially through the colonial chiefs’ system who wielded petty dictatorships over many villages that had been autonomous. During the time of World War II, colonial economy stopped expanding and Protectorate Government reduced its activity to the minimum. However, formal education for the privileged few, coupled with new administrative and social organisation, had began to blossom.
quality of Ugandan government institutions surviving with minimal or no objection from the downtrodden ordinary citizens. Munini (2016:11) raises a relevant question about the naïve explanation regarding public expenditures in respect of Members of Parliament travels abroad by Parliament’s director of communications “stated that MPs were entitled to those allowances...What are the normal Ugandan citizen’s entitlements? Is she not entitled to good healthcare and other social services...What exactly does an MP do that makes him more entitled to all this money...?”

Van Wyk (2007:17) states that, “Good leaders produce results, whether in terms of improved standards of living, basic development indicators, abundant new sources of personal opportunity, enriched educational opportunities, skilled medical care, freedom from crime, or strengthened infrastructure.” Therefore, low levels of civic competence amongst Ugandan local communities encouraged non-transparent governance. Eventually, elitist methods of exercising public power were possible in post-independence Uganda because even when constitutions were in operation, the rulers were less transparent in public affairs management. It was that deliberate opaqueness of the rulers that gave institutions of state their characteristic nature of weak and flawed agencies (International Crisis Group, 2012:3). That situation called for improved coordination of efforts towards increased citizens’ constitutional rights awareness education campaigns.

In post-independence Uganda, the power of the individual rulers was closely knit with the power of those public institutions they led, and the system was maintained through “a facade of democratic formalism” (International Crisis Group, 2012:3). Increasingly, the veneer of power of the presidency greatly influenced the other arms of government and public institutions. That challenge to the doctrine of separation of powers was complicated by the curse of low levels of civic competence amongst the ordinary citizens who could not deal with the fusion of presidency and the individual’s power effectively. Okurut (2016:11) observes that,
“just as it was in the Animal Farm, we also had some cosmetic revolutions from colonialism to Obote I; from Obote I to Idi Amin; from Idi Amin to Obiote II; from Obote II to a series of inconsequential governments; and from this inconsequentiality to the present NRM...these revolutions have hardly delivered any transformative improvements of the grassroots.”

Okurut’s (2016:11-13) main concern is the continued tinkering and non-adherence by legislators to the originally established constitutional checks and balances. Okurut further notes that:

“Nothing in Uganda’s rugged constitutional development path illustrates better the revisionist nature of legislations...than the removal of presidential term limits in 2005 and the promulgation of the Public Order Management Act of 2013 and a Bill to scrap age limits.”

Indeed, paths to personal power were varied. “Leaders acquire their position through ascription, succession, nomination, appointment, election or self-appointment” (Van Wyk, 2007:17-18). For example, whereas President Obote was able to manipulate constitutional arrangements, compromise the parliament, rule by means of a single-party state in the 1960s and later forge a dominant military-backed UPC Party rule in the early 1980s, President Museveni derived his personal power from his ability to arrive at ruthless decisions promptly and definitely. Hill (1983:129) asserts that:

“The leaders in every walk of life decide quickly, and firmly. That is why they are leaders. The world has the habit of making room for the man whose words and actions show that he knows where he is going.”

This was the same attitude Museveni maintained and demonstrated through managing a loyal military formation effectively. Under his administration, democracy was an issue that largely faded from the scene. It was a challenge to the doctrine of separation of powers and explains why he has ruled the longest so far in post-independence Uganda. The point of debate is about assessing whether the NRM system was controlled by the constitution or the NRM Party controlled the constitution! Ordinarily,
public power is regulated by official institutions of state and government. However, ‘constitutionalising personal power of the presidency’ in Uganda illustrated the causes and effects of the curse of low levels of civic competence in the general populace. This blight encouraged those rulers to largely govern in secrecy, corruption, patronage and weak laws (International Crisis Group, 2012:19-22).

Therefore, the curse of low levels of civic competence in the Ugandan general populace complicated its constitutional separation of powers’ dilemmas and provided limited choices to the citizens. It is concluded that mobilising efforts and working towards improved access to quality information and enhanced transparency as advocated for by Bauhr and Nasiritousi (2012:12) would create rare opportunities of tackling this challenge. Persistent low levels of civic competence amongst Ugandan citizens to enforce accountability of national rulers effectively remained a disturbing gap. Conscientisation about improved coordination, cooperation and communication efforts with regard to constitutional rights awareness would address those national dilemmas.

6.2.7 Constitutional Dilemmas and Uganda Citizens’ Choice

Young and Mustafa (2002:106-107) highlight ethnic conflicts as peripheral but vital causes of militarisation of states in post-independence Africa, Uganda inclusive. Militarisation of the Ugandan state was one of the constitutional dilemmas that eventually brought about the diametrically opposed and antagonistic armed formations in the country, an issue to which Museveni (1997:111-112) gives credence.51 Mutibwa (2008:99-102) is at pains to interpret the Ugandan national constitutional dilemma in terms of The Buganda Factor in Uganda Politics. Mutibwa shows the challenges to separation of powers that accompanied the introduction of the Republican Constitution in Uganda and further illustrates the

51 Museveni (1997:111-112) gives views on the causes of the problematic sectarianism attitudes harboured by both Fronasa and Kikosi Maalum that eventually brought about campaigns of un-governability in Uganda and a bloody civil war in the Luwero Triangle.

The constitutional predicament and Ugandan citizens’ choices were further complicated by the implications of Articles 5(2) and 178 and First Schedule, which group only 75 out of the 112 districts into 16 possible regional governments. In addition to that arrangement was the special administrative rank of Kampala as being outside Buganda region. Those official policy bargains made the immigrant target workers invisible. They also created largely unnecessary tensions with and amongst local governments (Mutibwa, 2008:205-206; International Crisis Group, 2012:6-8) that greatly restricted citizens’ choices for uniform participatory rights in the affairs of governing the country. The essence of this argument is the wide range of views accruing from the suggested possible regional governments covered in the list of specified districts subject to those constitutional provisions as the following:

“The districts of the regions of Buganda, Bunyoro, Busoga, Acholi, and Lango...shall be deemed to have agreed to form regional governments...the headquarters of ...of Buganda, Mengo Municipality to be created by Parliament...in Bunyoro, Hoima Municipality...in Busoga, Jinja Municipality... Acholi, Gulu Municipality...in Lango, Lira Municipality” (GoU, 2006:32, 139-140, 195).

The explanation adduced was “the shift to patronage and personal rule” (Mutibwa, 2008:205-206; International Crisis Group, 2012:6-8), the modification of which was found to be essentially wrong. After all, Dersso (2008:5) argues that the “failure of post colonial state to recognise ethnic diversity and develop the necessary institutions and policies for accommodating the interests and identities of members of various groups” was the main cause of conflict in Africa.

Treverton et al. (2006:30) give a useful conclusion whose contribution that serves to guide the current purpose: the range of views among participants suggest why, even among those who might agree on the need for reforms or “revolutionary changes,” it is difficult to agree on the course or courses of action. While many commentators and analysts could list constitutional
dilemmas for Uganda, the divergence of their views on citizens’ choices and how to make rulers respect the doctrine of separation of powers remained a hindrance. This obstruction complicated how Ugandan constitutional dilemmas could be changed, and whether changing them would make significant differences. This conclusion was reached because throughout Uganda’s post-independence period, each time a new political class assumed the reins of power and responsibility being national rulers, failure to respect constitutionalism was the sure outcome.

The tendency of leaders being hostile to the doctrine of separation of powers was not unique to Uganda. For instance, Kenya Section of the International Commission of Jurists (ICJ-Kenya) and Stiftung (2008:10-21) discuss the complicated nature of failure of the post-independence African states to perform the role of statehood. They illustrate that the option chosen by the post-independence states led to the rejection of accommodative structures of governance. Instead, states resorted to over concentration of state power in the executive, leading to the rise of a single party-rule phenomenon and together with the observed crisis of national integration, cultural domination and exclusion. However, at the time of this present study, the challenge involving African leaders’ disrespect of the doctrine of separation of powers was beginning to be identified correctly. That qualitative realisation has giving rise to new opportunities associated with adjusting to multi-ethnic nation-building as an alternative.

ICJ-Kenya and Stiftung (2008:21) suggest restructuring the African state and its official making processes in such a way that they are anchored on the shared social values, cultures and traditions of the continent’s diverse peoples. The debate is that by way of that kind of restructuring of the post-independence African state would emerge a just political order that gives all the diverse national groups the opportunity to participate in decision making by means of separation of powers, mutual respect and equal concern. For example, Fombad (2007) examines the possible role of that constitutionalising political parties can play in checking majoritarian abuses in post-independence Africa politics by looking at the diverse
constitutional approaches and practices. Fombad’s main concern is the weak and flawed constitutional foundation on which political rights were being exercised. Therefore, he suggests constitutionalising the status of political parties within the framework of certain basic and legally enforceable principle separation of powers inclusive. That kind of constitutional reform would ensure a fair and just outcome to competitive processes and enable the other arms of state to play a critical role in enhancing the prospects of constitutionalism and associated democracy.

Fombad’s pessimism is premised on the wave of democratisation that swept across Africa following the end of the global Cold War. That wave of democratisation generated expectations of a new dawn and the end of authoritarian and incompetent dictatorships that had earned the continent notoriety for political instability, civil wars, famine and similar ills. In short, leaders’ failure to protect, respect and fulfil the demands of the doctrine of separation of powers brought about those interrelated and interconnected challenges. Those challenges were translated into the recorded episodes of misery, pestilence and destitution on the continent vast with rampant abuse of power.

6.2.8 Persistence of High Levels of Corruption in all the Three Arms of Government

Since independence, almost all Ugandan regimes have been marred by corruption and abuse of power. The challenge of corruption hindering the doctrine of separation of powers in post-independence Africa is well illustrated in Ngugi wa Thiong’o’s (1982) Devil on the Cross, literally a work where he portrays them as the “devil deeply entrenched into the society.” Ngugi wa Thiong’o (1982:1) notes that:

“The devil, who would lead us into the blindness of the heart and into the deafness of the mind, should be crucified, and care should be taken that his acolytes do not lift him down from the Cross to pursue the task of building Hell for people on Earth.”

When the NRM Government took over power in 1986, fighting and eliminating corruption in all aspects of public life was one of their key goals. But while the government has since then put in place very solid legal and
institutional frameworks in its fight against corruption, the vice has been, is, and continues to be a serious menace to the country. Corruption in Uganda is widely spread and deeply entrenched in almost in all aspects of life, in both government and private organizations (Martini, 2013; Open Society Foundation, 2015; Kewaza, 2016). In the public sector, Martini observed that corruption has fully entrenched almost all government sectors, including the judiciary, legislature and executive, as well as other “government institutions, including procurement, police, and the defence, education and health sectors” (Martini, 2013:1).

Now, one wonders how the judiciary and legislature would effectively check the powers of the executive arm of the government when the former are key recipients of bribes and other forms of corruption from the latter! With persistently higher rates of corruption abounding in all the three arms of government, each of the arms of government finds itself in a moral dilemma to exerting oversight and instituting effective checks and balances onto the other arms of government, hence, the failure to ensure the full realisation of the doctrine of separation of powers in Uganda.

6.3 Chapter Summary and Conclusion
This chapter has explored the challenges that have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda. It has discovered that the failure of Uganda to fully realise the doctrine of separation of powers since 1962, is as the result of eight factors, summarised as follows.

First and foremost, the chronic use of state-inspired violence by the executive arm of government in the post-independence Uganda, has continuously made civilian authorities, particularly the judiciary and parliament, appear inferior before the military and executive establishments. Second, the heterogeneous nature of the Ugandan citizens and their inability to effectively agitate for the proper enforcement of the law has since independence greatly inhibited judicial activism, delayed judicial reforms, discouraged judicial reviews, undermined citizens’ ability to assert and coordinate pluralist community-based power, and ultimately
compromised the ability of the national rulers to effectively implement conventional public policy by promoting and protecting the parochial interests of the localities rather than emphasising nation-state institutional building efforts.

Third, the continuous failure of the governments to harmonise the relationships between the executive, judiciary, and legislative arms of government, has overtime severally resulted in: state institutional confrontations during which successive holders of executive power have invoked systematic misuse of authority to erode judicial autonomy; incidents of direct assault by the executive on the judiciary and/or guided administrative decisions and court proceedings disregarding citizens’ liberties; direct control of judicial officers by the executive, which in turn, has threatened citizens’ civil liberties; the abrogation or complete disregard of constitutions; and several other constitutional defects and areas of inadequacies which have inevitably impinged on the proper administration of the country.

Fourth, the persistent high levels of poverty among the Ugandan masses has complicated the situation of ignorance and disease, which for long were recognised as hindrances to citizens’ liberty since Uganda attained its self-rule in 1962. This is because, rather than becoming involved in progressive thinking, poor Ugandan nationals have spent most of their time worrying about elusive means for survival. Thus, with respect to high levels of poverty, ignorance and disease, Ugandans who have socially and economically been marginalised since independence have lived under absolute poverty and have not even appreciated the value of the doctrine of separation of powers and procedural democracy, neither have they managed to organise around their broad social interests and build a viable Ugandan constitutional state system that was/is both effective and accountable.

Fifth, the persistence of Uganda’s fragmented institutions of governance, has historically motivated and enabled the executive arm of government, led by the presidency, to persistently manipulate governmental systems
and transform(ed) them into personal rule. As a result, incumbent presidents have either ignored or twisted constitutional arrangements through both patronage and coercion, which presumably has motivated the chronic (mis)use of the military system to influence the judiciary, legislature, and other political developments.

Sixth, the curse of low levels of civic competence in the ordinary citizens of Uganda, has since independence complicated the constitutional doctrine of separation of powers’ dilemmas by not only providing limited choices to the citizens but limiting their ability to effectively deal with the fusion of the presidency and individual power of the president. This, supposedly, has enhanced the proliferation of low quality Ugandan government institutions which overtime have survived with minimal or no objection from the downtrodden ordinary citizens.

Seventh, the constitutional dilemmas and Uganda citizens’ choices, particularly with regard to ethnic conflicts and militarisation of the state, among others, have not only brought about diametrically opposed and antagonistic armed formations in the country, but also have continually heightened the tendency of leaders being hostile to the doctrine of separation of powers in Uganda. This has historically created unnecessary tensions and complications among the Ugandan citizens with regard to whether and how the constitutional dilemmas would be handled. This has ultimately and greatly restricted people’s choices for uniform participatory rights in the affairs of governing the country since independence.

Lastly, corruption has been and continues to be widely spread and deeply entrenched in almost all government sectors in Uganda, including the judiciary, legislature, and executive. With persistently higher rates of corruption abounding in all the three arms of government, each of these arms finds itself in a moral dilemma which hinders its institution of effective checks and balances onto the other, hence, the impossibility to ensuring the effective and/or full realisation of the doctrine of separation of powers in Uganda.
By uncovering the foregoing eight challenges that have hindered the full realisation of the doctrine of separation of powers in post-independence Uganda, this Thesis has not only achieved the third objective of the study but has also generated additional reasons which, together with the factors discussed in the previous chapter, have rendered the realisation of the doctrine of constitutionalism in post-independence Uganda not only problematic but also very difficult, if not impossible in many cases. The next chapter will delve into the Theory of Neo-patrimonialism and assess its relevance in explaining and enhancing the holistic understanding the contested nature of constitutionalism in Uganda between 1962 and 2018.

52 The third objective of the study was: ‘To determine the challenges that militated against the full realisation of the doctrine of separation of powers in post-independence Uganda.’
CHAPTER SEVEN
APPLYING NEO-PATRIMONIALISM TO EXPLAIN THE VOLATILE STATE OF CONSTITUTIONALISM IN UGANDA SINCE INDEPENDENCE

7.1 Introduction
As indicated in Chapter Three, the Theory of Neo-patrimonialism is considered to have practical relevance in explaining the volatile state and nature of constitutionalism in Africa. Kratt supports this view when he observes that neo-patrimonialism is the unchanging way which “has persistently characterised the way in which ‘Africa works’ since independence” (Kratt, 2015:1). Moreover, the Theory is perceived to be “the foundation stone for the system which drives African politics (Francisco, 2010:1), and it is said to have “defined African politics since independence” (Lindberg, 2010:123; Hyden, 2000:18; Beresford, 2014:2; Erdmann and Engel, 2007:106). Against this backdrop, this chapter applies the Theory of Neo-patrimonialism to not only authenticate the above claims, but, more importantly, to prove that indeed, Uganda’s political developments and their resultant volatile nature of constitutionalism are explainable within the theoretical lens of neo-patrimonialism.

After this introductory section, the chapter delves into neo-patrimonialism in post-independence Uganda with special focus on how it has been applied by the nine presidents who have ruled Uganda since 1962 to the present. Then the chapter ascertains whether the application of the Theory has, in any way(s), undermined good governance, democratisation, separation of powers, and generally constitutionalism, in Uganda. The chapter then concludes with a summary of the key findings generated with regard to the foregoing aspects.

7.2 Overview and Situating the Roots of Neo-patrimonialism in Uganda
Before Uganda was colonised in 1894 when it became a British Protectorate, it existed as an amorphous entity which was inhibited by traditional centralized kingdoms of Buganda (in the central region), Bunyoro (in the central and west), Toro and Ankole (in the west), and decentralized chieftdoms in Busoga (in the eastern region) (Mbazira n.d:1;
Moncrieffe, 2004:10-11). Each of these kingdoms and chiefdoms had a traditional ruler who wielded enormous traditional authority and legitimacy. As such, it can rightly be argued that Uganda was governed under patrimonialism during the pre-colonial period (Mbazira, n.d:1-3; Moncrieffe, 2004:13-15).

But by the time the British colonised Uganda and declared it a British Protectorate in 1894, the patrimonial system of governance had been fully and firmly entrenched by the pre-colonial traditional institutions. The British thus chose to adopt and maintain(ed) patrimonialism. The patrimonial British Imperial Governors in Uganda introduced indirect rule through collaborating agents who formed the chief oligarchy or a situation of “the unequal state: little men and big men” (Bayart, 1993:60). Ayandele et al. (1984:332-333) contend that:

“Colonial appointed-chiefs wielded petty dictatorships over many villages which had been autonomous...The corporate strength of the oligarchy was most clearly expressed in the new Lukiko or Parliament and the self confidence of the Ganda ruling class epitomised in the burly figure of Sir Apolo Kagwa, Katikiro or Chief Minister until 1926.”

In practice, right from the colonial times in Uganda, it was personalised executive power which fostered the methods of promoting the interests of the British Crown. That practice created vested colonial interests in the form of royal control of wealth, dominance of political space, and patrimonial experiences of personal rule. These three factors influenced local elites, who were mostly extracted from the Baganda chiefly agents, to nurture intrigues, double talk and subterranean grumbling, which potentially were harmful and detrimental to personal liberty and full enjoyment of peoples’ freedoms and human rights. Thus, throughout the colonial period, and at independence in 1962, Uganda had successfully maintained patrimonial aspects of leadership and governance on one hand, and had also fully embraced formal legal-rational institutions like the judiciary, legislature and executive, and other government auxiliary
institutions – each serving different purposes with differentiated powers (Mbazira, n.d:1-3; Moncrieffe, 2004:13-15).

It should be noted, however, that while the patrimonial system of governance had steadily been used by both pre-colonial and colonial rulers, the British colonisers at independence on 9 October 1962 handed over Uganda to Ugandans at under the presidential system of governance.53 Shortly after independence, however, a new form of governance was adopted by the political rulers in Uganda, and other developing nations in Africa and elsewhere alike. This form of governance was based on the reasoning and realisation that, while the fully established formal legal-rational institutions and rules or laws, like those under the presidential system of governance, were vital, they would not singly be relied upon for the effective regularisation and consolidation of power by post-independence leaders. The result was that, individual post-independence presidents invoked the use of traditional and/or informal institutions, rules, and norms, in the management and administration of formal rational-legal institutions, thus, the birth of neo-patrimonialism in Uganda where both formal and informal institutions, methods of work and practices co-existed and were invoked at anytime at the discretion, convenience and

53 The presidential system of governance is a type of public management procedure where the ideal of constitutional separation of powers between the popularly elected (political) executive is for a defined period, a representiative legislature for a limited term, and an institutionalised judiciary is promoted and respected. Under this system of governance, the elected executive names and directs the composition of government. This deliberate institutional design puts in place structural and actual powers that reside in the presidency which is charged with the duty of dispensing executive authority, hence, the term presidential government. Under the presidential system, the president is both “head of state and head of government” but his/her authority is limited and controlled by formal powers enshrined in the constitution, interpreted by courts of law and parliamentary legislation in the form of checks and balances. The generally elected president governs through a cabinet of his choice, as head of state and government (Carey, 2005:91; PIDS, 2006:1; Szilágyi, 2009:307-314). The presidential system of governance was first practised in the United States of Americas in 1789. The French presidency is different from the U.S. type because it is considered semi-presidential. In France, the president is universally elected but coexists with the prime minister and cabinet responsible to the legislature being the base of organisation of power of the state. This subsection is justified because it introduces the formation of presidential governments through popular elections as is done in the United States and France being pioneers of modern day republicanism. Presidentialism encouraged administration of public authority through separation of powers and built upon the republican idea (Carey, 2005:91; PIDS, 2006:1; Szilágyi, 2009:307-314).
wishes of the African presidents. This trend has persisted since 1962 when Uganda attained independence to this present day.

7.3 How Neo-patrimonialism was/has been Applied and Manifested during the different Presidential Regimes in Uganda from 1962 to 2018

Since independence (on 9 October 1962), Uganda has been ruled under nine successive regimes/presidents, namely; Sir Edward Mutesa II (9 October 1963 – 2 March 1966), Apollo Milton Obote (15 April 1966 – 25 January 1971), Idi Amin Dada (25 January 1971 – 11 April 1979), Yusuf Kironde Lule (13 April 1979 – 20 June 1979), Godfrey Lukongwa Binaisa (20 June 1979 – 12 May 1980), Paulo Muwanga (12 May 1980 – 16 December 1980), Apollo Milton Obote (17 December 1980 – 27 July 1985), Tito Okello Lutwa (29 July 1985 – 26 January 1986), and Yoweri Museveni (26 January 1986 – present). These presidential regimes form the basis for assessing whether and how neo-patrimonialism was/has been applied and manifested in Uganda since 1962 to the present. However, considering that most of these regimes were short-lived, the discussion largely focuses on the three dominant regimes of Apollo Milton Obote, Idi Amin Dada, and Yoweri Museveni, albeit that the other regimes are also briefly covered. As noted earlier, neo-patrimonialism is practiced and manifested in eight main forms which are summarised, as follows.

a) *Presidentialism.* This means that one man, usually the President, is very strong because both formal and informal institutions and rules place him “largely above the law and is not subject to the checks and balances that democratic executives face in mature democracies” (Van de Walle, 2007:1-2).

b) *Concentration of Political Power.* This means that the political power in a country is concentrated in and dominated by one individual – the president, or big man or patron – “who resists delegating all but the most trivial decision-making tasks” (Bratton & van de Walle, 1997:63; von Soest, 2007:625) and usually stay in power for very long periods, sometimes preferring to rule for life (1994:x).
c) *Clientelism.* This “means the exchange or the brokerage of specific services and resources for political support in the form of votes” (Erdmann and Engel 2006:20) and “the distribution of public resources through public sector jobs, licenses, contracts and projects, by the patron in order to consolidate his rule” (Soest, 2007:12).

d) *(Mis)use of State Resources for Political Legitimation and Corruption.* This involves presidents and other office holders (mis)using public resources and funds in the forms of embezzlement and misappropriation of funds to secure adequate funds to bribe voters, use of state resources like cars and other logistics during campaigns, bribing electoral officials when conducting or preparing elections, and bribing judges to tilt electoral case rulings in their favour, and all sorts of corruption (Soest, 2007:8).

e) *Institutional Hybridity.* This involves co-existence of both “informal patrimonial norms and practices” and “formal legal-rational rules” on one hand, and patrimonial institutions and “legal-rational institutions” on the other, but with actual powers to govern and make decisive decisions within the state vested outside formalised structures and state institutions because informal institutions, norms and practices in neo-patrimonial states tend to overshadow formal legal-rational institutions (O’Neil, 2007:2-3).

f) *Institutional Incompatibility.* This is manifested not only in the lack of “a common set of predictable rules” but also in the presence of multiple and often contradictory sets of “formal and informal rules” and institutions (O’Neil, 2007:3).

g) *Modern State whose Resources are shared along Nepotistic and Ethnic Motivations.* This involves the existence of governments with “the outward form of a modern state, with a constitution, presidents and prime ministers, a legal system, and pretensions of impersonality, but the actual operations of the government remain at core a matter of*
sharing state resources with friends and family” (Fukuyama, 2014:287-288).

h) *Neo-patrimonial Rule Types*, which involves exercising any or some, or all of the following regime types: “personal dictatorship, military oligarchy, and plebiscitary and competitive one-party systems” (Bratton and Van de Walle, 1994: 472).

Therefore, the assessment of whether and how neo-patrimonialism was/has been applied and manifested under each presidential regime in Uganda since independence is done by establishing the extent to which a Ugandan president adopted and/or fulfilled or manifested any or some or all the foregoing neo-patrimonial characteristics and manifestations. As such, this section discusses what qualitatively went/has gone wrong with the different Ugandan presidential regimes and focuses on the eventual chaotic breakdowns. Its aim is to analyse the different practices of personalised powers Ugandan presidents exhibited during their tenure in office contrary to the social contract doctrine as established in the constitution. As the following discussion shows, all Uganda’s post-independence presidential regimes failed to abide by the requirements of legal-rational institutional frameworks and instead espoused neo-patrimonialism although to varying extents.

### 7.4 How Neo-patrimonialism was Applied and Manifested under President Sir Edward Mutesa II (9 October 1963 – 2 March 1966)

Sir Edward Mutesa II became president of Uganda on 9 October 1962, the very day Uganda attained independence. The decision to make him president was finalised in Britain in a conference which was held in Lancaster, also called ‘Lancaster Conference’, during which the first Constitution of Uganda, also called ‘the Independence Constitution’ or ‘the 1962 Independence Constitution’, was drafted and adopted (Mbazira n.d:1-5).

Mutesa II’s presidential regime (9 October 1963 – 2 March 1966) is said to have made Uganda experience the beginning part of the most daunting
episodes in its political and constitutional history ever. As Mbazira (n.d) observes, the ‘seeds’ of this unfortunate episode were ‘sown’ mostly, though not exclusively, by a number of checks and balances that were enshrined in the 1962 Independence Constitution which was the legal formal instrument of power when Mutesa II took over as president. For example, while the President was the Head of State and Commander-in-Chief of the armed forces, presidential powers were limited through the Constitution. The Prime Minister had executive powers that led to institutional conflicts between the President and Prime Minister at a later period.

Mbazira (n.d:1) further notes that the President was not elected on the basis of adult universal suffrage; rather, he “was to be elected by the National Assembly from among the rulers of the federal states and the constitutional rulers of the districts.” Besides, the Constitution made the Kabaka/King of Buganda (Mutesa II) the President of Uganda, thus, giving Buganda a seemingly superior status compared to the rest of the kingdoms like those of Ankole, Toro and Bunyoro, hence, creating a feeling that the state was a theatre of ethnic conflict.

Mbazira (n.d:2) affirms that while the President was vested with powers to appoint the Prime Minister, he could not appoint any person of his choice but “was obliged to appoint as Prime Minister the leader of the political party with the majority membership in the National Assembly.” Moreover, the President’s powers to fire the Prime Minister were very limited to only “after a vote of no confidence in the government was passed by the National Assembly” (Mbazira n.d:2). While these provisions were meant to check the powers of the President against arbitrary rule and generally promote good governance, they were disturbing and problematic to the President, who, as the King of Buganda had absolute powers to hire and fire the Prime Minister at will. With these and other checks made in the 1962 Constitution, conflicts of interest and bickering between the then President (Sir Edward Mutesa II) and the Prime Minister and Head of Government (Dr. Milton Obote) became inevitable.
Used to having absolute powers and unquestionable authority as the King of the Buganda kingdom, President Mutesa II felt the constitutional checks limited his powers and undermined his authority; thus, he decided to undermine the Prime Minister. Such selective applications of the constitutional provisions, therefore, heightened conflicts and rivalry between the President and Obote. The peak of this was on 2 March 1966 when Obote, with the army’s assistance, stormed and took over President Mutesa’s palace, forcing him to flee into exile. This marked the end of the presidency of Sir Edward Mutesa II in Uganda. Against this backdrop, neo-patrimonialism during President Mutesa II’s regime was applied and manifested in institutional hybridity, concentration of power, (mis)use of state resources and power to pursue personal interests, and institutional incompatibility, which are elaborated below.

7.4.1 Institutional Hybridity
President Mutesa II’s regime was characterised by the neo-patrimonial aspect of co-existence of formal legal-rational rules and institutions, like the 1962 Independence Constitution and Parliament/National Assembly, on the one hand, and patrimonial cultural institutions like Buganda, Toro, Bunyoro, and Ankole kingdoms, among others, each with traditional chiefs, customs, norms and cultural practices, on the other. Moreover, while Mutesa II was president of Uganda, he was also the cultural leader/King (Kabaka) of Buganda kingdom which was and continues to be typically a cultural institution. With such co-existence of both formal and legal-rational institutions, therefore, institutional hybridity was inevitable.

7.4.2 Concentration of Power, and (Mis)use of State Resources and Power to pursue Personal Interests
Albeit that Mutesa II was president of Uganda between 1962 and March 1966, his regime was characterised by power struggles between the British, himself, and his Prime Minister, Milton Obote. The British sought to concentrate the power over Uganda under Her Majesty the Queen of England. From 1962 to October 1963, Her Majesty the Queen of England remained as Head of State, exercising sovereignty over post-colonial Uganda
through the Office of Governor General and overseeing the “flag-independence and neo-colonialism” superstructure (Mkandawire, 2003:1). It was that neo-colonial nature of political arrangement that attracted criticism of the situation that “independence constitutions were like negotiated treaties” (Oloka-Onyango 1994:479).

That subservient status of post-colonial Uganda explains why all real effective and institutional public power was still held by the British Crown with its Imperial Armed Forces in charge of the situation. This argument also explains why Oloka-Onyango (1994:478) observes that “Uganda’s baptism into the status of an independent nation was attended not only by the design of the new Coat of Arms, an inspiring National Anthem and a catchy motto, it also witnessed the promulgation of a Constitution.” In essence, the 1962 Constitution was more of a divisive tool than a legal instrument promoting national unity and hence, operating under its auspices, was mission impossible. Similarly, Article 96 of the 1962 Constitution of Uganda reinforces the neo-colonial status of Uganda. It provides for appeals to “lie as of right direct to Her Majesty in Council from final decisions of the High Court of Uganda on any question as to the interpretation of this Constitution.”

On the other hand, Mutesa II and Prime Minister Obote also had serious and irreconcilable struggles for power. Mutesa II, still being King of the Buganda kingdom with absolute powers and unquestionable authority, felt the 1962 constitutional checks limited his powers and undermined his authority, thus, decided to undermine the Prime Minister. The latter also undermined the former, by abiding and respecting the constitutional provisions only if they served or favored him. For example, as Tusasirwe in Peter and Kopsieker (2006:85-86) observed, whereas Obote:
“insisted on holding a referendum on the lost counties question because the Constitution so required, he then went on to sign the instrument transferring the counties to Bunyoro in accordance with the results of the referendum, although the same Constitution clearly vested such power only in the President who had obstinately refused to sign the instrument.”

Subsequently, the political and power bickering between Mutesa II and Milton Obote continued unabated. Individually, each of them kept personal informal structures sustaining ominous interests. Practically, Mutesa II relied on Buganda’s Lukiko or Parliament while Obote set up Special Police Force and the General Service Unit as paramilitary intelligence units trained and supplied by MOSSAD of Israel “under the control of Akens Adoko, a close associate” (Omara-Otunu 1987:65-67). Mutesa II and Obote attempted to institute particularistic networks of personal loyalty in the public space. Cumulatively, it was that approach which led to violent clashes between Mutesa II, a ceremonial President doubling as traditionalist Kabaka of Buganda, and Obote, the Prime Minister. This combination of the two strange bed-fellows in connivance against other stakeholders and each other in attempting to manage the complex distribution of public power in a sprouting nation-state inevitably became disastrous.

7.4.3 Institutional Incompatibility
Mutesa II’s presidential regime was characterised by several contradictory sets of rational legal-formal and informal rules, institutions, and practices. For instance, while Mutesa II was King/Kabaka of Buganda kingdom with absolute and unlimited powers, he was at the same time president of Uganda whose powers were limited under the 1962 constitution. A case in point is that, while the President was vested with powers to appoint the Prime Minister, he could not appoint any person of his choice but “was obliged to appoint as Prime Minister the leader of the political party with the majority membership in the National Assembly.” Moreover, the President’s powers to fire the Prime Minister were very limited to only “after a vote of no confidence in the government was passed by the National Assembly” (Mbazira, n.d:2).
Another illustration of institutional incompatibility is that, there were seemingly three main incompatible power centres during Mutesa II’s regime. As already noted, from 1962 to October 1963 was a phase when the Queen of England remained the Head of State of Uganda, thus, putting Uganda under Her Majesty’s dominion. This is the first power centre, which implies that, while Uganda had presumably attained independence, Britain still wanted to continue with it as its neo-colony or neo-protectorate. On the other hand, Mutesa II as Kabaka/King of Buganda, and president of Uganda and commander-in-Chief of Uganda’s armed forces was another centre of power; while Milton Obote who was Prime Minister with executive powers and head of government was the third main power centre (Kanyeihamba 2010:67). The existence of these three contradictory and irreconcilable power centres inevitably led Uganda into political turmoil and constitutional crisis which up to this day is still regrettable in the history of Uganda.

7.5 How Neo-patrimonialism was Applied and Manifested under President Apollo Milton Obote (9 October 1962 – 25 January 1971)

In examining neo-patrimonialism in Uganda under Milton Obote, it is crucial to focus on three time periods, namely; 9 October 1962 to 15 April 1966 when Obote was Prime Minister with executive powers, 15 April 1966 – 25 January 1971 when he was President for the first time, and 17 December 1980 – 27 July 1985 when he was President for the second time (The State House of Uganda, 2018:1). This sub-section, nevertheless, focuses on his first two episodes (9 October 1962 to 15 April 1966 and 15 April 1966 - 25 January 1971). His third episode (17 December 1980 – 27 July 1985) is handled later to ensure chronology of events in the discussion.

As noted earlier, when Uganda attained independence on 9 October 1962, Mutesa II was made president and Milton Obote became Prime Minister with executive powers. It should be noted that while Obote’s patrimonial tendencies have been briefly explained under the Mutesa II presidential regime, it is paramount that a precise and enriching discussion about
Obote’s patrimonial behaviours in this sub-section be extended backwards to 9 October when he became Prime Minister. It was on the basis of his executive powers as Prime Minister that most of his neo-patrimonial tendencies began to manifest. Precisely, neo-patrimonialism under Milton Obote (October 1962 and April 1966) can be well explained under the following neo-patrimonial characteristics: concentration and consolidation of political power; governing and sharing of resources along nepotistic and ethnic lines to further personal political agendas; adoption of personal dictatorship and plebiscitary one-party systems neo-patrimonial rule types, institutional hybridity, institutional incompatibility, and presidentialism

7.5.1 Concentration and Consolidation of Political Power

Shortly after assuming the position of Prime Minister which vested on him executive powers and made him head of government, Obote aimed to remove any obstacles to his desire for concentration and consolidation of power. Considering Mutesa II as merely a ceremonial president, and looking at himself as Executive Prime Minister and Head of Government, Obote detested any form of constitutional provisions that limited or checked his powers. He did everything within his powers to weaken and/or counterbalance any limitations. To begin with, Obote successfully dislodged the British from maintaining Uganda under the continued mandate of her Majesty the Queen of England. It all begun with enactment of first amendment of the 1962 Constitution, dubbed “Act 61 of 1963” of 9 October 1963. Titled “An Act to effect changes in the Constitutional position of Uganda, to amend The Uganda (Independence) Order in Council, 1962,” Section 3 of this Act provides for “Uganda to cease to form part of Her Majesty’s dominions” (GOU 1994x:177).

After successfully dislodging the British dominion over Uganda through the foregoing method, Obote started to undermine the president and would only abide by constitutional provisions which favored and/or served him. For instance, between 1962 and 1966, as already noted, Obote, using constitutional powers, held a referendum on whether to keep the disputed counties of Buyaga and Bukangaizi under Buganda or return them to the
Bunyoro Kingdom. While President Mutesa II was against this move, Obote went ahead with the results of the referendum and signed a legal instrument that transferred the two counties to Bunyoro, notwithstanding that such powers were constitutionally only vested in the President. Albeit that this appeased Bunyoro citizens, who were expected to reciprocate by giving overwhelming support to Obote in his personal pursuit of political power, it infuriated President Mutesa II (Tusasirwe, 2006:85-86).

7.5.2 Governing and Sharing of Resources along Nepotistic and Ethnic Lines to further Personal Political Agendas

Amidst the above tensions between him and President Mutesa II, Obote formed and/or encouraged the formation of cliques which were very loyal to him (and were very ready to promote his personal political agendas) but hostile to the President. Such cliques abounded in parliament, judiciary, executive, and the military, among others. In return, Obote would reward them for their loyalty with political favours, promotions, money, and other material benefits. This state of affairs inevitably increased conflicts and rivalry between the President and Obote. The height of this was in April 1966 when Obote, using General Idi Amin Dada (a fellow northerner by regional affiliation) together with the military, stormed and overtook President Mutesa II’s palace, forcing him to flee to exile (Tusasirwe, 2006:86).

Meanwhile, Obote filled most of the cabinet ministerial positions with his tribesmen. Similarly, most, if not all, top cadres in police, army and prisons services were from his ethnic group (*Langi*) or closely related tribes of the northern region of Uganda. Overall, the police, army, prison and public services and other key appointments in Government and foreign diplomatic missions were predominantly served and manned by the northerners. He did this to ensure that he secured a pool of loyal cadres who he was sure would not betray him, in addition to his innate desires to entrenching his own tribesmen in the most lucrative positions of government.

Besides, Obote, while Prime Minister and President, forged party and regional alliances to enable him secure countrywide political support and
regularisation. For instance, after becoming president in 1966, he appointed the *Kyabazinga* (King/cultural leader) of Busoga as Prime Minister of Uganda with intent to consolidate the support of Busoga region for himself and his party, the Uganda People’s Congress (UPC). Initially, he had already allied with the “*Kabaka Yeeka* (King above all)” Party to enlist and consolidate his political support within the Buganda region. He had also already awarded the two disputed Counties of Buyaga and Bukangaizi back to Bunyoro Kingdom in hope that the Banyoro citizens would reciprocate by politically supporting him and UPC (Moncrieffe, 2004:16; Tusasirwe, 2006:85-86).

7.5.3 Adoption of Personal Dictatorship and Plebiscitary One-Party Systems Neo-patrimonial Rule Types

Shortly after the departure of Mutesa II, Obote on 15 April 1966 took over power as President. Immediately, Obote sought to regularise and consolidate himself in power using a number of constitutional, political, and military strategies, which amounted to the adoption of a personal dictatorship neo-patrimonial rule type. First of all, he abolished the 1962 Constitution and replaced it with the infamous 1966 ‘Pigeon Hole Constitution’. This Constitution is called ‘Pigeon Hole Constitution’ because members of the Assembly did not participate in its making. Rather, they were bullied into accepting this Constitution and collected copies of it from their pigeon halls (Tusasirwe, 2006:86).

In addition, Obote also masterminded the enactment of the 1967 Constitution, also known as the Republican Constitution, which not only transformed Uganda into a Republic, but also vested on him as President with executive powers. As usual, Obote rewarded members of the general assembly for their loyalty in the foregoing constitutional developments with political favours, promotions, money, and other material benefits. In addition, from 1964 to January 1971, Obote, with the help of the (members of) parliament and other state organs and his enormous executive powers, suppressed opposition political parties’ activities (Tusasirwe, 2006:86). Also, Obote officially banned all kingdoms and feudalism, established a
one-party state under the Uganda People’s Congress (UPC) and assumed almost all control over commercial activities in the economy which he capitalised on to give favours in return to those who gave him political support and unwavering loyalty (Moncrieffe, 2004:16). By banning all kingdoms and feudalism, and establishing a one-party state under UPC, Obote successfully adopted a plebiscitary one-party systems neo-patrimonial rule types, henceforth.

7.5.4 Institutional Hybridity, Institutional Incompatibility, and Presidentialism

As already noted, Obote became Prime Minister in October 1962. At this time, there were several rational-legal formal institutions and rules, like parliament and the 1962 Constitution, on one hand, and the other informal and cultural institutions like Buganda, Ankole, Toro and Bunyoro kingdoms together with their various cultural beliefs, traditions, practices and norms. Obote realised that while these co-existed, they were incompatible with each other and were detrimental to his political agendas because they limited his political and constitutional powers. Obote thus abolished the 1962 Constitution and replaced it with the infamous 1966 ‘Pigeon Holes Constitution’. Shortly after, in 1967, he came up with the Republican Constitution, which not only transformed Uganda into a Republic, but also vested on him as President with executive powers. He also officially banned all kingdoms and feudalism (Tusasirwe, 2006:86). With all these, Obote managed to successfully naturalise all limiting forces and maintained himself in power under the neo-patrimonial feature of presidentialism – where he was that very strong one man because he manipulated both formal and informal institutions and rules, which placed him “largely above the law and not subject to the checks and balances that democratic executives face in mature democracies” (Van de Walle, 2007:1-2), until he was overthrown by his own military General, Idi Amin Dada, on 25 January 1971. This ended his almost 10 years’ rule as a typical neo-patrimonial leader.
7.6 How Neo-patrimonialism was Applied and Manifested under President Idi Amin Dada (25 January 1971 – 11 April 1979)

As highlighted earlier, Idi Amin became President of Uganda on 25 January 1971 following his overthrow of Milton Obote through a military coup. Because his regime is so fused with his neo-patrimonial aspects, this discussion goes straight to how his presidency applied and manifested neo-patrimonialism in the following aspects: adoption of a personal dictatorship neo-patrimonial rule type, and presidentialism; clientilism, governing and sharing of resources along nepotistic and ethnic lines to further personal political agendas; and concentration and consolidation of power under presidency, which are elaborated as follows.

7.6.1 Adoption of a Personal Dictatorship Neo-patrimonial Rule Type, and Presidentialism

After overthrowing Obote through a coup, Amin immediately adopted a personal dictatorship system of governance. Shortly after assuming power, he abolished the 1967 Constitution. This was because he perceived the Constitution as a limitation to his powers and authority and as a creation of Milton Obote who he had just toppled (Tusasirwe, 2006:86). Presumably, he reasoned that toppling Obote would be incomplete if he did not abolish Obote’s Constitution. Amin’s abrogation of the 1967 Constitution meant that he had swatted all prospects of constitutionalism during his regime. Subsequently, Amin declared that there would be no presidential elections (and indeed these were not held during his eight years’ rule), and instead declared himself a life President of Uganda. As a result, Amin’s political powers and authority were unquestionable because there was no constitution to limit him on these. Amin, aided by his civil loyalists, military and police became a very strong man, much stronger than all institutions of government, thus, the presidentialism aspect of his neo-patrimonial rule (Tusasirwe, 2006:86). It is therefore not surprising that, as Omara-Otunu (1987:143) observed, “all government functions became subordinate” to Amin’s “concern for his own physical safety and political survival” throughout his regime (Omara-Otunu, 1987:143).
7.6.2 Clientilism, Governing and Sharing of Resources along Nepotistic and Ethnic Lines to further Personal Political Agendas

Initially, Amin secured legitimacy and overwhelming support from many people in Buganda and across the whole country irrespective of the masses’ religious affiliations and ethnicity across the whole country. Nevertheless, from 1972, onwards, he drastically changed. For instance, in 1972, Amin declared an economic war on Indians in Uganda, who, at the time, held the economic muscle of the country. He declared war on the Indians because they were presumed to have taken over the economic sovereignty of Uganda and were suspected by him as agents of the imperialists. Under this economic war, he gave the Indians 90 days to vacate Uganda. He then gave their shops and other property to his loyalists in government and private sectors, in order to reward them for their continued political support and unquestionable loyalty. The given properties, nevertheless, were mismanaged, which subsequently collapsed the economy shortly after. In addition, Amin started favouring fellow Muslims and alienated the Christian fraternity. To demonstrate this, he appointed “Muslims to key positions in the army, thereby alienating the majority Christian country” because being a Muslim himself, he looked at Christians as infidels and traitors who had supported Obote whom he ousted through a coup (Moncrieffe, 2004:16).

Amin also attacked the Langi and Acholi people/communities and isolated the northern region for their overwhelming support for Milton Obote. He also dismantled the entire Kingdom of Buganda into several districts which he gave to his loyalists to govern as part of his favours to them. To reward those he was pleased with for their loyalty, Amin would give them jobs, material basic goods like sugar, salt, and soap, among others, which were very scarce during his regime. Also, Amin went as far as dissolving the Cabinet, which he did to get slots that he later filled with his ardent supporters and loyalists in acknowledgement of and appreciation for their uncompromising loyalty (Moncrieffe, 2004:16).
### 7.6.3 Concentration and Consolidation of Power under Presidency

After abolishing the Constitution, and in the pursuit of concentrating and consolidating all political powers under his presidency, Amin announced that henceforth, he would rule by decrees; the outstanding of which being the Land Management Decree of 1975 that attempted to abolish private land ownership by returning all land to state ownership. He then advanced the ideas of “the Second Republic of Uganda” while obliterating the government bureaucracy his predecessors had put in place since colonial days. His tyrannical rule was possible through manipulation of ethnic and linguistic affiliations; the military being heavily dominated by Sudanic-dialects speakers, and reinforced by others from the West Nile region. There was employment of selectively chosen elements of the Public Safety Unit and State Research Bureau being the killing and sadistic squads that spread terror and gruesome methods over most of the country. In addition, between 1971 and 1978, Amin “was devoid of any moral view and acted for personal reasons”; he manifested this by himself enrolling very many new army recruits including the Anya Nyas from South Sudan, Zairean rebels and from the West Nile region which is Amin’s home area. He did all these because he needed to build his own loyal army with which he would execute his plans without deterrance (Omara-Otunu 1987:93-108, 143).

Omara-Otunu observes that under Amin’s regime, “legitimacy was elusive, and it became a sensitive issue for a regime which had no elected representatives of the people... As far as the people themselves were concerned, the military control of the state and its apparatus of terror left them almost no room of self-expression, criticism or dissent” (Omara-Otunu, 1987:110,136). Another strategy Amin used to regularise and consolidate himself in power was to eliminate anybody he perceived to be his opponent – real or imagined, or held divergent views to his. He did this because he did not want anybody to question his authority and political legitimacy. As such, he summarily executed thousands of Ugandans;

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54 Amin’s adoption of decrees and abolition of the 1967 Constitution meant that he was not prepared to have a government and political power limited by constitutional provisions as constitutionalism demands (Mbodenyi and Ojienda, 2013:3; Kanyeihamba, 2010:9).
detained many without trial, tortured very many in detentions, and centralised all legislative powers and mandate under the presidency. As Harriet Anena reports, the International Commission of Jurists in Geneva estimates that Amin killed between 80,000 and 300,000 Ugandans during his brutal regime, while Amnesty International estimates the number of death to have been “500,000 out of the 12 million Ugandans at the time” (Anena, 2012:1). Michael T. Kaufman reports that, among the dead were prominent men and women who included “cabinet ministers, Supreme Court judges, diplomats, university rectors, educators, prominent Catholic and Anglican churchmen, hospital directors, surgeons, bankers, tribal leaders and business executives” (Kaufman, 2003:1). Many of these (and their positions) were replaced by those who Amin deemed loyal to him. Aided by the above neo-patrimonial practices and tendencies, Amin ruled Uganda for eight years until 11 April 1979 when he was overthrown by an alliance of Ugandan émigrés and Tanzanian forces (Tusasirwe, 2006:86).

7.7 How Neo-patrimonialism was Applied and Manifested under Presidents Yusuf Kironde Lule and Godfrey Lukongwa Binaisa, and the Military Commission under Paul Muwanga

Following the overthrow of Amin on 11 April 1979, this shortly ushered in an interim arrangement famously known as the Uganda National Liberation Front/Army (UNLF/A) which installed Prof. Yusuf Lule as President. As Omara-Otunu conjectured,

“...the fact that Amin’s regime was overthrown by military force meant that, at least a nationally elected government enjoying the support of the populace could be constituted, political stewardship of state institutions would be nominal and the real power would reside with the hotchpotch Liberation Army of not more than 2000 men, supported by Tanzanian Defence Forces” (Omara-Otunu, 1987:145).

After installing Yusuf Lule, the UNLF/A allowed him to rule for only 68 days (13 April 1979 – 20 June 1979). His removal was primarily a decision by the National Consultative Council which voted him out of office after realizing that he was politically weak and would no longer effectively deliver to their expectations. He was thus replaced him with Godfrey Lukongwa Binaisa (20 June 1979 – 12 May 1980), who, as Attorney General in 1966
had helped Obote to abrogate the 1962 constitution. Like Yusuf Lule, Binaisa’s presidency was also short-lived because he was not trusted by all members given that, as Attorney General in 1966, he had helped Obote to abrogate the 1962 constitution, yet the UNLF/A had many people who hated Obote. Binaisa was thus removed from office through but a bloodless coup by the Military Commission (12 May 1980 – 16 December 1980) under the leadership of Paulo Muwenga, and Yoweri Museveni as his deputy. The shortness and eventual removal of Yusuf Lule and Godfrey Binaisa out of the presidency serves to illustrate that political power without army backing in Uganda was hollow. In a few months after the removal of Binaisa, the Military Commission under Paulo Muwanga organised the December 1980 general elections which allegedly were marred by multiple irregularities, but all the same ushered in the second of Milton Obote’s regimes extending from December 1980 to July 1985 (Kanyeihamba, 2010:145-158; Omara-Otunu, 1987:145-150).

The short period when Uganda was governed under the UNLF/A (13 April 1979 to 17 December 1980), and under Yusuf Lule, Gedfrey Binaisa and Paul Muwanga applied and manifested neo-patrimonialism in three main ways: adoption of a military oligarchy neo-patrimonialism rule type, institutional hybridity, and institutional incompatibility, as elaborated below.

7.7.1 Adoption of a Military Oligarchy Neo-patrimonialism Rule Type
While the UNLF/A was created through direct patronage of President Julius Nyerere of Tanzania who sponsored the Moshi Unity Conference through which different personalities and factions agreed to unite and topple Idi Amin (Kanyeihamba, 2010:145-158), the resultant amalgam adopted a military oligarchy type of neo-patrimonialism rule. It is thus not

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55 In the military oligarchy type of neo-patrimonial rule, as noted earlier, the regime is exclusive in that elections are suspended, and most, if not all, decisions are made by exclusive small groups of elites behind secretive and closed doors. Albeit that a military oligarchy has a noticeable leader or president, he always has no concrete and exclusive powers in the real sense because key “decisions are made collectively by a junta, committee, or cabinet that may include civilian advisers and technocrats in addition to military officers. … a relatively professional civil or military hierarchy implements policy, and executive institutions are maintained” but in form, not in substance (Decalo, 1990:231-24). Under military oligarchies, “political participation is
surprising that after the removal of Yusuf Lule and Godfrey Binaisa, the duo did nothing because UNLF/A was championed by the military.

7.7.2 Institutional Hybridity and Institutional incompatibility

Institutional hybridity was manifested in that UNLF/A was but an amalgam of people who co-existed but with different ideologies and beliefs, albeit that they had the same aim of removing Idi Amin out of power. This, notwithstanding, the group was marred by a lot of differences and contradictions, which amounted to institutional incompatibilities. The regime was marred by deep suspicions and intrigues, partly because there were ideological and constitutional wrangles; but majorly because it was never elected into power through a general election. For instance, as already noted, Godfrey Binaisa was not trusted by all members because, as Attorney General in 1966, he had helped Obote to abrogate the 1962 constitution. Haters of Obote therefore did not like and trust him. Moreover, while Paul Muwanga, the Chairman of the Military Commission, was a Uganda People’s Congress (UPC) sympathiser, his Deputy, Yoweri Museveni, belonged to and was leader of the Uganda Patriotic Movement. It is thus not surprising that when the Military Commission under Muwanga organised and conducted elections on 10 and 11 December 1980, they are alleged to have been mismanaged in favour of Milton Obote who was leader of UPC to which Muwaga subscribed (Namungalu, 2012:1; RUPMUUNNY, 2018:1).

7.8 How Neo-patrimonialism was Applied and Manifested under the President Apollo Milton Obote’s Second Presidency (17 December 1980 – 27 July 1985)

After being declared winner of the 10th and 11th December 1980 presidential election, Obote was sworn in as president of Uganda on 17 December 1980 for the second time (Namungalu, 2012:1; RUPMUUNNY, 2018:1). However, shortly after his takeover, “Obote was faced for the second time with the severely circumscribed because there are no elections of any kind, especially in the early years of military rule” (Bratton and Van de Walle, 1994:473).
problem of legitimacy in the Central Region, especially among the people of Buganda”56 (Omara-Otunu, 1987:154).

In addition to the national economy being shattered, and characterised by very high levels of unemployment, lack of foreign exchange, high inflation, production breakdowns and lack of basic products like sugar, salt, and soap, among others, a civil war situation developed in the central, north west, and north eastern regions of the country. Basically, Obote’s second presidential regime was exclusionary as it was a partnership between personal friends in government and the Army colleagues though tainted with political favouritism and factionalism within the UNLA. These practices persisted until the end of the second Obote presidency. Raging insecurity was the order of the day orchestrated by the government’s own security organs. Finally, a northern coalition of UNLA soldiers of Acholi origin and other disgruntled soldiers under the leadership of Generals Tito Okello Lutwa and Bazilio Okello (who were Obote’s own appointed Generals serving in his military) ousted Obote’s government on 27 July 1985 (Omara-Otunu, 1987:162-163). Neo-patrimonialism was applied and manifested under Obote’s second presidency in the following ways: adoption of the plebiscitary one-party system acassioned by personal dictatorship types of neo-patrimonial rule; clientelism, (mis)use of state resources for political legitimisation and corruption, sharing of state resources along nepotistic and ethnic motivations; and concentration and consolidation of power, as elaborated below.

7.8.1 Adoption of the Plebiscitary One-Party System acassioned by Personal Dictatorship Types of Neo-Patrimonial Rule

Given the kind of resistance and legitimacy challenges Obote faced in the immediate aftermath of his takeover, he found himself with no better

56 Obote faced legitimacy problems in Buganda because the psychological wounds and traumas that he inflicted on Buganda between 1962 and 1970 were still very fresh in the minds of the Baganda people. It should be recalled that, during this period, Obote greatly undermined Sir Edward Mutesa II who was King/Kabaka of Buganda and president of Uganda until 1966. By Obote’s orders, the army stormed Kabaka Mutesa II’s palace forcing him to flee to exile from where he died. Meanwhile, Obote had abolished all kingdoms and feudalism in Uganda, and dismantled the entire Buganda kingdom and subdivided it into districts which he gave to his loyalists to govern in reciprocation for their political support (Tusasirwe, 2006:85-86; Moncrieffe, 2004:16).
options but to fully embrace the plebiscitary one-party system acassioned by personal dictatorship types of neo-patrimonial rule. The personal dictatorship neo-patrimonial rule type became increasingly vital as it helped him deal very decisively with the numerous dissenting elements in his government and opposition.

7.8.2 Clientelism, (mis)use of state resources for political legitimisation and corruption, sharing of resources along nepotistic and ethnic motivations

As already noted, Obote’s second presidential regime was exclusionary in nature; it was a partnership between personal friends in government and the army colleagues (including Generals Tito Okello Lutwa and Bazilio Okello who finally toppled him). Generally, Obote’s army, the UNLA, was mainly comprised by Obote’s tribesmen and a few others from the neighbouring districts of northern Uganda. The composition of the army was thus tainted with political favouritism and factionalism. Relatedly, given that his second time presidency period was characterised by very high levels of unemployment, lack of foreign exchange, high inflation, production breakdowns and lack of basic products like sugar, salt, and soap, among others, Obote would use state resources to secure these goods and services and share them mainly with his relatives, friends and those who served his political interests. Awarding of jobs and tenders was also done along ethnic, nepotistic and familial lines.

7.8.3 Concentration and Consolidation of Power

To concentrate and consolidate power under his presidency during his second term (between 1980 and 1985), Obote’s regime is said to have been

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57 As noted earlier, the Plebiscitary One-Party System (POPS) type of neo-patrimonial rule is an inclusive authoritarian regime. It is nevertheless headed by a ruler who “orchestrates political rituals of mass endorsements for himself, his officeholders, and his policies.” He mobilises and controls voters through one-party plebiscites mechanisms which usually results into higher voters turnouts. Between elections, POPS puts in place a mechanism that is used to distribute patronage to the masses to meet their economic and regional concerns while at the same time addressing the regime interests. Albeit that a POPS is more inclusive, it is nevertheless associated with undemocratic tendencies because it precludes sincere political competition, prohibits opposition parties from operating freely, allows only a single candidate from the official political party to appear on the ballot, and the elected leader is always entangled in a legitimacy crisis particularly shortly after elections (Bratton and Van de Walle, 1994:477).
characterised by excessive brutality and killings of political opponents – real or imagined, using the army which he allied with to ensure he kept tight grips on power. His killing of political opponents was to ensure that no body questioned his authority and legitimacy, and also show others that they would face the same fate if they dissented. Allegedly, his army brutality resulted in the death of over 300,000 political opponents and civilians in Uganda from 1980 to 1985. In the meantime, new elections were held in 1985, and Obote was once again declared winner under the UPC umbrella. Nevertheless, as he was still organising his government for another term, a group of his disgruntled army led by General Tito Okello overthrew him on 27 July 1985, thus, unceremoniously ending his second presidency and political career in Uganda once for all (Tusasirwe, 2006: 86-87).

7.9 How Neo-patrimonialism was Applied and Manifested under President Tito Okello Lutwa (29 July 1985 – 26 January 1986)

After overthrowing and unceremoniously ending Obote’s political rule on 27 July 1985, General Tito Okello Lutwa led a military junta which governed Uganda until 26 January 1986. The Lutwa presidency was more of an administration of confusion and dysfunctional public systems as there were no systemic constraints limiting public authority. The civilian constitution was in abeyance once more, and there were no generally accepted structures upon which to base governance. The irregular National Resistance Army (NRA, under the leadership of Yoweri Museveni) war in the Luwero Triangle had spread to other parts of western Uganda with impunity and continued to oppose Lutwa to the end. Progressively, Lutwa lost more administrative zones to the NRA which made state power a contested affair (Moncrieffe, 2004:16; Tusasirwe, 2006:86; Namungalu, 2012:1; RUPMUUNNY, 2018:1).

As Okello was sworn in as Head of State, the NRA was already closing in to Kampala (the Capital), and to avoid bloodshed and continued fighting between the new government forces and NRA, power-sharing negotiations were held in Kenya, and an agreement was reached and signed. Unfortunately for the former, and fortunately for the latter, the agreement
fell within very few weeks of its signing after the NRA overrun and overthrew the Okelo Junta on 26 January 1986, and swore in Yoweri Museveni as President on 29 January 1986. Neo-patrimonialism under Okelo Lutwa was applied and manifested in the adoption of military oligarchy neo-patrimonialism rule type, concentration/consolidation of power, (mis)use of state resources for political legitimation and corruption, and sharing of resources along nepotistic and ethnic motivations, as elaborated below.

7.9.1 Adoption of Military Oligarchy Neo-Patrimonialism Rule Type, Concentration/ Consolidation of Power
For the six months’ period Lutwa was president of Uganda, a military oligarchy type of neo-patrimonial rule was adopted. The regime was exclusive; political participation was seriously circumscribed because it was still a new and young regime which did not conduct elections, presumably because they were still reorganising the entire administration and also trying to rally political opponents like the NRA to unite with them to form a broad-based government. As such, during Lutwa’s rule, most, if not all, decisions were made secretively by an exclusive small group of the military led by Lutwa himself, assisted by Bazilio Okello, among others.

7.9.2 (Mis)use of state resources for Political Legitimation and Corruption, and sharing of Resources along Nepotistic and Ethnic Motivations
Shortly after overthrowing Obote, Lutwa immediately faced legitimacy challenges like Obote. First of all, Obote military loyalists wanted to oust him and bring Obote back through their coalition ‘Force Obote Back’ (FOBA). In Buganda, the Baganda citizens saw having Lutwa as an extension of the Obote regime and tendencies because the former was Chief of the Defence Forces in the latter’s regime. Meanwhile, the NRA and other forces opposed to Lutwa intensified their fight against Lutwa’s regime. Against this backdrop, Lutwa did not trust Ugandans from western, central and eastern regions. In the northern region, he mainly trusted the Acholi – his tribesmen. As such, he positioned most, if not all, key positions in the government, police, army, and intelligence agencies, among others, in the hands of his Acholi tribesmen, save for a few others who he placed in the
hands of individuals from other northern Uganda tribes he deemed friendly and loyal to him. Basically, the military and police as well as other security organs were largely comprised by his tribesmen. His soldiers were undisciplined, and his regime was marred by massive looting and abuse of human rights in addition to being very corrupt, undemocratic, and poorly governed. It was primarily on the basis of these that the NRA overthrew Lutwa’s regime on 26 January 1986 when they stormed and took over Kampala – Uganda’s Capital.

7.10 How Neo-patrimonialism has been Applied and Manifested under President Yoweri Museveni (26 January 1986 – present (2018))

7.10.1 Overview

Yoweri Museveni took over power on 26 January 1986 shortly after overthrowing General Tito Okello Lutwa. He ascended to power through a five-year (1981-1986) protracted guerrilla struggle in which he and his group (the National Resistance Movement/Army (NRM/A)) sought to overthrow Milton Obote, and later, General Okello Lutwa, to allegedly restore peace, security, democracy and respect for human rights (Moncrieffe, 2004:16; Tusasirwe, 2006:86). Since January 1986 to the present (2018), Museveni has been in power for 32 years and is still president until 2021 when his current term will expire. Before delving deeply into how neo-patrimonialism has been applied and manifested under the Museveni presidency, it is critical that some of the key political and constitutional developments which have taken place during Museveni’s regime be explored because these form the fulcrum for his neo-patrimonial behaviours and practices.

7.10.2 Key Political and Constitutional Developments during the first 32 Years of Museveni’s Presidency (1986 – 2018)

A detailed account of the key political and constitutional developments which have taken place during the first 32 Years of Museveni’s presidency (1986 – 2018) has been given in Chapter Three under sub-section 3.9.2. In summary, however, they are as follows.
Immediately after assuming the presidency, Museveni declared a transitional period of four years from 1996 to 1989. This, nevertheless, was later extended until 1996 when the first presidential elections were held since 1985. During this period, there were neither presidential nor parliamentary elections. And so, parliamentary oversight/checks and balances over the executive arm of government were not in existence. In addition, from January 1986 to September 1995, Museveni ruled Uganda without a Constitution. Instead, the NRM, through Legal Notice 1 of 1986 amended the 1967 to suite the government’s interests” (Tusasirwe, 2006:88). Nevertheless, on 8 October 1995, a new Constitution, also known as ‘The 1995 Constitution’ was promulgated, which, among other things, prescribed a continuation of the one-party system of government under the NRM, provided for a maximum of two five-year presidential terms (10 years), and an upper age limit of 75 years for presidential elections eligibility.


However, after being in power for just over 30 years, and in the immediate aftermath of being sworn-in for his fifth presidency in May 2016, the NRM, and presumably, Museveni himself, realised that he would reach the mandatory maximum presidential upper age limit of 75 (having been born in 1944) in 2019. This meant that the last two years of his presidency would be above the mandatory upper age limit. More important, it meant that
Museveni would be ineligible to stand for president in the 2021 presidential election. This ostensibly would be sad news for the NRM as they may want the current President and NRM Party Chairman Museveni to be their flag bearer for the presidency in 2021. Against this backdrop, the NRM covertly and overtly mobilised the Ugandan masses countrywide, urging and requesting them to embrace the idea of allowing their respective MPs to support the bill in parliament which proposed the removal of the upper age limit for presidential aspirants, among other things.

As a result, a bill seeking the removal of the 75 upper presidential age limit out of the Constitution, also known as ‘The Constitution (Amendment) (No. 2) Bill, 2017’, was tabled in parliament by the Igara West MP, Raphael Magyezi. The bill was discussed and finally passed on 20 December 2017. Of the 394 MPs who were in parliament at the time of the voting, “a total of 317 MPs voted in favour of the motion to lift the upper age limit of 75 years while 97 members voted against. Two members abstained from the vote” (URN, 2017:1). Shortly after, President Museveni signed the bill into law on 27 December 2017 (UNR, 2018:1).

7.10.3 Practices and Manifestations of Neo-patrimonialism in Uganda under Yoweri Museveni (26 January 1986 – present (2018))

A deeper analysis of Museveni’s presidency shows that he has practiced and manifested most of the elements of neo-patrimonialism in Uganda. These include: adoption of different neo-patrimonial rule types to suit different times, presidentialism, concentration and consolidation of power, clientelism, (mis)use of state resources for political legitimation and corruption, institutional hybridity, institutional incompatibility, sharing of resources along nepotistic and ethnic motivations, and institutional hybridity and institutional incompatibility, elaborated as follows.

7.10.3.1 Adoption of Different Neo-Patrimonial Rule Types to suite Different Times

Since assuming power in 1986, to the present 2018, Museveni has adopted and used at least three types of neo-patrimonial rule, namely; military oligarchy, plebiscitary one-party system, and competitive one-party system.
(i) Military Oligarchy Neo-Patrimonial Rule Type (1986-1995)

Under Museveni, Uganda was governed under a military government from 1986 to 1989, hence, a military oligarchy. His adoption of a military oligarchy type of neo-patrimonialism was because he had been leading a guerrilla warfare in the bush for five years, and thus, militarism was still part and parcel of him. Besides, in the immediate aftermath of his assumption of the presidency, Museveni declared a transitional period of four years from 1996 to 1989. This, nevertheless, was later extended until 1996 when the first presidential elections were held since 1985. During this period, there were neither presidential nor parliamentary elections; parliamentary oversight/checks and balances over the executive arm of government, were therefore not in existence. Key political decisions and policies were made and implemented by and under the ‘High Command’ which was the highest military organ then. All these were done to avoid possibilities of political challengers and to enable him and his regime to consolidate themselves into power. Besides, “the NRM did not immediately bring in a totally new Constitution”; instead, “through Legal Notice No. 1 of 1986, amendments were introduced to the 1967 Constitution, mainly those necessary to bring it into line with the intended structure of government” because he did not want to bind himself and his government under the 1967 Constitution which he considered unfavourable, neither did he want any constitutional provisions that would limit him or his power and legitimacy during the first 10 years of his presidency when he was still consolidating himself in power (Tusasirwe, 2006:88; African Elections Database, 2011:1). To this end, Museveni’s presidency between 1986 and 1995 primarily espoused a military oligarchy neo-patrimonial rule type.

(ii) Adoption of a Plebiscitary One-Party System (1995-2005)

From 1995 to 2005, Museveni adopted and maintained a plebiscitary one-party system neo-patrimonial rule type, in which a one-party system of
government, popularly known as the ‘movement political system’ was sanctioned in the 1995 Constitution (before amendment) and extended.\footnote{This was partly done to avoid political competition from opposition parties but also to weaken them as he popularised his movement system political ideology to the local masses. Meanwhile, at that time, the international community did not exert too much pressure on Museveni to open up the political space for multi-party democracy considering that he was seen as a moderniser and revolutionary who was still recovering the country from the patches of war (Tusasirwe, 2006:88).}

Article 70 (1) of the 1995 Constitution provides for the movement political system as a “broad-based, inclusive and nonpartisan and shall conform to the following principles—participatory democracy; democracy, accountability and transparency; accessibility to all positions of leadership by all citizens; individual merit as a basis for election to political offices.” With this legal provision, Museveni’s desire to rule Uganda under the movement political system gained legal legitimacy.

Besides, basing on Article 69 of the 1995 Constitution which provides that, “the people of Uganda shall have the right to choose and adopt a political system of their choice through free and fair elections or referenda”, Museveni and other groups from the NRM/movement political system successfully called for a referendum in 2000 in which they campaigned for the extension of the movement political system/plebiscitary one-party system. In a referendum which was held on 29 June 2000, the Referendum Question was: “Which political system do you wish to adopt, Movement or Multiparty?” Out of a total of 4,765,724 valid votes cast, the ‘Yes’ votes were 4,322,901 (90.71%), while the ‘No’ votes were 442,843 (9.29%) (African Elections Database, 2011:1). With such results, the movement political system/plebiscitary one-party system was extended. This further demonstrates that Museveni still wanted to curtail political competition from opposition parties and also continue to weaken them as he popularised his movement system political ideology to Ugandans.
(iii) Adoption of a Competitive One-Party System

In 2005, Museveni agitated for the opening up of political space to allow the opposition, which had expressed the desire to belong to their own political parties other than being legally forced to operate under the movement system of government, to freely operate under a multi-party system. So, in a referendum which was conducted on 25 July 2007, the referendum question was: “Do you agree to open up the political space to allow those who wish to join different organizations/parties to do so to compete for political power?” (African Elections Database, 2011:1). Out of a total of 3,941,088 valid votes cast, the ‘Yes’ votes were 3,643,223 (92.44%), while the ‘No’ votes were 297,865 (7.56%) (African Elections Database, 2011:1). With such results, a multi-party political system was re-adopted in Uganda.59 The movement system of government/NRM – having kept all the other parties in limbo since 1986 – still maintained reasonably high support countrywide. As a result, Museveni on the NRM ticket won the 2006 presidential election which was held under multi-party political dispensation with 4,109,449 (59.26%) out of the 6,934,931 total valid votes cast (African Elections Database, 2011:1). Since 2005 to the present, the competitive one-party system/NRM/movement political system has continued in power, under its leader Museveni as president. Against this backdrop, it is evident that since assuming power in 1986, to the present (2018), Museveni has primarily adopted and used military oligarchy, plebiscitary one-party system, and competitive one-party system neopatrimonial rule types.

59 It should be noted however that the opening up of political space and returning of multi-party democracy to Uganda was not merely Museveni’s wish. This is because, shortly after winning the 2001 elections, the international community started mounting a lot of pressure on him to open up the political space which he had curtailed for 15 years so that he would allow the opposition parties to operate. For instance, as John Odyek and John Eremu report, on 15 May 2001, “The United States and the European Union urged President Yoweri Museveni to open up political space for greater pluralism” as he governed during what he had promised would be his last term in office (Odyek and Eremu, 2001:1). This was because, under the original 1995 Constitution, Article 105 had prescribed that a President of Uganda would not rule for more than 10 years (two terms of five years each). This meant that Museveni’s mandatory two terms would elapse early 2006. It can therefore be argued that the opening up of political space and eventual return of multiparty system of political dispensations was also orchestrated by the donors and the other international community stakeholders.
7.10.3.2 Presidentialism
Since assuming power in 1986, Museveni has been in power for nearly 33 years. This not only makes him the longest serving president of Uganda but he has served for a longer period than the period served by all the past eight presidents combined. In addition, Museveni has enjoyed the leverage that both rational-legal and informal institutions grant to him. He is generally portrayed a very strong man, much stronger than many, if not most, formal and informal institutions. For instance, under Article 98 of the 1995 Constitution of Uganda, Museveni, as a serving president, is exempted from trial in any courts of law in Uganda. Museveni, in addition to being president, is “the Head of State, Head of Government and Commander-in-Chief of the Uganda Peoples’ Defence Forces, the Fountain of Honour”, and he takes “precedence over all persons in Uganda” (Article 98(1)).

As Commander-in-Chief of the Uganda Peoples’ Defence Forces, the President has powers to appoint and fire (top) leaders of the defence forces and police. In addition, he has the powers to appoint judges to the High Court, Constitutional Court, and Supreme Court, including the Chief and Deputy Chief Justices. Besides, the President has powers to appoint and fire Cabinet Ministers and can directly and/or indirectly influence the appointment and sacking of any political and civil leaders, administrators and managers, including the Chairperson and Commissioners of the Electoral Commission, among others. This enables him to appoint cadres many of whom are his loyalists and are expected to reciprocate in any ways possible to enable him retain power. Besides, having been in power for nearly 33 years already, coupled with the removal of presidential age limit, Museveni is destined to ruling Uganda for as many more years as he can win and is strong enough to rule the country (Daily Monitor, 2018:1; Kiggundu, 2018:1; Goitom, 2017:1). If this happens, Museveni will presumably be the longest serving president not only in Africa but worldwide.
7.10.3.3 Concentration and Consolidation of Power

Immediately after taking over, Museveni acted very fast to concentrate and consolidate power. For instance, during the transitional period (1986-1995), multi-party democracy and political party activities were suspended, and any aspiration for political leadership had to be done under the NRM system. This gave Museveni an opportunity to form a broad-based government, commonly known as government of national unity, in which he included key opposition figures like Dr. Paul Kawanga Semwogerere (then National Chairman of the Democratic Party), among others (Tusasirwe, 2006:88-89).

In order to boost NRM’s support throughout the country in the immediate aftermath of assuming power, President Museveni, through the relevant structures, introduced resistance councils (RCs) which were later turned into local councils (LCs) throughout the country. Each council had nine executive members, and were hierarchically arranged from the Districts to the grassroots levels, as follows: LC V at the district, LC IV at the County Level, LC III at the Sub-County Level, LC II at the Parish Level, and LC I at the Sub-Parish or Village or Zone Level. These councils were not only used as instruments to popularise Museveni and NRM but their bearers increased their loyalty to Museveni’s government as they looked at their political leadership on these committees as a source of livelihood and political base (Human Rights Watch, 1999:1). Besides, in March 1989, Museveni appointed the Uganda Constitutional Commission which was headed by Justice Ben Odoki. This Commission, mainly comprising Museveni’s ardent supporters, traversed the entire country to collect views which acted as bases for drafting the new Uganda Constitution. This draft was discussed in the Constituent Assembly in 1994 which resulted in the promulgation of the 1995 Constitution of the Republic of Uganda (Human Rights Watch, 1999:1).

Moreover, in 2005, through a referendum, as already noted, Museveni successfully campaigned for the restoration of multi-party rule in Uganda. While this gave opportunity to the rest of the masses who were not willing
to be under the NRM system any longer to belong to the political parties of their choice, it also helped Museveni to get rid of the opposition members like Kawanga Semogerere who were giving him headache under the movement political system. Most important, however, allowing the opposition members to form new or go back to their old parties enabled Museveni to consolidate himself in the leadership of the NRM as he was left with very few, if any, dissenting individuals. It should be noted also, that, while the multi-party multiparty democracy was restored in 2005, it happened against a backdrop of weakened old political parties – given that NRM had already taken deep roots and the majority of Ugandans had already embraced it. It is therefore not surprising that even in the 2006 presidential elections which were held under the multi-party political system, Museveni on the NRM ticket won with 4,109,449 (59.26%) out of the 6,934,931 total valid votes cast, while the rest of the fewer votes were shared among the opposition parties (African Elections Database, 2011:1).

7.10.3.4 Clientilism
Since 1995 when the new Constitution was promulgated, Museveni and the NRM government have maintained the overriding majority of MPs in Parliament. These MPs have been very instrumental in enabling Museveni to successfully push through various bills like the removal of presidential term and age limits bills, and enactment of other legislations that have supported and strengthened Museveni’s powers and rule in Uganda (African Elections Database, 2011:1). In reciprocation, the Museveni has continually helped MPs collectively and privately with financial and non-financial support. Some MPs have been appointed to various cabinet posts; others recommended for parliamentary committee membership; while some who lose parliamentary elections are either appointed Resident District Commissioners and Ambassadors or are positioned in different auxiliary organs of the Government. This has enabled Museveni to secure uncompromised support and loyalty from these individuals even when they are serving under their new portfolios.
On the other hand, to bring services closer to the local masses, Museveni and the NRM government introduced decentralization as a policy under which responsibility for provision of social services like health, education, and sanitation, among others, was placed under District Local Governments. Correspondingly, the less than 40 districts of Uganda prior to 1986 were sub-divided into just over 110 districts by 2017. Each of these District Local Governments has a District Service Commission (DSC) which recruits and appoints most Local Governments employees save for the few positions like District Chief Administrative Officers and Town Clerks which are filled through the Central Government. Each District also has a District Tenders Board (DTB, which awards District Tenders) is constituted by people from within that District. Manifestly, both DSCs and DTBs, as well as other Boards and Commissions at district and national level are constituted by individuals who, in addition to their qualifications, are either supporters of or affiliates to the central and/or local governments or political elites.

7.10.3.5 Infiltration of Nepotism, Ethnicity and rising tendencies of Corruption

Unlike the past regimes of Idi Amin and Milton Obote which staffed the military, police, prisons and other government bodies with people mainly from their ethnic groups, the northerners, President Museveni’s regime has been and is still associated with staffing the foregoing establishments by individuals from all regions across the country. This, notwithstanding, the majority of the most influential positions in many of these establishments is allegedly staffed by individuals from the western region which is the home place for the President. Besides, and just as it is typical of any neo-patrimonial state in Africa, Uganda is characterised by blurred and/or weak “separation of the public and private spheres.” This exacerbates the (mis)use of public resources and offices for private gains, nepotism, and corruption (O’Neil, 2007:3-4). It is thus not surprising that, Uganda, just like many other neo-patrimonial states in Africa and worldwide, still continues to grapple with the vice of corruption in most, if not all, public institutions (Bwambale, 2014:1; Transparency International Uganda,
2015:1; Lumu and Akampurira, 2017:1; Trading Economics, 2018a:1; Trading Economics, 2018b:1).

**7.10.3.6 Institutional Hybridity and Institutional Incompatibility**

Since Museveni took over power in Uganda, there has been and continues to be what O’Neil describes as co-existence of both “informal patrimonial norms and practices” and “formal legal-rational rules” on one hand, and patrimonial institutions and “legal-rational institutions” on the other, but with actual powers to govern and make decisive decisions within the state vested outside formalised structures and state institutions because informal institutions, norms and practices in neo-patrimonial states tend to overshadow formal legal-rational institutions (O’Neil (2007:2-3).

On the formal legal-rational rules for instance, there has been in place the Constitution of Uganda, adopted in 1995 and amended several times; “The Parliamentary Elections Act, enacted in 2005; The Presidential Elections Act, enacted in 2005; The Political Parties and Organisations Act, enacted in 2005”; and “The Electoral Commission Act, enacted in 1997”, among others (Petersen, 2006:4). But these co-exist with the informal rules of political organisations like the Constitution of the NRM and other political parties. Similarly, whereas formal legal-rational institutions like parliament, judiciary (courts and tribunals), public service and other governmental agencies abound, they co-exist with informal institutions like NRM party structures, taskforces and campaign groups, among other. Yet, overtime, it has been proven that many of these informal rules and institutions have exerted great influence over the formal ones, and in many cases, policies, decisions and rules ratified by the formal institutions are often decided by or within the informal ones. The ideas and policies that culminated in the changing of the 1995 Constitution to scrap the presidential two five-year terms limit in 2005 and presidential 75 age limit in 2017 were but all initiated and strengthened in informal institutions and informal settings like the NRM caucuses, informal meetings between the president and a few of his ardent supporters, and views from grassroots NRM structures. They only went to parliament for formalisation and
ratification but most ground work was done at the informal institutions levels. Similarly, while it is the role of parliament to vet and approve appointed ministers and other key appointees like the Ambassadors, Chief of Defence Forces, and Inspector General of Police, among others, decisions on who to appoint in those positions has historically involved serious influence from the informal links and informal frameworks outside formal ones.

Yet, amidst these formal and informal institutions and rules co-existence, there have been also instances of institutional incomparability. For example, the executive has severally complained about the judiciary granting bail to serious law breakers like rapists, terrorists, and robbers, among others, while the judiciary has severally complained about the executive branch of government through the police and security agencies re-arresting people who have been acquitted of wrong doing or granted bail. In another incidence, the NRM party expelled four of its MPs on accounts of indiscipline and insubordination to the NRM constitution and rules. As a party, NRM reasoned that since these rebel MPs had come to parliament on the NRM ticket, they should be expelled from parliament because they were no longer part of NRM. When the Speaker of Parliament was approached and requested to expel them, she declined, arguing that it was unconstitutional. Meanwhile, the rebel MPs had gone to the constitutional court to challenge the constitutionality of their expulsion from both the NRM party and parliament. The constitutional court ruled in their favour that, it was unconstitutional for the rebel NRM MPs to be expelled from parliament. They thus stayed in parliament until their term was over. These and other forms of institutional incompatibilities are vivid indicators that neo-patrimonialism has been and continues to be deeply entrenched under the Museveni’s presidency, just like it is the case under all neo-patrimonial states and regimes in Africa, and worldwide.
To effectively determine whether and how the application of neo-patrimonialism by Uganda’s presidents affected the full realisation of constitutionalism in Uganda between 1962 and 2018, it is imperative to first review the meaning of constitutionalism and what it involves.

As noted earlier, albeit that the concept of ‘constitutionalism’ is often widely used in both academic and non-academic discussions, applying a universal meaning to it has been and continues to be highly contentious. This is because, as Sweet (2009) underscored, attempting a universally agreeable definition for the concept may practically be impossible, because different writers conceptualise it differently. According to Waluchow (1998:6298), constitutionalism is the idea that “government can and should be legally limited in its powers, and that its authority depends on its observing these limitations.” Relatedly, the concept is understood as a doctrine which emphasises that “governments must act within the constraints of a known constitution whether it is written or not” (Mbondonyi and Ojienda, 2013:3). Yet Kanyeihamba (2010:9) perceived it to imply “a government which operates within the limits of the Constitution and makes it easy for orderly and peaceful changes of government and for the rule of law to prevail.”

On the other hand, Mosota in Lumumba, Mbondonyi and Odero (2010:48) define constitutionalism not only as the “practice of politics in accordance with the Constitution” (which he defines as “a collection of written or unwritten fundamental rules and principles that restrain the government (and other political actors) from exercising arbitrary power”) but also as “a driving force for the attainment of the best form of governance.” This therefore means that, as Uwensuyi-Edosomwan (2006:3) observed, constitutionalism is not an end in itself, but a means to an end known as ‘good governance’ which is realised through prevention of “arbitrariness in governance and maximization of liberty with adequate and expedient restraint on government”
Thus, considering that constitutionalism as a concept is highly contested, and bearing in mind that it is not merely ‘an idea’ and ‘a doctrine’ but also ‘a practice of politics’ and ‘a means to good governance’, it can be argued that the scope of constitutionalism is not only limited to (a) “separation of powers in government” and (b) “the limitation of the state versus society in form of respect for a set of human rights” (Kioko, 2009:8), but it also encompasses, inter alia: (c) the “rule of law” (Magaisa, 2011:51); (d) “an independent judiciary”; (e) “control of the amendment of the constitution” (Fombad, 2014:416); (f) “quality of government”, which is manifested in the level of “impartiality of institutions that exercise government authority” (Rothstein and Teorell, 2008:165); (g) having in place governments that account (or are held accountable) to entities or organs that are clearly distinct from themselves; (h) holding elections freely at different intervals; (i) having political groups that freely organise in opposition to the ruling governments; and ensuring that the legal guarantees of fundamental human rights are effectively enforced (by an independent judiciary) (De Smith, 1964). In analysing the constitutional crisis in Uganda and how it undermined constitutionalism between 1962 and 1986, the foregoing constructs are kept into perspective.

Against this backdrop, the assessment of whether, and how, the application of neo-patrimonialism by Uganda’s presidents has affected the full realisation of constitutionalism in Uganda between 1962 and 2018 in done by comparing the application of the neo-patrimonial behaviours and practices of Uganda’s presidents, and establishing how these impacted on any or some or all the foregoing components of constitutionalism.

With regard to whether the application of neo-patrimonialism by all Uganda’s presidents affected the full realisation of constitutionalism in Uganda, the answer is in the affirmative. Indeed, considering the fore mentioned components of constitutionalism, and as elaborated in the previous sub-sections, each of Uganda’s presidents has applied and manifested neo-patrimonial behaviours and practices which ostensibly affected the full realisation of constitutionalism in Uganda.
With regard to ‘how’ the application of neo-patrimonialism by Uganda’s presidents affected the full realisation of constitutionalism in Uganda since independence, there are numerous examples to show this, particularly if the presidents’ neo-patrimonial behaviours and practices are compared to how they affected the fore mentioned components of constitutionalism. As Guest (2004:71) conjectures, “government must respect the constitutions under the terms of which they govern, which implies that constitutional bureaucracy is very critical for effective presidency to take place. Besides, effective presidency must be regulated in the separation of powers arrangement and requires citizens to become qualitatively organised in civic associations so that they can demand accountability of the state-actors. Yet, all Uganda’s post-independence presidential regimes (have) failed to fully abide by the requirements of the legal-rational institutional frameworks in their pursuit of neo-patrimonialism, as the following discussion shows.

7.11.1 Undermining the Doctrine of Separation of Power and Constitutional Checks and Balances

As noted earlier, when Uganda attained independence on 9 October 1962, it was governed by Edward Mutesa II as President and Milton Obote as Prime Minister with executive powers. But in their pursuit of the neo-patrimonial tendencies of concentration and consolidation of power, and clientilism, among others, Mutesa II and Prime Minister Obote ended up in serious and irreconcilable struggles for power. Mutesa II, still being King of the Buganda kingdom with absolute powers and unquestionable authority, felt the 1962 constitutional checks limited his powers and undermined his authority, thus, decided to undermine the Prime Minister. The latter also undermined the former, by abiding and respecting the constitutional provisions only if they served or favoured him (Peter and Kopsieker, 2006:85-86). In so doing, both Mutesa II and Obote contravened the need for respect of the constitutional checks and balances and the need to observe the separation of power principle under constitutionalism.
7.11.2 Abrogation of the 1962 Constitution and Undemocratic Enactment of the 1966 and 1967 Constitutions

Because of his neo-patrimonial greed for presidentialism, unquestionable authority and unlimited powers, Obote, on 2 March 1966 and with the help of the army, overthrew Mutesa II who had been a democratically elected president. In addition, Obote abrogated the 1962 Independence Constitution and replaced with his infamous 1966 Pigeon Hall Constitution. Shortly after, in 1967, Obote again masterminded the enactment of the 1967 Constitution which turned Uganda into a Republic and gave the President executive powers. All these affected the full realisation of constitutionalism in Uganda because these Constitutions were changed and enacted to suit Obote’s personal interests of assuming and consolidating political power instead of fostering the spirit of constitutionalism in Uganda (Tusasirwe, 2006:86). It can therefore be argued that while the period between 1962 and 1970 was characterised by three Constitutions (of 1962, 1966 and 1967), the period was characterised by no constitutionalism.

7.11.3 Rule by Decrees and other Legal Instruments which are not Constitutions

Mosota in Lumumba, Mbondenyi and Odero (2010:48) define constitutionalism not only as the “practice of politics in accordance with the Constitution” (which he defines as “a collection of written or unwritten fundamental rules and principles that restrain the government (and other political actors) from exercising arbitrary power”) but also as “a driving force for the attainment of the best form of governance.” This, notwithstanding, many of the Ugandan presidents disregarded the use of constitutions as a basis for Uganda’s governance. For instance, when Amin took over power from Obote, he abrogated the 1967 Constitution and ruled by decrees from 1971 until he was overthrown in 1979. When Yusuf Lule, Godfrey Binaisa, Paul Muwanga and Okello Lutwa took over power, none of these ruled by a Constitution (Tusasirwe, 2006:86; Omara-Otunu, 1987: 93-108, 143-150; Kanyeihamba, 2010:145-158; Namungalu, 2012:1; RUPMUUNNY, 2018:1). Even when Yoweri Museveni took over power, he “did not immediately bring
in a totally new Constitution”; instead, “through Legal Notice No. 1 of 1986, amendments were introduced to the 1967 Constitution, mainly those necessary to bring it into line with the intended structure of government” until a new constitution was promulgated in 1995 (Tusasirwe, 2006:88; African Elections Database, 2011:1). Against this backdrop, the aforementioned regimes undermined the full realisation of constitutionalism in Uganda during their time because there was no way they could promote or fully realise constitutionalism when they actually ruled under no Constitutions.

7.11.4 Failure to respect Rule of Law and Human Rights
Rule of law is undoubtedly considered one of the key tenets of constitutionalism (Magaisa, 2011:51). This is because, among others, rule of law guarantees respect for human rights, particularly the right to life, and freedom from illegal detentions/dentations without trial, and above all, it promotes democracy and good governance. Yet, as findings show, some of the presidents, particularly Idi Amin and Milton Obote, failed completely to adhere to the principles of rule of law and respect for human rights.

For instance, as Harriet Anena reports, the International Commission of Jurists in Geneva estimates that, in addition to failing to respect the rule of law, Amin killed between 80,000 and 300,000 Ugandans during his brutal regime, while Amnesty International estimates the number of death to have been “500,000 out of the 12 million Ugandans at the time” (Anena, 2012:1). Among the dead were prominent men and women who included “cabinet ministers, Supreme Court judges, diplomats, university rectors, educators, prominent Catholic and Anglican churchmen, hospital directors, surgeons, bankers, tribal leaders and business executives” (Kaufman, 2003:1). On the other hand, as Obote tried to concentrate and consolidate power under his second presidency (between 1980 and 1985), his regime is said to have been characterised by excessive brutality and killings of political opponents – real or imagined, using the army which he allied with to ensure he kept tight grips on power. Allegedly, his army brutality resulted in the death of over 300,000 political opponents and
civilians in Uganda from 1980 to 1985 (Tusasirwe, 2006: 86-87). By failing to respect rule of law and respect for human rights, particularly, the right to life, Amin and Obote fell short of being regarded as promoters of constitutionalism in Uganda.

7.11.5 Banning of Multi-Party Politics and Adoption of a One-Party System of Governance which limited People’s Freedom of Association

As indicated earlier, some of the Uganda’s presidents adopted a plebiscitary one-party neo-patrimonial rule system/type which greatly affected people’s freedom of association and formation of opposition parties aligned to their conscience and political ideology. For instance, from 1964 to January 1971, Obote, with the help of the (members of) parliament and other state organs, coupled with his enormous executive powers, suppressed opposition political parties’ activities (Tusasirwe, 2006:86). Obote also officially banned all kingdoms and feudalism, and established a one-party state under the Uganda People’s Congress (Moncrieffe, 2004:16).

On the other hand, immediately after taking over power, Museveni adopted and maintained a plebiscitary one-party neo-patrimonial rule system, in which a one-party system of government, popularly known as the ‘Movement Political System’ was sanctioned in the 1995 Constitution under Article 70. Between 1986 and 1995, Museveni suspended multi-party democracy and political party activities, and ensured that any aspiration for political leadership had to be done under the NRM system. While this gave Museveni an opportunity to form a broad-based government, commonly known as government of national unity, in which he included key opposition figures like Dr. Paul Kawanga Semwogerere (then National Chairman of the Democratic Party), among others (Tusasirwe, 2006:88-89), it greatly curtailed people’s rights to freely belong to any political parties of their choice and/or forming new or belonging to their old political parties between 1986 and 2005. This tantamount to negation of constitutionalism.
7.11.6 Failure to hold Elections freely at Different Intervals

De Smith (1964) opines that holding free and fair elections and different intervals is a key defining feature of constitutionalism. Yet, this ideal was greatly undermined by Uganda’s presidents between 1966 and 1995. For instance, when Obote became president on 15 April 1966, he did not hold or allow any presidential elections until he was overthrown in January 1971 by Idi Amin. After Amin taking over, he declared himself a life president of Uganda and did not hold any elections (Tusasirwe, 2006:86). Besides, the transitional governments of Yusuf Lule, Godfrey Binaisa, and Paul Muwanga did not come to power through presidential elections. And while the Military Commission under the leadership of Paul Muwanga organised and conducted the 1980 elections, these were allegedly marred by many irregularities which cut them short of being free and fair (Namungalu, 2012:1; RUPMUUNNY, 2018:1). While another presidential election was conducted in 1985 and Obote allegedly won, his army chief, General Kito Okello Lutwa, among others, did not believe the election was free and fair. Lutwa, thus, toppled Obote before he could swear in. From July 1985 to January 1986 when Lutwa was overthrown, he had not conducted any presidential elections. Moreover, even after Museveni taking over as president, he did not hold presidential elections between January 1986 and January 1996 (Tusasirwe, 2006:88; African Elections Database, 2011:1). By failing to hold elections or holding them in ways that were irregular, unfair, and not free, the presidents within the above periods fell short of promoting constitutionalism.

7.11.7 Unconstitutional Changes of Governments

While constitutionalism presupposes that regime changes should be in accordance with the provisions enshrined in the constitution, particularly through presidential elections, Uganda has had a nasty experience in this regard. In fact, since independence, Uganda has never had a constitutional change of government. For instance, Mutesa II, the first democratically elected president of Uganda was unconstitutionally overthrown by Obote in March 1966 (Tusasirwe, 2006:86). After taking over, Obote was overthrown through a military coup by Amin in 1971. Amin was also overthrown
military in 1979 by the Uganda National Liberation Front/Army (UNLF/A) (Tusasirwe, 2006:86). Shortly after, Binaisa was overthrown through but a bloodless coup, and was replaced by the Military Commission in 1980 (Kanyeihamba, 2010:145-158; Omara-Otunu, 1987:145-150). When Obote took his second presidency in December 1980, he was overthrown through a military coup in 1985 by Okello Lutwa (Omara-Otunu, 1987:162-163), who was also military overthrown by Museveni with the help of his military, the National Resistance Army, in January 1986 (Tusasirwe, 2006: 86-87). Since then, to the present, Museveni has been and is still president. It is therefore manifest that by failing to conduct regimes change constitutionally and democratically, the presidents of Uganda have greatly failed to promote the spirit of constitutionalism.

7.11.8 The ease with which Uganda’s Presidents Change(d) or Mastermind the Changing of Constitutions

Fombad (2014:416) underscores the necessity for having adequate and strong controls over the amendment of National Constitutions to prevent and/or mitigate the tendencies of political leaders tinkering with Constitutions to entrench legal provisions that foster their personal political interests to the detriment of the other segments of the society. Conceivably, constitutionalism, in Fombad’s view, is, among others, synonymous with the irregular amendment of the Constitution, or if amended at all, it must be done for the common good; and not just for the few political elites or presidents in power.

It should be recalled that since independence, Uganda has had four Constitutions. These include the 1962 Independence Constitution, the 1966 (Pigeon Hall) Constitution, the 1967 Republican Constitution, and the 1995 Constitution. It should be noted however that the ease with which these Constitutions were/have been changed and/or amended tantamount to lack of fully entrenched adequate and strong controls over their amendment. For instance, with the support of parliament and army, Obote easily abrogated the 1962 Independence Constitution in 1966 and immediately replaced it with the 1966 Constitution without any
deliberations made about it by the parliament. Instead, MPs were just bullied to picking their Constitution copies from their pigeon halls, hence, the name, Pigeon Hall Constitution. Shortly after, owing to his desire to have executive presidential powers, Obote changed the 1966 Constitution and quickly replaced it with the 1967 Republican Constitution which vested in the president executive powers and turned Uganda into a Republic.

On the other hand, the 1995 Constitution in the 23 years of its existence has been amended six times. As Kiggundu reports, “the Supreme Law of the Land is not the same with 65 of its original Articles already amended, making some legal experts such as Professor Frederick Ssempebwa to call for a total review of the Constitution” (Kiggundu, 2017:1). The first amendment took place in 2000 under “The Constitution (Amendment) Act, 2000, Act No.13 of 2000”. The second amendment was done in 2005 under “The Constitutional (Amendment) Act, 2005, Act No.11 of 2005.” The third one was done in 2005 under “The Constitution (Amendment) (No.2) Act, 2005, Act No.21 of 2005.” The fourth amendment was in 2015 under “The Constitutional (Amendment) Act, 2015, Act No.12 of 2015”, while the fifth and sixth amendments were done in 2017 under “The Constitution (Amendment) Bill, 2017” and “The Constitutional (Amendment) (No.2) Bill, 2017”, respectively (Kiggundu, 2017:1). While appearing before the Legal and Parliamentary Affairs Committee “to give his views on yet another proposed amendment” of the 1995 Constitution to remove the upper age limit for the president, Professor Ssempebwa told the legislators that,

“Since the 1995 document is no longer recognisable having been amended several times and most of safeguards repealed, the best way for the country is not to go on amending individual articles but to review the entire document through a Constitutional Review Commission or a national dialogue” (Kiggundu, 2017:1).

It should be noted that while these amendments have been done in accordance with the relevant provisions enshrined in the 1995 Constitution, the ease with which they have been done, in Fombad’s (2014:416) view, would presumably presuppose that the framers of the 1995 Constitution did not entrench adequate and strong safeguards
against tinkering with the Constitution. This, in Fombad’s perspective, tantamount to a shaky basis for promoting the effective realisation of constitutionalism in Uganda.

7.12 Final Analysis of How Uganda and Africa Presidents’ Neo-patrimonial Behaviours have affected Constitutionalism in Uganda
Considering the above, it is evident that while the post-independence leaders of Uganda were expected to promote the full realisation of constitutionalism as well as democracy and good governance in the country, these ideals have not been realised to this day. The challenge is that, since independence in 1962, the presidents of Uganda have espoused, applied and manifested most, if not all, neo-patrimonial behaviours and practices. They have applied and/or manifested: presidentialism; concentration of power; clientelism; (mis)use of state resources for political legitimation and corruption; institutional hybridity; institutional incompatibility; sharing state resources along nepotistic and ethnic motivations; and adoption of either and/or personal dictatorship, military oligarchy, plebiscitary one-party systems, and competitive one-party system neo-patrimonial rule types.

By applying and manifesting all the above, Uganda’s presidents have inevitably hindered the effective and full realisation of constitutionalism in the country by: undermining the doctrine of separation of power and constitutional checks and balances; abrogating constitutions and undemocratically enacting others; ruling by decrees and other unconstitutional legal instruments; failure to respect the rule of law and human rights; banning of multi-party politics and the adoption of a one-party system of governance which limits people’s freedom of association; failure to hold free and fair elections at different intervals; using unconstitutional changes of governments; and effecting frequent changes/amendments of Constitutions which have continually been made to suit the various regimes’ interests to the detriment of the common good. These findings are in agreement with Bach who avers that, the concept of neo-patrimonialism rule in Africa “has become equated to predatory and
anti-developmental forms of power (Bach, 2011:282). The findings also confirm Sandbrook’s description of a neo-patrimonial state as “an archetype of the anti-developmental state, with ‘economic objectives subordinated to the short-run exigencies of political survival’ for the ruler and his regime” (Sandbrook, 2000:97; Bach, 2011:281). Above all, the findings confirm Erdmann and Engel’s description of ‘neo-patrimonialism’ as “a functional threat to the peaceful political development of African states” (Erdmann and Engel, 2006:8).

Yet, as findings on ‘how Uganda and other African presidents’ neo-patrimonial behaviours and practices have impacted on constitutionalism in Uganda in particular, and African generally’ show, this chapter validates that, indeed: (a) neo-patrimonialism is the unchanging way which “has persistently characterised the way in which ‘Africa works’ since independence”(Kratt, 2015:1); (b) neo-patrimonialism is “the foundation stone for the system which drives African politics” (Francisco, 2010:1), and it has “defined African politics since independence” (Lindberg, 2010:123; Hyden, 2000:18; Beresford, 2014:2; Erdmann and Engel, 2007:106); and (c) neo-patrimonialism in Africa is a concept that “can be applied to a number of different regime types, whether they be multi-party democracies, single-party systems, personal dictatorships, plebiscitary, or military oligarchies” (Ikpe, 2009:682; Bratton and Van de Walle, 1994:472).

Against this backdrop, this Thesis validates the argument that while neo-patrimonialism has been and continues to be associated with lots of negativities with regard to democracy, good governance, and development, it has been and continues to be a critical framework for analysing the state of constitutionalism, not only in post-independence Africa generally, but post-independence Uganda in particular.

7.13 Chapter Summary and Conclusion
This chapter has explored the Theory of Neo-patrimonialism and applied it to explain the volatile state of constitutionalism in post-independence Uganda. In so doing, the chapter has addressed the fourth and last research question which states that: ‘To what extent can the Theory of Neo-
patrimonialism be applied to explain and enhance the holistic understanding of the volatile state of constitutionalism in post-independence Uganda?

The chapter has explored neo-patrimonialism in Uganda and how it was/has been applied and manifested in the country under different presidential regimes since independence. After giving an overview and situating the roots of neo-patrimonialism in Uganda, the chapter has revealed that while Uganda has since 1962 to 2018 been ruled by nine presidents: Edward Mutesa II, Apollo Milton Obote, Idi Amin Dada, Yusuf Kironde Lule, Godfrey Lukongwa Binaisa, Paul Muwanga, Apollo Milton Obote II, Tito Okello Lutwa, and Yoweri Museveni, all these collectively have practiced and manifested all the eight identified features and manifestations, although to differing extents. The commonality across all the nine regimes shows that all the above presidents (have) applied and/or manifested: presidentialism; concentration of power; clientelism; (mis)use of state resources for political legitimation and corruption; institutional hybridity; institutional incompatibility; sharing state resources along nepotistic and ethnic motivations; and the adoption of either and/or personal dictatorship, military oligarchy, plebiscitary one-party systems, and competitive one-party system neo-patrimonial rule types.

Lastly, the chapter has revealed that, indeed, the neo-patrimonial practices and behaviours applied by Uganda’s presidents have supposedly hindered the full realisation of constitutionalism in Uganda. By applying and manifesting all the foregoing neo-patrimonial behaviours and practices, post-independence Ugandan presidents have collectively hindered the full realisation of constitutionalism in Uganda by: undermining the doctrine of separation of power and constitutional checks and balances; abrogating constitutions and undemocratically enacting others; ruling by decrees and other unconstitutional legal instruments; failure to respect the rule of law and human rights; banning of multi-party politics and the adoption of a one-party system of governance which limits people’s freedom of association; failure to hold free and fair elections at different intervals;
using unconstitutional changes of governments; and effecting frequent changes/amendments of Constitutions which have continually been made to suit the various regimes’ interests to the detriment of the common good.

Against this backdrop, the chapter concludes by authenticating the argument that while neo-patrimonialism has been and continues to be associated with lots of negativities with regard to democracy, good governance, and development, it has been and continues to be a critical framework for analysing the state of constitutionalism, not only in post-independence Africa generally, but post-independence Uganda in particular. It is therefore concluded that, to the greatest extent, the Theory of Neo-patrimonialism can suitably be applied to explain and enhance the holistic understanding of the volatile nature of constitutionalism in the post-independence Africa generally, and post-independence Uganda in particular. With the above discoveries, authentication and conclusion, this confirmatory study60 has successfully achieved the fourth and last objective of the study.61

In the next (last) chapter, the Thesis summarises the findings of the study, draws conclusions from the findings, recommends what should be done to enhance constitutionalism in Uganda, stipulates the utility and originality of the study and its original contribution to the existing knowledge, and dissects the impetus for conducting further research.

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60 A confirmatory study is a deliberate and systematic research exercise conducted by the researcher to test an already generated or existing “Theoretical Model (based on theory, previous research findings or detailed observation) through the gathering and analysis of field data” (Postlethwaite, 2005:2).

61 The fourth and last objective of the study was: ‘To determine the extent to which the Theory of Neo-patrimonialism can suitably be applied to explain and enhance the holistic understanding of the volatile nature of constitutionalism in post-independence Africa, and post-independence Uganda in particular.’
CHAPTER EIGHT
SUMMARY, CONCLUSIONS, RECOMMENDATIONS AND OTHER CONSIDERATIONS

8.1 Introduction
This chapter summarises the findings of the study, draws conclusions from the findings, gives recommendations on how to enhance constitutionalism in Uganda, states the originality of the study and its contribution to the existing knowledge, elaborates the significance and limitations of the study and concludes by providing the impetus for conducting further research related to some aspects of the study. The main aim of the chapter is to bring to the fore a distilled summary of the rather very detailed study’s findings in order to allow a synthesised version of the main themes to emerge, draw conclusions from them, recommend strategies that should be adopted to enhance constitutionalism in Uganda, and to give the Thesis a logical end.

8.2 Summary of Findings of the Study
This study set out to investigate the state of constitutionalism in Uganda in order to explain why Ugandan governments persistently failed to adhere to the basic requirements of the doctrine of constitutionalism between 1962 and 2018. The study was conducted against the backdrop that whereas a number of studies had been conducted, and various scholars had written, about the political and constitutional history of Uganda prior to and since independence, none of them had exclusively and comprehensively focused on investigating and/or explaining why Uganda experienced a volatile path to constitutionalism between 1962 and 2018.

Moreover, while the quest for securing theoretical paradigms which would/can suitably be applied to investigate and explain the volatile nature of constitutionalism in post-independence Uganda, was/is ongoing; and albeit that a number of studies had been conducted and concluded that Neo-patrimonialism is a Theory which can suitably be applied to drive and define African politics, no studies had been conducted to specifically authenticate the suitability of the Theory in explaining and enhancing the holistic understanding of the volatility of constitutionalism in post-
independence Africa in general, and post-independence Uganda in particular. To fill these gaps, therefore, the study was carried to achieve four specific objectives: (a) to explore the political developments that shaped the volatile process of constitutionalism in Uganda between 1962 and 2018; (b) to explore the factors that have influenced the contested state of constitutionalism in post-independence Uganda; (c) to determine the challenges that have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda; and (d) to determine the extent to which the Theory of Neo-patrimonialism can suitably be applied to explain and enhance the holistic understanding of the the volatile nature of constitutionalism in post-independence Africa generally, and post-independence Uganda in particular.

In order to generate the required findings to achieve the above objectives, the study devised and used four research questions. In the following four sub-sections, the summary of findings is presented thematically in accordance with each of the four research questions and the study objectives they correspond with.

**8.2.1 Political Developments that shaped the Volatile Process of Constitutionalism in Uganda between 1962 and 2018**

In relation to the first objective of the study, the first question which this Thesis set out to answer is: ‘What were the political developments that shaped the volatile process of constitutionalism in Uganda between 1962 and 2018?’ The findings addressing this question are presented in Chapter Three. The findings reveal that these political developments are categorised under three episodes, namely: the 1962 to 1971 period, code named ‘Uganda Constitutional Mission Impossible’ period; the 1971-1986 period, code named ‘Terror, Trauma and Bloody Resistance’ period; and the 1986 to the present (2018), code named ‘The NRM Regime: Bringing in the Citizens, Uncertainty and Constitutional Rights’ Awareness’ period.

The political developments that characterised the ‘Uganda Constitutional Mission Impossible’ period (1962 to 1971) were numerous but the following were the main ones. First and foremost, Uganda attained independence on
9 October 1962, and the 1962 Independence Constitution was adopted. This Constitution among others things, provided for the positions of the President as head of state and commander-in-chief of the armed forces, on one hand, and the Prime Minister as head of government, with executive powers, on the other. The Constitution, nevertheless, had entrenched provisions that limited and checked the powers of the President and Prime Minister to prevent them from abuse of power.

At the same time, following a multi-party parliamentary election which was won by an alliance between the Kabaka Yeeka (King Above All) party under the leadership of Sir Edward Mutesa II, who also doubled as Kabaka (King) of the kingdom of Buganda, and the Uganda People’s Congress (UPC) party under the headship of Milton Obote; the former was made President while the latter became his Prime Minister. Besides, as the findings show, the 1962 to 1971 was a period characterised by organised political bickering, a vice that threatened the social contract arrangement in the country. This is because, as the national independence project proceeded, four procedurally unworkable but interlocking patterns emerged.

First and foremost, from 1962 to October 1963 was a phase when the Queen of England remained the Head of State of Uganda, putting Uganda under Her Majesty’s dominion. It is inconceivable of how Uganda would claim to be independent when actually it continued under the dominion of its colonisers! At the same time, while Mutesa II was the Kabaka (King) of Buganda and at the same time, President of Uganda, and Obote was his Prime Minister with executive powers, both of them were uncomfortable with the 1962 Independence Constitution provisions that limited their powers. As a result, not only did they begin undermining each other, but dual federalism and abuse of authority became part of the key issues that two leaders began and continued to grapple with.

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62 Dual federalism is a “pattern in which federal and state governments are struggling for power and influenced with little inter-governmental cooperation” (Cimitile, 1995:10).
63 Abuse of authority is “the use of an existing authority for purposes that extend beyond or even contradict the intentions of the grantors of that authority” or “the furnishing of excessive
Second, the 1963 to 1966 phase was characterised by chaotic and perplexed self-rule: rulers exhibited incompetence and ill-fated attempts to solve some of the inherited constitutional dilemmas. The peak of this was on 2 March 1966 when the army, on Obote’s orders, stormed President/Kabaka Mutesa II’s palace, forcing him to flee into exile, thus, paving way for Obote to unconstitutionally takeover as President on 15 April 1966.

Third, was the 1966 to 1967 phase, defined by constitutional crisis involving irregular suspensions and obliteration of the 1962 arrangement by Obote, the Prime Minister; the promulgation of the interim infamous ‘pigeon-hole Constitution’ of 1966; and the introduction of the Republican Constitution of 1967. Fourth, was the 1967 to 1971 epoch characterised by systematic institutional decay; abolition of kingships and feudalism, banning of multi-party politics and institution of a one party rule by Obote under the UPC; decomposition of the one-man rule (Obote); and the inevitable and successful military coup d’état of 1971 by Idi Amin that saw the end of the first episode of Obote as president of Uganda. A combination of all these political developments therefore rendered the ‘Uganda Constitutional Mission impossible’ during the 1962 -1971 period.

The findings also reveal that the 1971-1986 was a period of Terror, Trauma and Bloody Resistance.’ This is because terror, trauma and bloody resistance are the most appropriate terms that describe the causes and effects of dreadful governance in Uganda between January 1971 and January 1986. After overthrowing Obote by force and taking over as President on 25 January 1971, Amin suspended the 1967 Republican Constitution and ruled by decrees. He also, shortly after the takeover, ushered in a reign of terror in which tens of thousands of people were extra-judicially executed while others were held in detentions without trial. Like Obote, Amin banned multi-party politics, suspended elections, declared himself a life president, and adopted and used a military dictatorship type

services to beneficiaries of government programs, violating program regulations, or performing improper practices, none of which involves prosecutable fraud” (Cimitile, 1995:1).
of rule throughout his reign of eight years until he was finally overthrown on 11 April 1979 by an alliance of Ugandan émigrés and Tanzanian forces.

Following the overthrow of Amin, this shortly ushered in an interim arrangement famously known as the Uganda National Liberation Front/Army (UNLF/A) which installed Prof. Yusuf Lule as President. After installing Lule, the UNLF/A allowed him to rule for only 68 days (13 April 1979 – 20 June 1979). His removal was primarily a decision by the National Consultative Council which voted him out of office and replaced him with Godfrey Lukongwa Binaisa (20 June 1979 – 12 May 1980). Binaisa’s presidency was also short-lived. He was removed from office through but a bloodless coup by the Military Commission (12 May 1980 – 16 December 1980) under the leadership of Paulo Muwanga. In a few months after the removal of Binaisa, the Military Commission under Paulo Muwanga organised the December 1980 general elections which allegedly were marred by multiple irregularities, but all the same ushered in the second of Milton Obote’s regimes extending from December 1980 to July 1985.

The findings have also revealed that, like Amin’s regime, the Obote’s second presidency was characterised by poor governance, massive abuse of human rights, and utter disrespect of rule of law. It was also a reign of terror in which tens of thousands of people were extra-judicially executed while others were held in detentions without trial. This continued until Obote was finally overthrown by his own Army Commander, Brig. Kito Okello Lutuwa on 29 July 1985. Lutwa’s regime extended Obote’s foregoing mismanagement practices until he was overthrown by the National Resistance Army/Movement (NRA/M) on 26 January 1986. It is thus not surprising that, as the findings have revealed, the 1971-1986 was a period of ‘Terror, Trauma and Bloody Resistance.’ Moreover, albeit that there were general elections for President and Members of Parliament on 10 December 1980, organised under the multi-party arrangement, little that was constitutionally progressive was registered for the duration of utter confusion.
The 1986 to the present (2018), code named ‘The NRM Regime: Bringing in the Citizens, Uncertainty and Constitutional Rights’ Awareness’ period, is the period the NRM (National Resistance Movement) has been in power. Shortly after the NRM takeover power on 26 January 1986 under Yoweri Museveni, a number of key political developments have taken place, some of which, as the findings show, include(d) the following.

Immediately after assuming the presidency, Museveni declared a transitional period of four years from 1996 to 1989. This transitional period was nevertheless later extended until 1996 when the first presidential elections were held since 1985. During this period, there were neither presidential nor parliamentary elections. And so, parliamentary oversight/checks and balances over the executive arm of government were not in existence. In addition, from January 1986 to September 1995, Museveni ruled Uganda without a Constitution. Instead, the NRM, through Legal Notice 1 of 1986 amended the 1967 constitution to suite the government’s interests. Nevertheless, on 8 October 1995, a new Constitution, also known as ‘The 1995 Constitution’ was promulgated, which, among other things, prescribed a continuation of the one-party system of government under the NRM, provided for a maximum of two five-year presidential terms (10 years), and an upper age limit of 75 years for presidential elections eligibility.

After standing and winning the 1996 and 2001 presidential elections, Museveni’s mandatory two presidential terms were to be over in 2005; implying he would not be eligible to stand for the 2006 presidential elections. Thus, in 2005, Museveni, together with the NRM political organisation successfully campaigned for the removal of the presidential terms limit and restoration of multi-party democracy in Uganda through a referendum. Under the NRM ticket, Museveni stood and won also the 2006, 2011, and 2016 presidential elections.

However, after being in power for just over 30 years, and in the immediate aftermath of being sworn-in for his fifth presidency in May 2016, the NRM, and presumably, Museveni himself, realised that he would reach the
mandatory maximum presidential upper age limit of 75 (having been born in 1944) in 2019. This meant that the last two years of his presidency would be above the mandatory upper age limit. More important, it meant that Museveni would be ineligible to stand for president in the 2021 presidential election. This ostensibly would be sad news for the NRM as they may want the current President and NRM Party Chairman Museveni to be their flag bearer for the presidency in 2021. Against this backdrop, the NRM covertly and overtly mobilised the Ugandan masses countrywide, urging and requesting them to embrace the idea of allowing their respective MPs to support the bill in parliament which proposed the removal of the upper age limit for presidential aspirants, among other things.

As a result, a bill seeking the removal of the 75 upper presidential age limit out of the Constitution, also known as ‘The Constitution (Amendment) (No. 2) Bill, 2017’, was tabled in parliament by the Igara West MP, Raphael Magyezi. The bill was discussed and finally passed on 20 December 2017. Of the 394 MPs who were in parliament at the time of the voting, “a total of 317 MPs voted in favour of the motion to lift the upper age limit of 75 years while 97 members voted against. Two members abstained from the vote” (URN, 2017:1). Shortly after, President Museveni signed the bill into law on 27 December 2017 (UNR, 2018:1). Precisely, an amalgam of all the above constitute the key political developments that shaped the volatile process of constitutionalism in Uganda between 1962 and 2018.

8.2.2 Factors that have influenced the Contested State of Constitutionalism in Post-independence Uganda

In relation to the second objective of the study, the second question which this Thesis set out to answer is: ‘What are the factors that have influenced the contested state of constitutionalism in post-independence Uganda?’ The findings addressing this question are presented in Chapter Four. The findings have revealed that the contested state of constitutionalism in post-independence Uganda is as the result of six key sets of factors, namely: the gambit of weak, illiterate and powerless communities; system of exclusive structures of governance; lack of appropriate means of enforcing the rule
of law; chronic political repression dynamic; weakened Ugandan state institutions; and external influences.

The findings have revealed that the gambit of weak, illiterate and powerless communities was the foundation curl that hindered the capacity of the general populace to further their broad interests and political-material identity. In succession, it was a system of formal rule by exclusive structures of poor governance that were finalised during the colonial period. That factor not only encouraged but also entrenched authoritarianism and repressive institutional structures of exclusion in Uganda. In that state, the affairs of citizens lacked the necessary civic competence and means of enforcing the rule of law and the accountability of officials. Thus, constitutionalism remained problematic and perplexing, especially with a chronic political repression dynamic whose origins were the national pre-independence epoch. As a result, governments resorted to punitive force and coercion as the only official methods of exerting political influence over the populace.

The findings have also revealed that; the system of exclusive structures of governance which post-independence Ugandan leaders adopted, the lack of appropriate means of enforcing the rule of law, the chronic political repression dynamism, and the weakened Ugandan state institutions, collectively resulted in poor governance and the observed volatility of constitutionalism in Uganda exhibited through the increased extents of absolutism and abuse of office by the political leaders and their supporters/accomplices, compromised administrative morality and juridical democracy, weak legislative oversight, and lack of effective accountability and transparency mechanisms in the hierarchy of government organs, bureaucracy and the entire public sector. All these negatively affected the quality of government and public management, and greatly curtailed the effective exercise of conventional public power through the requisite democratic institutions. Besides, matters were further complicated by the external influences in the forms of colonialism and neocolonialism after pre-independence conferences in London. As such, the
aforementioned factors, jointly and in almost equal proportions, complicated the observed Ugandan irregular constitutional path together with its rulers’ habits of exhibiting persistent failure to uphold constitutionalism.

8.2.3 Challenges that have militated against the Full Realisation of the Doctrine of Separation of Powers in Post-independence Uganda

In relation to the third objective of the study, the third question which this Thesis set out to answer is: ‘What are the challenges that have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda?’ The findings addressing this question are presented in Chapter Five. The findings have revealed that the failure of Uganda to fully realise the doctrine of separation of powers since 1962, is as the result of eight factors, summarised as follows.

First and foremost, the chronic use of state-inspired violence by the executive arm of government in the post-independence Uganda, has continuously made civilian authorities, particularly the judiciary and parliament, appear inferior before the military and executive establishments. Second, the heterogeneous nature of the Ugandan citizens and their inability to effectively agitate for the proper enforcement of the law has since independence greatly inhibited judicial activism, delayed judicial reforms, discouraged judicial reviews, undermined citizens’ ability to assert and coordinate pluralist community-based power, and ultimately compromised the ability of the national rulers to effectively implement conventional public policy by promoting and protecting the parochial interests of the localities rather than emphasising nation-state institutional building efforts.

Third, the continuous failure of the governments to harmonise the relationships between the executive, judiciary, and legislative arms of government, has overtime severally resulted in: state institutional confrontations during which successive holders of executive power have invoked systematic misuse of authority to erode judicial autonomy; incidents of direct assault by the executive on the judiciary and/or guided
administrative decisions and court proceedings disregarding citizens’ liberties; direct control of judicial officers by the executive, which in turn, has threatened citizens’ civil liberties; the abrogation or complete disregard of constitutions; and several other constitutional defects and areas of inadequacies which have inevitably impinged on the proper administration of the country.

Fourth, the persistent high levels of poverty among the Ugandan masses has complicated the situation of ignorance and disease, which for long were recognised as hindrances to citizens’ liberty since Uganda attained its self-rule in 1962. This is because, rather than becoming involved in progressive thinking, poor Ugandan nationals have spent most of their time worrying about elusive means for survival. Thus, with respect to high levels of poverty, ignorance and disease, Ugandans who have socially and economically been marginalised since independence have lived under absolute poverty and have not even appreciated the value of the doctrine of separation of powers and procedural democracy, neither have they managed to organise around their broad social interests and build a viable Ugandan constitutional state system that was/is both effective and accountable.

Fifth, the persistence of Uganda’s fragmented institutions of governance, has historically motivated and enabled the executive arm of government, led by the presidency, to persistently manipulate governmental systems and transform(ed) them into personal rule. As a result, incumbent presidents have either ignored or twisted constitutional arrangements through both patronage and coercion, which presumably has motivated the chronic (mis)use of the military system to influence the judiciary, legislature, and other political developments.

Sixth, the curse of low levels of civic competence in the ordinary citizens of Uganda, has since independence complicated the constitutional doctrine of separation of powers’ dilemmas by not only providing limited choices to the citizens but limiting their ability to effectively deal with the fusion of the presidency and individual power of the president. This, supposedly, has
enhanced the proliferation of low quality Ugandan government institutions which overtime have survived with minimal or no objection from the downtrodden ordinary citizens.

Seventh, the constitutional dilemmas and Uganda citizens’ choices, particularly with regard to ethnic conflicts and militarisation of the state, among others, have not only brought about diametrically opposed and antagonistic armed formations in the country, but also have continually heightened the tendency of leaders being hostile to the doctrine of separation of powers in Uganda. This has historically created unnecessary tensions and complications among the Ugandan citizens with regard to whether and how the constitutional dilemmas would be handled. This has ultimately and greatly restricted people’s choices for uniform participatory rights in the affairs of governing the country since independence.

Lastly, corruption has been and continues to be widely spread and deeply entrenched in almost all government sectors in Uganda, including the judiciary, legislature, and executive. With persistently higher rates of corruption abounding in all the three arms of government, each of these arms finds itself in a moral dilemma which hinders its institution of effective checks and balances onto the other, hence, the impossibility to ensuring the effective and/or full realisation of the doctrine of separation of powers in Uganda.

8.2.4 Extent to which the Theory of Neo-patrimonialism can suitably be Applied to Explain the Volatile Nature of Constitutionalism in Post-independence Uganda

In relation to the fourth objective of the study, the fourth and last question which this Thesis set out to answer is: ‘To what extent can the Theory of Neo-patrimonialism be applied to explain the volatile nature of constitutionalism in post-independence Uganda?’ The findings addressing this question are presented in Chapter Seven. In relation to the above question, the findings reveal as follows.

First, the findings have revealed that since independence in 1962, Uganda has been ruled by nine presidents, namely; Edward Mutesa II, Apollo Milton
Obote, Idi Amin Dada, Yusuf Kironde Lule, Godfrey Lukongwa Binaisa, Paul Muwanga, Apollo Milton Obote II, Tito Okello Lutwa, and Yoweri Museveni. Nevertheless, all these collectively have practiced and manifested all the eight identified features and manifestations of neo-patrimonialism in Uganda, although to differing extents. The commonality across all the nine presidential regimes shows that all the above presidents (have) either applied and/or manifested: presidentialism; concentration of power; clientelism; (mis)use of state resources for political legitimation and corruption; institutional hybridity; institutional incompatibility; sharing state resources along nepotistic and ethnic motivations; and the adoption of either and/or personal dictatorship, military oligarchy, plebiscitary one-party systems, and competitive one-party system neo-patrimonial rule types.

Second, the findings have revealed that, indeed, the neo-patrimonial practices and behaviours applied by Uganda’s presidents have supposedly hindered the full realisation of constitutionalism in Uganda. By applying and manifesting all the foregoing neo-patrimonial behaviours and practices, Uganda’s presidents have ostensibly hindered the effective and full realisation of constitutionalism in the country by: undermining the doctrine of separation of power and constitutional checks and balances; abrogating constitutions and undemocratically enacting others; ruling by decrees and other unconstitutional legal instruments; failure to respect the rule of law and human rights; banning of multi-party politics and adoption of a one-party system of governance which limits people’s freedom of association; failure to hold free and fair elections at different intervals; using unconstitutional changes of governments; and effecting frequent changes/amendments of Constitutions which have continually been made to suit the various regimes’ interests to the detriment of the common good.

Against this backdrop, the findings of the study authenticate the argument that while neo-patrimonialism has been and continues to be associated with lots of negativities with regard to democracy, good governance, and development, it has been and continues to be “the foundation stone for the
system which drives African politics” (Francisco, 2010:1), and it has “defined African politics since independence” (Lindberg, 2010:123; Hyden, 2000:18; Beresford, 2014:2; Erdmann and Engel, 2007:106; Ikpe, 2009:682; Bratton and Van de Walle, 1994:472).

Indeed, as the findings have revealed, neo-patrimonialism has been and continues to be a fundamental framework for analysing and explaining the state of constitutionalism, not only in post-independence Africa generally, but Uganda in particular. It is therefore concluded that, the Theory of Neo-patrimonialism, to the greatest extent, can suitably be applied to explain the volatile nature of constitutionalism, not only in post-independence Africa generally but post-independence Uganda in particular.

### 8.3 Conclusions arising from the Findings of the Study

On the basis of the (above) findings, the Thesis makes the following six conclusions.

First, ‘the contested state of constitutionalism in post-independence Uganda is as the result of six sets of critical factors, namely: the gambit of weak, illiterate and powerless communities; system of exclusive structures of governance; lack of appropriate means of enforcing the rule of law; chronic political repression dynamic; weakened Ugandan state institutions; and external influences.

Second, the failure and/or inability of the post-independence Uganda to fully realise the doctrine of separation of powers is as the result of eight consolidated factors, namely: the chronic use of state-inspired violence by the executive arm of government; the heterogeneous nature of Ugandan citizens and their inability to effectively agitate for the proper enforcement of the law; the continuous failure of the governments to harmonise the relationships between the executive, judiciary, and legislative arms of government; the persistent high levels of poverty among the Ugandan masses; the persistence of Uganda’s fragmented institutions of governance; the curse of low levels of civic competence in the ordinary citizens of Uganda; the constitutional dilemmas and Uganda citizens’ choices,
particularly with regard to ethnic conflicts and militarisation of the state; and the ‘insidious cancer’ of corruption which has been and continues to be widely spread and deeply entrenched in almost all government sectors in Uganda, including the judiciary, legislature, and executive.

Third, all post-independence presidents of Uganda (have) practiced and manifested neo-patrimonialism, although to differing extents, in the forms of: presidentialism; concentration of power; clientelism; (mis)use of state resources for political legitimation and corruption; institutional hybridity; institutional incompatibility; sharing state resources along nepotistic and ethnic motivations; and the adoption of either and/or personal dictatorship, military oligarchy, plebiscitary one-party systems, and competitive one-party system neo-patrimonial rule types.

Fourth, post-independence Ugandan Presidents have collectively hindered the full realisation of constitutionalism in Uganda by: undermining the doctrine of separation of power and constitutional checks and balances; abrogating constitutions and undemocratically enacting others; ruling by decrees and other unconstitutional legal instruments; failure to respect the rule of law and human rights; banning of multi-party politics and the adoption of a one-party system of governance which limits people’s freedom of association; failure to hold free and fair elections at different intervals; using unconstitutional changes of governments; and effecting frequent changes/amendments of Constitutions which have continually been made to suit the various regimes’ interests to the detriment of the common good.

Fifth, albeit that the practice of neo-patrimonialism has been and continues to be associated with lots of negativities with regard to democracy, good governance, development, and even constitutionalism on the one hand, it is a Theory which, to the greatest extent, can suitably be applied to explain the volatile nature of constitutionalism, not only in post-independence Africa generally but post-independence Uganda in particular.

Lastly, and the above notwithstanding, the collective behaviours of Uganda’s post-independence presidents viewed through the lens of neo-
patrimonialism are more fundamental in understanding the failure of democracy in Uganda than the country’s structural problems of constitutionalism.

8.4 Recommendations on how to enhance the adherence to and full realization of the Doctrine of Constitutionalism in Uganda

As elaborated in the previous chapter, this study has applied the Theory of Neo-patrimonialism to explain the volatile nature and state of constitutionalism in Uganda since independence. In Chapter Four, it has discussed the political developments that shaped the observed ragged trajectory of constitutionalism in Uganda, while in Chapters Five and Six, it has explored the various impediments to the full realisation and adherence to the doctrine of constitutionalism in Uganda. Some of these, which still exist today, include: the weak, powerless and illiterate or semi-illiterate segments of the Ugandan population which are characterized by no or low levels of civic competence; over concentration of power under the presidency; weak government institutions; inadequate adherence to the separation of power doctrine; poor coordination and harmonization among the three arms of government (executive, legislature and judiciary); chronic political repression dynamism; corruption; and the inadequate enforcement of rule of law and accountability by the government.

On the other hand, the previous Chapter has revealed that, while Uganda has been governed by nine presidents since independence, all these political leaders have adopted uniform neo-patrimonial behaviours like over concentration of political power, presidentialism (wishing to stay in power for very long), (mis)use of state resources for political legitimisation and corruption, institutional hybridity, and institutional incompatibility, all of which have exacerbated the observed challenges to constitutionalism in the country. To mitigate the above, and further enhance the prospects for the full realisation and adherence to the doctrine of constitutionalism in Uganda, therefore, the Thesis recommends as follows.
8.4.1 Tame the greed for power and abate presidentialism through restoration of the presidential term limits

As the study has revealed in the last chapter, greed for power and presidentialism – which is the tendency of, or desire to, staying in power for a very long time, have characterized almost all Ugandan political leaders since independence, including those whose regimes were short-lived. Moreover, since independence to the present, none of the Ugandan presidents has handed over power peacefully. Albeit that staying in power longer is in itself not necessarily bad per se, history has revealed that the longer a political leader stays in power, the likelihood that his legitimacy wanes, which, ultimately results in state-sponsored brutality in bid to fend off resistance from the opposition members who very often manifest their discontents through massive demonstrations and chaotic riots.

Against this backdrop, an effective way to tame greed for political power and mitigate presidentialism is through restoration of the presidential term limits. It should be recalled that the original 1995 Constitution of Uganda had prescribed, under Article 105, that the President of the Republic of Uganda would not serve more than two terms of five years each. That Article, nevertheless, was amended in 2005 when the term limits were scraped. This notwithstanding, term limits need to be restored for three main reasons. First and foremost, it would enable the masses and opposition to easily predict the political landscape of Uganda because they will know that a leader will stay for a maximum period of 10 years, and another one will takes over. This would help restore faith and confidence in government institutions and electoral processes whose legitimacy has dwindled overtime. Second, term limits would help to restrain political leaders from arbitrary use and abuse of power due to the fear of litigation when their term(s) expire.

Third, when the opposition and the rest of the masses know that a given political leader will leave office by a given date, the likelihood that they will be patient and restrain themselves from engaging in destructive riots and chaotic demonstrations against the political leader and his regime is higher.
And lastly, the maintenance of term limits would presumably help to ensure and promote peaceful political change and handover of political power, which is in itself not only crucial for democracy and good governance but a prerequisite for the effective adherence to the doctrine of constitutionalism.

8.4.2 Setup an effective Constitutional Review Commission to completely review the Constitution and halt its routine Amendments

As the previous chapters have indicated, while constitutionalism presupposes the existence of a constitution, Uganda has since independence had four Constitutions but has not experienced the true taste of constitutionalism. One of the mechanisms through which the latter can take place is when a constitution is merely used as a tool, which can be amended at any time to suite the interests of the regime. For instance, considering that 65 of the 288 Articles of the original 1995 Constitution had been amended by November 2017, one can be tempted to think that its framers lacked credence for writing a good Constitution which would stand the test of time, or that the political and socio-economic landscapes of Uganda have changed so much that the Constitution would not adequately cater for them, or that the regime may be merely using the Constitution as a tool to entrench itself in power for as long as they want to stay. Irrespective of which of these is most appropriate, what is obvious is that, a good Constitution should stand a test of time; should be amendable but not so regularly in order for the people to have faith and confidence in it; and above all, should be a true reflection of the interests of the masses as opposed to merely being seen as a tool for the ruling regime to champion its agendas and interests.

As earlier noted, Fombad (2014:416) underscores the necessity for having adequate and strong controls over the amendment of National Constitutions to prevent and/or mitigate the tendencies of political leaders tinkering with Constitutions to entrench legal provisions that foster their personal political interests to the detriment of the other segments of the society. Conceivably, constitutionalism, in Fombad’s view, is, among others, synonymous with the irregular amendment of the Constitution, or
if amended at all, it must be done for the common good; and not just for the few political elites or presidents in power.

One of the most effective ways to mitigating the above anomalies is to put in place an effective Constitutional Review Commission (CRC) to traverse the whole country, seeking people’s views on the state of the current Constitution; what Articles need to be changed and which ones should be retained. This view is supported by Professor Fredrick Ssempebwa, a law don and one of the former Chairmen of such commissions in Uganda. While appearing before the Legal and Parliamentary Affairs Committee in November 2017, Professor Ssempebwa reasoned that, considering “the 1995 document is no longer recognizable having been amended several times and most of safeguards repealed”, the most appropriate alternative “for the country is not to go on amending individual articles but to review the entire document through a Constitutional Review Commission or a national dialogue” (Professor Fredrick Ssempebwa in Nakatudde, 2017:1).

By operationalizing the CRC, various stakeholders in Uganda, including government, ruling and opposition parties and other interests’ groups and the masses would get an opportunity and platform to air out their views and consequently come up with an agreeable stand on which Articles of the Constitution need amendment and/or retention. This would presumably lessen, if not completely, eliminate the ongoing bickering between the ruling and opposition parties over the routine constitutional amendments in Uganda, which, the latter suspect, are deliberately done to foster and entrench the interests of the former. Most importantly, a complete overhaul of the Constitution through the CRC would presumably culminate into legitimate constitutional changes and restore faith and confidence in the Constitution by the general public which is itself very critical for constitutionalism to flourish in Uganda.

8.4.3 Use legitimate methods to limit the powers of political leaders
One of the main challenges and constraints to the full realisation and adherence to the doctrine of constitutionalism in Uganda since independence, has been and continues to be ‘vesting too much authority
and powers under the presidency.' For instance, by design, almost all post-
independence leaders have not wanted limitations to their authority and
powers, yet this is the cardinal component which constitutes the doctrines
of separation of powers and constitutionalism generally. As elaborated in
Chapters Four and Seven, after independence, both Mutesa II (the
President) and Milton Obote (then Prime Minister) had numerous feuds
between 1962 and 1966 until the latter forced the former to flee into exile
in March 1966. This was because each of the two leaders did not want the
1962 Constitutional provisions which limited their powers. Besides, shortly
after assuming the presidency, Obote replaced the 1962 Constitution with
the 1966 pigeon hall constitution. In the following year, he again came up
with the 1967 Constitution which transferred Uganda into a Republic and
vested executive powers in the president.

On the other hand, when Idi Amin took over the presidency through a coup
in January 1971, he immediately abolished the 1967 Constitution and
ruled by decrees, in addition to declaring himself a life president of Uganda.
Moreover, even when Yoweri Museveni took over power in January 1986,
he did not rule under any Constitution until the promulgation of the 1995
Constitution. It should be recalled that, during this period, Museveni was
president, speaker, head of government, and commander-in-chief of the
armed forces. Later, when the 1995 Constitution was crafted and
eventually promulgated, it still vested/vests in the presidency enormous
powers and authority, which if not well-used and tamed, can easily make
one abuse office.

For instance, under Article 98 of the 1995 Constitution of Uganda, the
President is exempted from trial in any courts of law in Uganda. Moreover,
he is “the Head of State, Head of Government and Commander-in-Chief of
the Uganda Peoples’ Defence Forces, the Fountain of Honour”, and takes
“precedence over all persons in Uganda” (Article 98(1)). As Commander-in-
Chief of the Uganda Peoples’ Defence Forces, the President has powers to
appoint and fire (top) leaders of the defence forces and police. In addition,
he has the powers to appoint judges to the High Court, Constitutional
Court, and Supreme Court, including the Chief and Deputy Chief Justices. Besides, the President has powers to appoint and fire Cabinet Ministers and can directly and/or indirectly influence the appointment and sacking of any political and civil leaders, administrators and managers, including the Chairperson and Commissioners of the Uganda Electoral Commission, among others.

Such authority and powers are too much to be vested in only one political leader! If a dictatorial political leader is vested with such sweeping powers, the consequences become obvious. Through the Constitutional Review Commission and/or constitutional amendment, there is need to trim some of the presidential powers to avoid abuse and enhance observance of the doctrine of separation of powers. For instance, there is need to amend the procedures for the judicial service appointments to ensure that the Chief Justice, Deputy Chief Justice and all Justices and Judges are appointed directly by the Judicial Service Commission instead of being appointed by the president as it is now. This would help strengthen the independence of the judiciary in its work, which would also promote respect and realization of the doctrine of separation of powers.

Another aspect from which the president should be exempted is the appointment of the Chairperson of the Uganda Electoral Commission and all Electoral Commissioners. These should be appointed by the Uganda Electoral Service Commission to enable them function in an impartial manner, particularly with regard to elections and other electoral processes to which the ruling regime is party. Other powers and responsibilities to be trimmed off the presidency could be determined through the Constitutional Review Commission. It is through such limited powers of the president/executive that the three arms of government (executive, judiciary and legislature) will be able to constructively and effectively adhere to the doctrines of separation of powers and constitutionalism.

Trimming of presidential powers and authority would also inevitably reduce the observed political repression dynamism and chronic use of state-inspired violence by the executive arm of government, and elevate the
status and significance of civilian institutions, particularly the judiciary and parliament, which for long have been relegated to inferior positions by the military and executive establishments. Also, reduced powers of the presidency would enable other organs of the government to independently enforce rule of law and accountability, revitalize the weakened state institutions due to reduced interference from the executive branch, and revitalize the effectiveness and efficiency of governance structures, all of which are fundamental in promoting adherence to the doctrine of constitutionalism in Uganda.

8.4.4 Ensure good relations and harmony among the Executive, Judiciary, and Legislative Arms of Government

As noted in Chapter Six, continuous failure of government officials to harmonize the relationships between and among the three arms of government (executive, judiciary, and legislature) is one of the main challenges to the full realisation of the doctrine of separation of powers and constitutionalism in post-independence Uganda. This institutional confrontation has been continually observed in the persistent and unfortunate incidents of conflict of interests amongst the three organs of government. For instance, in 2004, the government openly attacked the judiciary when it rejected “a constitutional court ruling that nullified the 2000 referendum, saying that the government would not accept the contents of the ruling” (Nampewo, 2004:93). In addition, the President is quoted to have said that:

“We restored constitutionalism and the rule of law. That is why judges can rule like this against the government. There were times when if a judge made such a ruling, he would not live to see tomorrow. The ruling will not work. It is simply unacceptable. Judges say Article 74 has evaporated. Article 74 is not dead. The movement system is not dead. We are all here” (The Daily Monitor, 2004:1; Nampewo, 2004:93).

Subsequently, many members of the general public held massive demonstrations against the judiciary on what the executive termed as impartial judgement by judiciary. This forced the court to cease their work and closed until normalcy returned (Nampewo, 2004:93). To avoid such and other similar scenarios for recurring, therefore, there is need to ensure
that the relations between the Judiciary, Executive and Legislature are well coordinated, normalized and regulated from degenerating into chaos. This will enable each of the organs to respect each other’s mandate and activities and to work towards a state void of unnecessary interferences in each other’s work. Coordination of these three organs should be done by a special department, or office or individual or group of individuals delegated for that particular purpose and agreeable to all the organs.

The concerned entity or individual(s) should ensure that any form of disagreement between any two or among the three organs should be addressed before it gets out of hand. This will enable the organs to work in harmony, instead of working as though they were competitors or enemies. Besides, when working in harmony, the three organs can easily and effectively handle issues like corruption and misappropriation of funds, which, as already discussed in Chapters Five and Six, have been found to be serious challenges to the realization of separation of powers and constitutionalism in Uganda. Most importantly, it is only through such harmony and unity among the Executive, Judiciary and Legislature that the effective adherence to, and full realization of, the doctrine of constitutionalism can be attained in Uganda.

8.4.5 Consolidate and unify the fight against the high levels of corruption across all sectors of government

Corruption, as revealed in Chapter Six, has been and continues to be a key factor that has militated against the full realisation of separation of powers and constitutionalism since independence. Corruption has been pervasive to the extent that almost all Ugandan regimes have been marred by the vice since independence. For instance, in the public sector, as Martini observes, the vice has fully entrenched almost all government sectors, including the judiciary, legislature and executive, as well as other “government institutions, including procurement, police, and the defence, education and health sectors” (Martini, 2013:1). Against this backdrop, all organs of government including the Executive, Legislature, Judiciary/Courts of Law, Police, Auditor General, Inspectorate of Government, Directorate of Public
Executions, Attorney General, Public Procurement & Disposal of Public Assets Authority, Directorate of Ethics and Integrity, and other anti-corruption agencies, should join and harmonize efforts to effectively fight corruption.

Fortunately, Uganda has put in place a solid legal framework, in addition to the foregoing institution framework, to fight corruption. Among others, it includes: The Penal Code Act Chap 120; The Prevention of Corruption Act 1970 (Cap 121); The Constitution of the Republic of Uganda 1995; The Local Government Act 1997; The Budget Act 2001; The Inspectorate of Government Act 2002; The Leadership Code Act 2002; The Public Finance and Accountability Act, 2003; The Public Procurement and Disposal of Public Assets Act 2003; The Access to Information Act 2005; The Local Governments (Financial & Accounting) Regulations 2007; The National Audit Act 2008; The Public Service Act 2008; The Anti Corruption Act 2009; The Whistleblowers Protection Act 2010; The Uganda Public Service Standing Orders 2010; The Financial Institutions (Anti- Money Laundering) Regulations 2010; The Anti-Money Laundering Act 2013; and The Public Finance Management Act 2015. So, what the government should do is to unify, harmonize and fully galvanize the above institutional and legal frameworks, and to these add adequate requisite political will by the executive branch of government, to effectively investigate, prosecute, sentence and/or penalize corruption culprits, as well as preventing and discouraging the would be culprits from committing the vice.

8.4.6 Increase the civic competence of the people of Uganda through civic education

As noted in Chapter Five, the gambit of weak, illiterate and powerless communities is a key hindrance to constitutionalism in post-independence Uganda. This is because, during colonialism, the imperial ruler/British Crown, who by law was the sovereign ruler of the Uganda Protectorate, wanted to keep Ugandans very weak, powerless and illiterate or semi-illiterate to ensure that state-subject relationships were characterized by practical domination for the benefit and pleasure of the British Crown.
Sadly, after independence, the Uganda’s political leaders perpetuated the same tendency, with the assumption that weak, illiterate and powerless communities are and would be easier to manipulate and/or manage (Ibingira, 1972:13-28).

Against this backdrop, it is paramount that civic education should be adopted as an effective medium through which the civic competence of Ugandans, many of whom are still powerless, weak and illiterate or semi-illiterate, should be enhanced for the effective realisation of constitutionalism in Uganda. This view is bolstered by Margaret Stimmann Branson when she observes that, “There is no more important task than the development of an informed, effective, and responsible citizenry.” She emphasizes that “Democracies are sustained by citizens who have the requisite knowledge, skills, and dispositions.” She adds that, a free and open society only succeeds when its citizens’ civic competence is adequate to make them get committed to the “fundamental values and principles of democracy” (Branson, 1998:1). It is therefore crucial, as Branson advises, that, “educators, policymakers, and members of civil society make the case and ask for the support of civic education from all segments of society and from the widest range of institutions and governments” (Branson, 1998:1).

8.4.7 Align international community’s assistance to Uganda to making significant headways on constitutionalism

Since independence, Uganda has been running a deficit budget. The implication has been, and continues to be, that, the rest of the funding has/will come from the donors. Secondly, the international financial institutions like the World Bank and IMF have been pivotal in aiding Uganda with grants and soft loans for development since independence. Yet, in doing so, they have not maximally exploited their potential to compelling Ugandan leaders to adequately adhere to the principles of constitutionalism in the processes of giving them the required financial handouts. Similarly, the U.S., U.K, German, France, Denmark, Canada, Norway, and Sweden, among others, have been and remain key
development partners with Uganda, but, like the World Bank and IMF, they have not fully maximized their potential.

Against this backdrop, it fundamentally crucial that the international community reconsiders its approach to ensuring that grants, soft loans, and other forms of financial and logistical assistance to Uganda are and should be issued in relation to the country making significant improvements and achieving important milestones in the field of constitutionalism. In addition, the donor and international community generally should also provide technical support by sending experts to Uganda to help teach and build the capacity of Uganda(ns) in the areas of quality government, rule of law, good governance, democratization, separation of powers, and constitutionalism generally. An amalgam of all these will go a long way in making Uganda realize and adhere to the doctrine and basic principles of constitutionalism, which the country has never tasted in its true sense since independence.

8.5 Originality of the Study and its Contribution to Existing Knowledge

The originality of the study is in its: (a) being the first comprehensive investigation into why Ugandan governments have persistently failed to adhere to the basic requirements of the doctrine of constitutionalism for the entire period of 56 (1962-2018) years of post-independence Uganda; and (b) its being the first study to apply the Theory of Neo-patrimonialism in explaining the volatile state of constitutionalism in Uganda.

The study’s contribution to existing knowledge lies in; (a) its generation of detailed and well-researched information on the volatility of constitutionalism in Uganda between 1962 and 2018, (b) its generation of crucial recommendations on how to effectively enhance the prospects for the adherence to and full realisation of the doctrine of constitutionalism in Uganda, and (c) its authentication of the validity of the claims that despite its shortcomings, Neo-patrimonialism is a Theory which not only continues to define and drive African politics but its application can suitably be used to explain the volatile state and nature of constitutionalism in post-
independence Africa generally and post-independence Uganda in particular.

8.6 Significance and Limitations of the Study, and Impetus for further Research

This study is significant in that it has successfully: (a) explored and unearthed the political developments that shaped the volatile process of constitutionalism in Uganda between 1962 and 2018; (b) discovered the factors that have influenced the contested state of constitutionalism in post-independence Uganda; (c) determined the challenges that have militated against the full realisation of the doctrine of separation of powers in post-independence Uganda; (d) generated crucial recommendations on how to enhance the prospects for the effective adherence to and full realisation of the doctrine of constitutionalism in Uganda, and (e) discovered that, to the greatest extent, the Theory of Neo-patrimonialism can suitably be applied to explain and enhance the holistic understanding of the the volatile nature of constitutionalism in Africa generally, and post-independence Uganda in particular.

The significance of the study, therefore, hinges on the fact that it has successfully generated well-researched findings which have filled the knowledge and information gaps that existed with regard to the foregoing aspects before the study was conducted. Besides, on the basis of the findings generated by this study, eight logical conclusions have been drawn and made. These, in addition to being informative and enlightening, may serve to stimulate future studies for purposes of their extension, validation, and/or invalidation, or making of theories or models in relation to constitutionalism and/or neo-patrimonialism.

The foregoing significance of the study acknowledged, it is worthy to note that this study suffers from one main limitation: its use of, and overreliance on, secondary data as the only basis of its findings. In other words, while this study has generated well-researched findings, which it generated principally from secondary sources through literature review and desk research, it did not adopt and/or use any primary sources of data and the
corresponding methods of data collection like self-administered questionnaires and in-depth interviews, among others. And so, albeit that the findings of this study are neither inferior nor erroneous, the adoption and use of both primary and secondary data sources and data collection methods would presumably have given a better, if not more accurate, results version.

Against this backdrop, this Thesis recommends that further research, involving the use of both primary and secondary data sources and their corresponding data collection methods, be conducted to not only determine the validity of the findings generated by this study but also to ascertain whether and how, the Theory of Neo-patrimonialism could usefully be applied to promote the effective adherence to and full realization of the doctrine of constitutionalism in Uganda.
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