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RIGHT OF MAN AND DUTY OF THE STATE IN *THE SOCIAL CONTRACT* OF JEAN JACQUES ROUSSEAU

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SUMMARY

TO

MY MOTHER FLORENCE BEKAH

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ABSTRACT

This work is a political philosophy on right of Man and duty of the State. This will constitute a reflection on jean Jacques Rousseau, *The Social Contract.* It will contain a typical discus on the right of man in the State and also the duty of the state toward man. The most re-occurring themes of this work will centre on man and state, right and duty. This work is aiming at upholding right of man through duty of the state. According to Rousseau it became a time when people were living a life far worse than they were in the state of nature, where there were no laws and life became survival of the fittest. This was because the monarchs, kings and rulers of his time mistook power as right, as such this led to dictatorship, tyranny, corruptions and injustice. He then called on man to come together and form a Social Contract in which they will make right a supreme ruler of the state in subjugation of power, this can be done through the duties that the state was to take in protecting man in all domain. This was because everyone, be it king, monarch or president will respect this right and they will make right and duty a universal law, that is, what is right for one person is right for everybody. In this work we are going examine as to whether Rousseau finally realize this dream. This is because in our contemporary society today, that is, there are revolutions in the east, north, west, and south. This implies that there is no peaceful coexistence between man and state because either man or the state has failed in it right or duty. If state has failed in its duty why? And if man has failed to respect state, why? These following approaches will be us in carrying out this finding, which is analytical, critical, synthetically and reconciling method. Therefore, this work is aiming at the right of man and the duty of the state by uniting right and duty and also trying to give a solution to this entire contemporary political crisis, rivalry, revolution, and conflict between man and the state. This problem is as a result of either, man or the State has mistaken right and duty for power, leading the state to Anarchism. Further-more, in this work, we shall look at the idea of right and duty of the state among the contractualist, the appraisal of his theory of Rousseau's notion of right and duty, and lastly the reality of Rousseau's right and duty in the context of Africa. With all this we will end at nothing but find a way forward to the resolution for the contemporary problem of man and the State.

Keywords: right, duty, citizens, state, sovereign, and general will

RÉSUMÉ

Ce travail est une philosophie politique sur les droits de l'homme et le devoir de l'État. Il constituera une réflexion sur Jean-Jacques Rousseau et son ouvrage "Du contrat social". Il abordera une discussion typique sur les droits de l'homme dans l'État ainsi que le devoir de l'État envers l'homme. Les thèmes les plus récurrents de ce travail porteront sur l'homme et l'État, le droit et le devoir. Ce travail vise à défendre les droits de l'homme par le devoir de l'État. Selon Rousseau, il est venu un moment où les gens vivaient une vie bien pire que dans l'état de nature, où il n'y avait pas de lois et la vie était une lutte pour la survie du plus fort. Cela s'est produit parce que les monarques, rois et dirigeants de son époque ont confondu le pouvoir avec le droit, ce qui a conduit à la dictature, à la tyrannie, à la corruption et à l'injustice. Il a alors appelé les hommes à se réunir et à former un Contrat social dans lequel ils feraient du droit le souverain suprême de l'État en subjuguant le pouvoir. Cela peut être accompli grâce aux devoirs que l'État devait assumer pour protéger l'homme dans tous les domaines. Cela signifiait que tout le monde, que ce soit un roi, un monarque ou un président, respecterait ce droit et ferait du droit et du devoir une loi universelle, c'est-à-dire que ce qui est juste pour une personne est juste pour tout le monde. Dans ce travail, nous examinerons si Rousseau a finalement réalisé ce rêve. Cela est pertinent dans notre société contemporaine, où il y a des révolutions à l'est, au nord, à l'ouest et au sud. Cela implique qu'il n'y a pas de coexistence pacifique entre l'homme et l'État, car soit l'homme, soit l'État a échoué dans son droit ou son devoir. Si l'État a failli à son devoir, pourquoi ? Et si l'homme a manqué de respect envers l'État, pourquoi ? Nous utiliserons les approches analytiques, critiques, synthétiques et de réconciliation pour mener cette recherche. Par conséquent, ce travail vise les droits de l'homme et le devoir de l'État en réunissant le droit et le devoir, tout en essayant de trouver une solution à cette crise politique contemporaine, cette rivalité, cette révolution et ce conflit entre l'homme et l'État. Ce problème découle du fait que l'homme ou l'État a confondu le droit et le devoir avec le pouvoir, conduisant l'État à l'anarchie. De plus, dans ce travail, nous examinerons l'idée du droit et du devoir de l'État chez les contractuallistes, l'évaluation de la théorie de Rousseau sur la notion de droit et de devoir, et enfin la réalité du droit et du devoir de Rousseau dans le contexte de l'Afrique. Avec tout cela, nous ne chercherons rien d'autre qu'à trouver un moyen de résoudre le problème contemporain de l'homme et de l'État.

Mots-clés : droit, devoir, citoyens, État, souverain, volonté générale

GENERAL INTRODUCTION

"*The strongest is never strong enough to be always the master, unless he transforms strength into right, and obedience into duty. Hence the right of the strongest, which, though to all seeming meant ironically, is really laid down as a fundamental principle*"[1] The idea of human security as the remit of the state is inextricable from the notion of the state this explain why man has been so anxious about his security where he lives. This has taken us to engage on a research so as to satisfy man's anxiousness about his security and where he lives. This work is a political philosophy which centres on ethics and politics. It focus is on the right of man and the duty of the state in our contemporary society. This work will centre on Jean Jacques Rousseau's book *The Social Contract*. A Social contract theory is the view that persons' moral and, political obligations are dependent upon a contract or agreement among them to form the society in which they live. However, social contract theory is rightly associated with modern moral and political theory. As such Rousseau define social contract as, "*A sacred right which is the basis of all other rights*"[2]. This is an agreement with which a person enters into civil society. The contract essentially binds people into a community that exists for mutual preservation. In entering into civil society, people sacrifice the physical right of being able to do whatever they please, but they gain the civil right of being able to think and act rationally and morally. As such he sees more advantage in the civil society than state of nature as he said,

> *What man loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting, what he gains is civil liberty and the proprietorship of all he possesses. If we are to avoid mistake in weighing one against the other, we must clearly distinguish natural liberty, which is bounded only by the strength of the individual, from civil liberty, which is limited by the general will* [3]

There are many theories of the social contract in which it differs according to their purpose: some were designed to justify the power of the sovereign, while others were intended to safeguard the individual from oppression by a sovereign who was all too powerful. For example, the social contract of Jean Jacques Rousseau was aim at liberating man from the hands of oppressors and dictators of his time as that will be our main concern here against the right of the strongest. Man has no right over another man's life as such everything should be done through agreement and consent and not cohesion. This justifies when Rousseau said, "*since no man has a natural authority over his fellow, and force creates no right, we must*

[1] ROUSSEAU Jean Jacques, *The Social Contact*, Trans. G.D. H. Cole London, J. M. Dent and Son LTD. 1762, p. 3.
[2] *Ibid*., P. 2.
[3] *Ibid*., pp. 9-10.

conclude that conventions form the basis of all legitimate authority among men"[4] Although similar ideas can be traced to the Greek Sophists, social-contract theories had their greatest currency in the 17 and 18 centuries and are associated with philosophers such as Jean Jacques Rousseau who is our main author here.

What distinguished their theories of political obligation from other doctrines of the period was their attempt to justify and delimit political authority on the grounds of man self-interest and rational consent. These then reduced to the form of a social contract, from which it was supposed that all the essential rights and duties of citizens could be logically deduced. This was because man had reached a stage where he needs laws that will secure him and this can only be through social contract as he said,

> *By the social compact we have given the body politic existence and life; we have now by legislation to give it movement and will. For the original act by which the body is formed and united still in no respect determines what it ought to do for its preservation [...] the human race would perish unless it changed its manner of existence* [5]

Rights refer to those claims and privileges recognized and enforced by the state. These claims are not rights until they are permitted by the law. The citizens are meant to enjoy these rights in order to live useful, active and balanced life in society. These rights will make the citizens to be responsible and effective members of the society. Examples of these rights are right to education, right to life, right to opinion and freedom of expression, as well as right to own property. Right exist into two part that is, natural and legal right. Natural rights are those that are not dependent on the laws or customs of any particular culture or government, and so are universal, fundamental and inalienable mean while Duty mean the responsibilities which a state or an individual is expected to carry out in return for the rights he enjoys. Duty and right are like the two faces of a coin. One does not exist without the other. The duty of citizens is very essential because it provides government the needed support that will foster peace, stability and progress in the state. Examples of these duties are:

-Voting in election

-Observing public holiday

-Payment of taxes

-Rates and other levies.

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[4] ROUSSEAU Jean Jacques, *The Social Contract*, p. 4.

[5] *Ibid.,* pp. 6-17.

In modern times a state can, be said to be more than a government, government according to Rousseau is, "*An intermediate body set up between the subjects and the Sovereign, to secure their mutual correspondence, charged with the execution of the laws and the maintenance of liberty, both civil and political*"[6]As we know government change but states are perpetual. A state is the means of rule over a defined or sovereign territory with a population. It is comprised of an executive, legislation judicial power and as well other institutions which are generally called the government which have the duty to ensure that law and order is maintained.

> *What then is government? [...] charged with the execution of the laws and the maintenance of liberty, both civil and political [...] I call then government, or supreme administration, the legitimate exercise of the executive power, and prince or magistrate the man or the body entrusted with that administration* [7]

But, along with that a state also levies taxes and operates a military and police force. Furthermore, States distributes and re-distribute resources and wealth to it citizen which in this work we will see it as their duty. As per legal dictionary, in broad term a State can be defined as groups of people which have acquired international recognition as an independent country and which have a population, and a defined and distinct territory. Rousseau in this sense define state as, "*A moral person whose life is in the union of its members*"[8] this implies here that state is the union of individual coming together under one constitution and laws.

Jean Jacques Rousseau who live from 1712-1778, was a French philosopher, essayist, and novelist of the modern period of philosophy, was born in Geneva. He was the one who initiate the belief that man, by nature was good but it is the society that has corrupt man. He believed that people in the state of nature were innocent and at their best and that they were corrupted by the unnaturalness of civilization. In the state of nature, people lived entirely for themselves, possessed an absolute independence, and were content but it became a time that man started being jealous and envy which spark off competition among them, as such he said,

> *I suppose men to have reached the point at which the obstacles in the way of their preservation in the state of nature show their power of resistance to be greater than the resources at the disposal of each individual for his maintenance in that state. That primitive condition can then subsist no longer, and the human race would perish unless it changed its manner of existence. But, as men cannot engender new forces, but only unite and direct existing*

[6] ROUSSEAU Jean Jacques, *The Social Contract,* p. 28.
[7] *Idem.*
[8] *Ibid.,* p. 14.

> *ones, they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance. These they have to bring into play by means of a single motive power, and cause to act in concert*.[9]

For this reason, he started thinking of what could be the right of man and the duty of the state if man could form a union through a contract. His whole philosophy is built on political thought like the problems of society, government, freedom, virtue, the State, education, morality, inequality, justice, laws, power, sovereignty, and the best government. These constitute political philosophy as a whole which is also known as political theory.

In this work we will be discussing issues such as politics, liberty, justice, property, rights, law, and the enforcement of laws by authority: what they are, if they are needed, what makes a government legitimate, what rights and freedoms it should protect, what form it should take, what the law is, and what right man need from a legitimate government, if any, and when it may be legitimately overthrown, if ever. All this is accompanied by Ethics of politics. When laws are put in place with the respect of ethical views there will be a good government this will make the society of man different and superior to that of animal, as such he said ‘‘*man is like but yet unlike other animals, because of the unique way he develops*’’[10]. To him, in the state of nature man is naturally peaceful and timid, at the least danger, his first reaction is to flee, and he only fights through the force of habit and experience. It seems that primitive men having no moral relations or determinate obligations could not be good or bad, virtuous or vicious. He is on concerned with his own well-being and happiness, satisfying his personal needs and disregarding everything he did not think himself immediately to notice he is solitary and independent. This feeling of self-love termed can only accidentally be good or bad. Man has not yet discovered reason, knowing no rights and acting upon his instincts. He does not know the feeling of love and so beauty has no importance to him. Therefore, inequality is except for physical inequality.

The individual’s first encounter with other men represents a critical juncture in Jean Jacques Rousseau’s writings. Man finds that in certain cases which are of mutual interest, he can cooperate with others and rely on them. Loose associations are formed, but the absolute turning point is when man begins to live in huts with his family; he starts living in a small society.

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[9] ROUSSEAU Jean Jacques, *The Social Contract*, pp. 6-7.
[10] ROUSSEAU Jean Jacques, *Discourse on Inequality Among Men,* Tran. Maurice Watson, Great Britain, vine LMD. 1984, p. 2.

> *Everything now begins to change its aspect. Men, who have up to now been roving in the woods, by taking to a more settled manner of life, come gradually together, form separate bodies, and at length in every country arises a distinct nation* [11]

Meanwhile in the same regard Jean Jacques Rousseau in *The Social Contract* talk of man with a sovereign right and power. Rousseau sees man in a healthy republic, as sovereign. That is, all the citizens or individual acting collectively. Together, they voice the general will with the laws of the state. The sovereign cannot be represented, divided, or broken up in any way: only all the people speaking collectively can be sovereign.

> *I hold then that Sovereignty, being nothing less than the exercise of the general will, can never be alienated, and that the Sovereign, who is no less than a collective being, cannot be represented except by himself: the power indeed may be transmitted, but not the will* [12]

This implies that man cannot act alone in the state. It is all about the general body. Individual were born into an anarchic state of nature, which was happy or unhappy. They then, by exercising natural reason, formed a society and a government by means of a contract among themselves. In broad terms, a state is a political organization of society. It is a form of human association with a purpose of establishing law and order in the society. The idea behind formation of a state is to settle the disputes among individuals by way of laws. The definition of State was evolved according to the change in social dynamics.

According to Rousseau, the powerful rich stole the land belonging to everyone and fooled the common people into accepting them as rulers. Rousseau concluded that the social contract was not a willing agreement but a fraud against the people committed by the rich. As a result, Rousseau published his most important work on political theory, *The Social Contract.* Rousseau agreed with Locke that the individual should never be forced to give up his or her natural rights to a king but to the whole people. The problem in the state of nature, Rousseau said, was to find a way to protect everyone's right to life, liberty, and property while each person remained free. Rousseau's solution was for people to enter into a social contract. They would give up all their rights, not to a king, but to the whole community, all the people in which he called all the people the sovereign. The people then exercised their general will to make laws for the public good.

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[11] ROUSSEAU Jean Jacques, *Discourse on Inequality Among Men,* p. 120.
[12] ROUSSEAU Jean Jacques, *The Social Contract*, p. 12.

The idea of western state can be traced back to Aristotle and Plato's theories, where civil state, was defined as the ideal form of association, where the whole community's religious, cultural, political, and economic needs could be satisfied. The city-state was self-sufficient and was perceived by Aristotle as the means of developing morality among the individuals in the communities. The two-state defined by Rousseau are the state of nature and the civil state. Rousseau, in *The Social Contract,* held that in the state of nature humans were unwarlike and somewhat undeveloped in their reasoning powers and sense of morality and responsibility. When, however, people agreed for mutual protection to surrender individual freedom of action and establish laws and government, they then acquired a sense of moral and civic obligation.

> *The passage from the state of nature to the civil state produces a very remarkable change in man, by substituting justice for instinct in his conduct, and giving his actions the morality, they had formerly lacked. Then only, when the voice of duty takes the place of physical impulses and right of appetite, does man, who so far had considered only himself, find that he is forced to act on different principles, and to consult his reason before listening to his inclinations*[13]

In order to retain its essentially moral character, government must thus rest on the consent of the governed, the general will as a source of duty and responsibility of state. The more perceptive social-contract theorists, including Hobbes, invariably recognized that their concepts of the social contract and the state of nature were unhistorical and that they could be justified only as hypotheses useful for the clarification of timeless political problems. According to Rousseau the State of Nature is a primitive state that existed before the civil state. Its was a state where there was an absent of high authority to adjudicate disputes, and protect people. There was no justice, commerce or culture. This unsustainable condition change when individual agree to relinquish their natural right to a civil authority where there will be authorities to adjudicate laws and protect citizens right as their duties. The state of nature was a starting point for social contract theory. When Rousseau talks about the state of nature, he is talking about what human life would been like without the shaping influence of society.

Also, Rousseau speaks from the perspective of Thomas Hobbes in which in his book *Leviathan,* he argues that the state of nature was one in which there were no enforceable criteria of right and wrong. People took for themselves all that they could, and there was a constant war of all against all because man was an enemy to his fellow man. These was so

[13] ROUSSEAU Jean Jacques, *The Social Contract,* p. 9.

disadvantageous to man as he could not progress economically, politically and social, as such he said

> *Whatsoever therefore is consequent to a time of War, where every man is Enemy to every man; the same is consequent to the time, wherein men live without other security, than what their own strength, and their own invention shall furnish them with all. In such condition, there is no place for Industry ; because the fruit thereof is uncertain : and consequently no Culture of the Earth ; no Navigation, nor use of the commodities that may be imported by Sea ; no commodious Building ; no instruments of moving, and removing such things as require much force; no Knowledge of the face of the Earth ; no account of Time ; no Arts ; no Letters ; no Society ; and which is worst of all, continual fear, and danger of violent death ; And the life of man, solitary, poor nasty, brutish, and short.*[14]

To an extend Hobbes was emphasize on the necessity of government for security purpose. The state of nature was therefore a state of war, which could be ended only if individuals agreed to give their liberty into the hands of a sovereign, who was hence forward absolute on the sole condition that their lives were safeguarded by sovereign power. The state of nature as one in which the rights of life and property were generally recognized under natural law, the inconveniences of the situation arising from insecurity in the enforcement of those rights. Therefore, the obligation to obey civil government under the social contract was conditional upon the protection not only of the person but also of private property. "*We might, over and above all this, add, to what man acquires in the civil state, moral liberty, which alone makes him truly master of himself; for the mere impulse of appetite is slavery, while obedience to a law which we prescribe to ourselves is liberty*"[15] Sovereigns who violated these terms could be justifiably overthrown. In another hand, a civil state is a contemporary societal state which is governed by law. Civil society is what we enter into when we agree to live in a community. With civil society, come civil freedom and the social contract.

The concept of state was thought of as a social contract the state is the social contract between individuals whereby, they agree not to infringe on each other's natural rights to life, liberty, and property, in exchange for which each man secures his own sphere of liberty. Meanwhile In the development of concept of State, the state is the highest form of social existence. Legitimacy of the state comes from upholding common morals rather than particular interest of the individuals in a society. Rousseau believed in the power of national aspiration. Every man is subordinate to the state and if a state claims one's life, he must

[14] HOBBES Thomas, *Leviathan*, London, Ely House, 1651, pp. 96-97.
[15] ROUSSEAU Jean Jacques, *The Social Contact*, p. 10.

surrender it. A good example of this is the establishment of The League of Nnations to end conflict and to establish a perpetual peace. A state is seen as an artificial means of producing a unity of interest and a device for maintaining stability. As for Rousseau, the role of the state was to ensure more happiness and lack of pain in the individuals. This theory is known as the utilitarian theory. Furthermore, state can be seen as an apparatus of oppression. It is operated by the ruling or a stronger class to ensure economic supremacy over the weaker class.

With a focus of an aim, this work is to reconcile right of man with duty of the state and it can only be through the performance of state duties that we can understand to what extend the right of man is respected or disrespected. More to that, to check whether the aim of man to come out from the state of nature to a civil state so as to enjoy freedom and liberty is realistic? This is because Rousseau considers the state as an artificial product of man as such, he called for a better state in which the right of man will be protected. The union of mean into a social contract marks the present of the civil state. The State is independent and sovereign. It has its own laws constitutions that guide them. This is why Jean Jacques Rousseau focuses on the apparent contradiction that strongly criticizes the social contract tradition and at the same time defends a social contract theory as the only solution to save mankind from corruption and degeneration. This was because in his time power was mistaken as right by the rulers of the time and he was against this right of the strongest as he said, ‘‘*The strongest is never strong enough to be always the master, unless he transforms strength into right, and obedience into duty*’’[16] here he wanted a right that can be universal irrespective of the race tribe nation or statue. Rousseau blames society for having transformed and corrupted man, who was originally innocent and how he criticizes the social contract tradition. That is why he analyses his paradoxical solution to end the corruption of mankind through re-education and the Social Contract emphasizing liberty through the obligation to follow laws and the general will. Thus, three stages described by Rousseau, are investigated: the state of nature, where man is free and independent, society in which man is oppressed and dependent on others, and the state under *The Social Contract,* in which, ironically, man becomes free through obligation; he is only independent through dependence on law.

The problem here is the of right of man and duty of the state. Right and duty are complimentary, as such right can only be visible in the state through duty. With regard to *The Social Contract,* man and the state was to come to together to make laws in a union that it will

[16] ROUSSEAU Jean Jacques, *The Social Contact*, p. 3.

secure them, while the state had as duty to protect man because he surrenders must of his right to the state, although he returned with some right such as right to life and property. It was a right of man to live and own property and the duty of the state to protect this right. In this sense the right of a man can only be visible if state is active in their duties. For example, if a person seizes my property forceful it is my right to take him to court and it is the duty of the state to protect me by taking my property and hand it back to me. If the state cannot do that, it means she has failed in her duty and my right also have been subdue as such when duty fail right lost it focus. This why, Rousseau began by condemning the authority who took right as force and violet right to life of the citizen. That is why Rousseau in this context began by condemning the misconception of right as force and the violation of right to life and property by the authorities of the state.

He states that being an authority those not make you the strongest man but it should make it a duty to protect the citizens and not to harm them. That is why he conclude that, "*Let us then admit that force does not create right, and that we are obliged to obey only legitimate powers*" [17]In the state of nature people have physical right, meaning that their actions are not restrained in any way, but they are little more than animals, slaves to their own instincts and impulses there was no ruler or laws to take a duty of restricting excessive and abusive use of right. In most contemporary societies, however, people lack even this physical right but more protected than in the state of nature. They are bound to obey an absolutist king or government that is not accountable to them in any way. He said, "*It would therefore be necessary, in order to legitimise an arbitrary government, that in every generation the people should be in a position to accept or reject it; but, were this so, the government would be no longer arbitrary*"[18] By proposing this topic, we hope to secure the civil right and duty that should accompany life in society. This right and duty is tempered by an agreement not to harm one's fellow citizens; because most laws in our contemporary society today favour's the state and not the citizens meanwhile it is the citizen with the general will make laws that it will suit them. But this restraint leads people to be moral and rational. In this sense, civil right is superior to physical right, since people are not even slaves to their impulses. In the state of nature, we enjoy the physical freedom of having no restraints on our behaviour. By entering into the social contract, we place restraints on our behaviour, which make it possible to live in a community.

[17] ROUSSEAU Jean Jacques, *The Social Contact*, p. 3.
[18] *Ibid.*, p. 4.

With this above concern, this personally motivated me by trying to reconcile right of man with duty of the state as Rousseau will say, "*In this inquiry I shall endeavour always to unite what right sanctions with what is prescribed by interest, in order that justice and utility may in no case be divided*"[19] Each society today has a Government and Constitution which guide them and as such all these political crises in the world today is because the right of man have been suppressed and the state has fail in their duties toward man or because man have fail to respect the laws of the state. These problems can be resolve by taking a review on the right and duty to be given to man by the state or respect to be given to the state by man. In, *The Social Contract,* Rousseau sets out to answer what he takes to be the fundamental question of politics, the reconciliation of the right of man with the duty of the state, which are liberty right and duty right. Liberty right is that which does not entails responsibilities, duties, or obligations on other parties, but rather only freedom or permission for right holder. Meanwhile duty right is that which you owe as a responsibility for a purpose. This reconciliation is necessary because human society has evolved to a point where individuals can no longer supply their needs through their own unaided efforts, but rather must depend on the cooperation of others.

But our question from at stake is, how can duty of the state uphold the right of man? With this background knowledge in our mind, we are faced with the following questions to answer such as, what is a right of man in the state? What are the duties of the state to man? Does the aim of Rousseau to bring man from the state of nature to better him up in the civil state have been realize? What is the relationship between man and the state? According to Rousseau when man was living the state of nature to civil state, they had an agreement which man will unite and surrender his right to one single body who will governed and in return take the duty to protect him. But today, is the Government still performing their duties by protecting man? If yes why are there all these civil wars and all this state rebellion? And if not why are there not performing their duties? What could be the way forward to resolve these problems between man and the state? Is man's right still respected today in the state? Is man at the service of state or state at the service of man?

Considering these questions, it is of a greater influence to provide answers to these questions. The relationship between man and the state is that of right and duty protection, respect and protection, and respect and freedom. Rousseau believed that in order to become

[19] ROUSSEAU Jean Jacques, *The Social Contact*, p. 1.

free, every individual must give up all his rights to the entire community, creating the same conditions for all and thus equality. Finally, each man, in giving himself to all, gives himself to nobody. To him if we respect the state, then we are just respecting ourselves. Men are thus all subject to what Rousseau name the general will. It is not the will of all the individuals or of the majority, as even the majority may be mistaken, but it is always to public advantage and for the 'greater good'. He further that, "*whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than he will be forced to be free*"[20]. This again reminds us that man is everywhere in chains.

Man's freedom is thus relative, he cannot endanger anyone else's freedom and he must follow the law and above all, the general will, so to maintain an ordered society. Man is only free by obedience, he must become dependent (on law) in order to be independent. In the Social Contract, Rousseau repudiates two traditional features of society. Firstly, political authority is not to be based on force, as the use of force can never be right. "*Since no man has natural authority over his fellow men, and since might in no sense make right, conventions remain as the basis of all legitimate authority among men*"[21] Secondly, man has no innate sociability, which means society is not a natural occurrence; but if he decides to, he has the potential to enter into a relationship with his fellows. Society must thus be formed upon rational choice; oppression is never right as it is our pre-occupation in this work. This thus rejects the view of Grotius that permanent enslavement of a captive people is acceptable, and certainly that of Hobbes, who advocates absolutism.

For a successful research to be realizing it will be of great important to apply series of method. By answering this question, we will be using analytical method. This method was use by Moore George in his book *The Nature of Judgment.* He sees analysis simply as "*The decomposition of complex concepts into their constituents: A thing becomes intelligible first when it is analysed into its constituent concepts*"[22] Analytical philosophers conduct conceptual investigations that characteristically, though not invariably, involve studies of the language in which the concepts in question are, or can be, expressed. This methodology echoes Rousseau, The *Social Contract,* when began with the analysis of what right is, and refuse that the strongest is never strong enough to always be the master except he transforms strength to right and obedience to duty. He further, that he doesn't see any moral act that strength can bring and

[20] ROUSSEAU Jean Jacques, *The Social Contact*, p. 34.
[21] *Ibid*., p. 3.
[22] MOORE George*, The Nature of Judgment*, London, mind new series, 1899, p. 8.

as such if it continues that way then people will be looking only for power so that they can also take power and become the strongest as such he concludes,

> *If force creates right, the effect changes with the cause: every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with impunity, disobedience is legitimate; and, the strongest being always in the right, the only thing that matters is to act so as to become the strongest. But what kind of right is that which perishes when force fails? If we must obey perforce, there is no need to obey because we ought; and if we are not forced to obey, we are under no obligation to do so. Clearly, the word right adds nothing to force: in this connection, it means absolutely nothing*[23]

It is only through agreement that right can be recognised. The original freedom, happiness, equality and liberty which existed in primitive societies prior to the social contract were lost in the modern civilization. Through Social Contract, a new form of social organization, that is, the civil state was formed to assure and guarantee rights, liberties freedom and equality. The essence of the Rousseau's theory of General Will is that, State and Law was the product of General Will of the people. State and the Laws are made by it and if the government and laws do not conform to general will, they would be discarded. While the individual parts with his natural rights, in return he gets civil liberties such as freedom of speech, equality, and assembly. This shows the analytical method in which Rousseau shows us the passive of man from the state of nature to the civil state which is our present-day society. Rousseau admitted universal justice but opposed it validity if is not mutual by nature, and further denies it effectiveness if it lacks natural sanctions but conclude in synthesis that agreement and laws are needed to unite right and duty.

> *Doubtless, there is a universal justice emanating from reason alone; but this justice, to be admitted among us, must be mutual. Humanly speaking, in default of natural sanctions, the laws of justice are ineffective among men: they merely make for the good of the wicked and the undoing of the just, when the just man observes them towards everybody and nobody observes them towards him. Conventions and laws are therefore needed to join rights to duties and refer justice to its object* [24].

With regard to the plan, it is skeletal frames which give a claw to the general research work. This work will be divided into three parts with six chapters. Part one contain two chapters and part two and three will contain two chapters each. Part one will be talking about Rousseau’s notion on right of man and the duty of the state. Chapter one of part one will focus

[23] ROUSSEAU Jean Jacques, *The Social Contact,* p. 3.
[24] *Ibid.*, p. 17.

on Rousseau on the notion of rights of man, and chapter two will be on the concept of duty according to Rousseau. In part two, we shall look at the general appraisal of Rousseau's notion of right of man and duty of state. Under it, chapter three will focus on the appraisal of Rousseau's vision of the rights of man and human right Chapter four will be on general categories of modern state institutions with its duties in reflection to Rousseau. Part three will be on the contextual reality of the application and critical position of Rousseau's concept of right and duty in African countries meanwhile in chapter five of this part we will be talking about the reality of social contract through the constitutional system of government in African contemporary society and furthermore, chapter six will centre on the poste philosophical innovation of Rousseau's thought through his critical position to the present modern days and lastly selected bibliography with table of contents.

PART ONE

THE QUESTION OF RIGHT OF MAN AND DUTY OF THE STATE ACCORDING TO THE CONTRACTUALISTS

As there is a close relationship between the body and soul, so there is a relationship between the rights and duties. If one has the right, the other has the duty related to that right. If one enjoys the right, it becomes the duty of the other not to prove an obstacle in the enjoyment of his right. For example, if I enjoy the right to life it is the duty of others not to cause any harm to my life. That is why Rousseau said, "*He who wishes to preserve his life at others' expense should also, when it is necessary, be ready to give it up for their sake […] it is in order that we may not fall victims to an assassin that we consent to die if we ourselves turn assassins*"[25] According to him it is our right to preserve and protect our life and as such it is also our duty to respect the preservation and the protection of other people's life. If I possess rights, I owe duties also, that is, as we treat others so others will treat us. If the other has the right to life and security, it is our duty that we should not cause any harm to their life and security. This is more of our concern here as we set forward to see what right we have in the state and what duty state owe to us as her subject

Thus, it is quite clear that rights and duties are so closely related to each other, that they cannot be separated from each other. If every individual pay attention only to his rights and does not perform his duties to others, rights of individual will cease to exist. There is a close relationship between the rights and duties. They are the same conditions viewed from different angles. They are the two sides of the same coin. If we have the right to speech, writing, wandering, running institutions and any religion we like, it is our duty at the same time that we should not spread evils in society by our writing work or by our lectures. In this part we are going to examine the right of man and duty of the state respectively. It shall constitute two chapters, chapter one will be on the question of liberty according to John Locke and the notion of rights according to Contractualist in reflection to Rousseau and chapter two will be on the dialectic of duties between state and the individual and the responsibility of state and individual according to Hobbes.

[25] ROUSSEAU Jean Jacques, *The Social Contract*, p. 16.

CHAPTER ONE

THE QUESTION OF LIBERTY ACCORDING TO LOCKE JOHN AND THE NOTION OF RIGHTS ACCORDING TO CONTRACTUALIST IN REFLECTION TO ROUSSEAU

Rousseau argues that there are some things that belong to the individual that he cannot legitimately hand over to others, even if he voluntarily chooses to do so, which is right as such he concludes that man is the master of himself. "*His first law is to provide for his own preservation, his first cares are those which he owes to himself; and, as soon as he reaches years of discretion, he is the sole judge of the proper means of preserving himself, and consequently becomes his own master*"[26] Legal rights are those bestowed onto a person by a given legal system. The concept of positive law is related to the concept of legal rights. The inalienable rights of the individual are items of this sort, amongst which are the right to life, property and liberty figures prominently. Right and liberty are two side of the same coin, if you have right over something then you have the liberty to use it the where you want. He further argues that, when these rights and liberty are taken away from a man he does not longer have a quality of human being as he said, "*To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duty* " [27] He believed in a direct democracy in which everyone voted to express the general will and to make the laws of the land. Rousseau argued that the general will of the people could not be decided by elected representatives.

1.1. THE QUESTION OF LIBERTY ACCORDING TO LOCKE JOHN

The natural right to freedom is second in Locke list of natural rights, for if there are any natural rights at all, it follows that there is at least one natural right, the equal right of all men to be free. As a natural right, it implies that man is born free and that this right is not created or conferred by men voluntary action. For Locke, man freedom should be based on reason and should be guaranteed by civil law such that it does not become license and should not deprive another from his own freedom. He holds that if government, which is supposed to foster and preserve this freedom.

[26] ROUSSEAU Jean Jacques, *The social contract*, p. 3.
[27] *Ibid.,* p. 4

a) The Natural Liberty of Man

John Locke was renowned for his criticism of hereditary monarchy and partriachism because in his view, monarchy and civil government are extremely opposite. His major contention here was that liberty as mans' natural gift is not associated with monarchism, but is what characterizes a civil society. However, such liberty comes, according to Locke mainly when everyone of the members of a society has quitted his or her natural power, resigned it up into the hands of the community in all cases that exclude him not from appealing for protections to the law established by it

> *The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man, in society, is to be under no other legislative power, but that established, by consent, in the commonwealth; nor under the dominion of any will, or restraint of any law, but what that legislative shall enact, according to the trust put in it*.[28]

. Therefore, earthly rulers do not derive their authority from God but from contracts made by man. Locke's Treatises apart from its defence of the revolutions, was also a direct attack on Sir Robert Filmer who defended this forms of authority Monarchy on the grounds that men are not born free and therefore can never have the liberty to choose either governors or forms of government. Filmer strongly believed that the creation of Adam gave rise to absolute authority and that a natural liberty of mankind cannot be supposed without the denial of the creation of Adam. The Filmer theory traces the right of the monarch to the establishment of monarchical power in Adam the first man of the Bible by God. "*The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule*"[29] This absolute authority to rule them then gets passed along down to the present King of England. But for Locke, a supposition of natural liberty is in no way a denial of Adams' creation, for his coming to being was made possible only when he received omnipotence from God. Locke ground forth refutation of Filmer's argument for Adam as natural King was that: the natural liberty of man is to be free from any superior power on earth and not to be under the will or legislative authority of man but have only one law of nature for his rule. Locke further argued that man is endowed with freedom from birth and that the only authority man can be put under is that which is established by the consent of the people in commonwealth, not under the dominion of any will or restraint of any

[28] LOCKE John, *Two Treatise of Government*, Ed. Global Grey, England, 2019, p. 122.
[29] *Ibid.,* p. 122.

law but what the legislative shall enact according to the trust put in it. The power given to the legislative by the people in society is what for Locke is called political authority.

For Locke the social contract depicts that for man to preserve his rights and privileges, he has to be in agreement with others, quit his natural execution power and resign to the community. The community becomes the umpire of defence and property. In the civil society according to Locke, one relinquishes his legislative and executive powers to the commonwealth and authorises it to legislate for the public good. The question one asks is this: if people have natural rights and also know moral laws, why do they desire to leave the State of nature? To this question, Locke answers that the great and chief end of men uniting into commonwealth and putting themselves under government is the preservation of their property. The latter for Locke is the guarantee of liberty. Man, who has been said to be a political animal, may also be argued to be condemned to authority. Bome 's view supported this when he claimed that "*there is in man natural inclination to live in a society with his fellow men. Authority is necessary to maintain justice and peace in this society*" [30]. For Locke, when any number of men have by the consent of every individual, made a community, they have thereby made that community one body which they entrust with the power to act on behalf of the majority. Thus, the act of the majority passes for the act of the whole and also by the law of nature and reason, has the power of the whole. The body constituted as authority and also having the power of the whole introduces two concepts which demand for clarifications, power and authority which some have mistaken to be the same.

b) Liberty and the Sate of Nature

Locke opens his second treatise on Government by supporting what he calls the true origin of the government. He begins by supporting what he termed the State of nature. For Locke, it was one of the perfect equalities and freedom regulated by the laws of nature. There is no subjection or subordination in the State of nature as Locke said "*there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection*"[31]. People are their own judge and master, each seeking his good individually. Locke posits that this is antecedent to all human government. He envisaged this State as "*we must consider, what State all men are naturally in, and that is, a State of perfect freedom to order their actions, and dispose of their*

[30] BOWE, *The Origin of Political Authority,* London, Elonmone & Reynoilds Publishers Ltd, 1955, p.45.
[31] LOCKE John, *Two Treatise of Government,* p.113.

possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man''[32] In essence, the State of nature can be described as a selfish State, a State where everyone is a lord of himself. It is a State where a person depends on his own thought. It is a State of individualism. However, Locke warns that having a State of liberty is not one of license. The State of nature differs from State of war in the sense that the former is a State of total freedom of men without common superior on earth, but the State of war is a State of force on others since they have no common authority to appeal to. For Locke,

> *And here we have the plain difference between the State of nature and the State of war, which however some men have confounded, are as far distant, as a State of peace, good will, mutual assistance and preservation, and a State of enmity, malice, violence and mutual destruction, are one from another. Men living together according to reason, without a common superior on earth, with authority to judge between them, is properly the State of nature. But force, or a declared design of force, upon the person of another, where there is no common superior on earth to appeal to for relief, is the State of war*[33]

The State of war according to Locke, results from the condition of the State of nature. In order to evade this State of war, men put themselves under an authority to appeal to and take them away from the State of nature into political society through pact. For Locke, the State of nature is not same as Hobbes war of all against all and life was nasty, solitary, short and brutish Locke's individual in the State of nature has no liberty to destroy himself or so much as any creature in his possession. Lockean State of nature is intrinsically characterized by freedom and equality, a State in which all the powers are equal, no one having more than the other. Everyone is classified equally with same intelligence and faculty even of punishing offenders against him and as such no one may be subjected or subordinated to others. Thus, Locke writes, '' *The State of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions*''[34] It is a State governed by the principle of reciprocity whereby the measure given one will be the measure he will get. The State of nature exists wherever there is no legitimate political authority, able to judge disputes and where people live according to the law of reason. On this

[32] LOCKE John, *Two Treatise of Government,* p.113.
[33] *Ibid.*, p. 120.
[34] *Ibid.,* p.114.

account, the State of nature is distinct from political society, where a legitimate government exists and from a State of war where all men fail to abide by the law of reason.

c) Liberty is not License

The goal of this work was to show that one of the most important political thinkers, one who did much to popularize the natural rights, conception of liberty, public good and who is credited with an emphasis on individual rights, in fact placed significant limits on individual liberty in society. "*though man in that State have an uncontroulable liberty to dispose of his person or possessions, yet he has not liberty to destroy himself, or so much as any creature in his possession, but where some nobler use than its bare preservation calls for it* " [35]Liberty was not conceptualized in Locke as mere maximizing individual freedom or minimizing government restrictions the way liberty is so often talked about today by libertarians. To him, he said, "*The State of nature has a law of nature to govern it, which obliges every one: and reason, which is that law, teaches all mankind, who will but consult it, that being all equal and independent, no one ought to harm another in his life, health, liberty, or possessions*"[36] On the contrary, in this major political theorist, whose ideas profoundly shaped many societies, liberty was a set of freedom within a set of restraints that were set by society for the public good. More than that, these restraints were thought to provide a kind of platform that in some sense made freedom possible and expanded liberty generally. We have seen that for Locke, a kind of trade is involved in social life. One gains tremendous benefits from society. One is no longer subject to the vagaries of life without a human law and supreme authority for enforcing it. Without that law, an impartial judicial system and an enforcement arm, one faces the conflicts and disagreement that are part of living with other people. In such a situation, one could be enslaved, ones' possessions could be taken and one could even lose ones' life. To better secure these original rights, most individuals prefer civil life. As Locke said,

> *The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any, that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left as they were in the liberty of the State of nature.* [37]

[35] LOCKE John, *Two Treatise of Government,* p.114.
[36] *Idem.*
[37] *Ibid.,* p.160.

According to Locke, life in civil society is more secure, provides a more peaceful life, and provides quiet. But more than showing up ones' core rights, we also want to live in society because we are social animals who want to interact with others and have the convenience of social life. To have those benefits, Locke posits that we make a trade, not unlike a commercial transaction we curtail some of the freedoms that we would otherwise have when we agree to live under a legislature that represents the interests of the society as a whole. "*what new engagement if he were no farther tied by any decrees of the society, then he himself thought fit, and did actually consent to? This would be still as great a liberty, as he himself had before his compact, or anyone else in the State of nature hath, who may submit himself, and consent to any acts of it if he thinks fit*[38]" This legislation can make laws that restrict our actions; it can define the boundaries between our rights to property and others. It can define what the right to possession means.

The law of society thus creates an umbrella of human law within which one consents to live and by which one is restricted. law thus restrains freedom even as it makes more freedom possible. Ones' core original rights are expanded even as specific laws now limit ones' individual actions. The original rights of individuals that Locke believes exist outside of social life are life, liberty and possession. But freedom does not mean license to do what one wish. We have seen that life or preservation is the primary right from which flow the secondary rights of liberty and possessions. Liberty has the specific meaning, not of freedom in general but the right not to be enslaved is a fence around ones' life, for if one can enslave one, such person can take ones' life. Similarly, the right to possessions derives originally from our right to preservation. Our original right to take from nature derives from our right to preserve ourselves and the species. The reason individuals prefer civil life over living on their own is their own personal interest in security and comfort. But the end of the social laws is the public good which is not identical to the original rights of life, liberty and possession.

I.2. ROUSSEAU AGAINST THE RIGHT OF THE STRONGEST

Rousseau states that there is no right of the strongest, strength itself only forces obedience through fear, but it cannot possibly produce morality. If the strongest were always right, the concept of rights would be meaningless: anyone who says it is right to obey those in power really means that people should yield to force, but not that the powerful have some inherent moral right to be obeyed. Similarly, an armed thief who robs Rousseau's purse does not have a

[38] LOCKE John, *Two Treatise of Government,* p. 160.

right to keep it just because he has the power of a gun. In summary, Rousseau concludes, might does not make right, and people should only obey legitimate powers. This affirms Rousseau's views that,

> *The strongest is never strong enough to be always the master, unless he transforms strength into right, and obedience into duty. Hence the right of the strongest, which, though to all seeming meant ironically, is really laid down as a fundamental principle. But are we never to have an explanation of this phrase?*[39]

Because morality is only created when people agree to follow a certain set of rules or laws, it is impossible for mere force to create an ethical state of affairs, or a legitimate form of political community. Rousseau is not denying the existence of physical coercion, but merely explaining that it has nothing to do with the nation he is imagining and distancing himself from philosophers who reduce all morality to physical force. However, readers might ask if the community Rousseau describes truly avoids coercion for instance, can a majority legitimately impose its will on a minority. In this section we going to examine Rousseau's rejection the right of the strongest, the misconception of power as right and rejection of right over slave of war.

a) Rousseau Rejection of Force as Right

In *The Social Contract*, Rousseau discusses the best way to run a state and uses philosophical arguments to argue his case. He also uses the ideas of force, right and freedom to support his argument. Here in this context power, strongest, force according to Rousseau refers to the rulers of his time such as king, monarch and prince. He feels we require a civil state, as opposed to living in the state of nature, as it substitutes justice for instinct and gives his actions a moral quality. Concerning right he begins by rejecting the fact that the strongest rules can never be right because in his time there was a misconception of right and force. The rulers of his time believe that force was right. Rousseau rejected this point that is why he said ''*Force is a physical power, and I fail to see what moral effect it can have. To yield to force is an act of necessity, not of will at the most, an act of prudence. In what sense can it be a duty?*''[40] He believed that it is not right that you should obey someone just because of force and that for the state to be administered properly the power it has must be legitimate and should be a duty right. Authority is legitimate if the person or institution possesses the right to command others, in other words, authority cannot use naked force to command obedience. He also believed that to

[39] ROUSSEAU Jean Jacques, *The Social Contact,* p. 3.
[40] *Idem.*

be legitimate, the authority the state has over the people must come from the people themselves, ‘‘*It would therefore be necessary, in order to legitimise an arbitrary government, that in every generation the people should be in a position to accept or reject it; but, were this so, the government would be no longer arbitrary*’’ [41] whom he called the sovereign general will, and not from a single person such as the king.

To prove the point that the strongest is not always right, that is, that because you can force me to obey you, is it right that I should obey you?’, Rousseau uses the example of ‘The strongest is never strong enough to be master all the time, unless he transforms force into right and obedience into duty. He said ‘‘*Force is a physical power; I fail to see what morality can result from its effects*’’[42] In other words, unless the authority is legitimate and the people feel obliged to obey, rather than forced to obey when the authority is absent, the people ‘will not necessarily obey as he said,

> *Suppose for a moment that this so-called right exists. I maintain that the sole result is a mass of inexplicable nonsense. For, if force creates right, the effect changes with the cause: every force that is greater than the first succeeds to its right. As soon as it is possible to disobey with impunity disobedience is legitimate; and, the strongest being always in the right, the only thing that matters is to act so as to become the strongest. But what kind of right is that which perishes when force fails?*[43]

There is no right of the strongest, Strength itself only forces obedience through fear but it cannot possibly produce morality. If the strongest were always right the concept of rights would be meaningless anyone who says it is right to obey those in power really means that people should yield to force but not that the powerful have some inherent moral right to be obeyed. In summary, Rousseau concludes, might does not make right, and people should only obey legitimate powers. As a result, he said, ‘‘*then let us agree that force doesn't create right, and that legitimate powers are the only ones which we are oblige to obey*’’[44] This is because morality is only created when people agree to follow a certain set of rules or laws, it is impossible for mere force to create an ethical state of affairs, or a legitimate form of political community. Rousseau is not denying the existence of physical coercion, but merely explaining that it has nothing to do with the nation he is imagining and distancing himself from philosophers who reduce all morality to physical force.

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[41] ROUSSEAU Jean Jacques, *The social contract*, p. 4.
[42] *Ibid.*, p. 3.
[43] *Idem.*
[44] *Idem.*

b) The Misconception of Power for Right

Concerning right he begins by rejecting the fact that power can never be right because in his time there was a misconception of right and power. The rulers of his time believed that power was right. Rousseau realizes that in his time power was being mistaken for right but he could not abide to this opinion because to him all the powers of the authority should be legitimate. According to Rousseau, he said, ‘‘*since no man has a natural authority over his fellow man and force create no right we are left with agreement as the basis for all legitimate authority among men*’’ [45]. This because might does not make right and as such all legitimate authority among men must be based on covenants. While Grotius might be right that people sometimes accept slavery in exchange for having their basic needs met, this does not apply to a people and their king: just as parents cannot control their children once they have grown up, a government cannot control people unless they actively consent to it. But people cannot willingly give up their freedom, which are their very nature and the basis of all morality. So contracts based on absolute dominion for one party and absolute obedience for the other are not legitimate because they are not reciprocal. That is why he said,

> *Finally, it is an empty and contradictory convention that sets up, on the one side, absolute authority, and, on the other, unlimited obedience. Is it not clear that we can be under no obligation to a person from whom we have the right to exact everything? Does not this condition alone, in the absence of equivalence or exchange, in itself involve the nullity of the act?* [46]

The importance of covenants, or contractual agreements, comes from the inherent equality that all people share because of their fundamental freedom. Rousseau sees freedom and self-preservation as the two essential principles of human nature; he thinks that no legitimate state can deny them. There is a difference between accepting servitude to meet one’s needs and promising absolute obedience: the first is an exchange of goods for services, and even if it is deeply unequal, it is still based on someone’s free agreement to accept certain conditions, when they could have refused to accept those conditions. On the other hand, absolute dominion and absolute obedience are not valid terms for a contract because they require people to give away the very freedom that allows them to make contracts in the first place. In other words, unless the authority is legitimate and the people feel obliged to obey rather than forced to obey when the authority is absent, the people will not necessarily obey.

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[45] ROUSSEAU Jean Jacques, *The social contract,* p. 4.
[46] *Idem.*

c) The Rejection of Right over Slave of War

Here Rousseau begins by refuting the idea of Grotius who considers slavery legitimate because the winner of a war has a right to kill the vanquished, but Rousseau disagrees and state that.

> *War then is a relation, not between man and man, but between State and State, and individuals are enemies only accidentally, not as men, nor even as citizens, but as soldiers; not as members of their country, but as its defenders. Finally, each State can have for enemies only other States, and not men; for between things disparate in nature there can be no real relation.*[47]

War is about conflicts over things, not mere personal relations. But there can be no property in the state of nature, before societies exist, so there also cannot be war. In fact, war is ultimately not between men, but between states. This is why foreigners who attack a country are criminals, not soldiers, unless they have the support of their own nation in doing so. He confirms it by saying that,

> "*The foreigner, whether king, individual, or people, who robs, kills or detains the subjects, without declaring war on the prince, is not an enemy, but a brigand Even in real war, a just prince, while laying hands, in the enemy's country, on all that belongs to the public, respects the lives and goods of individuals: he respects rights on which his own are founded.*"[48]

Rousseau points out that people have different kinds of rights under different circumstances: there are no rights at all until some moral agreement guarantees them. A war is about competing claims to a certain resource or territory, which means that when a war is over, the only rights of the vanquished that can be violated are the ostensible rights to that resource or territory. While Rousseau's argument is complex, it is based on straightforward intuitions about when different concepts of law do and don't apply. There is no war if two individuals fight because of a personal dispute, and no state will blame another state for the actions of its rogue citizens. States rightly recognize these as individual matters, in which people act as private citizens rather than representatives of the state but war is precisely the opposite, which means that an opposing state does not actually have rights over someone's life. War allows both sides to kill in pursuit of their objectives, but once those objectives are achieved, the war is over, and they no longer have a right to kill. Rousseau in this context is in reality with the universal human right which state, "*no one shall be held in slavery or servitude; slavery and*

[47] ROUSSEAU Jean Jacques, *The Social Contract,* p. 5.
[48] *Idem*.

slave trade it shall be prohibited in all it forms"[49] This is because war is fought between countries, not individuals, it is wrong for military leaders to kill civilians when waging war, and as soon as a war is won, the victor no longer has a right to kill its former soldiers, who stop representing their country and become simply men once more. Accordingly, victors also have no right to enslave the vanquished, if they do so, victors are maintaining the state of war, rather than acting as legitimate rulers which mean they are not recognizing any rights at all. So Rousseau concludes that there is no right of slavery, and in fact slavery and right are contradictory, they cancel each other out.

I.3. ROUSSEAU IN FAVOUR OF RIGHT TO LIFE

Right to life is a natural right that can never be alienated from any citizens as such the right to life should never be taken from anybody for what so ever may be the reason. This means that nobody, including the Government, can try to end your life. It also means the Government should take appropriate measures to safeguard life by making laws to protect you and, in some circumstances, by taking steps to protect you if your life is at risk. In this section we are going to analyse the how Rousseau support the right to life. In this section we are going to look at the right to life as a fundamental right of all right, the right to life as a moral human dignity and the prison as a backup right to life.

a) The Right to Life as a Fundamental Right of all Right

The right to life is fundamental to all rights and as many maintain, held equally by each and all because they are humans, perhaps the right to life is exceptional or even unique in not being forfeitable at all: the right to life is actually a fundamental natural or human right. One's actions cannot and do not alter one's status as a human being, thus, the right to life is inalienable and not forfeitable. Even killers retain their right to life, the state remains bound by the correlative duty not to kill a murderer, and capital punishment, then, is a violation of the human right to life. "*But, it will be said, the condemnation of a criminal is a particular act. I admit it: but such condemnation is not a function of the Sovereign; it is a right the Sovereign can confer without being able itself to exert it*" [50]

For a man to claim any of his right he must be alive and he cannot enjoy all his right while death. This implies here that right to life is the mother of all right as such it is a universal right that is applicable and enjoy by every human being. According to Rousseau this

[49] United Nation, *The Universal Declaration of Human Right* 2015, Article 4.
[50] ROUSSEAU Jean Jacques, *The Social Contract*, p. 17.

right should not be alienated though he was of the opinion that only the state have the right to put someone to death, but he further reject it and that is why he said, "*The state have no right to put to death, even for the sake of making an example, any one whom it can leave alive without danger*"[51] This means that nobody, including the Government, can try to end a citizens life. It also means the Government should take appropriate measures to safeguard life by making laws to protect you and, in some circumstances, by taking steps to protect her citizens if their life is at risk.

Public authorities should also consider their subjects' right to life when making decisions that might put them in danger or that affect your life expectancy. If a member of your family dies in circumstances that involve the state, you may have the right to an investigation. The state is also required to investigate suspicious deaths and deaths in custody.

b) The Right to Life as a Moral Human Dignity

Developed in this way, as a matter of fundamental human rights, the merit of capital punishment becomes more about the moral standing of human beings and less about the logic and mobility of rights through forfeiture or alienation. The point of a human right to life is that it draws attention to the nature and value of persons, even those convicted of terrible crimes. Whatever the criminal offense, the accused or convicted offender does not forfeit his rights and dignity as a person. This view reflects at least the spirit of the 1948 United Nations Universal Declaration of Human Rights: "*The right to life is universal, is rooted in each person's dignity, and is unalienable*"[52] But this view of offenders' moral standing can be challenged if one considers the implication that, of equal standing with any of us, then, are masters of massacres or genocide. As one retributivist defender of capital punishment puts it, "*though a popular dogma, the secular doctrine that all human beings have […] worth is groundless. The notion […] is perhaps the most misused term in our moral vocabulary […] If egregiously violate […] our moral and legal codes*"[53]

While people have no right whatever to take their own lives, Rousseau notes they do have the right to risk their own lives in order to preserve them Since the state preserves citizens' lives, people can be forced to risk or lose their lives for the state. So citizens can be sent to war to preserve the state, and the death penalty is valid because everyone agrees to exchange protection against being murdered for an agreement to die if one becomes a

[51] ROUSSEAU Jean Jacques, *The Social Contract*, p. 17.
[52] *The United Nations for human rights, 1948* article 3.
[53] POJMAN Louis, *The Death Penalty: For and Against.* Lanham, MD. Rowman, Little field, 1998. pp. 35-36.

murderer. Law breakers violate the covenant of their citizenship and effectively declare war on the state, becoming its enemy. Therefore, criminals can be legitimately exiled or killed, but these punishments are a last resort, acceptable only when criminals cannot be made good for something.

c) The Prison as a Backup for Right to Life

Prison is a better option that can easily replace capital punishment that Rousseau supported. It is preferable that death penalty should be abolished because it demeans life, is cruel, prison is a better punishment, and it is not effective. ‘‘*My objection to the death penalty is based on the idea that this is a democracy, and in a democracy the government is me, and if the government kills somebody then I'm killing somebody*’’[54] The death penalty demeans life. It makes life seem like something that can just be thrown away if you do something wrong, which in reality, it is something that should be carefully handle and make a criminal to change that is Rousseau said, ‘‘*There is no man so bad that he cannot be made good for something*’’[55]

Everyone can become a better person in some way or another. People make very bad decisions sometimes and there is nothing anyone can do to prevent that, but once this happens, then, we can work it out with the person so that they realize that what they did is wrong and that they can do so much better. If they are simply put to death, then there is no way for them to improve. Even if they live, and they do not improve in who they are, then we can all be calm in knowing that they had the opportunity to. Finally, the death penalty is not effective. If it really and truly worked, there would be no more crime deserving of the death penalty. All of it would have stopped when the death penalty was first legalized. If criminals feared death, they wouldn’t commit the crime in the first. So, by taking life is a wasting of human life which will not bring any solution.

1.4. THE QUESTION OF RIGHT AMONG THE CONTRACTUALIST

As there is a close relationship between the body and soul, so there is a relationship between the Contractualist. Both of them had the same view on right and to some extend had difference views. According to them right should be something natural and legitimate and one need to enjoys the right any obstacle in the enjoyment of his right. For example, if I enjoy the right to life it is the duty of others not to cause any harm to my life. That is why Rousseau

[54]‘‘Should death penalty be legal’’ EARLE Steve, https://www.bartleby.com/essay/Should-the-Death-Penalty. Consulted, 12/08/2023.
[55] ROUSSEAU Jean Jacques, *The Social Contract*, p. 17.

said, "*He who wishes to preserve his life at others' expense should also, when it is necessary, be ready to give it up for their sake […] it is in order that we may not fall victims to an assassin that we consent to die if we ourselves turn assassins*"[56] According to him it is our right to preserve and protect our life and as such it is also our duty to respect the preservation and the protection of other people's life. If I possess rights, I owe duties also, that is, as we treat others so others will treat us. If the other has the right to life and security, it is our duty that we should not cause any harm to their life and security. This is more of our concern here as we set forward to see what right we have in the State and what duty State owe to us as her subject**.** Here, we shall expose, analyse and evaluate the several notions and conceptions concerning right according to our contractual political thinkers, so as to see where their views are similar as well as dissimilar to Rousseau's own notion of the case study, for effective understanding and interpretation. The latter will serve as fulcrum to the study. The review shall help us to identify some knowledge gaps.

a) The Views of Thomas Hobbes

According to common-wealth is created when an assembly of people agree to a covenant in which a person or persons is to be their representative, and that representative, or sovereign power, is given all the rights and faculties of the assembly. First, since this power is contrived from a covenant, the people are not obliged to any former contracts, nor can they enter into a new contract that gives sovereign power to another person or persons. As such he said, "*And Consequently they that have already Instituted a Common-wealth, being thereby bound by Covenant, to own the Actions, and Judgements of one, cannot lawfully make a new Covenant, amongst themselves, to be obedient to any other, in anything whatsoever, without his permission*".[57] For subjects of a monarchy, a monarch cannot be dethroned or power transferred to another person or assembly. To dispose of a monarch is an injustice, and to kill a monarch is to assume a right no one person can ever have. The power of a sovereign cannot be forfeited, either by the sovereign power itself or by the people, and anyone who disagrees with the sovereign's right to power must agree to that right once it is decided by the majority. In Hobbes word he said,

> *when a Multitude of men do Agree, and Covenant, every one, with every one, that to whatsoever Man, or Assembly, men, shall be given by the major part, the Right to wealth, Present the Person of them all, (that is to say, to be what. their Representative ;) every one, as well he that Voted for it, as he*

[56] ROUSSEAU Jean Jacques, *The Social Contract*, p. 16.
[57] HOBBES Thomas, *Leviathan*, p.133.

> *that Voted against it, shall Authorise all the Actions and Judgements, of that Man*[58]

A sovereign can do no injury onto subjects, and subjects are not permitted to accuse a sovereign of injustice or attempt to kill or punish the sovereign in any way for any perceived offense. The sovereign alone is judge of what is necessary for the peace and defence of a common-wealth, and the sovereign also has the power to decide which doctrines are appropriate to be taught to subjects to avoid dissention and civil war. In a common-wealth, the sovereign is supreme power and can never break the law, which means that nothing a sovereign ever does can be considered illegal or unjust. This, of course, gives a sovereign free reign to do whatever they want to subjects. According to Hobbes, the sovereign is bound by the Laws of Nature to do what is in their subjects' best interest; however, since there is no power above the sovereign, there is no power to enforce this law. The sovereign power has the right to make the rules of a common-wealth, whereby every subject and their property is protected from injustice, and the sovereign power also has the right to sit in judgement over controversies. A sovereign power is responsible for doing what they see best in times of peace and war, and they are also responsible for selecting any needed counsellors or ministers. The sovereign power is responsible for rewarding and punishing subjects and for keeping honour and order in the common-wealth. Lastly, the rights of a sovereign power cannot be taken away, and the power and honour of individual subjects does not exist in the presence of the sovereign power. In a common-wealth, the sovereign is supreme power and can never break the law, which means that nothing a sovereign ever does can be considered illegal or unjust

According to Hobbes, the sovereign's main duty is to protect the lives and property of its citizens. In return for this protection, citizens have a duty to obey the laws and commands of the sovereign as he said, "*And because the End of this Institution, is the Peace and Defence of them all; and whosoever has right to the End, has right to the Means, it belongeth of Right, to whatsoever Man, or Assembly that hath the Soveraignty, to be Judge both of the meanes of Peace and Defence*" [59] Hobbes also believed that the sovereign should have absolute power and that any resistance to the sovereign's authority is illegitimate and that the sovereign should have absolute power and that citizens have a duty to obey the laws and commands of the sovereign without question. He argued that any resistance to the sovereign's authority is illegitimate, as individuals have voluntarily given up their natural rights to the sovereign in

[58] HOBBES Thomas, *Leviathan*, p.133.
[59] *Ibid.,* p.136.

exchange for protection and security. Additionally, he believed that the sovereign should have the right to make and enforce laws and that citizens have a duty to obey these laws.

b) The View of John Locke

The term liberty is often used in Locke as rights and the sum total of specific liberties, including economic liberty. Liberty is often interchanged with the word right or freedom and based on the divergent interpretations the concept of liberty by Locke. It is therefore indispensable that review of related literatures is considered here in this study. To John Locke, the natural rights of any man are right to life, property and liberty. In this context, liberty implies and protection from all of the rules except the law of nature. For Locke this understanding also infers that the liberty of man is to relinquish of their properties or persons as they wish within the law. When talking about equality, Locke means equal right that every human being has his natural freedom bereft of subjection to the authority established by any man. As he said,

> *A State also of equality, wherein all the power and jurisdiction is reciprocal, no one having more than another; there being nothing more evident, than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another without subordination or subjection, unless the lord and master of them all should, by any manifest declaration of his will, set one above another, and confer on him, by an evident and clear appointment, an undoubted right to dominion and sovereignty.* [60]

Thus, the law aims at preserving liberty, Locke conceives of a civil government with executive and legislature power to preserve every mans' right to life, liberty, pursuit of happiness and property. The essence of Locke's argument is based on the assumption that true liberty actually exists for every individual such that the process of protecting that liberty by law moulds valid. Simmons on Lockean liberty says "*[…] each persons' consent must surrender all the power necessary to the ends for which they unite into society like taxes, contribution to physical force to assist in domestic law enforcement or natural defence*"[61]. This does not mean that according to Lockean concept of liberty that the individual does not have right or at liberty to resist tyranny and dictatorship. It is the responsibility of the

[60] LOCKE John, *Two Treatise of Government,* p. 113.
[61] SIMMONS John, *On The Edge of Anarchy: Locke, Consent and The Limits Of Society*, Princeton Library Legacy, 1993, p. 60

government to protect the individual liberties. Thus, "*individuals lose their right to self-defence*"[62]

However, a conception of resistance to government is crucial to proper understanding of Lockean liberty. Though citizens when they consent to a government lay off their liberty and acquire obligations pay taxes and obey the law, resistance is sometimes justified in Lockean theory. Hence, Simmons in defence of Lockean concept of liberty puts that "*legitimate government , then hold their political power only for the purpose of advancing the good of the people who created them [...] the people are at liberty to resist when the government fails their task*"[63] Locke places the protection of individual rights as the major duty of the government and that the government should do all possible means to see that individual rights are attained by all members of the society. All the right that the individual must enjoy as member of that society and the government should not in any means deprive anybody of such rights in as much as such rights does not cause harm to other individual living in the society.

c) The Views of Rousseau on Right

Rousseau argues that there are some things that belong to the individual that he cannot legitimately hand over to others, even if he voluntarily chooses to do so, which is right as such he concludes that man is the master of himself. "*His first law is to provide for his own preservation, his first cares are those which he owes to himself; and, as soon as he reaches years of discretion, he is the sole judge of the proper means of preserving himself, and consequently becomes his own master*"[64] Legal rights are those bestowed onto a person by a given legal system. The concept of positive law is related to the concept of legal rights. The inalienable rights of the individual are items of this sort, amongst which are the right to life, property and liberty figures prominently. He further argues that, when these rights and liberty are taken away from a man he does not longer have a quality of human being as he said, "*To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duty* " [65] He believed in a direct democracy in which everyone voted to express the general will and to make the laws of the land. Rousseau argued that the general will of the people could not be decided by elected representatives. With regard to the right of man, Jean Jacques Rousseau was in favour of the existence of Nations that respect social coexistence and as well as that justice predominates. In that sense, Rousseau Stated that "*I would have chosen a*

[62] SIMMONS John, *On The Edge of Anarchy: Locke, Consent and The Limits Of Society,* p.158.
[63] *Ibid.,* p.72.
[64] ROUSSEAU Jean Jacques, *The social contract*, p. 3.
[65] *Ibid.,* p. 4

country where the law of legislation was common to all citizens, why, who can know better than they, in what conditions it suits them to live together in the same society ''[66] Interpreting the author, it can be said that the inhabitants of a society are in their right to implement or contribute to the political, economic and social development of the nation. In this regard, political rights are part of the life of man. Rousseau was contrary to the prevailing system at his time such as slavery as he said,

> *To remove all liberty from his will is to remove all morality from his acts. Finally, it is an empty and contradictory convention that sets up, on the one side, absolute authority, and, on the other, unlimited obedience. Is it not clear that we can be under no obligation to a person from whom we have the right to exact everything? Does not this condition alone, in the absence of equivalence or exchange, in itself involve the nullity of the act?*[67]

He was in support of people having leaders that governed them but condemned masters over slavery or servitude in all its spheres since, in the words of Rousseau he points out that ''*Once peoples are accustomed to having masters or lords, they cannot then live without them*''[68]. Added to the above, man by nature is a being that in his subconscious is governed by good politicians, bad, efficient or deficient. At the same time, he becomes a slave of his oppressors through the payment of taxes, inefficient services, and special contributions. Rousseau, considered society as a great pact where there is an association that protects and defends the entire community as well as people and their assets. All this under the principle of common freedom, since the people are a group of people associated with an end and the government has the task of safeguarding the popular will. In reference to freedom, he sees it as an inalienable right. Rousseau in his Social Contract States that,

> *To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties. For him who renounces everything no indemnity is possible. Such a renunciation is incompatible with man's nature; to remove all liberty from his will is to remove all morality from his act.*[69]

It is clear that Rousseau's ideas in his social contract were appropriated by the important politicians of modern Europe. Rousseau was against slavery and condemn it in all sphere as he said,

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[66] ROUSSEAU Jean Jacques, *The Origin of Inequalities Among men*, p. 10.
[67] ROUSSEAU Jean Jacques, *The social Contact*. p. 4.
[68] *Ibid*., p. 9.
[69] *Ibid.,* p. 4.

> *So, from whatever aspect we regard the question, the right of slavery is null and void, not only as being illegitimate, but also because it is absurd and meaningless. The words slave and right contradict each other, and are mutually exclusive. It will always be equally foolish for a man to say to a man or to a people: "I make with you a convention wholly at your expense and wholly to my advantage; I shall keep it as long as I like, and you will keep it as long as I like*[70]

The slavery, oppression, degradation of the human being and the lack of fundamental human rights begin to spread and debate to give way to a parliamentary system that would translate into the coming constitutions the rights and guarantees of the people. Rousseau was a lover of freedom and social justice, but condemned the oppression, the crimes, the poverty in which the majority lived, while comfort and opulence was a characteristic of kings that is why he claim that, "*Man is born free; and everywhere he is in chains*" [71]. Rousseau wanted a way that man can break out free these chains and be free by the civil law in a civil society. In most contemporary societies, however, people lack even this physical freedom. They are bound to obey an absolutist king or government that is not accountable to them in any way. By proposing a social contract, Rousseau hopes to secure the civil freedom that should accompany life in society as he said, "one *thinks himself the master of others, and still remains a greater slave than they. How did this change come about? I do not know. What can make it legitimate? That question I think I can answer.*"[72] This freedom is tempered by an agreement not to harm one's fellow citizens, but this restraint leads people to be moral and rational. In this sense, civil freedom is superior to physical freedom, since people are not even slaves to their impulses.

[70] ROUSSEAU Jean Jacques, *The social Contact*. p. 6.
[71] *Ibid.,* p. 1.
[72] *Idem*.

CHAPTER TWO

THE DIALECTIC OF DUTIES BETWEEN STATE AND THE INDIVIDUAL AND THE RESPONSIBILITY OF STATE AND INDIVIDUAL ACCORDING TO HOBBES

Rousseau's philosophical corpus is often interpreted from a particular point of view best described as fetishized-form, either normative or positivistic. Among them, liberal interpretations are the most prevalent where the question of right and duty and the terms by which it might be achieved is of central importance. The most important problem concerns how individuals, as bearers of specific materialistic interests, can create political societies where they form a common body with each other while at the same time making allowances for individual interests. this position on duty between individual and the state in *The social contract* on which it is based, shall be our main concern in this chapter. it will constitute five sun topics which are, duties of the state to man, the duties of man in the states, the division of government by it rule, types of government according to their rules and the sovereign and its role within the state.

2.1. DUTIES OF THE STATE TO MAN (CITIZEN)

Since the civil society has surrendered their right to fend for themselves to the state for the common good of every individual, the state in turn owes certain duties and responsibilities to the civil society. These responsibilities and duties of the government is something most people are not aware of. Rousseau makes analogy of state to the family and claim that state is like a family in which the ruler represent the father and the children represent the citizens, meanwhile as a father have as a duty to care for the children such as the state has as a duty to care for the citizens and in return the father get love from the children while the ruler get the pleasure of being in charge. That is why Rousseau said,

> *The family then may be called the first model of political societies: the ruler corresponds to the father, and the people to the children [...] The whole difference is that, in the family, the love of the father for his children repays him for the care he takes of them, while, in the State, the pleasure of commanding takes the place of the love which the chief cannot have for the peoples under him.*[73]

This implies here that there exists a reciprocal duty between the state and individual. This work is to expose it and make use to understand the duty of the state to man. Below are the responsibilities and duties of the government to the citizens of a state.

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[73] ROUSSEAU Jean Jacques, *The Social Contract*, p. 2.

a) Maintenance of Law and Order and Protection of Lives

It is the prime duty of the government to keep the society intact and in peace, maintenance of law and order is ensured through the police, armed forces and the courts by protecting the liberties of individuals in the society This is done by regulating the conduct of individuals living within the society and punishing offenders of the law. That is why he said, "*In order then that the social compact may not be an empty formula, it tacitly includes the undertaking, which alone can give force to the rest, that whoever refuses to obey the general will shall be compelled to do so by the whole body*"[74] This implies that the state has as duty to enforce obedience and respect to all it citizens.

Rousseau is of the opinion that the state should have as duty just as the father has as duty to his children. This is because he considered family to be the prime model of the state in which the father is like ruler and children are the citizens. The father as a ruler has as duty to protect the children while the children have as duty to respect the father. This goes same to the state and the citizens, if any of the party fail in it duty then the dependence will turn in to independence and disrespect except this is done through agreement and voluntarily. He backup this by saying that

> *The most ancient of all societies, and the only one that is natural, is the family: and even so the children remain attached to the father only so long as they need him for their preservation. As soon as this need ceases, the natural bond is dissolved. The children, released from the obedience they owed to the father, and the father, released from the care he owed his children, return equally to independence. If they remain united, they continue so no longer naturally, but voluntarily; and the family itself is then maintained only by convention*[75]

This implies that duty is fundamental tool for state building be it naturally or not because if natural duty fails, we still go by agreement in which all party will still have it on duty to perform. It is the duty of the government to protect lives and properties of the citizens residing within the country and outside the country. This ensures the enjoyment of the right to life and the right to own and use properties and also Maintain External Relations. The maintenance of good external relations with other countries is a view to ensure peaceful co-existence between the citizens of a country and citizens of other countries.

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[74] ROUSSEAU Jean Jacques, *The Social Contract*, p. 9.
[75] *Ibid*., p.2.

b) Promotion of Democracy, Social Justice and Social Welfare Services

The duty of state is also to promote democracy and social justice as it is through this that individual rights will be enjoyed fully and everyone will be able to realize his potentials. Revenue obtained from the various resources harnessed by the state is used to provide basic necessities of life. This includes roads, hospitals, good pipe borne water, electricity and education and any other services that improves the standard of living of citizens. The government's function is thus only to enforce and respect the sovereign will of the people and in no way seek to repress or dominate the general will as such this is done through the direction of general will. "*As nature gives each man absolute power over all his members, the social compact gives the body politic absolute power over all its members also; and it is this power which, under the direction of the general will, bears, as I have said, the name of Sovereignty*" [76]

Rousseau believed that good state must have the freedom of all its citizens as its most fundamental objective. *The Social Contract* in particular is Rousseau's attempt to imagine the form of state that best affirms the individual freedom of all its citizens, with certain constraints inherent to a complex modern civil society. Rousseau acknowledged that as long as property and laws exist, people can never be as entirely free in modern society as they are in the state of nature. Nonetheless, Rousseau strongly believed in these principles of state that, if enacted, can afford the members of society a level of freedom that at least approximates the freedom enjoyed in the state of nature. In, *The Social Contract* and his other works of political philosophy, Rousseau is devoted to outlining these principles and how they may be given expression in a functional modern state. That is why he said,

> *I mean to inquire if, in the civil order, there can be any sure and legitimate rule of administration, men being taken as they are and laws as they might be. In this inquiry I shall endeavour always to unite what right sanctions with what is prescribed by interest, in order that justice and utility may in no case be divided.*[77]

The States are responsible for everything which some of this major State responsibilities are schools, hospitals, conservation and environment, roads, railways and public transport, public works, agriculture and industrial relations, community services, sport and recreation, consumer affairs, police, prisons and emergency services. Each state has its own constitution setting out its system of government. The maintenance of good external relations with other

[76] ROUSSEAU Jean Jacques, *The Social Contract*, p. 14.
[77] *Ibid*., p. 1.

countries is a view to ensure peaceful co-existence between citizens of a country and citizens of other countries.

c) The Duty of Protection and Preservation of Man's Right and Property.

Rousseau argued that in the state of nature, each man protects his person and property until his own force proves to be inadequate against the obstacles to self-preservation as such man needed greater force to challenge the obstacle, so Rousseau called for the union of individual force under one sovereignty so as be strong to challenge the obstacles. That is why he said,

> *But, as men cannot engender new forces, but only unite and direct existing ones, they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance. These they have to bring into play by means of a single motive power, and cause to act in concert* [78]

At this point, it becomes apparent that the joined forces of mankind will provide greater protection from nature's perils. However, as people united into society for the purposes of greater safety, they became confronted with the question of preserving their liberties. Rousseau reasoned that the balance between safety and liberty is in the social contract a universal pact between members of society as such he said, "*To put into the community his person and all his powers under the supreme direction of the general will where every member becomes an invisible part of the whole*" [79]Consequently, the social contract governs the creation of society, providing for the mutual protection of the people and their goods. As members reap the benefits of society and enjoy a greater degree of protection, they forgo certain freedoms and comply with the general will of the society, enforced via a formed government.

The union thus formed marks the transition from state of the nature to civil state. The idea of social contract encompasses the notion that individuals forming it are free and equal and when they subject themselves to its rule, they follow their own rules. Locke agreed with Rousseau, arguing that "*The main reason people form societies and subject themselves to a government is for preservation of their property and safety*"[80] The government formed thus serves the purpose of protecting the individuals. In addition, Locke further emphasized that

[78] ROUSSEAU Jean Jacques, *The Social Contract*, p.7.
[79] *Ibid.,* p. 16.
[80] LOCKE John, *Second Treatise on Civil Government*, p. 4.

formation of the state by the people joining into the contract is governed by public good and with the consent of the individuals agreeing to be governed. Indeed, the doctrine postulates that since the individuals participate in the rule-making process, all its rules are just and legitimate. The justness and legitimacy of the rules are secured by the relationship formed between the government and its citizens, which is characterized as one of trust. Trust gives rise to the fiduciary power to be exercised solely for the good of the community. The fiduciary relationship creates wide array of powers for the government, but it is subject to an obligation: protection of the rights of the individuals who had given the government the power to act. Furthermore, the Rousseau proposed that when a government violates this agreement, that is enacts a rule that goes against preservation of property and protection of safety, the citizens reserve the right to dissolve the government and create a new one that would protect their rights and guard their safety. As such he concludes that,

> *The clauses of this contract are so determined by the nature of the act that the slightest modification would make them vain and ineffective; so that, although they have perhaps never been formally set forth, they are everywhere the same and everywhere tacitly admitted and recognised, until, on the violation of the social compact, each regains his original rights and resumes his natural liberty, while losing the conventional liberty in favour of which he renounced it*[81]

2.2. THE DUTIES OF MAN IN THE STATES

The government is often established in a Constitution for the protection of the rights of each individual regardless of background, culture or religion. Although all citizens enjoy the freedoms, protections and legal rights that the Constitution promises, citizens also have the responsibility, or civic duty, to meet certain societal standards and guidelines. Civic duties ensure that democratic values written into the Constitution and the Bill of Rights are upheld. Responsibilities include both those that are voluntary as well as those required by law. This include the duties to respect the laws, paying taxes, serving in the jury when summoned, voting responsibility and staying informed, and lastly is community involvement tolerance and passing. This will be our verification here. In this section we are going to see the duties of the man in the state.

a) The Duty to make and Respects the Laws

Every citizen must obey state and local laws, and pay the penalties that can be incurred when a law is broken. A citizen has as duties to respect laws, this often explain why prison is

[81] ROUSSEAU Jean Jacques, *The Social Contract*, p. 7.

made for the disrespect of the laws because it is their duties to respect the laws. There is nobody who is above or stronger than the laws which the citizens have come together to form, that is why Rousseau said, "*The strongest is never strong enough to be always the master, unless he transforms strength into right, and obedience into duty*"[82] The term citizen generally refers to any individual who legally belongs to a nation or body politic. For Rousseau, people are citizens in their active capacity as part of the state's sovereign body. In other words, people are citizens in the sense that, having freely agreed to the social contract, they are now part of the nation and partially responsible for making its laws and directing its political future. Therefore, the word citizen stresses people's responsibility to and for their nations. It contrasts with the word subject, which refers to people in their passive relation to the state, as they are forced to obey the same laws they help form as citizens. The concept of citizenship is also important to Rousseau because it defines his perspective on himself as an individual and thinker. Thus, Rousseau frames *The Social Contract* as his attempt to make sense of his rights, responsibilities, and duties as a citizen.

When citizens join together and form a nation through the pact that Rousseau calls *The social contract,* they do not sign away their freedom: rather, they preserve their liberty by agreeing to make major decisions collectively, as a community. These collective decisions are laws, and the body or collective being that makes these laws is the sovereign, which must be made up of all the citizens.

> *When I say that the object of laws is always general, I mean that law considers subjects en masse and actions in the abstract, and never a particular person or action. Thus the law may indeed decree that there shall be privileges, but cannot confer them on anybody by name. It may set up several classes of citizens, and even lay down the qualifications for membership of these classes, but it cannot nominate such and such persons as belonging to them […] In a word, no function which has a particular object belongs to the legislative power.*[83]

Rousseau's argument is straightforward: when any individual agrees to join society, they take on a twofold relationship to the community; they agree to take an active role in preserving everyone else's rights, in exchange for knowing that everyone else will do the same for them. This means they both participate in law making (as citizens) and are protected by the laws (as subjects). Because all citizens have a right and responsibility to participate in law-making, then, all citizens are part of the sovereign. Moreover, all citizens are equal in the

[82] ROUSSEAU Jean Jacques, *The Social Contract*, p. 3
[83] *Ibid*., p.18.

sovereign: they have all freely agreed to the social contract, and nobody would ever freely agree to be oppressed, which means that the social contract is predicated on the equality of all citizens. In turn, this means that everyone must equally share the power and burden of sovereignty, and everyone's interests are equally important in the nation. The sovereign takes everyone's interests into account by pursuing the general will, that is, doing whatever is in society's best interests. Rousseau carefully notes that that does not simply mean doing what is best for the majority, or giving everyone a little bit of what they want rather, it means pursuing what is in people's common interests as a collective.

b) Citizen has as Duty to Vote during Election

In Rousseau's system, people don't vote for what they want, but for what they think is best for all. If they can be deceived into thinking that an unpopular and unhealthy choice is in fact in the interests of all, they will be duty-bound to vote for that choice even if it is against their interests. Because citizens in the assembly are not meant to voice personal interests, there is no sure way of finding out that the unpopular choice is in fact unpopular. Rousseau provides no criteria beyond honest intuition for how citizens might determine what they think the general will is.

While voting is a right and privilege of citizenship, it is also a duty or responsibility. Citizens have as a responsibility to participate in their government by registering to vote and voting in elections. "*I could here set down many reflections on the simple right of voting in every act of Sovereignty a right which no-one can take from the citizens and also on the right of stating views, making proposals, dividing and discussing, which the government is always most careful to leave solely to its members*" [84]For example in 2011 election in Cameroon identity cards were issued to citizens free so as to vote because it was a duty of the state to provide them with voting card because it was the duty of the citizens to vote. This explain why after the election citizens on highways were stop by police to present their voting card and not identity. Those who did not have were paying penalties because they did not perform their civic duties as citizens. By voting, citizens have a voice in their government and help ensure that the democratic representative system of government is maintained.

Meanwhile to stay informed Citizens have the responsibility to stay informed of the issues affecting their communities, as well as national and international issues, and to be active in the civic processes. This includes being well informed about the issues and

[84] ROUSSEAU Jean Jacques, *The Social Contract*, p. 54.

candidates before voting in an election, getting involved in a political campaign or running for public office, or using their right to address the government through activism this confirm with what Rousseau said that,

> *As I was born a citizen of a Free State, and am a member of its sovereign my right to vote makes it my duty to study public affairs, however little influence my voice can have on them. Happily, when I think about governments I always find that my inquiries give me new reasons for loving the government of my own country* [85]

Here Rousseau was emphasizing on how valuable a citizen of a Nation is needed for a Nation building. This implies that you may have the right to protest but you need to have a [86]good knowledge on the situation before getting in to it.

c) The Duty for the Building of Democracy

While others may have conceived a democratic society, Rousseau was the first to articulate it in such a way that he described a reordering of society governed by the expression of each citizen. He said,

> *The government gets from the Sovereign the orders it gives the people, and, for the State to be properly balanced, there must, when everything is reckoned in, be equality between the product or power of the government taken in itself, and the product or power of the citizens, who are on the one hand sovereign and on the other subject*. [87]

He then concludes that, "*we have seen that the legislative power belongs to the people, and can belong to it alone*"[88] He said the combination of such expression is absolute and leads to outcomes in the form of laws or legislation. He also set forth the implications of democracy to public duty, governance, equality and freedom. From that point forward, his life was upended, but the price he paid may have inspired our Founding Fathers to revolt rather than negotiate with a monarchical ruler. In such a society, the sovereignty or government must treat each member equally. Concomitantly, each member must have an equal voice in producing the general will. Each citizen has the same weight in creating the general will and we each have the same rights under a government produced by such general will. Rousseau posits that any democracy must also possess the capacity to act upon the general will and the general will must lead to action, the logical way for that to happen is through the enactment of laws. He wrote: "*If the State is a moral person whose life is in the union of its members, and*

[85] ROUSSEAU Jean Jacques, *The Social Contract*, p. 1.
[86] *Ibid.*, p. 28.
[87] *Ibid*., p. 26.
[88] *Ibid.*, p. 27.

if the most important of its cares is the care for its own preservation, it must have a universal and compelling force, in order *to move and dispose each part as may be most advantageous to the whole*"[89] He says an election constitutes a declaration of will, which is tantamount to an act of sovereignty no less than law. Distinguishing between administrative acts which carry out the law, Rousseau declares that the general will produces laws. In other words, the will of the people must be reflected in the enactment of laws consistent with such will.

Without providing details of its operations, Rousseau says that a democratic government has absolute authority regarding matters of mutual concern. He recognizes, however, that such power extends no further than the concerns of the community. In addition, such power does not infringe on the natural rights which private persons ought to enjoy as men. We relinquish our autonomy relating to the concern of the community, but the sovereign leaves private matters to our discretion. Therefore, government is limited to the public domain, but within that realm, a democratic government has absolute power to act according to the will of the people. Next, Rousseau identifies two familiar threats to democracy: private interest and factions. He clearly wants citizens to act out of public duty. But he recognizes that it is not a fatal defect to the general will when some act out of private interest.

> *There is often a great deal of difference between the will of all and the general will; the latter considers only the common interest, while the former takes private interest into account, and is no more than a sum of particular wills: but take away from these same wills the pluses and minuses that cancel one another, and the general will remains as the sum of the differences.*[90]

Rousseau intuitively understands the concept of the collective mind diverse individuals acting independently on private information can express the common good when all views are expressed: From the deliberations of a people properly informed, and provided its members do not have any communication among themselves, the great number of small differences will always produce a general will and the decision will always be good. Therefore, private interests can be subsumed through the compilation of all interests in a society. Rousseau identifies factions as an agglomeration of private interests. Unlike individual private interests, factions pose a danger because they can combine such interests into a majority. He saw factions as a direct threat to the collective mind as expressed by the general. He wrote:

> *But when factions arise, and partial associations are formed at the expense of the great association, the will of each of these associations becomes*

[89] ROUSSEAU Jean Jacques, *The Social Contract,* p. 14.
[90] *Idem*.

> *general in relation to its members, while it remains particular in relation to the State: it may then be said that there are no longer as many votes as there are men, but only as many as there are associations. The differences become less numerous and give a less general result. Lastly, when one of these associations is so great as to prevail over all the rest, the result is no longer a sum of small differences, but a single difference; in this case there is no longer a general will, and the opinion which prevails is purely particular* [91]

Rousseau argues the general will cannot exist unless factions are controlled and describes how individuals relate to a democracy when they contribute to the general will by acting independently and in the common interest, they strengthen democracy. When they join forces with a faction, they undermine it.

2.3.THE RESPONSIBILITY OF STATE ACCORDING TO THOMAS HOBBES

The Hobbesian theory of State responsibility has three parts, which correspond to the Three Fundamental Questions. The first part is attribution: subjects authorize the government, and the government represents the State. The consequent responsibilities, such as debts and treaty obligations, are attributable to the State. The second part is succession: The State along with its responsibilities persist over time as long as it has a continuous series of representatives. The identity of the State is sustained by representation, just as it is created by representation. The third part is distribution: the costs and burdens of the State's responsibilities are distributed to its subjects. Insofar as subjects are the authors of the sovereign's actions, it is legitimate to distribute the resulting costs and burdens to them. Judgments of State responsibility can be evaluated according to whether the judgments of attribution, identity, and distribution that underpin them are sound. Consider the claim that Turkey should pay reparations for the Armenian genocide. There are three ways in which this claim could fail: first, if the people who carried out the genocide were not authorized representatives of Turkey, which implies that the genocide was not an act of State; secondly, if the Republic of Turkey is not the same State as the Ottoman Empire, which implies that the former is not responsible for a genocide committed by the latter; and thirdly, if the subjects of present-day Turkey are not authors of the genocide. There is also a purely empirical way in which Turkey could fail to owe reparations; the Turkish government maintains that there was no genocide.

[91] ROUSSEAU Jean Jacques, *The Social Contract,* p. 14.

a) Attribution of Ownership of Responsibility

How can actions be attributed to a State? Hobbes' answer is deceptively simple: an action counts as an act of State provided that the agent who performed the action was an authorized representative of the State. For example, an airstrike is attributable to Israel if and only if the pilot who carried out the airstrike was an authorized representative of Israel. We do not need to determine the intentions of the State, as the agential theory suggests. Nor do we need to determine whether the individuals who performed the action were organs of the State, as the functional theory suggests. The familiar concepts of authorization and representation do all of the work. However, there are many boundary cases and complications. Can dictators be authorized representatives? Hobbes thought so, but most of us would now doubt this. What about parastatal entities, such as State-owned companies? Hobbes thought of corporations, public and private, as little more than extensions of their parent States, but present-day corporations are much more autonomous. Hobbes account of attribution shows that, with some modifications, it provides an elegant and intuitive answer to the Question of Ownership. Under attribution of responsibility, there are two types of responsibilities, that is, general and personal responsibility of the State and two corresponding modes of attribution. Whereas general responsibilities are attributed to States according to their types such as 'wealthy' or 'democratic, personal responsibilities are attributed to States according to the actions of their authorized representatives such as signing a treaty or borrowing money.

> *But such as are sent by Authoritie only of some private pattie of a troubled State, though they be received, are neither Publique, nor Private Ministers of the Commonwealth; because none of their actions have the Common wealth tor Author. Likewise, an Ambassador sent from a Prince, to congratulate, condole, or to assist at a solemnity, though the Authority be Publique*[92]

Many of the responsibilities of States are general. For example, the United Nations General Assembly proclaimed in 2005 that "*each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity*"[93] persons that belong to the type, State, have a responsibility to protect their populations. Other general responsibilities apply to types of States, such the responsibility of wealthy States to help poor States. Attributing general responsibilities to States is theoretically unproblematic. Problems of attribution that involve general responsibilities can only be solved only by refining our first order normative theories. A better theory of State responsibility will

[92] HOBBES Thomas, *Leviathan,* London, Ely House, 1651, p. 187.
[93] UN. *General Assembly Resolution*, World Summit Out come, 2005, Art 138.

not make attribution any easier. Most of the theoretical issues of attribution arise from personal responsibilities, such as debts, reparations, and treaty obligations. These responsibilities presuppose the attribution of particular actions to particular States. Issues of attribution are also central to the debate about whether States can commit crimes. It makes sense to hold Serbia (rather than individual Serbians) criminally responsible for ethnic cleansing during the Yugoslav Wars only if both the act of ethnic cleansing and the corresponding intent can be attributed to the State Any theory of State responsibility must begin with an account of attribution an account of what constitutes an act of State.

The first condition for attribution is that the action must be performed in the name of the State. The fact that the action is performed by a State official, or even by the sovereign, is not sufficient. As Hobbes thinks that Monarch, have the person not only of the Common-wealth, but also of a man; and a Sovereign Assembly has the Person not only of the Common-wealth, but also of the Assembly. When the sovereign acts (e.g., buys property or signs a contract) as a natural person, or in his own name, the action is attributable to him as an individual, that is why Hobbes State that,

> *But If the debt be to one of the Company, the creditor is debter for the whole to himself, and cannot therefore demand his debt, but only from the common stock, if there be any. But If the debt be to one of the Company, the creditor is debter for the whole to himself, and cannot therefore demand his debt, but only from the common stock, if there be any*[94]

But when the sovereign acts as an artificial person, or in the name of the State, the action is attributable to the State.

> *If a Body Politique of Merchants, contract a debt to a stranger by the act oi their Representative Assembly, every Member is lyable by himself for the whole. For a stranger can take no notice of their private Lawes, but considereth them as so many particular men, obliged everyone to the whole payment, till payment made by one dischargeth all the rest*[95]

Whether an act of the sovereign counts as a private act or as an act of State depends on which person his own person, or the person of the State he represents at the time.

b) Responsibility of Succession of Identification

[94] HOBBES Thomas, *Leviathan,* p. 179.
[95] *Idem*.

> *Of all these Formes of Government, the matter being o! the mortal/, so that not onely Monarchs, but also whole Assemblies dy, it is necessary for the conservation of the peace of men, that as there was order taken for an Artificiall Man, so there be order also taken, for an Artificiall Eternity of life; without which, men that are governed by an Assembly, should return into the condition of Wane in every age; and they that are governed by One man, as soon as their Governour dyeth. This Artificiall Eternity, is that which men call the Right of Succession* [96]

The functional account relies on an analogy with the identity of a physical object: the identity of the State depends on its matter, that is, territory and population or its form of constitution. For Hobbes, corporate identity is not closely analogous to personal or physical identity. The identities of States and other corporate entities are peculiar in that they are created and sustained by their representatives. Just as representation transforms a multitude of individuals into one person, representation sustains the identity of this corporate person over time. The criterion for State continuity is succession. A State persists as long as it has a continuous series of representatives. Like his account of attribution, Hobbes' account of succession has many ambiguities and complications. How can we tell whether a new government is a successor to the old government or instead, the government of a new State? Does a revolution imply the replacement of one State with another? Can a dead State be resurrected, as the Baltic States appeared to be at the end of the Soviet occupation? Hobbes' account of succession it provides a novel and compelling answer to the Question of Identity when he said, "*Therfore it is manifest, that by the Institution of Monarchy, the disposing of the Successor, is alwaies left to the Judgment and Will of the present Possessor.*"[97] Hobbes takes Aristotle's discussion of corporate identity as his point of departure. He suggests that there is a fundamental similarity between the identities of men, rivers, and cities.

> *If the name be given for such form as is the beginning of motion, then, as long as that motion remains, it will be the same individual thing; as that man will be always the same, whose actions and thoughts proceed all from the same beginning of motion, namely, that which was in his generation; and that will be the same river which flows from one and the same fountain, whether the same water, or other water, or something else than water, flow from thence; and that the same city, whose acts proceed continually from the same institution, whether the men be the same or no.* [98]

Hobbes' account of identity might be called nominalist as opposed to Aristotle's formalist account. His key claim is that "*we must consider by what name anything is called,*

[96] HOBBES Thomas, *Leviathan,* p. 149.
[97] *Ibid,* p. 150
[98] HOBBES Thomas, *De Corpore*. Volume I, Ed. William Moles Worth. London John Bohn. 1839 (1655), pp. 38-137.

when we inquire concerning the identity of it" [99] The answer to a question about the identity of an entity depends on how that entity is categorized. As he says, "*it is one thing to ask concerning Socrates, whether he be the same man, and another to ask whether he be the same body*" [100] The principle that the continuity of a person requires continuity of representation appears elsewhere in Hobbes' thought. In his discussion of the Holy Trinity, he uses the idea of succession to explain how God can be said to be three persons even though he has had more than three representatives. The first person of God was represented by Moses, and his successors the High Priests, and Kings of Judah, in the Old Testament, and the third person of God by the Apostles, and their successors, from the day of Pentecost. Like the person of the State, each person of God remains the same person as long as it has an unbroken series of representatives. The heretical corollary of this principle is that God ceases to be a person if he ceases to be represented. The political implication of the principle of succession is that the entity of the State persists only as long as it is represented. If the chain of succession is broken, such as when a monarch abdicates without a successor, then the multitude ceases to be one person, and the State consequently ceases to exist. But how can we determine whether a new government is a 'successor' to the old government or, on the contrary, the government of a new State? Hobbes does not provide an answer, and his assumption seems to be that the answer will be obvious.

c) Responsibility of Distribution of Non-Fulfilment

The first legitimate reason for non-fulfilment is that the responsibility is impossible to fulfil. A responsibility that is unfulfillable must be suspended as long as there is a possibility that a change in circumstances will make it possible for the State to fulfil it in the future. Repudiation is legitimate only if it is clear that fulfilling the responsibility will never be possible

> *A party may invoke the impossibility of performing a treaty as a ground for terminating or withdrawing from it if the impossibility results from the permanent disappearance or destruction of an object indispensable for the execution of the treaty. If the impossibility is temporary, it may be invoked only as a ground for suspending the operation of the treaty.* [101]

If a State signed a treaty that obligates it to patrol its coastline for pirates, but it's no longer has a coastline, then the State can suspend the treaty on the grounds of impossibility.

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[99] *Ibid.,* p.38.
[100] HOBBES Thomas, *De Corpore*. p. 38.
[101] UN. *Vienna Convention on the Law of Treaty,* 1969, Art, 16.

Whether the State can justifiably repudiate the treaty will depend on whether there is a possibility that it will get its coastline back. There is no real conflict between sovereignty and rational consistency in cases of impossibility. Pacta sunt servanda assumes the possibility of fulfilment; agreements must be kept only if they can be kept. The second legitimate reason for non-fulfilment is that the responsibility is misattributed that the actions that generated the responsibility were not valid acts of State. Either the actions were misrepresentations of the State as in corruption or, the agents who performed the actions were not authorized representatives of the State, such as rogue officials or members of an unauthorized government. For instance, a minister in Cameroon who have been send to prison for embezzlement is because he uses the State fund for his personal interest this debt might be misattributed to Cameroon either because he used the money for personal enrichment or because he was not an authorized representative of Cameron. As such Hobbes said that, "*Also if a man be sent into another Country, secretly to explore their counsels, and strength ; though both the Authority, and the Businesse be Publique; yet because there is none to take notice of any Person in him, but his own ; he is but a Private Minister*" [102] Repudiation is the only justifiable form of non-fulfilment in cases of misattribution. If a responsibility is not attributable to the State in the first place, then there is no justification for suspending it until a later date so that some subsequent government will have to deal with it.

The conflict between sovereignty and rational consistency is only apparent in cases of misattribution. States do not contradict themselves when they refuse to stand by words or actions that were not theirs to begin with. The third legitimate reason for non-fulfilment is non-identity that the allegedly responsible State is not the same State as the one to which the responsibility was attributed. Non-identity does not justify non-fulfilment unless it is accompanied by non-accession. It has to be shown both that the State in question is not identical to the responsible State and that the State in question did not accede to the other State's responsibilities by agreement, implication, or inheritance. For example, if the Russian Federation were discontinuous with the Soviet Union, this would not necessarily mean that the Russian Federation can justifiably repudiate all of the Soviet Union's debt. Total repudiation would be justified only if the Russian Federation did not explicitly or tacitly agree to assume the Soviet Union's debts and did not claim any of its property. But if non-fulfilment were justified at all, it would have to take the form of repudiation rather than suspension. A State

[102] HOBBES Thomas, *Leviathan*, p. 188.

cannot justifiably defer fulfilment of a responsibility that does not belong to it in the first place.

> *For if he voluntarily entered into the Congregation of them that were assembled, he sufficiently declared thereby his will (and therefore tacitely covented) to stand to what the major part should ordayne : and therefore if he refuse to stand thereto, or make the , Protestation against any of their Decrees, he does pan. contrary to his Covenant, and therefore unjustly. And whether he be of the Congregation, or not ; and whether his consent be asked, or not, he must either submit to their decrees, or be left in the condition of warre he was in before; wherein he might without injustice be destroyed by any man whatsoever*[103]

In cases of non-identity, as in cases of misattribution, the conflict between sovereignty and rational consistency is only apparent. The fourth legitimate reason for non-fulfilment is misdistribution that it is unjustifiable to distribute the costs of fulfilling the responsibility to the State's subjects. This is the kind of reason that Runciman's for example suggests that, the debt is attributable to the State, and the State in question is the same State as the one that borrowed the money, but the subjects of the State overwhelmingly object to the debt. It is in cases such as this that sovereignty and rational consistency truly collide. Either the objections prevail over the debt, or the debt prevails over the objections. The objections ought to prevail only if two conditions are met. First, the distribution must be burdensome. Objections to fulfilling an otherwise valid responsibility are normatively significant only if the costs to subjects of fulfilling that responsibility are materially significant. The State's imperative to fulfil its responsibilities outweighs subjects' objections when the costs to those subjects are negligible. A burdensome debt might be mis distributed, but a diffuse debt cannot be. Second, subjects must lack a genuine presence in the actions that generated the responsibility. The claim of 'absence' is easiest to make for intergenerational responsibilities. If the State incurred a debt 100 years ago, then the current subjects might claim that the government that borrowed the money discounted their interests in favour of the interests of the subjects of the time.

2.4. RESPONSIBILTY OF THE CITIZENS ACCORDING TO HOBBES

Hobbes' idea of State personality gives us a richer understanding of State responsibility than the agential theory or the functional theory. According to Hobbesian theory, State responsibility is structurally different from ordinary individual responsibility and from vicarious individual responsibility. Instead, it involves a complex triad of relations between the State, its government, and its subjects. Subjects are the principals who authorize the

[103] HOBBES Thomas, *Leviathan*, p. 134.

government; the government is the collection of agents who represent the State; the State is the person who is responsible for the consequent debts and obligations; and subjects, in turn, share the costs and burdens of their State's responsibilities. No individual-level analogue can fully capture the logic of State responsibility, and analogizing between States and individuals often leads us astray.

a) Responsibility of authorisation

According to Hobbes subjects authorize the sovereign to do anything that is necessary for their Common Peace and Safety. Since the sovereign is the sole judge of what is necessary, this effectively means that subjects authorize all the Actions, and Judgments of the Sovereign. As such he said, "*whereas Man is then most troublesome, when he is most at ease : for then it is that he loves to shew his Wisdome, and controule the Actions of them that governe the Common-wealth*"[104] The authority of the sovereign is absolute; he is authorized to do anything that he sees fit. One important implication of Hobbes' absolutism is that the authority of the sovereign is irrevocable. Subjects cannot withdraw authority because, once they have authorized a sovereign, the right to revoke this authority belongs exclusively to the sovereign. Nor can the sovereign forfeit his authority by exceeding it, because his authority has no limits. Subjects do not even get their authority back when the sovereign dies, since the authority to choose a successor belongs to the current sovereign. There is no reason why we must accept Hobbes' absolutism or the implication that political authority is irrevocable. Hobbes' absolutism can be separated from the formal structure of his theory of the State. What can be dispensed with from Hobbes's account is the idea that authorization must be a once-for-all event, rather than an ongoing process. But what can be retained is the idea that those whom we authorize to act for us act not in our name as individuals, but in the name of the State, though it is as individuals that we pass judgment on their actions.

According to Hobbes, every single subject authorizes the sovereign. They are many Authors, of everything their Representative said or do in their name. Every man giving their common Represented Authority from himself in particular. Although the members of the multitude might initially disagree about whom to authorize, they must authorize the sovereign unanimously as Hobbes will say "*I Authorise and give up my Right of Governing myselfe, to this Man, or to this Assembly of men, on this condition, that thou give up thy Right to him, and*

[104] HOBBES Thomas, *Leviathan*, p. 131.

Authorise all his Actions in like manner''[105] Every one, as well he that Voted for it, as he that Voted against it, shall Authorise all the Actions and Judgements, of that Man, or Assembly of men. Authorization is therefore binary: a representative of the State is authorized by all subjects or by none of them.

The idea that authorization must be unanimous clearly served Hobbes' political aim to encourage absolute obedience to the sovereign but it is both unrealistic and unnecessary. For one thing, political authorization is always partial and contested. Subjects inevitably disagree about whether a government is authorized, and dissenters cannot simply be cast back into the State of nature. In any case, it is unnecessary for the government to be authorized by every single subject. Unanimous authorization would be necessary if the government represented subjects as individuals, since it is difficult to see how individuals who are not fools, children, or mad-men could legitimately be represented by agents whom they did not authorize. Lawyers and accountants cannot represent competent adults who have not authorized them, so it is not clear how presidents and legislators could. But the government represents the State, not each subject; it need not be authorized by every individual because it does not represent any individual.

b) Responsibility of Distribution of Liability

States are incapable of acting on their own, so their responsibilities must be distributed to individuals in order to be fulfilled. The core of an answer to the Question of Fulfilment must therefore be an account of distribution. There are two classes of people to whom the State's responsibilities can be distributed: its representatives and its subjects. Distribution to representatives is relatively unproblematic. The representatives of a State are obligated to uphold its agreements, honour its debts, and apologize for its wrongs simply because that is what their jobs require as Hobbes will say, "*If the Common-wealth impose a Tax upon the Body, it is understood to be layd upon every Member proportionably to his particular adventure in the Company. For there in this case no other common stock, but what is made of their partacular adventures*" [106] Like corporate executives and employees, political representatives and State officials typically assume their roles voluntarily, and these roles require that they do their parts to ensure that the State fulfil its responsibilities. Distributing the State's responsibilities to its subjects is more difficult to justify. The role of subject, unlike the role of representative, is typically involuntary. When a State pays reparations or repays a

[105] *Ibid.,* p. 132.
[106] HOBBES Thomas, *Leviathan*, p. 179.

loan, the costs inevitably fall on its subjects, usually in the form of taxation, inflation, or a reduction in public services. As such Hobbes said,

> *But when the Representative is an Assembly, and the debt to a stranger ; all they, and onely they are responsible for the debt, that gave their votes to the borrowing of it, or to the Contract that made it due, or to the fact which the Mulct was imposed ; because every one of those in voting did engage himselfe for the payment: For he that is author of the borrowing, is obliged to the payment, even of the whole debt, though when payd by any one, he be discharged.*[107]

When sanctions are imposed on a State, its subjects suffer from the interruption of economic activity. An adequate account of distribution has to explain why subjects ought to bear these costs, despite the fact that most subjects of most States have not chosen to be subjects and cannot easily leave. It is not necessary to show that subjects are culpable for what their State does that they are guilty or blameworthy. I turn now to the difficulty that intergenerational distribution poses for existing accounts of distribution. There are two common accounts of distribution. According to the authorization account, subjects tacitly authorize the State's actions, and therefore ought to share in the resulting liability, if the State credibly protects their rights.

> *If a Body Politique of Merchants, contract a debt to a stranger by the act oi their Representative Assembly, every Member is lyable by himself for the whole. For a stranger can take no notice of their private Lawes, but considereth them as so many particular men, obliged every one to the whole payment, till payment made by one dischargeth all the rest : But If the debt be to one of the Company, the creditor is debter for the whole to himself, and cannot therefore demand his debt, but only from the common stock, if there be any.* [108]

According to the participation account, subjects ought to share liability for acts of State if they have intentionally participated in the collective project of the State, such as by paying taxes, voting, claiming benefits, or taking pride in their citizenship. Whereas the authorization account focuses on the structure of the State, the participation account focuses on subjects' attitudes and actions toward the State. The important point is that neither can justify intergenerational distribution. The problem with the authorization account is that subjects who do not yet exist cannot grant authority. Although you might be an author of a debt that your State incurs today, you cannot possibly be an author of a debt that your State incurred before you were born. It is difficult to see how authorization can be retroactive. While

[107] HOBBES Thomas, *Leviathan*, pp. 174-175.
[108] *Ibid.,* p. 179.

participating in the State might make you liable for what the State does, it is difficult to see how it could make you liable for what the State did before you were born. Accounts of shared or collective responsibility that make it depend on individuals contributing to the achievement of a common objective or participating together in a joint action do not encompass cases where individuals cannot have contributed or participated. Not being born when an injustice took place seems a very good reason for denying any responsibility.

c) Representation of Responsibility

The first condition for attribution is that the action must be performed in the name of the State. The fact that the action is performed by a State official, or even by the sovereign, is not sufficient. As Hobbes said,

> *And whereas every man, or assembly that hath Soveraignty, representeth two Persons, or (as the more common phrase is) has two Capacities, one Naturall, and another Politique, (as a Monarch, hath the person not onely of the Commonwealth, but also of a man ; and a Soveraign Assembly hath the Person not onely of the Common-wealth, but also of the Assembly)*[109]

When the sovereign acts for example, buys property or signs a contract as a natural person, or in his own name, the action is attributable to him as an individual. But when the sovereign acts as an artificial person, or in the name of the State, the action is attributable to the State. Whether an act of the sovereign counts as a private act or as an act of State depends on which person his own person, or the person of the State he represents at the time. Similarly, subordinate officials or ministers may represent either the natural person or the artificial person of the sovereign. Asa such Hobbes said Ministers "*they that be servants to them in their naturall Capacity, are not Publique Ministers; but those onely that serve them in the Administration of the Publique businesse*" [110] Public ministers include judges, treasurers, provincial and colonial governors, ambassadors, civil servants, police officers, and soldiers. They represent the artificial person of the sovereign and, indirectly, the Person of the Commonwealth. For example, in their Seats of Justice judges represent the person of the Sovereign and their Sentence is his Sentence, his sentence is, in turn the State's sentence. Sentencing a criminal is therefore an act of State. Conversely, private ministers represent the natural person of the sovereign. As such Hobbes said,

[109] HOBBES Thomas, *Leviathan*, p. 184.
[110] *Ibid*., p. 184.

> *They also to whom Jurisdiction is given, are Publique. Ministers. For in their Seats of Justice they represent the person of the Soveraign ; and their Sentence, is his Sentence ; For (as hath been before declared) all Judicature is essentially annexed to the Soveraignty; and therefore all other Judges are but Ministers of him, or them that have the Soveraign Power. When a servant makes tea for the sovereign, the act of making tea is not an act of State* [111]

To act in the name of the artificial person of the sovereign, and hence the State, is to act for a public purpose. If Hobbes' distinction between natural and artificial representation seems obvious, it is because something like it is taken for granted in modern politics. The only significant difference between Hobbes' notion of political representation and the modern notion is that we are less clear about where sovereignty is located. Hobbes insists on a sharp distinction between the sovereign, who represents the State directly, and the public ministers, who represent the State indirectly by representing the artificial person of the sovereign. This distinction remains fairly sharp in constitutional monarchies.

The elusiveness of the modern sovereign matters little for the issue of attribution, since the actions of both the sovereign and the public ministers are ultimately attributable to the State. The important distinction is not that between the sovereign and the public ministers, but that between people who act in the name of the State and people who do not. In other words, what matters is who represents the State, not which of its representatives is sovereign. In what follows, we often collapse the distinction between the sovereign and public ministers by referring to both together as the government. The concept of representation puts limits on the kinds of actions that can be attributed to the State. Even the representatives of things that have no independent existence are limited by the need to keep up appearances. An actor must provide a plausible portrayal of the character that he plays, even if this character is fictional. He might portray Robin Hood as a marksman instead of an archer, but he cannot portray Robin Hood as a greedy executive. The first portrayal is conceivable, albeit anachronistic the second is so far out of character that the audience will probably reject it. The representatives of the State are similarly constrained by the need to play its role in a plausible way. Although Hobbes insists that sovereigns can never be held accountable by their subjects, he argues that it is nevertheless important for sovereigns to provide a portrayal of the State that is acceptable to their subjects.

> *The office of the Soveraign, (be it a Monarch, or an Assembly,) consisteth in the end, for which he was trusted with the Soveraign Power, namely the procuration of*

[111] *Ibid*., p.186.

> *the people; to which he is obliged by the Law of Nature, and to render an account thereof to God, the Author of that Law, and to none but him. But by Safety here, is not meant a bare Preservation, but also all other Contentments of life, which every man by lawfull Industry, without danger, or hurt to the Commonwealth, shall acquire to himselfe.*[112]

It is especially important hat Justice be equally administered to all degrees of People, that is, that as well the rich, and mighty, as poor and obscure persons. If the sovereign routinely acts in his own interest or in the interest of a certain class of subjects, then many of his subjects will come to see him as a natural person who is merely pretending to be an artificial person, and they will cease to accept his actions as acts of State. The inevitable result of partiality toward the great is the ruined of the Commonwealth both metaphorically and literally. The idea that the State is a distinct person will be lost, and the political union will be torn apart by faction and rebellion.

[112] HOBBES Thomas, *Leviathan*, p. 175.

PART TWO

THE GENERAL APPRAISAL OF ROUSSEAU'S NOTION OF RIGHT OF MAN AND DUTY OF THE STATE

To give proper respect and regard to the rights of others is our duty. But at the same time, it becomes the duty of the individual that he should make the use of those rights for promoting the common welfare. For example, if I have the right to vote, it becomes my duty that I should cast my vote in favour of a deserving candidate. While casting my vote, I should not allow my prejudice to work. I should not be influenced by the distinction of caste and creed, rich and poor and black and white. It becomes my cardinal duty to serve the state in full spirit. If rights spring to us from becomes our duty to perform certain duties towards the state. If the state protects us, it becomes our cardinal duty that we should pay taxes regularly and remains faithful and loyal to the state. This part will constitute two chapters that chapter three and four with five subtopics each. Chapter three will be on the appraisal of Rousseau's vision of the of rights of man and human right and chapter four, will be on general categories of modern state institutions with its duties in reflection to Rousseau

CHAPTER THREE

THE APPRAISAL OF ROUSSEAU'S VISION OF THE RIGHTS OF MAN AND HUMAN RIGHT

There exist two types of right by nature, that is, natural and legal right, Meanwhile Natural rights are those that are not dependent on the laws or customs of any particular culture or government and so are universal, fundamental and inalienable (they cannot be repealed by human laws, though one can forfeit their enjoyment through one's actions, such as by violating someone else's rights). Natural law is the law of natural rights. Legal rights are those bestowed unto a person by a given legal system (they can be modified, repealed, and restrained by human laws). The concept of positive law is related to the concept of legal rights. The idea of human rights derives from theories of natural rights. Those rejecting a distinction between human rights and natural rights view human rights as the successor that is not dependent on natural law, natural theology, or Christian theological doctrine. Natural rights in particular are considered beyond the authority of any government or international body to dismiss. In this chapter we are going to examine the general will as an inalienable right from the perspective of Rousseau, Rousseau's view of property as the first principle of right, the important and relevance of Rousseau's conception of right to contemporary society and lastly the contemporary significance of human rights.

3.1.THE GENERAL WILL AS AN INALIENABLE RIGHT FROM THE PERSPECTIVE OF ROUSSEAU

In the period of illustration or eighteenth century, also known as the century of lights, there were voices against monarchies as a prevailing system in Europe. This is the beginning of the decadence of the kings of the modern age. One of those voices that was pronounced with more force was without a doubt that of Rousseau. For him he thinks that in a society the people should play a leading role in the election of their ruler and approve and disapprove laws, that they have to do for the common good. "*The first and most important deduction from the principles we have so far laid down is that the general will alone can direct the State according to the object for which it was instituted, i. e. the common good*"[113] The general will for Rousseau is the whole community legislating for the whole community as an association of equals. It is formed in individual minds when each asks how each and every one ought to be

[113] ROUSSEAU Jean Jacques, *The Social Contract,* pp. 11-12.

treated, including oneself as an equal. It is therefore not a will to perform a particular act, but a will to follow a rule that we prescribe for ourselves. It is not a compromise between particular wills, which are wills concerning what I might want for myself, no matter how that affects others. In the formulation of the general will everyone must be able to participate and as a practical political matter, it needs the support of a majority in the assembly. In placing myself under the rule of the general will, I am not subjecting myself to others, but I am denying my desire to be recognized as superior. I am rising above my slavery to the passion of self-love and making my freedom effective. In this section we are going to see what makes general will inalienable.

a) The General Will as an Infallible Right

It should be noted that everything related to events that may influence the lives of people have to be consulted with the population. Rousseau was in favour of taking the voice of the people into consideration for the execution of regulations or instruments of a legal nature. A mechanism for that is the vote in a free and voluntary way, at the same time, rose that the popular expression has to be considered and respected without placing objections to it. Rousseau also says that the general will is infallible and absolute. What could he mean? By calling the general will infallible Rousseau is not saying that the majority in assembly, even if they are genuinely searching for the common good, have god-like, absolute knowledge.

> *It follows from what has gone before that the general will is always right and tends to the public advantage […] If, when the people, being furnished with adequate information, held its deliberations, the citizens had no communication one with another, the grand total of the small differences would always give the general will, and the decision would always be good […] But if there are partial societies, it is best to have as many as possible and to prevent them from being unequal, as was done by Solon, Numa and Servius. These precautions are the only ones that can guarantee that the general will shall be always enlightened, and that the people shall in no way deceive itself* [114]

He doesn't in fact mean that people cannot make mistakes. Think of Rousseau as saying that what spoils political power is the use of it to pursue purely private interests, to that effect smith supported this view of Rousseau when he said,

> *Rousseau also supports his thesis of the infallibility of the general will from the organic theory with which he tries to demonstrate that the proper functioning of a State depends, like a body, to be directed by a single will, that is, by the will itself of the sovereign people as the head of the political*

[114] ROUSSEAU Jean Jacques, *The Social Contract,* pp. 13-14

> *body that forms and that, as such, can never have any other interest than that of the body itself* [115]

When people avoid the mistake of legislating their purely private interests and instead attend to the common good, they are making an authentic use of political power that preserves and enhances freedom because it recognizes each and every other as an equal. To have one's selfish interest constrained by the good of all, he is saying radically different from being constrained by a law which expresses simply another particular will. If, for example, in time of war or emergency, the law constrains me to ration my consumption of food, I don't feel exploited by a private interest. If, when I arrive at the hospital emergency room in acute pain with a sprained ankle, I do not feel oppressed because the heart attack patient gets treated first. The general will is infallible in the sense that it is qualitatively different and better than the particular will.

b) General will as an Indestructible Right

Rousseau also says that the sovereignty of the general will is inalienable, indivisible and absolute. The sovereign is not limited by natural law, the individual retains no natural rights against the sovereign. "*I hold then that Sovereignty, being nothing less than the exercise of the general will, can never be alienated, and that the Sovereign, who is no less than a collective being, cannot be represented except by himself: the power indeed may be transmitted, but not the will"*[116] Despite this formal similarity there is a radical difference with respect to content, because the sovereign is each and all of us insofar as we are the legislators of a truly general will. There are also built-in limitations on the sovereign's absolute power, for example in the generality of the rules that it makes the sovereign can/should not act as an executive or judicial body, it does not implement or apply the law and in the fact that the community may generate as many civil rights as it desires. It would be up to us to protect each other from ourselves.

Similarly, the indestructibility of majorities is a fact since the people are the ones who must demonstrate in relation to the appointment of princes, kings, legislators and others. Zarka support this views by saying that "*with Rousseau, the sovereignty of the people provides the only legitimate and valid concept of sovereignty, as can be shown both in relation to the terms of the social contract, and with the concept of the general*"[117] It can be mentioned that the political power acquires a deep legitimacy when there is the participation of the sovereign in

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[115] ADAMS Smith, State *and Democracy in the Political thought of Jean Jacques Rousseau*, Santo domingo, Dominican Republic; Pedro Francisco bona Philosophical Institute, 2008, p. 38.
[116] ROUSSEAU Jean Jacques, *The Social Contract*, p. 11.
[117] ZARKA Charles, Rousseau *and the Sovereignty of the People,* Berlin, De Gruyter, 2016, p. 8.

terms of the election of the government. Likewise, Vergara was also in the same line with Rousseau when he said, "*The Russian democratic State is the people that have become a collective subject that governs itself* "[118] This implies the popular will is a reality of the democracies, these systems is where there is the participation and manifestation of the majorities that place a minority to direct the affairs of government.

c) General will as Electoral Right

In the same way, the acts of electing the rulers are a difficult fact, although it seems simple. The people tend to be wrong and for that reason do not choose the most appropriate. It rose that the monarchs and its representatives have to be elected by popular will. "*The simple right to vote in every act of sovereignty, a right that no one can wrest from citizens, and that of giving opinions, proposing, dividing and discussing*"[119] Following the author's idea, the vote is the way to express agreements disagreements with the rulers. At the same time, they must use a methodology that is in accordance with the reality of the country since the nations are of different political, social, cultural and economic contexts.

In relation to the above, the political ideas of Rousseau were the reaffirmation of a state that has as an aim the happiness of the majorities where the laws, people, life, popular will, property pacts or social pacts are respected among others. It is the people who determine through the vote as an instrument to designate who is going to occupy a permanent or transitory function of the destiny of the public administration. In that sense, the political thought of Rousseau is to give the sovereign participation to be master of their own destiny through popular elections where all sectors are.

Given Rousseau's idea of freedom, the only way it can be achieved in politics is for the people considering themselves to be equal members of the whole to legislate directly. The people, he says, being subject to the laws, ought to be their author: the conditions of society ought to be regulated solely by those who come together to form it. Rousseau is therefore saying that the only legitimate form of government is a highly participatory democracy. Only a radical, direct democracy could guarantee the rights of individuals and it would be senseless, Rousseau thinks, for individuals or groups within that democracy to arrogate certain immutable rights to themselves. The community may legislate privileges or social rights but only when it is an authentic act of the general will. It may protect minorities and civil rights as

[118] VERGARA, Camila, *Democracy and participation*, Jean Jacques Rousseau, Philolosophy Magazine Volume 68, 2012 pp. 29-52

[119] ROUSSEAU Jean Jacques*, Selected Works by Juan Jacobo Rousseau,* p. 935

for example, the rights of effective citizenship, but the most basic human right or natural right you have or need is to be an equal member of such a community. For Rousseau, as long as there is a genuine general will, there is no contradiction between absolute social power and individual power and individual responsibility. A true general will cannot impose useless fetters on the community, which is itself

3.2. ROUSSEAU'S VIEW OF PROPERTY AS THE FIRST PRINCIPLE OF RIGHT

In order to clearly present Rousseau's views on property in *The Social Contract*, we must first define what he means by property. Property according to Rousseau is that which is obtained legally thereby purporting legitimate claim to ones holdings. Now we must consider what gives an individual the right to openly claim ownership. In this regard, we are going to stop at nothing but look at it from the point of legal acquisition of property, how the individual's union as a principle of property right and lastly occupant and ownership as property right

a) The Lawful Acquisition of Property as Right

Rousseau points out that right does not equal might. In other words, a right can never derive from force. A right must be given legitimately which means it is attached to moral and legal code. This makes its contractual whereby the rights of one are applied to the rights of all. Once a right is established, it is beneficial and necessary for the individual to apply this right effectively for his best interests and those of the whole. This motivation is directed at the formation of community thereby creating a social contract between individuals which come together to act as a group.

Prior to a social contract being created there arose between the right of the strongest and the right of the first occupant a perpetual conflict that ended only in fights and murders. Those who claimed a stake to a resource by virtue of first occupancy were constantly being challenged by those who had nothing. Those with nothing constantly attacked the property holders and consequently there was no advantage to being a member of either class. Accordingly, the property holders devised a social contract which destroyed natural liberty, established forever the law of property and of inequality, changed adroit usurpation into an irrevocable right. The contract codified the right of first occupant which legitimized the inequality that resulted from such a system.

> *The right of the first occupier, though more real than the right of the strongest, becomes a real right only when the right of property has*

> *already been established. Every man has naturally a right to everything he needs; but the positive act which makes him proprietor of one thing excludes him from everything else. Having his share, he ought to keep to it, and can have no further right against the community* [120]

This surmises Rousseau's views on the foundations of private property in which on the other hand, he finds nothing natural in the institution of private ownership. Property is a right that cannot exist before contract that is why he said in the *Discourse on Inequality among men* that,

> *It is not the product of reason or natural law, but rather the culmination of the most thought out project that ever entered the human mind, carried out by a few ambitious men for their own profit […] Property, for Rousseau, is merely the name given to adroit usurpation that gain state sanctioned and thereby was converted into an irrevocable right* [121]

While Rousseau sketches out a familiar process by which the idea of property emerges from the cultivation of land to its division labour conferring the appearance of ownership he refrains from granting this right any manner of true legitimacy. Rousseau splits the mere act of possession from any moral right. In the state of nature each can lay claim to physical control over their holdings, yet given the constant spectre of expropriation, this form of ownership is tenuous. One can state the empirical fact that they control their property, yet these grounds are insufficient. "*Possession is decried as a precarious and abusive right and as lacking any justification beyond an appeal to brute force*"[122] As the right to property in the state of nature is derived through force alone, it could justifiably be superseded and appropriated by any greater power. Though individual labour coupled with continued possession provides an explanation for the idea of property any right was implicitly sustained by strength.

b) The Union of Individuals as a Principle of Property Right

Now a combination of rights is formed whereby each individual is protected by the whole group which stands together as a community. The concept is that man standing alone is more vulnerable than many men united each in defence of the other, it goes with the popular says that "united we stand divided we fall". This condition makes it impossible for one to hurt an individual without hurting the whole group or for one to hurt the group without affecting each individual. There is now a social contract where individual rights are combined. In this case, it

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[120] ROUSSEAU Jean Jacques, *The Social Contract*, p. 9.
[121] ROUSSEAU Jean Jacques, *Discourse on Inequality among Men,* p. 79.
[122] *Ibid.*, p. 78.

is in the best interest of the individual to give over his rights to the group since he has a more powerful protective base than standing alone. Even though individual rights are eliminated, a strong advantage is created since one now stands in better defence against all forces.

Now that one's rights are combined with others; an obligation of commitment is created where one acts in the best interests of the whole. Civil action comes into play on the part of each individual so there is more moral structure. Men act more moral when legal rights are given then when acting in concert with nature where nature provides for all and no one has the right to make claims on property. Rousseau believes that it is utterly on the basis of common interest that society ought to be governed. "*The first and most important deduction from the principles we have so far laid down is that the general will alone can direct the State according to the object for which it was instituted, that is, the common good*"[123] The sovereign should rule, in other words, in accordance with the general will, which favours equality, the general will can be ascertained by summing up all the individual wills and cancelling out any particular differences. While the private will tends towards giving advantages to some and not others, the general will, will tend towards equality as it refuses to prioritize any one individual's perspective. For Rousseau, the needs of the community are always elevated above the preferences of individuals. For example, each private individual's right to his own land is always subordinate to the community's right to all. As Rousseau believes that property derives its standing solely from the authority of the collective, the collective is therefore empowered to determine how these rights should be allocated. Society acts with a universal compulsory force to move and arrange each part in the manner best suited to the whole. The goal of the social contract is not to preserve property but to create a new equality upon the substrate of an unequal reality. The social contract substitutes a moral and legitimate equality for whatever physical inequality

c) Ownership and Ooccupants as a Property Right

A right to claim property in our now civil society involves the code of right of first occupant. Rousseau was of the opinion that to establish this state of occupancy three essential strictures must be in place. There can be no prior inhabitation, ownership must be based on need not greed whereby no individual takes more land than they can work, and the individual must actually work the land they claim. The individual rights of property are combined with the whole to create a public community or territory. Thereby each individual property is

[123] ROUSSEAU Jean Jacques, *The Social Contract*, pp. 11-12.

protected by govern of the whole. Created now is a state by which each occupant depends on the other with an obligation to work toward the best interests of each other and the community, included without exception.

People join society just as they are bringing whatever they possess and turning it into private property. Public property, Rousseau notes, belongs to everyone, but private possessions belong to individuals and public possessions belong to a society simply by virtue of the right of the first occupant which only becomes enforceable in society as possession turns into property. This does not mean that the first person to step on or conquer a piece of land rightly owns it, but rather that the land is theirs if they are really the first occupant, they don't take more land than they need for subsistence and they actually work and cultivate the soil.

He further argues that society and inequality were first institutionalized when people claimed private property. Having shown how property can be the basis for an illegitimate and oppressive form of government. Rousseau goes ahead to explain here how property should work under a legitimate state. If they already possess land, people bring this land under the control of the sovereign when they join a society. This guarantees it to them as private property, but it also incorporates it into the public territory of the nation as a whole. Alternatively, people can join together before possessing territory and then work together to legitimately occupy and share or divide up a territory. In either case, while people have individual rights over their private property, the sovereign's communal right to that property always comes first, this because the state is the overrule of all the property within it territory and that is why he said, "*For the State, in relation to its members, is master of all their goods by the social contract, which, within the State, is the basis of all rights*"[124] Rousseau notes that society does not destroy natural equality, but rather creates a moral and lawful equality in its place. In fact, while people may be naturally unequal in strength and intelligence, society makes them socially equal by covenant and by right because right of every nation makes equality amongst its members.

3.3. THE IMPORTANT AND RELEVANCE OF ROUSSEAU'S CONCEPTION OF RIGHT TO THE AFRICAN CONTEMPORARY SOCIETY

The political work of Jean-Jacques Rousseau historically was without a doubt one of the most transcendental during the period of enlightenment. Currently Rousseau is considered one of the fathers of democracy that the world knows today. His text, *The social contract* is the

[124] ROUSSEAU Jean Jacques, *The Social Contract*, p. 10.

instrument that was studied by other political notables and leaders of the French Revolution such as: Maximilian Robespierre, Jean-Paul Marat, George Danton among others. Social contract attempts to explain the formation as well as maintenance of societies or states as a result of implied contract between individuals and the state. Social contract is an intellectual tool aimed at explaining necessary relationships between individual and their government. In related to social contract, individuals are united to political process by mutual consent, agreement to abide by general rules and acceptance of duties to protect oneself and one another from violence or any other type of harm. It is a theory that played crucial role in enhancing an idea that, political mandate must be derived upon the government consent therefore, it is mainly associated with political and moral theory as it is depicted by Rousseau. This social contract theory from time immemorial till the present day is very important in modern day society in a number of ways.

a) It up hold Sovereign Laws as the Paramount Pillar Which the State can Function

Firstly, Rousseau's idea that the sovereign community was logically the only lawmaker, has had the indirect effect of stimulating direct Legislation by the people through present day Referendum and the initiative. It should also be understood that Rousseau's analysis of the institution of private property educates in no small measure on the origin and root cause of moral corruption and injustice that bed evil modern societies of the world.

Sovereignty in an organized society is purely vested with the people, as such, leaders or rulers of all kinds are supposed to be representatives of the interest and the General Will of the people. The people cannot afford to share this sovereignty with any other body and hence sovereignty is indivisible, and it cannot be located outside the people hence it is equally inalienable. That is why he said, ''*Sovereignty, for the same reason as makes it inalienable, is indivisible*''[125] This implies that it is only this theory alone that can justify the state's existence. The following recommendations are considered expedient to make both Rousseau's ideas more effective and a more proper organization of contemporary societies. In the same way**,** Rousseau's proposal on human rights as: life, vote, sovereignty, democracy and freedom between are still debated in the world of political science and political philosophy. Although these approaches were not new to him, he is given the greatest credit for generating transformations of a political order in contemporary society.

[125] ROUSSEAU Jean Jacques, *The Social Contract*, p. 12.

The Rule of Law is also equally important to recommend that the law, rather than people should rule modern governments, given the relevance of the General Will (Law) in Rousseau's ideas. Our leaders' actions should be governed by law rather than by their selfish attachments or affiliations. This said law of the land must, therefore, be made to reflect human face and its adjudication must not be selective nor delayed.

b) It Serves and Unfolds the Basis for Democracy and the Justification of Revolutions against Arbitrary Rule.

It inspired the French Revolution of 1789 which was a revolt against the despotic French ruler. Buttressing this very relevance of Rousseau's theory justification of Revolutions against arbitrary rule, it is important to note that the revolutionary doctrine rests on two or three simple principles: That, men are by nature free and equal. That the rights of government must be based on some compact freely entered into by these equal and independent individuals, and that the nature of the compact is such that the individual becomes part of the sovereign people, which has the inalienable right of determining its own constitution and legislation. With confirmation to Rousseau's views he said, "*Being nothing less than the exercise of the general will, can never be alienated, and that the Sovereign, who is no less than a collective being, cannot be represented"*[126] So, when such rights are deprived the individuals through arbitrary rule, the ground for revolution exists.

Above all, that the state is a social contract calls for the readiness and willingness of the leaders, who are involved in this kind of contract with citizens, to ensure adequate provision of their basic needs in life. This should be the priority of leadership or governance rather than always being busily involved in mere politicking with the resources meant for people by the people being wasted and diverted to leaders' private businesses. Good, durable or quality roads, reliable electricity supply, health care services, employment opportunities, good salary structures for the labour force, qualitative education for citizens, among others, should be the priorities of leadership in service of humanity in our contemporary societies. These, among others, it is optimistic, would ensure a strong reliable, free and equal developed, income parable and an organized modern society governed by Law.

c) It also laid a Foundation for Human Right of freedom against dictatorship

Rousseau's thought played an important role in promoting the notion of human rights, which is central to United Nation for Human Right Commission (UNHCR) work. Many

[126] ROUSSEAU Jean Jacques*, The Social Contract,* p. 12.

previous philosophers, from Dutch jurist and philosopher Hugo Grotius to the Englishman Hobbes, had conceived of rights in terms of the possession of power or of legal constructs within society. In contrast, Rousseau's insistence on the fundamental freedom of human beings in their natural state contributed to the modern notion that people have inalienable rights, regardless of their place in society. This notion is clearly reflected in 20th century documents such as the United Nations Charter and the Universal Declaration of Human Rights which state, "*Everyone has the right to life, liberty and security of person*"[127]

Rousseau did not set out a theory of international relations, but many of his underlying principles have helped shape modern thought in this area. At first glance, it looks as though he would have preferred states to remain as independent of each other as possible, because he believed that dependence was the source of all conflict. In situations of war, he was distrustful of rulers' motivations and would certainly have been a critic of great power intervention. The world has changed significantly since Rousseau's time and his ideals of internal unity and the independence of states feel out-dated in a globalized world that is characterized by mass migration, Diaspora populations and transnational social movements. It is therefore open to interpretation whether Rousseau would have embraced the notion of global governance or the establishment of organizations such as the United Nations.

He did not anticipate the concept of humanitarian intervention, however, he strongly believed in the intrinsically compassionate nature of humankind and the willingness of people to help alleviate the suffering of others. In that respect Rousseau's life and work remain highly relevant to the work of UNHCR and the many other humanitarian organizations that are based in the city where he was born. Finally, Rousseau's ideas of individuals' liberty and freedom in a society are pointer to a call for total rejection of military dictatorship in modern states with its attendant suspension of the constitution and deny of human rights and freedom. Africa's case is relevant in this wise. For example, the recent military coup junta in Guinea Conakry in which president Alpha Conde was ousted by Colonel Doumbouya on 5th September 2021, promising to hand power back to civilian rule after 6month, but on 1st May 2022 he said he will only hand power back to civilian rule after 39 months. Nevertheless, it must be remarked at this juncture that Rousseau's political analysis are inadequate in some ways, and this turns our attention to the critiques of his political ideas despite the relevance in our contemporary.

[127] United Human Rights Council, *Universal Declaration of Human Right*, General Assembly in Paris, 10 December 1948, Article 3, p. 2

Furthermore, with regard to Popular Participation, to ensure popular sovereignty, citizens of our contemporary societies be allowed the maximum freedom to participate in the governance of the affairs of their localities. This could rather be possible through representative democracy in modern day societies, due to the complexities of the contemporary world. Suffice it to say that modern governments, learning from Rousseau's ideas, should always be ready to respect and respond to popular views and interests for a free and participatory society governed by law.

3.4. THE CONTEMPORARY SIGNIFICANCE OF HUMAN RIGHTS

Human rights have been defined as basic moral guarantees that people in all countries and cultures allegedly have simply because they are people. Calling these guarantees rights suggests that they attach to particular individuals who can invoke them, that they are of high priority, and that compliance with them is mandatory rather than discretionary. Human rights are frequently held to be universal in the sense that all people have and should enjoy them, and to be independent in the sense that they exist and are available as standards of justification and criticism whether or not they are recognized and implemented by the legal system or officials of a country. In this regard we are going to look at how this right is relevant in our present day society.

a) The Identification of Human Right as Prerequisite of a Minimal Good Life

The moral doctrine of human rights aims at identifying the fundamental prerequisites for each human being leading a minimally good life. Human rights aim to identify both the necessary negative and positive prerequisites for leading a minimally good life, such as rights against torture and rights to health care. This aspiration has been enshrined in various declarations and legal conventions issued during the past fifty years, initiated by the Universal Declaration of Human Rights, perpetuated by most importantly, the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

Together these three documents formed the centre piece of a moral doctrine that many consider to be capable of providing the contemporary geo-political order with what amounts to an international bill of rights. However, the doctrine of human rights does not aim to be a fully comprehensive moral doctrine. An appeal to human rights does not provide us with a fully comprehensive account of morality per se. Human rights do not, for example, provide us with criteria for answering such questions as whether telling lies is inherently immoral, or what the extent of one's moral obligation to friends and lovers ought to be. What human rights do

primarily aim to identify is the basis for determining the shape, content, and scope of fundamental, public moral norms which was more basically the views of Rousseau. For Rousseau in this reflection, he wanted a society where there will be equality among everybody. "*[…] In this inquiry I shall endeavour always to unite what right sanctions with what is prescribed by interest, in order that justice and utility may in no case be divided*"[128] Human rights aim to secure for individuals the necessary conditions for living a minimally good life.

Rousseau with his works promotes democracy and founds critical thinking as such Vergara support his views as he points out that, "*A new democratic tradition is based on the participatory conception of democracy, based on the principle of popular sovereignty, which has reached an important development in our time*"[129] Paraphrasing the author, it is clear that political thinking as well as the educational, Rousseau remains a reference for all social actors. His contribution to political philosophy made him great not only for the ability to write relevant and forbidden topics. His greatness and main virtue was that he was not wrong in his approaches.

b) The identification of national and international authority as a place to secure human right

Public authorities, both national and international, are identified as typically best placed to secure these conditions of minimal good life and so, the doctrine of human rights has become, for many, a first port of moral call for determining the basic moral guarantees all of us have a right to expect, both of one another but also, primarily, of those national and international institutions capable of directly affecting our most important interests. Rousseau was rather vague on the mechanics of how his democracy would work. There would be a government of sorts, entrusted with administering the general will. But it would be composed of mere officials who got their orders from the people.

The doctrine of human rights aspires to provide the contemporary, allegedly post ideological, geo-political order with a common framework for determining the basic economic, political, and social conditions required for all individuals to lead a minimally good life. While the practical efficacy of promoting and protecting human rights is significantly

[128] ROUSSEAU Jean Jacques, *The Social Contract*, p. 1.
[129] VERGARA Camila, *Democracy and participation*, p. I.

aided by individual nation states' legally recognizing the doctrine, the ultimate validity of human rights is characteristically thought of as not conditional upon such recognition.

c) The Moral Justification of Human Right as National Sovereign

The problem in the state of nature, Rousseau said, was to find a way to protect everyone's life, liberty, and property while each person remained free. Rousseau's solution was for people to enter into a social contract. They would give up all their rights, not to a king, but to the whole community, all the people. He called all the people sovereign. The people then exercised their general will to make laws for the public good. Rousseau argued that the general will of the people could not be decided by elected representatives. He believed in a direct democracy in which everyone voted to express the general will and to make the laws of the land. Rousseau had in mind a democracy on a small scale, a city-state like his native Geneva.

All political power, according to Rousseau, must reside with the people, exercising their general will. There can be no separation of powers, as Montesquieu proposed. The people, meeting together, will deliberate individually on laws and then by majority vote find the general will. Rousseau's general wills was later embodied in the beginning of the U.S. Constitution, which stated, "*we the people of America […]*" [130] In Rousseau's democracy, anyone who disobeyed the general will of the people will be forced to be free. He believed that citizens must obey the laws or be forced to do so as long as they remained a resident of the state. This is a civil state, where security, justice, liberty, and property are protected and enjoyed by all.

The moral justification of human rights is thought to precede considerations of strict national sovereignty. An underlying aspiration of the doctrine of human rights is to provide a set of legitimate criteria to which all nation states should adhere. Appeals to national sovereignty should not provide a legitimate means for nation states to permanently opt out of their fundamental human rights-based commitments. Thus, the doctrine of human rights is ideally placed to provide individuals with a powerful means for morally auditing the legitimacy of those contemporary national and international forms of political and economic authority which confront us and which claim jurisdiction over us. This is no small measure of the contemporary moral and political significance of the doctrine of human rights. For many of its most strident supporters, the doctrine of human rights aims to provide a fundamentally legitimate moral basis for regulating the contemporary geo political order.

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[130] *The Constitution of The United State of America*, 1777, p. 1

CHAPTER FOUR

GENERAL CATEGORIES OF MODERN STATE INSTITUTIONS WITH ITS DUTIES IN REFLECTION TO ROUSSEAU

States vary vastly in their complexity and the functions which they perform increase hierarchically from the basic to the complex. We will attempt to give an overview of it institutions starting from the general institutions that are common and universal and more advanced ones. The most basic functions of a state are twofold; first the protection of the life, liberty and property of its citizens and secondly, the enrichment and satisfaction of the ruling class. These explain why there are these institutions which dominate does a great deal to determine the character of the state and state institutions can be used toward either end. At the most basic level, there are the military and the courts and religion. Nearly every Nation throughout history has had these in one form or another. They are essential to the existence of any country as they are fundamental to the dual functions of establishing order among the locals and keeping invaders out. Even the most primitive states such as ancient Israel during the time of the Judges had these in a simple form and among every people there are leaders to whom they entrust the settlement of internal disputes and the conduct of wars. In this chapter we are going to look at the administrative bureaucracy with it duty, universal states institution, the national executive of state government, the power and functions of the president and the principle of government in a constitution.

4.1. THE ADMINISTRATIVE BUREAUCRACY WITH ITS DUTY

Looking at what administrative Bureaucracy is, it is a method of organizing people and work that is based on the principles of hierarchical authority, job specialization and formalized rules. As a form of organization, bureaucracy is the most efficient means of getting people to work together on tasks of great magnitude and complexity. At present, bureaucrats are known in different names like permanent executive, non-political executive, civil servants, public servants, officialdom, departmental and government. All state bureaucracies are someway organized based on a definite purpose or functions. This is achieving through the construction of departments, ministries and agencies charged with responsibility for particular policy areas like education, defence, and agriculture. The number of such departments and agencies varies over time and from state to state. In the bureaucratic system, the works of the department or organization are divided among the employees in such a way that each employee has only a certain part of the work to perform. In this way, the employee repeatedly performs certain job

and becomes efficient at it. In every bureaucracy, there is a hierarchy or chain of command, where those at higher levels supervise officials at lower levels as seen below.

a) Bureaucracy Represents a Rational Form of Organization

The management of the organization is based upon written documents or files since nothing concerning the office is private, every transaction, decision, and order is recorded which help in efficient decision making in future. Management follows a set of rules, which are made known to all employees of the organization. Rules are equally applicable to everyone and they prevent any type of arbitrariness. Salaries are fixed for employees and there is a provision for pension, Provident Fund to take care of the employee when he retires from service. The employee must treat all clients equally and decisions are taken on strict evidence. The officials are expected to carry out their duties without allowing themselves to be influenced by their personal likes and dislikes. Rousseau in his opinion thought that in a successful state, citizens prioritize their public lives over their private lives and derive happiness from their participation in the state as such he said ''*In a country that is truly free, the citizens do everything with their own arms and nothing by means of money, so far from paying to be exempted from their duties, they would even pay for the privilege of fulfilling them themselves*''[131] He further argues that, when citizens stop prioritizing their public service as members of the sovereign over their own personal wealth for instance, by preferring to pay mercenaries rather than fight in wars personally the state declines. Bureaucracy serves all political parties in power without being biased. It has only committed to work and duty and not to participate in any Party ideology.

The main function of bureaucracy in any part of the world is to implement the policies of the government with full commitment and devotion. Specifically, Rousseau clarifies, the people's meetings also serve to remind the government's magistrates that they are employees of the people after all; this is why government workers are now called civil servants. Because the sovereign represents the general will and the government is merely hired to enforce this will, whenever the people meet, the general will is being renegotiated, so while the state's legitimacy as a whole is affirmed, the government's legitimacy as an agent of the general will is temporarily suspended.

> *The moment the people is legitimately assembled as a sovereign body, the jurisdiction of the government wholly lapses, the executive power is suspended, and the person of the meanest citizen is as sacred and inviolable as that of the*

[131] ROUSSEAU Jean Jacques, *The Social Contract*, p. 48.

> *first magistrate; for in the presence of the person represented, representatives no longer exist.*[132]

The basic idea behind the formation of bureaucratic structures is to provide 'permanent' government in the sense that the bureaucrats kept running the system of the government for the larger benefit of people as they are civil servants. Political executive in the form of politicians could come and go but the bureaucrats stayed on to look after the working of the governments. Therefore, their job has never been formulation of policy; they do help political leadership in policymaking but never make policies themselves. Since bureaucrats are not elected representatives, therefore, they cannot be expected to know the public aspirations and sentiments. Thus, if they happen to perform the policy-making function, they are very likely to fail as they are not programmed and trained for it of recognition of seniority.

b) Administrative Bureaucracy is practically indispensable

Without bureaucracy no administration can be run properly and efficiently, even the ordinary management of administration is not possible. Why bureaucracy is completely indispensable is the decisive reason for the advance of bureaucratic organization has always been a purely technical superiority over any other form of organization. According to Rousseau bureaucracy is an important tool for the administration of state and without it, it is very difficult for a state to survive. He further argued that, this indispensable give are given to the prince or magistrate by the sovereign when instituting a movement so as to give life and movement to the body politics. As such he said.

> *As the citizens, by the social contract, are all equal, all can prescribe what all should do, but no one has a right to demand that another shall do what he does not do himself. It is strictly this right, which is indispensable for giving the body politic life and movement that the Sovereign, in instituting the government, confers upon the prince* [133]

The fully developed bureaucratic apparatus compares with the non-mechanical modes of production. In bureaucracy office is arranged or ordered hierarchically like a pyramid. That is, officers hold office according to their rank. All the officers are subject to the higher authority. Bureaucratic system is characterized by impersonal and written rules. The entire administration is run by impersonal authority and the authority is vested in rules. In other words, in bureaucratic system, human appeal has no importance. Laws and rules conduct the administration as such; Rousseau was of the opinion that since the government is not created

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[132] ROUSSEAU Jean Jacques, *The Social Contract*, p. 47
[133] *Ibid*., p. 50

through a contract with the sovereign, it involves two parts: first, the sovereign passes a law establishing government and second, it names the magistrates who will run the government. This second stage is a particular act, not a general one because it applies to specific people, and so it constitutes a function of government. But this means that it requires the sovereign to act as a government, which appears to be contradictory but assures that this is completely possible just as the parliament can momentarily raise a specific political issue and discuss it as a subcommittee of itself, the sovereign can temporarily become its own democratic government to appoint magistrates, before then going back to being the sovereign. All the decisions are taken on the basis of rules and their methodical application.

c) The Officials are recruited strictly on the Basis of Proven Efficiency and Potential Competence.

Finally, Rousseau argued that bureaucracy should have an elective system of appointment like the elective aristocracy, in which the people choose government executives either randomly, in a small society or for positions that everyone is capable of doing, or because of their virtues, in all other cases. Because this both centralizes power enough to be effective and ensures that people charged with government authority are up to the job

> *But here magistracy is confined to a few, who become such only by election. By this means uprightness, understanding, experience and all other claims to pre-eminence and public esteem become so many further guarantees of wise government.* [134]

Rousseau considers elective aristocracy the best way to organize a government. Officials are given specialist training and for the purpose of recruitment, qualifications are fixed of course there may be provision for relaxation. This affirms what Rousseau said, "*it is the best and most natural arrangement that the wisest should govern the many, when it is assured that they will govern for its profit, and not for their own*"[135] Each official, in bureaucracy, has special or demarcated task. That is, there is clear division of work and each official will have to strictly observe it. The tasks are so demarcated that it involves full time employment as such Rousseau prefer this system which is in reflection with the system of aristocracy government and as such he said,

> *if this form of government carries with it a certain inequality of fortune, this is justifiable in order that as a rule the administration of public affairs may be entrusted to those who are most able to give them their whole time, but not, as*

[134] ROUSSEAU Jean Jacques, *The Social Contract*, p. 34.
[135] *Ibid.,* p. 35.

> *Aristotle maintains, in order that the rich may always be put first. On the contrary, it is of importance that an opposite choice should occasionally teach the people that the deserts of men offer claims to pre-eminence more important than those of riches.* [136]

Separation of officials from ownership of the means of administration, it means that the officials will simply conduct the administration and they cannot claim the ownership of the means of administration. Officials who perform their duties competently will have security in services salaries and promotion. In other words, in bureaucracy efficiency, merit and honesty are duly rewarded. There is also the scope of recognition of seniority. That is respect the other of hierarchy

In bureaucracy unlike aristocracy a small group of magistrates work together to determine how the laws will be implemented. Although Rousseau does not specify how they should divide this power, it seems that his picture of aristocracy is similar to modern administrations in which a cabinet of ministers takes charge of implementing the law. Of course, as Rousseau emphasizes here, these aristocrats have to be competent, which is why he thinks they should be elected. But he actually means that they should be appointed, or elected by the government itself, rather than elected by all the people. And it should be remembered that, in defending an aristocratic government, Rousseau is not defending an aristocratic state in which a network of nobility and oligarchs run the government.

4.2. THE UNIVERSAL STATE INSTITUTIONS

A question of a legal institution is question that has been studied and debated by philosophers of law, sociologists, and others. Sometimes legally recognized relationships and rights are described as legal institutions, such as the institution of marriage, or the institution of private property. This way of speaking acknowledges that certain legal relationships have become so enmeshed in the structure of society that they are part of its foundation, like democracy. In this sense, social practices can become institutionalized if they are almost universally accepted and followed. We can also think of institutions as similar to traditions, and thus speak of the institution of marking a new court year by a ceremonial procession of judges. In this regard, however, we will draw on the related word, institute, to help us in defining legal institutions. An institute is an organization, and therefore a legal institution is considered an organization connected with the law.

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[136] ROUSSEAU Jean Jacques, *The Social Contract*, p.36

In order for the state to maintain stability and wellbeing within its domains, it requires judicial legal system, military and religion. Although there exist many states institutions such as legislative, economic, financial, administrative, educational, and audit institutions that, together with the institutions that maintain social safety and stability, but we are going to look at the first three mention institution from above because those are the universal state institutions. States institutions are the various organs that constitute the smooth function of the state activities. These three state institutions are those that curve man to abide by the laws and respect of the rights of other members of the state. Legally, for the fear of being judge and send to prison for the violation of right of other citizen of the state and law of the state, we are bound to respect if not per say but for the consequence. Meanwhile for the sake of fear for military punishment we are law abiding and respect order and for the fear of divine justice, we are bound to succumb to religion and respect of natural right. This reflect Rousseau's view when he said, ''*it is in order that we may not fall victims to an assassin that we consent to die if we ourselves turn assassins*''[137] this implies that for us not to be killed by another person we should be kill if we kill another person. In this context we are going to look at this from it universal nature. There exist three universal forms of state institutions as seen below.

a) Legal System as a State Institution

In this way organizations that are involved with making or administering law or adjudicating disputes over legal issues will be called legal institutions. Another way of putting it is that legal institutions form part of the framework of the state. They are distinct organizations, but they carry out complementary functions prescribed by law. This is the institutional structure of the law we will examine. A constitution serves to create the legal institutions of a state among other purposes, such as recognizing basic rights and obligations. Most constitutions establish legislative institutions such as Parliament to make law, executive bodies such as Cabinet to administer law, and judicial institutions courts and tribunals to adjudicate legal disputes. Rousseau explains that sometimes a special magistrate called a tribunate is necessary to balance power among the sovereign, the government, and the people. It is neither legislative nor executive in fact, it can do nothing at all, but it has power because it can prevent anything from being done.

> *When an exact proportion cannot be established between the constituent parts of the State, or when causes that cannot be removed continually alter the relation of one part to another, recourse is had to the institution of a peculiar*

[137] ROUSSEAU Jean Jacques, *The Social Contract*, p. 16

> *magistracy that enters into no corporate unity with the rest. This restores to each term its right relation to the others, and provides a link or middle term between either prince and people, or prince and Sovereign, or, if necessary, both at once. This body, which I shall call the tribunate* [138]

While it defends a good constitution, the tribunate cannot grow too powerful, lest it overthrow everything by taking over the role of the executive power. According to Rousseau, this is what ultimately happened in Rome, and to prevent it from happening, Rousseau suggests that the tribunate only be convened during certain periods of time. This is because when it takes the duty of the executive it or jeopardise with the law that it need to protect, it will lead to tyranny as such he said "*It degenerates into tyranny when it usurps the executive power, which it should confine itself to restraining and when it tries to dispense with the laws, which it should confine itself to protecting*"[139] Here, Rousseau was driving at the necessity of separation of power so as to weaken the spirit of dictatorship and tyranny among rulers. Separation of powers is the dividing of legal functions between different institutions which help to prevent the accumulation of all legal authority in a single institution or person, with the aim of preventing dictator. The names of these legal institutions vary from country to country above we used the word branches of government to describe them in functional terms.

As the supreme law of a state, a constitution is expected to be obeyed by members of all legal institutions, including elected leaders. It is the task of judicial institutions to decide disputes over what the constitution and other laws require, even if this means concluding that state officials have acted unlawfully. Rousseau use Rome for inspiration, by making it known that, the tribunate he is describing here is what would now be known as a court system, which is the one ingredient that modern day readers might have noticed seems to be missing from Rousseau's depiction of the separation of powers. Essentially, the tribunate or court's purpose is to stop the sovereign from passing laws that do not really advance the general will and prevent the government from implementing laws incorrectly or growing corrupt. In this sense, for Rousseau, the tribunate's purpose is purely to serve as a check on the other branches of government. This is what is known as the principle of the rule of law; according to it, nobody is free to ignore the law, especially the constitution. If we focus on the structure of judicial institutions, we find out that they are usually organized hierarchically according to different levels of authority. Higher courts in a hierarchy can overrule reverse or overturn the decisions of lower ones. This form of organization recognizes two realities: the possibilities of error and

[138] ROUSSEAU Jean Jacques, *The Social Contract*, p. 63.
[139] *Idem.*

inconsistency among judges. A single court for all people in a state is only feasible in the smallest of states; most have multiple levels of courts and many judges. Judges are human and may make errors. Also, as we will see, most laws may be interpreted in different ways by different judges. A hierarchy of courts allows people to appeal ask for correction of error decisions they think are wrong to a higher authority and permits higher courts to resolve differences of interpretation among lower courts in the hierarchy. Errors may thus be corrected and consistency ensured.

b) Military as a State Institution

From time immemorial no civil state has ever exist without the forces of law and order or the military. Rousseau speaks highly of military institution with reference to the ancient comitia of Rome. This has an impact to the modern day's society in which it is very impossible for a state to exist without military institution. Military institution is the establishment of the state that oversees the armed services. Rousseau explain here that after the foundation of Rome through their military, the rising republic, that is to say, the army of the founder, composed of Albans, Sabines and foreigners, was divided into three classes; which, from that division, took the name of tribes. These are fundamental to the modern days republican army which is often divided in to three, that is, its consists of Land Army, Air Force, and the Marines as it is the case in Cameroon in which militaries and divided in into three group, that is the police, gendarme and the army.

The military institution is unarguably the most important state institution, not only because they have the mandate to protect the territorial integrity of the state but also its internal cohesion. A military is an organization authorized by its greater society to use coercive instruments, including use of weapons, in defending the motherland by combating actual or perceived threats. The physicality nature of the military differentiates it from other forms of official security organizations in a state. In addition, the terms armed forces, defence, security, arms, war, soldiers are important in understanding the nature of the military. The key functions of the military are to ensure the peace and security of the state. Rousseau speaks with reality to the modern state recruitment of army, universal principle of non-recruitment of minors into military work. He said servius to carried recruitment to this military institution, he distinguished between the young and the old, that is to say, those who were obliged to bear arms, from those who were exempted from it on account of their age, a distinction which gave more frequent rise to the repetition of the census or enumeration of them than even the shifting

of property. "*He distinguished young and old, that is, those who were under an obligation to bear arms and those whose age gave them legal exemption*"[140]. He required their assembly to be made on the Campus Martius, where all those who were of age for the service were to appear under arms as he said, "*the assembly should be held in the Campus Martius, and that all who were of age to serve should come there armed*"[141]

The reason, why he did not pursue the same distinction of age in the last class was that the populace of which it was composed were not permitted to have the honour of bearing arms in the service of their country. It was necessary to be house-keepers, in order to attain the privilege of defending themselves. There is not one private sentinel perhaps of all those innumerable troops that make so brilliant a figure in the armies of modern princes, who would not, for want of property, have been driven out with disdain from a Roman Cohort, when soldiers were the defenders of liberty as it is today in our contemporary society.

c) Religion as a State Institution

While not every individual participates in religious organizations, the institution of religion is present in every state. Societies may include more than one religious institution, but the purpose of this social institution is the same no matter what religion it is. Religion reinforces the norms and values of a society, and its members generally contribute positively to that state. Thought it may not that much link to the state but state cannot do without religion because it shapes our society morals. Rousseau previously made an analogy between religion and politics when he explained how lawgivers convince people to see themselves as a community and form a social contract. It only seems natural, then that the first nations would have been religious in nature and that political beliefs were the same as religious and moral beliefs as such he said "*At first men had no kings save the gods, and no government save theocracy*" [142] Since these values motivated people to fight wars, it becomes clear that they were the foundation of these early nations' political identities. Much has been said of religion's role in shaping nations, over the centuries, religion has helped to establish common bonds that tie communities together. As institutions, religions have helped preserve the history, language and culture of a people, and as sources of belief have served as the foundation of common values, but what of the state? How can religion contribute to strengthening the functions of government? Rousseau answers this question with the views that religion help in shaping the

[140] ROUSSEAU Jean Jacques, *The Social Contract*, p. 59.
[141] *Idem*, p. 59.
[142] *Ibid*, p. 67.

nation at it beginning. Even though it may not offer much in the course of the administration of the state but from its beginning it has much to offer "*We should not, with Warburton, conclude from this that politics and religion have among us a common object, but that, in the first periods of nations, the one is used as an instrument for the other*"[143]

Christianity was unique in separating the theological system from the political, but it still had political effects, spreading violent despotism across the globe and leading to an endless conflict of jurisdiction between states and churches in Christian nations. The clergy is simultaneously legislative and executive, meaning that Christian countries have two powers, two sovereigns. "*Wherever the clergy is a corporate body, it is master and legislator in its own country. There are thus two powers, two Sovereigns*"[144] Rousseau praises Hobbes for reuniting the church and state, but concludes that Christianity's dominant spirit would put the prince's interest before the states.

> *Of all Christian writers, the philosopher Hobbes alone has seen the evil and how to remedy it, and has dared to propose the reunion of the two heads of the eagle, and the restoration throughout of political unity, without which no State or government will ever be rightly constituted. But he should have seen that the masterful spirit of Christianity is incompatible with his system, and that the priestly interest would always be stronger than that of the State.*[145]

While all states have been founded on religion, Rousseau concludes, Christian law does not foster a robust constitution of the state. For the establishment of security, it is through the adjudication of disputes, building of social capital and spreading of civic values and for the provision of basic needs building community solidarity and providing humanitarian assistance. However, a more nuanced example of religion's role in state building is the question of legitimacy. In Western societies, legitimacy of authority is usually associated with the legality of actions. In societies in which customs play an important role, however, there are other aspects to legitimacy. David Beetham, Emeritus Professor of Politics at the University of Leeds, has identified two of these: a set of inter-generational rules regarded as fair by the community they are applied to, and an expression of consent acknowledging the new holders of power. Religion has the potential to contribute to each of these aspects of legitimacy. For example, centuries of Islamic jurisprudence have identified rules around how the legitimate transfer of power can occur. Most religions have a body of teachings that transcend generations and can be used as reference points against which the laws of the day are judged.

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[143] ROUSSEAU Jean Jacques, *The Social Contract*, p. 21.
[144] *Ibid*., p. 69.
[145] *Idem*.

Meanwhile, expressions of consent can be garnered by way of those senior clerics who hold the trust and respect of the people.

4.3. THE NATIONAL EXECUTIVE OF STATE GOVERNMENT

The executive consists of the President, the Deputy President and the Cabinet ministers at national level, and the Prime minister and Members of the Executive Councils at provincial level. It also includes government departments and civil servants. The responsibility of the Executive is to run the country and to make policy in the best interests of its citizens and in terms of the Constitution. They are empowered to implement legislation, develop and implement policy, direct and co-ordinate the work of the government departments, prepare and initiate legislation and perform other functions as called for by the Constitution or legislation. The Executives cannot pass laws, however, but may propose to the Legislature new laws and changes to existing laws.

a) The President (prince or magistrate) and its Election

While Rousseau believes that the people that is, the sovereign should make the laws and magistrates should be elected, he puzzlingly does not think the sovereign people should be the ones to elect those magistrates. But this is not as paradoxical as it seems, as he explained in, *The Social Contract,* the sovereign has to temporarily turn itself into a democratic government in order to appoint the government that will actually come to rule. This is because the sovereign cannot take particular acts, including naming specific people to office. What Rousseau is really saying then is that, elections by definition have to be conducted by an executive rather than a sovereign body, although both these bodies can be made of the same people. This means that his theory, as presented here, is fully compatible with the possibility of the people democratically voting for their own ministers. That said, he does specifically argue here that the aristocracy should choose its successors on the basis of merit, although he envisions this as a kind of committee vote rather than an appointment process.

This echoes the modern days' government in which the president at the beginning of the independent of a state is appointed by the national assembly. The National Assembly elects one of its Members to be President during the first sitting of the National Assembly. Once elected as President, the President ceases to be a Member of Parliament and must be sworn into office within stated lay days depend on the constitution of the state concern. The Head of the Constitutional Court (Chief Justice) presides over the President's election or designates another judge to do so. If the Presidency is empty, then the Chief Justice must set a date within

stated days in which the position will be filled. Although most nation in our contemporary society today are using democratic elections but Rousseau prefer election by the executive to appoint their president. Government elections can happen either by choice through voting or by lot randomly but Rousseau emphasizes that, either way, elections are the government's job not the sovereign.

> *If we bear in mind that the election of rulers is a function of government, and not of Sovereignty, we shall see why the lot is the method more natural to democracy, in which the administration is better in proportion as the number of its acts is small* [146]

In a perfect democracy, random elections would be fairer because serving as a magistrate is a heavy responsibility for which it would be unfair to single people out as he said "*In every real democracy, magistracy is not an advantage, but a burdensome charge which cannot justly be imposed on one individual rather than another"* [147] In an aristocratic government, the governing elites would choose their successors, and voting is the obvious way to ensure they are of high quality. And since there is no true democracy whose citizens are all equals, democracies should also vote for some places that call for special skills, such as military commands. In monarchies, there are no elections, since the monarch controls the whole government.

b) The Duration of the acting service president

Concerning the duration of the president Rousseau makes analysis to the reflection of Roman political system which gives us light to the present day's government which is control by the president. He argued that to best understand his political theory we need to understand from the Roman constitution of rule, as such he said "*But perhaps an account of this aspect of the Roman constitution will more forcibly illustrate all the rules I could lay down*" [148] Here he talks about dictatorship in which in his context did not mean the modern day dictatorship which is the abuse of power by an authority or president. In his context he means the sovereign dictatorship in which it is the handing of power to an individual to exercise on behalf of the people to protect existing constitution. Rousseau emphasizes that dictatorship should never last longer than one short term. "*However this important trust be conferred, it is important that its duration should be fixed at a very brief period, incapable of being ever*

[146] ROUSSEAU Jean Jacques, *The Social Contract*, p. 56.
[147] *Idem.*
[148] *Ibid.,* p. 57.

prolonged"[149] He further argues that he becomes either tyrannical or useless when there is no immediate crisis that needs resolution as such Rousseau said, "*In the crises which lead to its adoption, the State is either soon lost, or soon saved and the present need passed, the dictatorship becomes either tyrannical or idle*"[150] To him a president should be coming to power with a particular problem that he want to tackle and as such when the problem is solve he should step down and hand power to the sovereign "*The dictator had only time to provide against the need that had caused him to be chosen; he had none to think of further projects*"[151] This is because when he over stayed in power he becomes a tyrant. This is common among the African state which most of African state have long term rule which always end in the abuse of power and as such lead to power struggle.

Rousseau further that in Rome dictator or president can only hold power for six moons and at time they abandon it before the time reach and should in case, they prolong it, it can only be because they have forcefully done so not that the constitution accepts it. "*At Rome, where dictators held office for six months only, most of them abdicated before their time was up. If their term had been longer, they might well have tried to prolong it still further, as the decemvirs did when chosen for a year*"[152] In our modern days political society we have much resemblance with Rousseau's idea in every political society, we have presidential term of office. For example, in Cameroon it is seven years term renewable without any specific number. Main while in United State is 5years term of office renewable once. Appointments as acting President are not included in this period. Most importantly, the extent of the dictator's power depended on the task for which he was appointed. The dictator was thus authorized to take those measures that were necessary to achieve his task, for instance, to conduct a war, to put down sedition, or to reform the state. However, if he used his power to other ends, or if he took measures that were not necessary for his task, he violated his commission and acted without legal authorization. For example, apart from the six months term the dictator's term was primarily dependent on the task for which he was appointed, when his mission is accomplished, his power expired. Dictators were thus expected to lay down their powers forth with after completing their task, often after weeks or days, rather than months. Other examples were Cincinnatus, who after defeating the enemy resigned from his dictatorship which he had held for only fifteen days, Servilius Priscus, who did the same after eight days and Mamercus

[149] ROUSSEAU Jean Jacques, *The Social Contract*, p. 66.
[150] *Idem.*
[151] *Idem.*
[152] *Idem*.

after one day. By contrast, towards the end of the Republic, Sulla and Caesar had violated the dictatorship's temporal limitations. On this account, Sulla had obtained a dictatorship for eight years although he had given it up after four years when the civil wars had quieted down.

c) The Impeachment of the President.

As we have heard in the previous subsection that a president should be coming to power with an immediate problem in which he need to resolve, but Rousseau goes further to argue that a president should step down from power when he have finish the resolving the problem which he have been appointed to resolve as he said, "*The dictator had only time to provide against the need that had caused him to be chosen; he had none to think of further project*"[153] So with the reference with the Roman republic, the dictatorship was limited to six months or even less if the crisis passed. If a dictator refused to step down, he could be forcibly removed. This is more exigent to the present day states, because most of them use force to depose their rulers. For example the case of Zimbabwe and Guinea Conakry in which both of these countries deposes their president forcefully. Rousseau furthers that, for centuries, Roman dictators served when duty called and gave up power when their terms ended. This is a clear indication that if the president of these resent days could rule when duty called them to rule and leave power when their mandate ended they will be no more these crisis and war that we are facing today.

Rousseau argues that if the active dictator is not working well or if laws are too rigid and cannot adapt to circumstances, they can bring about the ruin of the state. As such, legal proceedings need to be sped up to deal with impending circumstances, and sometimes the sovereign needs to suspend institutions but only in the rare and obvious cases when the nation's security is severely threatened, the person in power need to go down for another person to handle the situation. Rousseau said,

> *However, none but the greatest dangers can counter-balance that of changing the public order, and the sacred power of the laws should never be arrested save when the existence of the country is at stake. In these rare and obvious cases, provision is made for the public security by a particular act entrusting it to him who is most worthy*[154]

If a stronger government is the solution, national security can be entrusted to one or two members of the government, but if the apparatus of law itself is what puts the nation in danger,

[153] ROUSSEAU Jean Jacques, *The Social Contract*, p. 66.
[154] *Ibid.,* p. 65.

then the nation needs a supreme head that will silence all the laws and temporarily suspend the sovereign authority. He clarifies that this is only reasonable in very extreme situations, when the decisiveness of action is more important than its correctness, or possibly when the sovereign and government are corrupted. That said, the sovereign still retains the ultimate power that the dictator is serving, like any other government magistrate. It is thanks to Rousseau that we have a principle of deposing a President if he has been found to have seriously violated the Constitution or the law, or has been engaged in serious misconduct or is unable to perform his/her duties. In this case, the National Assembly may remove him from the position of President. Such a resolution would have to be adopted with a two thirds majority that is two thirds of all of the Members of Parliament would have to agree to this. On the other hand, a motion of no confidence in the President that is, a proposal that she/he is not governing the country satisfactorily requires only a majority vote of over 50% of all Members by the National Assembly. If this is successful the President Deputy President and the entire Cabinet, as well as the Deputy Ministers, would have to resign.

4.4. THE PRINCIPLE OF GOVERNMENT IN A CONSTITUTION

In his book *The Social Contract,* Rousseau addresses freedom more than any other problem of political philosophy. He believed that good government must have the freedom of all its citizens as its most fundamental objective. He attempts to imagine the form of government that best affirms the individual freedom of all its citizens with certain constraints inherent to a complex modern civil society. Nonetheless, Rousseau strongly believed in the existence of certain principles of government that, if enacted, can afford the members of society a level of freedom that at least approximates the freedom enjoyed in the state of nature. Rousseau is devoted to outlining these principles and how they may be given expression in a functional modern state.

The drafting of a constitution is to create a governing document that divide, distribute, and balance governmental power. In addition, the Constitution made almost all uses of government power subject to the will of the people through their power as voters. The Framers believed that if the federal government reflected and remained true to these principles, the goals of the country progress will be accomplished. Principles of Governing in its structure and its language, is of common with most Constitution to express these basic principles of governing. These principles are popular sovereignty, limited government, separation of powers, checks and balances, judicial review, and federalism as seen below.

a) The Principle of Popular Sovereignty in Judicial Reviews

The concept that government gets its authority from the people and that ultimate political power remains with the people is known as popular sovereignty. Rousseau argues that only the sovereign's general will can create valid laws, so any will that is divided, or only the will of a part of the people, is not truly sovereign as he said, "*[...] it is the will either of the body of the people, or only of a part of it. In the first case, the will, when declared, is an act of Sovereignty and constitutes law: in the second, it is merely a particular will, or act of magistracy at the most a decree*"[155] It is true that many governments are divided among different branches, agencies, and jurisdictions, but this is a division of the rights and powers to implement the sovereign will, and not of sovereignty itself. Rousseau furthers this same principle and argues that there is no way to deduce the general will without including the interests of all the people. Notably, this does not mean that Rousseau believes decisions have to be unanimous: as he later argues, people can be wrong about what their own will demands, and so a part of the people can represent the will of the whole people and vice versa. What is important is not who votes for a decision, but whether that decision serves everyone or just a certain part of society.

In most contemporary state The Framers made popular sovereignty the foundation upon which the Constitution rests. For example in the united states of America their constitution is form base on this principle of popular sovereignty as it preamble state that, "*We the People of the United States [...] do ordain and establish this Constitution for the United States of America*"[156] By creating a republic a national government in which people exercise their sovereignty by electing others to represent them is form the Framers firmly established the people's authority. Still, much as the Framers despised the idea of an all-powerful kings or central government, they had no intention of putting unlimited power in the hands of citizens either.

> *As a number of citizens whether a minority or a majority united by a common interest who might act in a way that hurt the rights of other citizens or the interests of the nation that factions were certain to exist, so the way to deal with them was to limit their effects*. [157]

Here, Rousseau explicitly points out how joining society gives people a kind of split self, and therefore a split commitment between their own interests and the interests of their whole society. As such he claims that,

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[155] ROUSSEAU Jean Jacques, *The Social Contract*, p. 12
[156] *The American constitution*, 1787, p. 1.
[157] MADISON James, *The Federalist,* Daily Advertiser American, November 22, 1787, p. 10.

> *This formula shows us that the act of association comprises a mutual undertaking between the public and the individuals, and that each individual, in making a contract, as we may say, with himself, is bound in a double capacity; as a member of the Sovereign he is bound to the individuals, and as a member of the State to the Sovereign.* [158]

If this is confusing, self-control is a good analogy: someone can both control and be controlled by them. Society works in the same way, but Rousseau calls the controlling part the sovereign and its member's citizens and the controlled part the state and its member's subjects. When society as a whole wants to control itself in order to advance itself, it passes a law as the sovereign, and then is charged with following that law as the state. But because laws must apply to the whole community, people must put the interests of society as a whole first when they choose those laws although their personal interests do make up a small part of society's overall interests.

b) The Principle of Limited Government and federalism

In order to fulfil the general will and preserve it, the sovereign needs some system to organize and control its different parts and resources. But it cannot do anything it wants with citizens, since they retain their own individual rights, and so they cannot be forced to do anything that is not necessary to the community. ''*Every service a citizen can render the State he ought to render as soon as the Sovereign demands it but the Sovereign, for its part, cannot impose upon its subjects any fetters that are useless to the community*''[159] By its nature, the sovereign works for everyone because it includes everyone but on the flipside, this means it cannot reasonably weigh private interests against the public interest in situations not covered by existing law. By emphasizing why, the sovereign cannot trample on citizens' rights, Rousseau reaffirms the principle that individuals are actually freer in a society than they would be on their own. He also points out an inherent paradox in the nature of the sovereign: while its only purpose is to follow the general will, it can only fulfil this will by taking particular acts that would force it to break its vow of impartiality. This is why Rousseau believes a separate executive branch or government is necessary.

Rousseau reiterates that all citizens are fundamentally equal, because they all pledge themselves to the sovereign under the same conditions and must all enjoy the same rights as such he said,

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[158] ROUSSEAU Jean Jacques, *The Social Contract*, p. 8.
[159] *Ibid*., p. 14.

> *From whatever side we approach our principle, we reach the same conclusion, that the social compact sets up among the citizens an equality of such a kind, that they all bind themselves to observe the same conditions and should* therefore *all enjoy the same rights* [160]

Sovereignty, then, is not a covenant between a superior and inferior, but rather one of the bodies with each of its members. The sovereign power cannot exceed the limits of these covenants by violating citizen's rights or arbitrarily burdening them with unequal obligations. As a result, people do not lose anything by joining society; it actually improves their situation by giving them security, freedom, and inviolable rights which are preferable to living under a kind of eternal war in the state of nature.

For example, in American constitution, the list of powers is extensive, but the very act of listing permitted powers implies that any powers not listed are powers excluded. Moreover, Article I, Section 9, "*specifically denies Congress certain powers, such as the power to grant titles of nobility or pass laws that make criminal an act that was legal when it was committed*" [161] The Bill of Rights prohibits government from violating an individual's rights, such as free speech and to a jury trial. By spelling out the limits on government power, the Framers hoped to protect citizens from future abuses of power. A vigorous civil society voluntary civic and social groups that form around shared values, purposes, and interests also works to constrain government power. Civil society groups often participate in the political process, helping educate and inform the citizenry. Informed citizens make better choices when they vote, and they may be more likely to hold government accountable when it exceeds its powers or fails to respond to and address society's needs.

The final principle in the Constitution's blue print is federalism, under which the powers of government are distributed between the national government and state governments. In the formation of the state the framer struggled to find an acceptable distribution of powers. They had to ensure that the national government had sufficient power to be effective without infringing on the rights of states. For example, two clauses of the U.S. Constitution have been at the heart of the debate over how to strike the proper balance of state and national power. Article I, Section8, concludes by giving "*Congress the power to make all Laws necessary and proportional proper for carrying into Execution the fore going Powers*" [162] In addition, Article 5 of the Constitution contains "*The supremacy clause, which declares that the Constitution*

[160] ROUSSEAU Jean Jacques, *The Social Contract*, p. 15.
[161] *Constitution of United of America* 1787, article 1, section, 2.
[162] Ibid., article 1, section, 8.

together with U.S. laws passed under the Constitution government is the supreme law of the land "[163] Advocates for state sovereignty found these clauses troubling and that is why the Tenth Amendment to the Constitution addresses this issue. It states that the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

c) The Separation of Power

Concerning the separation of power, Rousseau declares that all actions have two causes a moral cause (the will or intention) and a physical cause (the strength which executes the intention). In a state these correspond to the legislative and executive powers, respectively, which must work together to enact the general will. Rousseau establishes a philosophical justification for the separation of powers between the sovereign which establishes the will of the people and the executive or government which enacts that will. The people hold the legislative power, but they cannot hold the executive power, because this encompasses particular acts that are beyond the sovereign's job of making laws.

> *The legislative power belongs to the people, and can belong to it alone. It may, on the other hand, readily be seen, […] that the executive power cannot belong to the generality as legislature or Sovereign, because it consists wholly of particular acts which fall outside the competency of the law, and consequently of the Sovereign, whose acts must always be laws*[164]

Rather, the sovereign needs a government, which first communicates between subjects and the sovereign and second implements laws and actively preserves people's freedom. The sovereign gives this government its power and has the right to limit, modify and resume this power. The government communicates between the sovereign and the subjects which are different perspectives on the people. To function well, the sovereign, government, and subjects must remain in balance Rousseau explains this in confusing mathematical terms, but his argument is simple. First, as a country's population grows, each citizen gets less say in politics, and the government needs to grow stronger to get people to obey the laws. But if governments grow too large, administrators abuse their power, so the sovereign must increase its relative power over the government to stop these abuses. Therefore, the sovereign's power over government and government's power over the people must remain in proportion with the size of the population. Rousseau concludes that the government should be very approximately

[163] *Constitution of United of America*, Article 5.
[164] ROUSSEAU Jean Jacques, *The Social Contract*, p. 27.

proportional to the square root of the number of the people, in terms of the amount of activity although this cannot actually be calculated.

The executive branch implements, or carries out, laws passed by the legislative branch. The president is also commander in chief of the nation's military. For example, the president of Cameroon, he is the head of state and the head of Arm forces. The judicial branch including the Supreme Court, exercise the judicial power. It is the function of the judicial branch to interpret and apply the law to say what the law is. The judicial branch can check the powers of the legislative and executive branches by declaring their acts unconstitutional. This is the power of judicial review. The Constitution also insulates federal judges from undue political influence by granting them lifetime terms. The Constitution balances the power of judicial review by giving the president the power to nominate and the Senate the power to approve all federal judicial nominations. Congress and presidents have, at times, been frustrated by courts exercising judicial review. Perhaps the most famous example of presidential annoyance at the Supreme Court occurred in the 1930s in America when President Franklin Delano Roosevelt had convinced Congress to pass several measures to combat the Great Depression, only to have the Court declare some of his recovery measures unconstitutional.

PART THREE

THE CONTEXTUAL REALITY OF THE APPLICATION AND CRITICAL POSITION OF ROUSSEAU'S CONCEPT OF RIGHT AND DUTY IN AFRICAN COUNTRIES

When we talk of the reality of Rousseau's conception of right and duty, we are simply putting its reflection to the African continent. It is very obvious that the social contract of Rousseau has a reflection in any society, state, nation and country that have a Constitution irrespective of the type of government which is the reality we are about to discourse. Every society is always aimed at social unity. In the realms of the light of Rousseau's social contract, African countries and its Constitution is moving hand in clove with Rousseau's concept of social contract. The social contract was a Constitutional contract on how man should unite with the states and forms a principle that can govern this union man left with the protection of right and the state owes him duty of protection. In this part three we are going to examine two chapters. That is, chapter five and six. Chapter five will base on, the reality of social contract in Africa. Here we are going to be looking at, how real the idea of Rousseau is visible to the states of Africa and chapter six will base on the post philosophical innovation of Rousseau’s thought through his critical position to the present modern days.

CHAPTER FIVE

THE REALITY OF SOCIAL CONTRACT THROUGH THE CONSTITUTIONAL SYSTEM OF GOVERNMENT IN AFRICAN CONTEMPORARY SOCIETY

The social contract theory of Rousseau is very important to and addresses the question of state formation, government and law in our African societies today. It is essential to understand the basis on which the constitutional system of government operates. This system of government connotes that the people in a particular society (state) have agreed to give up their individual rights that occurred in the state of nature, and to be bound by a collection of laws, for their own mutual benefit of living in harmony together. This collection of laws becomes the basic law of the society, and is referred to as the constitution of the particular society. People thus willingly give up their rights and will, and agree to a collective abidingness of the duties, liberties and responsibilities contained in the constitution on them all. By this, the rights of the society are pooled together, and such is then exercised by delegating them to appointed persons from within the society to act as agents for the members of the society as a whole and to do so within a framework of structures and procedures, that is, a government. Such government may not exercise any power not delegated to it, or do so in a way inconsistent with established procedures defined by the basic law which is the constitution.

5.1. THE SOCIAL CONTRACT THEORY IN ACCORDANCE WITH THE CONSTITUTIONAL SYSTEM OF GOVERNMENT IN AFRICA

The social contract is evident in the constitution making process itself in Africa by which representatives of the various communities forming a state are appointed by the community to represent them on a constitutional drafting committee or whatever is set up for such purpose as the case may be. Like the case in Cameroon in which the National Assembly, the Senate and the Constitutional Council which are in charge of drafting and applying laws. If one looks at the different ways by which constitutions are made, one sees that the process is meant to be representative of the desires, hopes and aspirations of the people and of the intent of the people to give up their individual rights under the natural state, and to agree to be governed. Thus, the constitution making process in Africa today resembles a social contract - although not the original one.

a) The Consent of a Particular Africans to be governed as Emphasizes by "The Social Contract" Theory

Cleveland unlike Rousseau argues that, "*The government is legitimate, not because it is inherently limited, but because the members of the society have agreed to be governed in a particular manner*"[165] Thus the contract that operates in constitutional democracies is that of the individuals making up the collective and the constitution by providing a framework for such individuals to be acted upon by the constitution. This is further evidenced in Africa in the preamble of most constitutions that starts with We the people [...] Cleveland argues that "*Membership approaches in essence replace the concept of natural rights with a theory of positive rights emerging out of the contract between the government and the governed*"[166] Thus membership of the society is what determines those to whom the social contract applies. They must be those categorized as members by whatever criteria are applied by the particular society. That the criteria for membership differ, is the important factor that determines who is bound by the social contract. That criterion could either be membership by Birth membership by affiliation or membership by location.

The social contract theory therefore has significant implications for individuals subject to government action who are not members and consequently not parties to the agreement. This is because only members and beneficiaries of the social contract are able to make claims against the government and are entitled to the contract's protection. Government may then act outside of the contract's constraints against individuals who are non-members. However, it should be noted that there are other bases on which certain contracts would apply to non-members. For example, a visitor in a foreign country would be under an obligation to behave according to the laws of that land and if found to have breached such laws, can be validly acted against by the officials of that land. Such visitor would be deemed to have consented to be bound by his/her action of going to a foreign country for whatever reason.

b) The Application of Social Contract Principle in the Constitutional Democracies of African Countries as a Reality

The preambles of most constitution of African countries are visible reality of Rousseau's social contract. Taking the examples of South Africa and Nigeria, the same pattern emerges.

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[165] Sarah Cleveland, '*Powers Inherent in Sovereignty*; Indians, Aliens, Territories and 19th Century Origins of Plenary Power over Foreign Affairs, Texas 2002, p. 20.
[166] *Idem.*

The Constitution of the Republic of South Africa also starts with a preamble that signifies the social contract theory. It states as follows,

> *We, the people of South Africa, recognize the injustices of our past […] believe that South Africa belongs to all who live in it, united in our diversity, we therefore, through our freely elected representatives, adopt this Constitution as the supreme law of the Republic so as to[…]* [167]

This preamble encapsulates The social contract theory, that is, it signifies not only that the people of South Africa have agreed to be bound, but also widens the membership approach to those to be bound, by including all those who live in South Africa and then specifically indicates the play of will and freedom that comes with the act of passing the Constitution into law. This same evidence of the social contract idea is found in the case of Nigeria. The Constitution of the Federal Republic of Nigeria 1999, in its preamble states that,

> *We the people of the Federal Republic of Nigeria, having firmly and solemnly resolved […] to provide for a constitution for the purpose of promoting the good government and welfare of all persons in our country […] do hereby make, enact and give to ourselves the following constitution* [168]

This preamble also indicates the presumption of the collective, freely drafting, making, enacting and agreeing to be bound by the provisions of the constitution. Most other constitutions also provide for the social contract idea of we the people, thus evidencing the idea of a people who agree freely to be bound by whatever laws and provisions are contained in the constitution to be governed by the executive for laws to be made by their appointed legislative representatives, and for the law to be interpreted and upheld by their appointed judicial representatives.

c) The Transfer of Constitution

Against the background of volition and freedom to be bound by the rules contained in the constitutions, it is important to examine how true this is in African countries where as a result of colonial rule, the legal systems of other societies have been transported, inherited, and imposed on the recipient countries. It is just the same like the state of nature in which the people who were living there inherited the laws in the civil state. This is usually achieved without due regard to the indigenous legal systems that existed prior to the contact with the colonial regimes. Could the people of these recipient states be said to have voluntarily at some stage, given up their individual rights for the collective good of the society? Can the

[167] Preamble to the Constitution of the Republic of South Africa, 1996, p. 1.
[168] Preamble to the Constitution of the Federal Republic of Nigeria, 1999, p. 1.

constitutions of these countries be said to be a product of the free will of the people? Also in the case of the appointment of representatives could one refer to all the officials of governments that exist now as valid representatives of the people?

This question is also pertinent in cases where the so-called representatives have been imposed firstly by the colonial government and then subsequently, by African governments, who continue to impose on their own people through the rigging of elections or hijacking of the processes associated with constitution making or constitution amendments. For example, the various instances of constitution amendment in Nigeria have been fraught with irregularities and malpractices that end with the process not being genuine or true to the people or to the needs and aspirations of the people. In South Africa, even though the 1996 Constitution has been hailed as one of the best and one of the most progressive constitutions in the world, the question remains to be asked, does it really reflect the hopes and aspirations of the people of South Africa? Do South Africans see it as their own? Does it really portray the will, consent and agreement on the part of the people to give up their individual rights in order to be bound by the constitution? This is the conundrum that one faces in explaining the rule of law, the legal systems and the laws in Africa, against the background of the social contract theory. This was because Rousseau was of the opinion that laws are the consent of the people and not individual will, as such he concludes that, "*When I say that the object of laws is always general, I mean that law considers subjects en masse and actions in the abstract, and never a particular person or action*"[169]

5.2. THE SOCIAL CONTRACT THEORY AND THE RECEIVED LAWS OF AFRICA AS A WEAKNESS IN AFRICA

In continuing the discussion of the social contract theory and Africa, this section will examine the possibility of drawing a nexus between the social contract theory and the situation in Africa. Can one say that the social contract theory can be applied to Africa, the way it has operated in other parts of the world, especially in the United States of America that is regarded as the seat of democracy? In the US, the social contract theory forms the basis of the US Constitution and the US Declaration of Independence. There it is evident that the rights and duties provided for in the constitution are a result of the collective rights of the people that have been freely given up in order to form a legitimate political society. Quite the opposite can be said to be the case in Africa, with its history of colonial rule. Here on the continent, the effect of the incursion of the colonial powers can be seen in the legal systems adopted by

[169] ROUSSEAU Jean Jacques, *The Social Contract*, p. 16.

almost every state. The legal systems adopted in Africa were imposed by the European colonialists and they were initially designed to meet the needs of those Europeans who came to the continent to build their colonial.

a) Lack of Willingness and Voluntary Agreement between the Colonialist and African People

Rousseau in his social contract was of the opinion that to have a legitimate laws and government it should come from the consent of the people and to impose on them by the authority. Looking at the relationship between the colonialist and the people of Africa we realize that there was no willingness, voluntary agreement or consent on the part of the indigenous people of Africa to give up their inherent rights for the purpose of being bound or for the purpose of creating a collective government using the British, French or any other legal system. Thus, the received laws did not result from any agreement between the Africans and the colonialists who conquered and invaded Africa as untenable. Ogwurike support this point and said that, "*for law to be legitimate there must be spontaneous obedience to it. It should automatically come through to the citizens to obey the law. This to him is the mainstay of the social order and coercion should not be used*"[170] Coercion only comes in at the point where law itself has failed to command obedience. He questions what causes and what those phenomena in society are which command spontaneous obedience and those that weaken it. These are different factors, and they are very relevant to the binding force of laws.

It is very important for the law to command obedience to itself not by reliance on state forces to coerce obedience to it, but by the fact of its being the accepted popular venue for ushering in the popular goal, and bringing fulfillment and satisfaction to the wants and desires of the people. This will be the case in a situation where there is a viable social contract in existence amongst the people. In the African scenario, the existence of such social contract is doubtful, due to the fact that the law is alien to the people and not a product of the will or agreement of the people.

[170] OGWURIKE Chijioke, *Concept of Law in English Speaking Africa*, New York, NOK Publishers International, 1979, p. 174.

b) Lack of the Generalize Acceptable Laws of the Countries to the Members of the Community as Binding

The legal systems that exist in English speaking African countries and even in other African countries are not always entirely a set of rules acceptable to the members of the community as binding. The legal systems in these countries are usually of a pluralist nature, comprising mostly of the laws of the colonial masters, the indigenous laws of the people, and in some extreme cases the religious laws of the people. Due to this pluralist nature of the legal systems in these countries, the allegiance of the people to the legal system becomes divided. The legal system of these English-speaking African countries recognizes not only the written law (which is a product of English common law), but also the customary law that is meant to be indigenous to the people. Such customary law, however, lost their original character by reason of the attempts by the Europeans to obliterate the laws which signified African strength and pride. The legal inheritance of English law has led to legal problems persisting, which has in turn slowed down and hindered social, economic and political advancement in most English-speaking African states. The view is often expressed that English-speaking African countries ought to have decided at the point of independence, the laws which were applicable to their unique cultures and norms, and used those, instead of continuing with the laws that existed at the time of independence that had been imposed by the colonialists. Ogwurike argues that,

> *For any law to be legal and legitimate, it must have significance to the socio-economic life of the people. Without the interconnectedness between the people, their culture, their political and economic outlook and aspirations on the one hand; and law, order and legality on the other, legal obedience will not be a dutiful submission to authority*[171]

This will mean that compulsion and force will continue to be a very strong and necessary feature of law, with resultant civil commotions and political instability. Law in Africa must be conceived of and evaluated in terms of its social purpose, function and the value system in which it is to be applied. He agrees with the postulate that the essence of law lives outside the law itself. It is to be found in the people, their ways of life, value systems and their common aspirations. The socio-economic and political life and outlook of the people should provide the base for the superstructure which is law. Right now, the law is not reaching, meeting and addressing the needs of the people as much as it should. It is presently foreign, esoteric, and

[171] OGWURIKE Chijioke, *Concept of Law in English Speaking Africa,* p. *194.*

even archaic and sometimes the obscure terminology used in the administration of the law, makes it even more remote and sometimes beyond the comprehension of the populace. The fact that greater percentages of the people feel a very minimal connection to the law means that use of the law in legal administration brings about a kind of mysticism, or apathy amongst the people which in turn hinders legal awareness. Thus, no major changes can evidently be made or sustained in political and social arrangements to modernize Africa, and to promote rapid economic, political, social development without a framework answering to the yearnings of the people. As long as legal development remains based on the colonial and neo-colonial legal systems, development and progress in Africa will be stunted.

c) Lack of the Expressive of the Social Purpose of the People in African Laws

As we have seen that received laws did not emanate from one definite contract as we know a contract to be. A contract implies an agreement between parties, with each having full control over what rights and liabilities it agrees to or at least with each party realizing the common intention of the agreement, otherwise there can be no consensus. In the situation of the received laws in Africa, the relationship between the colonialists and the indigenous Africans and or their representatives could not qualify to be one of a contract, as indigenous Africans had no control over what rights and liabilities they agreed to, it was dictated to them instead. All this receive laws runs contrary to Rousseau when he pose and conclude the question that, "*Laws are, properly speaking, only the conditions of civil association. The people, being subject to the laws, ought to be their author: the conditions of the society ought to be regulated solely by those who come together to form it"* [172]In the absence of this, the system, procedure and content of the law (particularly the received law as it now stands) call for radical change that will further the social purpose of the African people. The question may be asked as to what the alternative is. Would it be feasible to propose a return to the traditional customary law which evolved more in line with the social contract theory, where the people of each society gave their consent to be bound by their own customs? To advocate a return to the traditional/indigenous customary system of law will be impracticable, as it could not cope with the exigencies of the present time, neither with the imperatives of quick social and economic changes. The development of new phenomenon like globalization, democracy, capitalism and others that societies continue to experience, already radically changes the face of the societies.

[172] ROUSSEAU Jean Jacques, *The Social Contract,* p. 17.

Kelsens in his book, *Pure Theory of Law* was another theoretical analysis that, impacts on the exploration of the rule of law in Africa is. One of the issues which Kelsen dealt with was that of the basic norm or Grundnorm as he called it. He explained this as the fundamental norm of a society, which forms the backbone from which all other norms derive their validity. There is some degree of consensus as to the location of the grundnorm in the constitutions of societies or states, which is the center of the rule of law in Africa.

5.3. IMPLICATIONS OF ROUSSEAU'S THOUGHTS FOR THE AFRICAN SEARCH FOR DEMOCRATIC LEGITIMACY AND SUSTAINABLE DEVELOPMENT

A critical look at the democratic political configuration of Africa reveals the fact that most African nation-state has been faced with the crisis of legitimacy. This is evidential in the numerous upheavals and revolution that led to the Arab spring that began from Tunisia, through Egypt, Libya to the rest of the Arab world. At present, there still exist pockets of discontents and protest against regimes that have hitherto become unpopular with the people and yet desire to perpetuate themselves continually in power. This crisis, it suffices to state here has to do with the fact that the political authorities and powers were not derivable from the tacit consent of the people. African leaders prefer to continue in power despites their unpopularity with the people; they manipulate electoral process with impunity and in some cases, amend the constitution to remove the limit of the tenure of the presidency. This, of course, is hinged on the philosophy of wanting to die with the baton. Africa as it stands cannot be said to be developing in the pace that is considerably fast. Obi Oguejiofor seems to be thinking in the same line when he asserted that, "*Africa's problems appears all the more acute […] given the progressive changes taking place in other parts of the world, which were formally grouped with the awkward club of the 3rd world*"[173] In fact, Okunnade Bayo supported this views and say that, "*the only chunk of the globe that still looks like the old third world is sub-Saharan Africa […] outside Africa; you have to look hard to find a traditional third world country. There is virtually none in Latin America or the Middle East*"[174]. Contributing to discuss on the African condition, Maduabuchi Dukor made allusions to the fact that, *the African people are the worst example of people who have a crying need for*

[173] OBI Oguejiofor, *Philosophy and the African Predicament*, Ibadan: Hope Publication, 2001, p. 23.
[174] OKUNNNADE Bayo, *Democracy and Human Right in the context of Twenty first century Africa* in Olusegun Oladipo Ed., Remarking Africa: Challenges of the Twenty First Century. Ibadan: Hope Publication, 1998, p. 125.

development, economic progress and cultural advancement to rescue her from underdevelopment.[175] This is the most controversial issue in the present days Africa.

a) The prevailing of the tacit consent of the people in African's state

There exists a dialectical relationship between the social contract theory and democratic legitimacy, this thinking is based on the fact of the centrality of consent as the basis of the social contract. Rousseau suggested that legitimate political authority rest on a covenant of between the members of the society as such as he said, "*[…] sovereignty whose existence is in that way dependent on the conduct of it members* " [176] Again, in any democratic socio-political configuration, it is the underlining principle that confers legitimacy in line with the fact that political authority is power that is based on and derivable from the tacit consent of the people. It is in consonance with the above that Riley spoke of the social contract theory as,

> "*Positing that political legitimacy, political authority, and political obligations are derived from the consent of those who create a government and who operate it through some form of quasi-consent, such as representation, majoritarianism, or tacit consent. This implies that legitimacy and duty depend on consent, on a voluntary individual act, or rather on a collection of voluntary individual acts, and not on patriarchy, theocracy, divine right, custom, convenience, and the likes*"[177]

The process of development and democratic legitimacy again, seems to have a dialectical relationship; this is hinged on the fact of seemingly impossibility of the workability of one without the other. Democratic legitimacy which stipulates that a regime gets its powers through the tacit consent of the people who again reserves the right to withdraw same in the event of abridge of the terms of the social pact engenders public participation, good governance and accountability. The consequence of accountability, responsiveness and the pursuit of the public common good is one of the imperatives for development and by extension sustainable development. Hence, it is the crisis of legitimacy in most African modern nation states that have historically weakened their capacity to engineer the development process since independence.

b) The address of Phenomenon of Hidden Discontent in African state

Furthermore, the implication of the adoption of the Rousseau's model of the social contract theory in the search for democratic legitimacy and sustainable development can be

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[175] DUKOR Maduabuchi, *Problems of Corporative Citizenship in Africa*, Ike Odimegwu Ed., Philosophy and Africa, Amawbia: Lumos, 2006, pp. 214-215.
[176] ROUSSEAU Jean Jacques, *The social contract,* p. 9.
[177] RILEY Patrick, *Will and political legitimacy: a Critical Exposition of Social Contract Theory in Hobbes, Locke, Rousseau, Kant and Hegel*, Cambridge: Harvard University Press,1998, p. 21

seen in the fact that it will address the phenomenon of hidden discontent that is undoubtedly inherent in the African political space. The crises of legitimacy in Africa have led to hidden discontent among the people and this has led to different historic revolutions and violent conflicts between the supporters and beneficiaries of the status quo and the supporters of change. This atmosphere is without doubt no fertile ground for development as it is a truism that there can be no development in a chaotic as well as an atmosphere that is devoid of peace.

Proceeding from the discourse on the relationship between democratic legitimacy and development so far and within the matrix of the prevailing realities in Africa, it is stating the obvious that African is indeed in precarious situation. Specifically, this is evidential in the fact that the most part of the African nation-states are in constant threat of disintegration. Most studies regarding the question of development and the underdevelopment of Africa have tied the lackluster space of African development to colonialism and slavery, For I. J. Ndianefoo, "*The politics of neo-colonialism and the African leaders obsession with struggle for political domination have made Africa to continue to squirm in the nether regions of the underdeveloped world*"[178] While affirming to this above mention point, it is of the opinion that arguments linking Africa's underdevelopment with slavery and colonialism even in the 21st century no longer holds, returns untenable and is hinged on the fact that Africans have continually made themselves the subject of history rather than its object. What should rather be done with a concerted unrelenting resolve is an attempt by Africans to be object of history rather than being object of the same through institutionalization of true democratic practices in the tradition of deliberation and in line with the communalistic nature of the African people. Properly situated, it can be called "African Democracy" which will constitute a modest but a massive contribution to global discourse on governance and development.

c) The need to eradicate all forms of Political Apathy in African States

In Rousseau's contractarian thoughts, one of the major concepts that can be considered an integral part of his social contract is the concept of sovereignty. Sovereignty which is both inalienable and indivisible belongs exclusively to and resides with and in the people. What this means is that, the people in African socio-political configuration should be held in a very esteem. Put differently, Africans should realize their position in the political space, stand up to it, jettison all forms of political apathy and be alive to their responsibility of consenting to and conferring legitimacy on successive government and withdrawing same at any time they

[178] IFECHUKWU, Ndianefoo*, Philosophical Perspectives on the Politics and Crisis of Sustainable Development in Africa*, p. 116.

conceive of any regime as of having deviated from the terms of reference as well as the rules of engagement of the social pact. This ideas echoes Rousseau's views when he said,

> "*As long as a people is compelled to obey, and obeys, it does well; as soon as it can shake off the yoke, and shakes it off, it does still better; for, regaining its liberty by the same right as took it away, either it is justified in resuming it, or there was no justification for those who took it away*." [179]

In the above sense, politicians who are disinterested in the public common good which is all that is needed to place Africa in the path of sustainable development but rather interested in the private personal gain will be allowed to hold the reins of power, causing damages in the process. It is in consonance with the above that, Ifechukwu Ndianefoo asserted that,

> *Africans must take advantage of the philosophical insight that political power is contractual and as such should be employed only towards securing a just and viable society. Such philosophical insight would reverse the current obsession with political power and it's perpetuation by all means* [180]

The withdrawal of consent can be done through such democratic frameworks as the periodic elections and in critical situations, the activation of such lawful frameworks as provided for by the constitutions of modern nation-states in Africa as constitutional recall rather than having to wait for the expiration of the tenure of such a regime. "*Violation of the act by which it exists would be self-annihilation; and that which is itself nothing can create nothing*" [181] This will no doubt alter the trajectory and the tapestry of the political dramatist personals in the African political space. It will also change the thinking of African politicians which have largely being that of sitting tight in line with the philosophy of wanting to die with the baton of leadership as evidenced in some form of master -slave relationship between leaders and the led as opposed to a relationship that should be hinged on social contractual terms and basis. In the above sense, the frontiers of the inherent crisis of legitimacy be it in terms of the acquisition of political powers or sustaining same will be pushed back. This will consequently, pave way for the institutionalization of true democracy as well as legitimate democratic regimes in Africa that are in line definition and the "people centered" nature of democracy. It is only when sovereignty, which in Rousseau's contractarian thought belongs to the people in exclusive terms resides truly within the people who reserve the right to elevate a sheriff or a regime as well as sack same that the above can be achieved. Again, it is on the

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[179] ROUSSEAU Jean Jacques, *The Social Contract,* p. 2.
[180] IFECHUKWU Ndianefoo*, Philosophical Perspectives […] Crisis of Sustainable Development in Africa*, p.122.
[181] ROUSSEAU Jean Jacques, *The Social Contract*, p. 8.

above basis that the ruling class in Africa will be susceptible to accountability; they will be committed to fulfilling their part of the social contract entered into with the people for self-preservation and consequently the development of their nation-states.

5.4. THE ROLE OF CONSTITUTIONAL RIGHT PRINCIPLES IN AFRICA

The oldest constitutions in the world were framed in the 17th century and have been described as revolutionary pacts because they ushered in entirely new political systems. Between then and now, the world has seen different kinds of constitutions. Quite a number following the end of the cold war in 1989 have been described as reformatory because they aimed to improve the performance of democratic institutions including Africa. One of the core functions of any constitution is to frame the institutions of government and to determine who exercises the power and authority of the state, how they do so and for what purpose. But constitutions neither fall from the sky nor grow naturally on the vine. Instead, they are human creations and products shaped by convention, historical context, choice, and political struggle. In the democratic system, the citizen claims the right of original bearer of power this was the actual notion of Rousseau when he said, "*On this view, we at once see that it can no longer be asked whose business it is to make laws, since they are acts of the general will*" [182]. For him or her, the constitution embodies a social contract that limits the use of power by government to benefit the citizen in exchange for his or her allegiance and support. The term constitutionalism sums up this idea of limited power. In this section we are going to examine the rule of constitution in Africa.

a) The Embodying Values of Constitutions

Every constitution in African sets out principles that explain its purpose and normative foundation and guide the understanding of the constitution as a whole. Enshrining shared values, these principles can contribute to a sense of unity and enhance belief in and commitment to the constitution among citizens. Each constitution contains a set of principles that explain its purpose and normative foundation and guide the understanding of the constitution as a whole. These principles are often rooted in a country's historical experience; they may reflect values that are commonly held or respected by the people. Principles may demonstrate and embrace international and regional standards, either in an obligatory or in an aspiration sense. Other principles generally address current problems confronting the state. Some result directly from a collective experience of conflict and a desire to establish peace.

[182] ROUSSEAU Jean Jacques, *The Social Contract*, p. 16.

For example, with the restoration of democratic order in the Gambia in 2017, the West African region regained the attention of the world with renewed hope and optimism for democratic consolidation in Africa. The Economic Community of West African States' (ECOWAS) rejection of the undemocratic retention of power by former President Yahya Jammeh and its threat to apply force, coupled with Gambians' resistance, resulted in the restoration of democratic order in the country.

Generally, the principles set out in a constitution serve as a broad definition of the aims and purposes of government. Constitutional principles can reflect the ideology or identity of the state. As such, and at the most basic level, they serve as the symbolic embodiment, as well as a celebration, of a society's commitment to an idea, value, or way of life. Similarly, the articulation of principles also serves an educational purpose. They inform the public and other governmental institutions about the purposes and objectives of the constitution and the government. As the enshrinement and symbol of shared values, constitutional principles can contribute to a sense of unity. As Rousseau will affirm that, "*These they have to bring into play by means of a single motive power, and cause to act in concert"*[183] Furthermore, principles, as clear statements of the purpose and priorities of the constitution, may increase belief in and commitment to the constitution among citizens, a crucial element for its successful implementation.

b) Creating Agreement Among the People

Constitutional principles may permit agreement amid conflict by articulating shared values and aspirations at a level of generality that diverse groups can accept. Commitment to certain principles can also be a tool for breaking political deadlock and creating consensus. Constitutional principles have a great capacity to unify even a diverse society with various competing interests. That is why Rousseau said, "*for, in the first place, as each gives himself absolutely, the conditions are the same for all; and, this being so, no one has any interest in making them burdensome to others*" [184] Principles can be used to guide, and sometimes limit, negotiations. Commitment to a certain principle up front, such as a certain form of government, can effectively take an issue off the table, limiting the influence of those opposed to that principle. Once broad principles can be agreed upon, a commitment to creating a constitution that complies with them can be a motivating reassurance to different groups. One example of principles serving as this kind of commitment is found in the drafting experience

[183] ROUSSEAU Jean Jacques, *The Social Contract*, p. 6.
[184] *Idem*.

of South Africa, where the principles agreed upon served as a form of agreement or a pact among the parties involved. All parties were assured that the agreement established would not be breached the principles agreed upon became a legally binding, judicially enforceable basis for building the constitution[185]

For example, Constitutional principles played an important and unique role in the development and implementation of the South African Constitution. Early political commitments to a unitary state with common citizenship, racial and gender equality and constitutional supremacy. These principles served not only as a foundation for the Interim Constitution but also as a framework for negotiating and drafting the 1996 Constitution. Before the 1996 Constitution entered into force, the Interim Constitution required the newly constructed Constitutional Court to certify that the 1996 Constitution complied with all 34 fundamental principles. The binding commitment made to these principles exemplifies how legal safeguards can entrench certain norms in the constitutional order: the 34 Principles established by the Interim Constitution guided and perhaps more importantly limited the scope of negotiation concerning the final text of the 1996 Constitution.

As points of agreement, principles provide the foundation for creating an effective government. As discussed above, they may even set concrete limits to and guidelines for the development and enforcement of the constitution. However, providing expressions of shared values that serve as points of agreement for parties in opposition is not the only sense in which principles are meaningful. Though often broad and general, they need not be seen as mere lip service to the ideas they represent. They may also carry significance for matters arising in the future as decision makers rely on principles to determine their course of action, especially where the constitution does not provide more detailed guidance. Furthermore, clarity about a principle's meaning within the constitution often follows from decisions which acknowledge particular principles as the basis for substantive policies or powers. This clarity may, in turn, increase the influence of that principle as constitutional authority as Rousseau will say, "*BY the social compact we have given the body politic existence and life; we have now by legislation to give it movement and will*"[186] As discussed in the following sections, constitutional principles can carry a significant degree of influence as both courts and government actors rely on constitutional principles to guide their decisions.

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[185] NORA Hedling, *A Practical Guide to Constitution Building,* Sweden, Bulls Graphics, 2011, p. 6.

[186] ROUSSEAU Jean Jacques, *The Social Contract*, p. 16.

c) Informing the Meaning of the Constitution

Constitutions cannot provide detailed rules for every conflict or question that will arise in the course of their implementation. General principles are sometimes the only basis on which it is possible to understand the requirements of the constitution in a given situation. Constitutional principles guide the decisions and actions of governmental institutions and officials of the executive and legislative branches, and inform the interpretation of the constitution by members of the judiciary. Constitutions by their nature are not able to provide detailed rules for every conflict or question that will arise in their implementation. Therefore, general principles are sometimes the only basis on which to understand the demands and requirements of the constitution in a given situation. Additionally, ambiguous constitutional language or an absence of direction on a particular matter is sometimes an intentional characteristic of a constitution. Ambiguity can result from a lack of consensus among the drafters of a constitution who, rather than let the constitution-building process stall, choose to defer particularly contested questions to the decision makers implementing the constitution. When a constitution is silent on particular questions, constitutional principles may become the key source of guidance to later decision makers.

Another example of reliance on constitutional principles to answer such contested questions comes from the South African Constitutional Court, ‘‘which in its landmark decision banning the death penalty, referred to and relied on the principle of ubuntu’’[187] Ubuntu is a philosophical concept about human existence and interrelation. ‘‘*It has helped drive the nation’s political development and has been at the centre of many political debates, including those over reconciliation and labor relations*’’ [188] While the Constitution in force did not explicitly address the question of whether the death penalty amounted to an unlawful violation of fundamental rights, it did embrace the principle of ubuntu in a concluding section,4 which guided the Court’s decision on the matter: capital punishment did not accord with the principle of ubuntu and was not constitutional. The principle thus became an important instrument in understanding the meaning of the Constitution for a difficult and disputed question.

[187] *The State vs T Makwanyane and M Mchunu*, Constitutional Court of the Republic of South Africa, Case number CCT/3/94.
[188] MASINA Nomonde, Xhosa Practices of Ubuntu for South Africa, in William Zartman Ed. *Traditional Cures for Modern Conflicts: African Conflict Medicine*, London: Lynne Rienner, 2000, p. 78.

CHAPTER SIX

THE POST PHILOSOPHICAL INNOVATION OF ROUSSEAU'S THOUGHT THROUGHT HIS CRITICAL POSITION TO THE PRESENT MODERN DAYS

Rousseau has two distinct social contract theories. The first is found in his essay, *Discourse on the Origin and Foundations of Inequality Among Men*, is an account of the moral and political evolution of human beings over time, from a State of Nature to modern society. As such it contains his naturalized account of the social contract, which he sees as very problematic. The second is his normative or idealized theory of the social contract, and is meant to provide the means by which to alleviate the problems that modern society has created for us, as laid out in the Social Contract. In it he describes the historical process by which man began in a State of Nature and over time 'progressed' into civil society. According to Rousseau, the State of Nature was a peaceful and quixotic time. People lived solitary, uncomplicated lives and their few needs were easily satisfied by nature. Because of the abundance of nature and the small size of the population, competition was non-existent, and persons rarely even saw one another, much less had reason for conflict or fear. Moreover, these simple, morally pure persons were naturally endowed with the capacity for pity, and therefore were not inclined to bring harm to one another.

6.1. THE CRITICAL POSITION OF ROUSSEAU

With regard to the above mention point things could not remain the same as time passed, however, humanity faced certain changes as the overall population increased, and the means by which people could satisfy their needs had to change. People slowly began to live together in small families, and then in small communities. As Rousseau will say, "*[...] they have no other means of preserving themselves than the formation, by aggregation, of a sum of forces great enough to overcome the resistance [...] This sum of forces can arise only where several persons come together*" [189] Divisions of labor were introduced, both within and between families, and discoveries and inventions made life easier, giving rise to leisure time. Such leisure time inevitably led people to make comparisons between themselves and others, resulting in public values, leading to shame and envy, pride and contempt. Most importantly however, according to Rousseau, was the invention of private property, which constituted the pivotal moment in humanity's evolution out of a simple pure state into one characterized by

[189] ROUSSEAU Jean Jacques, *The Social Contract,* p.6.

greed, competition, vanity, inequality, and vice. For Rousseau the invention of property constitutes humanity's 'fall from grace' out of the State of Nature. Rousseau in his book *The Social Contract* had three critical points in his mind which was the replacement of might as right with agreement and consent, how to be free and live together, the ultimate of democracy.

a) The Replacement of Might as Right with Agreement and Consent

Rousseau was of the opinion that for society to live in a peaceful coexistence everything should be done through agreement and the consent of the general will of the people. Having introduced private property, initial conditions of inequality became more pronounced. Some have property and others are forced to work for them, and the development of social classes begins. Eventually, those who have property notice that it would be in their interests to create a government that would protect private property from those who do not have it but can see that they might be able to acquire it by force. So, government gets established through a contract which purports to guarantee equality and protection for all, even though its true purpose is to fossilize the very inequalities that private property has produced. In other words, the contract which claims to be in the interests of everyone equally is really in the interests of the few who have become stronger and richer as a result of the developments of private property. This is the naturalized social contract, which Rousseau views as responsible for the conflict and competition from which modern society suffers. As such he was engaging in the means of limiting it and finding a better and lasting solution to this problem and that is why he said at the end of the book one of *The Social Contract* that,

> *I shall end this chapter and this book by remarking on a fact on which the whole social system should rest: i. e. that, instead of destroying natural inequality, the fundamental compact substitutes, for such physical inequality as nature may have set up between men, an equality that is moral and legitimate, and that men, who may be unequal in strength or intelligence, become every one equal by convention and legal right*[190]

The normative social contract, argued for by Rousseau in *The Social Contract* is meant to respond to this sorry state of affairs and to remedy the social and moral ills that have been produced by the development of society. The distinction between history and justification, between the factual situation of mankind and how it ought to live together, is of the utmost importance to Rousseau. While we ought not to ignore history, nor ignore the causes of the problems we face, we must resolve those problems through our capacity to choose how we ought to live together peacefully with equity and justice because might never makes right,

[190] Jean, Jacques, Rousseau, *The Social Contract,* p. 11.

despite how often it pretends that it can. It can only be through contract and agreement that we can have legitimate right as Rousseau has said, "*[…] force creates no right, we must conclude that conventions form the basis of all legitimate authority among men*"[191].

b) How to be Free and Live Together

The Social Contract begins with the most oft-quoted line from Rousseau: "*Man is born free and everywhere he is in chains*" [192] This claim is the conceptual bridge between the descriptive work of the Second Discourse, and the prescriptive work of social contract. Humans are essentially free and were free in the State of Nature, but the progress of civilization has substituted subservience to others for that freedom through dependence, economic and social inequalities and the extent to which we judge ourselves through comparisons with others. Since a return to the State of Nature is neither feasible nor desirable, the purpose of Rousseau's politics is to restore freedom to us, thereby reconciling who we truly and essentially are with how we live together. So, this is the fundamental philosophical problem that The Social Contract seeks to address. We can do so, Rousseau maintains, by submitting our individual, particular wills to the collective or general will, created through agreement with other free and equal persons. Like Hobbes and Locke before Rousseau and in contrast to the ancient philosophers, all men are made by nature to be equals, therefore no one has a natural right to govern others, and therefore the only justified authority is the authority that is generated out of agreements or covenants. As such Rousseau conclude that, "*since no man has a natural authority over his fellow, and force creates no right, we must conclude that conventions form the basis of all legitimate authority among men*"[193]

The most basic covenant, the social pact, is the agreement to come together and form a people, a collectivity, which by definition is more than and different from a mere aggregation of individual interests and wills. This act, where individual persons become a people also echoes the ideas of Marx which he terms it, "*the real foundation of society*" [194]. Through the collective renunciation of the individual rights and freedom that one has in the State of Nature, and the transfer of these rights to the collective body, a new 'person', as it were, is formed. The sovereign is thus formed when free and equal persons come together and agree to create themselves anew as a single body, directed to the good of all considered together. So, just as individual wills are directed towards individual interests, the general will, once formed, is

[191] ROUSSEAU Jean Jacques, *The Social Contract*, p.4.
[192] *Ibid.,* p. 1.
[193] *Ibid.,* p. 4.
[194] KARL Marx, *A Contribution to the Critiques of Political Economy*, London, mascow, 1971, p. 20.

directed towards the common good, understood and agreed to collectively. Included in this version of the social contract is the idea of reciprocated duties: the sovereign is committed to the good of the individuals who constitute it and each individual is likewise committed to the good of the whole. Given this, individuals cannot be given liberty to decide whether it is in their own interests to fulfill their duties to the sovereign, while at the same time being allowed to reap the benefits of citizenship. They must be made to conform themselves to the general will, "*he will be forced to be free*"[195] as said by Rousseau.

c) The Ultimate of Democracy in every society

Base on the above ideas, Rousseau was critically driving at an extremely strong and direct form of democracy. For him one cannot transfer one's will to another to do with as he or she sees fit as one does in representative democracies. Rather, the general will depend on the coming together periodically of the entire democratic body, each and every citizen to decide collectively and with at least near unanimity how to live together, that is what laws to enact. As it is constituted only by individual wills, these private, individual wills must assemble themselves regularly if the general will is to continue. One implication of this is that the strong form of democracy which is consistent with the general will is also only possible in relatively small states. The people must be able to identify with one another and at least know who each other are. They cannot live in a large area, too spread out to come together regularly, and they cannot live in such different geographic circumstances as to be unable to be united under common laws.

Although the conditions for true democracy are stringent, they are also the only means by which we can, according to Rousseau, save ourselves, and regain the freedom to which we are naturally entitled. Rousseau's social contract theories together form a single consistent view of our moral and political situation. We are endowed with freedom and equality by nature, but our nature has been corrupted by our contingent social history. We can overcome this corruption, however, by invoking our free will to reconstitute ourselves politically, along strongly democratic principles, which is good for us, both individually and collectively.

[195] ROUSSEAU Jean Jacques, *The Social Contract,* p. 8.

6.2. THE CRITICAL INFLUENCE OF THE SOCIAL CONTRACT ON POST MODERN PHILOSOPHERS

After *The social contract* of Rousseau 1762, it influences other post philosopher to come up with their own theory, either by supporting him or by being against him. Different aspects of the variations of the social contract theory contractarianism have been brought up by some enlightenment and modern-day philosophers after Rousseau. The ideas of these post philosophers of Rousseau are related to the issue of the truth of the existence of any age-old contract evidencing consent or agreement among men in the work of Rousseau. Also, the issue as to whether the contract in the social contract theory was a once off contracting event that happened ages ago in history and of which we are still experiencing the results in modern society, or if it is a series of contracts that are renewed with time. It is said that there is no evidence of the contractarian account of the evolution of modern society, rather evidence that shows that society evolved in a non-contractarian way.

a) John Rawls in his, A Theory of Justice

Rawls after Rousseau wrote his book *A Theory of Justice* 1971 in which he describes his theory as "*justice as fairness*" [196] Because the conditions under which the principles of justice are discovered are basically fair, justice proceeds out of fairness. In such a position, behind such a veil, everyone is in the same situation, and everyone is presumed to be equally rational. Since everyone adopts the same method for choosing the basic principles for society, everyone will occupy the same standpoint: that of the disembodied, rational, universal human. This idea of Rawls echoes Rousseau's view as he was also of the opinion that a society should be formed through agreement in which everybody will be equal. Both of them have more power to general will against particular as Rawls said, "*There is an identity of interests since social cooperation makes possible a better life for all than any would have if each were to live solely by his own efforts*"[197] Therefore all who consider justice from the point of view of the original position would agree upon the same principles of justice generated out of such a thought experiment. Any one person would reach the same conclusion as any other person concerning the most basic principles that must regulate a just society.

The principles that persons in the Original Position, behind the Veil of Ignorance, would choose to regulate a society at the most basic level that is, prior even to a Constitution are called by Rawls, aptly enough, the Two Principles of Justice. These two principles determine

[196] RAWLS John, *A Theory of Justice*, United States, Balknap 1971, p. 3.
[197] *Ibid.,* p. 4.

the distribution of both civil liberties and social and economic goods. The first principle states that each person in a society is to have as much basic liberty as possible, as long as everyone is granted the same liberties. This was one of the critical standpoints of Rousseau when was enquiring how we can live together and be free. That is, there is to be as much civil liberty as possible as long as these goods are distributed equally. That is why Rawls said that*, "Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests"* [198]This would, for example, preclude a scenario under which there was a greater aggregate of civil liberties than under an alternative scenario, but under which such liberties were not distributed equally amongst citizens.

The second principle states that while social and economic inequalities can be just, they must be available to everyone equally, that is, no one is to be on principle denied access to greater economic advantage and such inequalities must be to the advantage of everyone. This means that economic inequalities are only justified when the least advantaged member of society is nonetheless better off than she would be under alternative arrangements. So, only if a rising tide truly does carry all boats upward, can economic inequalities be allowed for in a just society. The method of the original position supports this second principle, referred to as the Difference Principle, because when we are behind the veil of ignorance, and therefore do not know what our situation in society will be once the veil of ignorance is lifted, we will only accept principles that will be to our advantage even if we end up in the least advantaged position in society.

Having argued that any rational person inhabiting the original position and placing him or herself behind the veil of ignorance can discover the two principles of justice, Rawls has constructed what is perhaps the most abstract version of a social contract theory. It is highly abstract because rather than demonstrating that we would or even have signed to a contract to establish society, it instead shows us what we must be willing to accept as rational persons in order to be constrained by justice and therefore capable of living in a well ordered society as such Rawls said, "*One may think of a public conception of justice as constituting the fundamental charter of a well-ordered human association*" [199] The principles of justice are more fundamental than the social contract as it has traditionally been conceived. Rather, the principles of justice constrain that contract and set out the limits of how we can construct

[198] RAWLS John, *A Theory of Justice,* pp. 3- 4.
[199] *Ibid*., p. 5.

society in the first place. If we consider, for example, a constitution as the concrete expression of the social contract, Rawls' two principles of justice delineate what such a constitution can and cannot require of us.

b) The Influence on Karl Popper on Open Society and Poppers Ideal Society

It is evident that Popper unlike Rousseau regards living as essentially a process of problem solving. The work of Rousseau has played an important role in the advancement of Popper's philosophical works. Both of them centres their ideas on societal democracy but had different idea toward their practices. Popper therefore wants societies that are conducive to such a process. Now, since problem solving calls for the propounding of trial solutions which are then subjected to criticism and error elimination; he advocates forms of society which permit of the untrammelled assertion of differing proposals, followed by criticism, followed by genuine possibility of change in the light of criticism. Such a society, he believes, will be more effective at solving its problems and therefore more successful in achieving the aims of its members than if it was organized on any other lines.

He thus wants a society that is open and pluralistic, one within which incompatible views are expressed and conflicting aims pursued. In this society everyone should be free to propose solutions to problems, and in the same breath everyone should be allowed to criticize the proposed solutions of others, and especially those of the government, whether in prospect or application. Above all, he wants a society in which the government policies are changed in the light of criticism. By an open society, Popper refers to the degree of freedom that the members enjoy in making their contribution to the operation of the society. This, in turn, is determined by how receptive the whole social system is to inputs from individuals. The openness of society also refers to the latitude the prospective leaders are allowed to organize themselves for the purpose of offering their services to the people. Above all popper was advocating for the freedom of thought and expression gearing toward successful and peaceful state.

Popper spoke about Democracy but differ it from Rousseau's views, by democracy, Popper does not mean the rule of the majority or 'the rule of the people. He observes that "*although 'the people' may influence the actions of their rulers by the threat of dismissal, they never rule themselves in any concrete practical sense*".[200] He also believes that the election of governments by majority of the governed leads to what he calls the paradox of democracy,

[200] KARL Popper, *The Open Society and its Enemies,* London, Rout ledge, 1966, Vol. 1, p. 125.

which will be discussed later. For him, therefore, democracy does not consist in the rule of anyone in particular but in 'institutional control of those who hold office by those who do not hold office. Accordingly, his democracy should be understood as a characteristic or form of power-institutions or institutions of management, defined in terms of the institutional control over governors, including their dismissal and replacement, which is exerted by those whom they govern. This is well captured by his contention that,

> *by a democracy I do not mean something as vague as 'the rule of the people' or the 'rule of the majority, but a set of institutions among them especially general elections that is the right of the people to dismiss their government which permit public control of the rulers and the dismissal by the ruled, and which make it possible for the ruled to obtain reforms without using violence, even against the will of the rulers*[201]

From this definition, he gives the standard by which one should judge the democratic nature of a political system as the degree of adequacy allowed for the expression of the will of the people, that is, the extent to which the people are involved in decision making processes. Indeed, unlike earlier democratic theorists like Rousseau who saw the problem of democracy as being the control of government by the people, Popper sees it as being, how to give institutional expression to the will of the people, that is, how to make the will of the people explicit in real and concrete terms. He says that this can only be realized if a society creates and preserves social institutions that are free or impersonal and which can enable the ruled effectively to criticize and control their rulers and even change them if need be. Drawing from the above description of democracy the question that immediately springs to one mind is; what institutional framework can guarantee the expression of the peoples' sovereign will? Put differently, it comes to which institutions can make the open society be realized? This question thus leads us directly to the discussion of the main or necessary institutions of Popper's ideal society. Which also the genealogy of Rousseau's thought that has made popper's advancement to this level

c) Rousseau's Influence on Berlin Isaiah

After the work of Rousseau, its captivated Berlin in which he wrote his book the *Two Concept of Liberty* in 1996. He had the same ideas with Rousseau on general will but differs at some level. Berlin identified the general will in Rousseau as an expression of positive liberty and positive liberty as something which justifies brutal tyranny, the education of men as to

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[201] OYIGO Josphat, *Karl Popper's Vision of Democracy as the Ideal Society,* University of Nairobi Kenya, 1999, p. 64

their best interest over their objections, and which can authorize the sacrifice of men. Conversely, Rousseau speaks clearly that the general will is a limit on both "*civil freedom*" [202]and "*the ends of government*"[203], which consist mainly in good management of communal resources, effective legislation towards mutual interest, and the minimization of corruption intrinsic to the political society. More, for Rousseau the sacrifice of even one innocent to an oppressive government warrants immediate dissolution of that government. A main difference between Berlin's positive liberty and Rousseau's general will is the purpose of each conceptual tool. Berlin depicts a set of ideological objectives that correspond to a utopian end to political conflict while Rousseau's general will is an expression of those particular political objectives which most preserve the citizen's ability to live and prosper, despite the inherent inequality of the continuing political project. Berlin's positive freedom can legitimate any set of objectives deemed rational including violence but general will can legitimate only that which protects property and harms none of the citizens. "Even criminals (traitors against society) who might be killed for the purposes of deterrence are to be spared if practicable"[204]. Chiefs, magistrates, legislators, citizens should be able to understand their interests as individuals, the interests or particular will of the group to which they belong as priests or soldiers, and the interests of the group as a whole. Deliberation on the general will and the other wills is an activity that Rousseau expects the members of a society should engage in. Rousseau's general will is not as static or necessarily state-affirming as Berlin's presentation of it. At first glance it may seem that Berlin's claim about the forced conformity of all to the general will as an expression of positive liberty holds water. Rousseau states:

> *The Second essential rule of public economy no less important than the first. Do you wish the general will to be carried out? See to it that all particular wills take their bearings by it; and since virtue is nothing but the conformity of the particular will to the general will, to say the same thing in a word, make virtue reign*.[205]

Soon after, Rousseau continues with the mechanism of this conformity, "*It is not enough to tell the citizens, be good; they have to be taught to do so [...] and love of fatherland is most effective [...]*"[206] However, Rousseau is not the supporter of tyranny that Berlin has presented him as. The success of encouraging people to love the Fatherland is contingent on the fatherland being worthy of their love. If the fatherland did not protect civil security, "*[...] the*

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[202] ROUSSEAU Jean Jacques, *The Social Contract Other Later Political Writings*, p. 54.
[203] *Ibid.*, p.9.
[204] *Ibid*., p. 65.
[205] *Ibid*., p.13.
[206] *Ibid.,* p.15.

word fatherland could only have an odious or a ridiculous meaning for them." [207]Berlin did not offer readers a portrayal of the Rousseau's radical opposition to tyranny. Rousseau is radical because he advocates immediate dissolution of tyrannical/despotic regimes. Contrary to Berlin, Rousseau gives a full-throated defence of the protection of citizens from the injustice of despots: Private safety is so closely bound up with the public confederation that, if it were not for the concessions that have to be made to human weakness, this convention would be by right be dissolved if a single citizen in the state perish who could have been saved; if a single one were wrongfully kept in jail, and if a single lawsuit were lost through a manifest injustice: for once the fundamental conventions have been violated, it is no longer clear what right or interest could maintain the people in the social union, lest it be retained in it by sheer force, which makes for the dissolution of the civil state. This fiery condemnation of despotism and tyranny is a further illustration of why Rousseau and Berlin's Rousseau do not match up

6.3. THE RESOLUTION OF ROUSSEAU'S CRITICAL POSITION

Despite the critical position of Rousseau's views, it can be seen that if we really applied some certain principles in the states all this political uprising can be a thing of history and not a reality. As such we are going to discourse this principle in this section as, the states should be rule base on universal consent of agreement, the state should be founded upon civil religion, and laws should always be the supreme principle of administering a state.

a) The States Should Be Rule Base on Universal Consent of Agreement

In other to come to a compromised with this theory of Rousseau, he suggested some factors that man, if put into practiced the society or state and man will live in harmony, if not it will be very difficult for human race to see peace. He argues that, the only legitimate constraints on his choices, and likewise the only duties, obligations, and authorities that should be morally required to respect, are those which have willingly accepted for individual as a whole. Without consent, constraints, duties, and authority lack all legitimacy. If there is any exception to this rule, it may be within the family, where the authority of parents and the duty of children to obey arise naturally, from the total dependence of the latter on the former, not from consensual agreement. Still, even these natural obligations have an expiration date, when the child reaches maturity and becomes his or her own master. Beyond this crucial point, consent becomes a necessary condition for legitimate authority.

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[207] ROUSSEAU Jean Jacques, *The Social Contract Other Later Political Writings*, p. 17.

That is why he did not recognize any right of the strongest as he put it that, ‘‘*since no man has a natural authority over his fellow, and force creates no right, we must conclude that conventions form the basis of all legitimate authority among men*’’[208] A right is a claim that deserves respect even with the absent of force. But if you subjugate me to your will by force, not by consent, I am only obligated to respect your command as long as your powers exceed mine. If at any moment I sense I can overpower you, or simply escape, my doing so is permitted. Your command is entirely contingent upon your strength and so is not a true right.

He further rejects that people can ever legitimately forfeit their rights and be submitted to the arbitrary will of another as such our freedom makes us human and, as a matter of logic, cannot be traded away.

> *To renounce liberty is to renounce being a man, to surrender the rights of humanity and even its duties. For him who renounces everything no indemnity is possible. Such a renunciation is incompatible with man's nature; to remove all liberty from his will is to remove all morality from his acts. Finally, it is an empty and contradictory convention that sets up, on the one side, absolute authority, and, on the other, unlimited obedience* [209]

The very idea is contradictory. Hence, even losers of war retain their rights. So, for Rousseau, consent is a necessary condition for legitimate authority over human beings. Notice, though, that we have not solved our original puzzle so much as articulated it with more clarity. Human beings are free beings, over whom the exercise of legitimate authority absolutely and without exception requires consent, yet we find ourselves everywhere encumbered with constraints and duties imposed on us by coercive governments. How can these joint facts, the one moral and the other empirical, be reconciled theoretically, without denying the truth of either and without conceding the unintuitive conclusion that all our encumbrances are illegitimate? This, according to Rousseau, is the fundamental question confronting the political philosopher. As he puts it,

> *The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before* [210]

Rousseau has a ready answer to this fundamental question. He argues that a society can exercise an authority over citizens that are simultaneously legitimate and absolute, provided two conditions obtain. First, the society must have been founded upon unanimous consent,

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[208] ROUSSEAU Jean Jacques, T*he Social Contract*, p. 4.
[209] *Idem.*
[210] *Ibid*., p. 7.

with all founding members giving equal approval to the terms. Consent is necessary here because, as previously established, it alone can legitimize authority, and the consent must be unanimous because no one can grant consent on anyone else's behalf. Second, not just any pact will do but, crucially, only one that recognizes the general will to be absolutely sovereign over the society and its laws.

b) The State Should Be Founded Upon Civil Religion

In other to have a society with a peaceful coexistence Rousseau talk about the necessity of religion. He furthers that, for harmony to maintain all the citizens should be good Christian for a person with a Christian faith can never think badly of his fellow citizen. That is why he argued that,

> *For the State to be peaceable and for harmony to be maintained, all the citizens without exception would have to be good Christians; if by ill hap there should be a single self-seeker or hypocrite, a Catiline or a Cromwell, for instance, he would certainly get the better of his pious compatriots. Christian charity does not readily allow a man to think hardly of his neighbours* [211]

For this reason, for us to have a good society today we must have a Christian faith because Christian does not look up to man but to God and everything concerning God is good. He further that if we do all these things the citizen will be law abiding, the judges will not be corrupt, meanwhile the rulers will be just and there will be no wasting of state resources. In his word, he said, "*Everyone would do his duty; the people would be law abiding, the rulers just and temperate; the magistrates upright and incorruptible; the soldiers would scorn death; there would be neither vanity nor luxury*"[212]. In this regard, he concludes by offering a solution, proposing that there must be a civil profession of faith, authored by the sovereign, that defines who is a bonafide member of the body politic and who is persona non grata. Anyone not adhering to the profession can be justly banished, and anyone who professes and later reneges should be put to death for committing the gravest of sins. What, then, does Rousseau as civil theologian propose as the new creed of political faith? He answers this by saying that the civil profession of faith should be fixed by the sovereign but not as a pure religion but as an instrument of social sentiment of being a good citizen and faithful subject, as result he said,

> *There is therefore a purely civil profession of faith of which the Sovereign should fix the articles, not exactly as religious dogmas, but as social sentiments without which a man cannot be a good citizen or a faithful subject. While it can compel no one to*

[211] ROUSSEAU Jean Jacques, *The Social Contract*, p.71.
[212] *Ibid*., p.70.

> *believe them, it can banish from the State whoever does not believe them it can banish him, not for impiety, but as an anti-social being, incapable of truly loving the laws and justice, and of sacrificing, at need, his life to his duty. If anyone, after publicly recognising these dogmas, behaves as if he does not believe them, let him be punished by death: he has committed the worst of all crimes, that of lying before the law* [213].

This remarkable exposition is immediately followed by an even more remarkable claim that betrays another fundamental reason Rousseau needs something like his civil religion. Immediately following his only negative dogma, here Rousseau thinks that it is impossible to live in peace with people one believes to be damned. Leading up to his damned neighbour formulation, Rousseau seems to be searching for a positive candidate for a religious basis for society. As it turns out, Rousseau's civil religion also plays a disarming and preventative role. By identifying and rooting out intolerant religions, Rousseau aims to protect the state from the peculiar destructive power of the wrong kind of religion.

c) Laws Should Always Be the Supreme Principle of Administering a State

Rousseau writes that "*The great problem of statecraft [...] to find a form of government that puts law above man.*"[214] Why is it such a difficult problem for a nation to be ruled by law rather than men? People are corrupt, and in his advice for Corsica, Rousseau admits some people are so corrupt that governing well is not merely difficult but impossible, some people are "*incapable of being well-governed*"[215] But even among people capable of being well-governed and Rousseau believes the Corsicans are such a people, human passions and the drive of amour-propre quickly set in and can ruin even the wisest and most virtuous government and people. Even in the best of conditions human beings will be torn between their individual desires and what is best for the whole, and thus rulers should try to make the best of this basic fact of politics by devising procedural safeguards which is law.

He further asks what laws are and returns to the idea that, the general will cannot relate to any particular object without ceasing to be general, in essence he mean law is universal within a given state because it is author by the general will. Affirmatively he said, "*When I say that the object of laws is always general, I mean that law considers subjects en masse and actions in the abstract, and never a particular person or action*" [216] So, to be a law, a rule must be made by and for the people as a whole without any division whatsoever. Therefore,

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[213] ROUSSEAU Jean Jacques, *The Social Contract,* p. 72.
[214] ROUSSEAU Jean Jacques, *The Social Contract and other Later Political Writings*, Ed. Victor Gourevitch. Cambridge University Press, 2003, pp. 268-71.
[215] ROUSSEAU Jean Jacques, Political *Writings*, Ed. Frederick Watkins. New York: Thomas Nelson and Sons, 1953, p. 277.
[216] ROUSSEAU Jean Jacques, *The Social Contract*, p. 18

the law considers all subjects collectively and all actions in the abstract, rather than naming particular people. This implies here that if laws of the society are applied with the notion of everybody in mind, human race will have peace. It can create privileges but not say who gets them, or create a monarchy but not actually choose a royal family as he said,

> *Thus the law may indeed decree that there shall be privileges, but cannot confer them on anybody by name. It may set up several classes of citizens, and even lay down the qualifications for membership of these classes, but it cannot nominate such and such persons as belonging to them; it may establish a monarchical government and hereditary succession, but it cannot choose a king, or nominate a royal family. In a word, no function which has a particular object belongs to the legislative power* [217]

As such laws are laid dawn principle that does not discriminate. Because everyone collectively gives the law to themselves, nobody is above the law, the law is never unjust, and the law does not take away people's freedom, but is rather a way of realizing it. But any particular action for or against a particular individual or object is not a law, but an act of government.

Furthermore, he argues that as law is something that is applying universally it is only mean through which people can unite and the only possible way means by which a state can be governed. Rousseau defines any state which is ruled by law in this way to be a republic and argues that all legitimate government is republican as such, ''*Laws are, properly speaking, only the conditions of civil association*''[218] But Rousseau asks how the body politic makes these laws, for unfortunately it seldom knows what is good for it, even though it always wills what is good. In fact, it needs to learn to use reason to recognize what it desires, which is why it needs a lawgiver.

6.4. CRITICISM OF ROUSSEAU'S POLITICAL THEORY THE SOCIAL CONTRACT

Despite the important of the Rousseau's theory to our contemporary society, it still has some short coming. Rousseau's theory has also been criticized of being illogical, by presupposing such political consciousness in a people who are merely living in a state of nature as (the consciousness) could be possible in individuals who are already within an organized state. This criticism will be seen below.

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[217] ROUSSEAU Jean Jacques, *The Social Contract*, p. 18
[218] *Ibid*., p. 19.

a) The Too Much Power of the General Will could lead to Corruption and Mislead the State

First of all, *Rousseau* was scarcely aware of the fact that the unrestricted power of the General Will might result in absolutism in a community. Power, it is said, corrupts, and absolute power corrupts absolutely. Secondly, critics have pointed out that "*To argue that the general will is always the disinterested will of the community for the common good, and therefore, always right, is to give a phrase where we ask for solution*" [219] There is no guarantee that the will of the community will always turn out to be for the common good. The line between the General Will so defined and the will of all is not easy to draw. Man, by nature, is a selfish being; he can always think of his personal interest first before the general one. More so, Rousseau's social contract theory has been criticized of being a historical. The theory does not take into cognizance the history and chronology of events in human lives. Suffice it to say that history does not tell whole as well as its constituent parts. It was the source of all laws and determined the relationships among its members. It would be an end itself and also a means to an end.

Man, by nature, is a selfish being; he can always think of his personal interest first before the general one. So, it can never be possible for general will to be always right. This is because individuals' egoistic interests are inextricably perceived inherent in all human interactions. Man, by nature, is a selfish being. The theory's emphasis on the state as a result of the social contract makes it a historical-without evidence of records in history when such a contract and the state of nature existed. Some critics argued that his submissions are, therefore, illogical and practically dangerous, being favorable to anarchy.

b) Lack of Choice and Consent

Aside from the inability to just pick up and move to another State due to practical concerns such as a lack of transportation and money, one's ability to relocate is also circumscribed by the laws and actions of States themselves. As noted, Rousseau is of the opinion that States control who will be members of their polity and naturalization and ascription laws. Hanjian feels that such laws amount to dictating where an individual's political allegiance should be placed and "*unabashedly deny individual liberty, self-determination, and freedom of association*"[220]. Johannes Chan agrees, adding that "*To perpetuate human bondage by anchoring people in a particular territory through nationality is offensive and inhuman, and is usually accompanied by a violation of freedom of*

[219]APPADORAI Arjun, The *Substance of Politics,* London, New Delhi, 1974, p. 29.
[220] HANJIAN Clark Sovrien, *An Exploration of the Right to be Stateless*, Polyspire, Vineyard Heaven, 2003, p. 46.

movement''[221] Hanjian notes that although myriad laws exist that demarcate the boundaries of who may become a citizen, no laws exist that permit an individual to choose to become a citizen of nowhere (stateless). Thus, one has no right not to belong to the club of States according to international law even though the Universal Declaration of Human Rights asserts that "*no one may be compelled to belong to an association*"[222] This degree of compulsion by States to make individuals citizens without their direct acquiescence is a result of the State's largely unquestioned use of tacit consent.

For the purposes of this thesis, implicit consent refers to assent given to the State via indirect methods such as residency in a State and non-renunciation of citizenship acquired through birth or descent. In comparison, explicit consent requires that a member of the State directly express her assent to be a citizen as when an oath to that effect is taken at a given age, for example. Hobbes was a stalwart supporter of the doctrine of implicit consent to bestow citizenship and other social contract theorists, such as Rousseau, readily ascribed to citizenship acquisition via implicit consent as well. According to Rousseau, residence in a State acts as acquiescence to the social contract since the resident will receive benefits from the State such as property protection and the use of roads and utilities maintained by the State. In return, the resident must oblige to the State's laws and offer the State her support in times of need or else face expulsion.

That the social contract is taken as binding upon individuals born to citizens of a given State or born on the State's territory is also criticized. Adam Smith vehemently rejected the notion that descendants of people who initially agreed to a given social contract should be bound by that contract. In a similar vein to Hume's argument that one cannot simply leave a State due to practical constraints, Smith believed that ''*no inference of tacit consent could be drawn from the mere fact that the subjects remain living in the land of their birth, because they had no choice in where their birth occurred and rare prospects of resettling in a different country*''[223]

c) Rousseau's Social Contract Theory is disqualifying of being a Historical Theory

The theory does not take into consideration the history and chronology of events in human lives. As such it is to say that history does not tell us when such a social contract took

[221] CHAN Johannes, *The right to nationality as a human right*, Human right law journal 1991, p. 13.
[222] United Nations Human Rights Council (UNHRC). *Guideline field office concern statelessness,* Geneva 1998, Article 20, P. 16.
[223] KLUSMEYER Douglas, *Between Consent and Descent: Conception of Dramatic Citizenship,* Carmegie Endowment for International Peace, Washington D.C. 1996, p. 35.

place in human existence and his analysis of the state of nature is too idealistic, utopia and hence unrealizable. This confirms the foregoing assertions that.

> *From the historical point of view, the contract theory of the origin of political authority is untenable, not only because historical records are wanting as to those early times when, if at all, such compacts must have been made, but also because what historical evidence there is, from which by inference, primitive conditions may be imagined, is such as to show its impossibility.* [224]

Rousseau's theory has also been criticized of being illogical, by presupposing such political consciousness in a people who are merely living in a state of nature as the consciousness could be possible in individuals who are already within an organized state. Consequently, the theory is practically dangerous, being favourable to anarchy, because there can be no sufficient authority when the general will is contradicted by individuals' selfish will. This is because it is clearer that the state and its institutions are regarded as the result of the individual will, and therefore, they cannot have sufficient authority when they contradict this individual will This is, thus, capable of causing anarchy a situation of lawlessness. However, with all its defects, Rousseau's social contract theory remains relevant, as earlier mentioned. It is still the originator of those purposes which the state can serve and which alone can justify the state's existence.

[224]APPADORAI, Arjun, *The Substance of Politics*, p. 29.

GENERAL CONCLUSION

In summing up this work from its aim, which was to find how duty of state could uphold right of man in the state. We begin by showing what liberty and right of man is, and rebuking those rulers that violate liberty and right of man in Locke and Rousseau's time by indulging in slavery and slave trade. In order to remove man from this subjugation Rousseau, Locke as well as Hobbes find a way out by showing how liberty can be applied since it is a natural give from the state of nature according to Locke. This that liberty is a give of nature and cannot be jeopardize with. Man have natural right to liberty and this liberty right is right to life and right to own properties this was given to man and practical in the state of nature. But this liberty is not a guarantee for the freedom of one person should not tamper with another mans' own liberty. As such, if government takes over governance there will be social justice and freedom. It then goes that when there is freedom in the state then there must be respect of right of man. This is because according to Rousseau man was born free but everywhere in chains and he wanted man to have brake out from this chain and have the freedom that he was born with. Further to that Rousseau was the lover of peace which was the means by which right of man can be realize, when there is peace in any society it means there is the respect of right.

All these is because there was a misconception of right and power by the rulers who thought that power is right and use their powers abusively through force and not legitimacy and consent. Rousseau in his view reject this for he believes that, he does not see any moral act that force can bring, but its only bring disunity and breath fear in people. Although we have tried to justify how right of man can be protect and deny the fact that power is not right, we have seen that it can only be allow at length that everyone should do whatever he wants but not against the general people. Here we bring in capital punishment for the transgressions of crime by individual in the state. Capital punishment which is known as death sentence should be applied in the state for the prevention of life and right of others. Rousseau here talks about right to death but it should be done by the state and not individuals.

The question of right have long been discussed before Rousseau among the contractualist, as we focus on Rousseau, he was inspired by Hobbes and Locke which both of them had one idea concerning right. Beginning from Hobbes, he was of the opinion that man should live the state of nature and come under a union which they can give power to a ruler that will seat above the law to protect them. The right to appoint the leviathan belongs to the citizens and in no accession the ruler will take the life of any citizens. As such right to life and freedom was the mean concern of Hobbes. To John Locke, the natural rights of any man are right to life, property and liberty. In this context, liberty implies and protection from all of the

rules except the law of nature. For Locke this understanding also infers that the liberty of man is to relinquish of their properties or persons as they wish within the law. When talking about equality, Locke means equal right that every human being has his natural freedom bereft of subjection to the authority established by any man. Rousseau in his own part believe that, society could protect man if we can have a unified society not like the state of nature where man was living individually without laws and principles. With the present of modern-day state man right have prevail and human right and government have taken over as such there is order and peaceful coexistence among individual and the state. If government takes over governance there will be social justice and freedom. It then goes that when there is freedom in the state then there must be respect of right of man. Further to that Rousseau was the lover of peace which was the means by which right of man can be realize, when there is peace in any society it means there is the respect of right.

To make this right protective and Visible we need to make known to the duties of the state toward man as a means of upholding the right of man. Since the civil society has surrendered their right to fend for themselves to the state for the common good of every individual, the state in turn owes certain duties and responsibilities to the civil society. There exist a reciprocal link between man and the state, that is, the right of man to be cared for by the state as such man has as duty to respect the state and state has as duty to care for man. To uphold the right of man the state has as duty to protect man and give him the security he needs in the state, maintain law and order as well as social justice. Meanwhile man has as duty to respect the state, laws and order, vote and promote democracy. Meanwhile, Hobbes thinks that, the State along with its responsibilities persist over time as long as it has a continuous series of representatives. The identity of the State is sustained by representation, just as it is created by representation. He further that, the costs and burdens of the State's responsibilities are distributed to its subjects. Insofar as subjects are the authors of the sovereign's actions, it is legitimate to distribute the resulting costs and burdens to them. Judgments of State responsibility can be evaluated according to whether the judgments of attribution, identity, and distribution that underpin them are sound. He concludes, by showing that since state in her own part owe responsibility such as citizen owe responsibility to the state. The citizens have the responsibility to authorised the state and show also have the responsibility to share the liability with the state when need be and responsibility of representing the state.

This work had unveiled to us what right and duty are according to Rousseau and these have shown a great importance in the state. Social contract attempts to explain the formation

as well as maintenance of societies or states as a result of contract between individuals and the state. Social contract is an intellectual tool aimed at explaining necessary relationships between individual and their government. In related to social contract, individuals are united to political process by mutual consent, agreement to abide by general rules and acceptance of duties to protect oneself and one another from violence or any other type of harm. It is a theory that played crucial role in enhancing an idea that, political mandate must be derived upon the government consent therefore, it is mainly associated with political and moral theory as it is depicted by Rousseau. Much can be accredited to Rousseau for this wonderful Theory. The remarkable of this work is in the modern-day bureaucracy. Every state has a bureaucrat in which works and administration organize. Meanwhile it follows by institutions such as legal department where problems are resolves militaries who defend the state, and religion where punctuality and moral uprightness of citizens are thought. There have never and will never be a state that lack all this institutions and bureaucracy. This institutions and bureaucracy are being administrated by the national state executive. The executive consists of the President who is the head of the executive which comprise of the Deputy President and the Cabinet ministers at national level, and the Prime minister and Members of the Executive Councils at provincial level. It also includes government departments and civil servants. The responsibility of the Executive is to run the country and to make policy in the best interests of its citizens and in terms of the Constitution. They are empowered to implement legislation, develope and implement policy, direct and co-ordinate the work of the government departments, prepare and initiate legislation and perform other functions as called for by the Constitution or legislation. The Executives cannot pass laws, however, but may propose to the Legislature new laws and changes to existing laws. As such the president who is the head of executive is charge with the power of passing decree for laws are slow but decree start working as from the time it has been pronounced.

From the above assessment this work could not limit itself only to ancient days era but it has a remarkable impact that is very real in the context of African societies. When we talk of the reality of Rousseau's conception of right and duty, we are simply putting its reflection to the African continent. It is very obvious that the social contract of Rousseau has a reflection in any society, state, nation and country that have a Constitution irrespective of the type of government which is a reality about Africa. All African states has a constitution which governed them. This was the main aim of this work in which we have set to find a method where by state can be organized and rule. As such we practice democracy in Africa which

involves the participation of general will and also the transfer of constitution from colonial masters to the African as it was the case from the state of nature to the civil state.

Despite this reality, it could not have the true nature of social contract in Africa as it is the case with another Western continent. Most laws in African countries are inheritance from the colonial masters and not an agreement as stipulated by Rousseau's social contract. But if this doctrine of Rousseau can be applied judiciously it will really develop African democratic legitimacy. Where everything is done with the consent of people and legimately there is often peace. With all these principles it can only be binned and seal through constitution because it is this constitution that shows the where forward for the state. Every constitution in Africa sets out principles that explain its purpose, normative foundation and guide the understanding of the constitution as a whole. Since it set out principles other which state has to be governed and it can therefore resolve frequent African problems such as democracy and governance, diversity and rule of laws.

From the critical stand point of Rousseau, he then concludes that, whatever we have been saying we should replace might is right with agreement and consent, we should always find a way to live together in freedom and make democracy as the best government. With this theory of Rousseau, it could not limit its innovation only to man and state but it's also innovated academically as it gives birth to other philosophers who neither agreed with him or disagreed. As such he then concludes that for man to live peacefully with the state, the state should be founded on universal consent, civil religion and that laws should be the supreme director of the state.

Despite the importance, the values, the reality and the innovation of the Rousseau's social contract, some still stand contrary to his ideas for discredit his work as some argues that too much power and infallibility of the general will was wrong and that there was lack of choice, consent and means to live the state of nature to the civil state. He did not bother to know if everyone was willing and capable to move to the civil state and lastly it is disqualified as a historical Theory for it could not tell the date and time that all these things were happening. The state of nature was just an imaginary state that ideas have captivated and bring to existence.

To attain our alternative in this work, we have divided this work into three part with each part having two chapters. Part one is title, The question of right of man and duty

of the state according to the contractualists**.** Here we sake to understand what the contractualists mean by right, liberty, responsibility and duty. Our chapter one centers on, the question of liberty according to john Locke and the notion of rights according to contractualists in reflection to Rousseau. Here we sake to envisage the vision of liberty according to Locke and Rousseau's' view on the rejection of the right of the strongest, support and favors right to life as well as share the views of contractualists toward right. Meanwhile chapter two is entitle, the dialectic of duties between state and the individual and the responsibility of state and individual according to Hobbes. Here we set ford to see what is the duty of state to man, duty of man to the state, as well as the responsibility of the state and citizens according Hobbes.

Part two of this work is title the general appraisal of Rousseau's right of man and duty of the state. Here, chapter three is, the appraisal of Rousseau's right of man and human rights in the state. In achieving this appraisal, we have seen he important of making the general will inalienable, the making of properties as a first principles right, the important of Rousseau's notion of right and duty to the African contemporary society and the contemporary significant of human rights. Meanwhile chapter four of this part is base on, the general categories of modern state institutions with its duty in reflection to Rousseau. We achieve this by looking at the administrative bureaucracy with its duty, the universal state institutions, national executive of the state government and the principle of government in a constitution.

In part three we have also pause at some point after seeing the value of Rousseau's work, to look at the reality of Rousseau's work in Africa. This is part three which is title the contextual reality of the application and critical position of Rousseau's concept of right and duty in African countries. Under this part is chapter five and six in which chapter five is title the reality of social contract through the Constitutional system of government in Africa contemporary society. Under this chapter five we have talk about, the social contract theory in accordance with the constitutional system of government in Africa, the social contract theory and the receive laws of Africa as a weakness in Africa, implications of Rousseau's thought for the African search for democratic legitimacy and sustainable development, the role of constitutional right principles in Africa. Meanwhile chapter six is title, the post philosophical innovation of Rousseau's thought through his critical position to the present modern days. Under this chapter we have talk about, the critical position of Rousseau, criticism of

Rousseau's political theory the social contract, the critical influence of the social contract on poste modern philosophers and lastly, the resolution of Rousseau's critical position.

However, as it was the problem from at stake to uphold the right of man through the duty of the state. There can only be a one way out to do this. Right is visible only when duty is put in to practice. When state start performing their duty, man start enjoying his right. The question of right and duty is what is causing these entire contemporary crises in the world today. As we have seen in this work if we can really live by the principle of right and duty, human race will see peace. This is because the entire riot that we are facing today is because state has failed in it duty or man has failed in his right of duty. With all these, it is advisable that there should be reciprocal relation between right and duty for there are complimentary good, that is, one cannot go without the other. If we can go through this work it will facilitate us to have a spirit of humanity and can work to promote human right which is a universal moral ethic. Meanwhile democratic leadership will prevail and also rule by consent of the people takes over from rule by force.

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TABLE OF CONTENTS