

The constitution Abu Mayanja wanted for the Uganda postcolonial state

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Abstract

Mayanja was the leading “founding father” Ugandan politician in trying to define ideas of a constitution fit for his homeland. He was the most prolific in articulating how the Uganda postcolonial state should be designed and managed before and after independence. His ideas of the constitution of the Uganda postcolonial state he advocated for were informed by the nature of the state he wished his homeland to become. He wanted to live in a Uganda where a constitution was respected and guaranteed the rights and liberties of the people. He saw the constitution as a vital document that lays down government responsibilities defines citizens' rights and their obligations to the nation in a liberal democratic state. For him, the constitution was the legal basis for the actions of the state, for constituting the government, for laying down the relationship between the people and the government, for clarifying the rights and defining the obligations of citizens and spelling out the values and principles for which a nation stands. He insisted, however, that a constitution was not a cure for every political problem. It was only a guide to political behaviour, and the state managers would make the nation flourish or fail. He was very disappointed that some leading members of Obote's government did not know the value of a constitution in the management of a state. He was involved in drafting, criticising, and moderating almost all of Uganda's constitutions since 1962. He was the principal architect of the 1962 Constitution, the leading outspoken critic of the 1967 Constitution, a member of the Constituent Assembly that debated the 1995 and an opponent of what he thought were bad amendments to the 1995 Constitution.

1. The Constitution of the Uganda postcolonial state Mayanja¹ wished to live in

Nations are managed by agreements between citizens and their governments on principles and laws embodied in a constitution which shapes the use of political power. That is one of the reasons a constitution is often called the "supreme law" of any country. Respect and adherence to the articles of a constitution indicate a nation's stability and maturity. The nature and spirit of a constitution defines the format of a state. Uganda's constant change of its constitution since 1962 is indicative of the country's fragility. Since 1894, Uganda has gone through several state formats based on different "supreme laws". The colonial state lasted 68 years, from 1894 to 1962 and was based on the Uganda Order in Council of 1902; the first postcolonial state from 1962 to 1966 was managed with the 1962 Constitution, and the Pigeonhole Constitution state lasted from 1966 to 1967. Although the 1967 lasted thirty-two years up to 1995, the country was governed by promulgated dictatorial ordinances from 1971 to 1995. Much as the 1995 Constitution was the first supreme law of the land that was

¹ Abubakr Bakijukire Kakyama Mayanja (popularly known as Abu Mayanja) was born in 1929 and went to King's College Budo before joining Makerere College in 1950. In March 1952, he became the secretary general of Uganda's first national party, the Ugandan National Congress (U.N.C.). In August of the same year, he was expelled from Makerere College for leading a students' strike. However, to the surprise of many, the Governor of Uganda, Sir Andrew Cohen, not only secured a place for Mayanja at King's College, Cambridge, to study History and Law but also gave him a fat scholarship with stipends for his mother and sister. On the political front in Uganda, Mayanja invited Milton Obote into the U.N.C. and worked with him until the Kabaka asked him to be Minister of Education in 1960. As independence approached, Buganda and Uganda struggled for a compromise to co-exist. Mayanja was the architect of the 1962 Constitution, which allowed the various groups to form a governing coalition to which colonial officers handed power in 1962. From 1964 to 1971, he was a Parliamentary Member for Kyagwe Northeast, and his admirable performance earned him the honour of being referred to as the "Edmund Burke" of Uganda. From 1968 to 1970, he was in Obote's prison for political reasons. From 1971 to 1972, he served as Minister in Amin's Government but soon retired to the countryside. From 1986 to 1994, he served as Minister in various portfolios in Museveni's Government, including that of Third Prime Minister. He retired into legal practice until his death in November 2005.

constituted with the full discussion and participation of the public, a number of its pillars have been removed by Parliament.

When, for several reasons, but particularly the devastating impact of the second world war, the U.K. lost the capacity to hold on to its empire and planned to get out of Uganda as soon as possible, it seemed as if the Uganda state edifice would disintegrate². The Mengo establishment, who controlled the Buganda kingdom, wished to secede from Uganda to keep their privileges. Bunyoro wanted to regain territories it had lost to Buganda in the colonial state's consolidation conflicts. The deprived areas of the north and west, whose labour partly built the wealth of the central region of the country, did not like to lose what they considered their assets in Buganda.³ Yet the imperial power wished to leave Uganda as a functioning independent nation. While most African politicians were interested in taking over the state to "fall into things" by inheriting the fruits of the colonial state, Mayanja was the foremost "founding father" politician who tried to fully define ideas of a constitution fit for his homeland in discussions in parliament, the press, and other fora.⁴ He was the most prolific in outlining how the Uganda postcolonial state should be designed and managed before and after independence. The ideas of the constitution he advocated for the Uganda postcolonial state were informed by the nature of the state he wished his homeland to become. He envisioned a liberal democratic postcolonial Ugandan state with a government strong enough to rule but sufficiently moderate to guarantee, or be forced to accept, the rights of the people. For him, the Constitution was an agreement between the people and the government on their mutual rights and obligations. It specified government responsibilities and defined citizens' rights and obligations in a liberal democratic state. He considered the Constitution to be the legal basis for the actions of the state, for constituting the government, for laying down the relationship between the people and the government, for clarifying the rights and defining the obligations of citizens and spelling out the values and principles for which a nation stands. He insisted, however, that a constitution was not a cure for every political problem. It was only a guide to political behaviour; the state managers would make the nation flourish or fail. He was involved in drafting, criticising, and moderating almost all of Uganda's constitutions. He was the principal architect of the 1962 Constitution, the leading outspoken critic of the 1967 Constitution, a member of the Constituent Assembly that drafted the 1995 and an opponent of what he thought were retrogressive amendments to the 1995 Constitution. In making or revising a constitution, Mayanja maintained that Parliament should separately debate each article, its merits evaluated through discussions, voted on and approved if it gets the necessary support. He opposed the omnibus amendment of the 1995 Constitution passed in 2005, saying that about one hundred articles were

² For the speedy British withdrawal from her African empire, look at Pearce, R. D. (1982) *The Turning Point in Africa: British Colonial Policy, 1938-1948*. London: Cass; Pearce, Robert. "The Colonial Office and Planned Decolonization in Africa." *African Affairs*, Vol. 83, No. 330 (Jan. 1984); pages 77-93; Flint, John. "Planned Decolonisation and Its Failure in British Africa." *African Affairs*, Vol. 82, No. 328 (July 1963); pages 389-411; Thornton, A.P. "Decolonisation." *International Journal*, Vol. 19, No.1, (Winter 1963/64); pages 7-29; Cell, J. W. "On the Eve of Decolonisation: The Colonial Office Plans for the Transfer of Power to Africa." *Journal of Imperial Commonwealth History*, Vol. 8, 1979/80 (May 1980), pages 234-57; See also Ntambi Kakembo, Patrick (1989). "Colonial Office Policy and the Origins of Decolonisation in Uganda, 1940-1956," PhD dissertation, Dalhousie University; Lawal, Olakunle A. "From Colonial reforms to Decolonisation and the Transfer of Power, 1947-1960." *Journal of the Historical Society of Nigeria*, Vol. 19 (2010); pages 39-62. Ryrie, Sir William, "Uganda in 195758" In Brown, Douglas, and Marcell Brown (1996). *Looking Back at the Uganda Protectorate: Recollections of District Officers*. Dalkeith, Australia: Own published, pp.347-52.

³ Look at Jan Jørgensen (1981). *Uganda: A Modern History*. New York: St. Martin's Press

⁴ In a subsequent publication, I shall list over 200 publications by Mayanja in local and international media and over one thousand discussions and citations of his ideas by other writers.

enacted wholesale by Parliament without paying particular attention to each.⁵ Although he preferred a referendum, he thought two-thirds of the members of Parliament could vote on a constitution. On the structure of the government, he believed that the best way to moderate government authority was to ensure that the separation of powers of the three branches of government (Executive, Parliament, and Judiciary) was effective and well specified in the constitution. However, he felt Parliament superseded the other two branches of government because it enacted laws that the executive and the judiciary had to implement and interpret. For him, Parliament was the "watchdog of the people". He spoke vehemently against dictatorships, *whether local or foreign*. His criticisms of the 1967 supreme law as dictatorial contributed to his incarceration by Obote in 1968. To ensure the participation of citizens in local decision-making, he preferred responsible local government at regional levels. On unity, he envisaged creating a just postcolonial society where the various social groups based on ethnicity, religion, race, or gender lived in peace with one another in a confederation without being forced to integrate into one mega tribe or giving up their specific traditions and customs. He strongly felt that *unity did not mean uniformity*.

2. The structures of the government of Mayanja's desired Ugandan postcolonial state

Mayanja's constitutional ideas were structured by the postcolonial state he wanted Uganda to become. Mayanja pointed out that he accepted that the government is the main agency of, and therefore, the state's power. He, therefore, advocated for a Ugandan government strong enough to govern but sufficiently moderate to guarantee—or to be forced to guarantee—the protection of individual liberties and rights. He thus envisaged a postcolonial Uganda managed by a government moderated by the concept of the separation of powers and African ideas of social justice and good governance. He felt that traditional authorities were not as autocratic as many members of Parliament depicted them. For Buganda, he admired the checks and balances on the power of the Kabaka by the Namasole, the clan heads and the Katikkiro.⁶ For managing the postcolonial state, he embraced the Westminster model, which includes separating powers across the parliamentary, executive and judiciary branches of government. Mayanja believed that the president should be elected directly by the people or through their representatives, making the constituency that elects the head of state transparent.⁷ While Mayanja accepted that the president should have the prerogative of mercy to free convicted criminals, he insisted that a special committee should examine each case and advise the president accordingly.⁸ He warned Ugandans of the blurred line between the interests of the state and those of the persons holding government positions. On many occasions, absolute rulers have paraded their interests as those of the state.⁹ Mayanja wanted to live in a country where the judiciary branch of government played an independent role in interpreting the laws made by Parliament. In a debate on the Magistrates Bill, Mayanja informed Parliament that its role was to make laws and the courts' role to interpret them. To do so, the judiciary must be completely independent.¹⁰ Mayanja believed that two specific officers of the state—the auditor general (AG) and the director of public prosecutions (D.P.P.)—were positions of public trust that should have the authority to audit and investigate the financial and administrative actions of both the government and its officials, including the head of state. He thought these officers needed life tenure and their roles should be clearly defined in the Constitution to give them the independence to make impartial judgements. Defending their protection, he said in Parliament that "the auditor general acts as a trustee for all of us the taxpayers, to ensure that our money is not squandered, misused

⁵ *New Vision*, 15th March 2005, page 10, 5th July 2005, page 12, 23rd August 2005, page 10.

⁶ A recent book, *To Speak and Be Heard: Seeking Good Government in Uganda ca.1500-2015* by Holly Elizabeth Hanson (2022). Athens. Ohio University Press discusses power management in the Buganda traditional political setting.

⁷ Enactment of a New Constitution, 6th July 1967, pages 625-7.

⁸ Hansard: Enactment of a New Constitution, July 1967, page 1962.

⁹ Hansard, Motion: Enactment of a new constitution, 5th July 1967, pages 617-8

¹⁰ Hansard, 6th July 1967, p. 645.

and is not misappropriated. To achieve the equal application of the law for all, he likewise argued that the D.P.P. must also have a constitutional guarantee of security.¹¹

3. The philosophy of the constitution Mayanja advocated for

Mayanja clarified his views on the “underlying philosophy of a constitution” in Parliament while debating on the 1967 Constitutional proposals presented to the House by Obote’s government in that year. He started his long speech by asking several critical questions, including the following: What were the essential characteristics which every constitution must-have? What were the main issues a constitution should address? In starting his review of the constitutional proposals and having dismissed the view that a constitution can be used to resolve every political problem, Mayanja went on to say what, according to him, was the primary role of a constitution in a state. For him, the “.....underlying philosophy of our Constitution is that all men are under the law, and no one is above the law”¹². Therefore, a constitution must balance the claims of freedom of the individual and the state's interests, especially national security. Accordingly, a constitution must provide for a government strong enough to govern while at the same time protecting the rights, liberties and freedom of the individual citizen:

Mr. Mayanja: Mr. Speaker, Sir, since we have been given the opportunity to consider the constitution suitable for Uganda, I think, we should start off - to start off myself, by reminding hon. Members of certain basic characteristics which every constitution should have, or to put it differently by reminding hon. Members of the essential problem that a constitution should attempt to solve. Different countries, as we have been told, do have different constitutions because they have different conditions and so on, but essentially every constitution attempts to resolve two apparently conflicting claims or interests. It tries, on the one hand, to reconcile the claims of freedom with the interests of security. It tries to reconcile order with liberty, the state with the individual. You can use whatever word you want but the basic problem which any constitution maker has to resolve is this one. "How do I reconcile a government strong enough to govern and to move ahead with the objectives of personal liberty and of freedom of action? And in trying to find an answer, different countries have come to different constitutions but without being dogmatic about it and without saying that "I am for the individual or I am for the state" because any such opposition or dichotomy is unreal. I think we can say that such a Constitution is good which establishes a workable balance between the conflicting claims, remembering that the state exists for the sake of the individual. But at the same time that the individual cannot realize his potentiality and cannot be happy unless he lives in a state. Therefore, we must have law and order, and security, but in providing for these, you must not destroy liberty. I shall advance that point later on, Mr. Speaker¹³.

Next, Mayanja went on to list and analyse the underlying principles and philosophical basis upon which a constitution fit for Uganda should be made. He thought that for Uganda, the following issues were critical:

(i) National Unity.

He thought that national unity was vital for the country to define a shared vision. However, for him, unity did not imply total integration into one mega tribe. He preferred unity in diversity where each social group could retain its identity but willingly cooperate with others without loss of distinctiveness. He believed that unity did not mean uniformity¹⁴.

Mr. Mayanja: Having said that much I want to examine, in some detail, what are some of the basic problems which should underlie the making of a constitution fit for Uganda. What should be the underlying principles and philosophical basis for the Constitution which we are enacting? Mr. Speaker, at the risk of being a little tedious, I shall repeat because it is important to what has been said before. The first necessity that we have to provide for is of course, national unity; we must see that our Constitution guarantees for the people of Uganda, that they shall continue to exist as a nation in unity, and that any disruptive tendencies,

¹¹ Hansard. Motion: Enactment of a new constitution, 6th July 1967, page 647-9).

¹² Hansard, Motion: Enactment of a new constitution, 6th July 1967, page 648.

¹³ Hansard. Motion: Enactment of a new constitution, 5th July 1967, pages 603-4

¹⁴ Hansard, Motion: Enactment of a New Constitution, 5th July 1967, pages 605-6.

secessionist movements or tendencies towards a Biafraism or' any centrifugal forces are defeated. Mr. Speaker, I think we are all agreed on this objective of national unity. To me, it is an objective which I have pursued consistently, if I may so claim, ever since I grew aware of our national problems, and that was in 1947. I was then rather a small schoolboy at Budo. When we formed the first nationalist movement for Uganda - the Uganda National Congress (UNC)-the constitution of which I assisted in drawing, we placed national unity first and foremost, because at that stage we realised that it was indispensable for the achievement of independence. We have achieved independence, but we still want national unity to achieve what has been defined by the President as a happy contented, progressive and prosperous society. I would add that we want to achieve a society of men and women who are proud to be Ugandans, who, like St. Paul - with the apology to the hon. Mr. Mulira - St. Paul said, "With great pride, I am a Roman citizen". We want to achieve the same degree and ethos of pride when a man stands up and says "I am a Ugandan, I am a Uganda citizen". He should feel proud and put up his head in the air and say "I am a Ugandan citizen, I am a citizen of Uganda"¹⁵.

However, there was one exception where Mayanja said he would support the collapse of Uganda's borders: an East African federation. While debating on the estimates for use by the Foreign Affairs Ministry, Mayanja emphasised the importance of creating an East African Federation. He pointed out that although he believed that conducting foreign affairs aimed at preserving and strengthening the state, he was willing to have Uganda's borders adjusted if the country was to merge into an East African federation. He felt that the failure to achieve an East African union would have "the greatest repercussions not only here in East Africa but throughout Africa and beyond".

Before independence, however, Mayanja and most Ugandan African leaders and politicians did not like the idea of a federated East Africa due to the fear that European settlers of Kenya would capture that state. The most vehement opponents of the federation in Uganda were Baganda landlords who had a lot to lose in the form of land ownership and peasants' cheap labour. Serwano Kulubya spoke out strongly against the idea of a closer union in East Africa in the nineteen-thirties. In the 1950s, Sir Edward Muteesa II was also opposed to the idea of an East African federation, as were the members of the Mengo establishment. As early as 1953, Mayanja was also opposed to a federation of East Africa. In his letter that appeared in *Ebifa* of 15th August 1953, he told UNC members that "you should resist federation at all costs"¹⁶. According to the *Fortnightly Police Review* of 30th July 1953, Mayanja advised a UNC meeting of 21st July 1953 to include into their petition a statement that Uganda did not want a federation of East Africa. His advice was accepted. By 1957, Mayanja had concluded that the federation was good if Africans were in control of it, preferring it to come after independence¹⁷. In a later interview, Mayanja told me that the bigger East African playing field would positively release the potential energies of the Baganda which are constrained by the suspicions and fear the rest of Ugandans have of them¹⁸. He thought that it is high time the Mengo elite realised that an east African federation would be in the interests of the Baganda.

(ii) Freedom

As a liberal democrat, he considered the major role of the state to be the protection and the enhancing happiness and freedom of the individual. For him therefore, the constitution should provide for freedom, liberty and guarantee human rights because a nation of slaves cannot be a happy state, adding that:

But, Mr Speaker, **a nation of slaves cannot be happy, proud, prosperous, or progressive**. Consequently, in our quests for national unity, we must never forget that it is the unity of free men that we are seeking; we must never, in the attempt to achieve national unity, destroy the very objectives for which we want the unity, that is to say, to build up a nation of free men, proud men, happy men and women.¹⁹

¹⁵ Hansard. Motion: Enactment of a new constitution, 5th July 1967, pages 605

¹⁶ Look also at FCO 141/182246/ item 69, National Archives, Kew, London.

¹⁷ *Uganda Argus*, 16th July 1957, page 5

¹⁸ Interview, Kampala, 2004

¹⁹ Hansard: Motion: Enacting a new constitution, 5th May July 1967, page 605, para 1.

Mayanja felt that the proposals had sections which denied Ugandans the freedoms and rights for which independence was sought. He pointed out that the significant accusation against colonial rule and the principal motive for which the struggle for independence was embarked on was that colonial rule restricted Africans from the full enjoyment of the fundamental freedoms and rights of the individual. The justification for independence was not to replace white rulers with black Africans. It was to get more freedom, including the right to decide who shall govern them, the right to meet freely, the right to disseminate ideas, the right to acquire freedom of speech, the right to associate, the right to own property and so on. For example, he strongly objected to the introduction of the detention without trial statutes introduced by Obote's government. On one occasion in Parliament, he said as follows:

Mr. Mayanja: Mr. Speaker, it is a great shame for us to think like that we are more afraid to grant more freedom when we are independent than our colonial masters were disposed to grant us. Mr. Speaker, let me say it for the sake of posterity so that it is put very clearly on the record that in my opinion **there is no justification for detention without trial.** I repeat so that there is no shadow of doubt of where I stand on this. There is no justification for detention without trial, and the onus lies upon those who say there is, to show us the need. If we are satisfied of the need we shall support. Mr. Speaker, I intend to take steps as quickly as practicable to acquire a kibanja on the former land belonging to the Sekibobo which I shall now be able to occupy without paying any rent (Laughter). But Mr. Speaker, I want to talk about the protection of fundamental human right, or the rights as they have been called, protection of fundamental rights and freedoms of the individual.²⁰

He thought detention without trial was autocratic, evil, and undermined the fundamental rights and freedoms for which independence was sought. He believed that the power to detain people should be left to the courts after going through trial processes. He thought that the executive arm of government should have no right to detain people without due process of the law²¹.

(iii) Loyalty to the state

While he thought loyalty to the state was essential for the development of the Uganda postcolonial state, he realised two schools of thought about unity and loyalty to the state of Uganda. These were (a) those who thought that a Ugandan had to pay complete and exclusive loyalty to the state without mixing it with loyalties to other entities and (b) those who viewed loyalty to multiple entities in spreading out circles including the Uganda nation, the tribes, religions, and families. He preferred the second category as the most practical one, given the country's diversity. He thought that loyalty to the nation was not mutually exclusive of loyalties to tribes, religions, families or local unions. In other speeches in Parliament, he developed the latter view by saying that **true unity does not require uniformity or sameness.** The reality of Uganda is that different entities, ancient states and social groups existed before Uganda was packaged as a state for colonial administrative convenience starting from 1894. He believed that most of the cultural heritage Africans have accumulated are the results of efforts of tribal political or social formations. For him, it was on those formations that the features of the *African personality* should be erected.

Mr. Mayanja: Mr. Speaker, the second principle which I would like to examine in the making of the constitution, is the concept of loyalty. Now, this is obviously again very important. There appears to be two schools of thought on this question of loyalty. There is one school which appears to say that in order to achieve true national unity, there must be one and only one loyalty in the country -i.e. loyalty to the state of Uganda, or to the Republic of Uganda, as it shall be called after the passing of this constitution. The second school of thought, Mr. Speaker, is of those who conceive of loyalty in the series of expanding or spreading out circles. Thus "I am loyal to myself, to my conscience as a man, I am loyal to my family, club, profession or trade, clan, party, religion, nation, East Africa, United Nations, humanity and to God."

Mr. Onama: And the world.

²⁰ Hansard: Enactment of a new Constitution, 5th July 1967, pp 611-612.

²¹ Hansard. Motion: Enactment of a new constitution, 5th July 1967, pages 611-17

Mr. Mayanja: The Minister of Defence interjects quite rightly "And the world", I have jotted it down precisely. Now I would like hon. Members to reflect on this matter, it is not something childish, but it is very serious. I think somebody has referred to an article by the Reverend Henry Okulo, the Editor of New Day. He has tried to deal with the same point. It is obviously important, must the loyalty which the state claims and must rightly claim to itself, must it be exclusive of all other loyalties? Am I being disloyal to the state if I am also loyal to my football club, clan, or to my tribe? Mr. Speaker, as I said, it is important, and I submit that in our approach to the problem of national unity, we should not take a totalitarian attitude. Totalitarianism properly defined semantically without any pejorative connotations means a situation which exists by saying "I claim everything of you," body and soul. **I feel that we can be loyal to the state and render to it all the services that are due to it, in order that the state can also serve us, whilst at the same time we can retain other loyalties, and that separate loyalties, in fact, do cement each other; they are not mutually opposed, or exclusive. That, of course, brings in the third problem which is that of unity or uniformity. In my humble submission, true unity does not connote or require or even imply sameness or uniformity.** You unite different entities, not the same entities and the situation of Uganda is this, that different entities have existed before Uganda was invented, and any solution which appears to pretend that all Ugandans are the same, that the tribes do not exist is unreal, Mr. Speaker. We have an opportunity to enact the Constitution for us, which will take into account the peculiar circumstances of our situation, and I believe that in-so-far as we had tribes long before we ever dreamt of ever being brought together as Uganda, as one people with one destiny and one Parliament, it sounds marvellous to hear it. You know, Mr. Speaker, that until 1921 the Legislative Council of which this House is the successor did not exist until 1945, when most of us here were born -in 1945 I was a rather luscious naughty school boy -up to 1945 there was not a single African represented on the Legislative Council and it was not until 1954 that the first person to be elected as a representative of the people of Uganda came to the Legislative- and until that time, there was not a single forum. **In short, Mr. Speaker, I pray that whilst we must have unity in the country, we must not do so at the expense of losing our peculiar geniuses.** We may cry for uniformity, but then after this Constitution has been enacted, I shall be able to recognise the hon. the Deputy Minister of Animal Industry, Game and Fisheries just to look at him and I know where he comes from. Even after this Constitution has been enacted, I shall be able to recognise you, Mr. Speaker, I am saying that unity in diversity is a much truer reflection of true unity than an artificially contrived sameness or uniformity which ignores certain basic realities of the situation²².

More than any other person, Mayanja recognised the political implications of forcing diversities of social groups into one boiling pot. Recent studies indicate that incidences of conflicts in Africa are caused by the failure of postcolonial rulers to manage diversity.²³

(iv) Preserving or creating the African personality

In making a constitution that would reflect African identities and personality, Mayanja insisted that African political and social achievements must be the starting point. Most independent African nations would have liked to create the "image of the African personality". Mayanja warned members of the dilemma of negating all aspects of tribalism, including the positive ones. He thought that in building the "African personality", the new African state had few choices to choose from except looking at past achievements of Africans, which were mainly obtainable through looking at what pre-colonial African societies achieved as tribal organisations. He believed that kingdoms were perhaps the most visible political organisational achievements precolonial Ugandan African had achieved. These organisations or states were the custodians of African heritage. Short of studying and using past African achievements, African governments might create cultures that were imitations of western or eastern nations²⁴.

²² Hansard. Motion: Enactment of a new constitution, 5th July 1967, pages 605-6

²³ Zeleza, Paul Tiyambe (2008). "Introduction: The causes and Costs of War in Africa: From Liberation Struggle to the War on Terror" In Nhema, Alfred and Zeleza, Paul Tiyambe(2008). *The Roots of African Conflicts: The Causes and Costs*. London: OSSREA, James Curry, UNISA, Ohio University Press, pp 1-35

²⁴ Hansard. Motion: Enactment of a new constitution, 5th July 1967, pages 605-6

(v) Preparedness to take risks of instability for enhancement of freedom and happiness of citizens

Mayanja warned his colleagues that states must not build dictatorial structures for fear of instability and its attendant risks. He felt that it was essential to accept that a state must face risks of instability to provide its citizens with a better life during its life²⁵. States must strive for the better knowing that in doing so there is always a risk of instability.

4. A state worth the name needs a constitution

While contributing to amendments of the "Pigeonhole" constitution, Mayanja pointed out that any state worth the name needs a constitution. He objected to some Members of Parliament taking the constitution lightly. He felt the constitution was so fundamental that it gave direction to and regulated the behaviour of the state. He was particularly annoyed by MPs who thought the government could function without a constitution. He felt that a constitution should not be changed whenever there was a political problem, because it was not a magic wand that could resolve every conflict or administrative issue. Changing a constitution should be a significant process involving all stakeholders, including the public. He appealed to the government to introduce, at an appropriate time, a draft Constitution that the people could debate. The following was his contribution:

Mr. Mayanja: Mr. Speaker, if hon. Members on my side will bear with me, I shall be very clear, indeed, I intend to be very clear about this matter. We start with Article I in our Constitution by saying "the Constitution that we are amending," this Constitution is the supreme law of Uganda and what respect do we show to this Constitution which is the supreme law of Uganda, when for instance, an hon. **Member of the Government and who I regard as a senior Minister, a very senior Minister, stands up and says the Constitution should be scrapped?** What is the purpose of a constitution, Mr. Speaker? It is not my purpose today to give hon. Members a lecture on Constitutional law, but surely a constitution is regarded as a document of a very sacred nature, a document which sets forth the fundamental basis on which the country is to be governed. It is not like the Road Traffic Act which can be amended every now and again; and the very idea of having a constitution is so that the people in the country have some reasonable certainty that they can assume that the country will be governed at least for three months, according to a particular constitution, but if the people cannot even assume that the country can be governed for a reasonable period of time in accordance with the articles of the constitution, then what is the purpose of amending the constitution? Mr. Speaker, I think the constitution that we have here, can be amended by a simple majority. Mr. Speaker, this is precisely the same manner in which this House amends, for instance, the Road Traffic Act or the Education Act or the Public Health Act, or anything of this kind. In other words, the Constitution of Uganda is at par with any other law which we make in this House, and it would be a great deal more impressive, and it would be a great deal more meaningful if we had no constitution. If this is going to be the way we have to treat the constitution, it would be a good deal better if we were like the English who have no constitution, who have got no written constitution. Whatever Parliament makes or gains at a particular time is law. **I am surprised that my hon. Friends, particularly on the Front Bench, do not appear to understand my complaint, but I should have called it my advice.** (*Inaudible*) My advice to my hon. Friends (*Interjections*) we are faced with a situation when we need a constitution. Both for our own Government internally here and for the assurance of the people abroad, with whom we want to trade. It was this House, I think before I came, which passed the Investment Guarantee Act of Protection. That means that we are anxious to inform the world, those people with whom we may do business, as to what our intentions are, our intentions are expressed in our law, and the constitution in this sort of way; we should not stand up here and say we can scrap the constitution if we like because the constitution is for the people and not the people for the constitution; we all know that the people of this country are more important than

²⁵Motion. Motion: Enactment of a new constitution, 5th July 1967, pages 607.

all the laws of Uganda. We know that the people are more important than the constitution; but that is no reason to treat the constitution in this sort of way, Mr. Speaker²⁶.

5. Ignorance of some of former Ugandan leaders

As noted above, Mayanja was irritated by members of Parliament who did not know or appreciate the role of a constitution in the management of state. In retrospect, we now know that the rush to get out of Africa by the colonial power gave opportunities to a number of people with no relevant education or intellectual capacities to lead African states. At least two Uganda leaders confessed that they had no use for, or had not read, the constitution under which they served as ministers. One member, a deputy minister of Animal Industry, Game and Fisheries in Obote's first government, Mr K.K. Karegyesa, said he that he did not see the use of a constitution in managing a state. He felt that the money spent by Uganda representatives in going to London to discuss the constitutional proposals for the 1962 constitution was a waste of resources. While discussing the 1967 proposals in Parliament, he said as follows:

Mr. K. K. Karegyesa: Mr. Speaker, Sir, you can imagine the task for a man like myself to engage in the task, Mr. Speaker, for me to talk about a constitution, because I feel I do not know and I do not see the value and use of a constitution. Here, Mr. Speaker, the hon. the Minister of Internal Affairs has just said we should try to decolonise the minds of our people and I think the earlier we did this regarding documents like constitutions, the better for this country. I can also imagine the misfortune which befell this country when hundreds of our men went to London to make an agreement with Britain as to how we should rule ourselves. I can also, Mr. Speaker, see the expenses which this nation had to meet in a fruitless exercise like working out a constitution. I do not want constitutions; instead I worship the rule of law. If there is a bill of this Parliament which restricts somebody from beating me or coming to my banana shamba and start cutting my food and taking it away, that is the constitution. I want and value, but documents for things like human rights and the rest of it, those are rubbish because no nation in the world has managed to uphold them. Mr. Speaker, a lot of things have been said perhaps by better speakers and people who had done a lot of preparation – I did not make any preparation at all because I do not believe in Constitutions. In fact, I did not want to talk about this constitution, but I have picked out a few points which I would like to talk about²⁷.

Another leader could not read and had never heard of a constitution though he was second in command of the country's government. While being interrogated by the Uganda Human Rights Commission, Mustafa Adrisi, a former vice president (to Idi Amin), said that he could not read or write and he did not know the existence of the country's constitution²⁸.

6. A Constitution does not resolve every political or social problem of a state.

While contributing to amendments of the "Pigeonhole" constitution, Mayanja felt that a constitution should not be changed whenever there was a political problem, because it was not a magic wand that could resolve every conflict or administrative issue. Changing a constitution should be a significant process involving all stakeholders, including the public. He appealed to the government to introduce, at an appropriate time, a draft Constitution that the people could debate. The following was his contribution:

We should remember that, although the constitution is important and can assist a great deal, nevertheless a constitution in a sense is a framework. If you have your framework of steel, iron and things of that kind, you can then put in brick and glass and what not in order to grow. Those are the ordinary laws which we

²⁶ Hansard: 2nd Rdg. – The Constitution (First Amendment) Bill 1966", 27th May 1966 pp. 116 – 8.

²⁷ Hansard: Enactment of a new Constitution, 25th July 1967, pages 1128 – 9.

²⁸ Phares Mutibwa (1992). **Uganda Since Independence: A Story of unfulfilled Hopes**. Trenton, New Jersey: Africa World Press, Inc. Page 123

make here and we should not regard the constitution as a cure for every evil because it is not; and, whenever we find ourselves with some difficulty, we should not think that the answer lies in amending the constitution or the answer lies in having a new constitution or the answer lies in altering, modifying and abolishing this or that section in the constitution. If we think thus, we shall be failing to identify the real problem, and having failed to identify it, we shall not be in a position to prescribe the necessary cure.²⁹

Some two weeks later, he repeated the same warning as follows:

Mr. Speaker, I want to give another warning to hon. Members. We are going to make a great mistake if we assume that the constitution is a magic wand which, when you wave, it will get things done. The fact will remain fact, however, you may manipulate the constitution and what we may put down as the constitution. Some people think, for instance, that by changing the constitution, the number of schools will be doubled, they will not be doubled. **Some people think that taking away Kingdom Ministers and concentrating all the powers in the Central Government, that this is going to affect the rate of development in Uganda, it will not be doing anything of the kind.** Some of these people who have been in the Government for four years, are thinking that Constitution is unworkable, – was unworkable, therefore, one would be tempted to say that during the period of four years, they have not done things because they had an unworkable constitution. Now, Mr. Speaker, the people are going to question us when we go back for election, we have given, we have taken away the constitution, we are going to introduce a constitution as we like it, but let us tell the people that merely by writing this constitution differently – we are going to get more constitutions – we are not going to get more power and this is what I heard being stated in the House. Time will come when we will go back to the poll and then people will say alright there was no rapacious Katikkiro in Mengo, (Inaudible) there was no greedy Katikkiro in Toro, what have you accomplished?³⁰

7. A constitution is not a guarantee of democracy and good governance

Further, Mayanja alerted Parliament and the country that a constitution, however good it is, does not guarantee what is written on its pages. The people of Uganda, not the paper constitution, would guarantee democracy and good governance of the country.

Mr. Speaker, I want to end with a warning. **Democratic Government cannot be created by writing a constitution.** A constitution, if it is a good constitution, can help but ultimately, democracy does not reside in the constitution which is a piece of paper but in the hearts and minds of the people. **I have at a former occasion, not in this House, described democracy as a habit of mind. It is question of the temperament of our people, the spirit of tolerance, of sharing basic beliefs and values so that there is a substantial majority of the people in the country who say that far and no further, and this can be respected. Mr. Speaker, unless we cultivate those values, those commonly shared values and beliefs, unless we cultivate the habit of mind which is essential to the enjoyment of liberty, freedom and democratic government, we shall not succeed.** I have had personal experience of this, there has been – for instance, when I have been reproached for giving professional services to certain people, and yet I wish people would realize that when an advocate appears for a man, it does not in any way imply that he has any sympathy with that man, or his political objective. It is the same as the doctor, and if there is a doctor on a battle front and people are wounded on both sides, and if a man is wounded on the enemy side and he is brought to the doctor, the doctor will treat him, and he will treat him in accordance with his need as a human being, he will not pause to think and inquire whether this man is one of our troops or this man belongs to the enemy troops. This is the spirit whereby I shall – if I can always continue to subscribe to a fund, to enable a man to defend himself, to establish his innocence. But if that man has been convicted by a proper law court, I will never subscribe one penny in order to enable that man to pay his fine. That is the distinction and I give this as a simple illustration of what I understand to be the spirit of democracy. It is the spirit which recognizes responsibility, which knows that liberty cannot be enjoyed unless you undertake **to accept duties, which accept the privilege to elect leaders, but having elected them to accord them all the due respect.** Mr. Speaker, if we do inculcate amongst those people who it is our privilege to lead, with such a

²⁹ Hansard. Motion: Enactment of a new Constitution, 5th July 1967, pages 603-4

³⁰ Hansard: 2nd Rdg. – The Constitution (First Amendment) Bill 1966”, 27th May 1966 pp. 116 – 8.

spirit we shall be taking Uganda a long way, and the constitution that we shall enact in this Assembly shall have a great chance of succeeding³¹.

8. Mayanja participated in the making of almost all Uganda' constitution since 1958

Mayanja participated in the making of most of Uganda's constitution, though his influence was more effective in the 1962 because of the position he had as secretary of the Kabaka Yekka and as a friend of both Obote and Sir Edward Muteesa II. He was the major Parliamentary and press critic of the proposals for the 1967 Constitution and his doing so contributed to his arrest by the Obote government in 1968. He remained in prison until October 1970.

(i) The Wild Constitutional Committee

The 1958/9 Constitutional Committee was set up by Governor Sir Frederick Crawford under John Wild to "to consider and to recommend to the Governor, the form of direct elections on a common roll for the representative members of the Legislative Council to be introduced in 1961, the number of seats to be filled under the above system and their allocation among the different areas of the Protectorate....". Abu Mayanja, Peter Oola, Y. Engur and Ndugga Musaaazi gave evidence on behalf of the Uganda National Congress.³² They maintained Mayanja's earlier position that seats should not be reserved for minority groups.³³ Mayanja and other UNC members travelled around Uganda explaining the elements of the Constitution. On one occasion, Mayanja and Oola were involved in a car accident on their way to address a meeting in Arua. They were taken to Gulu Hospital.³⁴

(ii) The 1962 Constitution

As Secretary-General of the Kabaka Yekka, and as the person who had introduced Obote to both I.K. Musaaazi and Sir Edward Muteesa, Mayanja, though very young at the time (31 years of age), was the principal architect and designer of the 1962 Constitution. Mayanja and Obote patched up the agreement between the Mengo Establishment and the Uganda Peoples' Congress. He went to London as a representative of KY to the Constitutional Conference.³⁵ He was one of the top people who briefed Sir Edward Muteesa II daily during the London Constitutional Conference negotiations. We now know that the 1962 Constitution failed to resolve the differences between the Mengo Establishment and the majority of Baganda Catholic elites, Baganda peasants and their landlords, and Baganda farmers with workers from outside Buganda. It was also unable to give the Baganda the right to vote for their national Parliamentary representatives. It did not put in place a mechanism for reducing regional economic inequality. It did not devise a mechanism for uniting the state while adequately accommodating the traditional forces without increasing the forces of sub-nationalism. In later years, Mayanja regretted his part in the 1961-2 political decisions but said that there were few alternatives to bringing together the Mengo Establishment and Ugandan political forces.

(iii) The "Pigeonhole" Constitution, 1966

There was limited debate on the 1966 constitution because members were asked to debate it before seeing it as it had just been put in their pigeonholes where they were asked to find its draft. Further, the Parliamentary buildings in which they were sitting were surrounded by security forces who could arrest

³¹ Hansard, Enactment of a New Constitution, 7th July 1967, pages 665 – 6.

³² *Uganda Argus*, 26th October 1959, page 3.

³³ *Uganda Argus*, 23rd May 1958, page 4

³⁴ *Uganda Argus*, 7th October 1959, page 5

³⁵ *Taiifa Empya*, 26th September 1964, page 1.

any dissenting member of Parliament. Nevertheless, Mayanja was able to contribute as noted in item 4 of this paper.

(iv) The 1967 Constitution

Discussions on the draft 1967 Constitutional proposals gave Mayanja a chance to further pronounce and clarify in both Parliament and the Press the type of post-colonial state he would have liked Uganda to become. He wanted a Uganda with liberal laws based on universal and African concepts of justice. He spoke a lot, and on one occasion, for three days, and according to him (in an interview I had with him in 2002), for eight hours each day.³⁶ Hansard publications give the impression that he was the only significant contributor to the debates on the 1967 Constitution draft. Future generations need to consider his meticulous, marvellous, and voluminous contributions to state-building using both the floor of Parliament, the press and public service to assess what went right or wrong in the building of postcolonial Uganda. A number of his suggestions were incorporated in the 1967 Constitution. However, those dealing with the centralisation of power in the presidency and the nature of the unity of the state were not heeded by the Obote government.

It is not possible to summarise his hundreds of pages of his speeches on the 1967 Constitution. However, he summarised his feelings in an article in the Transition magazine number 32, of August-September 1967, pages 20-25. He warned the government against centralising state power in the hands of one person. In his speeches, he warned Uganda that such massive powers could be misused if a wrong person seized the presidency. Less than four years after his warning, Amin took over the state. The full article is quoted here for you to think about what he said.

“The Government’s Proposals for a new Constitution of Uganda

The keynote of the Government proposals is the concentration of all powers of government-legislative, executive, administrative and judiciary-into central Government institutions and the subjection of those institutions to the control of one man-the President. The result is the creation-not of a republic, but of a one-man dictatorship, as I shall attempt to show.

Under the Proposal, the President is given power, amongst other things----

- (a) To nominate up to one-third of the members of the National Assembly.
- (b) To legislate by promulgating ordinances in certain circumstances.
- (c) To declare states of public emergency and during their duration to make regulations which may override the laws made by Parliament.
- (d) To prolong and dissolve Parliament at any time.
- (e) To nominate and appoint the Chief Justice and members of the Judicial Service Commission which in turn appoints the judges and magistrates.
- (f) To detain people without trial and to restrict their movements without trial.
- (g) To appoint and dismiss Cabinet Ministers.
- (h) To appoint, discipline and dismiss all public officers including public employees of local governments.
 - (i) To appoint, discipline and dismiss members of the Police Force, including power to give operational directives to the Inspector General (the chief officer) of Police.
 - (j) To command the armed forces and give them operational directives.
 - (k) To appoint and dismiss the Commander and other officers of the Uganda Armed Forces.
 - (l) Generally, to exercise the entire executive powers of Uganda.

The Government Proposals for a new Constitution are thus subject to serious objections. In many respects, they are illiberal, authoritarian and dictatorial. They make serious inroads in the concept of the rule of law as accepted by most jurists and civilized nations. They provide for the concentration of excessive, autocratic

³⁶ Hansard: Enactment of a new constitution 7th July 1967, page 658.

and dangerous powers in the hands of one man. They are repugnant to the concept of the African personality in so far as they provide a wholesale abolition of all the traditional institutions which were involved in this country over centuries of time, experimentation and adaptation. But they do not attempt to replace them by the more enlightened and generally accepted form of government as understood at any rate in the West. Instead of providing the country with a truly republican form of government, we have ended with a Machiavellian Prince. The justification for all this is—in words of President Obote and some of his colleagues—that Uganda is backward and not yet ready for democratic government, that is to say, a government which bases itself on the consent of the governed, which seeks to divide and distribute the powers of the state amongst different organs, with suitable checks and balances, which observes and promotes the rule of law, and which encourages the free exchange of ideas and the changing government according to the climate of political opinion as ascertained by periodic free elections. This kind of argument is dangerous, and a betrayal of the African Revolution. Its only effect is to give comfort, solace and encouragement to men like Mr. Ian Smith of Rhodesia, who would enjoy nothing better than to see the African in a state of permanent serfdom—on the ground that he is not yet ready to play a full role in the affairs of a modern state. The people of Uganda must summon all their courage and make it clear to our Government that when we fought for freedom, we meant just that—that we believed all men, by reason only of the fact that they are human beings, are entitled to freedom of government by consent, freely given in free elections. Neither more nor less. A dictatorship by black men has no objective advantages whatsoever over a dictatorship by white men: it may even be less efficient and less impartial³⁷.

(v) The 1995 Constitution

The drafting of the 1995 Constitution was preceded by several amendments to the 1967 Constitution by the National Resistance Council acting as a surrogate Parliament for this country. One of the amendments made in July 1993 was the Constitutional Bill 1993 (Ebyaffe) and the Traditional Rulers (Restitution of Assets and Properties) Bill, 1993. It reinstated traditional rulers as cultural entities. Mayanja moved the amendment, which was very hotly debated.³⁸ As a member of the Constituent Assembly, Mayanja debated the draft 1995 Constitution written after massive consultations by the Odoki Constitutional Commission. He defended the merits of responsible local governments in the management of the state.³⁹

However, the way the 2005 amendment of the 1995 Constitution was conducted unnerved Mayanja. For example, he claimed that some 118 articles were brought in an Omnibus package, presented, debated and, most of them, passed without thorough scrutiny of each article. He thought that each article should have been brought alone, placed, debated, passed, or rejected separately. Writing in the press in March 2005, he noted:

The Constitution Amendment Bill 2005, nicknamed the Omnibus Bill, is an intimidating document. It proposes to make no less than 118 amendments, repeals, replacements and additions to the existing Constitution, which was adopted and promulgated only 10 years ago. This was after an elaborate process of consulting the people of Uganda through the Odoki Constitutional Commission, plus prolonged and sometimes agonising debates in the Constituent Assembly. My problem is that if you bring in one bill, 50 or 70 different amendments each dealing with a separate article, topic or principle of the Constitution, and then after a general discussion in Parliament at the second reading, you submit that bill to a vote and you get a two thirds majority, can anybody say the two-thirds majority has been cast in favour of each and every clause in the bill?⁴⁰

³⁷ “The Government’s Proposals for a New Constitution of Uganda” In *Transition*, Kampala: No. 32, Aug. - Sep., 1967, pp. 20-25

³⁸ *New Vision*, 17th July 1993, page 4.

³⁹ *New Vision* 16th July 1993, page 1; *Ngabo*, Monday 17th May 1993 page 1.

⁴⁰ *New Vision*, March 15, 2005, page 10

When Parliament passed the same amendment as Constitution (Amendment Bill 2 and 3 of 2005), Mayanja felt that Parliament had devalued the sanctity of the constitution and exposed it to desires for constant amendments due to six factors. First, the government rejected most of the recommendations of the Constitutional Review Committee (CRC). Second the government added many items that had not been before the CRC. Third, members of Parliament were reported to have been given large sums of money purportedly for consultations with their constituents, but several people suspected government buy offs. Fourth, the amendments were so many (over 100) that members did not have time to debate each thoroughly. Fifth, several items that were not constitutional were incorporated into the document. And lastly, the management and financing of regional governments were not well spelt out. He concluded by noting that:

Clearly, what Parliament has concluded is most unlikely to stand the test of time as the constitution of this country. What is likely to happen is that every time there is a general election, political parties will be including in their manifestos proposals to enact this or that amendment – for example, to restore presidential term limits and establish a recognisable federal system of government in Uganda. In other words, far from being settled, the Constitution is likely to remain constantly in the political arena⁴¹.

9. Conclusions

The formation of the initial Uganda state by the colonial power was neither intended nor planned nor well designed. The UK occupied Uganda for imperial reasons based on a myth that the control of India could be influenced by what happens in the Nile basin region since the Suez Canal had become the main artery between Europe and Asia. Buganda, the nucleus of Uganda, was annexed in 1894 to secure the headwaters of the Nile and to please Christian missionaries involved in that country. As the colonial government did not depend on people's opinions to govern, the population was not involved in the designing of the 1902 Order in Council which became the supreme law of Uganda up to 1962. The 1962 Constitution was rushed because the colonial power wished to pull out of Uganda as soon as it could and, according to Samwiri Karugire, leap frogged the country to independence⁴². The 1962 was discussed by chiefs, notables, and a few peoples' opinions. As noted above, Mayanja played a major part in the designing of the 1962 document and subsequent discussion of constitutions of the 1966, 1967 and 1995 proposals. He was the most prolific in producing ideas for Uganda's constitutions.

⁴¹ *New Vision*, August 23, 2005, page 10.

⁴² Karugire, Samwiri Rubaraza (1980). **A Political History of Uganda**. Nairobi: Heinemann, page 142.