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THE

LAW ON WITCHCRAFT, SORCERY AND ILLUMINATI IN UGANDA

A PHILOSOPHICAL DISCOURSE



Law of Witchcraft in Uganda

Isaac Christopher Lubogo

Law of Witchcraft in Uganda

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Table of Contents

Law of Witchcraft in Uganda

Dedicationvii
About the Book..... viii
Abstractxi

CHAPTER ONE

Introduction..... 1
The Concept of Witchcraft..... 2
Etymology and Definitions. 4
Roots of witchcraft. Inquisition into its incidents..... 6
History of Witchcraft 15

CHAPTER TWO

The Regulation of Witchcraft and Sorcery Practices and Beliefs.....28

CHAPTER THREE

Sorcery and Mythology.....34
Mohammedan Perspective on Witchcraft; Beliefs and Practices .. 42
Witchcraft in The Bible: Scriptures on Witchcraft and Magic 46
Practices..... 49
White Witches in Britain And Europe 50

Numerous Perspective on Witchcraft	51
Witchcraft, Feminism, and Media	53
Traditional Witchcraft	54
Witchcraft and Satanism	56
Human Sacrifice	58
Cannibaliasm	60
Historical and Religious Perspectives	63
Perspective in Africa.	68

CHAPTER FOUR

Criminalization of Witchcraft	86
Principles and Ideas Informing Decisions to Criminalize	87
Actus Reus of Witchcraft.....	89
Conduct must be Voluntary	89
Witch Murder and Mensrea	103
Reference of Witchcraft in Uganda	124
Extenuating Circumstances in The Law of Witchcraft.....	153
Is There Any Defence Available to Plead as Regards to Witch Craft	157

CHAPTER FIVE

Social Merits of Witches	183
How Witches Got Their Name and Reputation	184
Recognition of The Existence of Witchdoctors and Witchcraft.	186

Irreconcilability of Belief in Witchcraft and the Common Law .	194
The Impropriety of Traditional Witchcraft Attitudes	197
The Future of Witchcraft Beliefs	199
Witchcraft as A Domain of Science.....	202
Functionality of Witches and Wizards.	205

CHAPTER SIX

Demystifying Idiotic Myth of Witchcraft and Impact of Supernatural Power in African Communities.

207	
Witchcraft in The English Perspective.	216
The Ugandan Perspective unto Witchcraft.....	218
Second Sight.....	232
Sabbatical Tradition	233
Hypnosis.....	235

CHAPTER SEVEN

The Illuminati

244	
Illusions About the Illuminati	252
Church Miracles	253
The Big Lie of The Illuminati	253
The Eternal Oath of The Illuminati	255

BIBLIOGRAPHY

Case Law	258
Books.....	260

Isaac Christopher Lubogo

Dedication



Oh God, Even my God my High Tower, my refuge, my Redeemer, my only source of hope. This and many more is for you Oh God of the mighty universe.

About the Book



There has been a marked increase of reports on issues connected with witchcraft in the media. These stories range from exhuming dead bodies for body parts, human sacrifice where victims are killed, genitals cut off and blood drained from the body and people banished from home areas after being accused of bewitching others. One wonders whether witchcraft practices are on the increase or whether their prominence is because they are linked to criminal acts such as murder. Many reasons are advanced for practicing witchcraft search for wealth, jobs, power, love, peace and stability in relationships. Research reveals that witchcraft in historical, anthropological, religious, and mythological contexts is the alleged use of supernatural or magical powers. A witch is a practitioner of witchcraft. Historically, it was widely believed that witches were in league with the devil and used their powers to harm people and property. Particularly, since the mid-20th century, 'bad' and 'good' witchcraft are sometimes distinguished. The 'good witchcraft' often involves healing. The concept of witchcraft as harmful is normally treated as a cultural ideology, a means of explaining human misfortune by blaming it either on a supernatural entity or a known person in the community. The forever lingering mystery of Illuminati and sorcery in Uganda is hidden in the practices of societies like the church and industries like music and entertainment let alone politics, its legality is enshrined in the laws of Uganda but unearthing them is a tragedy, in this edition we seek to point out

these elements and how to work around them, their effectiveness and pangs plus how definite the spells and curses are legally especially in our laws of Uganda.

Uganda has a specific law on witchcraft. The Witchcraft Act of 1957. This law provides for the prevention of witchcraft and the punishment of persons practicing it. The practice of witchcraft is not confined to Africa. Communities worldwide practice it. For example, the United Kingdom has the Fraudulent Mediums Act of 1951 which repealed their Witchcraft Act of 1735. This English law punishes persons who fraudulently purport to act as spiritualist mediums or to exercise powers of telepathy, clairvoyance or other similar powers. In Uganda, one significant case on witchcraft is Constitutional Case No. 2 of 1997 between Salvatori Abuki, Richard Abuga and the Attorney General. The petition was successful, Constitutional court declared that: The sections interpreting witchcraft were void for being vague and ambiguous and did not meet the requirements of the Constitution. And that as a result the petitioner was not afforded a fair trial as the offence was unknown.

Following the Constitutional declaration, the exclusion order or banishment as a form of punishment was deleted from the law. And the need for an explicit definition of the offence of witchcraft was underscored. Currently, 14 years later, the Witchcraft Act still provides for punishment for practicing witchcraft ranging from imprisonment for a period not exceeding five years to life imprisonment. For example, Section 2 of the Witchcraft Act partly states: Any person who directly or indirectly threatens another with death by witchcraft or by any other supernatural means commits an

offence and is liable on conviction to imprisonment for life. The question is, what mechanisms can one use to discern or ascertain bona fide spirit worship or bona fide manufacture, supply or sale of native medicines? In light of all this, has Witchcraft Act outlived its usefulness? Further more Evidence of reputation under the law presumes that the aggrieved person knows what the practice of witchcraft involves It should be noted that most crimes linked to witchcraft such as child sacrifice are punishable under other specific laws such as the Prevention of Trafficking in Persons Act and Penal Code Act. It is all shrouded in mystery which this book seeks to unearth!

The Author R.B. Seidmen, "Witch Murder and Mens Rea A Problem of Society under Change" [1965] Mod. L. Rev. 46 at 52 writes that "... the peculiar nature of witchcraft is that it presents an overhanging, omnipresent threat. Time in such a case does not cool the passion; it inflames it."

Abstract



Use of supernatural or magical powers is a prominent phenomenon since antiquity till date. In our latter days, successful businessmen have been accused of amassing illicit wealth through the practice of witchcraft and magic, notions of blood money. Imagine such scene of a woman sitting on broom, holding it at its long handle and perhaps naked, freely floating in space with ease like directed balloon. One wonders about any possibility of mysterious healing. Like who does that or can do that? Pursuing a course in witchcraft and magic at one of the best universities on the face of the earth, another thought coming handy. Yet furthermore, discovering a world super power like America with legislation on sorcery is too much to imagine. Headlines on the media about cadavers being exhumed for body parts, human sacrifices, albinos and twins mostly being the major victims and or people being banished from their homes for witchcraft.

To commit oneself whether wholly or partially in a trade where the bravest fear and courageous menfolk and womenfolk shun off is precisely a mindboggling manifestation of human uniqueness.

Whether witchcraft is a vocation, art or science is a specimen for test and inquiry. Interest has been rather demonstrated in the manner of its practice, purpose and impact on third parties. The peace wizards and witches substitute with despondency, filling melancholy in place of ecstasy, causing dread and insecurity of being must be

alarming. Consequent incompatibility arising out of witchcraft between its practitioners and their subjects is a piece worth taking interest in. In the interest of harmonious existence and purposes of humanity, understanding the operation of witchcraft is fundamental. Periodically, masses have devoured stories of witch hunt, sorcery, and magic on one hand from the media. Perhaps, no human practice has been readily contended than witchcraft.

To assess the merits in both anecdotal and philosophical arguments in support or against witchcraft, one ought to embrace all kinds of information, empirical and non-empirical. Obviously, on no account can anyone do what he or she detests save on coercion maybe. I'm simply saying and not confirming whether this practice is palatable or not. And neither, can it be stressed enough that the sentiments about witchcraft are illegitimate. Witchcraft practices have encumbered abilities of communities to socially coexist, caused economic inequity as people lamely relate witchcraft and blood wealth, and destabilizing political corporation as often times, perpetrators have been exorcized, banished, brutally tortured by angry mobs and much more¹. I fervently discuss the origins and manifest of witchcraft on Gods earth underscoring the regulations of the same and essentially why we are doing the same.

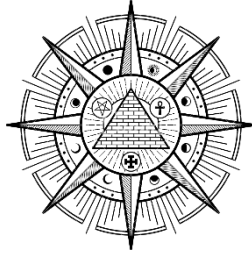
The case of *Uganda v. Zenatio Kombe*, H.Ct.Cr. Session No. 536 of 1967, H.Ct. Monthly Bulletin No. 136 of 1967. The accused killed a woman after being advised by a witch doctor that the same woman

¹ (Ashforth 2002; Comaroff & Comaroff 2004; Kohnert 2003, p. 218; van de Grijspaarde et al. 2012, p. 24).

Isaac Christopher Lubogo

had charmed his penis so that it could not function when he slept with his wife.

CHAPTER ONE



Introduction

Witchcraft is a term used to describe the malicious use of magic or other supernatural abilities. A witch is a practitioner. Where the phrase first appeared, in mediaeval and early modern Europe, suspected witches were typically women who were thought to have attacked their own community and frequently had symbiotic relationships with evil entities. It was believed that counter magic or protective magic, which may be offered by crafty people or folk healers, could thwart witches. Additionally, suspected witches were terrorised, exiled, attacked, or killed. If they were proved guilty or even only suspected of being guilty, they were frequently officially charged and punished. In the early modern era, hundreds of people were put to death as a result of European witch hunts and witch trials. Even while some folk healers were charged with witchcraft, they were a small portion of those. During and during the Age of Enlightenment, there was a gradual decline in the belief in witchcraft throughout Europe.

Witchcraft is frequently believed in by modern civilizations that hold magical and paranormal beliefs. Many non-European societies have similar beliefs and occult practices that are defined by anthropologists as witchcraft, and nations that have acquired the English language frequently refer to these practices as "witchcraft" as well. Indigenous tribes that believe in the presence of witchcraft characterise witches as the antithesis of their healers and medicine people, who are sought after for protection from witches and witchcraft, much like the cunning-folk in Europe. Some regions of Africa and Asia still practice modern witch hunting.

The witch-cult idea, which claimed that witchcraft was a remnant of a European pagan religion, rose to prominence in the early 20th century but has since been debunked.

Some Modern Pagans identify as witches and refer to their self-help, healing, and divination practices as witchcraft in current Western culture, particularly since the development of Wicca in the 1950s.

The Concept of Witchcraft

Throughout recorded history, the idea of witchcraft and the belief in its presence have survived. It has been observed in numerous civilizations around the world at various points in time and in a variety of forms, and it still plays a significant role in some of them now. Most cultures have long held the notion that some people have the power to curse others with supernatural ill fortune and harm. This could be a result of human nature, which is "to want to attribute events of spectacular good or terrible luck to agency, either human or superhuman." Historians and anthropologists view witchcraft as one theory for explaining misfortune, which has taken

many different forms. Because they thought that unexpected misfortune was typically brought on by gods, spirits, devils, or fairies, or by other people who had unintentionally cast the "evil eye," some cultures have historically feared witches much less than others.

According to Ronald Hutton, the majority of civilizations who subscribe to the idea attribute five main traits to witches and witchcraft. Traditional beliefs about witchcraft included that it involved using magic to harm or misfortune other people, that it was practised against one's own community, that it was immoral and frequently involved communion with evil beings, that its powers were acquired through initiation or inheritance, and that it could be stopped by defensive magic, persuasion, intimidation, or physical punishment of the alleged witch.

The Old Testament's prohibitions against witchcraft are the source of the modern Western understanding of witchcraft, which came to be accepted by the Church throughout the Early Modern Period. Witchcraft was widely considered to be wicked and was frequently connected to the Devil and Devil worship in the theosophical fight between good and evil. This resulted in mass witch trials and witch hunts for many years, notably in Protestant Europe, before mostly disappearing during the European Age of Enlightenment. It also concluded in deaths, torture, and scapegoating (placing blame for misfortune). Christian opinions now range from fervent belief and rejection (particularly from Christian fundamentalists) to non-belief and even acceptance in some churches. Witchcraft, also referred to as contemporary witchcraft to separate it from earlier beliefs, became the term of a subset of modern paganism beginning in the middle of

the 20th century. It is mostly used in modern witchcraft and Wiccan traditions, and it is no longer done in secret.

The dominant Western Christian viewpoint on witchcraft is by no means the only one held by society. Although the English translation of "witchcraft" hides a very significant diversity in their forms, magical beliefs, practices, and place in their society, many civilizations throughout the world still maintain widespread practices and cultural ideas that are loosely translated as "witchcraft." Many cultures were introduced to the modern Western world during the Age of Colonialism through colonialism, which was typically accompanied and frequently preceded by intense Christian missionary activity. The prevalent Western ideas of the time had an impact on these nations' beliefs about witchcraft and magic. Even today, there are still cases of witch-hunts, scapegoating, and killing or banishing alleged witches.

Many nations still harbor grave healthcare ramifications from the suspicion of modern medicine engendered by the notion that illness is the result of witchcraft. Regional witchcraft beliefs have greatly impeded the medical treatment and containment of two examples of infectious illness epidemics that are frequently fatal: HIV/AIDS and the Ebola virus disease. Leprosy, epilepsy, tuberculosis, and the prevalent severe bacterial Buruli ulcer are some severe medical disorders whose therapy is hindered in this way.

Etymology and Definitions.

The word is more than a thousand years old; Old English combined the words "witch" and "craft" to get the compound "witchcraft." Witch was originally a masculine word in Old English, when it was

sometimes spelled wicca or wycca. Folk etymologies attribute the phrase "craft of the wise" to the English terms "wit, wise, and wisdom" (Germanic root *weit-, *wait-, *wit-; Indo-European root *weid-, *woid-, *wid-).

In the English language, a Germanic language, women are typically referred to as witches. The word can be translated as bruxa in Portuguese, bruja in Spanish, sorcière in French, and strega in Italian in other languages, such as Neo-Latin languages (languages that originated from Latin). The words bruxo (Portuguese), brujo (Spanish), sorcier (French), and stregone correspondingly have masculine inflected counterparts with the same etymological root in these languages (Italian). "Wizard" or, less frequently, "warlock" are the terms that Anglophones prefer to translate into English.

Witches, according to anthropological terminology, differ from sorceresses in that they don't employ physical implements or actions to cast spells; instead, their maleficium is thought to stem from some ethereal inner quality. One may not even be aware that they are witches or may have been persuaded of their status by the advice of others. E. E. Evans-Pritchard, who pioneered this concept in a study of central African magical beliefs, cautioned that it might not be consistent with everyday English usage.

The anthropological definition of witchcraft has been difficult to apply to European witchcraft, where practitioners may equally employ (or be accused of using) physical techniques as well as individuals who genuinely tried to harm others through mind alone.

Roots of witchcraft. Inquisition into its incidents.

Concise Oxford Dictionary witchcraft is defined as “sorcery, the use of magic.” And in the Webster Dictionary a witch is defined as “one who practices the black art or magic, one regarded as possessing supernatural or magical power by compact with an evil spirit, especially with the Devil; a sorcerer or sorceress.” Witchcraft means rituals and practices that incorporate belief in magic and that are associated especially with neo pagan traditions and religions practitioners of witchcraft use the tools such as the broom (a purifying symbol), the wand, candles, crystals and the knife. It seems clear to me from the above that witchcraft is an inherent mysterious power of certain weird and peculiar people to do harm to others. Witchcraft can be defined as the intentional or unintentional causing of harm to others through the invocation of invisible powers. The shorter oxford English dictionary defines witchcraft as the practices of a witch or witches; the exercise of supernatural power supposed to be possessed by persons in league with the devil or evil spirits

Sorcery on the other hand is the belief in magical spells that harness occult forces or evil spirits to produce unnatural effects in the world. These three terms are largely synonymous for they all involve invoking spiritual powers whose effects are devastating to the other people and sometimes to the people who profess and practice them. Sorcery can be said to be an ingredient of witchcraft because witch is defined to include use of sorcery. Illuminati encompasses both witchcraft and sorcery. Witchcraft and Sorcery have existed in the African context from time immemorial. These practices in the early

historical years were always imputed on the elders who were regarded to be envious and jealous of the young people and their strong energies as so they resorted to spiritual practices as a means of showing superiority. Most regions if not all the regions in Uganda have been involved in witchcraft for time immemorial. Traditionally, witch doctors and sorcerers could mostly sacrifice animals like goats, cows and other domestic animals to pursue their agendas which included seeking for protection from the spirits, dominancy in trade activities and also appease the spirits. The concept of witchcraft is shrouded with mystery as it means different things to different people. There existed a defining point of difference between pre-colonial societies of Africa and medieval Europe with regard to witchcraft. The pre-colonial societies of Africa attributed witchcraft to intra group conflicts and competition for leadership and resources, whereas the medieval Europe attributed and understood witchcraft to be the practice of magic aimed at manipulating nature for the benefit of the practitioner or the client. In both cases, the overriding effect for witchcraft was to provide power and prestige to the practitioner. Pre-colonial African societies had the experience of witches but knew how to live with them. Witches and witchcraft were part of their everyday life and thus a reality. However, the act of criminalizing of witchcraft was a colonial invention in Africa, and therefore, was unheard of in pre-colonial African societies. The fear, hunt and criminalization of witches were introduced by European colonial rulers, as an extension of the witch hunt craze prevalent in medieval Europe.

Witchcraft, Sorcery, and other notably threatening dire evils like diabolism, illuminati which are all from the spiritual world take

many forms. These forms of witchcraft are not all considered evil. Some people use witchcraft, Black magic to ensure that there is enough rain, sunshine and other natural needs. Different continents and traditions have different names which all tend to refer to the same term witchcraft and world spirits. In Afro-Caribbean cultures, witchcraft is known as 'Santería'. In Latin America, it is called 'brujería'. In the southern United States, black magic is practiced in the form of 'voodoo or hoodoo' rituals descendant from Native American and Afro-Haitian origins. In Africa, witchcraft is generally referred to as voodoo and Juju which is understood as swearing an oath to a deity or supernatural object for protection or punishment. In India, witchcraft known as Daayan or churel is found in many villages, and fear of these occult forms frequently leads to the killings of suspected practitioners. Some regions and communities are specifically known to be believers and worshippers of witchcraft which thus becomes a prominent practice. Those who believe in witchcraft think it is the most likely cause of unfortunate happenings like, accident, lightning strikes, illness, death, impotence, drought and unproductivity. A case in point, 'Newsday Zimbabwe' reported that witchcraft may have been used in retaliation when a local magistrate judge got stuck to his crown chair and suffered a temporary blackout in a suspected case of juju as he delivered judgment against a 38-year-old man accused of raping his maid three times. In Uganda, it is alleged that the most notorious rebel who is known as Joseph Kony uses witchcraft and other spirits and that is why he has never been arrested despite the numerous raids and ambushes that have been carried out by the UPDF.

The witch doctors and their associates believe that when you sacrifice a child you get wealth. This explains why these beliefs and

practices have been rampant in Uganda as people consider them as sources of wealth. This can be evidenced by the actual murders and mysterious death of persons in Uganda, Child sacrifices in most regions in the country, Kidnapping of Children with the intention to practice witchcraft and sorcery unto them and also horrifying acts for instance extracting body parts like the Pancreas, Liver, Heart, Sexual organs and other sensitive parts of the human body from people. In 2008, a prominent business man in the names of Kato Kajubi Godfrey was arrested after the confession of a tradition practitioner known as Umar Kateregga and his wife Mariam Nabukeera where they confessed to having been paid by Kajubi to kill Joseph Kasirye. They cut off the minor's private parts and threw his torso in the Swamp. This gruesome act happened on the 27th day of October, 2008 at Kayugi Village in Masaka District. It is presumed that most business men in Kampala engage in these acts of witchcraft and sorcery to gain more wealth and stay on top of their businesses.

In regions of Uganda like Busoga, witchcraft has been prevalent though the practice is shrouded in secrecy. Witchcraft is understood and attributed by the Basoga to the use of mystical powers whose purpose is to cause fear and also other wicked commitments. This is always or usually carried out in secrecy. The rationale for this practice of witchcraft is to cause among other things fear, harm, pain and also to kill the victim. The Lusoga word for witchcraft is 'bulogo'. In this Busoga region, witchcraft is identified in mainly two forms. These are 'basezi' who are known as night dancers because they move at night to different homes dancing around the compound and also casting spells. There is also another category known as the 'balogo' who can be termed as sorcerers or sorceresses.

There is a difference in these two forms or categories of witchcraft though in most cases they are used interchangeably. The *basezi* are driven by the spirit of evil termed as 'ekitambo' with the aim of harming those around them. They practice their trade especially at home, in the compounds, and gardens of those they intend to harm or kill. 'Basezi' are said to be the major cause of sickness and ill-being in communities. They behave rather oddly in the society. For example, they walk naked at night when undertaking their evil activities, dance wildly, and scare those who move at night. They are said to walk with their heads on the ground and the legs up in the air, and are earnestly annoyed with those who identify them in the dark as 'basezi'. This may lead to the death of those who identify them. They are known to dig up corpses that have just been buried to eat them, and they use certain parts of dead bodies to mix with their medicine that they use to cause sickness upon those they hate. The 'balogo', on the other hand, are not driven by any mystical powers. These are just ill-intentioned individuals in society who do not wish to see others progress. This is because 'bulogo' is driven by hatred for someone, quarrelling and jealousy. The 'Basoga' believe that 'Bulogo' is practiced against those whom they hate. These may include people like adulterers, co-wives, thieves, step children and those who insult others rudely without sound reason. If one has a disagreement with another and he dies suddenly, or some an unfortunate experience takes place in his family, the other would automatically be called 'mulogo' being held responsible for such a misfortune. Unlike the 'basezi', who invoke mystical powers, the 'Balogo' use poisonous medicine to make others sick by putting it in food, water, clothes, bed, in the kitchen and suchlike. It is common among co-wives to make others sick by concealing their harmful medicine in the gardens where their victims will go to dig and collect

food. These kinds of activities can only be done by someone who knows the other very well. This is the very reason why upon the death of someone in Busoga or upon sudden illness experienced by someone, the most immediate person held responsible is the neighbour or close relative. This is the reason for the Kisoga saying, “*anakwita tava wala*”, meaning that he/she who will kill you does not come from far away. Some of these acts of witchcraft were also manifested on the 14th of September 2020 when a man was found with a human head at Parliament. The suspect had put the head in a box and on reaching the entrance of Parliament, he told security personnel that he was delivering a gift to the Speaker of Parliament who was by then Rt. Hon. Rebecca Kadaga who is a Musoga by tribe. When the security personnel opened the box, they found a severed head of a Juvenile. The suspect had attempted to enter Parliament while disguising as a woman wearing a dress, but his real gender was identified after the severed head was found.

Witchcraft and its related practices has also been attributed to certain churches in Uganda and Africa at large. There is stiff competition among churches for members and followers. Church leaders now resort to black magic to induce and persuade the followers. New churches are being established at the expense of the older ones because the leaders use Juju (magic) to either attract all the followers from the already established church or they just make it cease to operate through the various spirits. People’s fear of witchcraft makes them vulnerable to such an extent that they want to do away with it at all costs. In Yorubaland, in West Africa, and other places, people deserted their homes out of fear for witches. Some religious leaders and Pentecostal pastors who claim to have the ability to expel and prevent people from practicing witchcraft become increasingly

popular because people who are afraid of witchcraft flock to them to ask for their protection. These church leaders sometimes instigate or create the narrative of witchcraft or even practice witchcraft in order to get all the people afraid of witchcraft and in need of the protection of the church. Also, during the time for prayers, some of these pastors use black magic to create miracles that attract people to attend church. People want churches that perform miracles and so even the Pastors that are not gifted with the true holy spirit use that opportunity to show that they have the powers of performing miracles of healing, prosperity and other needs yet in actual sense they are using black magic. Besides healing, prosperity, the gospel and so forth, the demonstration of spiritual powers over witchcraft has seen the fast growth in Pentecostalism. This is also evidenced in the Catholic and Protestant churches which are facing a decline in membership while the Pentecostal churches are growing rapidly. There is no doubt that the Pentecostal churches derive their popularity from the claim that they can put an end to witchcraft in the community. Regardless of its association with the power of the evil, the terms and expressions of witchcraft. One observed, while visiting some of the Pentecostal churches, that many people are passive participants in those services while the preaching is done, but only become active while other issues like demon execution, praying for problems, wealth and progress take place. For some, getting to those churches is aimed at getting rich, progress and breakthrough in life. They go there in order to get rid of anything that is affecting their misfortune, witches being the chief enemy.

My rebuttable premise on the roots of witchcraft is to be found in the notion of evil and that from Genesis, evil was present and alive. We'll need a comprehensive surgery to separate Evil from the time of

creation as both, by all indications seem to have mutually existed at the same. Whether this is the case or not is a hard rebuttal. No gospel literature, in pristine terms, meticulously explained the roots and origins of evil or witchcraft. The pre-revelation days were loudly marked by express manifestations of evil, to the extent that owner of the heavens and earths was either provoked or prompted to send divinely guided messengers and prophets to different nooks and crannies of these universe.

Believers can allude, that none of these divinely inspired agents inquired into the source of evil, rather did what they ought to do. They all condemned evil and lobbied mankind to revert to their creator. Regardless of who God is to whoever, undoubtedly, God is an omnipotent originator of all kinds of creations existent. The scriptures emphasis His abundant and unwavering grace, that he endowed His beautiful earth with all fortunes in the soil, air, vast and deep-sea waters. Can it be supposed or presumed that evil too was God's creation? After creation will God then command his beloved creatures to guard against evil and warrants punishment for agents of evil? The source and origins of evil are mystic, ambiguous, and enigmatic phenomena.

The existence of witchcraft and evil is not a subject for inquiry. Being troubled about the existence of witchcraft, yet desirous of finding out the same, being at my best, bothered myself, flutily inquired into the roots of evil with a futile answer, as any of my equivalents would. For purposes of focus and particularity, evil and witchcraft, like life and oxygen are mutually exclusive, synonymous, inextricable and each manifest through or subsists in the other.

The first story I heard about Satan is that he/she was Gods angel before undertaking his present vocation. For infidelity and insolence, he/she lost the primitive purity, and glorious Excellency, and became unclean, wicked, envious, liar, and full of all wickedness. Because of the nature of angels, its certain that the banished angel cum devil came on earth with his natural abilities of understanding or power of Operation.

Before I make any further inquiry, I want to ask how many angels disobeyed God. None of the scriptures I've read say much about the numbers but it can intuitively be inferred that only one angel disobeyed his creator and this position is maintained throughout the scriptures I read. The question is if there was one angel cast from heaven, could it be that he multiplied? I mean reproduced so many and with who perhaps. As a conscious believer, it is my earnest belief that God is omnipotent and reserves all power to himself save for the angels whom are his unique creations. Following the foregone presumption, it must be the case that among all other creations, Satan is the only earthly creature with powers. So, I ask my last question. Where did the powerful people on earth get their powers from. Witches, sorcerers and cultists, where did they get their powers from? Could there be a marriage between the banished angel with humans. That's exactly my presumption.

The nature and manifestation of devil is; wisdom, cunning, deceit, power, subtility and knowledge. As to their natural power as Spirits, it's very great, if not equal to that of the Holy Angels: For, they are called Principalities and Powers². They are called, Rulers of the

² Rom. 8.38. Eph. 6.12

darkness of this world³. The Devil is full of malice against man, and frames his designs against him, chiefly to destroy his Soul.

I proffer the notion that witchcraft is a fact with rather mystic origins and has been, as still at large is in existence from pre-history throughout the medieval epoch till this date. One would be enthralled in finding that all humans impulsively relate to the existence and practice of witchcraft notwithstanding the moot on the question of reality or myth. During colonial days, imperialists were amazed at what they found, we're talking about invisible malevolence (and its remedies). White settlers in Kenya called it "supernatural," "magic," and "witchcraft" in English, and *uoi* and *uwe* in Kikamba. Though both regarded witchcraft as wrapped up in discursive violence.

History of Witchcraft

Witch-hunts supported by the Roman Catholic Inquisition began in the Late Middle Ages. In 1487, the notorious *Malleus Maleficarum* was published, inaugurating the period of witch-hunts in Early Modern Europe which would last for the following two centuries. The witch trials in Early Modern Europe became a major issue in the 17th century: persuasion and some torture was used to make people confess to a covenant with the Devil. Different methods were used in the examinations: archive records provide a rich amount of them. In this article, the Authors provide a short introduction about witchcraft, focusing on the situation in

³ Eph. 6 12 and 2.2.

Northern Italy during the period of 16th-17th century, using original sources and archive records.

Questioned whether she heals sick persons, answered yes Sir. Questioned with what kind of medicines, answered by picking betony up and washing it like salad and crushing it into a mortar to get its juice and to give it to her patients for 3, 4 and 5 days, telling them that the more they drunk it, the better it was With these words the healer Gostanza da Libbiano, tried for witchcraft in 1594, highlighted the special connection between women and medicine, which, though deeply rooted in the Indo-European culture and dating back to thousands of years ago, represents a cultural continuum that reaches up to modern times. The deep bond between women and nature also emerges clearly when we look to the cults of Mother Nature linked to fertility that were widely spread about in the Bronze Age. Goddesses such as the pre-olympian Gaia, considered the origin of all the gods and goddesses, and her sister Themis created the earth, restoring order. Furthermore, deities like Demetra, Athena, the Egyptian Isis and the Assyrian Ishtar had roles connected with fertility, with the abundance of the harvest and with human reproduction. In ancient Greece Hippocrates acknowledged the importance of popular medicine and the efficacy of the remedies used by herbalists such as, for instance, Artemisia, the queen of Caria, praised also by Strabone and Teofrasto. Nevertheless, common women could only rarely deal with medicine and it wasn't as easy for them as it was for queens: in the Athens of the fourth century A.D. women accused of practicing abortion and of teaching birth control methods were banished from society. Things went better in Rome, where Sorano from Efeso, a physician of Greek origins, wrote a book about obstetrics and gynecology for midwives,

believing that they should had a thorough knowledge of anatomy. Moreover, the works of Aspasia, a female gynecologist, were quite often quoted in the encyclopedia written by Ezio from Amida, a physician at the Byzantine court during the sixth century. In the Middle Ages, women's medicine was fully legitimized thanks to the Medical School of Salerno, where women could study and practice medicine, especially in the fields of obstetrics and gynecology. Figures such as Trotula and Francesca Romano were active in the city and were esteemed and respected by the population. With the downfall of the school in the thirteenth century, the first women doctors disappeared: most universities now tended to exclude them, letting women deal with medicine only as midwives. Folk Medicine That medical tradition, passed down to women since antiquity by the herbalists, ended up being considered a subculture in official medical circles and therefore susceptible to control and suppression. On the other hand, the coming of the Scholastica philosophy and the emergence of the universities changed the nature of scientific research, turning medicine into a profession that required a formal and well-defined education. In spite of the decline of Salerno in favor of universities such as those at Padua and Bologna, the most educated women were able to continue taking care of the sick, working with their fathers or husbands, who taught them the principles of anatomy and pharmaceuticals. As a result, a sort of women's medical hierarchy developed, having at the top women of excellent culture and education who practiced among the first families in their cities. Women of low social condition instead, operated under the general belief in the healing power of magic and worked for the poorest families, despite being often suspected of witchcraft. The fact that female healers worked with life-saving tools surrounded them with a supernatural aura. Both midwives and

healers induced respect in people, but at the same time, fear. Going by the belief that knowing how to cure also meant knowing how to kill, if the cure didn't work, healers were often accused of having cast a spell on the patients, using a maleficium. If medicine, including the popular variety, aimed at healing people then witchcraft was intended to do them harm, as confirmed by the words “*Quelli che li sanno conzare li sano anco guastare*”— who knows how to heal also knows how to damage — stated by Andrea Salvioli, a witness in the trial against Maria Mariani, a healer from Modena.

On the other hand disease had an obscure etiology and being able to trace its causes led women onto treacherous ground: having to do with infection, blood, nails, hair and other elements considered impure brought the healers to play an ambiguous and suspicious role. The difference between them and physicians was the specific kind of tasks assigned to doctors: physicians, who rarely touched impurities and who regularly graduated from the university, were believed to be able to make the pain cease, whereas the healer, due to the fact that she actually touched her patients, was able both to make pain cease and to cause it. The “*ladies of the herbs*”, though lacking a university education, were not ignorant of the subject but had a deep knowledge of herbs with healing powers. They knew the best time to gather herbs such as St John's wort, betony, sage, the herb of grace, fennel and ferns, when they were richer with active principles, and would gather them on specific days of the year such as the night of June 24th, considered magic and particularly favorable. These plants were often cooked alone or mixed with flour, boiled in wine or left soaking in oil to obtain a decoction and salves to be administered to patients. These were remedies with real anti-inflammatory, disinfectant, expectorant and fever-reducing

properties, and were used in conjunction with instruments such as candles, magnets, minerals and metals. Caterina Borgognona, a woman physician from Modena, mixed butter with crushed herbs and then with this mix would grease the limbs of an invalid child, just as Diamante Ascari left some sage and herb of grace soaking in oil of walnut to make a salve out of it. Healers referred to the principles of analogy and contact: in the first case, it was believed that similar produced or removed similar, that for instance red stones caused or stopped hemorrhages or that magnets drew diseases out of the body; as to contact, they believed an element put in touch with a person maintained a connection to him or her [16]. These two principles along with the knowledge of curing herbs, that had a fundamental value in primitive psychology are still present in the medical practice of all cultures, were passed on to women by other women, received from their own mothers or older experienced healers.

Northern Italy

It is interesting to note how in Italy, in areas near Ferrara, Mantua and Modena, there emerged and spread a belief in Domina Ludi, a mythical female figure who, dressed in black clothes, would teach the healing powers of herbs and shrubs to her followers gathered in clearings in the woods. It's a myth ascribable to shamanic beliefs of Celtic origin that were already evident in Europe from the eighth century on. The presence in northern Italy of cults of a shamanic kind linked to goddesses dispensing well-being and wealth led to the creation and entrenchment of certain odd beliefs. In trials concerning evil spells that occurred at the end of the fourteenth century in Lombardy, the two defendants, Sibillia and Pierina,

claimed to have joined meetings in the woods by flying there, where a certain Madonna Horiente showed them magic practices and the healing virtues of plants. Some centuries later, in 1518, during the trial in which she was accused of casting an evil spell, the healer from Modena, Giovanna Munarina, claimed she had been initiated along with other girls into magic healing by a woman who, standing in her vegetable garden, explained how to get benefits from the various plants and shrubs. In the Emilia region of Italy the significance of these myths connected to the magic of plants explains the particular role of these healers in the urban context of the time, evidence of a strong integration into society: in Ferrara, for instance, a city rich with vegetable and flower gardens, healers enjoyed such a reputation that in the first years of the sixteenth century the physician of the Este court, Giovanni Michele Savonarola, in order to write a book on the healing properties of plants, claimed he had more than once consulted with them and sought their advice. Even more unusual was the situation in Modena where, at the dawn of modern times, city streets and squares swarmed with healers of both genders who, meeting at spice shops, habitually exchanged recipes and advice. Priests, spice dealers and some physicians too, took part in these crowded gatherings, to such an extent that some speak of an actual interdisciplinary professional network centered around the *res herbaria*.

It is not by chance that Giulia from Bologna, a healer tried for witchcraft in 1518, claimed she had often asked a spice dealer for a specific herb to cure a child and of having been introduced to medicine by a “colleague” from Bologna, later burnt alive. Beatrice from Vicenza during her trial stated she had consulted many times with Anastasia, “la Frappaona”, a famous healer, as to some medical

substances. The people of Modena themselves, even those of high social status, often turned trustfully to healers, even those without a license: at the beginning of the century, Camilla from Nirano cast spells for Violante Carandini, who came from one of the noblest families of the city, one which some years later asked for the help of the healer and enchantress, Barbara Carretta. Indeed, if compared with situations in which the humble families were often those asking for help from the “ladies of the herbs”, the cases of Ferrara and especially Modena represent anomalies, so much so that it is possible to speak in these cities of witchcraft’s social normality. Beyond fantasy and beliefs, these peculiar medical skills, passed on to them by relatives or others, became so common among women in part because they represented one of the few means of survival. Many dedicated themselves to therapeutic magic because they were widows or alone or reduced to poverty.

Without the support a husband or a family could provide, these women devoted themselves to the healing of others, putting into practice what they had learned and starting to practice as healers or midwives, often both. If working as healers in the city was more complicated, it was easier to do so in the country since the scarce presence of physicians led people to turn to a healer more often. Though without a license, these women had a fundamental role in the society of the period, which turned to them despite the fact that they were feared. It was hard to face disease without summoning the local healer and unthinkable to give birth without the help of a “wise woman”, who was an expert in gynecology even though she was suspected of messing around with the devil. Therefore, these women were involved in crucial moments of life such as birth, sickness and death. They offered diagnoses, prepared medicines and assisted

births by whispering propitiatory prayers after having lit white candles. Obviously in the case of diseases difficult to diagnose and cure the death of the patient was inevitable, with the result that the healer was then often accused of witchcraft.

The trust they had inspired notwithstanding, in a few days the healers found themselves before the inquisitors, becoming the scapegoat for the suffering, anxiety and frustration deriving from situations difficult to bear, such as the loss of a relative, especially that of a child. At that point, the witnesses started to trace back past failures of the healers, the diseases they hadn't been able to cure, the babies who died during labor, the medicines that proved useless. Episodes dating back ten or even twelve years were brought up, wholly forgetting the socially necessary role the healer had filled. In such cases we can speak of a "breaking point", meaning that the healers could peacefully live in their society until a negative event brought upon their heads all sorts of accusations. In the 1599 trial against the woman of Modena, Maria da Trignano, the informer reported an episode that had occurred seven years before, just as in the trial against Giulia from Bologna one of the witnesses stated that the defendant had been dealing in magic for some ten years. In addition to healers, midwives too often deemed responsible for the death of newborn babies, fell into the most suspected categories. Until the eighteenth-century birth was an event men were completely excluded from: physicians did not pay much attention to gynecology and pregnant women preferred to be helped by female healers during labor. In many cases in addition to the midwife other women from the community joined in to help. Studies dealing with the iconography of birth have noted how paintings on The Nativity of the Virgin are very "crowded". In addition to the midwife, often

represented in the act of assisting the mother or giving directions to the servants and wet-nurses, there are also other women depicted while preparing food or the bath and the swaddling clothes for the baby. It's interesting to realize that in these paintings there is no male figure present at all in the room where labor and birth take place. The upcoming birth of a baby was a fundamental moment for the whole community and one of intense emotions: on one hand it meant the fulfilling of every woman's duty, on the other, it meant in some cases coping with the death of the baby or the mother or both. The lack of antibiotics and necessary antiseptic measures led to the death of one woman out of ten, whereas one baby out of three didn't reach his year-old birthday. In this situation the parents, moved by an emotional need, transferred their feelings of guilt onto the midwife, who was accused of witchcraft or of having killed the baby in order to offer it to the devil, often together with the placenta and the umbilical cord. The mothers, who guiltily felt they hadn't been able to give birth to healthy babies, were often the first to accuse midwives, though sometimes the accusations could come from outside: especially in countries affected by the Reformation, the excessive attention towards illegitimate births led judges to meticulously study every case of infant mortality as a possible infanticide. They believed there was a concrete risk that mother and midwife could be in cahoots to kill an unwanted newborn baby.

A study of literature about midwives has suggested further possible interpretations: among these, the psychoanalytical one underlines how the accusations came from women who were envious of midwives, by now post-menopausal, who were about to take care of their own children. These are statements to be considered very cautiously since they have often not been fully and carefully

documented, whereas the hypothesis that shows, in witchcraft treatises of the period, how a link was formed between midwifery and evil spells is strongly grounded. The famous *Malleus Maleficarum*, written at the end of the fifteenth century by two German Dominican inquisitors Jakob Kraemer and Heinrich Sprenger, focuses in many places on the subject, actually affirming that «nobody damages the Catholic faith more than midwives», in reference to those crimes midwives were often accused of committing. It is not by chance that during the witch hunt that set Cologne on fire in 1627-30, seven out of twelve of the accused were involved in births. Again, in Germany, in 1587, there was the case of Walpurga Hausmannin, a midwife suspected of the death of 40 babies, similar to the first episode of witchcraft to occur in New England before the well-known Salem witch trial of 1692, involving the midwife, Anne Hutchinson, banned from Massachusetts in 1630 [34]. Similar situations occurred a bit everywhere. The story, quoted at the beginning, of Gostanza da Libbiano, a famous healer and midwife, was also representative. Much sought after for her exceptional therapeutic and magic powers by nobles and peasants, Gostanza was actually transported in a carriage while traveling through- out Tuscany. Her reputation was tarnished when she was accused of the inexplicable death of certain babies and of practicing “medicine”. Indeed, suspicions of infanticide played an important part in this case, but the attention of judges directed towards midwives was especially motivated by the matter of baptism, a fundamental rite for every Christian.

In the case of difficult births or in emergency situations, midwives would baptize the babies, but without following any canonical ritual. As only in the eighteenth century did midwives start to be

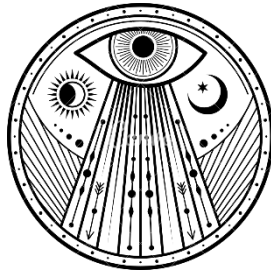
trained in the correct rite of Christening, they often gave rise to frequent accusations of superstitio, that is abusing the sacraments for therapeutic purposes. A significant example is the case of the healer, Maria di Baccio, who in 1586 was ordered by the bishop of Grosseto, Claudio Borghesi, to stop assisting births since she did not know the correct formula for baptism. If on one hand mothers might fear these women were casting an evil spell in order to later offer their babies' bodies to the devil, on the other hand inquisitors accused them of using prayers not recognized by the church. Before legislation of the seventeenth century established specific courses for the would-be midwives, those who decided to prepare for the job were trained by a more experienced midwife, who was often the young woman's mother. It was almost exclusively practical training since most of the midwives were illiterate, and it led the young trainees to assist and help their older colleagues during labor. Midwives made sure they verified the degree of cervical dilation and that the fetal position was correct then lubricated the genitals with oil to facilitate the birth. Once the baby was born, they freed its respiratory tract of mucus, washed it and swaddled it. Only in dire straits, such as breech deliveries, would they summon a colleague for a consultation or turn to a surgeon for a v-cut or to dissect the cranium of the fetus. The presence of obstetric physicians during labor is attested to starting in the middle of the seventeenth century, but only for the benefit of English and French aristocracy. Louis XIV for instance demanded a physician for the delivery by one of his lovers, but in Germany, Italy, Spain and in eastern European countries they still preferred to turn to female figures. The discriminating difference between physicians and midwives was the use of the forceps, created by the French physician Chamberlains, in the mid-sixteenth century; it was a tool midwife were not authorized

to use, since it was considered a surgical instrument. Its use surely saved mother and child in many cases, but this does not mean midwives could not carry through a labor with success. In fact, almost ninety per cent of the births they assisted occurred without particular problems. Though lacking a university education and despite the suspicions attached to witchcraft, women still preferred other women to assist them during labor, not only because their experience in the field was considered more trustworthy, but especially because these women were deemed fundamental members of every community, a social necessity and often irreplaceable. Though lacking a university education and despite the suspicions attached to witchcraft, women still preferred other women to assist them during labor, not only because their experience in the field was considered more trustworthy, but especially because these women were deemed fundamental members of every community, a social necessity and often irreplaceable.

The possibility to examine the archive records preserved in the State Archive of Modena was an extraordinary opportunity to highlight the particular situation of witchcraft in a well-defined geographic area of modern Italy: responses to sorcery, in fact, are deeply different in various contexts, depending on a wide range of social, political and cultural aspects. The great trust patients had for these herbalists and witchcraft's social normality makes the cases of towns like XVI century Modena an exception: in no other cases, healers, cunning men and wise women used to meet, to share their personal knowledge on the properties of plants, herbs and shrubs; in no other cases, they compared their opinion on medicine and magic to the one of spice dealers and priests, asking them for advice, too. This particular situation is also a glaring sample of the role wise women

and magic medicine had for people. These modenese healers would have never been called by wealthy patients- the episode of lady Violante Carandini is very significant- who could afford the expense of a real doctor, as folk medicine was not regarded as effective as the official one.

CHAPTER TWO



The Regulation of Witchcraft and Sorcery Practices and Beliefs

Sorcery and witchcraft beliefs and practices today generate a wide range of law and order– and development-related problems in many parts of the world. The most visible of these are violent exorcisms, banishment, torture, and killing indicted upon those accused of practicing sorcery and witchcraft in many parts of the global South, particularly India, Nepal, South Africa, Papua New Guinea, Tanzania, Angola, Nigeria, Indonesia, and the Congo (HRC 2009), and even China (Qiliang2009). There are thousands of cases of people accused of sorcery each year globally, often with fatal consequences (OHCHR2009). Moreover, a common trend in the literature is assertions that these numbers are increasing, the cases becoming more violent, the practices spreading, and new classes of victims being created (Adinkrah 2004, Bussien et al. 2011, Cohan 2011, Gardini 2013, Geschiere 2008, Horowitz 2014, Jorgensen 2014), although the difficulty in proving such claims quantitatively is acknowledged. These practices are real so increasingly (once again) becoming a challenge for countries in the global North, mainly

within migrant communities (Edwards 2013, Garcia 2013, Powles & Deakin 2012, *The Economist* 2015). Other crimes related to these beliefs and practices involve the killing of people (particularly children and people with albinism) for their body parts to be used for magical charms and rituals (Bruynell 2012, Cohan 2011, IHEU 2009, Smith 2015).

More broadly, the prevalence of sorcery and witchcraft practices and beliefs in many communities can be socially, economically, and politically destabilizing and can seriously endanger the state's monopoly on force and undermine poverty alleviation programs and the legitimacy of governments (Ashforth 2002; Comaroff & Comaroff 2004; Kohnert 2003, p. 218; van de Grijsparde et al. 2012, p. 24). Although sorcery and witchcraft have long been a staple of anthropological and historical studies, it has only recently become the subject of contemporary legal and public policy analysis. The regulation of sorcery and witchcraft is also an increasingly visible issue at the domestic level in a growing number of countries, for instance, as a term of reference for several national law reform commissions (Malawi Law Comm. 2009, SALRC 2014). Like witchcraft and sorcery beliefs themselves, the related social, legal, and policy considerations are complex and amorphous, with multiple overlapping issues. This article aims to present a broad overview of the state of the literature, identifying the main issues and approaches and different dimensions involved. After briefly discussing terminology, scope, and methodology, it discusses the nature and scope of the different problems that flow from such practices and beliefs, as well as the relevant legal frameworks and how they address or fail to address these problems. The clearest finding from this review is that although issues of sorcery and witchcraft have been

addressed extensively from an anthropological perspective, and the nature of the legal problems involved has been identified (although it remains contested), there remain considerable gaps in knowledge about the extent of sorcery-related violence and its broader impacts; whether it is increasing in severity and geographical scope and, if so, why; and most critically what interventions are effective in curtailing it and why. In short, although many demands for legal rules of one kind or another to address the problem of sorcery and witchcraft have been made, together with a plethora of recommendations, there is limited empirical evidence assessing the impact of any regulatory initiatives, both past and present.

At the outset it is important to address the issue of the worldview or ontological perspective adopted in the analytical framework. In most countries across the world, there are either entire populations or small communities of people with a deep belief in sorcery and witchcraft that informs and underpins their day-to-day life. For instance, in the context of Vanuatu, Rio (2010, p. 182) comments that it “is something that affects people’s life on a daily basis, forming an invisible background to social life and giving new impetus to the energetic activities of churches, healing rituals, relations of gift-giving and sharing, and people’s patterns of socialisation on the whole.” Similarly, across the world there are many entire populations or small communities of people who do not believe in witchcraft, and many who consider such a belief to be absurd or a relic from the dark ages. These conflicting worldviews mean that there is fundamental disagreement about what problems require regulation and who the victims of sorcery and witchcraft are. These disagreements are often not even realized, as those with differing ideologies talk past each other. For those who do not believe in the

existence of sorcery, the problem is the violence related to sorcery or witchcraft accusations, and the victims are those accused of being witches or sorcerers. For those who do believe, although there is often concern about sorcery accusation–related violence, the problem is also (and for some primarily) the harm that sorcerers and witches do to their communities, killing and harming innocent people. From this perspective, the victims are those people who have been killed or hurt through sorcery or witchcraft.

The question of whether the analytical conceptualization should take the emic view (that sorcery is a reality) into account is a question that greatly impacts how questions are framed and analyzed. In this article, the issue of these competing world views is accommodated, as far as possible, by adopting a neutral position as to whether or not sorcery really happens—hence referring to practices and beliefs—and highlighting the importance of the perspective adopted when considering these issues. The study of the regulation of sorcery and witchcraft is valuable because it brings into clear view a whole range of fundamental questions about the relationship between law, morality, and culture; the relevance and legitimacy of transplanted western rational legal systems in postcolonial contexts; the dissonance or congruence between popular and state legal norms; the limits and possibilities of human and spiritual agency; and the relationship between customary and religious regulatory systems and the state. Such questions are real so raised, to an extent, by other controversial issues, such as female genital mutilation, child marriage, and abortion. However, the regulation of behavior related to witchcraft and sorcery is additionally complicated by the fact that—for those who believe in it—sorcery and witchcraft are today

one of the most pressing and significant threats to physical and spiritual security (Ashforth 2002, 2015)

The terms sorcery and witchcraft have been widely criticized as being derogatory or neo-colonial, referencing inappropriate European traditions, and failing to identify the highly diverse range of practices and beliefs at stake (Ashforth 2002, p. 126). Hutton (2004, p. 420) contends that there is “little or no sense of a well defined common model to which everybody is working.” Some types of sorcery and witchcraft are also associated with positive practices and beliefs, such as healing, changing the weather, and gardening, which are often unproblematic, and indeed are highly valued by many societies and individuals.

Although anthropologists have traditionally drawn a distinction between sorcery and witchcraft as being, respectively, intentional and learned or inherent and uncontrolled (Evans-Pritchard 1937), it is increasingly being recognized that these distinctions are often blurred in practice and ultimately unhelpful (Hutton 2004, p. 428). The preferable approach is to use vernacular terms when discussing these practices and beliefs, but this has limited utility for comparative analyses of the type conducted here. Despite these problems, the literature continues to use the terms sorcery and witchcraft, and these terms are used interchangeably in this article to mean “the belief and those practices associated with the belief, that one human being is capable of harming another by magical or supernatural means” (Patterson 1974, p. 132). The sources of this article are scholarly literature (legal, anthropological, economic, and historical), law reform commission reports, nongovernmental organization (NGO) reports, and UN documents, largely focusing on the past 15 years. The enormous bodies of literature concerning

witchcraft and sorcery killings in early modern Europe and North America are generally beyond the scope of this discussion (see Maxwell-Stuart 2001 for a recent overview of this literature).

Although a global approach has been taken, the vast majority of the literature identified relates to Africa and Melanesia, which may be due to the search being limited to material in English. This article adopts an interdisciplinary and comparative approach. There has been ongoing contestation about the extent to which such framings are possible and useful, but the pendulum currently appears to have swung back in support of this approach (Geschiere 2013; Green 2005, p. 262; Hutton 2004). The main focus here is literature related to the regulation of sorcery and witchcraft practices and beliefs and questions about how to address its negative effects.

CHAPTER THREE



Sorcery and Mythology

Sorcery, in essence, provides a framework of moral agency that can make sense of seemingly undeserved misfortune; in other words, it answers the “why me (or he or she)?” question when sickness, death, accident, or bad luck affects individuals or communities. Ashforth (2002) argues that “the witchcraft paradigm” means that undeserved suffering is often blamed on the actions of a witch who is said to use his powers to satisfy his own evil desires or out of pure malice. The Partners for Law in Development (PLD) (2014, p. 31) point out the important but subtle distinction that “a person may be identified as witch to explain an event (such as an illness)” or “an event may be singled out as a sign to label a person as a witch.” In either event, sorcery-related violence may then occur for two main reasons: first, because there is a profound sense of injustice caused by the sorcerer’s purported behavior (Ashforth 2002, Tebbe 2007), and second, because sorcery is widely believed to be resisted in only three ways—by persuading or forcing the witch to give up or stop using his or her evil powers through exorcism, ritual, or torture; by using counter magic to neutralize the harm; or by using physical means to remove

or deter the witch (banishment, corporal punishment, or killing) (Hutton 2004).

The ways in which individuals are identified, accused, and labeled as a sorcerer vary enormously, ranging from state-sanctioned processes, as in Saudi Arabia, the Central African Republic (AlJazeera America 2015), and Cameroon, to the following of non-state authorized (but often implicitly tolerated or unofficially actively encouraged) customary procedures under the control of community leaders, throughout regulated mob violence[sometimes with the active participation or at least complicity of the army or police (PLD 2014, p. 39)]. There is often a customary or semi customary figure involved in assisting in the identification process who acts as a diviner, and this person has particular attributes in different countries, for example, the *glasman* in Papua New Guinea, the *ojha* in India (PLD 2014), and the *sangomas* in South Africa (see also Waller 2003). It is important for nonbelievers in sorcery to accept that although sorcery accusations are often used as a pretext for violence and can be manipulated for ulterior motives (see the excellent discussion of this in PLD 2014), there is often a real mortal fear that justifies the attack and a belief that the sorcerer's death or permanent banishment is the only way to be safe. Violence, even terrible violence, is "considered altruistic, necessary and exonerable" (Edwards 2013, p. 324). There are multiple levels at which the effects of sorcery accusation-related violence is felt. Those who are accused may be burned alive, tortured, beaten to death, stoned, beheaded, raped, banished, or stigmatized for life. Accused witches may be subjected to violent exorcisms, which may result in their death(HRC2009).There are also a range of less extreme consequences, such as public humiliation through disrobing, tonsuring, parading publicly, or forcing the

accused to eat excreta and otherwise be degraded and humiliated(PLD2014).In all cases, sorcery accusation leads to significant, sometimes ongoing, emotional and psychological trauma and economic deprivation for the person being accused and often for their family (see Adinkrah 2004, p. 338). Sorcery accusations also lead to displacement of people, as those accused flee both internally and to other countries, an issue to which the UN High Commissioner for Refugees has raised attention in a series of research papers discussed below. In Ghana, for example, there are camps composed of accused witches of between 2,000 to 5,000 people (HRC 2009, p. 16).

There is also increasing evidence that children and women accused of sorcery are prevalent in the African sex-trafficking networks (Garcia 2013). PLD (2014, p. 42) observe in the context of India that “the fear of being labeled as a witch is something a large number of rural women might be experiencing and that this may be acting as a crucial barrier to their exercising a whole range of choices as any sign of independence or initiative may become a pretext for labeling and violation.” In terms of the scope of the problem, the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions found in 2009 that there is “little systematic information on the available numbers of persons so accused, persecuted or killed, nor is there any detailed analysis of the dynamics and patterns of such killings, or of how the killings can be prevented” (HRC2009, p.13). The only conclusion is that “the number of so-called witches killed or otherwise persecuted is high in the aggregate” (HRC 2009, p. 19; see also Bussien et al. 2011, p. 9). A frequent theme in the literature is that such cases are on the rise (Jorgensen 2014; Miguel 2005, p. 1155), although statistics in this area are notoriously unreliable

owing to underreporting and the hidden nature of such violence and threats (Geschiere 2008; WHRIN 2013, p. 3; 2014, p. 9). The vast number of unreported cases that fall short of lethal but nevertheless involve serious long-term economic, physical, and emotional suffering are even harder to quantify (Adinkrah 2004, p. 351; PLD 2014). Erikson's (1966, p. 68) comments on the subjective nature of crime waves are also important to bear in mind: the severity of a "crime wave" cannot always be measured by the number of deviant offenders involved or the volume of deviance in fact committed. In the sense that the term is being used here, "crime wave" refers to a rash of publicity, a moment of excitement and alarm, a feeling that something needs to be done. It may or may not mean an actual increase in the volume of deviation.

Although anyone (men, women, children, rich, poor) can be a victim of a sorcery accusation, gender and generational divisions often characterize classes of victims in particular locations. Women are overwhelmingly identified as being more likely than men to be victims on both global and national scales, and the issue is often categorized within a gender-based violence framework (Edwards 2013; Mgbako & Glenn 2011, pp. 400–2). For example, the Committee on the Elimination of Discrimination against Women (CEDAW 2007) noted that the practice of witch hunting in India "constitutes an extreme form of violence against Women." However, it is also important to note that there are some communities in which men are predominantly the victims, such as in parts of Kenya and Melanesia (Craig 2008; Jorgensen 2014; Schnoebelen 2009, p. 9).

Children are also a particular and, it appears, new and increasing category of victim, particularly in Africa (Cimpric 2010, Garcia 2013, Green 2005, Hanson & Ruggiero 2013, Secker 2012). The elderly, the disabled, and other vulnerable or isolated members of society are both more commonly victims of sorcery accusations and also more likely to suffer in an extreme or violent way from such accusations, as they lack champions and support (Sleep 2011). Those who are wealthy or successful are sometimes accused owing to beliefs that they must have succeeded through the use of sorcery (Rodlach 2006, p. 57); however, these victims seem to be less likely to be physically attacked (Comaroff & Comaroff 2004a, p. 525). Green (2005, p. 252) notes that whether the categorization as a witch stick depends upon one's social networks, status, and power. Those accused of sorcery are also overwhelmingly close kin or neighbors rather than strangers (Andersson 2002; Hutton 2004, p. 422; PLD 2014), leading Geschiere (1997, p. 11) to refer to witchcraft as "the dark side of kinship." There are multiple theories by nonbelievers seeking to explain the existence and prevalence of sorcery beliefs and practices, and also why the intensity of fear associated with them varies so significantly (see Hutton 2004, p. 430; Schnoebelen 2009, pp. 4–6). Even the underlying causes of the witchcraft cases in early modern Europe continue to remain contested (Johnson & Koyama 2014, p. 80).

One point of agreement is that cultures and traditions are not sufficient to explain the form, incidence, and importance of sorcery accusations (Jorgensen 2014; Kgatla et al. 2003, p. 10). One dominant set of theories revolves around the concept of scapegoating, observing that certain individuals may be accused of witchcraft in the context of social tensions caused by, for instance, economic

malaise, uneven development, famine, drought, failing medical systems, and epidemics such as HIV. Some economists have demonstrated a causal connection between income shocks and the murder of elderly women as witches in Tanzania (Fisman & Miguel 2008; Miguel 2005). Hutton (2004, p. 430) summarizes such theories as follows: “It is a general rule that dramatic economic, social and cultural changes commonly induce a sharp increase in witch-hunts among people who have a traditional fear of witches. It is also a rule, however, that such an increase is not an automatic result of such changes.” Sorcery accusations are also often said to mask underlying conflicts, particularly disputes over land and other property (Gardini 2013, McDonnell 2015, Mgbako & Glenn 2011), as well as problematic social relations, political rivalry, jealousy, and economic inequality (Kgatla et al. 2003). PLD (2014, p. 31) found in their study of witch hunting in India that in two-thirds of the cases studied it was possible to identify factors that could be seen to form a material basis for a conflict between the perpetrator and the victim, and more often between the families of the two. One classic sociological theory explaining sorcery and witchcraft is expounded by Erikson (1966, p. 13) in his book *Wayward Puritans*. He argues that categorizing certain forms of behavior as deviant provides a necessary structure to society and supplies “the framework within which the people of the group develop an orderly sense of their own cultural identity.” He applied this to the Salem witchcraft mania in the late 1600s and observed that at the time it occurred, “most of the familiar landmarks of the New England Way had become blurred by changes in the historical climate, like sign posts obscured in a storm, and had become society no longer able to judge itself with any certainty” (Erikson 1966, p. 140). Heals observed, “[perhaps no other form of crime in history has been a better index to social disruption

and change, for outbreaks of witchcraft mania have generally taken place in societies which are experiencing a shift of religious focus—societies, we would say, confronting a relocation of boundaries” (Erikson 1966, p. 154). Another set of theories links sorcery explicitly to modernity, capitalism, and globalization (Comaroff & Comaroff 1999, Federici 2010, Geschiere 1997). The desire to control women is another possible explanation, particularly in the context of their economic advancement (Adinkrah 2004, pp. 331, 345–47; Crampton 2013, p. 202; Schnoebelen 2009, p. 10). Similar explanations have been provided for the increasing numbers of children who have been branded sorcerers in the thousands in Kinshasa, often in contexts where they, as returned child soldiers or diamond traders, exercise considerably more economic power than their parents (Hanson & Ruggiero 2013, p. 10). The rise of charismatic churches and religious extremism in general is also often identified as the cause of the increase and spread of sorcery beliefs and practices owing to their emphasis on Satan, the devil, and the expelling of evil spirits (Federici 2010; Hanson & Ruggiero 2013, pp. 8–10; Kohnert 2003; Powles & Deakin 2012, p. 13). Garcia (2013, p. 4) argues “[religious leaders play an important role in the spread of witchcraft abuses” in the context of migrant communities. It is widely agreed that sorcery practices and beliefs are dynamic and highly adaptable, moving quickly into new geographical areas and taking on new forms in response to changing patterns of social conflict (Kohnert 2003, p. 218). PLD (2014, p. 136) assert that “witch hunting has evolved as a means by which conflicts are managed, social control exerted, transgression and difference punished, or mishaps and losses rationalized. In its contemporary form it is not restricted to tribal communities.” Rodlach (2006, p. 73) notes that the mass media has influenced the spread of modern

sorcery globally and reinforces sorcery beliefs in the township he studies. Jorgensen (2014, p. 276) refers to witch killing as a “traveling package” in the context of Papua New Guinea. Bussien et al. (2011, p. 12) attribute the growth of witchcraft allegations in places where they had not been common or had died out to “displacement, resettlement, asylum, migration and even trafficking patterns.” It is also clear that sorcery-related violence tends to be episodic, flaring up at certain times and leading to outbreaks or epidemics of accusation and violence that often appear self-perpetuating (Herriman 2013).

Although sorcery accusation-related violence and its various repercussions have been the focus of much of the concern of NGOs and international agencies working in this area, those who approach the issues with a different worldview perceive a different range of problems. Ashforth (2015, p. 7) argues that for those who live in a world where sorcerers are real, “the dangers they pose are real and present. In such places the primary concern is security: how to protect against witchcraft and other forms of violence. A secondary question is justice: what to do about perpetrators of harm when injury has been done.” He cites a 2012 study of “witchcraft-based violence” in Malawi that found that out of a sample of 94 key informants, 10 considered themselves victims of witchcraft attacks in the past two years (Ashforth 2015, p. 11). Similarly, in Vanuatu a 2011 national survey found that 49% of respondents were very concerned with crime owing to sorcery (compared with 44% who were concerned with robbery, assault, and murder)(VWC2011). In Papua New Guinea the Constitutional Law Reform Commission (CLRC 2011, p. 57) found “During the nationwide consultations, it became obvious that the majority of the people were concerned more about deaths occurring as a result of sorcery [than sorcery

accusation–related violence].” Another body of problems identified in the literature is the impact of witchcraft laws upon the right to freely practice a variety of religions, including voodoo (Boaz 2011) and modern/Western Paganism, also known as Wicca (Harris 2011, Leff 2014). These arguments are made most often in the context of the global North, but also in some places in the global South, such as South Africa (SALRC 2014). A further category of problems is the murder of people, often children and albinos, for their body parts to be used in making magical potions, such as those believed to increase wealth and power (Bruynell 2012, Cohan 2011, IHEU 2009, SALRC 2014, Smith 2015). This is particularly a problem in South Africa, where the practices are referred to as multi murders, but also in at least 12 other African countries (HRC 2013, WHRIN 2013). Finally, there is a growing body of literature on the broader economic and developmental impacts of such beliefs and practices, with concerns raised that they undermine social capital and further disempower rural and marginalized communities (see Eves & Forsyth 2015, Gershman 2015, Green 2005, McNamara 2015

Mohammedan Perspective on Witchcraft; Beliefs and Practices

The use of sorcery or witchcraft is condemned in the Quran (2:102), but some hadith indicate that certain types of spells or incantations (ruqyah) are permitted (*Sahih Muslim* 26:5448). With regard to the evil eye, certain hadith affirm that it is real (*Sahih Muslim* 26:5427; *Sahih Muslim* 26:5450), while some interpretations claim the Quran (68:51) also mentions the evil eye. Jinn are mentioned in the Quran (for example, 55:15; 55:56).

Both the Quran and hadith make reference to witchcraft and the evil eye as well as to supernatural beings known in Arabic as jinn. To gauge how widespread belief in these supernatural forces is today, I've asked fellow Muslims questions about witchcraft, jinn and the evil eye (the belief that certain people can cast curses or spells that cause bad things to happen).

In our discourse, roughly half or more Muslim colleagues affirm that jinn exist and that the evil eye is real. Belief in sorcery is somewhat less common: some actually say they believe in witchcraft. At the same time, however, Muslims widely agree that Islam forbids appealing to jinn or using sorcery.

Islamic tradition also holds that Muslims should rely on God (tawhid) alone to keep them safe from sorcery and malicious spirits rather than resorting to talismans, which are charms or amulets bearing symbols or precious stones believed to have magical powers, or other means of protection. Perhaps reflecting the influence of this Islamic teaching, a large majority of Muslims I live with everyday do not possess talismans or other protective objects. The use of talismans is most not widespread in Islam. Those who wear talismans or precious stones claim that it's for protection.

Reliance on traditional religious healers appears most prevalent among Muslims in sub-Saharan Africa who claim to have gotten powers to cure someone who is ill.

Jinn.

According to the Quran, God created jinn as well as angels and humans. Belief in jinn is relatively widespread a number of Muslims

believe in these supernatural beings. Muslims who pray several times a day are more likely to believe in jinn.

It is important to note that while belief in jinn is widespread, relatively few Muslims believe it is an acceptable part of Islamic tradition to make offerings to jinn. Those who relate with jinn are simply on their own and no Islamic authority directs Muslims to do such. Probably, it's a marriage of Islam and ethnic tradition, say it's a religious innovation but not Islam.

Witchcraft.

The Quran and hadith both make reference to witchcraft and sorcery in the time of the Prophet Muhammad. Today, substantial numbers of Muslims continue to believe in the existence of witchcraft, although levels of belief vary widely very few Muslims believe the use of sorcery is an acceptable practice under Islam.

In sub-Saharan Africa, the proportion of Muslims who say witchcraft or sorcery is really substantial and several anecdotes have emerged from Tanzania, Ethiopia, and Morocco among other Islamic nations.

Evil Eye; According to hadith, the Prophet Muhammad confirmed that the evil eye, borne by jealousy or envy, is real and capable of causing harm or misfortune. Many Muslims including I myself believe in the evil eye. It is hard to distinguish evil eye from sorcery and witchcraft but some Muslim communities or families believe the evil eye is real than say the witchcraft.

Talismans.

Some hadith condemn the wearing of talismans – charms or amulets bearing symbols or precious stones believed to have magical powers. People claim often claim that they use magical objects to ward off evil or misfortune and for protection. The practice of wearing talismans or amulets is most common among Pakistani, Albanian and Sudan. Objects to Ward Off the Evil Eye appears so among these Muslims communities. the rationale of possessing these objects in their homes instead wearing talismans is to protect them against the evil eye. In general, Muslims who pray several times a day are no more likely than less religiously committed Muslims to have objects to ward off the evil eye.

Traditional Religious Healers.

Substantial numbers of Muslims report that they turn to traditional religious healers when they or their family members are ill. This practice is common among Muslims in sub-Saharan Africa and South Asia. In some countries, Muslims who pray several times a day are more likely than those who pray less often to use traditional religious healers.

Exorcism.

I've ever wondered whether my friends have ever seen the devil or evil spirits being driven out of someone, as in an exorcism. My brothers who went to Islamic institutes often narrated stories of exorcism. they have experienced or witnessed such an event

Witchcraft in The Bible: Scriptures on Witchcraft and Magic

The worship and seeking of supernatural powers other than God have been around since the beginning. Satan has used witchcraft to prevent people from finding holy spirituality in God alone. He uses witchcraft such as mediums, horoscopes, and games to entice people away from God and toward a power that gives self-enlightenment. The Bible describes witchcraft as evil, apostasy, blasphemy and condemns it in louder terms.

Associating partnership with God creator. 1 Chronicles 10:13 Saul died because he was unfaithful to the LORD; he did not keep the word of the LORD and even consulted a medium for guidance,

Rebellion against Gods holiness; 1 Samuel 15:23 For rebellion is like the sin of divination, and arrogance like the evil of idolatry. Because you have rejected the word of the LORD, he has rejected you as king.” 2 Chronicles 33:6 He sacrificed his children in the fire in the Valley of Ben Hinnom, practiced divination and witchcraft, sought omens, and consulted mediums and spiritists. He did much evil in the eyes of the LORD, arousing his anger.

Weaker force against God. 1 Samuel 22:23, Stay with me; don't be afraid. The man who wants to kill you is trying to kill me too. You will be safe with me.”

Leviticus 19:31 ‘Do not turn to mediums or seek out spiritists, for you will be defiled by them. I am the LORD your God. Leviticus 20:6‘I will set my face against anyone who turns to mediums and spiritists to prostitute themselves by following them, and I will cut

them off from their people. Leviticus 20:27⁶ 'A man or woman who is a medium or spiritist among you must be put to death. You are to stone them; their blood will be on their own heads.'

Revelation 18:23 The light of a lamp will never shine in you again. The voice of bridegroom and bride will never be heard in you again. Your merchants were the world's important people. By your magic spell all the nations were led astray.

Revelation 21:8 But the cowardly, the unbelieving, the vile, the murderers, the sexually immoral, those who practice magic arts, the idolaters and all liars they will be consigned to the fiery lake of burning sulfur. This is the second death."

Galatians 5:19-21. The acts of the flesh are obvious: sexual immorality, impurity and debauchery; 20 idolatry and witchcraft; hatred, discord, jealousy, fits of rage, selfish ambition, dissensions, factions 21 and envy; drunkenness, orgies, and the like. I warn you, as I did before, that those who live like this will not inherit the kingdom of God.

Micah 5:10-12 10 "In that day," declares the LORD, "I will destroy your horses from among you and demolish your chariots. 11 I will destroy the cities of your land and tear down all your strongholds. 12, I will destroy your witchcraft and you will no longer cast spells.

Isaiah 8:19-22, 19 When someone tells you to consult mediums and spiritists, who whisper and mutter, should not a people inquire of their God? Why consult the dead on behalf of the living? 20 Consult God's instruction and the testimony of warning. If anyone does not speak according to this word, they have no light of dawn. 21

Distressed and hungry, they will roam through the land; when they are famished, they will become enraged and, looking upward, will curse their king and their God. 22 Then they will look toward the earth and see only distress and darkness and fearful gloom, and they will be thrust into utter darkness.

Deuteronomy 18:10-14, 10 Let no one be found among you who sacrifices their son or daughter in the fire, who practices divination or sorcery, interprets omens, engages in witchcraft, 11 or casts spells, or who is a medium or spiritist or who consults the dead. 12 Anyone who does these things is detestable to the LORD; because of these same detestable practices the LORD your God will drive out those nations before you. 13 You must be blameless before the LORD your God. 14 The nations you will dispossess listen to those who practice sorcery or divination. But as for you, the LORD your God has not permitted you to do so.

Isaiah 47:8-14, 8 “Now then, listen, you lover of pleasure, lounging in your security and saying to yourself, ‘I am, and there is none besides me. I will never be a widow or suffer the loss of children.’ 9 Both of these will overtake you in a moment, on a single day: loss of children and widowhood. They will come upon you in full measure, in spite of your many sorceries and all your potent spells. 10 You have trusted in your wickedness and have said, ‘No one sees me.’ Your wisdom and knowledge mislead you when you say to yourself, ‘I am, and there is none besides me.’ 11 Disaster will come upon you, and you will not know how to conjure it away. A calamity will fall upon you that you cannot ward off with a ransom; a catastrophe you cannot foresee will suddenly come upon you. 12 “Keep on, then, with your magic spells and with your many sorceries, which you have labored at since childhood. Perhaps you will succeed, perhaps you

will cause terror. 13 All the counsel you have received has only worn you out! Let your astrologers come forward, those stargazers who make predictions month by month, let them save you from what is coming upon you. 14 Surely, they are like stubble; the fire will burn them up. They cannot even save themselves from the power of the flame. These are not coals for warmth; this is not a fire to sit by.

Practices

Beneficial magic is tolerated or even accepted wholeheartedly by the people — even if the orthodox establishment opposes it — in places where belief in malicious magic practices exists. Practitioners of malicious magic are typically prohibited by law as well as hated and feared by the general populace.

Spell casting

The ability of a witch to cast a spell—a group of words, a formula or verse, a ritual, or a mix of these—used to perform magic, is likely her most well-known trait. Spells were traditionally cast using a variety of techniques, including the immolation or binding of a wax or clay image (poppet) of a person to affect them magically, the recitation of incantations, the performance of physical rituals, the use of magical herbs as amulets or potions, and the use of mirrors, swords, or other specula (scrying) for divination.

Necromancy (conjuring the dead)

Although the phrase has also been used to refer to resurrecting the dead for various purposes, strictly speaking, necromancy is the act of summoning the spirits of the dead for divination or prophecy. It is

one of the witchcraft practices forbade by Ælfric of Eynsham: "Witches still go to crossroads and to heathen burials with their delusive magic and call to the devil; and he comes to them in the likeness of the man that is buried there, as if he arises from death." The biblical Witch of Endor engaged in it (1 Samuel 28th chapter).

White Witches in Britain And Europe

The names "witch" and "witchcraft" have historically been associated with evil. The majority of cultures that have held harmful witchcraft or "black" magic beliefs have simultaneously held beneficial or "white" magic beliefs. In these communities, practitioners of beneficial magic offered services including healing, divination, retrieving lost or stolen property, breaking the effects of witchcraft, and love magic. They were referred to as smart people or cunning folk in Britain. There were other interchangeable labels for these practitioners, including "white," "good," or "unbinding" witches, blessers, wizards, and sorcerers; but, "cunning-man" and "wise-man" were the most common. This is according to Alan McFarlane. The phrase "service magicians" is preferred by Ronald Hutton. These persons frequently assisted in the identification of purported witches.

Any magic-users were occasionally called "witches" by hostile church members as a method to defame them. In *The Discoverie of Witchcraft* (1584), Englishman Reginald Scot, who aimed to debunk witchcraft and magic, wrote: "At this day it is indifferent to say in the English tongue, "she is a witch" or "she is a wise woman." Communities in Europe frequently had mixed feelings about folk magicians because they believed they could do more harm than

good, which could lead to accusations that they were "witches" in the pejorative sense. In France, many devins-guerisseurs (diviner-healers) were accused of witchcraft, and more than half of the accused witches in Hungary appear to have been healers. Many English "witches" convicted of consorting with demons may have been cunning people whose supposed fairy familiars had been demonised. However, according to Hutton (2017), "Service magicians were occasionally accused of being witches, but they seem to have made up a minority of the accused in any location surveyed." Some people who claimed to have communicated with fairies spoke of having out-of-body experiences and travelling to "other worlds."

Numerous Perspective on Witchcraft

Societies that believed in witchcraft also thought there were several ways to stop it. Utilizing counter magic or protective magic, at which the crafty folk excelled, was one typical strategy. This included hiding artefacts like horse skulls inside building walls as well as charms, talismans, and amulets, anti-witch marks, witch bottles, and witch balls. Persuading or compelling the suspected witch to break her spell was another traditional remedy for bewitchment. Frequently, people would try to dispel the supposed witch's power by physically punishing her, such as by banishing, injuring, torturing, or killing her. Nevertheless, "in most communities a formal and legal solution was preferable to this sort of private action," whereby the claimed witch would be tried and then legally punished if proven guilty. Often, this led to execution.

Witchcraft accusations

According to Eva Pócs, there are four main causes for allegations of witchcraft:

1. Someone was exposed to either positive or negative sorcery.
2. A well-intentioned sorcerer or healer lost the confidence of their customers or the authorities.
3. A person did nothing more than make their neighbours dislike them.
4. A person was said to be a witch and had an atmosphere of occultism or witchcraft.

She describes three types of witches that are believed to exist:

The "social witch" or "neighborhood witch" is a witch who curses a neighbour after a disagreement.

The "magical" or "sorcerer" witch is a person who is a professional healer, sorcerer, seer, or midwife, or who has increased her wealth through magic to the alleged detriment of a neighbouring household. Due to neighbourhood or community rivalries and the ambiguity between positive and negative magic, such people can be labelled as witches.

The "supernatural" or "night" witch is a demon that appears in dreams and visions, according to court tales.

Only in rural areas where residents rely heavily on one another are "neighbourhood witches," who are the result of disputes between neighbours. Any person involved in routine social interactions may

be the target of such charges after violating some social standard, such failing to return a borrowed item. However, social tensions are not the only source of "sorcerer" or "supernatural" witch claims. The supernatural witch frequently had nothing to do with intergroup conflict but instead expressed tensions between the human and supernatural worlds. In Eastern and Southeastern Europe, such supernatural witches became an ideology explaining disasters that struck entire communities.

In the witchcraft conflicts of seventeenth-century New England, the medical arts were an important and occasionally crucial factor, according to the historian Norman Gevitz. Physicians and surgeons played important legislative, judicial, and ministerial roles in relation to witchcraft trials in addition to serving as the primary professional arbiters for distinguishing between natural and supernatural signs and symptoms of disease. In court transcripts or other modern source materials connected to New England witches, 46 male physicians, surgeons, and apothecaries are identified. In addition to diagnosing and treating patients, these professionals performed autopsies, took testimony, issued writs, wrote letters, and sentenced people to prison.

Witchcraft, Feminism, and Media

The vibrant representation of female protagonists in Wiccan and Neo-Wiccan literature has been credited with promoting the empowerment of young women. With their depictions of "positive witchcraft," which diverge from the historical, traditional, and Indigenous definitions, fictional works of popular culture like *Charmed*, *Buffy the Vampire Slayer*, and the *Harry Potter* series

have a strong media presence. This has been linked to the recent growth in neo-pagan religions. According to the findings of a mass media case study titled "Mass Media and Religious Identity: A Case Study of Young Witches," many young people are choosing to self-identify as witches and belong to groups they characterise as practicing witchcraft. Witchcraft is diverse, but the portrayal of it in popular culture on many media platforms has the potential to inspire young people to identify as "witches." This evolution is also assumed to be fueled by widespread access to relevant content via online forums and chat rooms. It depends on a person's access to certain media resources and content to affect their religious beliefs and opinions. Because they give young women what they perceive as a means for self-empowerment, control of their own lives, and perhaps even a way to have an impact on the world around them, Wiccan beliefs, or pop culture variations thereof, are frequently considered by adherents to be compatible with liberal ideals like the Green movement, and particularly with some varieties of feminism. Due to the prominence of feminist ideas in some Neopagan societies and the lengthy history of women-led and women-only organisations like Dianic Wicca, this is especially true in North America. Some branches of Wicca are said to contain significant members of the second wave of feminism, which has also been recast as a religious movement, according to the 2002 study *Enchanted Feminism: The Reclaiming Witches of San Francisco*.

Traditional Witchcraft

The term "traditional witchcraft" is used to describe a number of modern witchcraft practices. Ethan Doyle White, a specialist in paganism, described it as "a large movement of allied magico-

religious organisations that reject all ties to Gardnerianism and the larger Wiccan movement in favour of more "traditional" and "ancient" origins. The Traditional Craft includes a vast and diverse range of occult sects within its ranks, from those who pursue a modern Pagan path suspiciously similar to Wicca to those who practice Luciferianism, however they are often unified by a shared aesthetic steeped in European folklore ". The word refers to "any non-Gardnerian, non-Alexandrian, non-Wiccan or pre-modern version of the Craft, especially if it has been inspired by historical forms of witchcraft and folk magic," according to British Traditional Witch Michael Howard. Traditional witchcraft, according to Daniel A. Schulke, the current Magister of the Cultus Sabbati, "refers to a coterie of initiatory traditions of ritual magic, spell craft, and devotional mysticism," in his declaration. The Cochrane's Craft, the Sabbatical Craft, and the Feri Tradition are some examples of traditional witchcraft.

The dubious late-19th-century account of a still-practicing witchcraft religion in Italy by Charles Leland, which worshipped the Goddess Diana, her brother Dianus/Lucifer, and their daughter Aradia, is very similar to modern Stregheria. The witches of Leland do not view Lucifer as the perverse Satan that Christians do, but rather as a kind-hearted sun god.

The structure of modern Stregheria's rituals is comparable to other Neopagan witchcraft faiths like Wicca. The most prevalent emblem of religious identity is the pentagram. While some adhere to the traditional Roman festivals, the majority of adherents observe an eight-festival cycle that is comparable to the Wiccan Wheel of the Year. Worship of the ancestors and equilibrium are highly valued.

Witchcraft and Satanism

Demonic connotations in general, as perceived differently across numerous cultures and religious traditions, may occasionally associate witchcraft with the Devil. All Abrahamic religions were affected by the devil, and Satanism was frequently linked to accusations of witchcraft. As a rebellious counterpoint to Christianity, Lucifer occasionally assumed a more virtuous persona. Romantics suggested that the biblical Satan is an allegory for a crisis of faith, individualism, free choice, knowledge, and spiritual enlightenment in Europe after the Enlightenment, reinterpreting famous works like Milton's *Paradise Lost*.

Other writings from the 20th century, such as *Letters from the Earth*, portrayed Satan in a less derogatory manner. Herbert Arthur Sloane, who associated the horned god with Satan (Sathanas) and established the Ophite Cultus Satanas in 1948, was influenced by Margaret Murray's 1933 book *The God of the Witches*. Sloane also communicated with Gerald Gardner, the creator of modern Wicca, and hinted that their approaches to Satan and the horned god were not necessarily at odds. He did, however, hold the opinion that modern witches had turned away from the true knowledge and had started to worship a fertility deity, a reflection of the creator god, even if gnosis and Wicca both related to knowledge and wisdom. He claimed that "the Yezedees would be the largest existing body of witches who are authentic Satanists." The book *The Gnostic Religion* was strongly recommended by Sloane, and portions of it were occasionally read at ceremonies.

Instead of treating Satan as a concrete deity, Anton LaVey used him as the evocative namesake of The Church of Satan, which he

established in 1966. With a distinction between Lesser and Greater forms, the Church uses magic in their daily life. In 1971, LaVey released *The Compleat Witch*, which was later reissued as *The Satanic Witch*. There are theistic Satanists who revere Satan as a supernatural deity, in contrast to the Church and other atheistic Satanists who utilise Satan as a symbol for the embodiment of particular human characteristics. Although it started to spread to Eastern Europe in the 1990s, around the time of the collapse of the Soviet Union, modern Satanism is mostly an American phenomenon.

Witchcraft may still be mistakenly associated with notions of "devil worship" and possibly confused with modern Satanism in the twenty-first century. Up to 100,000 Satanists were thought to exist in the world in 2006. (Twice the number estimated in 1990). In the West, satanic ideas have often been accepted as legitimate forms of religion. In 2004, Satanists were permitted to serve in the British Royal Navy, and the US Supreme Court examined an appeal in 2005 regarding inmates' rights to religious freedom. The Satanic Temple, which was established in 2013, rejects the use of magic, contending that "beliefs should adhere to one's best scientific understanding of the world."

Based on independent thought and the advancement of humanity, luciferianism emerged as a symbol of enlightenment. An English witch named Madeline Montalban followed the devotion of Lucifer, also known as Lumiel, whom she believed to be a kind angelic entity who had benefited humanity in its evolution. She placed a strong emphasis on her Order's members developing their own unique relationship with angelic creatures, such as Lumiel.

Gerald Gardner first appeared to have her support, but by the middle of the 1960s she had changed her mind and began to despise him and his Gardnerian heritage, calling him "a 'filthy old man' and sexual deviant." She also showed animosity toward Charles Cardell, a notable Pagan Witch of the time. However, in the 1960s, she grew friendly with Alex Sanders and his wife, Maxine Sanders, two prominent Alexandrian Wiccans who took on some of her Luciferian angelic rituals. There are Luciferian witches practicing traditional witchcraft nowadays.

Human Sacrifice

Human Sacrifice is an Act of killing one or more humans as an offering to a deity as part of rituals in a manner that appeases gods, spirits or deceased for example the killing of king's servants in order for them to continue serving their masters in the next life Closely related practices are cannibalism and witchcraft. ⁴The idea of human sacrifice has its roots in deep pre-history? In the evolution of human behaviour. From its historical occurrences, it seems mostly associated with Neolithic or nomadic cultures on the emergent edge of civilization. In the early 19th century, human sacrifice has been practiced in different cultures whose various rationale behind human sacrifice are the same that motivates human sacrifice in general that is to say; intended to bring good fortune and to pacify the gods for example dedication of a completed bridge.

The African statutes have almost the same position laws regulating human sacrifice i.e. scattered with different statutes e.g. in the penal

⁴ Micheal Rudolf(2003) Ritual performance s authenticating practices. LIT VerLag Munster Pg 78

codes, the anti-trafficking in persons act, the constitution as the supreme laws over all other statutes providing guidelines of which all other laws must be consistent with, and all the witch craft act which could have regulated the acts of ritual sacrifice has been held to be contradicting the constitutional provisions and the witchcraft act was found/ held to be contradicting the freedom to worship. There are no laws in east Africa regulating cannibalism which is seen to be closely related to human sacrifice.

There is evidence of human sacrifice in the early dynastic period at Abydos, when on the death of a king he would be accompanied by servants and possibly high officials who would continue in eternal life. The skeletons that were found had no obvious signs of trauma leading to speculations the giving of life to serve the king may have been a voluntary act, possibly carried out in a drug abused state, at the end of 2800 BCE any possible evidence of such practices disappeared though echoes are perhaps to be seen in the burial of statues of servants in old kingdom tombs.⁵ The most notorious example of human sacrifice was the annual custom of the Dahormey kingdom when a kings or queens died, many recorded cases of hundreds or even thousands of slaves were sacrificed at such events. Dahormey in the Benin Empire, the current Ghana and southern Nigeria. Where when a ruler die, the grand custom was that prisoners would slain that is to say; in 1727 as many as 4000 people were reported killed and an annual custom during which 500 prisoners were sacrificed and in the Ashanti region of modern day Ghana,

⁵ Jacques Kinnear. "Human Sacrifice", Retrieved from original on 12" -May-07, Ancient-Egypt.org. Retrieved 2010, May -25'h, Abydos, "Life and Death are Dawning of Egyptian civilization." National geographic. April, 2005. Archive from original on 2007-05-09

human sacrifice was often combined with capital punishment.⁶ However, later, human sacrifice became rare as earlier as Islam establishment in the area such as Hausa states and later banned by coercion or an annexation by either British or the French. The most important step was the British coercing powerful Egbo secret to society to oppose human sacrifice in 1850. The society was powerful in a large number of states that is south-eastern Nigeria. Nonetheless, human sacrifice continued normally in secret until West Africa came under firm colonial control. The Leopard men were West African secret society active until mid 1990s that practiced cannibalism. In theory, the ritual cannibalism would strengthen both members of society as well as their entire tribe⁷In Tanganyika, the lion men committed an estimated 200 murders for cannibalism rituals in a single 3months period. Child sacrifice is not a new ritual in east Africa for it has been practiced in the region for centuries since it was believed that acquiring of body parts brings great prosperity, and this has continued to date

Cannibalism

Cannibalism can show up at the most unexpected point in the history. In late 1500s essay of cannibalism by Montaigne's shed light on the intricate practice of cannibalism in Brazil where the Tupi people would be captives for months before they were eaten. They

⁶ Clifford Williams, ashante: Human Sacrifice or Capital Punishment? An Assessment of the Period 1807 -1874 *International Journal of African historical studies*, val. 23 no. 3 (1998) p. 433-441, J. Rives, human sacrifice among pagans and Christians, the journal of roman studies, vol. 85. (1995) p. 65-8

⁷ Robin Law, "Human Sacrifice in Pre-Colonial West Africa, *African Affairs*" Vol. 84, No. 334. (Jan, 1995) p. 53- 87

were made to entertain their eaters with the threats of their coming death, chanting with songs composed by prisoners that they all come boldly and gather to dine off him, for they would be eating their own fathers and grandfathers who have served to feed and nourish his body, "the muscles," "the prisoners say this flesh and the veins" are your own, "poor fools that you're." Note: the singing of the new world describes it is an "economy of flesh" that passed through the warring tribes for generations

Albinism

Albinism is a genetic condition characterized by lack of pigment in the body. ⁸ Albinos who are believed to be sources of magic in traditional communities, has so far faced brutal attacks led by witch doctors and their body parts apportioned in claims of being source of riches and wealth. ¹⁴ In Uganda, Kenya and Tanzania, most ritual killings are done for rituals to harvest body parts to prepare charms and magical concoctions which some desperate rituals invade cemeteries and exhume dead bodies to extract parts of the body. And victims are mainly minors, which claimed 87 children in 7 years yet others go unreported. And the women which claimed over 44 women by 3 months. ⁹ And claims in that report shows that the local authorities lack political will to uphold the rule of law and protect Human Rights as per Leo Igwe, Hue's representative for West and South Africa.

There are various International Convention, National Legislations, Principles of Common Law regulating murder, violence, and

⁸ Online dictionary at C by- SA 3.0 license

⁹⁹ Observer 8/9/17 by Olive Eyotary @<https://www.googleweblight.com>

inhuman, degrading treatment in East Africa. Despite the continued recommendation and debates to enact specific legislations regulating human sacrifice, Uganda has not excitedly embraced such laws. Hon. Atiku Bernard, Member of Parliament, Ayivu County,¹⁰ moved a motion to table a private members' bill among which the objectives were, "despite the International Instrument, National Laws and government's efforts in placed to protect individual rights to life, degrading acts, ritual killings and human sacrifice practices are in the raise whose common victims are children." Therefore, need for specific laws to prevent and prohibit human sacrifices practices have been identified as a major protection measure to address the growing and serious human rights challenge. He further recognized the Witchcraft Act,¹¹ prohibiting acts of witchcraft has lost relevance.¹² Relevance in today's circumstances and its existence in Uganda's statute books have been questioned especially since the law has rarely been enforced rendering it none-deterrent for the practice of human sacrifice.¹³ He then sought leave to introduce a private member's bill entitled The Prevention and Prohibition of Human Sacrifice and Hatmful Practices Bill, 2007 and to request the ministry of finance, planning and economic development to grant a certificate of financial implications. The MP was granted 2motonhs leave for the research and time tabling the bill, however, the bill went into silence given the prevailing bureaucracies involved in a private member's bill but the MP said the bill has just found its way to the ministry of fiancé for the certificate of financial

¹⁰ 18th-July-2017 House of Parliament of Uganda.

¹¹ Cap 124 Laws of Uganda

¹² AG v Salvatory Abuki

¹³ Id, 18th-July

implication and it may take one week.¹⁴ However, the Hon. stated that the bill which is to be tabled has not catered for the regulating cannibals, not thought of placing the presumption on ritual murder perpetrators, and the burden of proof wholly still placed on prostitution beyond reasonable doubt.¹⁵ Many cases therefore will be backlogged in courts based on the secretive nature of ritual killing for lack of evidence to pin the perpetrators. Mob justice will still continue to do its part since people think govern is not doing enough to bring perpetrators to book. East African courts followed their colonial rulers who regarded witchcraft as evidence of backwardness in Africa. The contradictions rooted in colonialism; this has caught them in a more requisite dilemma.¹⁶ And denying witchcraft deprives the state control of instrument and outlawing witchcraft drives it into a form of popular movements which contravenes state authority.¹⁷ It also established that cannibals in Kasese Uganda mix their Kitambo (charm) in food prepared at burial places and feed the monours so that they can increase in their number to avoid by lynched by the mob.

Historical and Religious Perspectives

Near East beliefs

The Nile Valley and ancient Near East appear to have been hotbeds of sorcery practice and belief. It was prominent in the cultures of

¹⁴ Phone call on the 26th-june-20 19 6:49AM

¹⁵ Wilmington Supra

¹⁶ Semeo, mesaki, witchcraft and witchcraft killing in Tanzania, paradox and dilemma, AG v Salvatory Abuki

¹⁷ Id, Article 29 (I) (c) Constitution of the Republic of Uganda (1995)

Babylonia and ancient Egypt. The Maqlû, an Akkadian anti-witchcraft ceremony, was a part of the latter tradition. The Code of Hammurabi (about 2000 BC) contains a section that specifies:

If a man casts a magic on another man and it is not justified, the target of the spell must travel to the holy river and jump into it. The person who cast the charm on him will inherit his home if the holy river sweeps over him and he drowns. The person who cast the spell will be executed if the holy river finds him to be innocent and he is unhurt. He who dove into the river will occupy the home of the person who cast the spell on him.

Abrahamic religions

Christianity

Hebrew Bible

The Holy Scripture frequently makes mention to sorcery, and the harsh condemnations of such practices found there appear to be more focused on the abomination of magic itself than on the possibility of fraud, according to the New Advent Catholic Encyclopedia.

The King James Version uses the words witch, witchcraft, and witchcrafts to translate the Masoretic *kāsháf* (Hebrew pronunciation: and (qésem); these same English terms are used to translate *φαρμακεία* *pharmakeia* in the Greek New Testament. Verses such as Deuteronomy 18:11–12 and Exodus 22:18 ("Thou shalt not suffer a witch to live") thus provided scriptural justification for Christian witch hunters in the early modern period.

The precise meaning of the Hebrew קַשְׁפָּ , usually translated as witch or sorceress, is uncertain. In the Septuagint, it was translated as *pharmakeía* or *pharmakous*. In the 16th century, Reginald Scot, a prominent critic of the witch trials, translated, and the Vulgate's Latin equivalent *veneficos* as all meaning 'poisoner', and on this basis, claimed that witch was an incorrect translation and poisoners were intended. His theory still holds some currency, but is not widely accepted, and in Daniel 2:2 is listed alongside other magic practitioners who could interpret dreams: magicians, astrologers, and Chaldeans. Suggested derivations of include 'mutterer' (from a single root) or herb user (as a compound word formed from the roots *kash*, meaning 'herb', and *hapaleh*, meaning 'using'). The Greek literally means 'herbalist' or one who uses or administers drugs, but it was used virtually synonymously with *mageia* and *goeteia* as a term for a sorcerer.

The Bible contains some proof that these prohibitions against magic were upheld by the rulers of Israel: With two men by his side, Saul disguised himself and changed into different clothing before approaching the woman at night. He said, "I entreat thee, divine unto me by the familiar spirit,[a] and bring me him up, whom I shall name unto thee." And the woman replied, "You know what Saul has done, how he has driven away magicians and people with familiar spirits from the land. Why then do you prepare a trap for my life, intending to kill me?"

New Testament

Similar to how the Old Testament did, the New Testament abhors the practice. Most New Testament translations use the word sorcerer/sorcery instead of witch/witchcraft.

Judaism

Witchcraft is viewed by Jewish law as being associated with idolatry and/or necromancy, both of which are grave theological and practical sins. Despite the fact that Maimonides vehemently disputed the efficacy of all witchcraft techniques, he maintained that the Biblical prohibitions against them were intended to wean the Israelites from behaviours involving idolatry. Even while magic is known to exist, it is illegal to use because it frequently includes the homage to other deities. The Talmudic Rabbis also forbade magic when it yielded results other than illusion, citing the case of two men who employed magic to harvest cucumbers as an illustration. Only the person who uses magic to actually select the cucumbers deserves condemnation; not the person who makes it appear as though they are being picked. However, some of the rabbis engaged in magical activity personally or provided instruction in it. For instance, Hanina and Hoshaiah studied together every Friday and produced a miniature calf to be eaten on Shabbat, while Rava (amora) constructed a golem and sent it to Rav Zeira. In some instances, the "magic" was viewed less as witchcraft and more as heavenly marvels (i.e., originating from God rather than from "unclean" powers). Jews may not attempt to study the practices of witches, and witches must be executed, according to Judaism. The Witch of Endor, whom Saul consults in 1 Samuel 28, is without a doubt the most well-known example of a medium in Jewish literature.

Islam

In Islam, there are many different types of divination and magic, including black magic, astrology, warding off the evil eye, making

amulets and other magical tools, evocation, casting lots, and astrology.

It is contested whether practicing witchcraft is legal. Most Islamic traditions make a distinction between good and evil magic. According to al-Razi and Ibn Sina, magic is only a tool, and whether an act of magic was legal or not depends solely on the result. Al-Ghazali acknowledges the existence of magic but forbids the study of any form of magic. Ibn al-Nadim contends that while sorcerers appease devils and engage in acts of disobedience and sacrifices to demons, beneficial supernatural abilities are bestowed by God after the soul has been purified. It's sometimes assumed that access to sorcery through acts of piety or disobedience indicates whether magic is legal or illegal. Ibn Qayyim al-Jawziyya, an adherent of Ibn Taimiyya, the main progenitor of Wahhabism, completely rejects magic, including exorcisms, as superstition. Sorcery, talismans, and prestidigitation are all condemned and considered unlawful by Ibn Khaldun. However, Tabasi simply provided a variety of sorcery rituals, rejecting the reasoned framework of magic advocated by the majority of Ash'arite theologians. But he acknowledges that only sorcery that complies with sharia is legal. Most Islamic traditions make a distinction between good and evil magic. Miracles are seen as divine gifts and are a part of legal magic.

The Quran attests to the existence of magic. According to al-Isra, the Quran itself is considered to bestow supernatural benefits and healing upon all who hear it. Only with God's approval did Solomon receive the ability to communicate with animals, jinn, and demons, as well as command them. [Quran 27:19] According to hadith literature, God revealed Surah Al-Falaq to Muhammad to defend

him from Jann, the ancestor of the jinn, and it is used as a prayer to God to fend off black magic. Muhammad's adversaries wrongly claimed that he was a magician. [Quran 10:2] Al-Baqara provides support for the notion that devils teach sorcery. Also stated as tempting humans to learn sorcery are a couple of fallen angels by the names of Harut and Marut.

Numerous magical practices in Islam have been connected to pre-Islamic East African and Turkish practices by scholars of religious history. The Zr is the most prominent of these traditions.

Perspective in Africa.

Thanks in large part to a tendency among western scholars to approach the subject through a comparative lens vis-à-vis European witchcraft since the time of the now largely discredited Margaret Murray, much of what witchcraft represents in Africa has been susceptible to misunderstandings and confusion.

Some of the nations where this was the case have formally recognised the fact of witchcraft through the law, whilst some colonialists attempted to end witch-hunting by creating legislation to ban allegations of witchcraft. As a result, there is now a climate that supports the prosecution of accused witches.

Cameroon

Djambe, a term used by the Maka people of eastern Cameroon to describe witchcraft, is a force that resides inside a person and has the potential to increase that person's vulnerability. It includes the occult, transformational, lethal, and therapeutic practises.

Central African Republic

In the Central African Republic, hundreds of people are found guilty of witchcraft every year. In the Central African Republic, Christian militias have also abducted, burned, and buried alive women who were allegedly "witches" during public ceremonies.

Democratic Republic of the Congo

Between 25,000 and 50,000 kids had been accused of witchcraft and expelled from their homes in Kinshasa, Democratic Republic of the Congo, as of 2006. These kids have endured exorcism abuse that is frequently brutal and is occasionally overseen by so-called religious leaders. Other Christian activists and pastors vehemently refute these allegations and work to protect children from their dishonest colleagues. These kids are frequently referred to as "child witches" or "children accused of witchcraft," respectively. Two short films on the topic were filmed in Kinshasa by journalists Mike Ormsby and Angela Nicoara in 2002 with funding from USAID.

In the midst of a panic, the police in Kinshasa, Congo, detained 14 suspected penis-snatching victims and sorcerers in April 2008. They were charged with employing witchcraft or black magic to steal (make disappear) or shrink men's penises in order to demand money for treatment.

One study suggests that even if the use of magical warfare techniques (such as "bulletproofing") in the Eastern Democratic Republic of the Congo serves a group function at the expense of individual combat effectiveness. This, according to the study's authors, is one of the reasons that the belief in witchcraft endures.

A local Congolese initiate's complimentary remarks about witchcraft:

From witchcraft ... may be developed the remedy (kimbuki) that will do most to raise up our country. "Witchcraft deserves respect .it can embellish or redeem (ketula evo vuukisa). "The ancestors were equipped with the protective witchcraft of the clan (kindoki kiandundila kanda). They could also gather the power of animals into their hands ... whenever they needed. ... If we could make use of these kinds of witchcraft, our country would rapidly progress in knowledge of every kind." "You witches (zindoki) too, bring your science into the light to be written down so that ... the benefits in it ... endow our race."

Ghana

In Ghana, neighbours frequently accuse women of practising witchcraft and assault them. Six witch camps exist throughout the nation as a result, where women who are thought to be witches can seek shelter. It is estimated that a total of 1000 women reside in the witch camps, which are unique to Ghana. Some of the camps may have been established more than a century ago. The camps will be shut down, the Ghanaian administration has said.

Arrests were made in an effort to stop the tragedy that occurred in Ghana 10 years ago, when mobs killed 12 alleged penis-snatchers. While it is simple for modern people to discount such claims, Uchenna Okeja contends that Africans who subscribe to a belief system that accepts the plausibility of such magical activities gain a lot from it. As an illustration, the notion that a sorcerer has "stolen" a man's penis can serve as a mechanism for reducing anxiety in men

who are experiencing impotence while also offering an explanation that is in line with African cultural beliefs as opposed to turning to Western scientific theories that are tainted by the history of colonialism (at least for many Africans).

Malawi

Children are frequently accused of witchcraft in Malawi, which has led to several cases of child abandonment, torture, and even murder. African traditional healers and their Christian counterparts are actively involved in identifying children as witches and trying to earn a profit out of exorcising children, just like in other African nations. To solve this issue, a number of secular and Christian organisations are working together.

William Kamkwamba claims that since they view money as a rival form of evil, witches and wizards are terrified of it. Placing currency, like as kwacha, about a room or bed mat may shield the resident from their evil spells because any contact with cash will break their spell and leave the wizard naked and bewildered.

Nigeria

In order to profit from the lucrative witch finding and exorcism business—which was once the sole purview of the so-called witch doctor or traditional healers—a number of Pentecostal pastors in Nigeria have blended their evangelical style of Christianity with African beliefs in witchcraft. These pastors have participated in the murdering and torture of children who were accused of practising witchcraft. Around 15,000 kids have been charged over the previous ten years, and about 1,000 of them have been killed. Nigeria has a

large number of churches, making it difficult to find congregations. Some pastors make an effort to develop a reputation for spiritual strength by allegedly "detecting" child witches. This frequently occurs after a family member dies, loses their job, or the pastor is accused of financial malfeasance. During "exorcisms," suspected children may be starved, beaten, dismembered, lit on fire, made to ingest cement or acid, or even buried alive. Many Nigerian churches are complicit in the abuse, despite the fact that church administrations deny knowledge of it, despite the strong opposition to it from some church leaders and Christian activists.

The mother of the attack's organiser, local politician Thomas Obi Tawo, was among the fifteen adults—mostly women—who were set on fire in May 2020 after being suspected of witchcraft.

Zambia

Witchcraft is a hot topic in Zambia where the courts seem to deal with such matters more often than in many other countries. In this case the two accused were convicted of murdering an elderly woman, but pleaded their belief in witchcraft as an extenuating circumstance. Though found guilty of murder, their alleged beliefs helped reduce their punishment to a life sentence instead of the death penalty that would otherwise have been mandatory. The two then appealed against sentence only, on the basis that it was "manifestly excessive" to imprison them to life since they were first offenders. Hearing this case, Zambia's supreme court took the opportunity to restate its views on when a belief in witchcraft would amount to extenuating circumstances. Given the number of such cases, this is a timely reminder – though the results of their deliberation would have come as a shock to the two accused.

AS so often in witchcraft-related killings, the victim in this case was an elderly woman. Her name was Monica Kabondo, and on the morning of 18 April 2012, she was at home with several grandchildren when a funeral procession veered off its course and made for her house.

Carried in the procession was a coffin with the body of a two-year-old child who had died of a fever the day before.

When they reached her house, the people in the procession brutally attacked Kabondo and she died soon afterwards on her way to hospital. One of her granddaughters would later tell the court that she heard her grandmother crying for help. When she squeezed her way through the crowd she found her, lying on the floor and covered in blood.

As the mob left the house, they took with them the grandmother's blanket, some clothing and a goat.

The two key witnesses both identified the accused, Donald Taulo and Watson Mboko, as part of the crowd that attacked Kabondo.

When he gave evidence Taulo said that it had been his son who was to be buried. As the mourners carried the coffin, it (the coffin) "turned and headed in the direction of the bush and later followed the road towards (Kabondo's) house." Both accused claimed they had tried to stop the crowd beating the old woman but failed.

Taulo's evidence that the coffin "turned" was an obvious reference to "kikondo", when a casket containing a deceased person is believed to take on a mind of its own. During a funeral procession the coffin

heads to the home of the person said to have been responsible for causing the death of the one in the coffin and points out him or her.

At the trial, the court found the two guilty of murder, but held there were extenuating circumstances in that they believed in “kikondo”. They were therefore both given a life sentence, rather than the death penalty that would usually follow a murder conviction. But the two decided to appeal on the grounds that the sentence was too severe since they were both first offenders.

The supreme court was skeptical. From the prosecutor they heard that there was no evidence to suggest any belief in witchcraft on the part of the two accused. Nor had the old woman been accused of being a witch or of being linked to the child’s death. The father of the dead child was specifically asked during the trial whether he had instructed anyone to put medicine on the coffin to initiate the “kikondo” procession – and he categorically denied having done any such thing.

In the view of the prosecution, the trial court should not have found any extenuating circumstances based on a belief on witchcraft, and the appeal should be dismissed, along with the previous sentence, and the mandatory death penalty imposed.

The supreme court commented that, in “a plethora of cases” already, it had acknowledged that “belief in witchcraft by many communities in Zambia is very prevalent” and could be held to be an extenuating circumstance. But in each case where a belief in witchcraft was pleaded, the truth of whether the accused really had such a belief had first to be established.

The court said it had made clear in many earlier cases that whenever the issue was raised of an alleged belief in witchcraft, that belief had to “reach the threshold of provocation” in order to lead to a life sentence rather than the death penalty. But in this case neither accused indicated a belief in witchcraft in their evidence and there was nothing in the record to show such a belief.

In order for a claim of belief in witchcraft to stand in court and to qualify as valid extenuating circumstances, some evidence was first needed that an accused in fact believed in a witchcraft practice. This might include “a visit to a witchdoctor, a visit to a witch finder or advice from either of the two; a visit or advice from a traditional healer or consultation about witchcraft or some other reasonably suspicious event or admission believed to have been authored by the deceased in the murder case; or indeed, a demonstration of strong belief in a local ritual ordinarily associated with witchcraft.”

According to the court no such evidence had emerged in this case, though the accused clearly knew the accused. The two used to do part time work cultivating the field that she owned and were well known to the family. There was no evidence of anything linking the child’s death to the old woman before her fatal assault by the mob. Neither of the appellants visited any witchdoctor or witch finder about the sick child before it died. Add to this the fact that the accused in fact claimed they had tried to stop the mob from carrying out the kikondo ritual.

The two would not have worked for the old woman if they really believed she was a witch, said the judges, and they concluded: “We do not find any evidence-based belief in witchcraft (by the two accused) to justify their assault” and thus their claim that they

believed in witchcraft and that this amounted to extenuating circumstances, had to be rejected.

The matter was originally been heard by seven judges, but two had since retired while another had been an acting judge and no longer on the bench. The remaining four said they were unanimous in finding the trial court made a “perverse finding of fact” on the question of extenuating circumstances due to a belief in witchcraft, and the supreme court felt “duty bound” to intervene and reverse it.

Sierra Leone

Trial and conviction for witchcraft had a positive outcome for those convicted among the Mende (of Sierra Leone). The entire hamlet had been forewarned by the witchfinder to protect the elderly defendants' relative well-being. Six months later, everyone who had been accused was safe, fed, and possibly happy than they had ever been. They scarcely even needed to beg for help getting food or other necessities to be brought to them. Such old and widowed people were reintegrated into society and left secure in their old age rather than being abandoned or (as in Western civilization) institutionalised in old people's homes. In that they are alone and defenceless, older persons are “ideal” candidates for this type of charge, just as they are for “social security” for the same reasons. Suwa'ye, which means “amazing powers,” is the Kuranko word for witchcraft.

Tanzania

President Kikwete of Tanzania openly denounced witchdoctors in 2008 for killing albinos for their body parts, which were believed to have lucky properties. Since March 2007, 25 albinos have been killed. On the guidance of witch doctors, albinos are frequently

killed in Tanzania for their body parts to construct potent amulets that are thought to ward off witchcraft and bring good fortune to its wearers.

Zulu

Witches known as sangoma, who are Zulu natives, guard humans from evil spirits. Typically, they spend five to seven years in training. This training might just take a few months in urban areas.

The inyanga are a different kind of witch; they are true witch physicians who treat patients with plant and animal parts. Future generations will continue to perform this duty. Eighty percent of Zulu people communicate with inyangas.

Uganda

Witchcraft Act Cap 124 Laws of Uganda,¹⁸ defines witchcraft to be supernatural power. And this position was also retaliated in the Regulations of Traditional Health Practitioners (THPs) and Traditional Medicine Practice (TMP).¹⁹The same position of witchcraft is taken also in Kenya and Tanzania.²⁰

Acknowledgement of witchcraft and the existence of witch doctors by the judicial officers Hale, charging jury in 1665 said "that there are such creatures as witches I have no doubt at all." Kenya in the case of *Arthuman V Republic*,²¹the jury recognized that witchcraft can

¹⁸ Section 3

¹⁹ WHO Africa on Better Action for Health, OssayMjKasilo, Jean-Marie Trapsida-WHO-Africa.

²⁰ Prichard forward to witchcraft and socery in E. Africa 1963.

²¹ 1967 EA 401

cause harm! Injury to another in mind/ property but Section 3²²referred to "so called witchcraft" meaning that it's in denying hence ambiguity which is hard to enforce in law. And witchcraft and criminal law in East Africa means that courts are reluctant to acknowledge its existence. In Uganda, the definition section does not define witchcraft it "excludes" and not provide us with "inclusion" of witchcraft but prescribes punishment. But despite the contradictions Uganda's and Tanganyika ordinance seem to clearly point that witchcraft is a "supernatural power" and supported a sociological anthropology writer E.E Evans Pritchard who described witchcraft as a "physic Act" and Lafontaine on his essay on the Bagisu who defined witchcraft as "all supernatural attacks. He should have put in considerations the existence of witchcraft doctors ²³where a witchcraft doctor in Mityana district was found with skulls in a rotting status, knickers of women, hair, new burial closes which implicates them of ritual murder basically exercise by witchcraft doctors to appease their gods.

Bugembe Anthony associated human sacrifice to devil worshipping where body parts of a person sacrificed and offered to Lucifer²⁴.

Kizza Immaculate in their study on oral tradition in Uganda found out that the Baganda's among other tribes in Uganda believe in the super natural realms of the spirit to be the word of the living and has always believed to be favored by ancestral spirit (Lubaale) to access good health and prosperity.²⁵ He suggested western education to

²² Witch Craft Act of Kenya Cap 67

²³ Bukedde TV 91 h May 2019! O: OOpM Agataliko Nfuufu

²⁴ "deveil worship". Sunday Vision 281 h March 2009

²⁵ "A study and anthology of the legends, Myths, epigrams and the folk tails (Jafferson, NC: Mcfarland & Co. 2010)"

remove fear of witchcraft having failed to consider the trials in India where it was recognized that witchcraft and witches are prevalent in both developed and underdeveloped countries since many practices are evident in England us.²⁶ Jean Marie, Ossay, MJ Kasilo also recognized spiritualism among various specializations under the regulation of traditional health practitioners and traditional medicine practice.

Jubilee campaign and Kyampisi child care ministries in their study concluded that child sacrifice is premised on triad actors that is the witch doctors, their clients and the spirits to whom the sacrifice is made, that is; the businessmen who seek witch doctor as to carry out rituals in order to get rid of their competitors in business off their ways in order to prosper and poor people seek witchdoctors and when no results are coming, the witchdoctors convince them to sacrifice a human being to grant their desires for wealth.²⁷ This clearly shows that if there is any prosecution, all the three should be prosecuted in case of human sacrifice. Mbogoni Lawrence focused on examining the practice of human sacrifice in Uganda and concluded that many lives are lost due to loathsome cultural practices who are aggressive witchdoctors and justified why government across the continent are adopting stringent measures aimed at curbing the vice and further suggested that new laws are needed to outlaw these practices and ensure perpetrators are dealt with accordingly.²⁸ Jean burke, Theresa J. Kaijage and Johannes John-

²⁶ Daily Nation March 4th 1969 at 2, COL. I, G. Parrinder, witchcraft: European and African (1963) especially CH.7, witchcraft Trials in Britain and American.

²⁷ Child Sacrifice in Uganda (Kampala 2011 p.37)

²⁸ Human Sacrifice and Super Natural in African History, Mkuku Na Nyota, Publishers 2013

Langba focused on studying Escalating violence against people with albinism in east Africa and established that murder of the people with albinism has emerged a human right issue ²⁹and related right and suggested that the social workers should challenge the injustices affecting the people living with albinism and social inclusion.³⁰

Statement by special representative of the secretary general of violence against children showed that violence against children is accused of witchcraft belief and are rarely reported because the belief cuts across the social lines of urban and rural areas though the practice have been criminalized and the protective measures have been adopted to safeguard children's safety and human rights but these protection remains in paper (s) not in reality given the prevailing circumstances³¹

Additionally, it's important to note that legislation does not criminalize the magic power to change customary practice that deeply rooted in beliefs. and suggested that states obligation of tackling measures of criminalizing such acts investigation of perpetrators to prevent attacks to the people with albinism and ensure there is effective remedies, redress and rehabilitation, healthcare's, shelters among others³²

²⁹ Right to Life

³⁰ Under the same sun 2012, children living with albinism in Africa: murder mutilation and violence a report on Tanzania

³¹ Section 3 of the Witchcraft Act Cap 157 Laws of Uganda, Salvatore Abuki Constitution Petition of 1999 (Supreme Court of Uganda) Additionally, it's important

³² UN. General Assembly, Human Rights Council 24th Session Agenda 2 & 3, Annual Report of the United Nations High Commissioner for Human Rights and Report of the Office of the Secretary General, 12th September 2013

Their concern of trading in organs, trafficking in persons, and sell of children surrounded by witchcraft and underground nature of its market make it difficult to find evidence about trafficking of persons and organs sustained by high prizes that some persons are willing to pay to obtain them. They acknowledged that while protocol to prevent and suppress and punish trafficking in Persons.

Especially women and the children supplementing UN conventions against transnational organized crime, which refers to trafficking in persons for purpose of exploitation, including remove of organs, it does not provide for penalties for removing of organs.

Med SK. Kaggwa in his human right statement on the concern of increased killings in Uganda in a short time recommended that government should make specific laws to curb down the growing evil of ritual killings.³³

Relying on the growing evil in the country based on the statistical figures and news reports in regard to child sacrifice between 2006 and 2017 (about 10 years) and the recommendations thereof, honourable member of parliament of Ayivu county Atiku Benard moved a motion to table a private member's bill, "the prevention and prohibition of human sacrifice and harmful practices bill, 2017." Basing on the grounds that although there are international instruments, national laws, and government efforts to protect life³⁴ and degrading acts³⁵, ritual killings and human sacrifice on the rise in the country children being common victims

³³ Uganda Human Rights Commission (UHRC) 5^h May 2017

³⁴ Article 21 (I) of the Constitution of the Republic of Uganda 1995

³⁵ Article 24 and 44 Ibid

He further stated that the Witchcraft Act³⁶ has lost its relevance given the supreme court judgement in the case of Salvatore Abuki 'supra' hence the need for a new law to repeal the Witchcraft Act to curb the growing evil of human sacrifice in Uganda given the fact that 6million Ugandans belief in power of witchcraft. has lost its relevance given the supreme court judgement in the case of Salvatore Abuki 'supra' hence the need for a new law to repeal the Witchcraft Act to curb the growing evil of human sacrifice in Uganda given the fact that 6million Ugandans belief in power of witchcraft.

Legal Frame Work of Sacrifice in Uganda

The constitution is the supreme law of the land and any other law that contradicts it is void³⁷.It prohibits cruel in human, degrading, treatment.³⁸ It further prohibits taking of another person's life except in accordance with the law³⁹

The Penal Code Act 7⁴⁰,criminalizes murder with malice afore thought and upon conviction the accused is liable to suffer death.⁴¹

The Children (Amendment) Act protects a child from violence, abuse and illegalizes harmful cultural practices against the child. Anyone who contravenes the Children Act, upon conviction is to suffer imprisonment of 5 years/ fine of 20 currency points/ both.

³⁶ Cap 157 Laws of Uganda

³⁷ Art 2 the Constitution of the Republic of Uganda 1995.

³⁸ Art 24 ibid

³⁹ Art 21 Ibid.

⁴⁰ CAP 120

⁴¹ Sections 243 Penal Code Act

Further, Anti-Trafficking in Persons Act,⁴²criminalizes human sacrifice and sentences the accused upon conviction to suffer death.

Kenya

The constitution is the supreme law of the republic of Kenya and binding on all persons and state organs at all levels.⁴³ It grants protection to everyone personal dignity.⁴⁴ Further. It prohibits intentional taking of another's' life except as authorized by the constitution or the law.⁴⁵ The Penal Code⁴⁶ criminalizes the act of killing another through unlawful means with malice afore thought, and anyone convicted of murder is liable to suffer death⁴⁷. Further, the Counter Trafficking in Persons Act incriminates trafficking in persons causing the death of the victim and upon conviction, the accused suffers life imprisonment⁴⁸Furthermore, the Witchcraft Act⁴⁹; incriminates practicing of witchcraft a manner that causes in my permanently against a person is liable upon conviction to 5 years imprisonment.

Tanzania

The right to life is protected by the society except in accordance with the Law, ⁵⁰ The Penal Code criminalized murder with malice afore

⁴² 2009

⁴³ Art 2(1) the Constitution of the Republic of Kenya 2010.

⁴⁴ Art 28.

⁴⁵ Art 26.

⁴⁶ CAP 63 LAWS OF KENYA

⁴⁷ 5.203,204,206 Penal Code Ibid.

⁴⁸ S.9. Cap 61laws of Kenya

⁴⁹ CAP 167 5.2.

⁵⁰ 86 ART 14 of the Constitution of the United Republic of Tanzania CAP 2.

thought and upon conviction the convict suffers death.⁵¹The Counter Trafficking in Persons Act, ⁵²criminalizes trafficking in persons and causing of death of the person trafficked, upon conviction suffers death. ⁵³The Witchcraft Act,⁵⁴ criminalizes practicing of witchcraft which intent to cause death against another and upon conviction, the accused is liable to a term of? years' imprisonment. Kenya. The children's Act,⁵⁵ incriminates acts of harmful practices against children and upon conviction the accused is liable to imprisonment of 2 months/ fine of 50,000 Kenya/ both.⁵⁶

International Conventions.

International Convention on Civil and Political Rights (ICCPR),⁵⁷ declares that no one will be subjected to torture cruel, inhuman degrading treatment or punishment, except with free consent to medical/ scientific experiment.

The Convention further prohibits arbitrary deprivation of a person's life.⁵⁸ And punishment will be that of genocide⁵⁹

The African Children's Charter (ACC) obliges state parties to take appropriate legislative, administrative social and educative measures to protect children from all sorts of abuse violence including

⁵¹ 87 S.196,197, and s 200 Penal Code CAP 16 Laws of Tanzania.

⁵² No 8 2010,

⁵³ No 8 2010,

⁵⁴ Sec 2 CAP 18 Laws of Tanzania.

⁵⁵ CAP 141, 92 S.14 and s. 20 of CAP 141 Laws of Kenya

⁵⁶ S.14 and s. 20 of CAP 141 Laws of Kenya.

⁵⁷ ART7

⁵⁸ Art 7,6

⁵⁹ Art 16,19AC

effective procedure for the child reporting, investigating treatment and follow-up of violence, abuse against children and appropriate judicial involvement.⁶⁰

African Charter on the Right and Welfare of the Child,⁶¹ further prohibits harmful social and cultural practices and obliges states to take all measures to eliminate harmful social practices harmful to a child i.e., those customs prejudicial to health/ life of a child.

Being members of organization of African union, Uganda, Kenya and Tanzania have ratified all the above conventions and are binding upon them.

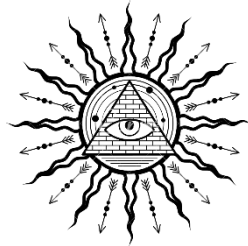
Conclusion Whereas the laws regulating human sacrifice in the region East Africa that is; Uganda Kenya, and Tanzania is in the Penal Code Acts, Children Acts, Anti Trafficking and Counter Trafficking in persons acts, none of these laws define what human sacrifice is and no laws regulating cannibalism.

East African countries of Uganda, Kenya and Tanzania must consider putting together the laws regulating human sacrifice in one document, consider renaming these define human sacrifice as ritual murder and not murder, consider having in place a law regulating cannibalism, since there is ritual cannibalism.

⁶⁰ Art 16/19 of ACC

⁶¹ Art 21 ACR WC, adopted in 1990, Ethiopia, Adis-ababa, came into force in 1999, November.

CHAPTER FOUR



Criminalization of Witchcraft

From the fore discussion on religious perspective on witchcraft, and these are the major religions in my abode, it is obvious the evil of witchcraft or sorcery and magic are abominable. Even besides these religious condemnations, African traditions have prejudice against witches and this is ubiquitous.

Therefore, because we detest witches as religious people, could the religious prejudice be a reason for criminalizing witchcraft? Then why promulgate laws when we could simply use the scriptures to deal with them? The objects for criminalizing witchcraft are likely objective and necessary but looking at this from legal lens, it's not as easy as a walk in the park. The law has stringent tests for a crime which the scriptures have not sufficiently guided on. Even that, the very enigmatic nature of magic makes it hard to penalize.

Although it is hard to conceive of a society without criminal law, the existence of coercive rules backed up by punishment is in fact problematic. Let us examine the power of the state to coerce our behavior or procure a certain kind of behavior. A key concern is to consider what the criminal law does which could not equally well be

done by morality, regulation or the civil law. The parameters for discussion have been described in the following question: ‘What are the facts, beliefs and principles which should underpin a political body’s choice to proscribe certain sorts of behavior by means of the criminal justice system?’ As a starting point we will consider some of the basic premises which generate the need for criminal law as opposed to other forms of social control, namely those of autonomy, social welfare and harm prevention.

Principles and Ideas Informing Decisions to Criminalize

State interference with a citizen’s behavior tends to be morally justified when it is reasonably necessary to prevent harm or the unreasonable risk of harm to parties other than the person interfered with. More concisely, the need to prevent harm (private or public) to parties other than the actor is always an appropriate reason for legal coercion.

Underlying the operation of the criminal law is a fundamental, yet challengeable, premise. It is that human beings are characterized by their ability to control their own destiny. Human action is conceived as the product of free, rational choices on the part of the individual.

This capacity for free and rational action taking effect in and on the natural and social world designates human beings as autonomous moral agents, that is as bearing responsibility for their actions whether good or bad. It is this same capacity which, in liberal societies, coercive rules exist to support. The premise has, then, direct implications for the relationship of the individual and state

because it provides a potential basis by which to justify and evaluate a system of coercive rules and punishment for breach. The coercive rules are justified by the fact that they act to promote human autonomy rather than restrict it. Subjects, as rational, free human beings, have the choice whether to conform or not and are able, using rules as standards, to conduct their lives with the minimum risk of suffering interference. Punishment for breach can then be justified because, by offending, the individual (free and rational) is deemed to choose not only to offend but also the punishment ‘price-tag’ attached to his conduct.

“The only purpose for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant. He cannot rightfully be compelled to do or forbear . . . because in the opinion of others to do so would be wise or even right⁶².”

The harm principle has both a negative and a positive thrust. Its negative thrust, which gives it its liberal appeal, is that the State has limited authority to coerce and punish. It may only do so to prevent harm to other people. Beyond this individual should be allowed to do, say, think what they like. Harm to self is not enough, nor is upholding society’s moral values. They may smoke, or drink themselves to death. They may spend every waking day watching TV or looking at pornography. They may blaspheme, commit suicide, deny the existence of God, engage in any form of consensual sexual unorthodoxy. In short, the ‘harm principle’ gives political priority to individual freedom from coercion rather than individual or

⁶² J.S. Mill, ‘On Liberty’ in J. Gray (ed.) *On Liberty and Other Essays*, Oxford: OUP (1991).

collective goods such as morality or welfare. Its positive thrust is to identify what justifies State coercion, namely harm prevention.

Taken together the principle yields the following equation. Where freedom of action must be restricted in order to maintain the autonomy and security of citizens, it is proper to curtail it. Otherwise, freedom takes priority. The crimes of theft and violence express this at its simplest. People who punch or steal from us seek to be authors of our destiny as well as their own. It is right, therefore, to restrict their freedom to do so.

Actus Reus of Witchcraft

A defendant must usually have both committed an *actus reus* (a guilty act) and have a *mens rea* (a guilty mind) to be liable for a criminal offence and the requirement that the *actus reus* and *mens rea* of a crime should usually both exist at the same point in time. An *actus reus* can consist of more than just an act, it comprises all the elements of the offence other than the state of mind of the defendant.

Conduct must be Voluntary

If the accused is to be found guilty of a crime, his or her behavior in committing the *actus Reus* must have been voluntary. Behavior will usually only be considered involuntary where the accused was not in control of his or her own body (when the defense of insanity or automatism may be available) or where there is extremely strong pressure from someone else, such as a threat that the accused will be

killed if he or she does not commit a particular offence (when the defense of duress may be available

As a matter of human rights, constitutions do recognize the fact that it is in the public interest to punish criminals who have been fairly tried and found guilty by the courts. People who commit crimes must not expect to be treated with kid gloves. They must expect to receive sentences that fit the offence they have committed. The sentence may be cruel, inhuman and degrading but they are lawful even under the constitution. Such sentences are accepted even in greater democracies such as the United States of America and the United Kingdom.

Uganda had a legislation on witchcraft, the “*Witchcraft Act of 1957*”. The witchcraft Act 1957 is an Act to provision for the prevention of witchcraft and the punishment of persons practicing witchcraft. It should be noted that for the purposes of this Act, it should be noted that witchcraft doesn’t include bonafide spirit worship or the bonafide manufacture, supply or sale of native medicines.⁶³ This is not peculiar to Uganda alone. Several countries have promulgated laws to regulate the practice of witchcraft. United Kingdom for instance had the *Fraudulent Mediums Act of 1951* which repealed their Witchcraft Act of 1735. These legislations were a deterrence on the occasion of witchcraft and the punishment of persons practicing it. A person claiming to be a psychic, medium or other spiritualist while attempting to deceive and to make money from deception were subjects of the law. The practice of witchcraft is not confined to Africa. Communities worldwide practice it. For example, the United Kingdom has the Fraudulent Mediums Act of

⁶³ <https://old.org> legislation consolidated act

1951 which repealed their Witchcraft Act of 1735. Does exercise of powers of telepathy, clairvoyance or other similar powers amount to witchcraft. What about intuition or ordinary forecasting. The yardstick of gauging witchcraft is onerous one.

In Uganda, one significant case on witchcraft is *Constitutional*⁶⁴ *Case No. 2 of 1997 between Salvatori Abuki, Richard Abuga and the Attorney General*. The petition was successful, Constitutional court declared that: The sections interpreting witchcraft were void for being vague and ambiguous and did not meet the requirements of the Constitution.

One, Salvadori Kabuki and one Richard Boga petitioned their convictions under the Witchcraft Act, laws of Uganda. They were tried separately in the Grade II Magistrate's Court of Auki in Lira District. salvatory was charged in one count with practicing witchcraft on Albertina Argol, Oka Alexandro and David Pongola. He pleaded guilty and subsequently was convicted and sentenced to 22 months imprisonment. In addition, he was banished from his home for 10 years after serving the sentence of imprisonment. Clearly, he should have been charged in three separate counts, one for each of the complainants. Richard Boga was convicted of being in possession of articles used for witchcraft and with practicing witchcraft. He was sentenced to 36 months imprisonment on the first count and 24 months imprisonment on the second count. And an exclusion order for 10 years was also made against him.

⁶⁴ constitutional case no.2 of 1997

The petition was that; “(if) that the Witchcraft Act Cap 108 Laws of Uganda, and (ii) the convictions sentences and exclusion orders thereof, are inconsistent with the Constitution *Articles 21(1), 28(1), 28(12), 24, 44, 26 and 29(1) (b) - (c) and 29 (2).*”

Whereas it's true that, the said petition (*supra*) succeeded, one asks as he ought to, what metric was used to discern whether the said petitioner was a witch or not. I mean was it a question of his conduct? Yes, court did observe the vagueness and ambiguity in interpreting the law governing witchcraft. Did court overly understand witchcraft as a practice? The law on witchcraft and its practice, in my considered view are not mutual. Apparently in the instant case, the law was on a witch's rights, constitutional right at that. The practice of which according to the law does not make the witch less human save if proven, his practice that could be inhumane maybe penalized. Which means that you can't take away or harshly ostracize a witch, denying him or her the rights to life.

For instance, what would a judge consider in concluding a case of witchcraft when the trial judge cannot verify the acts amounting to witchcraft. Factually the ingredients of witchcraft are not written anywhere and one ought to be inept with the nuts and bolts of the practice or at least have a glimpse of the same. However, considering that witches normally do not reveal how they conduct their practices, what's the source of information about the conduct of magic that the justices used in the trail.

The law and conduct of witchcraft are not only unparticular, ambiguous but also bind boggling and certainly causes miscarriage of justice. For a second time, would it therefore suffice to claim that for one to test an act, one ought to have a full knowledge of the act

in question? A deduction from the likely consequence of witchcraft is handy but is that a sufficient logic to condemn a witch. I earnestly believe that deducing a phenomenon from its probable future ramifications is equivalent to an injury on justice against the victim.

A similar incident to that of *Salvatore Auki* was in Kenya. The *Agenda*, among whom witchcraft was more strongly entrenched than among most Chania tribes, had put to death an old woman, who, they alleged, was a witch. The woman had stood trial before the elders and the chiefs of the tribe, had been subjected to a poison ordeal, and found guilty of causing the death of one of the head chief's wives and the deformity of two of his children. Then, following the custom of the tribe, she had been executed, in a slow and painful manner. It was a horrible death, but meted out after due trial, and for the most anti-social crime in the Wabenda calendar.⁶⁵ Okay, how was the killing and or causing deformity on the children inferred. In my considered view, killing the suspect was an evil synonymous with witchcraft.

IT has been believed that Satan can assume the Shape of an Innocent person, and in that Shape dose mischief to the bodies, or estates of mankind.

This maxim has been a scapegoat, turning the wheel of accusation upon persons condemned for this. That when a person suffers by Diabolical agents and is supposed to be bewitched, and in their sufferings see a specter in the exact image of any person, that person

⁶⁵ Ibid.

so represented must be considered the Witch. In opposition to this Maxim, I shall lay down three Propositions.

Proposition is, Satan may represent himself doing mischief in the shape of an innocent person, without prejudice to, or perverting of Gods Ordinance of Civil Justice. If Satan then it's alike easy in itself for him to personate an innocent, as a guilty person, if we look to his natural power: For according to natural causes by which he worketh, one's Image is as easily formed as the others. Satan personating the innocent in doing mischief is no prejudice to Civil Justice, if it can be found out that the mischief so done is the act of Satan, and not the act of the person represented. And witches' wickedness herein may be found by such means as those, if thorough care and diligence be used;

If it can be proved that the party represented (accused) was in another place at that time.

If when the afflicted complain they see the witch upon them, pinching, or hurting of them or others, can neither see any person there, nor by feeling perceive any flesh or bones, they may conclude there's not the very person complained of, but either an abused Imagination, or the Devil personating to the afflicted the person complained of.

If the supposed person come into the room through the Key hole, or when there is no place open for a person to come in by, then conclude, it's not the person but the Devil seen there. A Specter can come in by a pin-hole: but Satan cannot bring in the body of a man or woman in at such a place: for if so then Satan could work a miracle property so called, which he cannot do.

When a supposed person is seen in their full proportion and then changed into the form of another Creature, as a Cat, &c. This is a Specter not the person. The turning Lots Wife into a pillar of Salt was a proper Miracle beyond the power of Devil or Angel of themselves to perform. But a Specter can change its shape like the Wind under Ice running upon the water. This well weighed will confute many fond Stories that have passed, that such a Woman is a Witch, for she was seen in her full proportion, and then turned into a Cat, and back at last into a Woman; for all this was either a phantasy in the brains, or a Phantasma before the Eyes.

If the prints of biting of teeth, pinching with fingers, pricking with pins or irons be made on the Bodies of the Afflicted, and no hand, mouth or Body can be seen or felt to do it, this is to be imputed to Satan, and not to a real person doing of it. By these or such like means, due circumspection being used, when Satan personates the innocent, his fallacy and malice may be discovered, at least ordinarily.

Following the Constitutional declaration, the exclusion order or banishment as a form of punishment was deleted from the law. And the need for an explicit definition of the offence of witchcraft was underscored. Currently, 14 years later, the Witchcraft Act still provides for punishment for practicing witchcraft ranging from imprisonment for a period not exceeding five years to life imprisonment. For example, Section 2 of the Witchcraft Act partly states: Any person who directly or indirectly threatens another with death by witchcraft or by any other supernatural means commits an offence and is liable on conviction to imprisonment for life.

The question is, what mechanisms can one use to discern or ascertain bona fide spirit worship or bona fide manufacture, supply or sale of native medicines? Further more Evidence of reputation under the law presumes that the aggrieved person knows what the practice of witchcraft involves. It is all shrouded in mystery!

It should be noted that most crimes linked to witchcraft such as child sacrifice are punishable under other specific laws such as the Prevention of Trafficking in Persons Act and Penal Code Act. In light of all this, has Witchcraft Act outlived its usefulness?

1. Child sacrifice seems to be cropping up again in the country, what is the parliamentary committee on Human rights doing to keep this vice away forever? We as MPs have decided to have field trips to find out the causes of child trafficking and child sacrifice and get other emerging details. As a committee, we shall discuss the way forward. That is to say we will write down the solutions from the field which is causing the increase of the level of child sacrifice and trafficking. To give a hint, some of the problems Ugandans are facing are poverty, ignorance, inadequate security, lack of surveillance systems especially in rural areas and the failure by responsible agencies and institutions of government like the Uganda Human Rights Commission and the police to have an outreach programme to every village in an attempt to sensitise the population on the indicators or agents of child sacrifice and trafficking, among other measures of preventing these heinous crimes.

2. What should be the role of Ugandans and parents in particular in all this?

As parents, we know that each of us has a responsibility to take care of our children. We must ensure that we look at all the threats to

children. We should take the responsibility of our children seriously. For instance, which people come to talk to out maids? Or where are these maids really from? All of us know very well that God handed responsibility to parents. Whatever they are doing is a responsibility given to them and not a favor. As a community, everyone should act as a brother's and sister's keeper.

3. Should legislation be changed to make it more difficult for those who perpetuate child sacrifice? The law is very clear. Article 22 (1) of the 1995 Constitution of Republic of Uganda states that “no person shall be deprived of life intentionally.” Further, Section 188 of the Penal Code Act Cap. 120, creates the offense of murder for any person who intentionally causes the death of another person by an unlawful act. A child is by reason of Section 197 of the same Act deemed to be a person and therefore any person who unlawfully causes the death of a child is guilty of murder upon conviction by a competent court.

Article 6 (1) of the Convention on the Rights of the Child to which Uganda is a party States that Parties shall recognize that every child has the inherent right to life. We as MPs would like to request the government to increase the budget of the human rights commission so that they can go to the villages and sensitize people about the dangers of witchcraft. Even the budget for police should also be increased in order for them to sensitize the masses to desist from such practice. Actually, the punishment is not equivalent to the weight of the vice. Because when you lose a child you never get him or her back. We need a very strong law that will deter others from doing the same.

4. There are reports that some medical workers connive with witch doctors to steal babies and sell them for sacrifice. As legislators, have you thought of any remedy?

Of recent I saw that but we are going to take it on. We also want the health committee to join the investigations. This is still an allegation that a baby was kidnapped at birth at Mulago hospital. We shall investigate it together with the police, the health workers and other security agencies. We need to tell the police and those responsible for the safety of children in hospitals to be on the lookout as well. Such elements who steal babies should be apprehended and face the law. As a Member of Parliament, I want to send a warning message to the perpetrators of this act, that at the moment you will run but you will not hide as the long arm of the law will catch up with you wherever you are hiding. In other words, to the mothers who have lost their children, we want to assure them that those criminals will be brought to justice.

5. Is there a law which prohibits witchcraft? The law is there but was made by the colonialists. We need to tighten them to accommodate new developments. But there is general decline in security vigilance, thus people only care about their immediate relatives and whatever happens to other people's children is none of their business. This mentality should be changed. The Act to make provision for the prevention of witch craft and punishing persons practicing witch craft has six sections. What is funny is the interpretation of witch craft. It interprets witch craft not to mean bona fide in spirit worship or bona fide on manufacture of native medicine. It does not stop witch craft. The definition is ambiguous. Ironically threatening of death through witchcraft attracts a penalty

of life imprisonment. If you practice witch craft, you get five years in jail; which is also ironical.

6. How are you going to work on children trafficked from the eastern part of Uganda into Kampala and then they are arrested by city authorities?

We are also planning to visit some of these areas where such children are being kept. These children live like semi-slaves in their own country. The government should be ashamed of this. Billions are being stolen by a few individuals yet thousands of children sleep hungry. These are the future leaders of this country. We should do everything possible to take care of them. Government should also know that they do not come to the streets because of their own making. The driving force is poverty. If poverty could be done away with, then there would be no children on the streets. Pump money into agriculture, education – not this kind of funny UPE – and then you will see the results. The First Lady is in charge of Karamoja. Let her make sure that the money-hungry selfish businessmen and women stop grabbing people's land, leaving parents and children without homes. It is good the President is working with a committee to investigate land grabbing in Karamoja. That is a very good move.

7. What is the best thing the government can do to protect children from all these dangers? Definitely the children and youth need a full ministry. They are the majority of Ugandans yet the government doesn't seem to care much about them. Other countries have such full ministries, why not Uganda? The children and youth have a raw deal. The youth are suffering. They are the ones being trafficked to Malaysia; actually, reports indicate that some of our youth are languishing in Malaysian prisons.

The government also needs to get rid of poverty and ignorance. As long as these two continue to exist, child sacrifice and trafficking will also continue. Illiterates are the ones who embrace witchcraft mostly, though these days even those who have gone through university resort to such deception. In 1968, while launching the Common Man's Charter, Dr Milton Obote said: "We need to make the law to guide the unguided and make a law to inform the misinformed." This is the same thing we should do.

Recently, there has been a marked increase of reports on issues connected with witchcraft in the media. These stories range from exhuming dead bodies for body parts, human sacrifice where victims are killed, genitals cut off and blood drained from the body

Recently, there has been a marked increase of reports on issues connected with witchcraft in the media. These stories range from exhuming dead bodies for body parts, human sacrifice where victims are killed, genitals cut off and blood drained from the body and people banished from home areas after being accused of bewitching others. One wonders whether witchcraft practices are on the increase or whether their prominence is because they are linked to criminal acts such as murder. Many reasons are advanced for practicing witchcraft "search for wealth, jobs, power, love, peace and stability in relationships. Research reveals that witchcraft in historical, anthropological, religious, and mythological contexts, is the alleged use of supernatural or magical powers. A witch is a practitioner of witchcraft. Historically, it was widely believed that witches were in league with the devil and used their powers to harm people and property. Particularly, since the mid-20th century, 'bad' and 'good' witchcraft are sometimes distinguished. The 'good witchcraft' often involves healing. The concept of witchcraft as harmful is normally

treated as a cultural ideology, a means of explaining human misfortune by blaming it either on a supernatural entity or a known person in the community. Uganda has a specific law on witchcraft” the Witchcraft Act of 1957. This law provides for the prevention of witchcraft and the punishment of persons practicing it. The practice of witchcraft is not confined to Africa. Communities worldwide practice it. For example, the United Kingdom has the Fraudulent Mediums Act of 1951 which repealed their Witchcraft Act of 1735. This English law punishes persons who fraudulently purport to act as spiritualist mediums or to exercise powers of telepathy, clairvoyance or other similar powers. In Uganda, one significant case on witchcraft is Constitutional Case No. 2 of 1997 between Salvatori Abuki, Richard Abuga and the Attorney General. kabuki and Abuga challenged their convictions under the Witchcraft Act. They had been tried in the Grade II Magistrates Court of Auke in Lira District, their appeals to the Chief Magistrate’s Court failed. Abuki was charged with practising witchcraft, pleaded guilty, was convicted and sentenced to 22 months’ imprisonment. Abuki on the other hand, was convicted of being in possession of articles used in witchcraft and practising witchcraft. He was sentenced to 36 months’ imprisonment for possession of articles used in witchcraft and 24 months for practising witchcraft. The sentences ran concurrently. In addition, both Abuki and Abuga were served with exclusion orders that banished them from their homes for 10 years after serving the sentence of imprisonment. The main issues in their constitutional petition were: Whether the banishment order of the Witchcraft Act infringed on constitutional rights in particular, the right to freedom from inhuman, cruel and degrading treatment or punishment; Whether one could be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed by

law; Whether the petitioner was afforded fair trial or hearing as provided for under the Constitution; Whether the Witchcraft Act infringed on the right to equality and freedom from discrimination; The petition was successful, Constitutional court declared that: The sections interpreting witchcraft were void for being vague and ambiguous and did not meet the requirements of the Constitution. And that as a result the petitioner was not afforded a fair trial as the offence was unknown. The exclusion order was unconstitutional because it threatened the petitioner's life by depriving him of the means of subsistence and deprived him of access to his property. Hence it was considered inhuman, since it was a threat to life, and contravened the Constitution. And that by depriving the petitioner access to his property, the exclusion order contravened the Constitution. The petitioner was granted immediate release from custody and the respondent ordered to pay him costs. Following the Constitutional declaration, the exclusion order or banishment as a form of punishment was deleted from the law. And the need for an explicit definition of the offence of witchcraft was underscored. Currently, 14 years later, the Witchcraft Act still provides for punishment for practising witchcraft ranging from imprisonment for a period not exceeding five years to life imprisonment. For example, Section 2 of the Witchcraft Act partly states: Any person who directly or indirectly threatens another with death by witchcraft or by any other supernatural means commits an offence and is liable on conviction to imprisonment for life. The question is, what mechanisms can one use to discern or ascertain bona fide spirit worship or bona fide manufacture, supply or sale of native medicines? Further more Evidence of reputation under the law presumes that the aggrieved person knows what the practice of witchcraft involves. It is all shrouded in mystery It should be noted

that most crimes linked to witchcraft such as child sacrifice are punishable under other specific laws such as the Prevention of Trafficking in Persons Act and Penal Code Act. In light of all this, has Witchcraft Act outlived its usefulness?

Witch Murder and Mensrea

Africa is a land of extreme contrasts is the hackneyed introduction to every travelogue. One such contrast is between those areas where the indigenous peoples have assimilated the colonialists' mores, and those areas where they have not. Now, in the blazing morn of independence, the new African governments face the task of developing legal, social and economic institutions which will bring the more backward elements of the population into harmony with the demands of twentieth-century industrialised society. To what extent is the criminal law an apt tool to accomplish these changes?

In the last decades of Empire, the colonial courts were presented with this problem in a variety of masks. Perhaps the most persistently nagging cases are those in which the defendant was tried because he killed a supposed witch in imagined self-defense against her diabolical craft. With monotonous regularity, courts have convicted, sentenced the defendant to death, and-in the same breath recommended executive clemency. Why this ambivalent result? Is there some organising concept which, tolerably with the pattern of the criminal law, can resolve the seeming contradiction?

To answer this question, we shall examine first the nature of witchcraft belief, the defences raised in prosecutions for the murder of supposed witches, and the judicial response to them. In an effort

to find a satisfactory solution, however, we shall have to explore the conceptual mazes of *mens rea*, which is the analytical concept chiefly at issue.

For many Africans, witchcraft belief is an integral part of their *Weltanschauung*, growing out of indigenous theories about the psyche.⁶⁶ The Akan (one of the largest West African tribal groupings), for example, postulate man as tripartite. His physical body, a mere shell, encloses two indwelling souls the *kra*, or life-soul and the *sunsum*, or personality-soul.⁶⁷ A wicked entity, the *obayi*, on occasion seizes dominion of the *sunsum* of a witch. Without her volition, her *sunsum* makes excursions from her earthly body. Free of physical restraint, it attacks the *kra* or *sunsum* of its victim by sucking it forth secretly from its material shell. As the *kra* is devoured, sometimes by degrees, sometimes in a rush, so the physical body of the victim withers. As the *sunsum* is destroyed, so will the victim's hope of worldly success disappear.⁶⁸

⁶⁶ Field, *Search for Security* (1960), *passim*; and see Evans-Pritchard, *Witchcraft, Oracles and Magic among the Azande* (1937), p. 21 ("A witch performs no rite, utters no spell, and possesses no medicine. An act of witchcraft is a psychic See Debrunner, *op. cit.*, note 3 above, p. 102; Rattray, *Religion and Art among the Ashanti* (1927), p. 29; Rattray, *Ashanti Law and Constitution* (1929), p. 313. The shocking mode of execution of wizards in Uganda (see Hayden, *Law and Justice in Buganda* (1960), p. 283) was actually used by the defendants in *Fabian* (1941) 8 E.A.C.A. 96 (Uganda). [Note: place names after E.A.C.A. and W.A.C.A. citations indicate country of origin of the cause.] act").

⁶⁷ Meyrowitz, *The Sacred State of the Akan* (1951), p. 24; Rattray, *Ashanti*

⁶⁸ Field, *op. cit.*, note 1 above, p. 36; Debrunner, *Witchcraft in Ghana* (1959) at p. 35 et seq.

Prior to European overlordship, death, usually in some peculiarly horrible form,⁶⁹ was the invariable punishment for proven witches.⁷⁰ The colonial governments, having but recently abolished equally barbaric measures against witches in the metropole, abolished them in the colonies as well. But superstition nevertheless flourished⁷¹ albeit now shorn of institutional protection.

The African who believes in witchcraft is thus faced by a fearful dilemma. He believes in witches to his bones⁷² He knows that they can destroy his kra or sunsum in sundry mysterious ways, without chance for defence, so that both his physical being and his hope for earthly success are endangered, as much as by threatened blow of panga or spear or matchet.

⁷⁰ Rattray, *Ashanti Law and Constitution* (1929), p. p. 392-395; Kingsley, *Traoels in West.Africa* (1897), p. 464; Parrinder, *Witchcraft: European and African* (1958), pp. 177, 178. A death arising from such an ordeal was the *actus reus* in *Palumba s/o Fundikila*, 14 E.A.C.A. 96 (Tanganyika) (held, since the defendant intended to cause death only if deceased were a witch, and since witches are imaginary, he is not guilty of intentional homicide but only of manslaughter).

⁷¹ In Africa, in Europe, witchcraft superstition seemingly flourishes in times of social instability, Parrinder, *op. cit.*, note 5 above, p. 205; Debrunner, *op. cit.*, note 3 above, p. 71. Colonialism made African society even more unstable than it had been.

⁷² The judges repeatedly find that the defendant genuinely believed that the deceased was a witch who threatened his life. See, e.g., *Galikuwa* (1951) 18 E.A.C.A. 175 (Uganda); *Gadam* (1954) 14 W.A.C.A. 442 (Nigeria). Many Africans are convinced that they are witches; in some of the cases, the deceased has threatened the defendant. See, e.g., *Sitakimatata s/o Kimwage* (1941) 8 E.A.C.A. 57 (Tanganyika). Field, *op. cit.*, note 1 above, is based upon confessions of witches made at anti-witchcraft shrines in Ghana.

He sees nothing in the societal order to which he can appeal for protection. His tradition approves of capital punishment for witches.

Faced by such dread forces, bereft of societal shield, terrified by the loss of the values at stake, some Africans not surprisingly have struck back in terror and in self-defence. How have the common law judges treated them when they were charged with murder?

The response of the courts has been practically unvarying: such defendants are guilty of murder. But the verdict, with its common important death sentence, is in both West' and East lo Africa almost invariably leavened with a judicial prayer that the executive reverses the decision just made. Such a formalised, indeed institutionalised, reliance upon executive clemency at once negates any supposed deterrent effect of the death penalty and confesses a felt inadequacy for the judicial solutions to the problems posed by these cases.

That judicial solution has been an all but unvarying rejection of the various defences urged. Whether the claim is nakedly that these defendants lack a guilty mind, or whether an attempt is made to fit them within the conventional categories of self-defence, or defence of others, mistake, insanity or provocation, it has been rejected by the courts.

The evisceral response of any lawyer to the killing of a supposed witch in imagined selfdefence is that the superstition negates mens Tea. That claim was rejected in *Kumwaka Wa Malumbi & 69 Others (Kenya)*⁷³ Seventy defendants admitted beating to death an old woman they believed to be a witch. The court overruled a plea that

⁷³ (1932) 14 K.L.R. 137.

the homicide was *ips0 jacto excusable*: ('For courts to adopt any other attitude in such cases, would be to encourage the belief that an aggrieved party may take the law into his own hands, and no belief could well be more mischievous or fraught with greater danger to public peace and tranquillity.)' Sixty defendants were sentenced to death; ten juveniles were detained.⁷⁴

The more conventional plea of self-defence has not fared better. In Erika Galikuwa⁷⁵ the defendant was convicted of killing an unscrupulous witch-doctor. The defendant imagined that he heard the witch-doctor's '(spirit voice" repeat & demand for ransom on two occasions, at one point with a threat to kill by sucking your blood." Terrified, the defendant killed "and saved my life." The court, upholding a conviction for murder, pointed out that a plea of selfdefence was not tenable, for ('it is difficult to could be brought within the principles of English Common Law." The defence that the killing was necessary to save the life of another has been equally unavailing. In Konkomba (Gold Coast),⁷⁶ the defendant's first brother died. He consulted a "juju" man who pointed out the deceased as the guilty witch. Defendant's second brother became ill, and charged deceased with causing his illness by witchcraft. The defendant slew the supposed witch. He was, of course, found guilty of murder.

⁷⁴ 4 Cj. Goodhart, *English Law and Moral Law* (1953), p. 93: "Retribution in punishment is an expression of the community's disapproval of crime, and if this retribution is not given recognition, then the disapproval may disappear." Which society is expressing its disapproval of crime when a British colonial judge sentences the male population of a Kenya village to death?

⁷⁵ (1951) 16 E.A.C.A. 175 (Uganda).

⁷⁶⁷⁶ (1952) 14 W.A.C.A. 236 (Gold Coast).

The case may fairly be contrasted 'with the familiar Bourne.⁷⁷ There the defendant, a socially prominent doctor, was charged with committing abortion upon a fifteen-year-old victim of a brutal rape. His defence in part was that he had relied upon advice of a psychiatrist that, if the pregnancy were permitted to continue, severe psychiatric damage to the child might well ensue. The abortion was held justifiable.

Seemingly, it is the validity of the belief under which the defendant acted which determines his criminality. Discussion along this line is usually subsumed under the heading of mistake: to what extent will a misapprehension about the true state of affairs exculpate a criminal defendant?

In *Gadam*⁷⁸ (Nigeria), defendant was convicted of murder. The Crown's case was that he believed that his wife had been bewitched by the deceased, whom he therefore killed. The defendant relied upon a section of the Nigerian Code, affording a defence for a mistake which is both "honest and reasonable." The court conceded that witchcraft belief was common among ordinary members the community, but held that " it would be a dangerous precedent to recognise that because a superstition, which may lead to such a terrible result as is disclosed by the facts of this case, is generally prevalent among the community, it is therefore reasonable." ⁷⁹

⁷⁷ 1939] 1 K.B. 687.

⁷⁸ (1954) 14 W.A.C.A. 442.

⁷⁹ Quoted by the court from *Ifereonwe*, W.A.C.A. selected judgments for July/October-December 1954, p. 79 (cyclostyled). Accord: *Akopo s/~ Karoon* (1947) 14 E.A.C.A. 105. (" A mere belief that witchcraft has been or is being exercised may be an honest belief . . . but the suspicions of the person cannot be

The critical question is, of course, the standard to be used in determining what is "reasonable." The measure adopted has invariably been not the average man of the defendant's community, but the reasonable Englishman.

Att.-Gen. for Nyasaland v. Jackson⁸⁰(Federation) states the rule with unparalleled bluntness. There the court held squarely that the standard of reasonableness of mistake in the killing of a witch in imagined self-defense (' is what would appear reasonable to the ordinary man in the street in England. . . . On this basis, and bearing in mind that the law of England is still the law of England even when it is extended to Nyasaland, I do not see how any court, applying the

said to be both honest and reasonable. To hold otherwise would be to supply a secure refuge for every scoundrel with homicidal tendencies.")

⁸⁰ [1957] R. & N. 443. Accord: Mbombela, [1933] A.D. (S.A.) 269. (" The standard to be adopted in deciding whether mistake of fact is reasonable is the standard of the reasonable man, and the race and idiosyncrasies or the superstitions or the intelligence of the person accused do not enter into the question "); cf. Ruka Matengula (195?), 5 L.R; N.R. 148 (four defendants carried a coffin through the village; it at a supposed witch, and jumped forward so violently that the witch suffered broken ribs and died. A defence of automatism was rejected; a defence based on native; custom was rejected as being against justice, which the court construed as not being against justice as we people in England see it 'I). Contra: Wabwire, 16 E.A.C.A. 131 at p. 134 (reasonableness of belief judged by community from which defendant comes; dictum). A case is stated in 1 Bishop, Criminal Law, 9th ed., pp. 21,+219 from Washington Territory (U.S.A.) in which the judge charged: The law permitted one to kill another to save his wife's life, which the latter [an Indian wizard] was in the act of taking away; and though they would not themselves credit the deceased with the power attributed to him, yet if the defendant in good faith did, and this belief was B reasonable one in him, considering his education and surroundings, it would furnish him. under the circumstances proved, a good defence."

proper test, could hold that a belief in witchcraft was reasonable so as to form the foundation of a defence that the law could recognise.”

If mistake has not afforded refuge for these defendants, neither has insanity. In Philip Muswi s/o Musola ⁸¹ (Kenya), the defendant killed his wife by shooting her with an arrow when she was sitting in her kitchen. There had been continual quarrels between them for some time, and the defendant believed that she was practising witchcraft against him. A psychiatrist testified that there was a history of madness and epilepsy in the family and that the defendant was probably suffering from a mild depression and the night of the killing. The psychiatrist believed that the defendant knew what he was doing; that he could distinguish right from wrong; that what he was doing was not contrary to tribal law; and that the defendant believed that he was justified in doing what he did. A defence of insanity was overruled, for “. . . even if [the defendant] believed that he was justified in killing his wife because she was practicing witchcraft, there is again no evidence that such belief arose from any mental defect; it is a belief sometimes held by entirely sane Africans.”

⁸²The case which most clearly articulates why witchcraft belief per se is not insanity within the M’Naghten Rules, arose, of all unexpected forums, in the Supreme Court of the United States. In *Hotema v.*

⁸¹ (1956) 23 E.A.C.A. 622.

⁸² *Ibid.* at p. 625. *Contra*: Magatb 810 Kachehakan! [1957] E.A.C.A. 330 (High Court, Uganda) (defendant killed his father because he bewitched my two sons and killed them, he again bewitched my wife and killed her, also he bewitched me and made me impotent . . . He bewitched my goats and killed them all, bewitched my cow which is still sick, he bewitched my second wife. . . Held, guilty but insane; “an African living far away in the bush may become so obsessed with the idea that he is being bewitched that the balance of his mind may be disturbed to such an extent that it may be described as a disease of the mind.”)

United States the defendant killed a supposed witch in obedience of the biblical injunction. The court approved a charge which directed that if the defendant's belief in witches was simply the erroneous conclusion of a sane mind, he was to be convicted; but if as the result of a disordered mind, acquitted. Insanity as a defence exculpates only when the defect is a function of mental disease and not merely of training.⁸³

Nor does the defence of partial delusion stand on any better ground. Under the traditional rule, the facts imagined must themselves be sufficient to excuse or justify the killing.⁸⁴ Since the accused does not imagine himself physically backed to the wall, the delusion is an insufficient defence.⁸⁵

⁸³ Cf., 2 Stephen's Hist. Crim. Law, p. 163:* "Anyone would fall into the description in question [i.e., insane] who was deprived by reason of disease affecting the mind of the power of passing a rational judgment on the moral character of the act which he meant to do." Query, whether defendants in the witchcraft cases had the power of passing such a judgment. 28 M'Naghten's Case (1843) 10 C1. and F. 200 at p. 211; 8 E.R. 71

⁸⁴ 8 M'Naghten's Case (1843) 10 C1. and F. 200 at p. 211; 8 E.R. 718 at p. 723 (Rule IV).

⁸⁵ Skekanja (1948) 15 E.A.C.A. 158 (Tanganyike) (defendant imagined a devil commanded him to kill a boy; he strangled a half-grown lad and beheaded him at cross-roads in obedience to the imagined command; held, murder). Query, the result under the extraordinary wording of the Criminal Code, 1960 (Ghana), s. 27 (verdict of guilty but insane indicated where the accused "did the act in respect of which he is accused under the influence of an insane delusion of such a nature as to render him, in the opinion of the jury or the court, an unfit subject for punishment of any kina with respect of such an act.") The defence of insanity would probably not be available in the witchcraft cases even under the Durham

The defence of provocation, with one very narrow exception, has been equally unavailing.⁸⁶ In *Fabiano (Uganda)*,⁸⁷ defendants believed that the deceased was a wizard who had killed members of their families. They discovered the supposed wizard, naked, crawling about their compound at night. The court found that the defendants actually believed that the deceased was then and there practicing witchcraft against them, and allowed a partial defence of provocation. " We think that if the facts proved establish that the victim was performing in the actual presence of the accused some act which the accused did genuinely believe, and which an ordinary person of the community did genuinely believe, to be an act of witchcraft against him or another person under his immediate care (which act would be a criminal offence under the Criminal Law (Witchcraft) Ordinance of Uganda . . .) he might be angered to such an extent as to be deprived of the power of self-control and induced to assault the person doing the act of witchcraft. And if this is to be the case a defence of grave and sudden provocation is open to him."⁸⁸

rule (*Durham v. United States*, 214 F. (2d). 862; 45 A.L.R. 1430). (Defendant legally insane if the defendant did the act as a product of mental disease.)

⁸⁶ *Maloole Konkomba* (1952) 14 W.A.C.A. 236 at p. 9-37 (Gold Coast); *Kumataiaraf Mu&* (1939) 16 E.A.C.A. 117; *Sitakimatata s/o Kumwage* (1941) 8 E.A.C.A. 57 (Tanganyika); *Kasalo*, [1944-1946] R.L.R. 110; *Akobe s/o Koruon* (1947) 14 E.A.C.A. 105 (Kenya); *Kajum 8/0 Mbake* (1946) 12 E.A.C.A. 104 (Tanganyika); *Kelementi Magnga s/o Ochieng* (1942) 10 E.A.C.A. 49 (Uganda)

⁸⁷ (1941) 8 E.A.C.A. 96.

⁸⁸ *Rothocll* (1891) 1.2 Cox 145; *Thomas*, 7 C. k P. 182; *Hall* (1928) 21 C.A.R. 48; *Mancini v. D.P.P.* [1942] A.C. 1; 28 C.A.R. 65

This is merely a special application of the usual rule which reduces to manslaughter a killing done in a provoked passion. The standard is always that of the reasonable man of the community to which the accused belongs and the killing must actually be done in the heat of passion engendered by the provocation

The plea has been unavailing in most of the witchcraft cases because there is usually time for passion to cool. But the peculiar nature of witchcraft is that it presents an overhanging, omnipresent threat. Time in such a case does not cool the passions; it inflames them. It was inevitable that provocation like all the other defences invoked would not be a useful shield for these defendants.

No doubt, the received conceptual patterns of the common law could have been manipulated to reach a more equitable result. The reasonableness of the mistake might readily have been measured against the community from which the accused comes, rather than the "man on the Clapham omnibus"; moreover, there is the serious question that the common law requires that the mistake be "reasonable." It might have been possible to treat witchcraft belief evidence of insanity; so, Professor Kenny advocated.⁸⁹ The defence of provocation might have been extended by recognising that belief in witchcraft provides the sort of provocation in which passion may overcome reason even after long brooding. Or, finally, it might be

⁸⁹ Kenny, *Outlines of Criminal Law* (17th ed., 1958), p. 54 ("No belief which now has come to be currently regarded as an obsolete superstition can be treated as a mistake sufficiently reasonable to excuse a crime. . . . It would be more satisfactory if these instances of fantastic superstitious belief could be approached as insane delusions and treated in accordance with the rules applicatile thereto.") LOC. cit., note 35 above

possible to deal with these cases by specific legislation, as Glanville Williams has suggested⁹⁰

The acceptability of these various solutions might be assessed in terms of the ultimate objectives of criminal law. To one degree or another, they retain some deterrent function; to one degree or another, they identify the defendant as a person who is exceptionally dangerous⁹¹ and hence the subject of rehabilitative or restraining sanctions. These cases are only examples of 'a broad spectrum of prosecutions in which what is right and proper in indigenous society is criminal at common law.'⁹²

⁹⁰ applicatile thereto. ") LOC. cit., note 35 above. p. 488 (" In the last resort, if a particular superstition is common in a community, it may be best to deal with it by an explicit statute so that those labouring under the superstitious delusion will know that their practices, independently of the truth or falsity of the belief, are punishable.") It may be doubted that legislation provides any notice of illegality, within the context of the African bush.

⁹¹ The defendant in most of these cases ex hypothesis is subject to the same superstitions as most of the members of his community, and therefore is not identifiably more dangerous than they are. Query, the extent to which the average man in contemporary indigenous society will resort to killing a supposed witch; for to the extent that he does not, to that extent is the defendant who does kill, identified as more dangerous than the rest of his community. In Ashanti society of olden time, the " power of the knife " -i.e., to inflict capital punishment-inhered in the Asantehene. Rattray. op. cit., note 5 above, pp. 289-290. But there were recognised tribunals before which a charge of witchcraft might, be hid, so that an individual who believed that he was being attacked by a witch had some recourse. In Ghana, there are innumerable anti-witchcraft shrines which have sprung up in recent years.

⁹² See, e.g., Alpha Kanu (1959) 16 W.A.C.A. 90 (Sierra Leone), and Ufuonye Enweonye (1959) 15 W.A.C.A. 1 (Nigeria) (whole village co-operating to kill

In all these cases the criminal act is intentional, and the defendants cannot, unless the courts can be fit to recognize any recognized defense. It is as though England had been conquered by a nation of Hindus, so that the eating of beef immediately became a high crime.⁹³ Would the Englishman who ate his usual dinner possess a guilty mind? Can it fairly be said that an African under analogous circumstances possesses mens rea?⁹⁴ Now there is a sharp

trespassers on " their " section of a river); Akpunono (1947) 8 W.A.C.A. 107 (Nigeria) (killing of infant twin); Zanhibe, 1954 (3) S.A. 897 (woman horribly burned by witch-doctor who was exorcising a demon); Lekishon ole Sang Arc (1956) 03 E.B.C.A. 626 (Kenya) (deceased killed while defending cattle from young initiates who demanded them as traditional dues); Kofi Antcci (1955) 1 W.A.L.R. 29 (Gold Coast) (man shot by elders resisting attempt by malcontents to seize the stool, traditional symbol of a chief's authority) ; Ukpe (1938) 4 W.A.C.A. 141 (Nigeria) (a member of one village slain by a member of another; every member of the victim's village swore lujju to kill a member of the village of the slayer, presumably to accompany the victim on his funeral voyage).

⁹³ * The gross absurdity of endeavoring to apply the substance but particularly the forms of our law to the people of India may be best conceived by supposing for a moment 12 Conongoes, Moreland and Pundits, taking their seats in Westminster Hall, beginning the administration of justice there and gravely assuring the people of England that it was intended merely for their advantage. In the short space of one term every inhabitant of this metropolis would be capitally convicted for eating his ordinary food, and perhaps it would be no more than a just retaliation for the capital conviction of a Gentoo on the Coventry Act or one of the Sta, titles of Forgery." Statement of -4. NaciLrnn'~1, Counsel for the East India Company, December 26. 1788 (MS. Home Misc. No. 411, India Office, London; quoted in Michael & Wechsler, Criminal Lnr and its Administration (1940), p. 285 note 8).

⁹⁴ In Kichingeri, 3 E.A.L.R. accomplice evidence was accepted although uncorroborated. The court later commented on that case, saying that "It is interesting to note that the exceptional circumstance in the Kichiiigcri cnie was that because the accomplice's bona fide thought they had performed a legal and meritorious act in

dichotomy between our myths about mens rea, and the actual requirements of the law. The myth is that the criminal law requires the presence of a " guilty mind " as a pre-condition to guilt⁹⁵ a requirement patently demanded by humanitarian and ethical notions.⁹⁶ But the hard-nosed rule of law is that a man is guilty of a crime if he commits it intentionally, and if he is not within one of a very few prescribed categories-self defence, mistake, insanity, youth, and the like. Mens rea in modern law is wholly objective⁹⁷ Its ethical

putting a suspected witch-doctor to death, the court concluded that their evidence was not tainted . . . because they were not shown to be persons of bad or doubtful character." Khotso Negi (1948) 23 K.L.R. 36 at p. 37. Presumably the accomplices, for all that they were not persons of bad or doubtful character, were also found guilty of murder and condemned to death.

⁹⁵ It is true that under the old common law, breaches of the laws of morality and crime were much the same. In a mass of cases men8 re@ involved moral blame, and the result is that people have got into the habit of translating the words men8 rea as meaning guilty mind, and thinking that a person is not guilty of a penal act unless in doing what he did he had a wicked mind. That to my mind is wrong." Per Shearman J. in *Allard v. Selfridge* [1925] 1 K.B. 129 at p. 137. See also Williams, op. cit., note 35 above, p. 30 ("Any theory of criminal punishment leads to a requirement of men8 rea . . . However, the requirement as we have it in the law does not harmonise perfectly with any of these theories.") Cj. Devl.ip, Zoc cit., note 44 belo: (objective definition of mew Tea) with Devlin, *Enforcement of Morals* (1959) 46 Proc. Brit. Aced. ("I think it clear that criminal law as we know it is based upon moral principles.")

⁹⁶ Turner," *The Mental Element in Crimes af Common Law*" in Radzinowice and Turner (eds.), *The Modern Approach to Criminal Lam* (1946), p. 195; Williams, op. cit., note 36 above, p. 30; Kenny, op. cit., note 36 above, pp. 10-14; Russell on Crime (10th ed., 1950), Vol. 12, p. 26 et seq.

⁹⁷ Every man runs the risk that a court may decide that what he has done is a crime or is immoral, but his liability does not depend on his own ability to make that

content is at best limited. The judges' unease at the results which they have reached in the witchcraft cases arises because these defendants seem without mensrea in the mythological-Le., the moral and subjective-sense, although they plainly have mens Tea in the legal-ke., the objective -sense. Can the contradiction be resolved? Is it possible perhaps to generalise from the exceptional defences to find some new exception that will fit all these cases? To find a common denominator, a brief excursion seems required into the psychology which underlies these defences.

It is commonplace to conceive of the psychology which provides the foundation for the M'Naghten Rules as a constant wrestling match between reason and passion⁹⁸ The same psychology underlies our notions of mens Tea. An American court once described it as the notion that "there is a separate little man in the top of one's head called reason whose function it is to guide another unruly little man called instinct, emotion or impulse the way he should go."⁹⁹

The role of the criminal law both in Benthamite and neo-classical thebry, is to provide, by its sanctions, an incentive to reason to follow the right road. Sanctions must be imposed, therefore, whenever an intentional criminal harm is caused, unless for one of three

decision; and his risk is just the same whether or not he has any idea that what he is doing is immoral, or a civil wrong, or a crima." Turner, loc. cit., note 43 above, p. 216

⁹⁸ The literature is voluminous. See, e.g., Biggs, *The Guilty Mind* (1955), p. 203 et seq. This is, of course, the central target of the medical attack

⁹⁹ *Holloway v. United States*, 148 F. (2d) 668; certiorari denied, 334 U.S. 858 (1948)

exceptional causes, reason understandably failed to guide passion along the road of legality. First, reason may be withered by inherent infirmity. Insanity and youth are the chief examples. Secondly, reason in choosing to do the act, may be acting reasonably. Self-defence and mistake fall within the category. Thirdly, reason under all the circumstances of the case may understandably be temporarily overpowered by passion. Provocation is of course the principal sort. These categories aside, the law punishes a man whose reason does not control his passion. Save perhaps in cases of inherent physical infirmity the test is invariably that of the reasonable man. If a mistake be one that a reasonable man would not have made, it is no excuse. If the error be that the defendant failed to act as carefully as a reasonable man, he is guilty, whether or not he actually perceived the risk¹⁰⁰ If the issue is whether the defendant foresaw the consequences of his conduct, the test is not whether he actually foresaw, but whether a reasonable man would have foreseen¹⁰¹ In short, the law actually punishes if a man's reason fails to control his actions, save where a reasonable man's reason would likewise have failed, or where the defendant is physically incapable of reasoning¹⁰²

¹⁰⁰ *achekepunabe* (1897) 28 Ont.Rep. 309 (the defendant, an Indian, was posted as guard to defend against a Wendigo or man-eating spirit, which had been seen in the area; he shot and killed his foster-father, whom he mistook for the Wendigo; held, manslaughter)

¹⁰¹ *D.P.P. v. Smith* [1961] A.C. 290

¹⁰² That drunkenness is a defence, the courts punish a man for the sin of drunkenness, but measure the punishment by the appropriate harm committed. The illogic is in the measure of punishment, not the measure of guilt. "There have been a number of convictions, and the relevant holdings imply, that ignorance of ordinary factual knowledge, possessed by every normal adult in the community,

The reasonable man, however, is a normative which hypostatizes not the average man, but the ideal man-i.e., a man with some, but not the grosser, human failings. It is a statement of the judge's notion of a standard of conduct which the average man can fairly be expected to achieve. In the criminal law, the concept of mens rea performs a similarly normative function. It is a statement of a standard of conduct for the little man labelled reason. To state that mens rea is present, is merely to say that defendant's reason failed to act as would a reasonable man under the circumstances

The use of the standard of the reasonable man in defining mens rea resolves a pervasive conflict in the criminal law. On the one hand, "objective" mens rea ignores the defendant's actual consciousness of guilt. It finds its social justification not in the reformation of individual criminals, but in exemplary deterrence. Holmes, an ardent proponent of the objective theory,¹⁰³ once wrote, "If I were having a philosophical talk with a man I was going to have hanged or electrocuted, I should say, I don't doubt that your act was inevitable for you but to make it more avoidable by others we propose to

except such eccentrics as these defendants, no defence. Although mitigation is, undoubtedly frequent, it is assumed that the ignorance IS unreasonable and the conduct is held criminal." Hall, op. cit., note 35 above, at p, 375.

¹⁰³ 8 See Hall, op. cit., note 35 above, pp. 147-152. Hall, while in general agreement with Holmes' perception of the essential soundness of the objectivity of the penal law, finds its justification not in expediency (as Holmes did), but in a mystique of the "community:" 'I... the valid ground . . . is not expediency, but . . . the correctness of the community's freely derived values, as expressed in penal law. . . .' Ibid., p. 163. Query, in the African context, whether Hall could argue that there was any validity to the imposition of the English law, of crimes, since it if, hardly an expression of the African community's freely derived values.

sacrifice you to the common good. You may regard yourself as a soldier dying for his country if you like. But the law must keep its promises.”¹⁰⁴

This harsh utilitarianism finds its source in society’s interest in protecting its individual members. Out of the same regard for human beings arises a countervailing humanitarian or moral consideration. “This moral objection normally would be couched as the insistence that it is unjust, or unfair, to take someone who has not broken the law or was unable to comply with it, and use him as a mere instrument to protect society and increase its welfare.” This humanitarian consideration, like the utilitarian objective, is partially met by a concept of *mens rea* modelled upon the reasonable man, for “moral wickedness cannot well be imputed to a man who behaved as a reasonable man behaves. . .”

So, consideration is extended to the criminal, if not for his own idiosyncratic weaknesses, then at least for those of the reasonable man. The tension between the utilitarian and humanitarian objective of criminal punishment thus finds one resolution in the concept of objective *mens rea*. That concept simultaneously serves both ends: it furnishes a rationale to punish one who fails to meet objective norms, and an excuse to exonerate one who failed to meet them where most men would likewise have failed. Like many of the germinal legal concepts, it resolves the pervasive antagonism between social expediency and individual rights

The success of objective *mens rea* in resolving this tension obviously turns upon how close a fit there is between the reasonable and the

¹⁰⁴ Holmes-Laski Letters (Howe ed., 1953), p. 806.

average man. Where they are fairly congruent (as they are in English society), then objective mens rea serves its function tolerably well. In most cases, it protects the morally innocent; in some cases, the morally innocent may be criminally guilty, but the result will not be too shocking; and in the few cases where moral innocence is distressingly clear, the executive can spring to the rescue. In short, where such congruence exists, there is rarely more than a small difference between the morally and the legally guilty¹⁰⁵

A very different state of affairs was obtained, however, when men's rea was cut from African cloth, but shaped to British patterns. Then the reasonable man and the average man were continents and in some cases worlds apart. Since the humanitarian function of mensrea depends upon the narrowness of the gap (although the function of exemplary deterrence is indifferent to it), the result was that colonial law was devoted almost entirely to the objective of deterrence. Put bluntly, in the final analysis colonial law in these cases selected its victims without regard to moral guilt; it imposed its norms upon the indigenous population by sheer terror. Despite the best intentions of judges and administrators, the use of objective mens rea based upon English precedents guaranteed that the law would be concerned only with deterrence by harsh example¹⁰⁶ illens

¹⁰⁵Cf. Hall, op. cit., note 35 above, pp. 166-167 ('since most defendants are ' reasonable ' men both the objective method of fact-finding and the objective standard of liability function accurately and justly in most cases. In other words, although the defendant is directly and verbally held to the objective standard of liability, that standard in most cases also fits the defendant's actual (6 subjective ') state of mind.")

¹⁰⁶ Atma Singh &/o Chanda Singh (1942) 9 E.A.C.A. 69 (Kenya) (the defendant, following Sikh custom, cut off the numbers: and ears of his unfaithful wife. On

Tea, originally a humanitarian concept, became its very opposite. But the colonial judges were humane men. So, they regularly impleaded the executive to save the law from the pit which it had dug. Is it possible to find some organising principle which would subsume the cases which led to this discussion, and facilitate reaching more defensible results?

One possible solution would be to model mens rea more closely upon the community from which the defendant comes. This, I believe, would be unacceptable. The Africans who now control their own countries, educated as they are to the highest standards of European culture, will not accept a pre-scientific standard of knowledge and behavior. Nor could they, for they must build modern industrialised societies, and belief in witchcraft and its equivalents is impermissible

A second possible solution would be to retain as norm the standard of educated, twentieth-century, rationalist man, but to take into account as a mitigating circumstance on sentence the fact that this particular defendant could not reach that standard and could not

appeal from sentence, the court said: When one further considers that one of the most important objects of punishment is deterrence, our view is that 8 lesser sentences might be misunderstood. If . . . there still exists among the Sikh or any other Indian community a custom of disfiguring deserting or unfaithful wives in the hideous and barbaric fashion exemplified in this case. then the demand for a heavy sentence for such acts would be all the more necessary"); Zanhibe, 1954 (3) S.A. 597 (the defendant, a native doctor. had a woman forcibly restrained over a fire to exorcise 8 demons: the woman died. The court assumed that moral guilt was absent, but said: " It . . . seems to me that even where moral guilt is absent a court may, in a proper case. where a very large section of the community, especially an unenlightened one. requires to be protected against dangerous practices, disregard the existence of that form of mitigation.")

have acted otherwise than he did. This is the South African solution, where the practice has always been to treat belief in witchcraft as extenuation.¹⁰⁷

A third, possibly more radical solution, seems indicated whole doctrine of *mens rea* arises historically. It bottoms itself upon two historically derived conditions. The first is that the felony verdict not so long ago determined not only guilt, but punishment as well-and the punishment was death. Had it been otherwise, moral guilt might have been merely a consideration affecting punishment. Instead, it became the touchstone of legal guilt. The resulting confusion between religious, ethical and legal considerations has plagued the criminal law ever since-as the witchcraft cases here discussed bear witness.

The second historically determined condition for the doctrine of *mens rea* is a system of pseudo-psychology that today is a super situation to which apparently only judges and lawyers subscribe. Reason and emotion are simply not independent entities. Man's personality is a unity. No doubt, in the interplay between conscious and subconscious, there remains some area in which it is not incorrect to speak of free will; but as one descends into the criminal classes that area becomes progressively more circumscribed by the inevitable. How could a doctrine built on so sandy a psychological feudalism be more than accidentally valid? To abandon the notion

¹⁰⁷ 9 Fundakabi, 1948 (3) S.A. 810. Accord (semble) Peter Mukasa (1944) II E.A.C.A. 114 (Uganda) (defendenta killed some thieves stealing food crops. Prior to the advent of British rule the killing of persons caught stealing food crops was held by the Buganda to be justifiable homicide." Held, in the light of this, sentences reduced.)

of the wrestling match between reason and emotion, however, implies a substantial abandonment of deterrence as an objective of the criminal law. It is at best a largely unachieved objective; speaking of the slaying of supposed witches, a South African court once sadly confessed: “not that great reliance can be placed on the severity of punishment alone to get rid of the evil.”

If the death penalty did not automatically flow from a hiding of guilt, and if the objective of exemplary deterrence were abandoned, the solution would become easy enough. The guilty verdict would mean only that the accused was made subject to administrative processes of re-education. The objective of criminal sanction would be to rehabilitate the criminal, not to deter others. There could then be made available to the sentencing authority a whole host of procedures which are foreclosed by an emphasis upon exemplary deterrence: re-education, vocational rehabilitation, family counselling, compulsory attendance at a job, transportation to another part of the country, and the like. The objective of the criminal law would become wholly humanitarian, for no man would be regarded as expendable in the interests of the state.

Reference of Witchcraft in Uganda

Chapter 124. The Witchcraft Act

Arrangement of Sections.

Section

Interpretation.

Offences and penalties in relation to witchcraft.

Imputation of witchcraft.

Possession of articles used in witchcraft.

Evidence of reputation.

Confiscation and destruction of witchcraft implements.

Chapter 124. The Witchcraft Act.

Commencement: 28 March, 1957.

An Act to make provision for the prevention of witchcraft and the punishment of persons practising witchcraft.

1. Interpretation.

For the purposes of this Act, “witchcraft” does not include bona fide spirit worship or the bona fide manufacture, supply or sale of native medicines.

2. Offences and penalties in relation to witchcraft.

Any person who directly or indirectly threatens another with death by witchcraft or by any other supernatural means commits an offence and is liable on conviction to imprisonment for life.

Any person who directly or indirectly threatens to cause disease or any physical harm to another, or to cause disease or harm to any livestock or harm to any property of whatever sort or another by witchcraft or by any other supernatural means commits an offence and is liable on conviction to imprisonment for a period not exceeding ten years.

Any person who practises witchcraft or who holds himself or herself out as a witch, whether on one or more occasions, commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

Any person who hires or procures another person to practise witchcraft or who for evil purposes consults or consorts with another who practises witchcraft or holds himself or herself out as a witch commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

3. Imputation of witchcraft.

Any person who, other than to a person in authority, imputes the use of witchcraft to another, if any harm results to that other as a result of the imputation, commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

4. Possession of articles used in witchcraft.

Any person, other than a person in authority acting in the course of his or her duty, in whose possession or control any article used in practising witchcraft is found, other than bona fide for scientific purposes or as a curio, commits an offence and is liable on conviction to imprisonment for a period not exceeding five years.

In any prosecution under this section the prosecution shall be required to show that the article found is by common repute or belief an article which is used for the purposes of witchcraft, but shall not be required to show the particular purpose or significance of the article.

5. Evidence of reputation.

Notwithstanding the provisions of any law or practice to the contrary, where any person is charged with the commission of an offence under this Act, evidence may be adduced—

to show the reputation of that person as a witch;

to establish that by common repute any substance, means, process or ceremony proved to have been administered, used or performed, or attempted or caused or advised to be administered, used or performed, is commonly administered, used or performed in the practice of witchcraft.

6. Confiscation and destruction of witchcraft implements.

A court on convicting any person for an offence against this Act shall order the confiscation and destruction of any article brought before it either before or after the trial which the court is satisfied was or might have been used in the commission of the offence.

History: Cap. 108.

Commissioners' note: The Supreme Court of Uganda held, in *Attorney General vs. Salvatori Abuki and Richard Obuga*, that former section 7 of the Act, which dealt with exclusion orders, was unconstitutional

Witchcraft is the use of supposed supernatural powers to do good, or, more often, evil. Belief in witchcraft is universal. It persists in the west, even in western Canada. It is, however, most rampant in societies beset with illiteracy and technological backwardness. In those societies any inexplicably unfortunate occurrence, such as

illness, death, accident, loss of property, and any misfortune, is often attributed to practices of witchcraft, see, for example, the case of *Uganda v. Zenatio Kombe*,¹⁰⁸The accused killed a woman after being advised by a witch doctor that the same woman had charmed his penis so that it could not function when he slept with his wife. These vary from country to country, from community to community. However, the common denominator in most practices of the craft is its evil or foul nature. Typical practices include injuring or killing people and exhuming their corpses for ghoulish feasts; stealing or damaging property; destroying crops; and causing calamities or accidents. In Uganda, as is the case in many African countries, witches or sorceresses are generally viewed with revulsion, fear, and abhorrence. They are considered to be inhuman and not fit to live. In pre-colonial times instant death was the sentence reserved for them. Among the Baganda of Uganda, for example, a *Mulago* (an ordinary witch or sorceress) or a *musezi* (the night prowler) was either burnt alive or killed by stuffing unripe bananas up his or her anus. Throughout Uganda and elsewhere in Africa perceived victims of witchcraft took, as they continue to do, the law in their hands to kill witches and sorcerers, and to rid the community of the peddlers of this evil craft see for a recent example see *Baziriyo Baryonruntaro v. Uganda*,¹⁰⁹The appellant tried to kill his wife because neighbours accused her of being a witch. He was disarmed but, in the process, killed the deceased. To the enlightened and scientific mind, witchcraft is utter nonsense. Indeed, a leading authority has defined the practice of witchcraft as "... an imaginary offence because it is impossible. A witch cannot do what he is supposed to do and has in

¹⁰⁸ H.Ct.Cr. Session No. 536 of 1967, H.C. Monthly Bulletin No. 136 of 1967.

¹⁰⁹ S.Ct.Cr. App. No. 5 of 1991 (unreported).

fact no real existence." This authority goes on to say that "a witch performs no rite, utters no spell, and possesses no medicine. An act of witchcraft is a psychic act." However, to the superstitious mind witchcraft is real and is a social evil that must be combatted and extirpated. As indicated, the practice of witchcraft was already considered to be a heinous offence under the indigenous customary system. Modern criminal law could not ignore this phenomenon. For this reason, the Witchcraft Act was enacted, making it an offence:

For any person to directly or indirectly 'threaten another with death by witchcraft or by any other supernatural means; for any person to directly or indirectly threaten to cause disease or any other physical harm to another, or to cause disease or harm to any livestock or harm to any property of whatever sort of another by witchcraft or by any other supernatural means; for any other person to practice witchcraft or to hold himself out as a witch, whether on one or more occasions; to hire or procure another person to practice witchcraft or for evil purposes to consult or consort with another who practices witchcraft or holds himself as a witch; or to be found in possession or control of any article used in practicing witchcraft other than bona fide for scientific purposes or as a curio.

Contrary to the general law of evidence, the Act permits the prosecution to adduce evidence to the effect that the person charged with practising witchcraft is a witch by reputation. The prosecution may also adduce evidence to the effect that articles found in his possession are by common repute generally used in witchcraft. If the courts were not vigilant this kind of evidence could be very prejudicial to the accused person. In one case, for example, an

accused person charged with being a witch was alleged to have been responsible for the death of over twenty people in his community. As is to be expected, there was no iota of evidence to substantiate this highly damaging allegation. It was based on sheer rumour and gossip which the High Court rejected. See *Uganda v. Fenekansi Oyuko*¹¹⁰, The High Court held that reputation under the Act does not mean "a rumour or fame spread by gossip, but that reputation which springs from acknowledgment, conduct and life."

A person convicted of offences under the Act may be sentenced to various terms of imprisonment. He may also be subjected to exclusion orders, prohibiting him, for such periods as may be stated in the orders, from entering and remaining in specified areas, including and surrounding the places in which the offences were committed. Alongside witches and sorcerers is another class of professionals: the diviners or witch doctors. These are what in the west may be called "white witches" or practitioners of "white magic." These people, known as *endagu* or *abalaguzi* in the Lugandan language, claim to possess supernatural powers to diagnose people's problems and to find their causes; they claim to be able to counteract spells, find witches that are allegedly responsible for their clients' ills, and to find remedies to their supplicants' problems. To these "doctors" many supposed victims of witchcraft flock for assistance. Witch doctors or witch finders are another source of evil, because they may prey on the ignorance of the people to extort gain for themselves, to accuse other people falsely of being witches, and to lead their clients to commit dastardly crimes against innocent people, usually close relatives. Laws of such countries as Botswana do not explicitly acknowledge the existence of witchcraft; hence,

¹¹⁰ [1973] Uganda Law Reports 35.

they refer to it as "so-called witchcraft" or to "pretended means of witchcraft." Their purpose is to discourage irrational belief in and fear of the craft. The Witchcraft Act, on the other hand, by explicitly prohibiting practices of witchcraft unwittingly lends credence to the existence of the craft and perpetuates people's irrational belief in and fear of it. One problem with witchcraft, at least in Uganda, is that there is usually no physical or tangible act that the witch does. Therefore, witches cannot easily be brought within the purview of the Witchcraft Act for prosecution. Their supposed victims usually base their accusations on mere suspicion and intuition and, unable to invoke the aid of the law, resort to self-help. Consequently crimes, mostly killings, are committed by such people.

The problem that arises out of such killings is whether they are excused under the usual defences such as mistaken belief, provocation, or insanity.

Mistaken Belief

The defence of mistake is an extension of the general rule that a person who is not at fault should not be punished and that, therefore, the prosecution must prove guilty knowledge or mens rea, where this has not been excluded. A person who labours under some genuine, albeit mistaken, belief as to the existence of a state of things is not at fault and may therefore have a good defence. However, for the defence to be sustained the mistaken belief must be:

in the existence of a factual state of things; honest or genuine; reasonable; of a sort which, if true, would not render the accused guilty of a criminal offence Belief in the existence of a state of things must be honest or genuine. It must not be feigned belief. If the facts

on which the accused based his belief are known to be non-existent, then the belief is not honest or genuine. Whether this is true or not is a matter of evidence. With respect to witchcraft, it must be shown in each case that the accused did honestly believe (i) that his victim practiced witchcraft on him or on any of his relatives; and (ii) that he acted in self-defence or defence of those relatives. Generally speaking, this is not a difficult task, since belief in witchcraft and its potential for harm is widespread and, as one judge has remarked, entire African communities are "soaked" in witchcraft. See *Chabijana v. The King*, 111 Not only must the belief be honest, it must also be reasonable. What is "reason-able belief"? It is a belief that a reasonable person would hold. What test does one use to determine the behaviour of a reasonable person? The courts throughout English-speaking Africa, where the common law applies, have had to grapple with this issue. In a case from the former Nyasaland (now Malawi) the deceased, who had some misunderstanding with the appellant, told the appellant that the appellant would not see the sun that day. The appellant interpreted this to be a threat to kill him by witchcraft. The appellant decided to kill the deceased before sunset or else he himself would die first by her witchcraft. He shot her with an arrow through the murder he pleaded that he honestly believed that the deceased would kill him by witchcraft, and that he acted in self-defence. The issue was whether the appellant's belief was reasonable. Before resolving this issue, the court had to determine what "reasonable" meant. According to the Federal Supreme Court of Rhodesia and Nyasaland "reasonable" meant "what would appear reasonable to the ordinary man in the street in England." Belief by the accused that the

¹¹¹ East Africa Court of Appeal 104.

deceased would kill him by witchcraft before the end of the day was not a belief that an ordinary Englishman in the street in England would entertain; ergo it was not reasonable, and the defence of self-defence would not avail the appellant. See *he Attorney General of Nyasaland v. Jackson*¹¹², The Trial Court had allowed the defence, but the Appellate Court reversed. To the Court of Appeal of Botswana, a "reasonable person" means "an ordinary person of the class of the community to which the accused belongs." If the accused is from a rural community his conduct will be judged by the standard of conduct expected of an ordinary or average person from that community. If he is urbane and educated, his conduct will be judged by the standard of an average urbane and educated individual. Using this standard, the court held as reasonable an army officer's belief, which turned out to be mistaken, that a vehicle parked near the Botswana Defence Force barracks at Mogoditsthan, resembling those previously used by South African commandos to attack Botswana, was an enemy vehicle, justifying the officer to order his men to shoot at it to prevent its escape. see *Innocent Manjesa v. State*¹¹³(unreported). The Court of Appeal for Eastern Africa used a similar test, albeit implicitly, in the Tanzanian case involving villagers who killed suspected thieves on the honest but mistaken belief that the law permitted them to do so. Sir Charles Newbold, P., dealt with the matter in the following way:

[a]ccepting for the moment that the belief here was honest — and there is a certain amount of evidence which will support such a submission — is it a reasonable belief? It is true that these persons are

¹¹²¹¹² [1957] Rhodesia and Nyasaland Law Reports 443 at 448, per Tredgold C.L

¹¹³ C.A. Crim. App. No.30 of 1991

illiterate and rural peasants, as they have been described, but is it reasonable that any member of the community could possibly believe that because his M.P. tells him that he can go and indiscriminately kill people that he is entitled to do so? We are satisfied that that cannot be regarded as a reasonable belief. One of the witnesses made it quite clear that he would not have done so.¹¹⁴

The Zambian Court of Appeal was faced with issues similar to those involved in the Nyasaland case. The Court referred to the Nyasaland case but rejected its "ordinary man in the street in England" test as untenable. But the Court was not prepared to use the "ordinary man in the accused person's community" test. To do so would have involved using the standard of a typical Zambian village, the majority of whose members were illiterate and believed in witchcraft. Instead, it used the standard of the average "member of a modern society." Said Charles J.: whether a belief or act occurring in the course of the everyday affairs of life is or is not reasonable depends, for the purpose of the Penal Code, and apart from any positive rule of law governing the question, upon whether or not it was a belief or reaction which was likely to be held or suffered in the circumstances by, a member of a modern society who has average modern knowledge, average perception, average intelligence, average judgment and average self-control, and who is to be presumed to be guided so far as the imperfections of human nature permit, by reason in the light of such modern knowledge as has extended beyond the realm of the experts into the realm of judicial knowledge¹¹⁵

¹¹⁴ *Musa & Anor v. Republic* [1970] East Africa 42 at 44.

¹¹⁵ *Mutambo & Anor v. The People*, [1965] Zambia Law Reports 15 (emphasis supplied).

Using such a standard, the Court rejected as unreasonable the belief by the appellants — all members of a religious sect — that the deceased and other members of a police contingent sent to carry out investigations into their activities, had gone there to attack them and to expel them from their village "as their primitive minds may well have led them to such belief." Does not the fact that the majority, even an overwhelming majority, of the members of a community to which the accused person belongs believe in witchcraft render the accused's belief reasonable? Not so, according to the West African Court of Appeal. In a case originating from Nigeria the accused genuinely believed that the miscarriage and mortal illness of his wife was caused by witchcraft, practiced on her by an old woman. Labouring under such a belief the accused struck the old woman to death with a hoe. Dismissing an appeal against the accused's conviction for the old woman's murder, the West African Court of Appeal held that belief in witchcraft, though honest and prevalent in the accused's community, was not reasonable so as to excuse the murder. The Court cited with approval the following passage from an earlier unreported case:

I have no doubt that a belief in witchcraft such as the accused obviously has is shared by the ordinary members of his community. It would, however, in my opinion be a dangerous precedent to recognize that because a superstition, which may lead to such a terrible result as is disclosed by the facts of this case, is generally prevalent among a community, it is therefore reasonable. The

Courts must, I think, regard the holding of such beliefs unreasonable.¹¹⁶

The issue of "reasonable belief" or "reasonable person" is one that will continue to tax the minds of jurists and judges in developing societies. The standard suggested by the Zambian Court of Appeal and followed, albeit by implication, by the West African Court of Appeal, has some merit, in that it underscores the criminal law's educative value, setting societal standards of behaviour and requiring members to conform to those standards. If judges insist that the accused ought to know that witchcraft is superstitious nonsense, the law is telling him or her to strive to get educated and become more enlightened. Even if the entire village or community were to be enthralled by the belief, this would afford no excuse. The village or community ought to strive and free itself from such.

However, the weakness of the "enlightened reasonable man" standard is that it is unrealistic and unfair. When the majority of the people in a community are uneducated and unenlightened, is it reasonable or fair to expect them to behave as if they were educated and enlightened? Are the ends of criminal justice subserved by standards that are too high for the ordinary member of the community to reach? One may be permitted to doubt it. This doubt is underscored by the fact that in many cases in which this standard has been used, and the accused convicted and sentenced usually to death, the Courts have made recommendations to the head of state to exercise the prerogative of mercy. This suggests that the Courts were not satisfied with the justness of their decisions. This is where

¹¹⁶ *Gadam v. R.*, 119541 14 West African Court of Appeal 442. The cited case is *Ifereonwe v. R.*

the 'ordinary man of the accused's community' standard has much to recommend itself. It deals with people at their own level. It recognizes the need for the law to move in tandem with the general societal beliefs of the people. It accords with requirements of fairness in that it does not demand from community members more than what can be attained by an ordinary member of that community. Its obvious drawback, however, is that it tends to perpetuate ignorance, to slow the pace of societal development, and the eradication of harmful, antiquated, and unscientific beliefs. Be that as it may, the courts in Uganda, as in other common-law countries in Africa, have made a policy decision to reject belief in witchcraft as a basis for the defence of mistake. In a case originating from Uganda the Court of Appeal for Eastern Africa declared that:

A belief in witchcraft per se does not constitute a circumstance of excuse or mitigation for killing a person believed to be a witch or wizard when there is no immediate provocative act.¹¹⁷

B. Provocation

Provocation, then, may be a defence to a crime committed under the influence of beliefs in witchcraft. It should, however, be emphasized from the outset that provocation as a defence is available only in cases of murder which, in Uganda, is a capital offence. Furthermore, if granted, the defence of provocation does not lead to a complete acquittal, but to a conviction of the lesser offence of manslaughter. It merely recognizes the frailty of man and his proneness to lose self-control under certain circumstances and thus to do things which he

¹¹⁷ *Eria Galikuwa v. R.*, [1951] 18 Eastern African Court of Appeal 175 (emphasis added).

otherwise would not do. As Chief Justice Brian Dickson of the Supreme Court of Canada put it,

all human beings are subject to uncontrollable outbursts of passion and anger which may lead them to violent acts. In such circumstances the law would lessen the severity of criminal liability.¹¹⁸

Witch killers have not always found it easy to invoke the provocation defence, particularly because of the Code's insistence that (i) they must have acted under "sudden provocation," (ii) arising out of a "wrongful act or insult," and (iii) "before there is time for ... passion to cool." The essence of provocation is that it is sudden, unanticipated and takes the affected person off guard. In the Canadian case of *The Queen v. Tripodi*, defined a provocative act as "the wrongful act or insult upon a mind unprepared for it, that it must make an unexpected impact that takes the understanding by surprise and sets the passions aflame. The law's insistence on sudden provocation seems to be the need to guard against self-help by deliberate and premeditated killings of other people. As often happens, however, killers of the so-called witches take considerable time brooding and nursing suspicions against their victims. The victims, for their part, often say no word or do no direct overt act to the accused that the law would recognize as sudden provocation. The Code also requires some physical and overt act or insult that is capable of derailing a person's fortitude and power of self-control and likely to induce him to retaliate by killing the person who offers it. Metaphysical phenomena, such as fears of witchcraft, are not such

¹¹⁸ *R. v. Hill*, [1985] 51 C.R. 97 at 108, [1986] 1 S.C.R. 313 at 323.

acts. Moreover, with the exception of a woman's confession to marital infidelity which is hitherto unknown to her husband, mere words falling short of an insult are not enough. Equally unacceptable are threats to do harm in the future. *Eria Galikuwa v. R.* is a case in point. Here the appellant sought the assistance of the deceased, a reputed witch doctor, to recover money stolen from him. It is not clear from the report whether the appellant did recover the money. What is clear is that the deceased demanded from the appellant remuneration for his services with such vigour that he told the appellant that if he did not pay, his [the deceased's] medicines would "eat him up." The appellant failed to raise the money. Fearing that the witch doctor's powers would kill him, he got a stick and struck the witch doctor five blows on the head and killed him. Charged with murder, he pleaded provocation. The plea was rejected, principally because there was no overt physical provocative act on the part of the deceased. There was merely a threat to cause injury in the future. In confirming the conviction, the Court of Appeal for Eastern Africa said:

It seems that a mere threat to cause injury to health or even death in the near future cannot be considered as a physical provocative act. In any case, the appellant's own evidence shows clearly (a) that he was motivated not by anger but by fear alone. He struck, not in the heat of passion, but in despair arising from the recognition of his inability to raise the money demanded and his hopeless fear of the consequences; and (b) that he was not suddenly deprived of his self-control but acted as he did deliberately and intentionally because of the impasse.'

A similar case with similar results is that of **Rex v. Emilio Lumu**. A child belonging to the appellant's sister died after a short illness. It died in the appellant's hands. The appellant's sister told him that the deceased, who happened to be his own father-in-law and a reputed witch, had administered some black powder, which she believed to be witchcraft medicine, to the child. She held him responsible for the child's death. On hearing this allegation, the appellant went over to the deceased's house and stabbed him to death. In his own deposition to the court, the appellant said:

I stabbed the deceased Sempogo for giving medicine to my [sister's] son and killing him. If he had not given medicine to the child I would not have done anything to him. I felt it very badly for such a young child being bewitched. I would rather he had bewitched me. Therefore, I was angry and went to stab the deceased and I was weeping when I came to stab him. That is all. The child had died that same day at 7 a.m. and I killed deceased at 8 a.m.

The court was prepared to accept the alleged administration of the black powder as an act of witchcraft. However, since that act was performed several days before the stabbing and in the absence of the accused, it could not amount to legal provocation. Even apart from the appellant's honest belief in witchcraft, it could be assumed that the deceased had killed the child by natural means, by poisoning, rather than by witchcraft. The court would not afford the appellant the defence of provocation. He did not satisfy the requirement of the Penal Code that the provocative act be done "in the presence of an ordinary person to another to whom he stands

in conjugal, parental, filial or paternal relation." The court emphasised that with the exception of provocation by adultery, in

all cases the party alleged to have been provoked must see the act done. It accordingly upheld the appellant's conviction for murder. *R v. Fabian Kinene & Anor* is one of the few cases in which belief in witchcraft was held to constitute legal provocation.¹¹⁹ The accused had long suspected the deceased to have caused the deaths of their relatives by witchcraft. On the night in question, they found the deceased crawling naked in their compound. They seized him and killed him by forcibly inserting into his anus 20 unripe bananas. The Court of Appeal for Eastern Africa held that the deceased's act of crawling naked in the accused's compound at night amounted to "sudden provocation." Said Sir Joseph Sheridan C.J.:

[w]e think that if the facts proved establish that the victim was performing in the actual presence of the accused some act which the accused did genuinely believe, and which an ordinary person of the community to which the accused belongs would genuinely believe, to be an act of witchcraft against him or another person under his immediate care [which act would be a criminal offence under the Criminal Law (Witchcraft) Ordinance of Uganda and similar legislation in the other East African Territories] he might be angered to such an extent as to be deprived of the power of self-control and induced to assault the person doing the act of witchcraft. And if this be the case a defence of grave and sudden provocation is open to him.¹²⁰ Threats of future harm by themselves, according to the *Eria Galikuwa* case, are unacceptable as a foundation for the defence of provocation. However, according to more recent judicial opinion "a threat to kill taken with other existing circumstances could amount

¹¹⁹ See *Yovan v. Uganda* [1970] E.A. 405 at 406 per Duffus P.

¹²⁰ (1941) 8 Eastern Africa Court of Appeal 95.

to legal provocation." In two cases this has been held to be so. In the first, the trial judge summarized his findings as follows:

I am quite sure that the accused believed that the deceased had supernatural powers and this belief was shared by most of the village. I accept that the accused honestly (but obviously mistakenly) suspected that the deceased had caused his wife's death. The deceased's sudden boast confirmed his worst suspicions and to this was added a threat that the accused and his children would meet the same fate. But this was not all: I also accept the deceased seized the piece of cloth round the accused's neck and pulled it tight, at the same time trying to take possession of the panga which the accused was innocently carrying. Judging the accused by the standards of a reasonable member of the unsophisticated community to which he belongs, I have no doubt that legal provocation has been made out sufficient to reduce this terrible killing to manslaughter¹²¹

In the second case, the accused stabbed his step-mother to death. He said that he did so under provocation. The facts constituting the provocation were that he suspected her of having bewitched his son to death; he found her squatting in the doorway of his house (something that women in that part of the country do not do); she threw away something wrapped in a cloth in the nearby bush; in reply to a suggestion that she had killed his son she allegedly replied, "if I have bewitched your child go and accuse me to the authorities. If you are not careful I will also kill you." From these facts the court held that the accused acted under provocation and convicted him of

¹²¹ Uganda v. Nambwagere s/o Rovumba, [1972] Uganda Law Reports 14.

manslaughter only.¹²² It may be argued that if suspicions and fears are entertained by a person against another, passage of time may facilitate the heating up, rather than the cooling down of his passions.¹²³ This may be true. Nevertheless, since provocation is already a concession, to make a further concession on this point might appear to encourage the nursing of baseless suspicions and "to supply a secure refuge for every scoundrel with homicidal tendencies."¹²⁴ Three further points may be noted. The first is that, provided that there is an overt physical act of witchcraft, the courts are at least willing to accept an ordinary person of the community and background of the accused as the standard for determining whether or not an act of witchcraft would be sufficient to deprive a reasonable person of self-control and to induce him to commit the offence in question.¹²⁵ The second is that the requirement, as in Canadian law, that the provocative act or insult be unlawful is supplied by the fact that acts of witchcraft are outlawed in Uganda.

¹²²Uganda v. Bonefasi Muvaga, [1973] Uganda Law Reports 30.

¹²³ See P. Brett, "The Physiology of Provocation" [1970] Criminal Law Review 634. See also R.B. Seidmen, "Witch Murder and Mens Rea A Problem of Society under Change" [1965] Mod. L. Rev. 46 at 52 where he writes that "... the peculiar nature of witchcraft is that it presents an overhanging, omnipresent threat. Time in such a case does not cool the passion; it inflames it."

¹²⁴ See R v. Fabiaso Kinene Anor, supra note 43

ee the passage in R v. Fabian Kinene CŒAnor, ibid. See also Uganda v. Nambwegene s/o Rovumba,¹²⁵

The third is that Ugandan criminal law, in keeping with English law,¹²⁶ but in sharp contrast with Canadian law,¹²⁷ apparently requires that the accused's retaliatory act must bear reasonable relationship with the provocative act or insult.¹²⁸

The requirement of "sudden provocation" has thus in the past tended to take the defence of provocation away from most people who kill others out of fear of witchcraft. This led a judge in Tanzania, whose law on the subject is identical with that of Uganda, to bemoan the state of the law, writing that "[u]ntil all and sundry are rid of the age-old belief in magic our people will be condemned to death for holding such beliefs." Condemning to death an accused person who killed his father who had previously threatened to kill by witchcraft,

ee *Mancini v. Director of Public Prosecutions*, 11942] A.C. 1.¹²⁶

¹²⁷ For example see *R. v. Hill*, [1985] 51 C.R. (3d) 97 at 115 where Dickson C.J. wrote that: "[t]he second test of provocation is called "subjective" because it involves an assessment of what actually occurred in the mind of the accused. At this stage, the jury must also consider whether the accused reacted to the provocation on the sudden and before there was time for his passion to cool. In instructing the jury with respect to the subject test of provocation, the trial judge must make clear to the jury that its task at this point is to ascertain whether the accused was in fact acting as a result of provocation. In this regard, a trial judge may wish to remind the jury members that, in determining whether an accused was actually provoked, they are entitled to take into account his or her mental state and psychological temperament."

i) ¹²⁸While this requirement is not spelled out in the Penal Code, the courts have applied the principle in a few cases. See *Ochuku s/o Ochende v. R.*, [1955] 19 Eastern Africa Court of Appeal 220. See also James S. Read, "Some Aspects of Manslaughter in East Africa" (1965) 1 East Africa Law Journal 260.

the judge said, "unfortunately for him [the accused] the law as it stands does not allow the killing of wizards like it does the killing of snakes and other prowling beasts."¹²⁹

In contrast, the Ugandan judges have not been content to wait for the legislature to initiate the changes that their Tanzanian counterpart alluded to. Taking an activist stance, they have shown ready willingness to depart from old authorities, invariably of a colonial vintage and a willingness to interpret the law liberally so as to afford believers in witchcraft some defence. As a result of this change of attitude some defendants have been saved from the gallows. This has been accomplished by (i) using belief in witchcraft to negate malice aforethought, and (ii) treating the belief as insanity.

C. Malice Aforethought

An amendment to the Penal Code in 1970 limited malice aforethought, the mens rea in murder cases, to an actual intention to cause death. Mere intention to cause actual bodily harm is no longer adequate¹³⁰ In *Uganda v. Gabriel Ojoba* the accused was charged with murder. His defence was that he killed the deceased out of fear that he was bewitching him and his relatives. The High Court convicted him of manslaughter instead of murder, reasoning that when the accused killed the deceased he did so under a state of fear and confusion to save his life and that of his relatives; and that under such a state of mind he could not be said to have intended to kill.

ii) ¹²⁹ *Republic v. Juma*, [1974] E.A. 336.

¹³⁰ see *Bukenya & Anor v. Uganda*, [1972] E.A. 549

Commenting on the existing state of the law, the Court also observed thus:

[I]t is not for me to pass judgment on the correctness of earlier decisions especially when they are decisions of the highest Appellate Court in the land. But, I think, there was by far too much emphasis on eradicating the belief of witchcraft by the "natives." The purpose of the criminal law is to punish an individual for his wrongdoing and not to sacrifice a few in the hope of converting their community from beliefs, however primitive, which they hold so deeply. Criminal responsibility has always been individual¹³¹

D. Insanity

In a case decided by the Uganda High Court in 1957, the accused was charged with the murder of his father. The accused believed that the father had bewitched and killed his two sons, his first wife, his

¹³¹High Court Crim. Session Case No. 260 of 1975. See also *Uganda v. Gabriel Habaasi* H.Ct. Cr. Session No. 41 of 1992 (unreported). In this case the accused killed his father whom he accused of having bewitched his children and of threatening to kill him as well. The father wanted to initiate the accused into becoming a witch like him, but the accused refused on religious grounds. The father treated this refusal as an act of insubordination and threatened to punish him "seriously" for it. Subsequently, two of the accused's children died and a third went mad. The father apparently accepted responsibility and intimated to the accused that these punitive measures would continue until he agreed to become a witch. It is for these reasons that the accused hit the father on the head and killed him. The accused was charged with murder. He instead pleaded guilty to manslaughter. The court accepted the plea, apparently because the accused did not kill with malice aforethought. In sentencing him to a three-year gaol term, the court remarked that the father "was the author of his own death"! The Northern Rhodesian High Court in *R. v. Luka Matengula & Anor* (1952)

goats and a cow. He also believed that the father had bewitched him and made him impotent, and bewitched his second wife who was always sickly. On the fateful day, the accused and his father went to a funeral of a child. They came back together, talking in a friendly manner. All of a sudden and without any quarrel or provocation, the accused hacked his father to death with a panga. He then went to a Gombolola Chief and reported the killing. He said to the Chief, "I have killed him because he was Satan" (meaning that he was bewitching him). An assessor assisting the Court opined that the accused's belief that the father bewitched his children affected his mind; and the nadir of this effect was the attendance at the funeral of a child, which reminded him of his own children. Faced with the Court of Appeal decisions discussed above, the Court ruled out the defence of provocation, and instead decided to avail him of the defence of insanity. Said Lyon J.: I have considered the words "disease of the mind" in s.12 of the Pend Code. I am of the opinion that an African living far away in the bush may become so obsessed with the idea that he is being bewitched that the balance of his mind may be disturbed to such an extent that it may be described as disease of the mind. Here the killing is unexplained, and in my opinion inexplicable; except upon the basis that the accused did not know what he was doing.¹³²

The problem with this decision is that it is generalistic and did not pinpoint the "disease" that affected the accused's mind. It is no wonder that for twenty years it was neither cited nor followed. It was resurrected only in 1978 when the Uganda Court of Appeals likened the fear of witchcraft to "an insane delusion," "a disease of the mind,"

¹³²regina v. Magata s/o Kachehakana, 11956-718 Uganda Law Reports 294

and found the appellant not guilty of murder on account of insanity¹³³

Recently, there has been a marked increase of reports on issues connected with witchcraft in the media. These stories range from exhuming dead bodies for body parts, human sacrifice where victims are killed, genitals cut off and blood drained from the body and people banished from home areas after being accused of bewitching others.

One wonders whether witchcraft practices are on the increase or whether their prominence is because they are linked to criminal acts such as murder. Many reasons are advanced for practising witchcraft” search for wealth, jobs, power, love, peace and stability in relationships.

Research reveals that witchcraft in historical, anthropological, religious, and mythological contexts, is the alleged use of supernatural or magical powers. A witch is a practitioner of witchcraft. Historically, it was widely believed that witches were in league with the devil and used their powers to harm people and property. Particularly, since the mid-20th century, 'bad' and 'good' witchcraft are sometimes distinguished. The 'good witchcraft' often involves healing. The concept of witchcraft as harmful is normally treated as a cultural ideology, a means of explaining human misfortune by blaming it either on a supernatural entity or a known person in the community.

¹³³ Okello s/o Kamuleti v. Uganda, Uganda Court of Appeals, Crim.App. No.2 of 1978

Uganda has a specific law on witchcraft” the Witchcraft Act of 1957. This law provides for the prevention of witchcraft and the punishment of persons practising it. The practice of witchcraft is not confined to Africa. Communities worldwide practice it. For example, the United Kingdom has the Fraudulent Mediums Act of 1951 which repealed their Witchcraft Act of 1735. This English law punishes persons who fraudulently purport to act as spiritualist mediums or to exercise powers of telepathy, clairvoyance or other similar powers.

In Uganda, one significant case on witchcraft is Constitutional Case No. 2 of 1997 between Salvatori Abuki, Richard Abuga and the Attorney General. Abuki and Abuga challenged their convictions under the Witchcraft Act. They had been tried in the Grade II Magistrates Court of Aduku in Lira District, their appeals to the Chief Magistrates Court failed. Abuki was charged with practising witchcraft, pleaded guilty, was convicted and sentenced to 22 months' imprisonment. Abuki on the other hand, was convicted of being in possession of articles used in witchcraft and practising witchcraft. He was sentenced to 36 months' imprisonment for possession of articles used in witchcraft and 24 months for practising witchcraft. The sentences ran concurrently. In addition, both Abuki and Abuga were served with exclusion orders that banished them from their homes for 10 years after serving the sentence of imprisonment. The main issues in their constitutional petition were: whether the banishment order of the Witchcraft Act infringed on constitutional rights ”in particular, the right to freedom from inhuman, cruel and degrading treatment or punishment; whether one could be convicted of a criminal offence unless the offence is defined and the penalty for it is prescribed by law;

whether the petitioner was afforded fair trial or hearing as provided for under the Constitution; whether the Witchcraft Act infringed on the right to equality and freedom from discrimination. The petition was successful, Constitutional court declared that: The sections interpreting witchcraft were void for being vague and ambiguous and did not meet the requirements of the Constitution. And that as a result the petitioner was not afforded a fair trial as the offence was unknown.

The exclusion order was unconstitutional because it threatened the petitioner's life by depriving him of the means of subsistence and deprived him of access to his property. Hence it was considered inhuman, since it was a threat to life, and contravened the Constitution. And that by depriving the petitioner access to his property, the exclusion order contravened the Constitution. The petitioner was granted immediate release from custody and the respondent ordered to pay him costs. Following the Constitutional declaration, the exclusion order or banishment as a form of punishment was deleted from the law. And the need for an explicit definition of the offence of witchcraft was underscored. Currently, 14 years later, the Witchcraft Act still provides for punishment for practising witchcraft ranging from imprisonment for a period not exceeding five years to life imprisonment. For example, Section 2 of the Witchcraft Act partly states: Any person who directly or indirectly threatens another with death by witchcraft or by any other supernatural means commits an offence and is liable on conviction to imprisonment for life. The question is, what mechanisms can one use to discern or ascertain bona fide spirit worship or bona fide manufacture, supply or sale of native medicines? Further more Evidence of reputation under the law presumes that the aggrieved

person knows what the practice of witchcraft involves. It is all shrouded in mystery! It should be noted that most crimes linked to witchcraft such as child sacrifice are punishable under other specific laws such as the Prevention of Trafficking in Persons Act and Penal Code Act. In light of all this, has Witchcraft Act outlived its usefulness?

Child sacrifice seems to be cropping up again in the country, what is the parliamentary committee on Human rights doing to keep this vice away forever? We as MPs have decided to have field trips to find out the causes of child trafficking and child sacrifice and get other emerging details. As a committee, we shall discuss the way forward. That is to say we will write down the solutions from the field which is causing the increase of the level of child sacrifice and trafficking. To give a hint, some of the problems Ugandans are facing are poverty, ignorance, inadequate security, lack of surveillance systems especially in rural areas and the failure by responsible agencies and institutions of government like the Uganda Human Rights Commission and the police to have an outreach programme to every village in an attempt to sensitise the population on the indicators or agents of child sacrifice and trafficking, among other measures of preventing these heinous crimes.

legislation be changed to make it more difficult for those who perpetuate child sacrifice? The law is very clear. Article 22 (1) of the 1995 Constitution of Republic of Uganda states that “no person shall be deprived of life intentionally.” Further, Section 188 of the Penal Code Act Cap. 120, creates the offense of murder for any person who intentionally causes the death of another person by an unlawful act. A child is by reason of Section 197 of the same Act

deemed to be a person and therefore any person who unlawfully causes the death of a child is guilty of murder upon conviction by a competent court.

Article 6 (1) of the Convention on the Rights of the Child to which Uganda is a party States that Parties shall recognize that every child has the inherent right to life. We as MPs would like to request the government to increase the budget of the human rights commission so that they can go to the villages and sensitize people about the dangers of witchcraft.

Even the budget for police should also be increased in order for them to sensitize the masses to desist from such practice. Actually, the punishment is not equivalent to the weight of the vice. Because when you lose a child, you never get him or her back. We need a very strong law that will deter others from doing the same.

The law is there but was made by the colonialists. We need to tighten them to accommodate new developments. But there is general decline in security vigilance, thus people only care about their immediate relatives and whatever happens to other people's children is none of their business. This mentality should be changed. The Act to make provision for the prevention of witch craft and punishing persons practicing witch craft has six sections. What is funny is the interpretation of witch craft. It interprets witch craft not to mean bona fide in spirit worship or bona fide on manufacture of native medicine. It does not stop witch craft. The definition is ambiguous. Ironically threatening of death through witchcraft attracts a penalty of life imprisonment. If you practice witch craft, you get five years in jail; which is also ironical.

A good law should be able to tackle and embrace witchcraft mostly, though these days even those who have gone through university resort to such deception. In 1968, while launching the Common Man's Charter, Dr Milton Obote said: "We need to make the law to guide the unguided and make a law to inform the misinformed."

Extenuating Circumstances in The Law of Witchcraft.

WITCHCRAFT is a hot topic in Zambia where the courts seem to deal with such matters more often than in many other countries. In this case the two accused were convicted of murdering an elderly woman, but pleaded their belief in witchcraft as an extenuating circumstance. Though found guilty of murder, their alleged beliefs helped reduce their punishment to a life sentence instead of the death penalty that would otherwise have been mandatory. The two then appealed against sentence only, on the basis that it was "manifestly excessive" to imprison them to life since they were first offenders. Hearing this case, Zambia's supreme court took the opportunity to restate its views on when a belief in witchcraft would amount to extenuating circumstances. Given the number of such cases, this is a timely reminder – though the results of their deliberation would have come as a shock to the two accused.

In the judgment it was argued so often in witchcraft-related killings, the victim in this case was an elderly woman. Her name was Monica Kabondo, and on the morning of 18 April 2012, she was at home with several grandchildren when a funeral procession veered off its course and made for her house. Carried in the procession was a

coffin with the body of a two-year-old child who had died of a fever the day before.

When they reached her house, the people in the procession brutally attacked Kabondo and she died soon afterwards on her way to hospital. One of her granddaughters would later tell the court that she heard her grandmother crying for help. When she squeezed her way through the crowd she found her, lying on the floor and covered in blood.

As the mob left the house, they took with them the grandmother's blanket, some clothing and a goat.

The two key witnesses both identified the accused, Donald Taulo and Watson Mboko, as part of the crowd that attacked Kabondo.

When he gave evidence Taulo said that it had been his son who was to be buried. As the mourners carried the coffin, it (the coffin) "turned and headed in the direction of the bush and later followed the road towards (Kabondo's) house." Both accused claimed they had tried to stop the crowd beating the old woman but failed.

Taulo's evidence that the coffin "turned" was an obvious reference to "kikondo", when a casket containing a deceased person is believed to take on a mind of its own. During a funeral procession the coffin heads to the home of the person said to have been responsible for causing the death of the one in the coffin and points out him or her.

At the trial, the court found the two guilty of murder, but held there were extenuating circumstances in that they believed in "kikondo". They were therefore both given a life sentence, rather than the death penalty that would usually follow a murder conviction. But the two

decided to appeal on the grounds that the sentence was too severe since they were both first offenders.

The supreme court was skeptical. From the prosecutor they heard that there was no evidence to suggest any belief in witchcraft on the part of the two accused. Nor had the old woman been accused of being a witch or of being linked to the child's death. The father of the dead child was specifically asked during the trial whether he had instructed anyone to put medicine on the coffin to initiate the "kikondo" procession – and he categorically denied having done any such thing.

In the view of the prosecution, the trial court should not have found any extenuating circumstances based on a belief on witchcraft, and the appeal should be dismissed, along with the previous sentence, and the mandatory death penalty imposed.

The supreme court commented that, in "a plethora of cases" already, it had acknowledged that "belief in witchcraft by many communities in Zambia is very prevalent" and could be held to be an extenuating circumstance. But in each case where a belief in witchcraft was pleaded, the truth of whether the accused really had such a belief had first to be established.

The court said it had made clear in many earlier cases that whenever the issue was raised of an alleged belief in witchcraft, that belief had to "reach the threshold of provocation" in order to lead to a life sentence rather than the death penalty. But in this case neither accused indicated a belief in witchcraft in their evidence and there was nothing in the record to show such a belief.

In order for a claim of belief in witchcraft to stand in court and to qualify as valid extenuating circumstances, some evidence was first needed that an accused in fact believed in a witchcraft practice. This might include “a visit to a witchdoctor, a visit to a witch finder or advice from either of the two; a visit or advice from a traditional healer or consultation about witchcraft or some other reasonably suspicious event or admission believed to have been authored by the deceased in the murder case; or indeed, a demonstration of strong belief in a local ritual ordinarily associated with witchcraft.”

According to the court no such evidence had emerged in this case, though the accused clearly knew the accused. The two used to do part time work cultivating the field that she owned and were well known to the family. There was no evidence of anything linking the child’s death to the old woman before her fatal assault by the mob. Neither of the appellants visited any witchdoctor or witch finder about the sick child before it died. Add to this the fact that the accused in fact claimed they had tried to stop the mob from carrying out the kikondo ritual.

The two would not have worked for the old woman if they really believed she was a witch, said the judges, and they concluded: “We do not find any evidence-based belief in witchcraft (by the two accused) to justify their assault” and thus their claim that they believed in witchcraft and that this amounted to extenuating circumstances, had to be rejected.

The matter was originally been heard by seven judges, but two had since retired while another had been an acting judge and no longer on the bench. The remaining four said they were unanimous in finding the trial court made a “perverse finding of fact” on the

question of extenuating circumstances due to a belief in witchcraft, and the supreme court felt “duty bound” to intervene and reverse it. “The net result is that we quash the life sentence and we impose the mandatory death sentence in its place,” the judges said.

Is There Any Defence Available to Plead as Regards to Witch Craft

Self Defence

Self defence, its justifiable to kill the attacker in self defence as long as the force used is reasonable under the circumstance and that the force employed was absolutely necessary however if there is a possibility of retreating it should be done before resorting to force. However, in *Rex V Kamwaka Wa Mulumbi*,¹³⁴ the appellants who admitted killing by beating the deceased to death who was believed to be bewitching the wife of the accused, she was brought to remove the spell and she removed her and, in the morning, she was beaten to death as she tried to escape. It was held that killing a witch in defence of another person's life from death could not succeed for the killing was not necessary in the circumstance and was convicted of murder.

He further stated that self defence should be separated from fear of one's life academically from legal fear of a weapon used physically which is contrary to witchcraft which is super natural power ¹³⁵ which was stated that the accused acted by killing the deceased for fear and conviction of murder was upheld.

¹³⁴ 1932 (vol. 14) KLR 137

¹³⁵ GalikuwavRex (1951)18EACA J'15, 177

Grappling with problems of witchcraft and self-defence runs some of the hazards of navigating among icebergs; many of the critical points for determination are not immediately clear. An examination of how the courts have applied the tenets of self-defence law to witchcraft cases makes manifest the possible dangers.

In East Africa, self-defence law is governed by the English Common Law. Under the Common Law, one who kills his attacker in self-defence is justified so long as the means of resistance which he employs are reasonable under the circumstances. The person who seeks to rely on self-defence must also establish that he retreated and can only be excused for death caused during the process of defending himself if it was no longer possible for him to withdraw with safety.¹³⁶

In practical terms, this means that the accused cannot successfully rely on self-defence unless it was absolutely necessary to act as he did under the circumstances, and what is "necessary under the circumstances" has not in the least received a uniform interpretation from the courts. For example, in *Rex v. Kumwaka wa Mulumbi*¹³⁷ the appellants admitted inflicting corporal punishment on the deceased woman as a result of which death occurred. The deceased

¹³⁶ The requirement, of course, will only apply to a situation where retreat is deemed necessary to make any resulting homicide excusable. Therefore, if a person, in order to defend himself or his property even against an assault or trespass not involving felonious violence, uses force which is reasonable in the circumstances and unintentionally kills his assailant, the killing is excusable. In defending himself in such a case, a person must retreat as far as he can before resorting to force. HALSBURA'S LAWS OF ENGLAND § 1384, at 722 (3d ed. 1955)

¹³⁷ [1932] 14 K.L.R. 137

was believed to be a witch, and the appellants genuinely believed that she had bewitched the wife of one of the appellants, making her ill and unable to speak. She, the deceased, was brought to the hut where the sick woman lay and was ordered to remove the spell. At night the deceased removed half the spell, but in the morning was seen running away, whereupon she was chased and beaten with sticks until dead

On the issue of self-defence, counsel for the appellants cited *Rex v. Rose*,¹³⁸ in which a son had shot his father when he, the son, genuinely believed that his father was cutting his mother's throat. The rationale under which the son was acquitted was that "[i]f the accused had reasonable grounds for believing and honestly believed that his aid was necessary for the defence of his mother, the homicide was excusable." The Kenya court dismissed the relevance of *Rose* on the sole ground that, unlike the case before it, the act of the accused was necessary in the English case. In a society that adheres to the belief that the only defence to witchcraft is the death of the witch, it is questionable whether what the appellants did was not necessary.

The holding of the Kenya court is also found in other former English colonies. Thus, killing a witch to save the life of another was rejected as a defence in Ghana (then Gold Coast) in a case where, after the defendant's brother died, a "juju" was consulted and pointed out the deceased as the guilty party. When the defendant's second brother fell sick, a charge of witchcraft was laid against the deceased by the defendant who then killed him. The defendant was convicted of murder. The case is not dissimilar from the English case of *King v.*

¹³⁸ 15 Cox Crim. Cas. 540 (1884).

Bourne¹³⁹ where the defendant, a socially prominent physician, was charged with committing abortion upon a 15-year-old girl who had been the victim of a brutal rape. Relying on the advice of a psychiatrist that if the pregnancy was not discontinued severe psychiatric damage to the child might ensue, the defendant performed the abortion, and it was held justifiable. Yet the results were totally different. As observed by R. B. Seidman:

In [both cases] the defendant honestly believed that what he did was necessary to save another.... Yet one man was found guilty, and the other exonerated. The only apparent difference is that the tribunal believed in psychiatry, and not in witchcraft.¹⁴⁰

The Unreasonable Reasonable Man

The crucial issue involved in both the Rose and the Bourne case seems to be the effect of mistake of fact. Under mistake of fact, if A points at B with an unloaded pistol, and B, honestly and reasonably but mistakenly believing the pistol to be loaded, fires and kills A, B would not be guilty of murder since he can plead that he was defending himself against what he thought posed a threat of imminent death to himself. Furthermore, the defence of self-defence is not restricted to the particular person actually attacked. It extends to defence of one's property as well as defence for persons who are under the immediate care of the accused. " But the important factor in mistake of fact is that the person relying on it would have been justified if the true state of affairs had been as imagined. Thus, in Rose, the accused was acquitted because, had his father been cutting

¹³⁹[1939] 1 K.B. 687.

¹⁴⁰ Seidman, *Witch Murder and Means Rea: A Problem of Society Under Radical Social Change*, 28 *MoDERN L. REv.* 46, 49 (1965).

the throat of the accused's mother, the accused would have been justified in killing his father.

The question, then, is whether a belief that a person is a witch and is bewitching either the accused or those under his immediate care can ever fulfill the above requirement. For such belief to afford a defence under mistake of fact, it must be shown that if the belief were actually true, then there would be justification to act in self-defence (subject to other essentials of self-defence law). And it is on such issues as this that the social ethos and traditional customs fundamentally differ from English Common Law and statutory law. Under native customs the accused would be absolutely exonerated of any liability; however, under the English Common Law no such defence seems available. This position has been endorsed by the East African courts over the years in their application of criminal law principles. The technique adopted by the court's hinges on the interpretation of "reasonableness" in the belief that the accused's life was threatened by an act of witchcraft. It should be noted that in the majority of cases, the honesty in such belief has been accepted by the courts. But on the question of "reasonableness" in such belief, the accused have, almost without exception, failed to establish their cases. This is primarily because of the application of the "English reasonable man" as the standard in judging the African's behavior. "Therefore, one court stated that "it is difficult to see how an act of witchcraft unaccompanied by some physical attack could be brought within the principles of the English common law.

This proposition was cited with approval in Jackson¹⁴¹ where the High Court had acquitted the accused on the ground of justifiable homicide. Both the High Court and the Federal Supreme Court, on appeal, concurred in the view that it was sufficient if the accused genuinely believed that his own life was threatened even if that were not, in fact, the case. The Federal Supreme Court, however, parted company with the High Court on the "reasonableness" of the accused's belief. The lower court had relied upon the opinion of the African assessors in determining what would be regarded as "reasonable" in a person with the background and upbringing of the defendant. The Federal Supreme Court, however, had a different view: "Whereas genius is a subjective test, reasonableness in one's belief is objective and the applicable standard is that of the ordinary man in the street in England."¹⁴² This conclusion was reached notwithstanding the Nyasaland Penal Code provision that "an ordinary person shall mean an ordinary person in the community to which the accused belongs."¹⁴³ The court justified its non-compliance with the clear dictates of the Nyasaland provision by rationalizing that the law of England was still the law of England even when it extended to Nyasaland.¹⁴⁴

On the basis of the court's attitude and approach to witchcraft, as demonstrated in the cases of Galikuwa and Jackson, it is probably safe to state that a belief in witchcraft can never constitute self-

¹⁴¹ Attorney General for Nyasaland v. Jackson, [1957] Rhodesia & Nyasaland L.R. 443. The court in Jackson also cited with approval Rex v. Fabiano Kinene, [1941] 8 E.A.C.A. 96.

¹⁴² Attorney General for Nyasaland v. Jackson, [1957] Rhodesia & Nyasaland L.R. 433 (emphasis added).

¹⁴³ Penal Code § 214 (Cap. 23, Laws of Nyasaland (1957 rev.)).

¹⁴⁴ Attorney General for Nyasaland v. Jackson, [1957] Rhodesia & Nyasaland L.R.

defence. If the standard of "reasonable man" is that of the "gentleman" in London streets and not the ordinary man within the accused's community, then the case appears to be prejudged, and nothing can rescue the accused. Conviction is almost guaranteed in every case. It may be argued that legislation can alter the position. But what clearer statutory provision is called for if that in the Nyasaland Penal Code is not sufficient? In Jackson the court was clearly directed as to the applicable standard of reasonableness. Yet the court, by "an interpretation that shocks the conscience," succeeded in sabotaging the clear, legislative intentions. There is no assurance that what happened in Jackson cannot be repeated but on different arguments. For instance, since most courts in East Africa are situated in urban environments, the judge can take the behaviour of the urban population with which he is mainly familiar as representative of the community.

There is a lesson to be learned from Jackson--it is not enough to have "good laws" (whatever that may mean) without corresponding judicial officials who are committed to applying them to the practical problems of a given society. Judicial officials who are worth their salt should not apply immutable legal rules to practical day-to-day social problems and even less so when the local conditions call for a different approach, if not a modification, of the written law. It is hoped that the situation will improve with the increase of Africans on the bench; however, such hopes may not be heavily relied upon for it is not enough to have an African judge. The training of the judge (and at present the training in East Africa is entirely English-oriented) must also be taken into account.

Fear of The Witch and His Arsenal

The court in Jackson attempted to differentiate between "killing in self-defence" and "killing because of fear for one's life." This distinction appears too fine to appreciate. Once a person is assailed and strikes back, it is purely academic to embark upon an exercise of separating fear from self-defence. As a matter of fact, one precedes the other in such an interlocking manner that the two must as of necessity go hand -in-hand. Without fear for one's safety (be that safety for one's life or those immediately under his care) it is difficult to comprehend the whole idea behind self-defence. It is humbly submitted that the distinction is unworkable in practice.

Yet another objection to the approach of the courts in East Africa and Nyasaland in respect to witchcraft is that in both jurisdictions the courts seem to have a weird concept of a weapon. According to these courts, a weapon has to be physical before self-defence can succeed.⁵ This requirement runs contrary to witchcraft which by definition is supernatural power. If one must be attacked with a physical weapon, which is taken to mean a "tangible" instrument like a pistol, then witchcraft can never under any circumstances constitute a basis of self-defence.

The preceding paragraphs should not be interpreted to mean that the law itself (be it Common Law or statutory law) is appropriate in witchcraft cases, and therefore the problems are all judge-made. On the contrary, it is submitted that the legal rules themselves may pose unsurmountable problems when applied to witchcraft cases. Accordingly, it is a requirement in self-defence law that the assailed person must show that the force he used in resisting the attack was

neither excessive nor unreasonable under the circumstances."¹⁴⁵ The question then is what force is reasonable or what means are appropriate to counteract supernatural power. What is the measure of "reasonable force and means" in witchcraft? In ordinary self-defence cases, any force or means are proper so long as they are proportionate to the force and means used by the assailant.⁶¹ Sticks, bows and arrows, pistols and guns may be mentioned as a few of the weapons to which the assailed may revert. But are such tangible weapons necessarily the appropriate means of self-defence in witchcraft cases? Are they appropriate to rebut a supernatural attack? Should one not be legally permitted to resort to supernatural power in one's self-defence against witchcraft?

According to the East African witchcraft statutes, the weapons to which a victim of witchcraft attacks may revert are restricted to the point of being non-existent. In view of the court's attitude and/or approach, weapons like pistols are, for practical purposes, ruled out since such tangible weapons are appropriate only where the attack is by another tangible weapon; however, witchcraft is not a tangible weapon. The only alternative is the traditional methods of rebutting witchcraft attacks. These include the use of witchcraft itself against the alleged witch and the use of witchcraft instruments which vary from one community to another. If one was bewitched or believed he was being bewitched, he could consult another witchdoctor who could either supply a preventative or curative counter-measure or supply the bewitched with the proper witchcraft to counteract the activities of the assailant. Such measures or weapons, however, are by

¹⁴⁵ See 10 Halsbury's Laws of England § 1382, At 721 (3d Ed. 1955).

virtue of the witchcraft statutes illegal.¹⁴⁶ For instance, section 5 of the Kenya Witchcraft Act declares it an offence to be in possession of a charm or other articles usually used in the exercise of witchcraft, sorcery or enchantment for the purpose of causing fear, annoyance or injury to another in mind, person or property and without showing reasonable cause why he should retain any such charm or other article in his possession. 8 At first glance, it is arguable that if a person in possession of such articles shows that the articles are for his "self-defence," that would be reasonable cause for his possessing them. But this is not the case. One cannot defend himself before he is attacked. Thus, the person in possession of the articles or charms would have to go further and show who his assailant is -the witch against whom he is protecting himself. This, unfortunately, amounts to accusing the alleged attacker of being a witch which constitutes an offence under section 6 of the same act.

In short, the believer's position is an awkward one. On the one hand, the Common Law authorizes him to use any reasonable means and force in his self-defence. What is reasonable varies with the particular facts and circumstances of each case. And within this, witchcraft and instruments used in the practice of the same could well be covered. On the other hand, the common law right of self-defence is taken away from the witchcraft believer by what outwardly appears to be unreasonable rules of interpretation conceived and upheld by the courts and by the express prohibition of the witchcraft statutes.

On the requirement of "retreat" in self-defence, the problem still awaits decision as to whether such requirement is appropriate in witchcraft cases. The rationale behind "retreating" is that on

¹⁴⁶ See, e.g., Witchcraft Act § 3.4 (Cap. 67, Laws of Kenya (1962)).

common example where such tenet is practical is where the attacker has a panga or bow and arrow. With such weapons, the victim may easily remove himself from the "danger-region." But this requirement does not sound reasonable in witchcraft cases. How can one retreat from supernatural power? Among the Gusu, the "obasaro," allegedly used in witchcraft killings, is traditionally believed to be capable of acting at infinitely great distances. To fulfill the requirement of retreat in such case, the assailed may be forced to leave his own village, location or even the country. The common law requirement does not seem to have envisaged, nor intended, such consequences should try to keep away from the attack until such a stage that he can no longer retreat with safety.

Applicability of The Defence Of Provocation

While there are cases where witchcraft has been used to perpetrate a fraud ¹⁴⁷ or as a means of self-defence, the chief vehicle by which witchcraft has presented itself for scrutiny by the courts is the ground of provocation. It is from this most important angle of witchcraft that the court's attitude toward witchcraft must be examined.

Many are the instances where the accused has, with little success, tried to justify his killing on the ground that either:

- 1) the victim, by an act of witchcraft, provoked the accused; or
- 2) the accused, believing the deceased to be a witch, killed him. On the latter ground, belief that the victim is a witch is not, *per se*, a defence on a murder charge. The danger into which the society

¹⁴⁷Athumian v. Republic, [1967] E.A. 401 (Kenya).

would be plunged if those who believed others to be witches or to have bewitched them were given the green light to accomplish their desires is obvious. The position was admirably summed up in *Rex v. Kumwaka wa Mulumbi*:

Threat of witchcraft has been consistently rejected by the court except where the accused has been put in such fear of immediate danger to his own life that the defence of grave and sudden provocation has been held proved. For courts to adopt any other attitude to such cases, would be to encourage the belief that an aggrieved party may take the law into his own hands and no belief could be more mischievous or fraught with greater danger to the public peace and tranquillity.¹⁴⁸

Most cases in the area of provocation involve a situation where the victim has provoked the defendant by an act of witchcraft. *Rex v. Kumwaka wa Mulumbi* is the earliest reported case in East Africa.⁶ On a charge of murder the accused pleaded, among other defences, provocation. The court held that such a defence was unavailing since the accused had not been "put in such fear of immediate danger to their own lives that the defence of grave and sudden provocation could be held proved."¹⁴⁹

The Test of Provocation

To the extent that the standard of fear required to establish a defence of provocation based on a belief in witchcraft is not discernible from the court's statement of facts, it may be said that the above statement

¹⁴⁸ [1932] 14 K.L.R. 137.

¹⁴⁹ *Id.* at 139. On the same reasoning and authority, provocation as a defense was rejected in *Rex v. Muwalwa bin Nyangwesa*, [1940] 7 E.A.C.A. 62.

is too general. However, in 1941, the East African Court of Appeal seized the opportunity to clarify what the statement meant:

The phrase confuses the emotion of fear (which has no place in the doctrine of provocation) and the emotion of anger, which is the natural and only product or result of provocation received. A defence of provocation arising from a belief in the potency of witchcraft is established if a fancied bewitchment, or threat of bewitchment, induces in the victim such a degree of fear as to deprive him of self-control and induce him to assault his provoker.¹⁵⁰

On the basis of the court's language, it appears that unless the fear engendered reaches such a degree as to deprive the accused of his self-control, it will not constitute provocation.

The case of *Regina v. Fabiano Kinene*¹⁵¹ is the unchallenged touchstone by which belief in witchcraft, as a possible element of provocation, must be valued. The decision is important because it epitomized the requisite elements (as per the Penal Code) which must be fulfilled before a murder conviction can be reduced to manslaughter on the ground that an act of witchcraft provoked the accused. Additionally, this was the first instance where a belief in

¹⁵⁰¹⁵⁰ *Rex v. Sitakimatata s/o Kimwage*, [1941] 8 E.A.C.A. 57. In this case the deceased told the appellant that he had compassed the death of the appellant's wife by witchcraft and that he would kill the appellant by the same means. Appellant thereupon decided to kill the deceased and carried out his intention some hours later in circumstances which indicated premeditated revenge: appellant went back to his home to fix up his affairs, put the cattle in the Kraal and fowls on the roost, saw that the children got their evening meal and then armed himself with a spear with which he killed the deceased. *Id.*

¹⁵¹ [1941] 8 E.A.C.A. 96.

witchcraft fulfilled the legal tenets of provocation. The following were the facts in that case:

The appellants had been convicted of murder for killing the deceased whom they found crawling naked in the compound on the night of the killing. The appellants believed the deceased had bewitched their relatives, and that they had caught him in the act of bewitching them. They then forcibly inserted unripe bananas into his bowel through the anus. The method they used to kill him was traditionally considered proper for killing a wizard. The appellants admitted that they used the bananas knowing that the deceased would die. The court found that the appellants saw the deceased acting in such a way as to cause them to believe that he was then and there practising witchcraft against them¹⁵²

As their defence, the appellants asserted that the deceased, by his act, provoked them. The court was thus faced with the issue as to whether there was a case of legal provocation under the circumstances.

It is of significance to spell out in detail the court's arguments in *Fabiano* because subsequent cases on the topic are only intelligible in the light of those arguments. The reasoning employed therein also demonstrates why previous cases had been decided the way they were. The court found that the accused "genuinely and reasonably" believed that the deceased was actually, and there and then, engaged in practicing witchcraft against them when they found him crawling naked in the compound." The court made an invaluable observation by taking notice of the "large part played by witchcraft in the life of

¹⁵² [1941] 8 E.A.C.A. 96.

the average African native."¹⁵³ " The court also explained the meaning of the phrase "in the heat of passion" as used in the Penal Code.¹⁵⁴ The phrase is "more properly referable" to the emotion of anger than to that of fear." The court continued:

We think that if the facts proved establish that the victim was performing in the actual presence of the accused some act which the accused did genuinely believe and which an ordinary person of the community to which the accused belongs would genuinely believe, to be an act of witchcraft against him or another person under his immediate care [which act would be a criminal offence under the criminal law-witchcraft ordinance and similar legislation in the other East African territories] he might be angered to such an extent as to be deprived of the power of self-control and induced to assault the person doing the witchcraft. And if this be the case, a defence of grave and sudden provocation is open to him. The court concluded that the defence of provocation had been established, and accordingly, the sentence was reduced to manslaughter. To summarize, the following are the requisite elements, as restated in *Eria Galikuwa v. Rex*, before a plea of provocation can succeed:

(a) The act causing the death must have been done in the heat of passion, i.e., in anger. Fear alone, even fear of immediate death, is not enough.

¹⁵³ 8 E.A.C.A. at 101.

¹⁵⁴ This principle, that the act of killing must be done in the heat of passion, governs two other cases decided prior to *Fabiano*: *Rex v. Mawalwa bil Nyangwesa*, [1940] 7 E.A.C.A. 62, and *Rex v. Kimutai Arap Mursoi*, [1939] 6 E.A.C.A. 117, in both of which it was held that the time lapse between the alleged provocation and the killing was too long for there to be provocation.

(b) The victim must have been performing in the actual presence of the accused an act which the accused genuinely believed, and which an ordinary person of the community to which the accused belongs would genuinely believe, to be an act of witchcraft against him or another person under his immediate care.

(c) A belief in witchcraft per se does not constitute a circumstance of excuse or mitigation for killing a person believed to be a witch in absence of an immediate provocative act.

(d) The provocative act must amount to a criminal offence under criminal law.

Before examining how these elements have been applied in subsequent cases, it should be pointed out that element (d) has its own peculiarity. If the provocative act must amount to a criminal offence under criminal law, then it is submitted that the court was giving witchcraft a unique approach not found in other criminal cases. For instance, if a man sees his wife in the act of adultery, he may be provoked, but the passion engendered is not necessarily because adultery is a violation of a penal statute.⁸ In fact, adultery is not a criminal offence in Kenya and Tanzania. It is only in Uganda that adultery is a crime.¹⁵⁵ Yet, provocation has never been denied in Kenya and Tanzania if one caught his wife red-handed practising adultery. Accordingly, the passion engendered by a witch performing his profession might well arouse passion to such an extent that one loses self-control whether or not a statute prohibits witchcraft. It is therefore suggested that element (d) should be excluded when determining what would constitute legal

Penal Code § 150A (Cap. 106, Laws of Uganda (1964)).

provocation. Indeed, in no other case, prior or subsequent to Fabiano, has the court addressed itself to the issue of whether the provocative act was or was not a criminal offence in deciding whether provocation had been established. Accordingly, to make out a case of provocation, only elements (a), (b) and (c) should have to be proved. The three elements must coincide if the accused is to succeed, and failure to establish any one of the three elements mean failure to prove provocation.

Thus, in *Rex v. Kelement Maganga*¹⁵⁶ where the accused beat and strangled the deceased whom they caught walking naked at night in the accused's compound, it was held that the facts established legal provocation. But it should be noted that subsequent to *Kelement Maganga*, the plea of provocation has been rejected by the courts in practically every case because one or more of the requisite elements was lacking. In *Rex v. Kafuma s/o Mbake*¹⁵⁷ the accused was convicted of murder and not manslaughter because he could not prove that he received immediate provocation or establish that the deceased was performing the alleged witchcraft act in the actual presence of the accused. A year later, in *Rex v. Emilio Lumu*,¹⁵⁸ the plea of provocation failed because "although the accused was present when his allegedly bewitched child died, he was not present when the bewitching was performed. He was merely informed."¹⁵⁹

¹⁵⁶ [1943] 10 E.A.C.A. 49.

¹⁵⁷ [1945] 12 E.A.C.A. 104.

¹⁵⁸ [1946] 13 E.A.C.A. 144.

¹⁵⁹ 86. *Id.* at 145. On the same ground, the plea of provocation was rejected in *Rex v. Akope*, [1947] 14 E.A.C.A.

In *Rex v. Petero Wabwire*,¹⁶⁰ the accused was convicted and sentenced to the death penalty because:

Although he genuinely believed that his wife was practicing witchcraft against him with intention of killing him, such belief was unreasonable since an ordinary person of the community to which the accused belonged would not genuinely believe that the deceased's act was one of witchcraft. Honest as he might have been in his belief, the accused fell below the standard of "reasonableness," vis-a-vis, his fellow villagers. In *Eria Galikuwa v. Rex*,¹⁶¹ the plea of provocation failed because the requirement that the act causing death must be done in the heat of passion, i.e., anger, was not complied with. The court concluded that the appellant was motivated by fear alone and not anger: "He struck, not in the heat of

¹⁶⁰ [1949] 16 E.A.C.A. 131.

¹⁶¹ [1951] 18 E.A.C.A. 175. The facts were as follows: The appellant had some money stolen from him, and he hired the deceased, who had a great reputation as a witch doctor, in hopes that the deceased might recover the stolen money. The deceased, an unscrupulous rogue, seized the opportunity for unjust enrichment. On his first visit he exacted Shs. 70/- (70 shillings) as his fees and a chicken. On the second visit he demanded Shs. 320/-, a goat and threatened appellant that his "medicine would eat him up" unless he paid. On his third visit the deceased demanded Shs. 1,000/-, a sum which appellant did not have but which he promised to raise in a few days. That evening the appellant heard the deceased's "medicine" demanding the money saying it would "eat him up if you don't pay us." Appellant promised to pay. The demand was repeated the following night by the "voice" adding that appellant would be killed at noon the next day if he failed to pay. The "voice" added also that "if you go to borrow the money, we will go with you and if you don't get money, we will eat you by sucking your blood." Appellant testified that he had witnessed the hen and the goat which he had given to deceased on previous visits die instantly, without the deceased giving them anything. As a result of that threat to his life, appellant decided to kill, and did kill, the deceased to save his own life. *Id.*

passion but in despair arising from his inability to raise the money and his hopeless fear of the consequences. He was not suddenly deprived of his self-control."

As applied, the above principle would seem to have wrought injustice to the appellant in Galikuwa. The distinction between fear and anger may be very clear in theory. Practically, however, as in the circumstances and facts of Galikuwa, it is next to impossible to draw such a fine line between fear and anger. One is even led to question whether the above principle was not more appropriate in Galikuwa than in Fabiano for it will be recalled that in the latter case, the appellants, after seeing the deceased crawling naked at night, thought he was simultaneously practicing witchcraft against them. An important factor which must have weighed heavily in the minds of the appellants in deciding to kill the deceased was that they believed the deceased had bewitched their relatives and was then bewitching them. The proper question was whether the appellants were afraid that the deceased would kill them in the same manner as he had killed their relatives. Yet, how is that any different from the fear which the appellant in Galikuwa had, taking into account the mysterious manner by which the chicken and the goat had been killed by the deceased? The only possible distinction which one can draw between the two cases is that in one the victims of the deceased's practices were human beings (the relatives of the appellants) whereas in the other case no human being had been killed by the deceased.

This factual distinction does not seem sound in view of the facts in both cases. In fact, it is humbly submitted that to reconcile the decisions on that distinction is unrealistic because it would appear

that the crucial issue is not "the thing killed" but "the killing power" of the alleged witch. So long as the alleged witch has power to kill by use of witchcraft, it should be immaterial whether it is an animal or a human being that has been killed. Such distinctions hardly ever cross the minds of witchcraft-believers Superiority of Judicial Construction

To summarize, provocation, as a defence, has not been easily available in witchcraft cases. Two interdependent reasons may account for this. The first is that the circumstances in which killings in witchcraft arise are not apt to fulfill the legal tenets as formulated by both the penal codes and case law. The second reason may be that the criminal law principles in respect to provocation are not appropriate in witchcraft cases, and especially the requirement that the killing must have been sudden, in the heat of passion and before there is time for the killer's passion to cool. Professor R. B. Seidman suggests that the statutory requirements on provocation are inapt in witchcraft cases: "The nature of the threat of witchcraft is that the passage of time serves only to inflame the passions, not to cool them ... " This thesis is supported by the facts in several cases and is a suggestion worthy of serious thought and consideration. If the applicable law is defective, it is probably asking for too much to expect the courts to adopt an elastic attitude in bending the legal rules to suit local conditions-the legal rules are themselves incompatible with witchcraft practices and reactions thereto. Were the theory acceptable, the accused in the relevant cases would have been guilty of manslaughter only. The theory also may have considerable merit in view of the popular notion that law should take into account the social ethos of the community in which it

operates and that the function of a judge "is not to apply immutable principles, but rather to solve practical problems."

The courts seem to have sensed the necessity for giving such convicts a somewhat different treatment. While they have sentenced the convicts to death (for the "legal bible" leaves no vagueness on the punishment to meted out to anyone convicted of murder), they have simultaneously and regularly recommended that the executive exercise its clemency, and, in effect, reverse the sentence. Such recommendations and reliance on the executive clemency defeat any deterrent effect of the death sentence in witchcraft cases. Whether such an approach is an appreciation of the inadequacy of judicial solutions to the problems raised by witchcraft or an acknowledgement of the fact that the problems posed by witchcraft are probably never found in any other criminal law area is not quite clear from the decisions. But those are inferences which may be drawn from the conduct of the courts. The wisdom in amending the penal codes to provide for a different standard in witchcraft, in contradistinction with other criminal cases, however, seems questionable. It is true that the problems posed by witchcraft are unique and probably are never found in any other criminal law area. But whereas such problems may be a necessary condition in adopting the approach the courts seem to have taken, it is doubtful whether they are sufficient grounds for an amendment of the penal codes. In the writer's opinion, such an amendment is uncalled for. The penal code provisions concerning provocation can well cover the situation if properly construed by the courts. How the courts interpret the words, "killing in the heat of passion; sudden

provocation and before there is time for the passion to cool,¹⁶² seems to be the gravamen of the matter. No legal drafting, however thorough, however comprehensive, can cater for all eventualities in which the statute may be invoked, and the penal codes are no exception. It is for the courts to fill in the gaps which the legislature could not foresee-gaps which may vary with the facts of each case. There is no mathematically fixed time for the "cooling of passion," nor would such suggestion be tenable. What amounts to "sudden provocation" may also vary with the facts of each case. And in that light, if it is discovered that in witchcraft more time is required to arouse the anger of the victims of witchcraft or that more time elapses before the passion cools down, the statutory provisions on provocation should be interpreted in view of such evidence. It must be pointed out, however, that the approach advocated herein-interpretation of the already existing penal code provisions rather than an amendment of the same-can only be based on, and in fact presupposes, an existence of a bench with the full appreciation and background knowledge of the environment in which witchcraft believers live. It is not questioned that on several occasions the courts have shown such an appreciation,¹⁶³ however, the prevalence of such understanding is not as widespread as the special witchcraft situation necessitates.

¹⁶² Penal Code § 207 (Cap. 16, Laws of Kenya (1962))

¹⁶³ See, e.g., *Regina v. Magata*, [1957] E.A. 330 (Uganda); *Rex v. Fabiano Kinene*, [1941] 8 E.A.C.A. 96.

Applicability of Defence of Insanity

Witchcraft and Insanity: in *Muswi S/O Musula*,¹⁶⁴ court rejected the defence of insanity since evidence shows that the accused had quarrels with his wife before shooting in the kitchen with a bow and arrow that the wife was bewitching him, relying on sections 2 of the Kenyan penal code which the exonerates an accused from criminal liability if he can prove that at the time of killing did not know what he was doing due to insanity. And in conclusion, he agreed that witchcraft is a complicated phenomenon to comprehend because of beliefs unless identified with culture and background of those that hunted by fear make little sense, and very impossible for a legislature to enact against offences that impossible of commissioning.

Section 12 of the penal code, Kenya, Section II of the Penal Code Act Laws of Uganda, no one would be held liable if he was acting through the disease of mind and incapable of understanding what he was doing. A question arises what constitute "the disease affecting the mind." Is a person who genuinely believed another of the community feeds upon human flesh and uses salt to quench his thirsty sane? Or insanity confined to only those who have been so satisfied by the physicians? 191 East African cases do not render sufficient as to the courts position on witchcraft and insanity. The first case is *Muswi s/o Musula*,¹⁶⁵ court rejected the assertion a belief in witchcraft could constitute insanity. In that case, the defendant killed his wife by shooting with an arrow as she sat in her kitchen. There had been continued quarrels between them for some time and the defendant believed that she was practicing witchcraft against

¹⁶⁴ (1956)23 EACA 622

¹⁶⁵ (1956) 23 EACA 622.

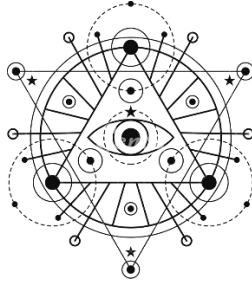
him. A psychiatrist testified that there was a history of madness and epilepsy in the family and that the defendant was probably suffering from mild depression at the material time. Rejecting the defence of insanity, courts said "even if the defendant that he was justified killing his wife because she was practicing witchcraft, there is again no evidence of such believes arose from any mental defect, it's a belief sometimes held by entire sane Africans. According to penal codes and M'naghtens rule it is imperative to show court that the defendant was incapable of understanding what he was doing or knowing that he ought not to have done what he did. This position is made doubly difficult by the requirement that the incapacity to understand what he was doing or the wrongfulness of the act must be a result of a deceased affecting his mind. Distinction is important in differentiating between erroneous conclusions that arrived at as a result of training or lack of it and mental disease which may impair such understanding whether or not one has the necessary training. It is only in light of this distinction that the courts conclusion in Muswi should be construed. The belief entertained by the defendant was traceable to traditional native life and had nothing to do with insanity. Were the defendant's contentions acceptable, a term "insanity" would cover large percentage of African society which calls similar beliefs. The defendants' actions indicated an erroneous conclusion of a sane mind and that is why belief in witchcraft, perse, is not insanity within a M'Naghtens rule, Hotema v USA. In 1957 after Muswi was decided, high court of Uganda held that the accused killed his father in an honest belief that his father was a witchcraft was insane as a result of such. Both the accused and his father had been to a burial of a boy. As they walked from the burial, they were on friendly terms. The accused suddenly killed his father by cutting his neck with a panga saying that he killed his father because he was

Satan believing that he was bewitching him and his two sons who he had bewitched and killed, bewitched his wife and killed her, bewitched the accused and made his feet swollen, bewitched his goats and killed them all, his cows was still sick, bewitched his second wife who to hate him, the whole village to hate him and even the relatives hated him, my second wife also said she would marry someone else. Because I was bewitched, my head was not right, even my ears were affected, when I have sex intercourse with my wife my pens burns, court held that the accused is guilty of murder but insane at the same time courts found that he did not know h h d. 195 w at e was omg was wrong

The court observed that "an African living far away in the bush may become so obsessed with the idea that he is being bewitched that the balance of his mind may be disturbed to such an extent that it may be described as a disease of the mind." In a council of two there cannot be a majority. It is difficult to be dogmatic where there are only two cases indicative of the court's position in respect to witchcraft and insanity. Moreover, the two cases are not by the same court. One is by the East African Court of Appeal while the other is by the Uganda High Court. It seems clear, however, that in appropriate cases, even the Court of Appeal for East Africa would come to the same conclusions as that arrived at by the Uganda Countryt; "there is again no evidence that such belief arose from any mental defect Suggests that had relevant evidence been ·adduced, insanity could have been established in Muswi. What is not quite clear is what more was expected from the defendant in Muswi. It is inarguable that insanity cannot be established except by analysis of the facts of each particular case. But looking at the facts of the two cases, the only major distinction between the two cases seems to be

the number of "irrational beliefs" held by one defendant but not by the other. Otherwise, each of the accused in the two cases killed because he believed that the deceased was bewitching him. It is submitted that the courts have not as yet, arrived at any definitive posture as to the applicability of self-defence in the witchcraft situation.

CHAPTER FIVE



Social Merits of Witches

Health and science reporter Katherine Ellen Foley published an article on October 30, 2018, *“Women healers who were persecuted as witches left a rich legacy for modern medicine. Witches knew that foxglove could be used as a heart medicine before doctors did”*

Reporting, English witch Mrs. Hutton, 1700s discovered botanical medicine to cure heart failure. The awe is that she worked from the periphery of medicine.

The medical community at the time discovered Hutton from a patient who gave up on the failures of doctors to treat their heart failure, and defected to the witch’s care. When the patient, fully recovered, told their physician, William Withering, about Hutton’s miracle remedy, Withering left Stafford and took the 30 miles (50 km) journey to the witch’s home in Shropshire, and asked her for some of her concoction to study himself.

Witch Mrs. Hutton’s brewed herbs that modern science believed in. Amazing right? Withering hypothesized that the active ingredient in

Hutton's remedy was the foxglove plant. He tested this by administering dried, crushed foxglove leaves to over 160 patients, and wrote up his findings, noting that it was particularly useful for those who had developed scarlet fever or strep throat, which can lead to heart damage when untreated. Today, we know even more details about why Hutton's remedy worked: digoxin, a compound found in foxglove is still used as the active ingredient in some heart and blood pressure medications. Over the years, modern Western medicine has taken many remedies from all kinds of alternative forms of medicine, including witchcraft, according to Smithsonian. Witches used willow bark to treat inflammation; the compound used in aspirin today was developed based on a precursor chemical found in the willow tree. They used garlic for ulcers; garlic has since been found (paywall) to slightly lower cholesterol and partially block the formation of platelets, which can cause blot clots. So-called "flying ointment"—a "magical aid" with hallucinogenic effects—contained henbane, nightshade, and mandrake. Henbane contains hyoscine, which is now used in lower doses to treat motion sickness and stomach cramps. Nightshade contains atropine, a muscle relaxant that is sometimes used to calm patients going into surgery and to treat nerve-gas poisoning.

How Witches Got Their Name and Reputation

As Salon notes in an essay about the 2010 revision of *Witches, Midwives and Nurses*, witches developed their name and evil reputation in the context of European medieval class struggles, the continuing domination of the Christian church, and a burgeoning field of study that would become what we now think of as the

Western scientific tradition. Early medical establishments that arose in the 1200s in Europe banned women from practicing medicine. For centuries, only doctors—nearly all of them white and male—were deemed credible medical practitioners; women could only be their assistants.

But doctors were expensive. Poor people often only had one other option: women who practiced medicine or midwifery illegally. For all their trouble, religious and civic authorities labeled these women as “Satanic” (or tried them for practicing illegal medicine). According to Barbara Ehrenreich and Deirdre English, the authors of *Witches, Midwives, and Nurses*, this was in part because their work saving the lives of the poor undermined the advice the Christian church gave the severely impoverished at the time: to simply accept death.

Ehrenreich and English also note that authorities frowned upon any women meeting in large groups, for fear that they were creating covens to worship Satan. These women, the Christian authorities said, were likely witches. (Most likely, Ehrenreich and English say, the women were probably meeting to share what they’d learned in their personal health care practices.) Ironically, one of the biggest grievances medicines had with witches was that they were good at their job. The idea that a woman could offer cures that male doctors couldn’t was seen as so preposterous, it had to be magic.

Witches probably couldn’t tell you scientifically how their cures worked; they just knew that their therapies made people feel better. But neither could a lot of the early practitioners of Western medicine. Digoxin itself wasn’t even isolated as the active ingredient from foxglove until the 20th century, almost 200 years after

Withering discovered the plant's use. Even today, although rigorous and extensive clinical trials are required to show that a drug is safe and effective before it is approved for use, there is no requirement to show exactly how it works—as long as it heals patients.

Recognition of The Existence of Witchdoctors and Witchcraft

Witchdoctors: Whether witchdoctors exist is a question which (though dictum) was basic to the statements by the High Court of Kenya in *Athuman*. In that case the appellant had been charged and convicted of obtaining money by false pretences by pretending that he, *Athuman*, was a witchdoctor with power to remove devils (*Majini*) from the wife of one *Aloisi*. The wife suffered from pains in her head, stomach and eye, and the appellant was contacted for help. After stating that he would cure the wife, the appellant asked for and received 418 shillings as payment for the treatment in addition to a goat and two yams. Shortly thereafter, the appellant announced that he would not undertake the treatment and returned the goat but not the money. The complainant, *Aloisi*, regarding the matter as a swindle, complained to the police. In its decision the court began by questioning the particulars of the charge. The statement in those particulars that the appellant pretended that he was a witchdoctor could perhaps be criticized since the phrase may imply that there are such things as genuine witch doctors¹⁶⁶ Shortly thereafter, but in the same paragraph, the phrase, "so-called

¹⁶⁶ [1967] E.A. at 402.

witchdoctors," is used by the court in reference to witchdoctors. The court continued:

Is it not possible, it may be asked, that honest though strangely deluded witchdoctors exist, and that the appellant may be one of them? We may be forgiven for saying that there probably witchdoctors. There may well be men who undertake the cure of ailments for reward and have an honest belief in the efficacy of rituals, incantations and the like. 'Common sense leads us to suppose that those who practice medicine with the aid of such arts are likely to have lost much, if not all, of their faith in those arts by reason of hard experience.¹⁶⁷ The court's attitude appears to indicate a denial of the existence of witches. To the court, witches are not human beings. They are "things." This approach could not, however, be maintained in view of the charge against the accused. At the root of "falsely pretending to be a witchdoctor" lies the assumption that genuine witchdoctors exist, and in the absence of that assumption it is difficult, if not impossible, to imagine the rationale for the crime which the appellant committed. The court, perhaps realising the absurdity of the approach it had thus far taken, shifted its argument and appeared to acknowledge that witchdoctors can exist: "But we do not deny the possibility of the existence of an honest witchdoctor." "If" an honest witchdoctor" can exist,¹⁶⁸ then the court

¹⁶⁷ Id. The court's supposition that witchcraft practitioners have lost faith in their art is not supported by, and in fact is contrary to, the evidence that belief in witchcraft has not decreased. See notes 108-13 *infra* and accompanying text.

¹⁶⁸ *f* the court's decision. However, the issue of the existence of witchdoctors so dominates the larger part of the court's deliberations that it in fact tends to obscure the central issue in the case, i.e., whether the accused falsely pretended that he was a witchdoctor.

had to determine whether the appellant was one of the genuine witchdoctors.

The Kenya court's reluctance to acknowledge the existence of witchdoctors seems unnecessary in light of the innumerable instances where the existence of witchdoctors has been granted judicial acknowledgement. For instance, Lord Hale, charging a jury in 1665 said "[t]hat there are such creatures as witches I have no doubt at all."¹⁶⁹

The recent witchcraft trials in India¹⁷⁰ and the many current practices in England and the United States of America¹⁷¹ illustrate that the notion of the existence of witches is prevalent in "developed" as well as "under-developed" countries

Assuming then those witches and genuine witchdoctors exist, the next question is how to identify them. There are no universally agreed upon criteria, even in East African communities, on what constitutes a witchdoctor. The characteristics which make a witchdoctor in one tribe are not necessarily what another tribe would consider sufficient to "qualify" a person to be called a witch

¹⁶⁹ *trial of the Suffolk Witches*, 6 St. Tr. 687, 700-01 (1665). See also 4 W. BLACKSTONE, COMMENTARIES *60-61. For other earlier references acknowledging the existence of witches, see Exodus 2:18; Leviticus 20:7; 1 Samuel 15:23; 2 Kings 9:22. The works of Shakespeare and, in particular, Macbeth are replete with reference to the existence of witches

¹⁷⁰ In Raipur, India, local police battled with villagers to save two women from being buried alive for alleged acts of witchcraft in the village. In the commotion, police opened fire into the furious crowd, and a villager was wounded. *Daily Nation*, Mar. 4, 1969, at 2, col. 1

¹⁷¹ ., G. PARRINDER, WITCHCRAFT: EUROPEAN AND AFRICAN (1963) (especially ch. 7, Witchcraft Trials in Britain and America).

or witchdoctor. Thus, among the Nandi, witches have the power to kill or injure people by means of spells or cause illness, deformity, madness or bodily swelling.¹⁷² Witches are also believed to have the power to cause small black snakes or bits of stone or wood to enter a victim's body. Among the Gishu, witches walk about naked late at night, cause crops to wither and animals to die, commit incest, feed on human flesh and use human arms to stir the beer which is said to give the witches extra strength.¹⁷³ These illustrations are not exhaustive, but they are sufficient to show the diversity of the concept of the nature of witches among the tribes. It is submitted that the characteristics which make a witch, different as they are from one tribe to another, should be considered by the court when dealing with witchcraft cases. How, for example, can a court deal with an allegation that one party falsely obtained money by holding himself out as a witch without considering whether the alleged offender was or was not a witch within the meaning of that word in the community concerned? The author has come across no definition of a "witch" in the witchcraft statutes in East Africa. In the absence of such a definition, it is submitted that the courts have no choice but to determine whether the accused is a witch on the basis of the facts and evidence before the court. This means a determination as to whether the accused is a witch according to the traditions of the specific tribe. And this, it is further submitted, is what the court in Athuman should have done.

¹⁷² Huntingford, Nandi Witchcraft, in *WITCHCRAFT AND SORCERY IN EAST AFRICA* 175, 177 (J. Middleton & F. Winter ed. 1963).

¹⁷³ LaFontaine, Witchcraft in Bugisu, in *WITCHCRAFT AND SORCERY IN EAST ARICA* 197 (J. Middleton & E. Winter ed. 1963).

Recognition of the existence of witchdoctors is not synonymous with the recognition of the existence of witchcraft. It is therefore necessary to examine whether or not witchcraft exists and if so whether its existence is recognized. The importance of this consideration cannot be overemphasized because, if witchcraft does not exist in the eyes of the courts, then the relevant witchcraft statutes may be superfluous.

Whether witchcraft exists is a matter of definition, and, in search for a definition of witchcraft, the initial source of inquiry would appear to be the witchcraft statutes. One would expect, however, precise definitions of "witchcraft," especially in light of the heavy penalties stipulated in the East African witchcraft statutes. Unfortunately, that is not the case.

In Uganda the interpretation section of the Witchcraft Act reads: "For the purposes of this Act, Witchcraft does not include bona fide spirit worship or the bona fide manufacture, supply or sale of native medicines."¹⁷⁴The Act, however, does not say what witchcraft is and the "exclusions" do not furnish us with the "inclusions." The only glimpse comes from section 3 (1) which reads: "It is an offence for any person to directly or indirectly threaten another with death by witchcraft or by any other supernatural means."¹⁷⁵ From this it may be deduced that witchcraft is a "supernatural power.

In Kenya the Witchcraft Act appears to contribute more confusion than assistance. Like the Kenya High Court in *Athuman*, the Act seems to deny the existence of witchcraft while at the same time

¹⁷⁴ Witchcraft Act § 2 (Cap. 108, Laws of Uganda (1964)).

¹⁷⁵ d. § 3 (1).

recognising that witchcraft can kill. Section 3 reads: "Any person professing a knowledge of so-called witchcraft shall be guilty of an offence;" " section 11 provides: "Nothing in this Act shall affect the liability to the death penalty of any person who by use of witchcraft commits wilful murder."" The two sections are incompatible. The use of the phrase "so-called witchcraft" constitutes a denial of the existence of witchcraft and is the same phrase as used in Athuman; however, the proposition that witchcraft does not exist but yet can kill is untenable. Either witchcraft is or is not, and, if it is not, then the penalty under section 11 is superfluous since murder by witchcraft could never be committed in the first place. Furthermore, it should be noted that unlike the Uganda Act, which hints that witchcraft involves supernatural power, the Kenya Act clearly takes the position that witchcraft and supernatural power are two different phenomena. The relevant portion of section 2 provides that "any person who pretends to exercise any kind of supernatural power, witchcraft, sorcery or enchantment, shall be guilty of an offence."²² The Tanganyika statute is on better footing. Section 2 reads:

Witchcraft includes sorcery, enchantment, bewitching, the use of instruments of witchcraft, the purported exercise of any occult power and the purported possession of any occult knowledge.¹⁷⁶

While definition by listing a term's coverage is not uncommon, where the "inclusions" are themselves, subjects deserving of definition, it is doubtful whether the definition serves much purpose. To say that witchcraft "includes bewitching" is not particularly helpful. Indeed, such definition hangs on the verge of

¹⁷⁶ Witchcraft Ordinance § 2 (Cap. 18, Laws of Tanganyika (1954)).

absurdity. The reader who does not know what witchcraft is made no wiser by knowing that it includes "bewitching." Furthermore, how one is to identify "instruments of witchcraft" in the absence of any knowledge of what witchcraft is is a legal curiosity. Section 2, however, does demonstrate that in Tanganyika witchcraft is considered to be a supernatural power even though the term "purported" is used in connection with occult power and occult knowledge.

In the absence of a satisfactory statutory definition of witchcraft, the alternative is to look to the case law for assistance. Even here, however, the one authority dealing with the definition of witchcraft recites only the Webster's dictionary definition and concludes that "the meaning of witchcraft is narrowed to the practices or art of witches or intercourse with evil spirits."¹⁷⁷

To recapitulate, the East African witchcraft statutes do not seem to offer sufficient guidance in the very area of the law that they purport to regulate. Not only are the definitions of witchcraft inadequate but (and this applies particularly to Kenya) the statutes seem to deny the existence of the very subject matter of the crimes they aim to prevent. In light of these contradictions in the operative law, the statutory witchcraft offences render themselves vulnerable to criticism

Witches and witchcraft are viewed with abhorrence by the tribal communities. This is evidenced not only by the practice of putting witches to death but also by the likelihood of defamation when an accusation of practising witchcraft is laid against a member of the

¹⁷⁷ Hamadi Bin Juma v. Rex, [1948] 8 Z.L.R. 116, 119. A fortiori, one may define law or medicine as "the practices or art of lawyers and doctors" respectively.

community.¹⁷⁸ This abhorrence is also reflected in the statutes where heavy punishments are meted out to those practising witchcraft. For example, under the Uganda Act²⁸ the court is empowered to make an exclusion order in lieu of or in addition to punishment which may be imposed. Such exclusion may be for as long as ten years on the first conviction or for life on a second or subsequent conviction.² "The powers given to the trial judge or magistrate by section 10 of the Kenya Act, in addition to awarding punishment under the relevant section which may have been violated, allow him to recommend to the Minister" that the convicted person be deported or restricted." It is submitted that these punishments should not be meted out where there is any doubt as to the existence of the subject matter of the crime itself. The problem still remains, however, that there is punishment for acts of "so-called" witchcraft in Kenya.

Despite the contradictions and confusion in the Kenya Witchcraft Act, the provisions of the Uganda statute and the Tanganyika ordinance seem clearly to point out that witchcraft is "supernatural power." This definition of witchcraft is supported by sociological-anthropological writers like E. E. Evans Pritchard who describes an act of witchcraft as "a psychic act," and LaFontaine in his essay on

¹⁷⁸ See, e.g., Witchcraft Ordinance § 5 (Cap. 31, Laws of Nyasaland (1957 rev.)) which provides that it is not only an offence to accuse or threaten to accuse any person with being a witch or with practising witchcraft (unless such an accusation is made to a person in authority), but the imputor is also liable for any harm which may befall the other person as a consequence of such imputation. Similar provisions can be found in the Witchcraft Acts of Kenya and Uganda. Witchcraft Act § 6 (Cap. 67, Laws of Kenya (1962)); Witchcraft Act § 4 (Cap. 108, Laws of Uganda (1964)).

the Bugisu who defines witchcraft as "all supernatural attacks." These two writers illustrate that the sociological-anthropological approach considers the phenomenon of witchcraft as supernatural, or at least that a belief in witchcraft is a belief in the supernatural powers of witches. Throughout the rest of this article, the term "witchcraft" is used in the above sense, i.e., that witchcraft is "supernatural power."

Irreconcilability of Belief in Witchcraft and the Common Law

The belief and hangings by two of the "complainants" while a considerable part of the gathering sat around the tree and offered no protest. The killing of a witch was the only practical way of ridding the society of such undesirables. The power of evil possessed by the witches was, and still is, considered stronger than the witch's own will-power. They could bewitch other people irrespective of their good intentions.⁷ ver in witchcraft seldom, if ever, questions the existence of witchcraft and believes that witches have the ability to destroy not only his physical existence but his earthly success as well. Baidelman has emphasised the awe with which a witch is viewed: "Some Karugu prefer to defacate and urinate in their huts rather than venture outside at night. These practices are all chiefly due to the prevailing fear of witches."⁸ Prior to the advent of penal statutes,

native customs approved of capital punishment for witches."¹⁷⁹As recently as 1938" a suspect was taken to a tree before a large baraza¹⁸⁰

The believers in witchcraft found themselves in a position where no outside power could save them from witches. They had no alternative but to strike in terror and self-defense. This reaction constituted not only the right of self-preservation, but was also considered a commendable service and execution of a duty to the society, i.e., the cleansing of the society from witches

Statutory laws and the English Common Law, however, took an entirely different attitude from that adopted and sanctioned by native traditions. A belief in witchcraft has never received legal blessing except in those limited instances where the accused has been put in such fear of immediate danger to his own life that the defense of "grave and sudden provocation" could be proved¹⁸¹." As one court stated:

¹⁷⁹ In *Rex v. Fabiano Kinene*, [1941] 8 E.A.C.A. 96, the defendants killed the deceased immediately after they caught him performing an act which they genuinely believed to be an act of witchcraft. The manner of retribution was severe; death was caused by the forcible insertion of unripe bananas into the deceased's bowel through the anus. In their confession to the killing, the appellants said "that they had ... killed him in the way which, in the olden time, was considered proper for the killing of a wizard." *Id.* See also *Rex v. Kumwaka wa Mulumbi*, [1932] 14 K.L.R. 137

¹⁸⁰ See LeVine, *Witchcraft and Sorcery in a Gtuiu Community*, in *WITCHCRAFT AND SORCERY IN EAST AFRICA* 226 (J. Middleton & E. Winter ed. 1963).

¹⁸¹ In *Rex v. Fabiano Kinene*, [1941] 8 E.A.C.A. 96, and *Rex v. Kelement Maganga*, [1943] 10 E.A.C.A. 49, a belief in witchcraft was held to constitute legal provocation.

For courts to adopt any other attitude to such cases would be to encourage the belief that an aggrieved party may take the law into his own hands and no belief could well be more mischievous or fraught with greater danger to public peace and tranquillity¹⁸²

It is worth observing that the question of taking the law into one's hands never arose under native traditions. If tribal custom authorised the act of an individual upon a known witch, the same native community would not turn back and condemn the actor for carrying out a praiseworthy act and public duty. Accordingly, for the courts to term such belief as "mischievous and fraught with great danger to public peace and tranquillity" is a contradiction of known words. What "public peace and tranquillity?" It was surely not that of the native society. Furthermore, for practical purposes, the successful invocation of "grave and sudden provocation" and "self-defence" is further limited by the technical requirements laid down by the criminal law before an accused can succeed on such a plea.¹⁸³

In short, then, the witchcraft believer finds himself in a predicament. On the one hand he is convinced that life affords no protection for him against the powers of witches and witchcraft, his only protection being his own actions. On the other hand, the state condemns any such self-help measures except in those severely limited cases in which the action is sanctioned. Such cases, however, are enshrined in what the believer would describe as "not only foreign, but unrealistic rules in his witchcraft-oriented world." ' Such

¹⁸² *Rex v. Kumwaka wa Mulumbi*, [1932] 14 K.L.R. 137, 139. This principle was also approved in *Rex v. Kumutai Arap Mursoi*, [1939] 6 E.A.C.A. 117, and *Rex v. Mawalwa bin Nyagwesa*, [1949] 16 E.A.C.A. 62.

¹⁸³

protection as the statutory law affords against witches might as well be non-existent. 2 The law does not protect the believer; therefore, if witches are born, but not made,"¹⁸⁴ it is both futile and working against the laws of nature to attempt a reformation of such creatures by imprisoning them.

The Impropriety of Traditional Witchcraft Attitudes

The propriety of the penal code and the Common Law to witchcraft should be questioned. The survey seems to indicate that some of the principal requirements, especially in self-defence, may justifiably be compared to a dwarf in a giant's robe when applied to witchcraft. The cases and the statutory sanctions tend to regard the defendants (believers in witchcraft) as especially dangerous persons who are in acute need of treatment. If the community of which the defendant is a member holds the same beliefs, then the identification as "dangerous" is a misnomer- "dangerous" in whose judgment, and to whom? It is beyond the scope of this paper to examine the aims of punishment in criminal law. It should suffice, however, to point out that if one of the goals of punishment is to express the society's disapproval of the defendant's conduct with the intention of rehabilitating him (capital punishment does not fit into this), such punishment serves little purpose in witchcraft cases where the defendant's act is not only approved but is also a praiseworthy service to the society. If any achievement results from such punishment, it

¹⁸⁴ LaFontaine, *supra* note 16, at 196.

is to lead the indigenous society to believe that the law is in "collusion" with the witches.

It may also be a fair comment to say that the cases suffer from a common vice of treating what was/is right and proper in punishing witches under the native custom as criminal. Both the criminal law and the native traditions are in agreement that witchcraft is bad and socially disruptive, that witches should be punished and that where they cause death by their wicked practices, they shall be served with the death penalty. If, therefore, the basic point is agreed upon, the rest is a matter of methodology-what type and degree of severity of the sentence shall be meted out and by what organ of the society. The African customs authorised the whole community or a group thereof, as well as an individual, to punish those believed to be witches. The danger with this is in establishing that the person punished is actually a witch. To allow one who believes, however genuinely, that he has been or is being bewitched to be both the witness, the judge and the executor of the appropriate sentence is unquestionably absurd. Personal malice cannot be kept out in such a system. It is a fallacy, however, to assume that this was the common practice among the native communities prior to statutory punishment. On the contrary, the alleged witchdoctor was given an opportunity to exculpate herself/himself in a properly constituted gathering in accordance with the customs. Witnesses would come forward and adduce evidence to establish the charge. In short, the punishment of witches was not, under the African traditions, a mere whimsical exercise whereby one could lose his life purely through the emotions of his enemies. The Kamba tribe, for instance, would never invoke operation "KINGOLE" in the absence of corroborated evidence. The whole village or even the entire clan was permitted to

be present in the public hearing of such cases, and all evidence was relevant.

The Future of Witchcraft Beliefs

It is important to discuss the future of witchcraft beliefs-important because there would be no real necessity of advocating any change in the court's attitude and/or approach to witchcraft cases, much less any amendments to the penal statutes, if it can be proved that witchcraft beliefs and all that go with them are dying a natural death. Were such the case, some of the seemingly absurd decisions arrived at by the courts could probably be overlooked as "blank judicial history" with little future relevance. Unfortunately, however, and contrary to what most people would expect, witchcraft beliefs are not dying the natural death that they should. A detailed analysis of the future of witchcraft beliefs, however, is outside the scope of a paper of this nature in view of the sociological content that it would entail. Perhaps it will suffice to point at one or two factors to illustrate any trends and reasons for why people believe in witchcraft. This may probably dispel some of the conceptions held not only by the courts but also by a large proportion of the nonbelievers in witchcraft. That done, it is possible that believers in witchcraft will get a more sympathetic hearing, if not treatment.

The sole issue worth serious consideration is why even "educated" people believe in witchcraft. One would expect the heavy statutory penalties against witchcraft to be sufficient deterrence. Such hopes are apparently not supported by the weight of evidence. Many people would associate beliefs in witchcraft with either unscientific thinking or lack of "education." Such conclusion is at best naive. The

issue involved in such beliefs is in almost all cases a search for a causal explanation of the incomprehensible and misfortunes-an attempt to Penetrate behind the facade of the observable and scientifically provable world¹⁸⁵ Thus, it is never questioned by the believers in witchcraft that some snakes are poisonous and that A will die of such snake bites unless treated. That is never doubted. The question is: Why the snake bit the particular person and not the person walking immediately in front of or behind him. It is not why tuberculosis killed A but why the disease attacked A and not B. To the witchcraft believer, science answers the obvious, and, to that extent, may be trite learning, absolutely impotent of furnishing the requisite solution to the witchcraft menace.¹⁸⁶ It is in the perspective of the foregoing facts that one should examine whether or not "education," Western or otherwise, can ever provide the solution to witchcraft or an answer to the future of the beliefs therein. It is humbly submitted that "education," apparently a panacea for almost everything else in the geographical region under consideration, does not seem to supply the solution to witchcraft beliefs.¹⁸⁷

¹⁸⁵ Consider the following explanation: "We went to a witchdoctor to find out from him what had caused the death of Levi. We knew a snake had bitten him, but according to our custom (belief) we had to find out through a witchdoctor what had caused the snake to bite him." J. CRAWFORD, WITCHCRAFT AND SORCERY IN RHODESIA 122 (1967).

¹⁸⁶ A recent incident in Kenya illustrates why and how witchcraft beliefs have entrenched themselves. Tsume Washe, alias Kajjwe, a coast provincial witchdoctor, offered to purge the entire coast of all other witchdoctors by driving them into oblivion. To prove his ability to do so, followed by hundreds of the faithful, he marched up to the rival witchdoctor in Kilifi District.

¹⁸⁷ Therefore, as recently as March, 1969, three qualified primary school teachers at Jilore, Near Malindi, fled from the school in mortal fear, claiming that they were victims of witchcraft applied against them in different forms. The rest of the staff

It may be argued that with more people undergoing a Western-type of education, beliefs in witchcraft are on the decline. This may be so, but one cannot be dogmatic about that theory. There is no statistical data to support or disaffirm such a rationalization. An exercise to determine the percentage of witchcraft believers may not be very fruitful since few, if any, "educated" Africans would like to be associated with a belief which they consider "primitive" and thus damaging to their social or economic status. Only occasionally, when one's security, either of life or of job, is really threatened do we get a glimpse into the inherent beliefs of even those with a Western-type education.¹² This response in times of crisis is in accord with witchcraft beliefs. Even among witchcraft believers, the beliefs become relevant only when there is social tension and hostility, and at present, the areas over which people may disagree or hate one another are on the increase. The changed economy and introduction of cash-crops together with increased shortage of land have caused fierce competition; people are forced to squeeze together as land is not available elsewhere. Living so close together, people have many more opportunities to develop hostilities." For instance, cows from one homestead are apt to devour the crops of another homestead's fields and that can become a source of irritation; being a father or mother of a well-to-do or educated child is a sufficient cause of hatred; in some societies, in the absence of protective measures, one may improve one's social status only at his own risk. This type of fear is found not only among the rural residents; it extends to the African

of the same school threatened to quit unless government protection was forthcoming. The victims further illustrated their faith in witchcraft when they petitioned the government to allow Kajiwe, the coast provincial witchdoctor, to use his powers to weed out the petty witchdoctor concerned or give the victims immunisation against the spells. Daily Nation, Mar. 29, 1969, at 1, col. 1.

urban societies as well. Thus, it is not uncommon to hear of accusations of witchcraft between fellow workers competing for promotion or favour with their bosses. Not a few of such accusations arise between political opponents rallying for positions in the arena of demagoguery. In such circumstances it is not surprising that some urban, self-improved workers consult witchdoctors for immunization or protective spells before retiring to the countryside for their leave. This they do in the belief and fear that the villagers, in envy of their riches, may want to bewitch them.¹⁸⁸ Waking up to find oneself in the big towns does not necessarily alter one's background and deep-rooted beliefs and fears; similarly, the possession of academic credentials may not, without more, be regarded as sufficient to do away with some of the traditional beliefs. In the "civilized" (whatever that term may mean) communities, people attribute inexplicable eventualities to fate or the will of God. The native African has his explanation in witchcraft. But in both camps, the struggle is the same—a search for a causal explanation of misfortunes. How some people get the courage to label one "unscientific" or "primitive" is not easy to understand.

Witchcraft as A Domain of Science.

By 20th century, witchcraft was categorized as either 'bad' or 'good'. The 'good witchcraft' often involves healing. Bad witchcraft on the other hand is one with puzzles. A witch that entirely caused bad

¹⁸⁸¹⁸⁸ This type of behaviour is common at Mombasa where consulting Kabwere, allegedly the most senior witchdoctor in Kenya, has become a hobby with most of the upcountry migrants working at the coastal towns.

omen, a sorcerer and the like were bad and undesirable witches. Remember both those doing good and bad are all witches.

If Mrs. Hutton was exceling in a field where medical scientists were fatally failing, what was she doing or who could she have been. There's no paradox in what she's doing save for the designation accorded her. I want to proffer a general presumption that doctors are witches and Mrs. Hutton was a scientist. Unless there's a concept that explains these variances. Taking such prejudicial societal narrative that medics are or scientists are such distinguished folks formally educated from institutions of learning or apprenticeship. Mrs. Hutton demystifies these notions. Modern day scientists are plagiarizing works of uneducated philosophers and discoverers. There's been no discovery ever since the science of gravity or motion have been propounded by their respective proponents. At most what we've at most excelled at is expounding theorems through empiricism.

Fundamentally what I argue herein is the metric of measuring science and witchcraft. There must be a distinctive incident other than other than means through which one becomes or professes a profession. A definitive distinction between science and witchcraft is one of semantics but not of object or form.

Science defined as the study of the physical and natural world using theoretical models and data from experiments or observation. Defined further as the ability to produce solutions in some problem domain. That, its thus when a person researches into questions posed by scientific theories and hypotheses. Undoubtedly, such descriptive definition of science is evident and verifiable from its apparent manifestation. Through calculative observations and or

metaphysics, a plethora of human or planetary problems have been solved. Human medicine has restored lives from the brink of lose. The merits cannot be exhausted.

Back to witchcraft. What makes Mrs. Hutton a witch and not a scientist yet equally contributed to human medicine development. Just like Isaac Newtons and the peerage, she was troubled by a societal and humanistic problem and through metaphysical study of nature and human anatomy, she developed medical resource that conventional scientists failed in. Other good people or do we rather call them conscious individuals have rather called her a botanist than a witch.

I have appreciated the works of Mrs. Hutton and the like. On that very note, without a scintilla, *I want to redefine witchcraft as the practice of mystic science to resolve a problem domain.* Witches have not explained their theories, formulae of science and many times this is attributable to a plethora of prejudices encumbering them as I will explain. Certainly, this makes their works mysterious to other scientists.

Frankly speaking about the mysticism of witchcraft, how does the same differ from modern science. What are the objects of both? How does one become evil and not the other? Whereas we've seen and or experienced the evils of witchcraft, this cannot or negate and relegate the merits of witches in the development of contemporary science. Depending on one's objectives, science could be used to advance human development or destroy its very order and civilization. Therefore, the difficulty of witchcraft should not arise from how it has resolved humanly puzzles or an explanation of its foundational concept.

Functionality of Witches and Wizards.

One unfortunate incident that characterized early practice of medicine was that there were no definite formulas for administering medicines. Witches weren't excluded from this. Meanwhile that notwithstanding, medical prescriptions were effective and delivered desired healing.

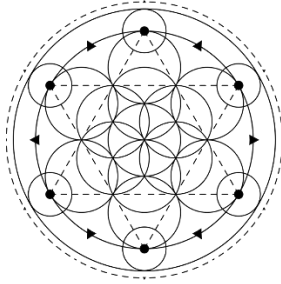
The presumption that witches could not explain or theorize their formulae is preposterous. From Ehrenreich's account, medieval Europe was characterized by Christian prejudice and classed societies. Under circumstances where education was for the privileged and all acts must conform with Christianity or if it deviated, one suffered brutal inquisition.

The same conditions that ostracized, at worst condemned destitute members of the state to donkey labors, slavery or death had their fair impact on the development of rudimentary science. So, how could witches advance their science. Remember history has it that witches are in league with the devil and used their powers to harm people and property. This is dumbfounding. Ancient Church authorities and the state labeled women in practicing science as "Satanic" setting the widely believed notion of evil and witchcraft.

Whereas it is true that witches probably couldn't proffer scientific functions of how their cures worked and notwithstanding today's, robust, consultative, rigorous and extensive clinical trials to authenticate use of a drug, witches administered medicines that were safe and effective before.

Stringent conditions for the functionality of witchcraft or supernatural powers is dumbfounding too. Why must science or scientific experimentation demand inhumane or cruel conducts. Combatants against colonial governments had to respect numerous conditions: sexual abstinence, no stealing, a prohibition on washing themselves, during the fighting they could not retreat and they had to follow a lot of food restrictions. A plethora of perplexing measures. Why can't supernatural powers simply work without such restrictions.

CHAPTER SIX



Demystifying Idiotic Myth of Witchcraft and Impact of Supernatural Power in African Communities.

Do witches have limitation to their power? Okay, since we've claimed that witchcraft entails exercising inexplicably natural phenomenon through use of powers, we must in the same spirit agree though notwithstanding, I'll definitely convince you to agree that that it takes a supernatural being to explain and cause a supernatural event to occur as humans can only explain humanly phenomena's and natural science. Probably you've observed, heard, read or witnessed harsh conditions being prescribed to unthinking, subconscious and dullards, victims of witchcraft. Or you may probably want to wonder why it is that the functionality of magic is dependent upon an undertaking or completion of certain stringent and probably humanly undoable, impracticable and irrational acts.

Supernaturality ideally denotes or refers to acts human power cannot do and cannot explain but rather form a sequence of logic

and theory to ascertain its possible or probable and likely justification of the same. This is not science and could not be. A seemingly fictitious occasion yet practicable, verifiable and capricious could not be anything more than supernatural. No man can or should ideally have an explanation for such occasion and only a blind faith, that forces beyond human nature could possibly be a reason for their happening. On that very note I argue that anything extraordinarily done by man or any incidence with a humanly cause and explanation of its occasion is not supernatural and simply witchcraft. Witchcraft is an absolute deceit with no merits save for its author or practitioner.

I can demonstrate thousand and plus incidents where the myth of supernatural powers or merits of witchcraft have been futile, abortive and embarrassing yet such authors or their proponents have usually stupidly died in their own movies marking their very end and piece of history.

Truly if merits of witchcraft were real, perpetually verifiable, pragmatic and continuous till now, personally I'll probably be persuaded to lay trust and belief in the functions of witchcraft or exercise of supernatural powers. I will demonstrate through literature reviews of remarkable scholars, anthropologists and historians how magic or witchcraft is, as has usually been unviable and futile aid in selected native African communities. This will certainly corroborate my proposition that though witchcraft is real, its merits are unfounded. It's a complex fraud on logic and a pitiful misrepresentation. It should be noted that people believed to be witches have been killed in many parts of Africa since precolonial times. Belief in witchcraft persists today among many people, occasionally resulting in the killing of the suspected witch. The killer

views witchcraft as an attack similar in nature to the use of physical force and therefore kills the witch in an attempt to end the perceived attack. As it stands today, the law in Uganda fails to strike a balance between the rights of the deceased victim violated through murder and those of the accused who honestly believes that he or she or a loved one was a victim of witchcraft. This article argues that the defenses that are currently available mistake of fact, self-defense, insanity, and provocation by witchcraft are insufficient, as they fail to strike that delicate balance. A more pragmatic approach to the issue of witch-killing, one that deals with the elimination of belief in witchcraft, is necessary.

Furthermore, every society in the world has some sort of witchcraft concept. It is indisputable that witchcraft, as is the case with most occultism, is shrouded in mystery. There is also a lot of controversy about its rationality and logic in the modern world. Witchcraft has of late become a 'growth' subject and particular interest is centred on comparing and contrasting witchcraft within Africa itself as well as the now despicable "witch craze" of Medieval Europe. Studies of the evolution and role of witchcraft in the African continent are fraught with sensational and derogatory overtones. Conventional anthropologists and historians approach the subject with disdain and ethnocentric prejudices which impedes objectivity in understanding such a sensitive but pervasive phenomenon. This article articulates a number of historical accounts on the origins and distinctive features of witchcraft in pre-colonial Africa. It offers an appraisal on some poignant aspects such as magnitude, ramifications and controlling witchcraft in traditional settings. It aims to place witchcraft in its proper perspective as a socially constructed meaning system contending in many pre-scientific societies. Furthermore, it

elaborates on the role of anti-witchcraft specialists (waganga) whose expertise and significance were deliberately misconstrued by over-zealous colonial administrators and pioneering Christian missionaries.¹⁸⁹

Examples of witchcraft activities include child sacrifice, eating people, heritage for example keeping bodies of the late kings in the palace for remembering

Kenya.

Katherine elaborately discusses the subtopic in piece meal in her work “Witchcraft and Colonial Rule in Kenya, 1900–1955¹⁹⁰”. Reading snippets of her work, one is undoubtedly destined to astonishment in the fervent display of magical might by the Kikuyu and Akamba people as they rose up to redeem their political independence earlier coveted by Christian colonial agents. Had their magic worked, you and I could be specialist witches or wizards probably crushing all our unsolicited enemies.

Besides portraying how magic and practice of supernatural powers are deeply entrenched in many African communities, we’ll appreciate from her book the fact that somehow belief in this phenomenon was customary. She reports that regardless of its efficacy, native Kenyans amassed an overbearing confidence in their own might compelling them to inevitably employ native power against a well-trained, mechanically equipped and sophisticated colonial army, whose operation was specifically peculiar to

¹⁸⁹ The evolution and essence of Witchcraft in the Precolonial African Societies by Simeon Mesaki.

¹⁹⁰ KATHERINE LUONGO, *Northeastern University*

themselves alone. I was enthralled that the white settlers stretched their minds to limits, in a bid to fathom the nature of Mau Mau organization or the guts those dark melanin folks had.

That even they themselves for the meantime futilely tried, even adopted complex and genocidal tactical operations against materially ill-equipped if even not at all as it were against native blacks, one ought to remember the *scorch earth* combat that lasted a lengthy period before finally delivering up possession of the English protectorate.

Let's consider the excerpts hereunder and we'll appreciate our (native Africans) belief and practice supernatural power and whether or not it was significant. I will argue the nature and merits of such practice at precolonial Africa in selected communities as I let cause you to be persuaded to notice the apparent irrelevance today of witchcraft.

Mau Mau rebellion, Kikuyu community

Katherine Luongo

Famous Mau Mau uprising 1952 against colonial British government was a culmination of grievances accruing from continuous depredations and deprivations of colonialism in Kenya. This unique rebellion with unqualifiable violence was related to supernatural beliefs and practices. Fighters on oaths, vowing whether in pain of death to stick to the spirit of the revolution and at no account to disclose its specifics. Aback the rebellion and the bewildering nature of its organization, colonial authorities preferred to read Mau Mau abstractly as a primarily supernatural situation in

which atavistic black magic was an engine and means of anti-colonial resistance rather than as a socioeconomic and political conflict rooted in tangible concerns, the remedying of which would necessitate the relinquishment of a significant degree of colonial privilege and power. An understanding of Mau Mau as a supernatural situation influenced the character of colonial administrative policies and practices instituted to “rehabilitate” and “cleanse,” or “de-oath,” known or suspected Mau Mau adherents.

As part of the administration’s efforts to combat Mau Mau in the mid-1950s, the British colonial government instituted de-oathing campaigns to cleanse black Kenyans known or supposed to have taken the Mau Mau oath. These campaigns were part of the state’s broader strategy of eradication and rehabilitation which entailed tactics like interning black Kenyans in labor camps and removing them to “safe” villages established by the state.¹⁹¹

The procedures, politics, and presentations of Mau Mau oathing and of concomitant de-oathing activities were debated in a range of colonial documents during the course of the rebellion. In many ways, Mau Mau oathing was mysterious to colonial authorities, and they struggled with defining its origins, its elements, and their meanings. It was neither patently clear to nor easily agreed upon by members of the colonial administration (1) which categories of persons administered the oath, (2) who exactly had taken the oath – voluntarily or otherwise, (3) what precisely oathing entailed, and (4) if the oath was unitary or if different oaths corresponded to varying levels of Mau Mau participation. Indeed, even the term “Mau Mau” was itself obscure to them. British “ethno psychiatrist” J. C.

¹⁹¹ Elkins, *Imperial Reckoning*.

Carothers highlighted some retrogressive and “magical” elements driving the collective “psychosis” of Mau Mau.¹⁹² Both Carothers’s and Leakey’s, spoke to what has been dubbed “the myth of Mau Mau,” or the notion that “Mau Mau was a conspiracy using magic and terror to manipulate the Kikuyu psychologically into a return to savagery.”¹⁹³

Leakey’s conceptions of Mau Mau oathing and de-oathing are addressed in his Mau Mau-era monographs and Carothers’s attitudes are consolidated in his report, they are also reflected in the Rehabilitation Advisory Committee’s 1954 secret dossier entitled “Report on the Sociological Causes Underlying Mau Mau with Some Proposals on the Means of Ending It.”¹⁹⁴ Assembled by former

¹⁹² J. C. Carothers, *The Psychology of Mau Mau* (Nairobi: Government Printer, 1954), 6–18. In the 1930s, the issue of Africans’ “mental aptitudes” was a hot topic in anthropological circles. In the 1930s, Dr. L. H. Gordon, a British psychiatrist, conducted studies on the “mental aptitudes” of Africans using black Kenyans as research subjects. See L. H. Gordon, “The Mental Capacity of the African,” *Journal of the African Society*

33.132 (July 1934): 226–243. Gordon’s work was met with a call from the International Congress of Anthropological and Ethnological Sciences for further investigation along anthropological lines. See LSE IAI/2, International Institute of African Languages and Cultures Bureau Minutes, 26 October 1934. Gordon’s work was sharply criticized by Louis Leakey, Bronislaw Malinowski, and J. H. Oldham, administrative director of the International Institute for African Languages and Culture, for its excessive and outdated focus on cranial capacity. See LSE MALINOWSKI/9/13, letter from Bronislaw Malinowski to the *Times of London*, 8 January 1934. See also, Jock McCollough, *Colonial Psychiatry and “the African Mind”* (Cambridge: Cambridge University Press, 1995).

¹⁹³ Berman, *Control and Crisis*, 356.

¹⁹⁴ KNA VP/2/2/21, Report on the Sociological Causes Underlying Mau Mau with Some

administrator T. G. Ask with who was commissioner of Community Development during Mau Mau, the committee also included Harry Thuku and Leakey as members and “was advised by J. C. Carothers.”¹⁹⁵ The committee’s avowed aim, carried out in a series of ten meetings, was “to inquire into and report on the sociological causes of Mau Mau,” the term “sociological” having been “taken to embrace economic, psychological, political, and religious causes in their widest sense.”¹⁹⁶ Focusing on Mau Mau oathing among the Kikuyu, the report offered a range of hypotheses about and recommendations for effectively dealing with psychological and/or sociological elements of Mau Mau.

First, the report addressed the character of Mau Mau oathing, reading it as an aberration of “Kikuyuness” and as rejection of Kikuyu tradition. Complementing official colonial discourse (or propaganda) about Mau Mau, the committee members wrote, “it is made plain that the filthy practices of the Mau Mau oath are a complete flouting of all the old traditions” and that the “object must be, and the effect certainly is, to make the initiate feel himself completely cut off from his old associates and loyalties dedicated to a new dispensation.” The report also suggested a fluidity to oathing practices, asserting that “the oath became progressively more bestial as the atrocities of Mau Mau increased. It is presumably felt that the more horrible and inhuman the crimes to be performed, the more loathsome and inhuman must be the initiation.”¹⁹⁷

Proposals on the Means of Ending It.

¹⁹⁵ Berman, *Control and Crisis*, 359.

¹⁹⁶ KNA VP/2/2/21, “Introduction,” 1.

¹⁹⁷ KNA VP/2/2/21, “Chapter I: Certain Recommendations on Matters of Urgency,” 1.

In a section entitled, “Fear of the Oath,” the report suggested that “disillusioned” Mau Mau participants were “afraid to break their oath” and attributed this fear, particularly among “less sophisticated and pagan element which forms most of the striking force of Mau Mau,” not to an “expectation of Mau Mau vengeance” but rather to a “superstitious dread.” The “superstitious awe” with which the average Mau Mau participant regarded oaths both the Mau Mau oath and the “cleansing” oath the report posited, had resulted in “instances when a man first cleansed has been visibly overjoyed to be rid of his burden.”¹⁹⁸ According to the committee members, the disorder of Mau Mau and its remedies were relatable to the affective states fear, awe, and joy that each produced.

The strain of colonial discourse that opposed the “pagan” retrogression of Mau Mau to the enlightenment of colonial Christianity, the report employed a Christian idiom to highlight “confession” as the touchstone of the de-oathing of Mau Mau participants and to stress the need for such confessions to be voluntary and sincere. It stipulated; *the most important and valuable feature in reclaiming a person from Mau Mau is his confession, if freely and voluntarily made in the presence of people who know him well. In many cases if this is followed by a cleansing ceremony properly conducted, this may be of great value in setting a seal of sincerity upon his confession, and also to free his mind and conscience from the oppressing burden of the Mau Mau oath.*

¹⁹⁸ KNA VP/2/2/21, “Chapter I: Certain Recommendations on Matters of Urgency,” 3.

It was agreed that a cleansing ceremony was only valuable for a person who believed in it, and while a person might be advised to take it, he should never be forced to do so¹⁹⁹. Accordingly, the committee recommended a series of steps reminiscent of Christian adult baptism for the cleansing of confessed Mau Mau participants. They advocated that persons who confessed before colonial authorities to having participated in Mau Mau should then make a formal and public confession, and be cleansed by either a Gutahikio [Kikuyu] Christian or Mohamedan ceremony, after which he should be exhorted to take a Githathi or similar Christian or Mohamedan oath, undertaking never again to participate in the Mau Mau movement²⁰⁰.

Witchcraft in The English Perspective.

Early witches in the English history were people who practiced witchcraft, using magic spells and calling upon spirits for help or to bring about change. Most witches were thought to be pagans doing the devil's work. Many however, were simply natural healers or so called 'wise women' whose choice of profession was misunderstood. It's unclear exactly when witches came on the historical scene, but one of the earliest records of a witch is in the Bible in the book of 1 Samuel, thought to be written between 931 B.C. and 721 B.C. It tells the story of when King Saul sought the witch of Endor to summon the dead prophet Samuel's spirit to help him defeat the Philistine Army. The witch roused Samuel who then prophesied the death of Saul and his sons. The next day according to the Bible, Saul's sons

¹⁹⁹Ibid.

²⁰⁰ Ibid., 4.

died in battle and Saul committed suicide. Other Old Testament verses condemn witches such as the often-cited Exodus 22:18, which says, “though shalt not suffer a witch to live”. Additional Biblical passages caution against divination, chanting or using witchcraft to contact the dead.

Most people think that witches are a Christian invention, but the idea of the witch who flies in the night and draws power from the dark cosmic forces to work her ill will on others pre-dates Christianity probably by centuries.

By the 1590’s, the last decade of Elizabeth 1’s reign, the idea of the witch in England had crystalized as an old, very poor woman, lame or blind in one eye, and inclined to lose her temper over personal slights. Her dry, twisted and ageing body was a kind of poison, and she was believed to be able to harm people and animals simply by speaking to them or looking at them. However, the law had been updated to reflect the work of continental demonologists. They however, rejected the idea that elderly women could do magic that flouted the will of God. They concluded that it must be the devil who had all the power, and so the witch’s familiar became a demon.

Witch trials started to be carried out and as an accused witch, you could be tried in a church court, at quarter sessions (local courts), or at an assize court where you could be condemned to death. The process was similar at every level. Somebody would complain to the local justice of peace that you had bewitched an animal, or a foodstuff or a child. Whether or not the complaint is taken any further depends on how energetic the justice peace is and how much

he believes in witchcraft. Evidence would in most cases be given by the complainant and also confessions made by the accused. There was no counsel for the defense and if you are found guilty, then you be executed just like the others.

In the present time, there still witches in the western world. Most practice Wicca an official religion in the United States and Canada. Wiccans avoid evil and the appearance of evil at all costs. Their motto is to 'harm none' and they strive to live a peaceful, tolerant and balanced life in tune with nature and humanity. Many modern-day witches still perform witchcraft, but there is seldom anything sinister about it. Their spells and incantations are often derived from their book of shadows, a 20th century collection of wisdom and witchcraft, and can be compared to the act of prayer in other religions. A modern-day witchcraft portion is more likely to be an herbal remedy for the flue instead of a hex to harm someone. Today's witchcraft spells are usually used to stop someone from doing evil or harming themselves. Ironically, while it is probable some historical witches used witchcraft for evil purposes, many may have embraced it for healing or protection against the immorality they were accused of.

Still, several men and women suspected of using witchcraft have been beaten and killed in South America, in the immigrant communities in Europe and the United States and other areas.

The Ugandan Perspective unto Witchcraft

Having analysed the history of witch craft in Uganda, there are numerous acts of witch craft in Uganda today that still evagilise that indeed witch craft exist. Every tribe in Uganda has its own belief per

its tradition thus every tribe practice witch craft but the question is always to what degree? It is known in Uganda that the strongest witch doctor comes from Tanzania.

The perspective of witch doctor per the Baganda, the witch doctor in Buganda is known as the omuganga, who are always responsible for cultural beliefs. It is always a witchdoctor (omuganga) who tells the person what to bring in exchange with gods to give him or her what he wants. there are various witch craft acts that are practiced among the Baganda and these include: sending Jinni, Jembe, Talo, sacrifice etc. this is perscieved from the spirits.

The Baganda historically it's proved that they had spirits which were divided in numerous sectors per their functions namely; god Mukasa (spirit) from Busabala, Lusiti a village about 20km out of Kampala, deep in Wakiso district, where the hill of Mukasa mbuga (palace) is, right at the shores of Lake Victoria. It is known as Mukasa Ebukasa to many. Mukasa is believed to be the king of all lakes. Baganda witch doctors together with some decendants that visit the shrine they go with firewood and a goat. The bundles of wood are brought to light his fire and those of the other spirits that reside here. The goat is one of the many that are brought to be sacrificed, in honour of the spirits. But why is this small hill different from any other? Ekiseera ekyokusoka (during the age of our ancestors), when the spirits still lived on earth (in body) and Daudi Chwa was king of Buganda, the spirits decided to sail from Ssesse Island where they originate and landed here, George William Ssemwanga, who guards the mbuga, explains. It is from this spot that the spirits held a meeting. Each spirit was given a hill in the city and a village from where they could rule and heal us, the grandchildren. Ssemwanga says as he puffs at his

long, black, beautifully spotted pipe, spitting into a small plastic cup cut out of a mineral water bottle. While all the other spirits left to find hills and homes of their own, Mukasa stayed here. Thus, the name Bukasa.Ddungu was given Makindye; Nakayima Mubende; Kinene Mityana Tanda; Ssezibwa Jinja. Wearing a dreamy, far-away look, Ssemwanga narrates: Mukasa came with his father Wanema, his sons Kiwanuka and Musoke and his wives, Nabuzana, Nagadya, Nanseko and Nalwoga. Mukasa is the one who approves of the spirits and ghosts before they can start healing. He is the leader of all ghosts and spirits. Nevertheless, the other spirits are not worshipped any less. Fires of spirits like Muwanga, Kinene (Walumbe), Musoke, Sselukela, Kibuuka, Namalele e zinga, Kiwanuka, Wanema, Najjemba, Nakayima, Muleguza, Ddungu and Abachwezi burn ceaselessly. Grass and barkcloth-covered caves represent the spirits that landed here with Mukasa. Every spirit has a house where it can rest. It is here that any argument between spirits is settled, Ssemwanga explains. Legend has it that a woman, Najjemba, also sailed here on a goat's skin. She landed in Kilindo (waiting place). She seemed to be dumb. Out of fear, the people reported the matter to King Daudi Chwa. He sent his witchdoctors to perform rituals. A he-goat was sacrificed. After many days, she said she was waiting for the king, who gave her the shore where she landed, Ssemwanga says. Mukasa's father, Wanema, fell in love with and married her. They decided to sail back to Ssesse to start a family. Najjemba is the ghost said to head the Ngonge clan. Distribution of spirit powers Musoke was given power to give birth to those searching for it. Kiwanuka guards land and sea and all the other spiritâ palaces. Ddungu is the hunter for both man and the spirits. He also hunts for those who seek wealth. Kitinda unites land and water. It is he who makes sure water stays in its place, safe and away from people. Ndawula leads

and guards the royal family. Milimu was given powers over all workers. Those seeking jobs go to him. Musisi is the oldest spirit. He shakes the earth whenever he is on the move to show his power. Buganda kings came to Bukasa to get advice. When the problem for which the king sought help was too big, the spirits would sail to Ssesse to seek advice from Najjemba and Wanema. When Nakibinge was king, and went to seek advice on how to defeat the Banyoro, Wanema gave him two of his sons to help. Before leaving, Wanema asked Kayizi Namuyimba Nsamba Bikomo and Kibuuka Omumbale to swear not to fall in love with any woman before their mission ended. However, Kibuuka saw and instantly fell in love with a beautiful Munyoro woman. Forgetting the oath, he told her that he was the one who killed the Banyoro, Ssemwanga narrates sadly. She went and told the Banyoro warriors, who tried to kill Kibuuka. He was rescued by the Ndiga clan in Mbale, says Ssemwanga. Asked why it is him who guards the palace, Ssemwanga says: "I was chosen by Mukasa, through a dream. Through dreams, he tells me what I should do to help the people who come here.

Distribution of spirit powers Musoke was given power to give birth to those searching for it. Kiwanuka guards land and sea and all the other spirit palaces. Ddungu is the hunter for both man and the spirits. He also hunts for those who seek wealth. Kitinda unites land and water. It is he who makes sure water stays in its place, safe and away from people. Ndawula leads and guards the royal family. Milimu was given powers over all workers. Those seeking jobs go to him. Musisi is the oldest spirit. He shakes the earth whenever he is on the move to show his power. Buganda kings came to Bukasa to get advice. When the problem for which the king sought help was too big, the spirits would sail to Ssesse to seek advice from Najjemba

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In conclusion therefore the Baganda per their custom they still practice witchcraft in numerous shrines across Buganda and depends on which problem because they have spirits in every sector.

Witch craft among other tribes like Busoga, Bugishu, Toro Lango etc. originated from the Baganda and thus all have the same belief on witch craft but different practices.

The burial of late Former Speaker of parliament, Member of parliament Omoro District Jacob Oulanyah Saga

The act that happened on the burial of the late Jacob Oulanyah on 8th April, 2022. When the tent where there was a casket of the deceased was blown off by the wind. This act per the custom of the of Acholi it is a sign of not being satisfied, according to the witch doctor's statements in Acholi,²⁰¹ The deceased was communicating for his people that what killed him is not what is said out. So, he wasn't satisfied with cause of the death.

Is Witchcraft Applicable to our Ugandan Law?

In Uganda, practicing witchcraft is punishable with up to five years of imprisonment under the colonial-era of the repealed Witchcraft Act of 1957 . The witch craft act aimed at protecting the herbalists not the witch doctors.

The standard of prove as regards to the legal burden and evidencial burden unto the Prosecution is soo high and also unto the accused the evidencial burden is so high. Allegations are reported unto the prosecution but however the prosecution fails to prove the onus of the case as regards to the fact in issue if at all it's lineage to witch craft. However the prosecution can prove the out come or effects of the act basing on the ingrediants as eveligised in the fact in issue agood example is murder if one commites murder with the essence

²⁰¹ Lubangakenne Onen Chan

of saying that he/she was insane at the moment when was committing the act the prosecution need to prove the degree of insanity not per the witch craft but under the directions of MCA in getting a psychiatrist thus if proved the case shall be reduced to manslaughter(s.187 of penal code act cap 12o)

In the case of *Uganda v Kato Kajubi Godfrey*,²⁰² The accused relied on the defence of Alibi, that he didn't kill a child and he didn't send the witch doctor to sacrifice for witch craft rituals. the onus of the evidential burden was upon prosecution to prove that the accused was connected to the scene of crime, through the evidence adduced by the prosecution of the phone calls when the accused was communicating to the witchdoctor at the day when the child was sacrificed and also the statements that were said by the prosecution witness "witch doctor" there was no case to answer and the accused was convicted.

Witch craft in Uganda are taken in the field of customary law and per the judicature act cap 13. section 14(2), Witch craft is not recognised in criminal law hence also customary criminal law but an exception is on the effect of the witch craft practice for example Human sacrifice that caused murder, the law is blind upon witch craft and the law will just look unto the ingredients of murder but not charging some one with witch craft.as per the case of *Uganda v Kato Kajubi Godfrey*.²⁰³

The prosecution always finds it difficult to prove the men's rea sometimes even the actus reus on the assumption of witch craft that

²⁰² (Criminal Appeal 39 of 2010) [2010] UGCA 48 (22 November 2010)

²⁰³ (Criminal Appeal 39 of 2010) [2010] UGCA 48 (22 November 2010)

lead to the certain fact in issue but just rely on evidence of the effects adduced such as;

Finding Angello; The price for babies: Child Sacrifice in Uganda in the face of Law.

"Education is the great engine of personal development. It is through education of a peasant can become a doctor, that the son of a mine worker can become the head of the mine, that a child of a farmworker can become the president of the greatest nation. It is what we make out of what we have, not what we are given, that separates one person from another" Nelson Mandela

Mr. John Bwete, a fish trader in Kasenyi Fish landing site lived a simple but promising until his wife Noeline Muneza Bwete visited a witch doctor's shrine on her quest to sire a boy child. The couple had lived together for quite a long time in peace and love. However, each night the couple easily ran into bickering and soft disagreements. Why?

The household felt incomplete and somewhat failures. For the twenty years of their marriage, something was still missing. *Girls only* weren't enough to match their wealth and prosperity. Girls only couldn't take the family legacy forward.

Pressure ensued. Visits to several cultural sights and sacrifices become the supplement to priests and pastors and most likely the only possible solution in their quest for a boy child remaining. Mrs. Bwete was running impatient because each year that passed, she was moving closer to menopause yet Mr. Bwete needed a male heir.

Mrs. Bwete sought every possible solution. Going to gaenological doctors and seeking priestly blessings had become inadequate.

Nalumansi introduces her to a witch doctor:

Mrs Bwete's desire to have a boy child drove her insane and she decided to seek traditional inoculation to this disturbing problem that is likely to tear the family apart.

On the 10th of November, 2011. Nalumansi and Mrs. Bwete visited Karangwa Hussein, a famous Tanzanian²⁰⁴ witch who practiced his medicine in the areas of Kitinda by the shores of the Lake Victoria in the precincts of Entebbe.

"What brings you here, this morning? What is it "daughter "of mine?", Karangwa asks in a rather husky tone, holding a long pipe with two chimneys in his mouth. His eyes are purely red and he is clothed in several beads plaited on a piece of bark cloth. He is barefoot seated on stool. He moves several bones turns to her, Mrs Bwete is simply awed and shocked. She is sweating profusely but focused.

" Am I safe?" She asks self while contemplating an answer the initial interviews of this god she has just made.

"Don't speak "Karangwa shouts with rage." You are not allowed to say a word in this place without permission from the gods lest you go away with more challenges than the ones you came with. Later on, she narrated to the spiritual what was bothering her life.

²⁰⁴In Uganda, Tanzanian witches are believed to be of higher potency

The witch asked for several articles every time she visited Karangwa's shrine. The items ranged from rear animal articles, snake skins, dead owls, etcetera. She had to part with several shillings as some items were regarded rare species only to be found by a talisman himself. She at one point paid over 100 dollars for the female heads and feathers. She needed 50 heads of owls as sacrifice to get a baby.

Ten months later, Mr. And Mrs Bwete bore a male boy, Kirabo Andrew. The family got joy of a boy child twenty years of attempt and waiting, made Karangwa the family spiritual director officially. More tasks were to be sent out to him; more missions had to be accomplished.

All seemed rosy for the family and visits to the witch doctor became frequent until 2014 when the witch doctor, Karangwa, Rs Bwete, Mr. Bwete and their shamba boy Segi were arrested and convicted over murdering one Kakeeto, a three-month child in the areas of Kajjansi. They were rich and famous but their wealth stood squarely on bloody spiritual rituals and a chain of evil acts of child sacrifice among others.

Mr. Bwete chronicled for me this story behind bars in the infamous Luzira maximum prison. He narrated to me this ordeal of his life and maintained that it was his wife who introduced him to the witch doctor, Karangwa like the biblical Eva who lured Adam to eat the apple in Eden after the snake cunningly promising them better understanding of God. Mr. Bwete curses with remorse and sought a lawyer to handle his case. Each lawyer he attempted to get, refused as the case had got a very negative public press coverage. He needed my help definitely.

This story above and next following synopsis is an attempt to dissect the law regarding ritualistic sacrifices in Uganda. I shall do this by reviewing various high court cases, the law and the rulings. Over the years judges are faced with human sacrificial cases and this is an attempt to review some of them.

Stories like the one of Mrs.Bwete are common place in Uganda today. The most recent study on child sacrifice in Uganda showed that a child is mutilated every week²⁰⁵. Child sacrifice came to the limelight in the late 1990s when the first reports of the practice appeared in the local press.²⁰⁶

In 2008, the Uganda Police released a crime report indicating that ritual murders involving mainly children had risen by over 800 % from the previous year rising from three to twenty-five — policy makers and parents alike were alarmed and outraged²⁰⁷.

That child sacrifice is gaining ground as a ritual, as a means of getting and sustaining riches, and as a business for human organ traffickers raises a lot of concern and stimulated action among stakeholders²⁰⁸ started organizing themselves to respond to the growing problem of child sacrifice.

*Finding Angello; Tomusange Lasto & Bulega Versus Uganda case*²⁰⁹

²⁰⁵(Fellows, 2013).

²⁰⁶ (Annie, 2009; Jubilee Campaign & Kyampisi Child Care Ministries, 2011).

²⁰⁷ (Bukuluki, 2009)

²⁰⁸ Such as: parents, communities, government, religious leaders, traditional healers, local and international Non-government Organizations civil society organizations

²⁰⁹ CSS No.87 of 2014.Presided over Lady Justice Hellen Obura

In the year, 2012 hell broke loose in a landed Baganda bourgeois family in the areas of Busiro, Wakiso district. Two brothers murdered their own blood.

A one Lasto Tomusange had a sexual relationship with one Christine Achan with whom they sired a minor, Angello Ssebugwawo. (Now deceased). The couple however went separate ways after developing irreconcilable differences.

When Angello marked his one-year birthday, Achan returned the baby to its father. The late baby started staying with its step mother, Phiona Nabakiibi (also deceased at the time of court proceedings)

It is alleged that on the 23rd August,2012. A one Bulega Ronald(A2) went to the home of Lasto Tomusange(A1) and picked Angello with. From then on, Angello was never seen or heard of.

On the 24th August,2012 Phiona Nabakiibi (step mom to Angello) went to Kawala police and filed a case of missing child.

That day, 24th August, Bulega Ronald was arrested to help with the investigations since he was the last person to be seen with the minor, Angello Ssebugwawo. Meanwhile while at police Ronald pleaded innocence and claimed that he had brought back the minor to the veranda of the neighbor to Lasto.

On the 29th August,2012, Hajjati Nanyazi was tilling her gardens as usual in Nsujjupulwe village, kirengete subcounty in Mpigi District when she came across the dead body and on examining the dead body upon a second look, she noticed the infant's head, legs and arms had been dismembered and only the torso remained. She forthwith reported to Lc1 what she had seen in her garden. The LC1

reported to Nakirebe police station. The child's remains were picked and taken to the mortuary.

The case at Nakirebe attracted the media attention. The body found in the garden was aired on the *Agataliiko Nfuufu*, a 10:00pm popular local show aired in local language Tv, Bukedde.

Aida Nabatanzi, the mother of Lasto Tomusange watched the news that day and suspected that the decaying body was that of Angello, her missing grandson so beloved. Angello's grandmother together with Christine Achan, her estranged daughter in law also reported the matter of the missing child to the police nearest.

The wheels finally were set rolling when the police proceeded to the mortuary where Achan positively identified the body as that of her missing son, Angello.

Also, Bulega(A2) also positively identified him as the missing nephew he had picked from his brother's house. It was at this point that A2 affirmed that he had murdered the baby. A1 maintained his innocence throughout the case.

Court took notice of how the two accused had committed similar kinds of murders in the same area. Two bodies of farmhands were found in close proximity to each other in Nsujjampolwe and therefore appear to have been part of the same transactions.

A search was conducted and suspicious items were recovered a white polythene bag with two pieces of white clothes with blood stains, a knife with blood-stained wooden handle, a small bag containing a gourd made of bark cloth, small basket wrapped in a piece of blood-stained bark cloth and blood-stained white sleeved shirt.

In the final result court in 2015 found the two brothers guilty for murdering their own blood, Angello SSebugwawo. Lady Justice Hellen Obura held;

“This is the second case where A2, the convict is sentenced for a gruesome murder of a defenceless, innocent persons, who were murdered around the same time in the same place in the name of looking for riches. In this case the convict was duty bound to protect his child but it was him who heartlessly cut him like slaughtering an animal and carried off his blood in white pieces of cloth for rituals. I did not observe any remorsefulness, on the contrary through the trial, he stood with a stone face without showing any emotions even the deceased’s mother broke down as the gruesome act, he has demonstrated enough that he can be a danger to his very own that he is supposed to care for and love, for that reason, his family would be safer without him”

The trial observed the demeanor of the two accused. They were not sorry and as if they would still go back and do the same heinous acts all over again. She sentenced, A1 to 47 years of imprisonment and 9 months. A2 to 37 years and 8 months. The two brothers appealed in 2015²¹⁰ however the court of appeal confirmed their guilt and sentences. On Appeal, A2’s sentence was reduced to 35 years and 8 months taking notice of the plea of guilty and time spent on remand.

Authors’ conclusive notes:

Ritualistic murders are common place in Uganda’s courts of justice today. Stories like the Bwetes’ in Luzira and the high court case above are simply a tip of an iceberg. Child sacrifice cases are common in the

²¹⁰ Criminal app.no.103 of 2015

media and the law reports. Recent mysterious Women and girlchild murders and the consequential mutilation of their body parts are sometimes linked to fisherfolk who desire to please the spirits of the lake, Nalubaale so as to harvest large amounts of fish.²¹¹ On deciphering the various cases, I am quick to note that the discreet nature of human sacrifice, makes the prosecution's burden of raising evidence quite daunting. Most times, the prosecutors heavily rely on circumstantial evidence which must be corroborated.²¹² That isn't easy. The crime usually involves a large racket of individuals who all must be held culpable.

Taking one's life in Uganda unlawfully is a crime punishable by death under the law²¹³ The guardians of justice i.e., police, judiciary etc. in this country must continue to fight the vice at whatever cost. All lives matter and ritualistic murders should have no place in the quest for wealth. Whoever commits murder is liable to suffer death after being held liable by competent courts of jurisdiction rather than being enriched by some mystical spirits prevalent in Uganda.

Second Sight

Second sight is an alleged extra-sensory vision of future events or of things or events at a remote location usually using extra sensory perception.

²¹¹ In the year 2017, a renowned fish trader was arrested and tried for the said women murders in the areas of Entebbe. He was however acquitted and no one has ever been brought to account for the over 27 bodies of girls and women.

²¹² Kato kajubi's and the reliance on confessions to convict kajjabi had been defeated on the first trial.

²¹³ Sections 188 and 189 of the penal code Act.

Sabbatical Tradition

According to Chumbley, “It is typical of genuine cunning-folk to utilize whatever is close at hand, and to turn all influences, irrespective of religious provenance to the secret purposes of the Arte.” Sabbatic Witchcraft, as a general practice was an unintentional by-product of the Cultus Sabbati. Chumbley claimed to belong to two lines of traditional witches from England and Wales with whom he was inducted; this formed the basis of his background of the occult. Sabbatic mythology, for instance, describes the way in which elements of witch-lore, and imagery were being employed in the cunning craft tradition. The central purpose of Sabbatic imagery and practice is based on the core belief, in which the seeker undertakes the nocturnal pilgrimage to the Witches Sabbath through the use of various trance inducing techniques.

The body of lore associated with this particular tradition is detailed in the *Azoetia*, a working grimoire for the Cultus Sabbati written by Chumbley at the age of twenty-four.

Daniel A. Schulke, current magister of the Cultus stated: “Chumbley’s grimoire *Azoetia*, although wholly a reification of traditional British witchcraft makes use of Sumerian, Egyptian, Yezidi, Arabic and Aztec iconography among others. This theme of diversity is concurrent with the Sabbatic Current. Chumbley, in his writing, draws from these ancient sources as they take on new meaning in the context of the witches sabbat. The main directives of this tradition are spirit congress, coming together to form relationships, and receiving transmission of occult knowledge of the Sabbatic Current.” In the article, *Cultus Sabbati: Provenance, Dream and Magistracy*, Chumbley discusses a defining feature of

Sabbatic Witchcraft. This article can be found in its entirety online at www.xoanon.com, which serves as the publisher for the Cultus' outer tradition. The specialized use of imagery and mythos of medieval and early modern witches' sabbat is the focus of sabbatic understanding. Through the use of cultural symbols and spiritual associations, the Sabbatic Current is transmitted by man and spirit.

The many symbols that have been borrowed and used overtime are meant to convey specific ideas already in the collective consciousness of mankind. The symbolic associations within Sabbatic Witchcraft some from Pagan, Christian and Greco-Roman mythology and culture among others that have influenced Western esoteric thinking. These images have changed over time and do not indicate any adherence to Abrahamic ideologies.

For example, "Traditional Sabbatic Craft often employs demonological names and imagery as part of a cipher to convey a gnosis of Luciferian self-liberation." These names and symbols serve as manmade vehicles for the elder gods. Chumbley warns that "One must be wise to discern the use of veil upon veil; the use of demonological terms should not be misconstrued as advocacy for vulgar-Satanism, black magic or suchlike; neither should use of Judeo-Christian terms imply adherence in any conventional sense." A defining feature of the Cultus is its use of the medieval and early modern *Witches' Sabbat*, which is the astral gathering of witches' souls, animal spirits, and a myriad of otherworldly beings around the circle of arte, between waking, sleeping, and death. This serves as the basis of rituals and practice. Hidden within the imagery of the Witches' Sabbath are various occult symbols such as nocturnal flight, the stang, the Horned God, *Unguentum Sabbati* or Witch's Ointment; which serve to define the practice of the sabbatic witch

who seeks gnosis and spiritual union through oneiric travel to the eternal circle of the Witches' Sabbat.

Hypnosis

The words Hypnosis, Hypnotism, Mesmerism and Animal Magnetism are used to describe the same phenomenon. Of these words Hypnosis and Hypnotism are the terms most commonly used today, and they are used synonymously.

Hypnosis comes from the Greek word "hypnos"-sleep. A state resembling normal sleep, differing in being induced by the suggestions and operations of the hypnotizer, with whom the hypnotized subject remains in rapport, responsive to his suggestions.

Hence, a similar sleeplike condition." Webster's Collegiate Dictionary (5th ed. 1947). "Hypnosis. An artificially induced state resembling deep sleep, or a trancelike state in which the subject is highly susceptible to suggestion and responds readily to the commands of others: hypnotic state.

Somnus: natural sleep (rare). "Hypnotism. Hypnosis: braidism: mesmerism: trance: an induced condition resembling somnambulism, in which the subject is seemingly asleep yet strongly under the influence of suggestion: the subject's attention is intensely concentrated upon the suggested idea, but he is oblivious to all else.

The practices involved in the induction of hypnosis. "Lethargic hypnotism, trance-coma: the deep sleep following major hypnotism. "Major hypnotism, a state of extreme suggestibility in hypnotism in which the subject is insensible to all outside impressions except the

commands or suggestions of the operator. "Minor hypnotism, an induced state resembling normal sleep in which, however, the subject is obedient to suggestion though not to the extent of catalepsy or somnambulism. "Somnambulism comes from the Latin "sorrnus," sleep and "ambulo," to walk about. A sleep disorder in which a person walks, writes, or performs other complex acts automatically while in a condition of somnolence, having no recollection, on awaking, of what he has done. A condition in which one's mental processes are conducted in a more or less unusual or odd way, and in which one seems confused and almost as if asleep. "Catalepsy comes from the Greek "kata," down and "lepis," a seizure. A morbid state, allied to autohypnosis or hysteria, in which there is a waxy rigidity of the limbs that may be placed in various positions which they will maintain for a time. The subject is irresponsive to stimuli: the pulse and respiration are slow and the skin is pale." Stedman, Medical Dictionary (20th ed. 1961) Hypnotism is defined to be a name applied to a condition, artificially produced, in which the person hypnotized, apparently asleep, acts in obedience to the will of the operator.

An aura of the occult surrounds the mention of hypnosis. As a result, hypnotism is rarely used in court. Although tainted by its sideshow reputation, hypnosis, when applied properly, can substantially aid both the investigation and litigation stages of law enforcement. Suggestibility is a naturally occurring aspect of the mind. The conscious mind acts as a filter to the numerous suggestions attacking the subconscious. Upon removal of this filter, the subconscious mind becomes infinitely more susceptible to suggestion. The basic theory of hypnotism is that it removes the conscious filter thereby heightening the power of suggestion and opening a door to the

tightly guarded subconscious. Assuming, arguendo, that hypnosis removes the conscious shield around the subconscious mind, does the theory make a difference to the legal community? The two most important aspects of hypnosis are motivation to accept suggestion, and the ability to disassociate. Suggestibility is the potential for directing the subconscious and communicating with it. Disassociation is the ability to separate oneself from one's surroundings, thereby freeing the subconscious mind from the reality of a situation.

Hypnosis can be used in conjunction with the polygraph. The polygraph, or lie-detector, relies on autonomic responses from the central nervous system. Such responses are not always reliable. For example, there is a chance of a false reaction due to anxiety over the test itself. Hypnosis can be used to relax an individual and remove any fears concerning the test itself from the subject's autonomic response. The hypnotized subject might then feel more confident that truthful answers could more easily be distinguished from false ones. Hypnosis has serious limitations that prevent its everyday use. These limitations can be placed in two different categories. First, there are limitations inherent in the hypnotic process, and second, there are difficulties inherent within the legal system which prevent the use of any new investigative aid, along with the significant legal questions that its use may bring before the court. This combination has effectively stymied this potentially beneficial tool. One fallacy inherent in the hypnotic process is that a subject has to be in a very deep state of hypnosis in order for hypnosis to be productive.

Another fallacy is that a hypnotized subject lacks the will to resist. Tests have shown that a subject can lie or distort the truth even while

in the deepest hypnotic trance. The natural instinct for self-preservation is so powerful that some individuals can subconsciously lie. If a conscious mind is capable of creating elaborate, logical, but untruthful scenarios, there is no reason why the subconscious mind should lack this talent. A problem inherent in the hypnotic process is that hypnosis may be faked by the unscrupulous individual. A skilled hypnotist should be able to expose the malingerer by use of a few simple tests, but what of a professional imposter? Simple tests such as sticking a needle in the flesh and placing a flame under a palm to check for reflexes will undoubtedly reveal someone with little experience with hypnosis. The problem will arise when it is to an individual's advantage to circumvent the hypnotist. Such a situation will arise constantly in legal cases. Then the potential subject may try everything from drugs to prior hypnotic treatment to appear under a hypnotic trance. If a hypnotized subject can enter his hypnotic statements into evidence, it is feared that the mere fact that the subject was hypnotized will give added credence to the statements.

Perhaps the major reason for regulations concerning hypnotism is the fear that inexperienced individuals will tamper with the human mind. In an effort to resolve these deficiencies,

One case focusing on the sinister aspects of hypnosis was the Spurgeon Young case, in which a seventeen-year-old died, allegedly from a hypnotic practice. He suffered organic impairment which was thought to result directly or indirectly from physical or emotional disturbances, or derangement of nerve function, due to a hypnotic practice. It is now known that since hypnosis does not resemble sleep, no waking process is necessary, and that most people who refuse to regain a conscious state are doing so of their own volition. Other cases brought up significant issues, such as the

admissibility of exculpatory statements made while under the influence of hypnosis. In *People v. Eubank*,²¹⁴ the court, when confronted with the issue of whether exculpatory hypno-induced testimony should be admitted, merely answered that the law does not recognize hypnotism. This simplistic procedure resulted in only one case being litigated in America between 1915 and 1950. 3 In 1950, hypnosis was once again reviewed as a litigable issue in American courts. At first, the cases followed the *Eubank* decision in determining the relationship of hypnosis and the law. *State v. Pusch*²¹⁵, stated that no case could be found permitting hypno-induced exculpatory evidence. Then, in 1958, the A.M.A.'s approval of hypnotism ushered in a new era of judicial leniency. In *Comell v. Superior Court*²¹⁶, the right to representation by counsel was held to include the right to have a hypnotic interview. In this case hypnotism was used to overcome the effects of amnesia. The California Supreme Court found that an attorney, with the consent of his client, is entitled to conduct a hypnotic examination with the aid of a hypnotist, to learn facts that may be of assistance in preparing for the defense of the crime charged, whether or not the evidence so secured would be admissible. The important factor in this case was the court's acceptance of hypnotism as a medical technique on a par with psychiatry. *Cornell*, however, was not consistently followed in its home state of California. In *People v. Pusch*²¹⁷, the entry of a physician's testimony concerning the mental state of the defendant was forbidden. Although there are significant legal differences

²¹⁴ 117 Cal. 652, 49 P. 1049 (1897),

²¹⁵ 77 N.D. 860, 46 N.W. 2d 508 (1950)

²¹⁶ 52 Cal 2d 99, 338 P. 2d 447 (1959)

²¹⁷ 56 Cal. 2d 868, 366 P. 2d 314, 16 Cal. Rptr. 898 (1961),

between this case and Comell, the reason for the exclusion was that hypno-therapy influenced the report. The court ruled that a proper basis was not established concerning the reliability of a tool still lacking recognition in the field of psychiatry. The opinion was not aided by the fact that hypnosis had been obtained with the aid of sodium pentathal, and that this case was the physician's first appearance as an expert witness. A legal landmark occurred in the unreported case of *State v. Nebb*²¹⁸, Franklin Co.²¹⁹ Here, an individual was allowed to testify under hypnosis. The facts of the Nebb case, above, are relatively simple. Arthur Nebb had arrived at the home of his estranged wife, Bernice, and found her in the company of another man. He went to his residence to get a witness, since a contested divorce action was pending. He returned to his wife's home ahead of the witness, and, in the interim, shot his wife and her visitor. Bernice recovered from her wounds, but the man died. It was imperative to determine Mr. Nebb's intent in order to establish whether to convict him of first-degree murder or manslaughter. This was the first time that a prosecuting attorney allowed a defendant to be hypnotized without objection, and actually participated in the interrogation. During the hypnotic interrogation, Mr. Nebb modified his story several times, and made both inculpatory and exculpatory statements concerning the event. The entire interrogation took place outside the jury's presence. Immediately afterward, the prosecutor reduced the charge to manslaughter, resulting in a guilty plea. The case was not able to set a legal precedent, however, since the hypnotic issue was not reached. However, many courts do not allow hypnotic statements into the

²¹⁸ No. 39, 540 Ohio C.P.,

²¹⁹ May 28, 1962.

courtroom because of their inherent unreliability. The majority of courts think hypnosis must gain the reliability of a scientific experiment, (i.e., chemical tests, fingerprints) before it will be judged reliable. In summary, hypnosis has an unflattering heritage that prevents its popular acceptance by the courts, yet it can prove beneficial in a variety of ways. Proper application will at least provide leads to other caches of admissible evidence. The unbiased witness and victim are now able, more than ever, to enter their hypno-induced testimony. The difficulty lies with entering the hypno-induced statements of the defendant. However, this article has attempted to show that the legal arguments preventing such evidence being admitted are not insurmountable. The courts appear more reluctant to deny admission due to tradition than any basic rationale concerning hypnosis being unreliable. Courts are traditionally cautious in accepting new philosophies, but in specific instances the allowance of hypnotic testimony is far more rational than its denial. It is hoped that hypnosis will once again be tested by the courts, and a fresh potential source of evidence will be available to the attorney

It is, therefore, the intent and purpose of part of the need to regulate the practice of hypnosis for therapeutic purposes by providing that such hypnotic techniques shall be used only by certain practitioners of the healing arts within the limits and framework of their own particular field of competence; or by qualified persons to whom a patient may be referred, in which event the referring practitioner of the healing arts shall be responsible, severally or jointly, for any injury or damages resulting to the patient because of either his own incompetence, or the incompetence of the person to whom the patient was referred.

Some examples of ‘protected titles’ by law are:

Nurse

Psychiatrist

Physiotherapist

Clinical Psychologist

Some examples of professional titles NOT protected (regulated) by law are:

Hypnotherapist

Psychotherapist

Massage

Therapist

Counsellor

Yoga Teacher

[Note: many of these professions have quite rigorous self-regulation – this means that the profession has often established a single recognised national register with agreed standards of training, ethics, complaints procedures etc. Some good examples of this are UKCP for psychotherapists and BACP for counsellors. Unfortunately, hypnotherapy has remained a very fractured and fragmented profession – and has not managed to establish one single recognised national register. Please note that this page is merely concerned with the legal status of the profession of hypnosis and hypnotherapy, and calling oneself a “hypnotherapist”.]

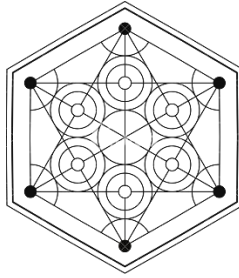
It is also worth mentioning the Hypnotism Act of 1952 which pertains to Stage Hypnosis – but has no impact on the use of hypnosis for health, psychological well-being, performance

improvement etc.
(further reading can be found in the Hypnotism Act of 1952)
hypnosis can also be seen in many jurisdictions.²²⁰

²²⁰<https://ngh.net/wp-content/uploads/2010/11/StateLawGuide.pdf>

This is an excellent document produced by The National Guild of Hypnotists (NGH) in the United States – it relates to the practice of hypnosis in the US and how that is regulated state by state.

CHAPTER SEVEN



The Illuminati

The Illuminati founded by Adam Weishaupt who was born on 6 February 1748 at Ingolstadt, Bavaria in the Holy Roman Empire defines as the most powerful elite organization in the world, political leaders, musicians, multi-millionaires, wealthy people globally among others have all benefited in Illuminati. The secret elite society was established hundreds of years ago and has since gained immense popularity wide world. Based on its impact onto the world, a formation of a new world order came to exit. Illuminati promotes happiness around the world. The Illuminati is a secret elite family that strives to promote wealth values. It was formed to lead the world under the principals of love, justice, unity, peace, relief and wealth, the family brought rich and famous individuals of will together as a society regards of their differences and backgrounds, they aim to ensure that all people in the world live in peace and have a better life, many people from various movements in the early Century were influenced by the Illuminati family. Illuminati is said to provide wealth & companionship, Illuminati advocates for peace, togetherness and stability in societies, they assume that they prepare

all individuals for greatness - as a family they share knowledge to up skill life.

Definition of illumination, the action of illuminating or state of being illuminated: such as spiritual or intellectual enlightenment, a lighting up, decorative lighting or lighting effects, decoration by the art of illuminating. History and Etymology for illuminate, it is a middle English word, from Latin *illuminatus*, past participle of *illuminare*, from *in* *luminare* to light up, from *lumin*, *lumen* light more at *luminary*. The book is for those who desire to be illumined and achieve wealth and prosperity. The illuminati success wisdom herein is for seekers who are open to new perspectives and who want to live to the fullest. This manuscript is based on the ancient illuminati exercises and lessons and is designed to help readers make a difference in the world by helping people make the best of themselves and their opportunities. For those of you who want more out of life, and who are tired of failure, this collection of timeless success wisdom will show you the path to achievement and the keys to prosperity. Do not sit idly by and reject or deny the abundance of the world abundance awaits your cooperation and inquiry. The world is plentiful with resources, and your creativity is one of the many secrets to your future success.²²¹

How to distinguish law from non-legal but systematic and rule-guided practices of legal officials? This issue features prominently in the debate on ‘positive originalism’ in US constitutional law, and in similar fundamental controversies in other legal orders. I take it as a question about the content and constitution of ultimate rules of

²²¹ The illuminate Secret Laws of Money, The Wealth Mindset Manifesto, The Life changing Magic and Habits of Spiritual Mastery(First) by George Mentz.

recognition. Legal philosophers have been too quick in dealing with this problem. I argue that there is more space to claim that non-officials have a constitutive relationship with the content of the law, thus potentially providing a standard to distinguish legal and non-legal practices of officials. However, to the extent officials play a constitutive role in the law, what matters is their genuine acceptance of ultimate rules of recognition. To show this, I develop the concept of acceptance of a social rule by specifying the requirement of genuineness of acceptance and the role of mental dispositions associated with acceptance.

To sort out the truth about the Illuminati, I consulted a variety of experts on the subject. Mark A. Fenster, a law professor at the University of Florida and author of *Conspiracy Theories: Secrecy and Power in American Culture*, sums up the group's long-lasting appeal. "It's absurd on its face that you've got this sacred group that's more than 300 years old and continue to see arguments about its relevance today," he says. "The fact that the discussion is alive is amazing."

In a historical sense, the term "Illuminati" refers to the Bavarian Illuminati, a secret society that operated for only a decade, from 1776 to 1785. This organization was founded by Adam Weishaupt, a German law professor who believed strongly in Enlightenment ideals, and his Illuminatenorden sought to promote those ideals among elites. Weishaupt wanted to educate Illuminati members in reason, philanthropy, and other secular values so that they could influence political decisions when they came to power.

"It was pretty ambitious for six or nine guys, but they really wanted to take over the world," says Chris Hodapp, the co-author

of *Conspiracy Theories and Secret Societies for Dummies* with Alice VonKannon.

The Illuminati's goals and reputation often exceeded their means, Hodapp notes. In its early days, the group was just a handful of people. And even at its largest, it only consisted of somewhere between 650 and 2,500 members. The group grew to that size by becoming a sort of sleeper cell within other groups. Illuminati members joined Freemason lodges to recruit members for their own competing secret society.

There were two sides to the historical Illuminati: their odd rituals and their ideals.

The Illuminati did plenty of unusual things. They used symbols (like the owl), adopted pseudonyms to avoid identification, and had complicated hierarchies like Novice, Minerval, and Illuminated Minerval that divided the ranks. In the beginning, Hodapp says, Illuminati members didn't trust anyone over 30, because they were to set in their ways. Other reports of rituals are harder to confirm, but we know that members were very paranoid and used spy-like protocol to keep one another's identities secret.

But while they were following these bizarre rituals, they also promoted a worldview that reflected Enlightenment ideals like rational thought and self-rule. Anti-clerical and anti-royal, the Illuminati were closer to revolutionaries than world rulers, since they sought to infiltrate and upset powerful institutions like the monarchy.

Historians tend to think the Illuminati were only mildly successful at best in becoming influential. (Though, of course, there are also those who believe the Illuminati successfully took over the world — and still control it today. If an all-powerful group does dominate the world, we probably wouldn't know about it.)

It's also difficult to untangle the success of the Illuminati from that of the Freemasons, which they infiltrated and commingled with. It's just as tough to tell what influence the Illuminati actually had as opposed to the influence people *think* they had.

We do know the Illuminati had some influential members — along with many dukes and other leaders who were powerful but are forgotten today, some sources think writer Johann Goethe was a member of the group (though other sources dispute the claim). In a way, Illuminati influence depends on what you believe about them. If you think their revolutionary ideals spread to other groups, like the French Revolution's Jacobins, then they were successful. If you think those ideas would have prospered regardless, then they were mainly a historical curiosity

"They were wiped out," Hodapp says. "People have tried to revive them over the years, but it's a moneymaking scheme."

In 1785, Duke of Bavaria Karl Theodor banned secret societies, including the Illuminati, and instituted serious punishments for anyone who joined them. Most of the group's secrets were disclosed or published, and, if you believe most historians, the Illuminati disappeared.

From the moment of the disbanding, however, the myth expanded. As described in *Conspiracy Theories in American History: An*

Encyclopedia, documents found in the homes of high-ranking Illuminati members like Xavier von Zwack confirmed some of the spookiest Illuminati theories, like their dreams of world domination and cultish behavior (even though those documents may exaggerate the truth about the group).

Almost immediately after the Illuminati were disbanded, conspiracy theories about the group sprang up. The most famous conspiracy theories were authored by physicist John Robison in 1797, who accused the Illuminati of infiltrating the Freemasons, and Abbe Augustin Barruel, whose 1797 history of the Jacobins promoted the theory that secret societies, including the Illuminati, were behind the French Revolution. Historians tend to see these as the first in a long line of conspiracy theories (though, again, for those who believe the Illuminati run the world today, this is arguably proof of the group's power).

Later on, some of the Founding Fathers managed to stoke interest in the Illuminati in the United States. In 1798, George Washington wrote a letter addressing the Illuminati threat (he believed it had been avoided, but his mentioning it helped bolster the myth). In the panic caused by the anti-Illuminati books and sermons, Thomas Jefferson was (baselessly) accused of being a member of the group.

Though these early Illuminati panics fizzled out, they gave the group a patina of legitimacy that, later on, would help make a centuries-long conspiracy seem more plausible.

Conspiracy theories have always been popular in the United States, but for centuries, the Illuminati were less feared than the

Freemasons. The 1828 Anti-Masonic Party was based on an opposition to the Freemasons, and though the party died out, Freemasons remained a focal point for paranoia in America. Because the Illuminati recruited many members in Europe through Freemason lodges, the two groups are often confused for each other.

To some degree, Freemason paranoia grew out of the Freemasons' influence in the United States. Many Founding Fathers were members, after all. And some key American symbols may have been derived from the Freemasons: There's a strong argument that the floating eye on the dollar, the Eye of Providence above a pyramid, comes from Freemasonry. (There's also an argument that it was meant as a Christian symbol; the only thing we know for certain is that it has nothing to do with the Bavarian Illuminati.)

That early Freemason paranoia can help us understand the conspiracy theories about the Illuminati today. "People will use a term like 'Illuminati' to define anything that they don't like that might challenge their values," says Joseph Uscinski, a political scientist at the University of Miami and co-author of *American Conspiracy Theories* with Joseph Parent.

The Illuminati never completely disappeared from popular culture — it was always burbling in the background. But in the mid-1970s, the Illuminati made a marked comeback thanks to a literary trilogy that gave the group the simultaneously spooky and laughable image it holds today.

The Illuminatus Trilogy, by Robert Shea and Robert Anton Wilson, depicted the Illuminati with ironic detachment. This trilogy became a countercultural touchstone, and its intermingling of real research

— Weishaupt, the founder of the real Illuminati, is a character — with fantasy helped put the Illuminati back on the radar.

"It was a great example of the post-'60s ways of ironizing elite forms of power," Mark Fenster says. "That ironic vision of conspiracy theory is extremely widely distributed. You can be both a serious conspiracy theorist and joke about it."

From there, the Illuminati became a periodic staple of both popular culture — as in Dan Brown's massively popular novel *Angels and Demons* — and various subcultures, where the group is often intermingled with Satanism, alien myths, and other ideas that would have been totally foreign to the real Bavarian Illuminati.

Uscinski clarifies that most Americans today don't actually believe in the Illuminati. In a survey of conspiracy theories, he conducted in 2012, he says zero people claimed that groups like Freemasons or Illuminati were controlling politics. Even so, the Illuminati seem to persist in our collective consciousness, serving as the butt of jokes and the source of lizard people rumors

Jay Z has previously said that he thinks rumors of his membership in the Illuminati are "stupid." Kanye West has said it's "ridiculous." Of course, to conspiracy theorists, that's exactly what a member of the Illuminati would say.

In a broader sense, rumors about the Illuminati and celebrities speak to their place in our culture. Fenster sees the half-ironic, half-serious accusations of Illuminati membership as the latest expression of an old American phenomenon. "It marks that Jay Z and Beyoncé seem to live in a different universe than us," he says. "They have secret lives

and secret access that seems reptilian. We notice how bizarre their lives seem to be and how powerful they seem to be."

Uscinski also notes the ties between power and conspiracy. "The thing that ties conspiracy theories together is that they always point at someone who is supposedly powerful," he says. "You never hear a conspiracy theory about the homeless guy in the street or a gang of poor children."

Both Fenster and Uscinski noted that conspiracy theories can, in many ways, represent genuine anxieties about social problems. In a global, media-driven world, celebrities represent a new and unusual form of power that has an appropriately conspiratorial response.

Illusions About the Illuminati

Financial Breakthrough

Change your life from the poor to become rich. you will get money as you know life and money move together in this world. so, join illuminati and get cash money as soon as you register.

Provides Conviviality and Companionship

The illuminati advocates for peace, companionship, and brings the society together, irrespective of their color, race and class. members of the illuminati also receive immortality.

Promotes Happiness

The benefit of joining illuminati is considered as something which is favorable, profitable and helpful to an individual. it has numerous

advantages such as enhancing a personal life, improving his health and well-being. in a nutshell, members enjoy both physical and intangible benefits.

Political and Social in Nature

Many members that belonged to various movements in the 18th century were members of the illuminati. it was political and social in nature since members were constantly advocating for meaningful change in their respective governments.

Prepares Individuals to Greatness

There are many benefits of being illuminati such as providing you with the opportunity to fellowship and share knowledge with other members. it also gives you the opportunity to mentor those who want to achieve wealth and overall well-being. the members are reminded to appreciate ethics, morality, and principles, while others find satisfaction in advancing their positions within the society.

Church Miracles

A illuminati member can be able to make church miracles and fame plus benefits of all life

The Big Lie of The Illuminati

Millions of people from all walks of life have committed themselves to the Illuminati's global work for the betterment of the human species. By forgoing all divisions of religious, geographical, or

political beliefs, followers of Illuminatism strive to form a planet where all people, in all places, can live in Abundance.

"The 66 Laws of the Illuminati: Secrets of Success," written by The House of Illuminati, provides the blueprint and tenets required for personal success. The House of Illuminati, known around the world as "The Illuminati," has broken years of silence with this publication. The Illuminati has made known its "Laws" which they indicate are the secrets of success for anyone who embarks upon the path of Light.

Organized in six chapters, the book begins with "Chapter 1: The 66 Laws." Chapter 1 details the sixty-six rules of life suggested by the Illuminati as a guaranteed guide to success. The Laws are age-old, proverbial wisdom which typically sheds light on a principle of good character. Each of the Laws is followed by a Lesson that gives further clarity; insight, meaning, and commentary to help the reader better understand how to apply the Law. Chapter 2, "A Letter to the Youth of the Present Age," is a letter written by the Illuminati to the youth of the 21st century.

It is a passionate epistle in response to comments made by rap artist Jay-Z and negative inaccurate rumors which were circulating at the time. Chapter 3, "The House of Illuminati," shares the ancient and modern history of Illuminati. Chapter 4, "The Rituals," is a behind-the-scenes look at what happens inside the secret House including admission criteria and ceremonies. Chapter 5, "The Creed," and Chapter 6, "The Prayer," publish the Illuminati's creed and prayer which shape the essence of what the Illuminati believes. For the first time in centuries, this book is the only known source of written documents which define The Illuminati. A detailed account of our purpose and our commitment to the "path of Light" is provided for

the public. The Illuminati hopes that all readers around the world will unite in a common cause to pursue the Light and travel down a road of success. Success is guaranteed to any person who follows the Laws and learns from the Lessons. On the path of the Light.

Profound belief

To free minds from the chains they've been confined to. We know that the masses are awakening, and that they're ready to get rid of what holds human civilization back. We all die. The goal isn't immortality; it's to create something, a system or a future, that is. Be part of something bigger, and get rewarded generously for it.

The Eternal Oath of The Illuminati

Since our origination, Illuminati members have dedicated themselves to the advancement of the human species by taking oaths of commitment. These pledges are a core tradition of the Illuminati, formed as written contracts between a single person and all members of humanity. The first pledge of the Illuminati is called the Eternal Oath.

The Pyramid

Money is not the root of all evil, money is the route to all freedom. The selfish pursuit of money is a hollow goal, but the pursuit of the goodness that money can create is one of humanity's greatest responsibilities.

The Eye

Living humans evolve at a rapid pace and continue to advance in ability through study, practice, and self-improvement. The human species is guarded by a coalition of its most elite members called the Illuminati.

The Light

Every human is guided by an inner compass that points toward the Light, revealing truth and direction amidst decisions. All human spiritual beliefs ultimately seek the Light in ways differing only in form and function.

The Eternal

Every human is one part of a larger, eternal design – individual gears in a clock that has no end. Though they may never realize it, a person’s actions have the power to alter the future of the entire world

Power

It’s through faith that we move from the known to the unknown. Achieving a state with a dominant position characterized by its extensive ability to exert influence or project power on a global scale.

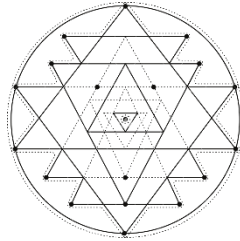
Wealth

Be ever prepared. Live this moment as though it is your last moment on this earth and acquire the maximum spiritual wealth here and now. Success is money. Guided by your soul You achieve abundance of valuable financial assets and physical possessions

Fame

Success in the illuminati will bring you an endless fame Successful people have to be on their toes all the time. You will be worshiped and loved forever in your community, your country and the world at large

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ABOUT THE BOOK

There has been a marked increase of reports on issues connected with witchcraft in the media. These stories range from exhuming dead bodies for body parts, human sacrifice where victims are killed, genitals cut off and blood drained from the body and people banished from home areas after being accused of bewitching others. One wonders whether witchcraft practices are on the increase or whether their prominence is because they are linked to criminal acts such as murder. Many reasons are advanced for practicing witchcraft search for wealth, jobs, power, love, peace and stability in relationships. Research reveals that witchcraft in historical, anthropological, religious, and mythological contexts is the alleged use of supernatural or magical powers. A witch is a practitioner of witchcraft. Historically, it was widely believed that witches were in league with the devil and used their powers to harm people and property. Particularly, since the mid-20th century, 'bad' and 'good' witchcraft are sometimes distinguished. The 'good witchcraft' often involves healing. The concept of witchcraft as harmful is normally treated as a cultural ideology, a means of explaining human misfortune by blaming it either on a supernatural entity or a known person in the community. The forever lingering mystery of Illuminati and sorcery in Uganda is hidden in the practices of societies like the church and industries like music and entertainment let alone politics, its legality is enshrined in the laws of Uganda but unearthing them is a tragedy, in this edition we seek to point out these elements and how to work around them, their effectiveness and pangs plus how definite the spells and curses are legally especially in our laws of Uganda.

Uganda has a specific law on witchcraft. The Witchcraft Act of 1957. This law provides for the prevention of witchcraft and the punishment of persons practicing it. The practice of witchcraft is not confined to Africa. Communities worldwide practice it. For example, the United Kingdom has the Fraudulent Mediums Act of 1951 which repealed their Witchcraft Act of 1735. This English law punishes persons who fraudulently purport to act as spiritualist mediums or to exercise powers of telepathy, clairvoyance or other similar powers. In Uganda, one significant case on witchcraft is Constitutional Case No. 2 of 1997 between Salvatori Abuki, Richard Abuga and the Attorney General. The petition was successful, Constitutional court declared that: The sections interpreting witchcraft were void for being vague and ambiguous and did not meet the requirements of the Constitution. And that as a result the petitioner was not afforded a fair trial as the offence was unknown.

Following the Constitutional declaration, the exclusion order or banishment as a form of punishment was deleted from the law. And the need for an explicit definition of the offence of witchcraft was underscored. Currently, 14 years later, the Witchcraft Act still provides for punishment for practising witchcraft ranging from imprisonment for a period not exceeding five years to life imprisonment. For example, Section 2 of the Witchcraft Act partly states: Any person who directly or indirectly threatens another with death by witchcraft or by any other supernatural means commits an offence and is liable on conviction to imprisonment for life. The question is, what mechanisms can one use to discern or ascertain bona fide spirit worship or bona fide manufacture, supply or sale of native medicines? In light of all this, has Witchcraft Act outlived its usefulness? Further more Evidence of reputation under the law presumes that the aggrieved person knows what the practice of witchcraft involves It should be noted that most crimes linked to witchcraft such as child sacrifice are punishable under other specific laws such as the Prevention of Trafficking in Persons Act and Penal Code Act. It is all shrouded in mystery which this book seeks to unearth!

