

Reimagining Ghana's Fourth (4TH) Republican Constitution Through The Prism Of Social Contract Theories Of Thomas Hobbes And John Locke

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Abstract

This study audited the provisions of the 1992 Constitution of the Republic of Ghana using the lens of two social contractarians known as Thomas Hobbes and John Locke on nature of the Social doctrines associated with them to ascertain the state of man before the coming into force of the Constitution, characteristics of the Constitution to either validate or otherwise the propositions of the nature of law proffered by these jurists. This research is anchored in doctrinal legal research approach into descriptive claim that there is a third Social Contract theory aside that propounded by Thomas Hobbes and John Locke from the perspective of the 1992 Constitution of the Republic of Ghana. Two plausible competing philosophies on the nature of law postulated by these theorists from jurisprudential perspective were looked at and an audit of selected provisions of the 1992 Constitution of the Republic of Ghana was carried out through the lens of these plausible theories to ascertain the state of nature in Ghana and existence or otherwise of a social contract in Ghana after the enactment of this Supreme law of the Republic of Ghana. Secondary data on plausible theories of the jurisprudence of law by Thomas Hobbes and John Locke were assessed and used as aids in conducting the audit on selected provisions of the 1992 Constitution of the Republic of Ghana. It was observed that the Social doctrines associated with Thomas Hobbes and John Locke partly answers some aspects of the events leading to the enactment of the 1992 Constitution, the nature of the constitution, the parties to the Constitution, the fact that it was rights that the constitution seeks to protect but the state of man before the enactment of the 1992 Constitution and the framework of government formed under the 1992 Constitution are inconsistent with that proposed by the two contractarians. The 1992 Constitution therefore provides clues for reconstructing an African jurisprudential Social Contract theory different from that propounded by Thomas Hobbes and John Locke. The 1992 Constitution of the Republic of Ghana reflects the existence of a Social Contract theory which is not in all fours with that propounded by Thomas Hobbes and John Locke in various respects. The Constitution provided clues for reconstructing an African jurisprudential Social Contract theory different from that propounded by Thomas Hobbes and John Locke. This African jurisprudential Social Contract theory can be succinctly stated as that before the social contract viz the coming into force of the 1992 Constitution; there were existing laws in the state of man, no civilian government to govern man and the existing laws were issued from authoritarians or dictators in the form of decrees. In that state of man, lives were not protected, likewise properties, rights and freedoms. There were no liberties of man and equality of opportunity, and prosperity eluded man in this state of nature. Man was faced with challenges in his survival either from oppression from a section of his society or threat to his survival in his society. Hence man entered into two pacts to forestall a state of nature which does not threaten his survival and freedoms. The first pact entered into by man is referred to as pactum unionis where man sought protection and preservation for their lives, liberties and properties whilst the second pact referred to as pactum subjectionis in which man unites with his fellow men creating a union which elevated the union of man to the status of a supreme being who establishes institutions of state vesting part of their powers (executive, legislative, judicial powers) in these institutions/authorities pledging to obey the institutions set up by them, surrendering part of their freedoms and rights to these institutions, and the institutions in return guaranteed man protection of life, properties, equality of opportunity, liberty and assurance of creating an environment for a prosperous nation. However, man could withdraw his support for government when it fails to provide protection of life, properties, equality of opportunity, liberty and assurance of creating an environment for a prosperous nation. The Social Contract preserved the right of man to withdraw his support for heads of the institutions of state established by him if these institutions of state and man could remove the heads of these institutions through legitimate means and not the framework of government established by man but in doing so, the Social contract prohibits illegitimate means in removing government of state.

Keywords: Social contract, state of nature, political and moral theory, pactum subjectionis, pactum unionis, sovereignty by institution, self-preservation, fundamental laws of nature

Date of Submission: 01-08-2026

Date of Acceptance: 11-08-2026

I. Introduction

Social Contract theory has been described as the view that persons' moral and or political obligations are depended upon a contract or agreement among them to form a society they live in.³ This theory has been one of the most dominant theories within moral and political theory throughout the history of the modern west.⁴

This theory is a descriptive theory about society and the relationship between rules and laws, and why society needs them.⁵ **The theory aims at showing that members of a society have reasons to endorse and comply with the fundamental social rules, laws, institutions and or principles of that society.⁶ This means that the theory is concern with public justification or in the determination of whether or not a given regime is legitimate and therefore worthy of loyalty.⁷**

The social contract theory admits of a theory that in initial state of man after creation, man lived in a state where there were no rules or laws. There was also no government to govern man. However man was faced with challenges in his survival either from oppression from a section of his society or threat to his survival in his society. Hence man entered into two pacts to forestall a state of nature which does not threaten his survival and freedoms. The first pact entered into by man is referred to as *pactum unionis* where man sought protection for their lives and properties whilst the second pact referred to as *pactum subjectionis* in which man unite with his fellow men and pledge to obey an authority surrendering the whole or part of their freedoms and rights to the authority, and the authority in return guaranteed them protection of life, properties and liberty.⁸

Proponents among this school of thought are; Thomas Hobbes, John Locke, Jean-Jacques Rousseau and John Rawls. This research is anchored in doctrinal approach to legal research where two plausible competing philosophies on the nature of law postulated by Thomas Hobbes and John Locke on the social contract theory from jurisprudential perspective are looked at and an audit of selected provisions of the 1992 Constitution of the Republic of Ghana is carried out through the lens of these plausible theories to ascertain the state of nature in Ghana and existence or otherwise of a social contract in Ghana after the enactment of this Supreme law of the Republic of Ghana.

II. Methodology

Research Methods and Theoretical Method of Enquiry Research methods refers to the theoretical and philosophical framework for carrying out a research as well as the processes and procedures employed for the study.⁹ This research is grounded in the doctrinal approach to legal research. This research approach involves a careful reading and comparison of appellate opinions with the view to identifying ambiguities, exposing inconsistencies among cases and lines of cases, developing distinctions, reconciling holdings and otherwise exercising the characteristic skills of legal analysis.¹⁰ This approach to legal research is premised on the idea that law is largely an autonomous discipline hence practitioners do not have to know any other field of learning to contribute to it,¹¹ and that a subject properly entrusted to persons trained in law and in nothing else.¹² Doctrinal analysis sometimes goes outside the logic of an opinion or series of opinions being examined by legal practitioners in making judgments but practitioners do not stray too far. This approach to legal research also involves the study of cases, experience as lawyers, common sense, and shared moral and political values of a society to evaluate the practicality and justice as distinct from the clarity and consistency of existing or proposed legal rules. Doctrinal ideology of law has been attacked by Holmes, who argues that 'law is a tool for achieving social ends, so that to understand law requires an understanding of social conditions'.¹³ By implication, Holmes postulates that it is only when one knows something about a society that one can understand the laws in the society to be able to criticize and improve the law because law is a deliberate instrument of social control.¹⁴ Accordingly doctrinal analysis is insufficient to study and understand law in terms of how it reverberates in society. Notwithstanding, the attacks on doctrinal paradigm, it is still the dominant mode compared with other approaches to legal scholarship.¹⁵ Rationale for Selecting Qualitative Research Method Using Doctrinal Approach The researcher's choice of a qualitative research premised on the doctrinal approach to legal research is that the data required to be collected are mainly primary data in the form of Constitution of the Republic of Ghana.¹⁶

Data collection

Research data may be classified into primary and secondary data. Primary data are information collected by the researcher himself or herself for analysis in fulfilling objectives of a research.¹⁷ On the other hand, Secondary data are information from previous research works readily available for use by other researchers to achieve objectives of a research.¹⁸ Qualitative Data may be collected through conducting interviews, observing a phenomenon in a population and collection of both primary and secondary data.¹⁹ Secondary data on plausible theories of the jurisprudence of law by Thomas Hobbes and John Locke were assessed and used as aids in conducting the audit on a primary data, i.e. the 1992 Constitution of the Republic of Ghana. The audit conducted is on selected provisions of the 1992 Constitution of the Republic of Ghana. The research method

was therefore a qualitative method one which provided comprehensive answer to the research question.

Plausible theories of the nature of law by Thomas Hobbes

Thomas Hobbes postulated that man in his natural state lived in a society without rules which society he referred to 'in a state of nature'.²⁰ For Thomas Hobbes, there were limited supplies of material possessions in the state of nature. Hence life in the state of nature was solitary, poor, nasty, brutish and short.²¹ He was of the view that every act of man though ostensibly kind or altruistic, is actually self-serving. Hence any account of man's action including morality must acknowledge man's essential selfishness. Hobbes held the view that in the state of nature, there was equality of man among his peers and everyone had right to everything. Therefore in such condition, man was in perpetual war against his colleagues and no morality exist threatening life of man putting him in constant fear.²² He attributed the reasons for the constant war to competition for limited supplies of material possessions, distrust among men and the quest of man to preserve his powerful reputation (i.e. glory). He puts it succinctly thus;

"In such condition, there is no place for industry, because the fruit thereof is uncertain; and consequently no culture of the earth, no navigation, no use of the commodities that may be imported by sea; no commodious building, no instruments of moving and removing such things as require much force; no knowledge of the face of the earth, no account of time, no arts, no letters, no society; and which is worst of all, continual fear and danger of violent death; and the life of people, solitary, poor, nasty, brutish and short."²³

Giving the nature of man in the state of nature, there was the need for self-preservation of man hence Hobbes proposed peace as his first and fundamental law of nature which would enable man escape the scourge of war²⁴. For him, every person ought to seek peace as far as he has hope of obtaining it and where peace evades man, he could resort to war. In furtherance of the need for self-preservation, Hobbes also proposed the need for every man to mutually divest himself of certain rights example right to take another person's life, punish offenders etc. to each other, so as to ensure peace in the society. This proposition for man to cede off certain rights to attain peace is referred to as Hobbes' second law of nature.²⁵ The mutual transfer of certain rights is what is seen as a contract and this gives rise to a moral duty amongst men as having ceded off his right to take another man's life to the society, his right to life should also be assured by his fellow men who have also ceded that right to the society to take another man's life to the society.²⁶ These social contracts, Hobbes stated are not generally binding to allay the fears of man that they could not easily be breached.²⁷ Hence in his third law of nature, parties to the social contract need to honour the agreement.²⁸

Hobbes added that when man covenants mutually to obey a common authority to which they ceded off part of their rights in the society, man establishes what is known as 'sovereignty by institution'.²⁹ He also stated that that when man is threatened by a conqueror or one's fellow man, he covenants with them for protection by undertaking to obey and man establishes what is known as 'sovereignty by acquisition'.³⁰

Hobbes did not lose sight of the fact that even though the contract entered into by man may be breached by deviants hence he postulated that it is when an unlimited power is granted to a political sovereign to punish offenders who violate those who breach the contract.³¹ It is his position that it is in the establishment of the sovereign institution that any objective determination can be made on what is right or wrong.³²

Therefore, for Hobbes, political legitimacy is about government's capacity to protect effectively those who consented to obey it and not how government achieves power.³³ Hence Hobbes held the view that if a government stops providing protection for its led, its political obligations will end.³⁴

For Hobbes, natural rights are logically prior and natural law is derived from these rights.³⁵ His social contract theory therefore discerned a natural right of every person to everything.³⁶

Hobbes postulated a fourth law of nature to supplement his three laws of nature thus; man should show gratitude towards those who comply with the terms of the contract. Hobbes concluded that morality consists of entirely of these four laws of Nature.³⁷

Plausible theories of the nature of law by John Locke

John Locke on the other hand also recognized the existence of state of nature as a society without laws as recognized by Hobbes however, contrary to Hobbes assertion that life in the state of nature was solitary, poor, nasty, brutish and short, Locke held the view that life was almost a total bliss.³⁸

However, like Hobbes who stated that there was limited supplies of material possessions in the state of nature, Locke was of the view that man acquire right to property only after he has mixed his labour with material objects to become its owner.³⁹ He stated that property was inadequately protected in the state of nature.⁴⁰ Hence it was in order for man to forestall this flaw in the state of nature that man agreed to forfeit some of his freedom to institutions or a sovereign to provide protection for their properties.⁴¹

Therefore whereas Hobbes held the view that the social contract was entered into for self-preservation, Locke held the view that the social contract was not for only self-preservation but to preserve man's natural

rights to life, liberty and property, the enjoyment of private rights which included the pursuit of happiness for the common good which is begotten in civil societies.

Both Hobbes and Locke named a sovereign or institution or individual as the one to whom man ceded off some of his rights in order to enjoy protection from the sovereign who manned the state.⁴²

At best, the proposition of the nature of law by both Hobbes and Locke can be described as general histories of the birth of positivist law as part of a general history of civilization. This is because these jurists' Social Contract theories served as a recount of how and for what purpose law was issued in the society. Further as proponents of Natural law school of thought, the fact that reference was made to the state of man or nature suggest that man at the stage of forming the social contract was of full age and capacity and would have gone through the natural transformation from baby to a toddler to an adolescent and finally to man. This meant that contrary to their proposition that there were no laws in the state of nature, natural law existed. Hence the proposition that in the state of nature there were no laws may mean Hobbes and Locke who are Natural law jurists ruled out Natural law as law in their proposition of the nature of law in the state of man and rather looked at the formation positive law. This is also indicative of a corroboration to St. Thomas Aquinas' typology of law that Human law is also law and a rebuttal of criticisms that Natural law school totally disregard man made law as law.

In both Hobbes and Locke's proposition of the nature of law, the sovereign is given power when man ceded off his rights in order to enjoy protection from the sovereign who exercised the power given it.⁴³ However, in the case of Hobbes, it is an unlimited power of sanction that is given to the sovereign whilst in the case of Locke, the sovereign is given limited power of sanction.⁴⁴

Unlike Hobbes who held the view that political legitimacy is about government's capacity to protect effectively those who consented to obey it and when government of the day fails to provide protection for those who consented to obey it, those who consented to obey it cannot withdraw their support for the government, Locke held the view that the social contract was entered into to preserve the natural rights of man hence if the sovereign failed to preserve the natural rights of man, man has the right to withdraw its support for the sovereign.⁴⁵ Hence for Locke, a state is formed to preserve the natural rights of its citizen but when government fails in its task to preserve the natural rights of its citizens, its citizens have the right and sometimes a duty to withdraw the support and even to rebel against the government.⁴⁶ On the other hand, Hobbes' theory of social contract did not recognize rebellion as a solution for breach of the terms of the social contract by the sovereign or conqueror.⁴⁷

Whereas Hobbes regarded natural rights as logically prior from which natural law is derived, Locke derived natural rights from reason (i.e. natural law).⁴⁸ Further, whereas Hobbes natural right to freedom to be attained with the social contract theory is not circumscribed hence he discerned natural right of every person to everything, Locke's social contract theory circumscribed the natural rights which ought to be protected to the social, health, liberty and possession.⁴⁹

For Hobbes, our motivation for ceding off all our rights to a sovereign or a fellow man or institution is selfishness or self-interest with the propensity of breaching the social contract hence the need to protect our interest.⁵⁰

Further, whereas Hobbes' theory from which he derived the four laws of nature deductively and logically from the general principles that; man pursue only his own self-interest, there is equality among men, there are causes of quarrel among men, there is a natural condition of war and there is a motivation for peace; Locke's theory rests on an account of man's right and obligations under God.⁵¹

In Hobbes' theory of social contract, he asserted that whatever a state does is just as all of society is a direct creation of the state and a reflection of the will of the sovereign whilst Locke held the view that the most important role of a state is to ensure justice is seen to be done.⁵²

The proposition of the nature of law put forward by both Hobbes and Locke fix the description of constitutional law and not laws like Wills Act where a testator can decide not to comply with the law by not making a Will and cannot not be punished by the state or institutions of state or individuals vested with power to provide protection of the natural rights of the citizenry.

The description of the state of nature by both Hobbes and Locke referring to the state of man in the state of nature suggests that living beings existed in the state of nature and man obvious was born a baby grew and definitely died in the state of nature as is in this modern world particularly the Republic of Ghana. Hence, natural laws in addition to natural rights existed in the state of nature contrary to the proposition of the state of nature by both Hobbes and Locke. The proposition of the nature of law by both Hobbes and Locke referring to the social contract theory is evidence of the fact that, as natural law theorist they both recognized positivist law as law as St. Thomas Aquinas did where he recognized *lex human*. Since in their proposition of the nature of law, they stated that in the state of nature there was no law, they as natural law theorists denounced what St. Thomas Aquinas regarded as *lex naturalis*, as law since as demonstrated natural law existed in what Hobbes and Locke referred to as the state of nature.

Further, once Hobbes and Locke postulated how man entered into a social contract, it presupposed that in the state of nature, aside the existence of natural laws and contrary to the proposition by them that in the state of nature, no laws existed, the law of obligations existed where even in the worse state of nature, sanctity of contract was respected giving man the assurance that the best way to offset the ills of state of nature is to bind each other with the social contract, hence the choice by man to enter into the social contract and not any known forms of transactions to secure their natural rights.

The proposition of the nature of law by both Hobbes and Locke in their social contract theories bring out a utilitarian nature of law to wit that the law is a tool for social change and for among other to preserve the natural rights of man and ensure peace. This attribute of the nature of law is consistent with that put forward by St. Thomas Aquinas that man must have laws framed by man because he cannot achieve perfection of virtue-which is his end in life-by himself, and that the object of the law is to let man have peace and virtue.⁵³

The proposition of the nature of law by both Hobbes and Locke in their social contract theories, did not bring out all the nature of law.

Audit of the Constitution of the Republic of Ghana, 1992

This audit seeks look at the state of affairs of the Republic of Ghana before the enactment of the 1992 Constitution of the Republic of Ghana by the People of Ghana, what necessitated the enactment of the constitution, the nature of the constitution so enacted, the framework of government established under the constitution, the natural rights existing before and after the enactment of the constitution, the powers given to government, the obligations given to government, the extent to which powers vested in government can be exercised, etc. through the lens of the plausible social contract theories propounded by Hobbes and Locke.

In Ghana, the laws of Ghana comprise of the Constitution; enactments made by or under the authority of the Parliament established by this Constitution; any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution; the existing law; and the common law.⁵⁴ The constitution is regarded as the supreme law of Ghana and any act or omission of any person or any enactment or anything contained in or done under the authority of the enactment which is inconsistent with Constitution is void to the extent of the inconsistencies.⁵⁵ These extracts from the fourth Republican Constitution of Ghana shows that by its nature, the constitution is a law and forms part of the laws of Ghana and yet in terms of hierarchy, it is regarded as the supreme law of Ghana whose provisions are the yardstick for judging the validity or otherwise of; an act done or omission of anybody in Ghana or an enactment or any provision of the enactment passed in Ghana. Further the provisions of the 1992 constitution of the Republic of Ghana show that there has already been suspensions or abrogation of three previous pacts or constitutions of the Republic of Ghana which were enacted in 1960, 1969 and 1979.⁵⁶ And in between the frameworks of government established by these past constitutions, military regimes like National Liberation Council, the National Redemption Council, the Supreme Military Council, Armed Forces Revolutionary Council and the Provisional National Defence Council displaced the constitutional regimes established under the named constitutions and governed Ghana.⁵⁷

The state of affairs of Ghana before the 1992 Constitution of the Republic of Ghana was enacted as can be gleaned from the transitional provisions of the said constitution, was a state of affairs under a military rule specifically the regime of the Provisional National Defence Council.⁵⁸ In that state of affairs, executive, legislative and judicial actions were taken which led to the promulgations of laws which laws and actions the 1992 Constitution of the Republic of Ghana regards as valid.⁵⁹

These extracts above also show that the Constitution recognizes existing laws, i.e. laws which existed before the coming into force of the Constitution on 7th January 1993 and therefore there is the continuation of the operations of laws enacted before the coming into force of the first Republican Constitution through to the coming into force of the 3rd Republican Constitution and to the last military regime before the coming into force of the constitution. Since most of the laws regarded as existing laws took their source from the respective constitutions in existence before they were enacted, the 1992 Constitution of Ghana served in a way as a continuation of operations of portions of previous constitutions of Ghana. This suggests that before the coming into force of the fourth Republican Constitution of Ghana, laws existed and not as the state of nature propounded by Hobbes and Locke.

A close look at the preamble to the 1992 Constitution of Ghana which reads; "IN THE NAME OF THE ALMIGHTY GOD We the people of Ghana, IN EXERCISE of our natural and inalienable right to establish a framework of government which shall secure for ourselves and posterity the blessings of liberty, equality of opportunity and prosperity; IN A SPIRIT of friendship and peace with all peoples of the world; AND IN SOLEMN declaration and affirmation of our commitment to: Freedom, Justice, Probity, and Accountability; The Principle that all powers of Government spring from the Sovereign Will of the People; The Principle of Universal Adult Suffrage; The Rule of Law; The protection and preservation of Fundamental Human Rights and Freedoms, Unity and Stability for our Nation; DO HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION." suggests that apart from all indications that laws existed before the coming into force of

the Fourth Republican Constitution of Ghana, the people of Ghana gave to themselves and posterity the 1992 Constitution of Ghana to be the supreme law of the Country and this they did in the exercise of their inalienable right to establish a framework of government. This also suggests that apart from the 1992 Constitution of the Republic of Ghana being a law, it is also a pact entered into by the people of Ghana for themselves and posterity hence progressive in nature. The Constitution could therefore be referred to as a social pact or contract entered into by the people of Ghana to establish its government. The people of Ghana could also be said to have been imbued with natural rights which are inalienable and enabled them to enter into pacts once of which led to the enactment of the 1992 Constitution so as to establish a framework of government before the enactment of the 1992 Constitution. This suggests that formation of government of the Republic of Ghana was a deliberate act in the exercise of the collective will of the people Ghana for that time being for themselves and posterity with the mandate of securing for themselves and posterity the blessings of liberty, equality of opportunity and prosperity.

It is obvious from the preamble of the constitution that it was not for nothing that the people of Ghana would wanted to secure for themselves the blessings of liberty, equality of opportunity and prosperity if before they enacted the constitution, there was liberty, equality of opportunity and prosperity among citizens. Further, they would have had the benefit of living in a state of affairs where there was liberty, equality of opportunity and prosperity, and a state of affairs where there was no; liberty, equality of opportunity and prosperity to be able to decipher what the blessings and ills of liberty, equality of opportunity and prosperity are to be able to opt for the setting up of a framework of government which save guards the blessings of liberty, equality of opportunity and prosperity instead of the ills of these state of affair.

These suggest that there was equality of man among his peers and everyone had right to everything in Ghana which the people of Ghana saw as blessings to them before the state of affairs existing before the enactment of the fourth constitutional regime. This state of affairs before the development of the state of affairs necessitating the enactment of the 1992 Constitution of the Republic of Ghana to secure for Ghanaians equality of opportunity is in line with Hobbes' proposition of the state of nature before man entered into social contract that there was equality of man among his peers and everyone had right to everything.

Also, if the people of Ghana were not threatened by the ills of finding themselves in a society without liberty, equality of opportunity and prosperity, they would not have established a new framework of government which secured for them liberty, equality of opportunity and prosperity. This suggests that before the enactment of the 1992 Constitution of the Republic of Ghana, there was a framework of government which created a society where liberties of the citizenry were curtailed, there were inequalities of opportunity and retrogression in lives of there citizenry. This suggests that there was a system of government by tyrants who might have conquered the citizens of Ghana and deprived them of their liberties, equality of opportunity and prosperity. The liberties, equalities of opportunity and the prosperity the people of Ghana enjoyed before the state of affairs necessitating the enactment of the 1992 Constitution of the Republic of Ghana could be ascertained from the provisions on very liberties, equalities and prosperities the Constitution seeks to secure.

A close look at chapter five of the 1992 Constitution of the Republic of Ghana, revealed that most of the liberties to be secured by the constitution are described as Fundamental Human Rights which includes protection of; life⁶⁰, personal liberty⁶¹, privacy of home and other properties⁶²; respect for human dignity⁶³, protection from slavery and forced labour⁶⁴, protection from deprivation of property by the state⁶⁵, general fundamental liberties or freedoms⁶⁶ (which include freedom of speech and expression, freedom of press and other media, freedom of thought, conscience and belief which includes academic freedom, freedom to practice any religion and to manifest such practice, freedom of assembly including freedom to take part in processions and demonstrations, freedom of association which included freedom to form or join trade unions or associations, national and international for the protection, right to information subject to qualifications and laws in existence, freedom of movement, freedom to form and join political parties and to participate in political activities subject to law and such qualifications as are necessary in a free and democratic state), protection of property rights of a spouse,⁶⁷ protection of cultural rights and practices⁶⁸ (which includes the right to enjoy, practice, profess, maintain and promote any culture, language, tradition or religion subject to the constitution,⁶⁹ whilst all customary practices which dehumanize or are injurious to the physical and mental well-being of a person⁷⁰). The equalities of opportunities the Constitution seeks to secure from the preamble includes; equality and freedom from discrimination⁷¹ (which includes creating the atmosphere where every person found within the territories of Ghana are equal before the law,⁷² and no form of discrimination against any person on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic status⁷³), provision for economic rights of citizens⁷⁴ (which includes the right to work under satisfactory, safe and healthy conditions for equal pay for equal work without distinction of any kind,⁷⁵ provision mandating employers to assure to their employees of rest, leisure etc. with pay when they are employed⁷⁶), creation of educational rights⁷⁷ (which includes provision for the right to equal educational opportunities and facilities with a view of achieving the full realization of that right, equality and from discrimination⁷⁸, right of every person at his own expense to establish and maintain a private school or schools at all levels⁷⁹). When it comes to women's rights, provisions have been made for

special care for working mothers during a reasonable period before and after child-birth and where the mothers shall be accorded paid leave, women are guaranteed equal rights to training and promotion without any impediments from any person. Provisions have been made for children's rights and rights of disabled persons.

From the provisions of the 1992 Constitution of the Republic of Ghana, it can be surmised that the Constitution was enacted to ensure that; where there is no place for industry, because the fruit thereof is uncertain, and consequently no culture of the earth, no navigation, no use of the commodities that may be imported by sea, no commodious building, no instruments of moving and removing such things as require much force, no knowledge of the face of the earth, no account of time, no arts, no letters, no society, and continual fear and danger of violent death, and the life of people, solitary, poverty by virtue of the state of affairs before the enactment of the constitution, all the requisite natural rights and freedoms of the people of Ghana will be preserved. The overall effect of these provisions of the constitution will be to ensure that human resources of Ghana are improved whilst these liberties and equality of opportunity are secured to ensure a conducive environment for wealth creation for every citizen of Ghana to prosper.

These provisions above suggest that the named rights and liberties of the people of Ghana were threatened in the state of affairs of Ghana before Ghanaians entered into the pact referred to as the 1992 Constitution of the Republic of Ghana and the rights which were threatened were that of self-preservation, right to property, respect for human dignity, economic rights, etc. Further, the Republic of Ghana is mandated by her constitution to enact appropriate laws to assure protection and promotion of all other basic human rights and freedoms including the rights of the disabled, the aged, children and other vulnerable groups in development processes aside the once referred to as Fundamental Human Rights.⁸⁰ Also all citizens have the right and freedom to form or join political parties and to participate in political activities subject to such qualifications and laws as are necessary in a free and democratic society and are consistent with provisions of 1992 Constitution of the Republic of Ghana. These suggest that so many human rights of Ghanaians are to be secured by the 1992 Constitution of the Republic of Ghana and that the constitution which has earlier been identified as a pact among Ghanaians did not circumscribe the natural rights of Ghanaians which ought to be protected as postulated by Locke who claimed the social contract theory circumscribed the natural rights which ought to be protected to the social, health, liberty and possession. The fact that the 1992 Constitution of the Republic of Ghana is to protect a limitless number of natural rights of Ghanaians is in line with Hobbes' proposition of law that natural right to be protected by the social contract was not circumscribed where he discerned natural right of every person to everything. These bring out the utilitarian nature of law which was indirectly canvassed by both Hobbes and Locke when they referred to purpose of the social contract entered into by man. The 1992 Constitution of the Republic of Ghana from the perspective of Hobbes and Locke's proposition of the nature of law is simply a pact which is also a law which serves among others as a tool for social change.

The provisions so far looked at also suggest that before the 1992 constitution, not only life of the citizens and property were inadequately protected as was in the state of nature propounded by Locke but rather, all natural rights of citizens of Ghana were inadequately protected as was in the state of nature propounded by Hobbes hence the need to secure these natural rights.

Further since the 1992 Constitution of the Republic of Ghana was enacted through the exercise of the natural rights of the people of Ghana, it suggests that the supreme law was derived from natural right which is a deduction in line with Hobbes' proposition of the nature of law that natural rights are logically prior from which natural law is derived.

However, even though Hobbes postulated that natural right to freedom is attained with the social contract theory, suggesting that before the social contract theory there was no natural right to freedom, what is deducible from the preamble to the 1992 Constitution of the Republic of Ghana particularly the portion which reads;

"The protection and preservation of Fundamental Human Rights and Freedoms, Unity and Stability for our Nation"

is that the natural rights of the citizens to freedom existed before the 1992 constitution was enacted and need not be attained but rather their enjoyment by citizens were threatened hence the constitution was enacted to protect and preserve these natural rights to freedom and not to attain the said natural rights.

Also, the 1992 constitution of the Republic of Ghana was enacted in the spirit of friendship and peace with all peoples of the world as can be gleaned from the preamble to the constitution. This suggests that the people of Ghana in enacting for themselves and posterity the 1992 Constitution of the Republic of Ghana, were aware that in order to ensure that the ills of the state of affairs before the 1992 constitution of the Republic of Ghana was enacted are forestalled, there was the need for peace to prevent any war. This is in conformity with what Hobbes regards as the first fundamental law of nature.

Again, both Hobbes and Locke named a sovereign or institution or individual in the social contract theory as the one to whom man ceded off some of his rights in order to enjoy protection from the sovereign who

manned the state. The pact created by Ghanaian using the 1992 Constitution of the Republic of Ghana created a framework of government in which the People of Ghana are regarded as the very person within who sovereignty resides and from whom government derives powers and authority through the Constitution.⁸¹ This epitomizes Hobbes and Locke's proposition of the nature of law that man ceded off some of his right in order to enjoy protection from the sovereign but the sovereign as identified in the Constitution of Ghana is the people of Ghana and not institution or individual as Hobbes and Locke postulated. It is from the people of Ghana that government derives all its powers and these powers are derive through the constitution.

This suggests that collectively, the people of Ghana consolidated their individual powers as one body and bestowed upon themselves the status of sovereign wielding the most power to be found in Ghana. It is with this status that the people of Ghana established the current framework of government and vested in institutions of state and individuals to act on their behalves to protect and preserve the natural rights of the people of Ghana. These therefore suggest that contrary to Hobbes and Locke's named sovereign or institution or individual to whom man ceded off some of his rights in order to enjoy protection from the sovereign who manned the state;⁸² the people of Ghana collectively are the sovereign and they cede off some of their individual powers to themselves as a collective body to establish institutions and vested some of their collective powers in the institutions and individuals in order to enjoy protection from these individuals and institutions. These also suggest that the provisions of the 1992 Constitution of the Republic of Ghana constitutes a pact which contains the collective Will of the people of Ghana.

These further suggest that in an attempt to ensure equality among all Ghanaians, every Ghanaian was bestowed the status of sovereign so that any preexisting dominant status of any Ghanaian before the pact or Constitution which made them appear more superior than others are neutralized. This agenda was further entrenched in the constitution when equality and freedom from discrimination were provided for in the Constitution⁸³ to ensure that every man is regarded as equal and need not be discriminated upon on in certain matters. The aim of rendering every Ghanaian as equal sits with the proposition of the nature of law put forward by both Hobbes and Locke to off set the inequalities among men in the state of nature. This also portrayed the fact that in the jurisprudence of social contract existing in Ghana, Ghanaians as sovereign established a type of government and its agencies vesting part of their powers in this government and its agencies to act in the stead of Ghanaians to preserve to ensure the protection and preservation of lives, equality of opportunities and prosperity. Hence it is Ghanaians as sovereign who ruled over themselves through proxy institutions other than a sovereign disconnected from the ruled as suggested by both Hobbes and Locke.

The natural rights of Ghanaians to be protected and preserved are endeared to all Ghanaians to the extent that provisions of some of these natural rights referred to as fundamental Human rights are regarded as entrenched provisions and cannot be easily amended by any of the arms of government unless it presented before the people of Ghana to vote by referendum on any proposed amendments to these rights.⁸⁴ This suggest that like other provisions of the 1992 Constitutions of Ghana, one of the main issues the constitution becomes more relevant to the people of Ghana is its assurance of protection and preservation of their fundamental human rights. Hence it can be submitted that as pointed out in the preamble of the constitution of Ghana, one of the reasons why the constitution was enacted is to preserve and protect the fundamental human rights of all Ghanaians and this accords with Hobbes and Locke's reasons that it is for the preservation of named natural rights that the social contract was entered into.

Through the pact or the 1992 Constitution of the Republic of Ghana, the people of Ghana established the executive arm of government and vest the executive authority of Ghana in the president of Ghana and extended the executive authority of the president to execution and maintenance of the provisions of the Constitution and all laws made under or continued in force by the constitution.⁸⁵ Further, through the pact, the people of Ghana established the Council of State to counsel the president in the performance of its functions.⁸⁶ Also, through the pact, the people of Ghana established parliament as the legislative arm of government and vest the legislative power of Ghana in Parliament to make laws in accordance to the Constitution.⁸⁷ The 1992 Constitution of the Republic of Ghana also established the judiciary arm of government and vest the judicial power of Ghana in the judicial to administer justice in the name of the Republic of Ghana.⁸⁸ These provisions of the 1992 Constitution of the Republic of Ghana are evidence of the fact that the people of Ghana aside being the sovereign set up government vested some of their powers in the state, institutions of state and individuals like the president through provisions of the pact known as the 1992 Constitution of the Republic of Ghana. This epitomizes Hobbes and Locke's proposition of the nature of law that man ceded off some of his rights to a conqueror, state, institution or individual in order to enjoy protection from them.

Of the three organs of government, as part of the accountability process in ensuring that the Executive up of government account to its people on how it is ensuring the realization of basic human rights, a healthy economy, the right to work, the right to good health care and the right to education, the president is mandated to report to parliament at least once a year on these matters.⁸⁹ The 1992 Constitution of the Republic of Ghana mandates the government formed by the people of Ghana to protect and safeguard the independence, unity and

territorial integrity of Ghana and shall see the well-being of all her citizens.⁹⁰ The Government of Ghana is further mandated by the constitution to promote just and reasonable access by all citizens to public facilities and services in accordance with law.⁹¹ Government of Ghana is also mandated the constitution to cultivate among all Ghanaians respect for fundamental human rights and freedom and dignity of the human person.⁹² Government is mandated by the constitution to promote integration of peoples of Ghana and prohibit all forms of discrimination and prejudice.⁹³ Government is also mandated to promote among the people of Ghana the culture of political tolerance. These duties imposed on the government of Ghana suggest that the framework of government formed under the 1992 constitution of Ghana was to ensure that the natural rights of the citizenry are protected and preserved to ensure that government created regulates how the natural rights of every citizen are respected whilst ensuring that there is tolerance by every citizen of in the exercise of the natural rights of their neighbours.

These provisions of the Constitution show that a framework of government was created by the people of Ghana when they enacted for themselves and posterity the 1992 Constitution by ceding off portion of their rights to government, institutions of state and individuals and in return for the power ceded off to government, institutions of state and individuals, they are to use the powers vested in them to protect and preserve the natural rights of the citizenry whilst regulating how these natural rights are asserted without infringing on the rights of their neighbours to ensure peace instead of war. Government, institutions of state and individuals vested with powers of the people of Ghana in return for the vested powers are to exercise their powers to promote freedom, justice, probity, and accountability to the people of Ghana. The duty imposed on Government, institutions of state and individuals by the 1992 Constitution will therefore ensure Unity and Stability of Ghana to enable its citizenry to remain focus to work together to create wealth for prosperity of Ghana.

The creation of Government, institutions of state and individuals by the 1992 Constitution to ensure the natural rights of the people of Ghana are protected and preserved to ensure peace conforms to the proposition of the nature of law put forward by Hobbes which is referred to as his 2nd fundamental law of nature.

The obligations imposed by the 1992 Constitution on Government, institutions of state and individuals referred to above are evidence that the pact entered into by the people of Ghana through the constitution provided a yardstick for political legitimacy of government, the institutions of state and individuals who were vested with the power as alluded to by Hobbes in his proposition on how political legitimacy of government is created.

On abrogation of the whole or part of the pact or 1992 Constitution, i.e suspension or abrogation through coup, revolution, etc. or where a party to the pact who may be a tyrant government or an individual conqueror (orchestrators of a successful coup or revolution) tends to abrogate portions of the pact or constitution or portions of the terms or provisions of the constitution either by rendering provisions on the obligations of state in protecting the natural rights of the citizenry nonoperational or omitting to recognize and fulfill the obligations of the state to provide the requisition protection of the natural rights of the citizenry, the 1992 constitution foresees the occurrence of such situations hence it provides for safeguards. The constitution prohibits any of such acts and makes them an offence providing sanctions for them as stated thus:

“(2) Any activity of a person or group of persons which suppresses or seeks to suppress the lawful political activity of any other person or any class of persons, or persons generally is unlawful.

(3) A person who

(a) by himself or in concert with others by any violent or other unlawful means, suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act, or

(b) aids and abets in any manner any person referred to in paragraph (a) of this clause, commits the offence of high treason and shall, on conviction, be sentenced to suffer death.”⁹⁴

This extract suggest that the constitution is a sacred pact which cannot to set aside lest the perpetrator suffers death when found guilty. Therefore, persons forming government of the Republic of Ghana, who are saddled with the obligations of the state to provide protection for the natural rights of the citizenry, try to set aside the constitution or a provision thereof to perpetuate their reign, they would be committing high treason and if found guilty could suffer death.

Further, the constitution provides for defence of the supreme pact or constitution by any person in Ghana when it provides that:

“(4) All citizens of Ghana shall have the right and duty at all times to

(a) defend this Constitution, and in particular, to resist any person or group of persons seeking to commit any of the acts referred to in clause (3) of this article; and

(b) do all in their power to restore this Constitution after it has been suspended, overthrown, or abrogated as referred to in clause (3) of this article.

(5) A person or group of persons who suppresses or resists the suspension, overthrow or abrogation of this Constitution as referred to in clause (3) of this article, commits no offence.”⁹⁵

The above extracts endorses civil disobedience of a sort. So that if the government in the exercise of the powers vested in it by the people of Ghana through the 1992 Constitution tries to embark on tyrannical rule

suspending the constitution of Ghana disrespecting among others the natural rights of the people of Ghana and also not fulfilling its obligations towards the people of Ghana for example by not providing protection for among others the natural rights of the people of Ghana, the people of Ghana are mandated by law to resist such tyrant or group of tyrants and do all that is in their power restore the whole or part of pact or constitution which was being abrogated or suspended or disregarded. In resisting the tyrant or group of tyrants, it suggests that any rules or laws they would enact could be disobeyed in the attempt to restore the whole or part of pact or constitution.

Since the provisions of the 1992 Constitution of the Republic of Ghana is replete with provisions on natural rights and freedoms of the people of Ghana and other matters, where the government of the day in Ghana be it; the executive, legislature or the judicial arm or all the arms of government suspends or tries to suspend the whole or part of pact or constitution which automatically will mean government suspending or trying to renege on its obligations which include its duty to protect effectively the people of Ghana, it should not be accorded political legitimacy but should be resisted so as to restore the constitution so that the frame work of government that is to preserve among others the natural rights and freedoms of the people of Ghana is maintained. These suggest that the political legitimacy of government of the Republic of Ghana is based *inter alia* on its capacity to protect effectively those who consented to obey it and not how government achieves power. This is consistent with Hobbes' proposition of the nature of law on political legitimacy of government that it is the capacity to protect effectively those who consented to obey the government which gives government its political legitimacy and not because of how the govern achieved its power. However, with Hobbes, since man surrendered all his power to the sovereign, everything done by the sovereign is seen are right for the benefit of the society but this stance does not accord with the provisions of the constitution of Ghana looked at above. The provisions referred to above rather best fit the proposition of the nature of law put forward by Locke that a state is formed to preserve the natural rights of its citizen but when government fails in its task to preserve the natural rights of its citizens, its citizens have the right and sometimes a duty to withdraw the support and even to rebel against the government. So that by the provisions of the 1992 constitution, a government of Ghana will lose its legitimacy if it fails to among others to protect effectively those who consented to set up that framework of government and obey it, and the citizens have the right and sometimes a duty to withdraw their support and even rebel against the government if the government attempts to abrogate the whole or any part of the constitution of the Republic of Ghana to substitute its own rule. This also meant that, in the construct of the social contract, Ghanaians did not surrender all their rights to the state or individuals or institutions to protect their rights for them but reserved some of them which is consistent with Locke's proposition of how the social contract was entered into by man surrendering part of its rights to the state or individuals or institutions in return for protect from the state or individuals or institutions.

Further the powers vested in the state or institutions of states or individuals under the framework of government established by the people of Ghana to provide protection for the natural rights of the citizenry are limited in nature. The nature of the powers vested by the people of Ghana were in the form of Executive, Legislative and Judicial powers whilst reserving in them all the powers to remove government and form new ones etc. Previous exercise of power of some Ghanaians in the past to topple governments in the past through their military folks were validated by the Constitution, and laws, decisions taken in the nature of judicial decisions and anything done during those military regimes in pursuance of the object of these military folks are rendered immune from executive, legislative and judicial actions, inquisitions or prosecutions.⁹⁶ This shows that the people of Ghana withdrew their supports for governments formed under the 1960, 1969 and 1979 Constitutions when these governments failed to provide protection of life, properties, equality of opportunity, liberty and assurance of creating an environment for a prosperous nation. The 1992 Constitution however prohibits illegitimate means in removing governments of state. And provides incentive for restating any form of government contrary to that established by the 1992 Constitution.⁹⁷ This reflects Locke's view that man has the right to withdraw its support for the sovereign if it failed in its obligations towards man for which man vests some of his power in it but in withdrawing his support the existing form of government and the social contract must be preserved.

In sum, after the audit of the 1992 constitution, it was found that the state of nature after the Third Republic of Ghana was brutish but there were laws in existence where the natural rights of the people of Ghana were threatened and curtailed. This led to in equalities among citizens, lack of equality of opportunity and this affected the prosperity of the people of Ghana. This state of affairs necessitated the promulgation of the Fourth Republican Constitution of Ghana which recognizes existing laws as laws of Ghana. This state of affairs is contrary to state of nature postulated by both Hobbes and Locke that in the state of nature, no laws exists. Further the promulgation of the Fourth Republican Constitution of Ghana is to check the imbalances in the country and secure for all citizens the various natural rights and freedoms. The 1992 Constitution of the Republic of Ghana did not limit the natural rights to be protected to right to life and properties but to every known human rights like it was propounded by Hobbes. Hence the constitution could be regarded as the social contract made by the people of Ghana which made provisions for preserving certain rights of its citizens which it regards as

fundamental Human Rights and other basic human rights which are non-derogatory to an extent by the Executive, legislative and the judicial arms of government. Also, there were evidence that in Ghana, institutions were established and given power which could preserve the natural rights of the citizens of Ghana as postulated by Hobbes. It was observed that apart from the protection of properties and self-preserve for which laws were enacted, the constitution sought to provide for protection of personal liberty life, properties, general fundamental liberties or freedoms (freedom of speech and expression, freedom of press and other media, freedom of thought, conscience and belief which includes academic freedom, freedom to practice any religion and to manifest such practice, freedom of assembly including freedom to take part in processions and demonstrations, freedom of association which included freedom to form or join trade unions or associations, national and international for the protection, right to information subject to qualifications and laws in existence, freedom of movement). Therefore social contract theories propounded by Hobbes and Locke did not entirely manifest themselves in the enactment of the 1992 Constitution of the Republic of Ghana.

III. Recommendations

It is recommended that in order not limit the state of nature in Ghana before a constitution was brought forth to govern her citizens before the enactment of the 1992 Constitution of the Republic of Ghana, there is the need to also ascertain the existence or otherwise of a social contract during those constitutional eras, the very rights that were ceded off to a sovereign to provide protection for the citizenry, and the rights of the people of Ghana which was threatened and therefore protected by the enactment of these constitutions of Ghana, a similar audit should be carried out on previous constitutions of the Republic of Ghana to fully appreciate practicality of the social contract theory in the jurisprudence of Ghana.

IV. Conclusion

It can be surmised that the Social doctrines associated with Thomas Hobbes and John Locke partly answers some aspects of the events leading to the enactment of the 1992 Constitution *viz* the nature of the constitution, the parties to the Constitution, the fact that it was rights that the constitution seeks to protect but the state of man before the enactment of the 1992 Constitution and the framework of government formed under the 1992 Constitution are inconsistent with that proposed by the two contractarians. The 1992 Constitution of the Republic of Ghana reflects the existence of a Social Contract theory which is not in all fours with that propounded by Thomas Hobbes and John Locke in various respects. The Constitution therefore provided clues for reconstructing an African jurisprudential Social Contract theory different from that propounded by Thomas Hobbes and John Locke. African jurisprudential social contract theory could be postulated as; before the Social Contract *viz* the coming into force of the 1992 Constitution, there were existing laws in the state of nature or state of man, there was government to govern man but that government was not a civilian one but an authoritarian or dictator and the existing laws were issued from the authoritarian or dictator in the form of decrees. In that state of man, lives were not protected, likewise properties, rights and freedoms. There were no liberties of man, equality of opportunity and prosperity eluded man in this state of nature. Man was faced with challenges in his survival either from oppression from a section of his society or threat to his survival in his society. Hence man entered into two pacts to forestall a state of nature which does not threaten his survival and freedoms. The first pact entered into by man is referred to as *pactum unionis* where man sought protection and preservation for their lives, liberties and properties whilst the second pact referred to as *pactum subjectionis* in which man unites with his fellow men creating a union which elevated the union of man to the status of a supreme being who establishes institutions of state vesting part of their powers (executive, legislative, judicial powers) in these institutions/authorities pledging to obey the institutions set up by them, surrendering part of their freedoms and rights to these institutions, and the institutions in return guaranteed man protection of life, properties, equality of opportunity, liberty and assurance of creating an environment for a prosperous nation. However, man could withdrew his support for government when it fails to provide protection of life, properties, equality of opportunity, liberty and assurance of creating an environment for a prosperous nation. The Social Contract preserved the right of man to withdraw his support for heads of the institutions of state established by him if these institutions of state and man could remove the heads of these institutions through legitimate means and not the framework of government established by man but in doing so, the Social contract prohibits illegitimate means in removing government of state.

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