Readings on law in developing countries in Africa

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"Tribalism" is the basic ingredient of all newspaper accounts of African politics. That the boundaries of the new nations are direct progeny of the arbitrary lines drawn in the Victorian era on a map by elderly statesmen who had never been to Africa, and bear little or no relevance to the needs, desires or emotional attachments of Africans, is a commonplace. The Ewe nation of West Africa fall between the Gold Coast and Togoland; the SomalI, between Kenya and Somaliland. Nigeria is said to contain groups which among them speak over two hundred different languages and dialects.

The challenge of ethnic and regional pluralism is not unique to Africa. The United States, the Soviet Union, India, Canada and Australia, among others, were and are faced by analogous problems. In Africa, however, the problem is complicated by the fact that regional pluralisms are overlaid by the dichotomy between the subsistence economy and its related culture laws and elites, and the export enclave with its associated, Westernized culture, laws and elites.

Why federalism? The reasons for the adoption of the federal schema in much of Africa does not appear to be the same as that which operated elsewhere in the world. As Wheare [Federal Government (4th ed. 1963) Ch. III] points out, in the developed federal countries, the federal solution was adopted and succeeded because three conditions were present: (1) the communities or states concerned desired to be under a single independent government; (2) they desired at the same time to maintain independent regional governments; and finally, (3) they had a capacity to operate the system. Factors which have historically urged a single independent government have been: A sense of military insecurity and of the consequent need for common defence; a desire to be independent of foreign powers, and a realization that only through federation could independence be secured; a hope of economic advantage through union; geographical neighbourhood; and similarity of political institutions. Factors promoting a desire to be separate for other purposes have been: A previous existence as distinct colonies or states; a consequent divergence of economic interests; great distances separated settled centers of population; a divergence of nationality; dissimilarity of social (including political) institutions. Capacity to make federalism work depends in large part upon the strength of both centrifugal and centripetal forces. Wheare identifies the most important centrifugal force as similarity of social, and especially political institutions; the most usual centripetal force, the previous existence of the component units as distinct governments.

Professor Friedrich, on the other hand, finds very different justifications for federalism. He states that the federal solution will be successful only as a limitation upon the power of the central government, necessary and desirable for the same reasons that he believes makes a Bill of Rights desirable - i.e., to protect the autonomy of

"A federalist agitation is characteristically an ethnocentric affair. Members of a community which happens to be geographically concentrated in particular regions call for the disaggregation of a unitary state because they have experienced, or fear they will experience, discrimination at the hands of more numerous or more advanced communities; they want to be sure of their fair shares of jobs in the public service, of schools, scholarships, and funds for economic development; they feel that their religion, their language, or their traditional ways of life will be eroded and submerged unless they are allowed a measure of self-determination." [at p. 286]

Hence he concludes that "Modern 'disaggregationist' movements in unitary states tend, therefore, to be fundamentally defensive and conservative in outlook, although they may often speak the language of liberalism," [at p. 287]. Nwabueze suggests that indeed the underlying reasons for federalism in Nigeria were precisely those suggested by de Smith.

The Functions of Federalism in Africa. In general, political opposition in Africa took on ethnic and regional coloration. In Ghana, the opposition became primarily an Ashanti particularist movement; in Nigeria, the entire political party structure was based on regional and ethnic appeals; in Kenya, the same phenomenon occurred; in Uganda, the traditional kingdoms of Buganda, Bunyoro, Toro and Ankole asserted equivalent demands. At the same time, however, the modernizing elites who bore the main burden of the drive for independence in general asserted the necessity for maintaining the largest possible political and economic units in the interests of national political and economic development.

The almost uniform response of British constitutional advisors to these claims was a federal solution, on the theory that only so could unity be maintained in the face of diversity. As Lloyd points out, however, these pluralistic divisions are not necessarily deeply rooted in Africa. They have been exacerbated by the competition for jobs and for political control, a condition which only came to pass in recent years and especially with the increasing urbanization of Africa. How well has federalism served its intended function? What latent consequences have occurred as well?

The latent functions of federalism appear to be at least two: The intensification of pluralistic tendencies, (in some cases) and the elevation of traditional elites to power. As the Nigerian history
makes clear, the very fact that politics were based on regional con-
siderations reinforced whatever pluralist tendencies existed. To a
great degree, federalism based on ethnic and regional pluralism thus
becomes a self-fulfilling prophecy.

The second latent function of federalism is to tend to strengthen
classical regimes against the claims for power by modernizing elites.
As de Smith points out,

"In Africa...federalist sentiment is more often than not another
name for tribalism; and generally speaking tribalism represents
(or is believed by the radical westernizers to represent) tradi-
tionalist conservatism, with its superstitions, its inertia and
complacency, its veneration of symbols that mean little to the
educated." [loc. cit. supra]

The most important consequence of these traditionalist attitudes is
allegiance to traditional authorities.

In the event, the federal solution tended everywhere in Africa to
strengthen chiefs and emirs. In Ashanti, the chiefs supported regional
authority against the center; in Northern Nigeria, the most important
function of federalism was to strengthen the grip of the emirs upon
governmental authority; and so in Uganda and in Kenya.

The Treatment of Traditional Authorities. As might be expected,
therefore, traditional authorities originally best maintained their
position in federally-organized states. In every case, this threw
them into sharp conflict with the modernizing elites. In every case
except Nigeria (where the issue is still in doubt), this conflict ended
with the overthrow of the chiefs in favour of the center -- Kenya, Uganda
and Ghana are examples. Tanzania for a variety of reasons, never had the
problem. In Malawi, as we have seen in an earlier chapter, the peculiar
political development there taking place has led to an alliance between
Dr. Banda and the chiefs. In Zambia, the matter is only just coming to
a head; as the statute reproduced below suggests, however, the central
government will effectively put the chiefs into a subordinate position.

Pluralism and Values. It seems self-evident that empirically the
federal solution to the problems of ethnic and regional pluralism has
failed in Africa. Far from resolving the tensions, it has exacerbated
them. Today there is no federation still existent in Africa; Nigeria,
the most grandiose of them all, remains locked in bitter struggle arising
from the very tensions which federalism was supposed to resolve.

What, then, is the solution for these tensions? To a large extent,
ethnic and regional pluralism in Africa is merely the form in which
horizontal pluralisms tend to express themselves. This is not novel to
Africa. McWhinney has said that:
"...while legal contests, in a federal society, will be between sovereign personalities so-called -- between member-states inters or between state and nation -- the actual conflicts which the legal processes may mask may really be between differing ethnic-cultural communities within the one nation which may or may not happen to correspond with the actual political boundaries of the states.....[This can be] observed in the United States, where the battle for desegregation in social life and the claims in particular for full racial integration in the grade schools reflect, really, a contest between two rather different 'ways of life' -- of the politically dominant white population in the Southern states on the one hand and of the national majority on the other. The preference for national values over local values, in such situations, must frankly be recognized as necessarily imposing sacrifice and deprivations on some groups while conferring benefits on other groups.....

"The problems of distribution and allocation of natural resources also benefit by being viewed in this broader civilization context,....Here, of course, we need to bear in mind Mr. Justice Jackson's warning and make sure that it is really a regionally based interest or claim that is involved, and not merely economic special interest groups masquerading under the legal cover of 'states' rights."  

[Comparative Federalism (1962) pp. 12 et seq.]

The underlying problem, therefore, is not merely to find a formula which can provide accommodation between groups which desire to cooperate in specific, limited areas. Rather, the problem posed by ethnic and regional pluralism is not significantly different from that posed by the challenge of development generally: How is it possible to resolve fundamental differences in values held by different groups and strata in Africa, and at the same time to move forward towards modernization?

Problem-solving of this nature can only be done by a highly secularized decision-making process, that can explore all the potential alternatives, the institutional and other constraints, the probable empirical consequences of each alternative, and determine the values involved. Whether such decision-making machinery exists in Africa we examined in a small way in the last several chapters. Absent such machinery, what is the possibility of a solution to pluralist tensions short of a trial by force?
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The ideologies of the Western-educated elite stress the unity of the newly independent states; conflicts within their boundaries between different classes or ethnic groups are denied, ignored or belittled. Yet, in their search for identity, members of the elite explore the past of their own societies, often creating myths of past greatness or idealized traditional values. In this process, stress is inevitably placed upon primordial attachments — those that arise from a sense of natural affinity, deriving from one's birth into a given family, religious community or language group, rather than from personal affections or common interests. In the modern state, national unity is usually maintained by routine allegiance to the civil power supplemented by ideological exhortation; a lifting of the primordial ties to the level of political supremacy is regarded as pathological. Yet in the modernizing states of Africa and Asia, these primordial attachments are repeatedly proposed as bases for political units, with arguments that legitimize authority, acceptable to the masses, flows only from the inherent coerciveness of such attachments. In West Africa, such political units are almost invariably smaller than the present independent states, and proposals for their creation constitute separatist and fragmenting tendencies.

In the years following the first definite moves towards independence, 'tribalism' appears to have increased in West Africa. Furthermore, it has come to be regarded as one of the major social ills of the new states, one against which politicians continually inveigh. It is used as a term of abuse — as might 'bourgeois', 'capitalist', or 'communist' be used in other parts of the world. Yet the term is vague, and its current usage embodies a number of separate concepts. One may describe a man as a 'tribalist' if he adheres to the norms of his traditional society where — as in the modern town — these tend to be inappropriate. Thus a man who uses his influence to secure a job for a close kinsman is accused of nepotism by those who assert the supremacy of bureaucratic values. Or, again, one may use the term tribalist to describe the man who does adopt his behaviour to modern situations yet retains an allegiance to chiefs and elders in his rural home. Tribalism is perhaps most commonly used, however, to connote loyalty to an ethnic group (or tribe) which parallels or transcends loyalty to the new state. The term 'ethnicity' is frequently used here by sociologists, though it has yet to find its way into colloquial usage in the English-speaking states.

As has been shown, cultural differences between neighbouring West African peoples are often very considerable. Thus between the Yoruba and Edo languages, the similarities are as slight as between English and Russian. From Dakar to Lake Chad the range in types of social system, dress, diet, and language, far exceeds that to be found between Ireland and the Urals. Nor have events in the twentieth century diminished these differences. The indigenous languages are still spoken by almost the entire West African population; many of them are taught in primary school. Styles of life have not, for the majority of people, altered to such a degree as to produce appreciably greater uniformity. Even in those areas where the export of cocoa, coffee or groundnuts has brought rapidly increasing cash incomes, a large proportion of the farmers still live in their traditional compounds in the villages of their ancestors. In few areas are there large groups of strangers owing no loyalties to local elders or chiefs. Men usually choose their wives from settlements within a very few miles radius from their own, and almost invariably from their own ethnic group. The stranger who settles permanently in a rural area still tends to adopt the culture of the host group; the temporary migrant maintains his ties with his own people. In West Africa's rural areas, primordial attachments remain as strong as ever.

It is in the towns that one might expect a weakening of these ties. Yet, as has already been indicated, this is not always so. Most residents of the modern urban areas are recent immigrants, men and women who were born and grew up to adolescence in the...
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rural villages; only a minority of the present adult population is urban-born. The immigrant usually claims that he intends to return to his home village in his old age, if not earlier; and he maintains close contacts with those at home, so ensuring that his rights to land and to political status do not lapse through his presumed renunciation of his group. Such links are reinforced by the ethnic associations.

Nevertheless, it is in the modern towns that the people of diverse ethnic groups come together. In few cases are the members of any single group residentially segregated; the Hausa are, here, an exception. In fact, one frequently finds considerable ethnic mixing in tenement buildings, with members of different groups sharing washing or cooking facilities. Yet despite the numerous inter-ethnic contacts, the social life of the urban immigrant, and especially of the unskilled worker, tends to be shared with members of his own ethnic group. English and French may each be a lingua franca, but neither provides the basis for intimate relationships. Again, marriage tends to be within the ethnic group, and even townspeople choose their spouses from their own or neighbouring home villages. Only among the best-educated does the number of mixed marriages become appreciable. And so even in the towns it is unusual to find a man who is not closely identified with an ethnic group, and very rare to find one who identifies only with the modern state.

Stereotypes of neighbouring peoples have always existed; but in the past a villager rarely saw men and women from places more than a few miles distant. Ethnic mixing is a contemporary phenomenon. In the towns the new immigrant is unfamiliar with the urban roles expected both of himself and of others. Only slowly does he learn to categorize people by their wealth or occupation. In the transitional period, ethnic categorization is the one which most readily comes to him. Hence it is not surprising that competition for jobs and the frustrations of failure tend to be seen in ethnic terms, with the resulting tensions merely increasing the tendency to categorize individuals primarily by ethnic criteria. Tribalism is thus to a large extent an urban phenomenon, and one which develops with increasing modernization of the economy.

Ethnic nationalism

The early intellectuals of West Africa usually traced the origin of their peoples and cultures from civilizations of prestige in the Middle East. In so doing, they asserted, perhaps only implicitly, the equality of their own cultures with those of the Western world, and Biblical legends of the dispersion of the sons of Noah lent credence to their hypotheses. Thus, for instance, the religion of the Yoruba people has been shown by one author to have extraordinarily close affinities with that of Egypt in the second millennium B.C. Alternatively, the Yoruba are said to have originated in the Nile kingdom of Meroe. Others again would derive West African peoples from the Hebrews. The arguments for such origins are drawn variously from rather literal interpretations of myths current in West African kingdoms (and influenced, in many cases, by a general Islamic mythology); from the specious equation of modern African names for places, peoples and deities, with those of the supposed ancestral cultures; and from parallels drawn between the social structures and traits of present and past cultures — similarities which, in most cases, are expressed in terms so general as to be applicable to tribal peoples in any part of the world. Later intellectuals tended to look for the origins of contemporary culture not in the non-Negro civilizations but in the medieval kingdoms of the western Sudan, ruled by Negroes and thus inferring a purely Negro origin of African culture. Cheik Anta Diop has, indeed, gone so far as to postulate that Egyptian civilization was largely of Negro origin, so that the Western world is thus indirectly the cultural heir of Negro Africa.

These hypotheses, formulated on the most meagre evidence, have found little support from recent research. Whilst it is, indeed, likely that cultural influences both from the Nile valley and from the medieval kingdoms of the western Sudan (and through them from North Africa and the Mediterranean shores) did reach the forest areas of the Guinea coast, linguistic and archaeological evidence suggests long settlement of these areas. But whilst current African scholarship is recognizing the importance of recent findings, the tendency remains among historians to see
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Each ethnic group as possessing its own peculiar origin, as developing over the centuries its own culture, and retaining to a substantial degree its biological purity. Thus some scholars portray the ancestors of their own ethnic group as a small band of migrants who travelled from the east; others see the ethnic groups of West Africa linked genealogically one with another. It is rarely suggested by these men that West African societies, as we know them today, have developed over the centuries as the result of successive population contacts. The arguments of anthropologists favouring a gradual evolutionary development and postulating a most complex pattern of interaction among peoples and cultures, do not find wide popular support.

The intellectuals among the elite have been responsible not only for stressing the exclusiveness of each ethnic group but for creating, in many cases, cohesive groups much larger than those that existed in the pre-colonial era. Thus the term Yoruba was formerly used only of the kingdom of Oyo; no single term seems to have existed to describe the diversely structured kingdoms whose peoples spoke closely related dialects and whose rulers claimed common descent from the mythical Oduduwa. Individual loyalties were directed to one's own kingdom, and members of other kingdoms were seen as foreigners. But the early C.M.S. missionaries used the term Yoruba to embrace all these related peoples, and the usage has won almost universal acceptance. Schools have taught a standardized dialect which is quickly superseding local variations. The Yoruba dress adopted by the elite has a range of styles, but differences between the kingdoms are no longer apparent. The search for 'the origin of the Yoruba people' tends to take priority over the histories of the individual kingdoms. In the past, it is probable that kingdoms on the margins of Yoruba country felt a closer affinity with their non-Yoruba neighbours than with other Yoruba-speaking groups two hundred miles away. But the development of a Yoruba consciousness creates not only greater internal cohesion but much more starkly defined cultural boundaries with neighbouring ethnic groups.

A similar process has occurred within other ethnic groups. Thus throughout much of West Africa individuals have been drawn into modern society and into membership of new states,

whilst continuing to proclaim the uniqueness of their own ethnic groups. The distinctions between pride in one's own group and claims of its superiority become difficult to draw.

None experience the competition of loyalties to state and ethnic group so much as do the educated elite. They are a national elite, identified with the state and its government. Yet they are also largely responsible for the development of ethnic nationalism in their respective groups. Many, indeed, still prefer to identify primarily with their ethnic group rather than with the state. In Nigerian hotel registers, one often finds 'Ibo', 'Yoruba', or 'Hausa', in the column headed 'Nationality'. As we have already seen, the educated man is expected to be active in the affairs of his home town, using his ability and influence in its attempts to achieve social and economic development. But if he is a highly placed civil servant, for instance, others will accuse him of using his office to gain favoured treatment for his town.

Fears of domination

Colonial governments stood apart from African society, ruling arbitrarily and relatively impartially. Each community and ethnic group was equal in its subordination to the alien power. Now independence has granted to West Africans not only a direct participation in government, but also participation in governments which wield greater powers and control larger resources than did the colonial instruments which they replaced. Popular interest in the government of the new states thus runs at a high level; and for many, 'self-government' implies defining the relationship between one's own community or ethnic group and the new locus of power. One of the facets of ethnic nationalism is the claim for equality with other groups. Yet modern political constitutions may be used as the most potent agents of domination.

Competition for power between ethnic groups is usually recorded at the national level; yet identical processes are at work within the smallest communities. A local government ward may consist of two villages, one of which is larger than the other, and each will probably put forward one of its own members as a candidate. Every voter will feel a primary loyalty to the candidate
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of his own village (though other factors may complicate the situation), and so the larger village will see its representative elected. Everyone will subsequently expect that the new councillor will not only seek to secure the maximum benefits for his own ward, but that his own village will be especially favoured; the new school and well will be close to his own village, and his kin will be preferred in the granting of licences. If he fails to fulfil the expectations of his electorate, another candidate will replace him at the next election. In the ethnically heterogeneous modern town, it is feared that licences for market stalls will be granted only to members of that ethnic group which dominates the town council.

Fears at a national level merely replicate those at local levels. Each member of a legislative assembly is expected to win favoured treatment for his own constituency — if not always for his own section within it (although one does hear of newly tarred roads which stop at the house of the minister responsible for such works). A cabinet in which one ethnic group is dominant is thought to expedite the social and economic development of that group at the expense of others. Members of minority groups feel that they can never be better than second-class citizens; they cannot alter their ethnic status, but they may seek a greater share of power by joining the political party associated with the dominant ethnic group and so facilitate a general tendency towards one-party government.

In the past, the villager probably felt that men living more than ten miles from his own home were strangers, while those living more than thirty miles away were foreigners. His loyalties lay to relatively small political groupings. The ethnic groups recognized today are not only varied in size but in some cases very large indeed — the ten million Yoruba, for instance, or the ten million Ibo. The degree of inter-ethnic hostility arising from fears of political domination is dependent upon the relative sizes of the groups. In one state, the ethnic groups may be so small that none can assert a dominant role; nor perhaps are permanent coalitions between culturally related ethnic groups likely to develop. Here ethnic hostilities are likely to be minimal. In other states, however, one ethnic group may be dominant. Nigeria provides a triple example, for in each of the three regions originally created, one ethnic group constituted a majority of the population — the Yoruba in the West, the Ibo in the East, the Hausa and the population of the emirates in the North. The ethnic minority areas claimed that they were discriminated against. Often with reason, they felt that legislation on matters relating to personal status or land tenure was drafted to accord with the social structure of the dominant group. They feared a loss of their cultural identities. Yet the minority ethnic groups rarely achieved unity in demands for a separate region, since among themselves they were similarly divided. Within Nigeria's Western Region, the non-Yoruba comprised Edo-speaking groups, Ibo and Ijoh. The traditional rulers of Benin saw in the proposed Mid-West State a revival of the Benin empire, and this was resented by Edo-speaking peoples who no longer paid allegiance to the oka of Benin. Others feared the dominance of the achievement-oriented Ibo. The Ijoh wanted to join other members of their ethnic group in Eastern Nigeria, or hoped to form with them a separate Delta State. The eventual creation of the Mid-West State was due to a number of factors, of which local demands were but one.

Fears of ethnic domination are most widely reported in the political sphere. But they may be found, of course, in any power structure — in trade unions, in student associations, or in religious synods — where those holding high office are felt to be in a position to discriminate in favour of members of their own ethnic group. That they would so discriminate is probably presumed until other loyalties, not based upon primordial attachments, take obvious precedence.

Competition for employment

The modern West African towns are ethnically heterogeneous. And with the expansion of primary and secondary schools, an ever increasing flow of literate immigrants moves townwards. These youths not only seek work but often have, as least at the outset, an unrealistic knowledge of the employment market and of the type of work currently correlated with specific levels of education. Many primary school leavers still expect to enter a clerical career, as did their elder brothers and cousins a decade or
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two earlier; in fact, in areas such as southern Nigeria or Ghana, they may find difficulty in being hired as unskilled labour. The ensuing frustrations are liable to be attributed to tribalism.

There is no sound evidence that members of one West African ethnic group are inherently more apt in either academic or mechanical skills than any other. Some people with the most rudimentary indigenous technology have with training made surprisingly good artisans. University examination results do not show that one ethnic group produces better scientists, whilst another provides the more brilliant arts graduates. Any irregularities in the distribution of talent can usually be attributed to the different quality of secondary schools and to the vagaries of the selection processes. On the other hand, some parts of West Africa — in general, the coastal areas — have enjoyed Western education for a much longer period than others; and the tendency has been for these parts to maintain their earlier advantages, so that at the present time they produce more secondary-school- and university-educated persons in proportion to their total population. They may even appear to dominate certain fields of employment.

If differences in innate skill are difficult to specify differences in attitudes towards achievement certainly seem to be more apparent. Members of certain ethnic groups appear more aggressive in their desire to make good. Some people seem less reluctant to start right at the bottom; some shun manual labour, maintaining in this a traditional attitude of superiority over neighbouring peoples; others do not mind dirty work when the rewards seem promising. Such qualities usually dominate the stereotypes held of neighbouring peoples. It is believed, furthermore, that in the town every man has an obligation to find work for others from his own village, and these obligations are expressed through the ethnic associations which provide a focus for primordial loyalties. The image is thus created of the chief clerk or foreman who endeavours to establish an ethnic "closed shop" among his own subordinates — an endeavour which fails to succeed only to the extent that the higher officials insist rigidly on ability and education as criteria for appointment and promotion.

Ethnic rivalries are not confined to the less skilled among the urban people, those one might expect to find more attached to primordial sentiments. They may be equally strong among the most highly educated. As has already been observed, the rapid rates of promotion in the expanding civil services have created extremely intense competition. Many men have been appointed to posts for which, by generally accepted Western standards, they were inadequately qualified. Some have owed their good fortune to the lack of more suitable candidates; others, to policies of Africanization which have eliminated better qualified but expatriate rivals. One’s failure is easiest to bear when the successful man is obviously fit for the office; it leads to bitter resentment when the mediocre are rewarded.

Failure can, however, be rationalized as the effect of nepotism and tribalism. It is rarely difficult to find one or two members of the board making the appointment who belong to the same ethnic group as the successful applicant and who may even have some tenuous ties of kinship with him. Their willingness to place ethnic loyalties above other criteria is held responsible for the outcome of the contest. Such arguments are used by the disappointed, indeed, even when the successful candidate seems to have been chosen on his merits. They find even greater scope in processes, such as the award of scholarships, which are inevitably somewhat haphazard, owing to the difficulties in finding valid measures of ability. The appointment committees are probably less partial towards their kin and ethnic groups than is commonly presumed. But it is the common presumptions which encourage men to improve their chances of appointment or promotion by seeking the aid of influential members of their own ethnic groups. A decade or more ago it seems probable that, at least in southern Nigeria, men personally manipulated their relationships within elite associations to seek advancement. Today, they are more likely to urge the senior members of their own ethnic group to press their claims, so that the group does not fall behind others in the general competition for elite status and a better livelihood.

Competition of this type seems most bitter when two ethnic groups are equally large and have similar levels of education. Such is the case with the Ibo and Yoruba of Nigeria. And rivalry is
exacerbated by the different personality type of the two peoples, together with the fact that the Ibo were later in developing their educational system and feel a need to catch up with the Yoruba. In recent years the public corporations and some of the universities have been riven with inter-ethnic hostilities to the extent that these have become major political issues.

In the modern towns, the ethnic protagonists are usually on neutral ground; all are equally strangers. Nevertheless, situations do occur where the more favoured types of employment are held by recent immigrants, whilst the locally resident population is left with the menial tasks; differences in educational level are, in most cases, responsible. The outcome of the tensions generated, however, may be serious ethnic rioting.

Thus, the prohibition of Christian missionary work in the Muslim emirates of Northern Nigeria has resulted in their scholastic backwardness. Clerical workers and artisans from the southern Regions fill posts not only in the government service and expatriate commercial firms, but even in the native authorities. In 1945, nearly one-half of the employees in Zaria’s Public Works Department were southerners. The Hausa feared, with some justification, the control exercised by the southern immigrants over all the strategic sectors of the North’s modern economy, and the more insistent demands for self-government by the politicians of the southern Regions raised the possibility that southerners would effectively control the new Federal government structure, in spite of the Northern Region’s allocation of half the seats in the House of Representatives. Thus, when the southern political parties campaigned at Kano in 1953 for immediate independence, riots were triggered off which resulted in thirty-six deaths and 240 wounded.

Riots at Abidjan in 1958 seem to have been inspired by minor clerical workers who were frustrated following the end of a boom in employment opportunities. Their own targets were the Dahomeyan and Togolese clerks. For literates from these countries, with more advanced primary schooling than was available in most parts of the French West African empire, had migrated from their own economically more backward areas to the capitals of the other territories. On subsequently returning home, they constituted a dissatisfied group, a further source there of political instability.

Political exploitation

The political leaders of the newly independent states must arouse sentiments of national unity and loyalty, in their attempts to establish for the masses the legitimacy of their rule. To the extent that party leaders seek to mobilize the masses, using the single party to socialize new values and stressing the absence both of class and ethnic conflicts in the allegedly homogeneous society, ethnic loyalties are repressed and their manifestations discouraged. But most politicians have, at some time or another, attempted to manipulate ethnic loyalties in order to increase their popular support.

It is, in fact, difficult for leaders to claim an aura of traditional legitimacy without arousing ethnic loyalties and fears. When Modibo Keita asserts his descent from the early rulers of the empire of Mali, or Sékou Touré exploits the resistance of his ancestor Samory to French colonization, the peoples subject to these past rulers are not likely to be impressed. In employing traditional symbols of dress or political ceremony, it is difficult to avoid an identification with a specific ethnic group. The adoption of the name Ghana, for the former Gold Coast, was in some respects a stroke of genius, for it identified the new nation not with any ethnic group inside its boundaries but with an empire far distant in the past. Similarly, in replacing the English symbols and ceremonials of parliament with those of Ghana, an attempt was successfully made to incorporate motifs from all parts of the country; the dominance of Akan themes reflected the numerical superiority of this group in the state. It would be a far harder task to design Nigerian symbols which incorporated motifs from the cultures of the Hausa, Ibo and Yoruba.

When parliamentary constituencies elect influential local men to the legislatures, it is tempting for the government to reward such supporters not only with social services but with ministerial office. The result is that a very high proportion of the members of the dominant party tend to hold such office, and parliament
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tends to be an expensive institution. Rivalry between ethnic groups is manifested in the demands that one of their own members should be among the occupants of the most powerful offices. And the impression is thus further enhanced that members of parliament represent the interests of ethnic groups and localities before all others. In Treichville, the major African suburb of Abidjan, branches of the Parti Démocratique de la Côte d'Ivoire are reported to be ethnically based, emphasizing primordial ties in those areas where one would most expect occupational interests to be dominant. The deliberate fostering of ethnic loyalties probably contributes to the absence of organizations based upon other criteria of recruitment.

Ethnic resentments provide, of course, a ready weapon for the politician unsure of his majority. In some cases he may advance the claims of the dominant group in his constituency, hoping to win its entire vote. In others he may whip up feelings of antagonism against outsiders, in order to resolve or obscure divisions within his own constituency.

In the Gold Coast, the rapidly declining party of the older Western-educated elite, led by men like Dr Danquah, seized upon the dissatisfaction in Ashanti for a last bid for power. The Ashanti complained that too much of the country's revenue, gained from their cocoa crops, was being spent in Accra; and that the status of traditional chiefs was being undermined. The National Liberation Movement accordingly sought a more federal type of constitution, which would not only grant greater local autonomy, but also weaken the nationally organized C.P.P. In Northern Nigeria when, in 1959, the Action Group campaigned in the Hausa areas on the issue of class, attempting to rouse the commoners against the Fulani aristocracy, N.P.C. propaganda stressed in reply that a vote for a southern party would lead to southern dominance and the quick elimination of Hausa and Islamic culture.

The rift in the Action Group in Western Nigeria between Akintola and Awolowo culminated in the reinstatement of the first as Regional Premier by the Federal Government and in the gaoling of the second with several supporters, on charges of treason. The Yoruba remained divided in their loyalties to these two leaders, and it seems certain that Akintola never enjoyed the support of the majority. Soon after Awolowo's trial, the opposing factions tried to rally Yoruba unity behind a new culture hero, substituting Olofin for Oodua, who was associated with the Egbe Omo Oodua, the Pan-Yoruba cultural movement that Awolowo had founded. But this ploy met with little success. Then, at the first regional election held after Akintola's triumph, the propaganda of his party emphasized the need for Yoruba unity.

Some cartoons showed an Ibo and a Hausa dipping into a full bowl of soup, with a Yoruba man on the floor picking up the falling scraps. (The implication being that until Akintola's party, supreme in the Western Region, entered the Federal coalition, the Yoruba would be discriminated against in the allocation of services and in the location of new industry. Awolowo's desire to convert the Action Group into a national party, whilst Akintola favoured the development of Regional parties, each supreme in its own area, was one of the causes of their disagreement.) Other cartoons were bitterly anti-Ibo, implying that most Yoruba ills might be attributed to exploitation by Ibo traders and lorry owners - a situation which equally called for greater Yoruba unity behind their incumbent rulers.

The consequences of tribalism

Those who on some occasions use tribalism as an epithet of abuse, at others stress the positive value of ethnic loyalty. The term embraces a variety of meanings, according to different aspects or theories of modernization process.

Ethnic loyalties provide for West African peoples a sense of identity, of the values of their own cultures, which balance the feelings of inferiority that derive from the continual borrowing of Western technology and the acceptance of Western styles of living. Allegiances have been developed to ethnic units far larger than existed in the pre-colonial era. Many associations based upon these and smaller units, the para-political elite cultural associations or the urban ethnic associations, are modern in purpose and structure and are conducive in less direct ways to the acceptance of new norms and values within an apparently
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traditional framework. Much of the enthusiasm in the building of new schools, indeed, has derived not so much from appreciating those values of modern society that stress education, as from a rivalry between neighbouring villages or ethnic groups in which neither wishes to appear the more backward. When the incumbent of a modern office is criticized in terms of his ethnic origin, the new role of the office is tacitly accepted; were attacks upon the failings of the modern sector to be directed against its structure rather than the individual traits of its personnel, the survival of the new state would be seriously jeopardized.

Yet these positive contributions may be balanced by others, apparently inimical to modernization. The large ethnic units are united by cultural features which are also what distinguish them sharply from neighbouring groups. The factors which have united the various Yoruba-speaking peoples cannot, at a higher level, unite them with the Ibo. The particular segmentary structure of Ibo society, which has engendered such strong sentiments of cohesion, cannot be replicated at a level which would unite all Nigerian peoples. Ethnic exclusiveness provides a ready basis for political separatist movements. The supremacy of ethnic loyalties may be convenient to ruling groups who fear opposition from the underprivileged, for they may exploit these divisive factors. Progressive movements may accordingly be weakened. Furthermore, it becomes difficult to stress ethnic loyalties without implying acceptance of tribal values like nepotism. The efficiency of any modern organization is likely to be impaired if appointments are made on the basis of ethnic allegiance rather than ability. In many cases the reduction in efficiency may be slight; but the apparent disregard of bureaucratic values by those in power leads many educated men and women to view their supporters with cynical contempt. Ethnic rivalries may produce schools and the like, but enthusiasm can overreach itself, and the development of such social services may injure the total economic effort. A new manufacturing plant of marginal economic viability is severely handicapped when its location is determined by ethnic considerations rather than industrial ones. It is to obviate these destructive features of tribalism whilst retaining some of the beneficial aspects that...
2. LAW AND SOCIETY: NATIONAL AND LOCAL (STATE) CIVILIZATION-AREAS

As a partial application of the foregoing point, it is to be noted that while the legal contests, in a federal society, will be between sovereign personalities so called—between member-states *inter se* or between state and nation—the actual conflicts which the legal processes mask may really be between differing ethnic-cultural communities within the one nation which may or may not happen to correspond with the actual political boundaries of the states as determined under the constitution or dependent arrangements. Thus in the case of the Canadian federal system, French-Canadian jurists often assert that the constitution was, historically, a compact or treaty between the two main races, French and English, in Canada and that it should be treated on that basis today. On this view, the centre of French-Canadian culture—the predominantly French-descended, Roman Catholic province (state) of Quebec—is not merely one province equipped with no more and no less powers than the other nine (predominantly English-derived, Protestant) provinces, in relation to the national government in Ottawa, but a special sovereign entity in its own right, to be accepted as being on an equal footing with the national authority. Certainly, if we look to the special position historically accorded to the Roman Catholic Church\(^2\) and to the civil law of the province of Quebec\(^3\) under the general Canadian constitutional arrangements, the claims of French Canada to some special treatment

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\(^2\)See, for example, the Canadian Constitution (British North America Act, 1867; 30-31 Vict. c. 3), s. 93. The rights and privileges of the Roman Catholic Church itself and the free practice of the Roman Catholic faith had been effectively guaranteed much earlier than this in a series of legal measures—the Capitulations of Quebec of 1759 and of Montreal of 1760, the Treaty of Paris of 1763, and, above all, the Quebec Act of 1774.

\(^3\)The civil law system of the province of Quebec, based essentially on the old Coutume de Paris as applied to New France in 1663 by Ordinance of Louis XIV, was formally codified in 1866. See Baudouin, *Le Droit Civil de la Province de Quebec* (1953), p. 51. See also Canadian Jurisprudence: The Civil Law and Common Law in Canada, ed. McWhinney (1958).
under the constitution, and also French Canada's rejection, in particular, of the English-Canadian conception of a federation of ten provinces of mathematically equal powers, seem not completely lacking in foundation. In fact many of the Canadian constitutional causes célèbres of recent years, in the civil liberties arena, reflect this dual sovereignty contest, for these cases are really products of the differences in the two main civilization-areas. Thus, in situations involving conflicts of interests in free speech on the one hand and interests in public order on the other—for example, the attempt at executive-legislative control of the Communist Party or at regulation of the mode and manner of the religious proselytizing activities of the Jehovah's Witnesses—it is quickly apparent that French Canada and English Canada would tend to strike the balance of the competing groups of interests in rather different ways. The resolution of these problems in a federal society like Canada requires, therefore, a choice between the values of different civilizations, and ultimately the decision whether the nation as a whole rather than the local cultural community concerned is to be taken as the appropriate space dimension for resolution of the value conflict.

A similar situation can be observed in the United States, where the battle over desegregation in social life and the claims in particular for full racial integration in the grade schools reflect, really, a contest between two rather different "ways of life"—of the politically dominant white population in the Southern states on the one hand and of the national majority on the other. The preference for national values over local values, in such situations, must frankly be recognized as necessarily imposing sacrifice and deprivations on some groups while conferring benefits on other groups. The particular American resolution of the problem of race relations in education, represented by the epoch-making Supreme Court decision of 1954, is an attempt at once to establish the national values as the appropriate jural postulates for solution of the problem, in the long range, while at the same time seeking to make an ally of time and, by staggering the concrete application of the decision in the various states, to try eventually to make local values accord with the national values. In any case I think it is clear that the immense ramifications of the problem and the practical difficulties attending any effective long-range solution are more adequately perceived when the problem is viewed in terms of the conflict of civilization-areas rather than—more narrowly, and in the terms in which the legal cases themselves tend formally to arise—as contests between one local school board or another and individual students and their parents.

The problems of distribution and allocation of natural resources also benefit by being viewed in this broader civilization context, for here large areas of a federal country—extending over a number of state or provincial boundaries—may have problems and difficulties in common, for example the water user and control problems of the western states in both the United States and Canada; the Tidelands Oil claims of the Gulf of Mexico littoral states and of California in the United States; the depressed economic condition of the Atlantic "Maritime" provinces in Canada. Here, of course, we need to bear in mind Mr. Justice Jackson's warning and make sure that it is really a regionally based interest or claim that is involved, and not merely economic special interest groups masquerading under the legal cover of "states' rights."
needs to be understood, as is now increasingly the case, not only as a pattern or design for dividing powers between two levels of government but also as a process of federalizing, that is to say, an ongoing evolution towards either greater unity or greater diversity. But whatever the approach, whether static or dynamic, federalism presupposes constitutionalism. Only where the notion of autonomous spheres for individual and group is understood and believed in, where therefore the notion of restraints upon governmental action for the purpose of protecting such spheres is grasped and affirmed, can federalism be durable. The hope that one can employ it merely as a gadget, a mechanism for resolving group antagonism and conflict, as in Nigeria and elsewhere, is doomed at the outset. The history of Switzerland is a striking instance of where the moorings of federalizing procedure as an ongoing process must be sought. As a recent analyst has poignantly remarked: "A peasant from Appenzell, a socialist worker from Berne and an anglophile banker from Geneva . . . do not have much to say to each other, but they know that they are attached to the same political institutions, to the same common rules arranged so as to allow them to remain different . . . But the three know that they are Swiss, not because of some common quality, either natural or cultural, but because they are placed in the same ensemble which is called Switzerland which they approve. If one has understood that, he has understood federalism." It is clear that such an attitude of tolerance for divergence and indeed contrast presupposes a belief in the dignity and hence the convictional autonomy of every man, a belief which rests upon a submerged, even hidden religious faith.
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Uganda is to get her Independence on October 9, if all goes according to plan. Negotiations on the new constitution have been arduous and protracted. A number of local committees have debated the subject; two Royal Commissions have visited the country and made reports; and there have been two major constitutional conferences in London—one in October 1961 and the second in June 1962. Acrimonious debates have taken place in the councils of some of the traditional kingdoms of Uganda. One election to the new National Assembly was boycotted by an ethnic group reluctant to be incorporated in a unitary state of Uganda (1961). There have been sporadic outbursts of local disorder and house burning. As late as June of this year it seemed impossible to reach an acceptable compromise on the main issues.

The first and the most important of these controversial issues was the relationship between the newly constituted central government and the four Bantu kingdoms which make up south Uganda. This relationship was particularly difficult in the case of Buganda which has enjoyed a special position in virtue of the Agreement which its representatives signed with the British government in 1900. The second, less fundamental, issue turned out to be equally intractable at the recent constitutional conference. It was the settlement of a long-standing boundary dispute between two of the kingdoms—Buganda and Bunyoro. The last Conference narrowly avoided a complete deadlock and the Agreement, finally signed, registers the dissent of both Buganda and Bunyoro to the solution proposed for the boundary dispute. The new constitution is obviously based on a very precarious balance of interests.

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"Formulae" for Independence

Politicians and journalists are beginning to write as though the granting of Independence had almost become a science—as though we could enunciate specific formulae by which metropolitan powers could achieve the results that they and the rest of the world want to see. The powers handing over authority to African states naturally want, first and foremost, a peaceful transfer of authority from European to African hands without rioting, the murder of Europeans, bitter faction fights, or moves towards separatism. Secondly, they hope for the maintenance and development of economic enterprises and of the social services they have set up; and thirdly, the survival of the type of government which they have introduced and which they describe as "democratic." By analysing the results of previous experiments in the transfer of authority African experts are beginning to become didactic—to predict, for instance, that an emergent state will succeed, according to the three criteria I have suggested above, if it has had x years of experience of participation in a central legislature; y years since the establishment of a genuine civil service with Africans holding posts at the senior level, if not the top positions, which have naturally been held by ex-patriates; or z years since the appearance of national rather than regional political parties. The numbers of university graduates available in the new state and able to fill senior government and professional posts have been estimated as one of the important conditions of success as well as the strength and training of the local police and army. The existence of urban populations free from tribal affiliations and therefore more able to take a national rather than a regional point of view has been noted as another significant factor making for the success or failure of the new state.

The Conditions for Successful Decolonisation

In other words, political and other social scientists are turning their attention to a fascinating and virtually new problem of applied
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political science—that is to say, to the conditions in which a Western-type central government with a national civil service and a national party system can successfully exert authority over the variety of political sub-structures or tribal groups which go to make up the average African state. This science has a new name. A conference which is to meet in Paris partly will be devoted to the study of “decolonisation.” Nevertheless, it must be admitted that though we are beginning to know more and more about the conditions which make for a successful transfer of authority from European to African governments, yet in the recent hurry and flurry of constitution-making these conditions, important as they are, have never been the decisive factors in the timing of the grant of Independence. No territory, however small or backward, has agreed to wait for its independence till it has, for instance, enough trained civil servants or professional experts or until it has had the required amount of experience in the working of a central government. In Africa, as well as in Malaya and in other parts of the world, the crux of each new Agreement has been the establishment of some possible balance between the interests of different ethnic groups either European, Asian, and African, as in Central Africa; or in West Africa, the Congo and Uganda between different African tribal groups with their own institutions and political structure and their intense rivalries. Cultural heterogeneity is a characteristic of colonial régimes.

Uganda is a case in point. It has a number of quite competent civil servants and traditions of executive authority, in its southern kingdoms at any rate. A large proportion of the undergraduates trained at Makerere, for many years the University College of East Africa, are citizens of Uganda and available for service. The problem facing this territory is precisely this difficulty of cultural heterogeneity. Uganda has a small European minority (10,866 in a total estimated population of 6,522,128) and very few of these immigrants are “settled” in the Kenya sense of the term. There is here no problem of the pied-noir or even of the “poor white.” There is also a sizeable group of settled Asians (69,103) though this is a smaller proportion of the population than in the case of Kenya or Tanganyika. The difficulty in framing the constitution for a unitary Uganda has been the planning of the relation between its different African peoples and the new central government. The problem of Uganda is in fact the problem of the country with a

single advanced enclave which refuses to be treated as a province of the new state on a level with the other provinces which are to constitute the newly “Independent” territory.

Buganda: An Advanced Enclave

The advanced enclave is, of course, Buganda. This traditional kingdom with a population estimated at three million according to the last census, is the wealthiest and most progressive province of Uganda. It has the richest soil in the territory and the most satisfactory rainfall. The plantain, the staple food of Buganda and of south Uganda in general, requires little labour for its production and it is a more or less permanent crop which made possible the growth of settled village populations at a time when other East African tribes were practising shifting cultivation or nomadic pastoralism. Cotton introduced by the British Government in 1905 gave a higher yield in the fertile basin of Lake Victoria than in the open grasslands to the north, where the staple crop is millet. Buganda had also established a large and growing empire by the end of the nineteenth century with one of the most centralised governments yet described in the African continent. Tribal rule was more centralised, for instance, than among the Ashanti with whom the Buganda have often been compared; it is perhaps more like that of the monarchy of Dahomey. This government was centred in the person of a sovereign, the Kabaka, who was not only the symbol of tribal unity and its military success, but also the head of a hierarchy of executive officials at the central and district levels whom he appointed at his pleasure. The monarchy was associated with a single capital—the only large conglomeration of people in the country, and in this capital lived a large retinue of court officials, guards, executioners, and tax collectors. The king also had a small standing army equipped with muskets introduced by Arab traders in the middle of the nineteenenth century as well as a local militia. The neighbouring kingdoms, Bunyoro, Ankole, and Toro, whose leaders have taken a prominent part in the recent London conference, were smaller and less wealthy. They had not reached the same level of political efficiency or centralised control.

Buganda was sooner in contact with Arabs than other parts of the country owing to its position on the northern shore of Lake Victoria. It has also been longer under the influence of European


5 The 1959 census gives the following figures: Buganda, 1,833,744; Bunyoro 126,875; Toro 347,451; Ankole 529,715.
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its neighbours. In 1953 Sir Andrew Cohen—Governor from 1952-57—transferred control over a number of social services from the Protectorate to the Buganda government. The heads of these local services were entitled the “Ministers” of education, health, and natural resources respectively. (Buganda already had a prime minister, and ministers of finance and justice, according to the 1900 Agreement.) In 1955 the Buganda government secured complete control over local civil service appointments, that is to say over the work of the “chiefs” at the county, sub-county, and parish level. The office of Resident remained, to the irritation of the Baganda, but it was agreed that the European Assistant Residents were no longer to tour the districts on visits of inspection. Self-government in Buganda was virtually complete. This devolution of authority did not occur to anything like the same extent among the lesser kingdoms or among the segmental tribes without hereditary monarchies which inhabit the rest of Uganda.

A Unitary State

The more prominent the position given to Buganda the less its luukiko, or central council, liked the idea of inclusion in a unitary Uganda on conditions of equality with the other provinces of the Protectorate, and it was only to a unitary state that the British were, and are, prepared to grant Independence. Because Buganda knew herself to be wealthier than her neighbours she felt, and still feels, able to “go it alone” with her three million inhabitants. Politicians and vernacular newspaper editors demand from time to time why the Baganda should have “to clothe the naked savages” to their north-eastern border and claim that Buganda with its large population should keep its own poll tax and not “give it away to others.” The economic preponderance of Buganda depends, of course, on the greater fertility of its soil and the greater investment of capital in businesses round the rail-head at Kampala. It is a preponderance which may well diminish when the post-war plans for the diversification of industry in Uganda have begun to bear fruit. The great Owen Falls hydro-electric scheme opened in 1954 is in Busoga, for instance, and the Kilember mines, now supplied with railway communication for the first time, lie in the small

6 Those who visit Buganda today will find it easy to understand how separate and unique the Buganda believe their kingdom to be when they see, as they pass through the streets of Kampala, that even the dust-carts of the Kabaka’s capital (the Kitengye) are labelled cipality of Kampala in which the Buganda capital lies. Letters are exchanged between the service” or “On the Service of His Highness the Kabaka.” The Buganda government, with a cluster of fine buildings on its own hill-top appears, and actually is, a separate policy within the Protectorate.

1 The chiefs in Buganda are appointed—originally by the Kabaka and now by an Appointments Committee. They are not hereditary as in other parts of Africa.

8 There are West African kingdoms of a similar size which are now independent, e.g., Ghana, just over four million; Senegal, just over two million; and the Ivory Coast, 1,810,562.

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kingdom of Ankole and not in Buganda. Wealth is likely to be more evenly distributed but at the moment it is natural that Baganda should feel that they have the whip hand and that their politicians should threaten secession if they are dissatisfied with the course of negotiations.

Again, because the Baganda feel they have a start in education they believe that they are infinitely superior to the other twenty-one tribes in the Protectorate. Their long history of conquest and expansion make them more conscious of tribal identity than any other people in the Protectorate and more determined to keep alive their language and culture. Out of twenty-four newspapers published in Uganda in 1957, thirteen were written in Luganda; while there are sixty-nine books or pamphlets on Buganda history, customs, or political development published since the turn of the century. It is important to realise that this emotional identification with their own culture is common to the university graduate as well as to the humble peasant cotton grower and the distinction, which is so common in West Africa, between the educated urban African who despises "tribalism" and the ignorant countryman, wedded to traditional forms, hardly exists in Buganda.

The Kabaka's Position

The symbol of Buganda is her Kabaka, whose office is regarded in a mystical, almost worshipful, way. He is a symbol which naturally fails to identify his subjects with the future of a United Uganda. A national leader of the Nkrumah type might become the symbolic head of a new Uganda but a traditional monarch of the Buganda type could only perform this function if he became "King of Uganda"—a solution which Baganda propose from time to time!

Hence a situation which must be unique in present-day Africa—an area in which the most Europeanised people are reluctant to participate in a central government and a central legislature of a European type; and in which the people most fitted for self-government have successfully held up the granting of Independence for many months because their desire to be free from foreign rule is not as strong as their desire to preserve their traditional political structure and their paramount position in Uganda. Progressive and educated Baganda would not all share this point of view, but the resolution submitted to the Queen in September 1960 when the Lukiiko asked to terminate the British Protectorate stated "Independence should be a means to an end and not an end in itself.

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Buganda cannot sell all her heritage for the purchase of Uganda's independence. That heritage is much more precious in the long run. Nor is Buganda willing to sacrifice everything on the altar of Uganda's unity. 8

The events of the last ten years show the consistency of Buganda's attitude and her determination to maintain her control of her own institutions. To this end she has continually fought against participation in the central legislature—a right so hotly demanded in other parts of Africa in the years preceding independence. In 1921 the then Kabaka and his prime minister heard with alarm of the first setting up of a Legislative Council saying that they feared that "the interests and welfare of the Baganda will be relegated to the background and will necessarily form a secondary consideration in the deliberations of the Council in view of the general interests and progress of the Protectorate." 9 In 1950 the Buganda Lukiiko refused to submit names from which Ganda representatives to the Legislative Council would be chosen by the Governor; in 1953 it declined to elect representatives to a newly constituted Legislative Council with fourteen African members, and it was the refusal of the Kabaka to recommend his Lukiiko to participate in the central legislature which was one of the issues which led to his deportation in November 1953. 10 By the 1955 Agreement which secured the return of the Kabaka, the Lukiiko agreed to appoint representatives to the central legislature, but the provision always irked its members. They have threatened from time to time to repudiate the Agreement and did in fact pass a resolution in December 1960 announcing the secession of Buganda from the Protectorate—a resolution which did not receive the approval of the Governor. A general election was held in March 1961 and was boycotted by the majority of the Baganda. The result was the victory of a National Catholic Party, the Democrats, and the leader of this party, Benedicto Kiwanuka, became the Leader of the Legislative Council. In the subsequent months, fear of domination by a Catholic party led Baganda politicians to change their attitude and to participate in new elections for a National Assembly in April 1962. The election was fought with bitterness and violence between

8 Memorandum to Her Majesty Queen Elizabeth II submitted by members of the Lukiiko of the Kingdom of Buganda, quoted in full in The Political Kingdom in Uganda, 1960, p. 479, by D. E. Apter.
9 Quoted in D. E. Apter, op. cit., p. 166.
10 The anxiety of the Lukiiko was sparked off in this instance by a remark of the Secretary of State (then Mr. Oliver Lyttleton) at a Nairobi lunch party approving the possibility of an East African Federation—a proposal which has always frightened Buganda.
the Democrats, who were then in power, and a Buganda-only party named "The Kabaka Alone" (Kabaka Yekka), allied for the moment with a second national party, the Uganda Peoples Congress, under the leadership of a Lango politician, Mr. Milton Obote. This combination of parties, one national and one regional and traditionalist—the Kabaka Only Party—secured a resounding victory and Mr. Obote became the Chief Minister of Uganda.

But Buganda's fear of national general elections remained. Her politicians realize that a subsequent election might produce an alliance between the two national parties, the Uganda Peoples Congress and the Democrats, against the regional "Kabaka Yekka" Party and that the future of Buganda might then be dependent on the decisions of representatives of other tribes which are naturally hostile to and jealous of her special position, even though the 1962 Independence Constitution contains a clause that the Buganda constitution cannot be altered without a two-thirds majority of the National Assembly and of the Buganda Lukiiko as well as the assent of the Governor-General, and the position of the four monarchs of Uganda is well entrenched.\(^\text{12}\)

Can a National Community Emerge?

The obstinacy of Buganda has frustrated the formation of the national parties essential to the working of a parliamentary democracy on the British pattern. She has the largest population in Uganda and more citizens fit to lead such parties than in other provinces, but again and again national parties have broken down when the state of Buganda seemed to be threatened. For instance, the first national party—the Uganda National Congress founded in 1952—was a national party with predominantly Ganda leadership, but it became almost entirely concerned with a Buganda rather than a Uganda issue during the years 1953–55, when it gave its energies to campaigning for the return of the Kabaka from exile overseas. We have seen how the success of the nation-wide Catholic party, the Democrats, led to a swift reaction on the part of the Baganda and to the ousting of this party by the regional traditionalist group, the Kabaka Yekka.

A second result of Buganda's attitude has been a series of demands by the lesser kingdoms—Bunyoro, Ankole, and Toro—to secure an equal measure of internal self-government. Here, again, Buganda values her special position: she announced at the recent conference that, if these kingdoms wanted the same privileges as she had, she would have to reconsider her status and ask for new conditions.

The Independence constitution which was hammered out with such anxiety in June 1962 obviously embodies many other clauses likely to produce friction, and most of these are centred round the position of the kingdom within the state. For instance, the central government is to have full authority for public safety and order under an Inspector-general of police but the Kabaka's government is to have its own police force. Uganda and Buganda are each to have "executive authority" and "current responsibility" for the maintenance of public order in Buganda and in Kampala, the capital of the new state, which lies in the heart of Buganda.\(^\text{13}\) Buganda is to have its own High Court administering the laws of Buganda with appeal to the High Court of Uganda and the East African Appeal Court.\(^\text{14}\) It is to have power of legislation on selected issues. It is to have a separate revenue of which 50 per cent. is to come from a statutory annual grant from the Central Government and 50 per cent. from licences, entertainment taxes, and cotton bonus funds.\(^\text{15}\)

This division of functions has evidently managed to secure the agreement of the signatories but it raises difficult problems for a new central government trying to drive a team in which a lion is harnessed to twenty lambs. The Baganda might be persuaded to identify their interests with that of the central government if her Kabaka were allowed to become the ruler of a Unitary Uganda and if her politicians secured a majority of the senior posts in the Government, but the hostility of the other tribes in Uganda is a force to be reckoned with. The opposition of Buganda would probably collapse if her monarchy were swept away by indignant politicians of other tribes, but she has shown a remarkable persistence in her fight to maintain these institutions for the last sixty years or so. Alternatively, a more genuinely federal solution in which other provinces are allowed powers of local self-government more similar to that of Buganda might make a more balanced constitution and allay the resentment of the peoples who live outside Buganda.

\(^\text{12}\) Cmd. 1778, Nos. 59, 60, and 61.
\(^\text{13}\) Cmd. 1778, Nos. 31–34 and 44.
\(^\text{14}\) Report of the Uganda Constitutional Conference, 1961, Cmd. 1523—concrete draft of a new Buganda agreement—p. 44.
CONSTITUTIONAL CONTRASTS IN THE EAST AFRICAN TERRITORIES

M. K. Mwendwa*

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TRIBALISM AND REGIONALISM

After Independence the East African territories pursued a distinctive line of constitutional thought and development. Perhaps the most profound influence on the initial forms of the independence constitutions, and on subsequent forms of the republican constitutions, has been the varying extent to which in the three territories tribalism or regionalism existed, and, whether or not connected with those factors, the varying extent to which there existed an opposition to the ruling party which was politically organised on a national scale.

Tanzania

In Tanganyika there are said to be some 120 tribes, but the absence of any real opposition to the TANU party before Independence ensured not only a relatively early date for Independence, but the absence of any element of federalism or regionalism in the one-party state at the time of Independence, although the Constitution said nothing for or against political opposition as an institution. Tanganyika was the only one of the three countries to begin its independent national life as a unitary state without any substantial

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political opposition outside the ruling party. Since then Tanganyika (and latterly the United Republic of Tanzania) has been searching for a democratic form of government which will ensure unity of national purpose and effort. In its search for a satisfactory working relationship between the executive and the legislature Tanganyika has not felt itself hidebound by any traditional lines of thought, and in respect of that relationship the Constitution of Tanzania differs substantially from those of Uganda and Kenya.

For the sake of completeness I should mention here that there is an element of federalism in the recent fusion of the two unitary states of Tanganyika and Zanzibar, in that the Interim Constitution only reserves certain powers in relation to Zanzibar to the legislature and executive of the United Republic, and the residual powers belong to the legislature and executive of Zanzibar.

Uganda

In Uganda, on the other hand, the existence of the four traditional “agreement kingdoms” of Buganda, Bunyoro, Toro and Ankole, and secessionist and separatist agitation before Independence, led to the creation of a partial federal state upon Independence, out of a territory that had before Independence been unitary at least in form. The four kingdoms and the district of Busoga became the five federal states. The remainder of Uganda was divided into districts and the territory of Mbaale. So Uganda is a federal state in parts and a unitary state in parts. The Parliament of Uganda has exclusive legislative power except in the federal states. In the case of Buganda there is a list of exclusive powers for the Parliament of Buganda, called the Lukiiko, and another exclusive list for the Uganda Parliament (the National Assembly). The residue of power is vested concurrently in both Parliaments, but a law of the Uganda Parliament will prevail to the extent of any inconsistency. The powers exclusive to the Lukiiko relate to a number of important services, and the National Assembly has power to add to the list.

In the case of the other four federal states the list is short and relates mainly to the office and functions of the ruler of the state and to traditional and customary matters, although the list can be added to by agreement between the Government of Uganda and the government of the state. Broadly speaking, the distribution of executive power between the states and Uganda follows the distribution of legislative power.

Kenya

In Kenya events have taken yet a different course, and a dramatic change in political alignments has had no less dramatic consequences in the field of constitutional law. Before Independence the major political parties, KANU and KADU, divided on the fundamental issue as to whether Kenya should be a unitary state or a federal state. KANU advocated the establishment of a strong central government. KADU advocated the establishment of autonomous regions with wide executive and legislative powers. It is not profitable to discuss now the positions adopted by the British Government or by the Kenya parties at the various constitutional conferences held in London. Suffice it to say that Kenya’s Independence Constitution was unique for its length and complexity, and extraordinary for the extent to which the provisions relating to the Regions, and to the

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9 Constitution, ss. 73–76, Schedule 7.
10 Constitution, Schedule 8.
11 Constitution, Chapter VIII, Part 2.
12 Constitution, ss. 38, 43, Schedule 6.
13 No. 61 of 1963.
familiar constitutional safeguards, were entrenched against amendment. The supporters of regionalism (or "Majimbo" as it was called) had every reason to feel safe in their constitutional castle. No word in the Constitution could be amended unless the Bill was supported by 75 per cent. of all the members of each of the two Houses of the National Assembly, i.e., of the elected House of Representatives and of the elected Senate, or unless the Government was successful on a referendum in getting the support of two-thirds of all those casting a vote. Many provisions of the Constitution relating to the Regions were "specially entrenched," and could only be amended if supported by 75 per cent. of all the members of the Lower House and by 50 per cent. of all the members of the Upper House, the alternative of a referendum not being available.13

Very soon after Independence, during the early part of 1964, the Regions proved their administrative weakness to the people at large, just as the central government proved its strength, and the demand for the abolition of regionalism grew rapidly. The statement made by Prime Minister Mzee Kenyatta in the House of Representatives on August 17, 1963, announcing the intention of his government to introduce a republican constitution on the first anniversary of Independence, and to amend the Constitution to restore a unitary state, was universally welcomed, except by the KADU minority in Parliament. But the KANU Government did not have the necessary 75 per cent. majority in the Senate at that time, let alone a 90 per cent. majority.

It thus became necessary to amend the Constitution piecemeal, starting with a Bill14 that did not touch the "specially entrenched" provisions, and which, therefore, if it did not gain the required 75 per cent. majority in either House, could be submitted to a referendum. It was constitutionally possible in such a Bill to establish a republican form of government, and to take away almost all the powers of the Regions, and a substantial proportion of their revenues. During the passage of this Bill through the Lower House the KADU opposition, whose main reason for existence as an opposition was the preservation of Majimbo, crossed the floor of the House and joined with KANU to form a national government. The Bill was passed and was soon followed by the enactment of a second Bill15 which made the necessary consequential amendments to the specially entrenched provisions of the Constitution. In the outcome Kenya became a unitary state on Republic Day, and the Regions have

6 Constitutional Contrasts in East African Territories

survived as a tier of local government, dependent for their powers on delegation by Parliament.

The outcome of the constitutional thinking in Kenya in the formative year of 1964 was the creation of an original device for reconciling the popular demand for national leadership in the form of an executive presidency with the demand, voiced by Parliament and supported by the Government, that there should be cabinet government with collective responsibility to Parliament. In short, the offices of Governor-General and Prime Minister were rolled into one. As in Uganda, no very significant changes were made in the "constitutional safeguards," I have referred to a third Bill16 now before Parliament. That Bill, to which I shall refer again, is mainly consequential in character, but does make a few changes of substance in the constitutional law.

That is but a brief outline of the constitutional changes in the three countries since Independence. It is now time to consider in detail and compare the main features of these constitutions. I have already referred to the partial federalism of Uganda, and to its significance in imposing conservatism in constitutional development. I have also referred to the element of federalism in the present relationship between Tanganyika and Zanzibar within the United Republic. The other contrasts in the three republican constitutions which should be of interest to constitutional lawyers may be grouped under two headings: first, the form of the executive and the legislature and their relationship; and, secondly, the extent of the constitutional safeguards.

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13 Constitution, s. 72.
14 Referred to as the Constitution of Kenya (Amendment) Act, 1964.
Recent Developments in Nigerian Federalism

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It is best to begin this report with a few words on the Constitution itself (1). The delegates who framed it set out with the objectives of increasing regional autonomy yet at the same time retaining sufficient powers at the centre to ensure a strong national government. Thus in distributing legislative (and therefore executive) powers, the Federation was given exclusive control of external affairs and defence. It was also entrusted with the most essential aspects of the country's economic life such as external borrowing (Regions can only borrow on their external assets for periods of under a year and this is virtually a dead letter), the currency, capital issues, customs and excise, and control of the exchange rate. All the major forms of communications and transport, such as shipping (on rivers as well as on tidal waters), railways, trunk roads, the postal and telegraph system, and aviation were also placed on the exclusive list.

On the concurrent list, the only important items are higher education, control of industrial development and combinations, labour conditions and relations, water-power, and the regulation of the legal and medical professions. The Regions are left all other tasks including the expensive and demanding responsibilities for education, agriculture, health, industrial development, public works and secondary roads. Each Region operates its own Marketing Board for the

major crops and has set up a Development Corporation to encourage the establishment of new industries.

This distribution of functions clearly aims at leaving all internal policy and administration to the Regions while external affairs and inter-regional traffic are left to the central government. The one major field of activity which does not lend itself to this division is the management of the economy — a function in which the state has a special role to play in an under-developed country. Here the only feasible solution was to leave overall aspects of financial and trading policy to the Federation while allowing the Regions to look after actual developments on the ground such as the encouragement of industry and the improvement of agriculture. The problem of dividing responsibility for the economy, especially in a country where almost all trade flowed through the two Southern Regions and the Federal territory of Lagos, reappeared in another form when the finances of the various governments were considered.

The Fiscal Commission appointed in mid-1957 to consider revenue allocation was instructed to do so in a way which would ensure "that the maximum possible proportion of the income of Regional Governments should be within the exclusive power of those Governments to levy and collect, taking into account considerations of national and inter-Regional policy." (2) Keeping clearly in mind "that the financial stability of the federal centre must be the main guarantee of the financial stability of Nigeria as a whole, and that by its strength and solvency the credit worthiness of the country will be appraised" (3), the Fiscal Commission reported. After a few revisions, its recommendations were incorporated in the Constitution. Regional Governments were to rely on exclusive control of income tax, the return to them by the Federation of all export duties on primary produce, all import duties on petrol and fuel oils (in proportion to the amount consumed in each region), all import and excise duties on tobacco, and 50% of mineral royalties and mining rents.

The Federal Government was allocated company profits and death duties as its exclusive field of taxation. It also was responsible for collection and could retain all import and excise duties (other than those levied on tobacco and fuel oils) except that 30% of the money so raised had to be paid into the "Distributable Pool". 30% of mining rents and mineral royalties was also to be paid into the Distributable Pool which was then to be divided among the Regions in the proportion of 40 to the North, 24 to the West and 31 to the East. It was estimated that such a system of allocation would give the Regions the maximum financial independence while allowing the Federal Government to hold a small surplus of between two and three million pounds a year.

To operate these powers and raise and spend these moneys, a relatively simple institutional structure was devised. Each Region was to have a bicameral parliament with a Premier and Cabinet responsible to a House of Assembly elected under normal democratic rules except that in the North the franchise was not extended to women. At the centre, there was to be a Federal House of Representatives which was directly elected, the members being distributed in proportion to population and a Senate composed of 44 members, 12 chosen at a joint sitting of the two houses of parliament in each region, four from the Federal territory of Lagos, and four to be nominated by the Governor-General. The Senate was given the power to delay bills for 6 months except that in the case of financial bills this was limited to only one month.

Considered from the federal aspect, the significance of the Senate is that while the North has an absolute majority in the lower House (174 of 312 seats), in the Senate no single Region can rely on more than twelve of the forty-four seats. Thus it is possible to have a federal government which exists solely on the solid support of one region, but such a ministry might not be able to do as it liked with the Senate. Even a government which had considerable support in two regions might not always command a majority in the Senate if the nominated Senators and those from the third Region and from Lagos could find three further supporters. There has been only one hint of such a combination since independence. It occurred when the present government acting on behalf of the Northern Region sought to amend the constitution so that the Grand Kadi could be a member of the High Court of that Region. Sufficient Senators voiced doubts that the government withdrew the Bill for a short period till there had been negotiations between the parties and then it was reintroduced and passed (4). Despite this example,

(3) Ibid., p. 8.

The Grand Kadi is an expert in Islamic Law who presides over the Sharia Court of Appeal. It was intended that he should be eligible to sit on the High Court of Northern Nigeria to give his advice in the case of appeals involving Muslims. The Constitution, however, had failed to exempt him from the normal qualifications required of High Court Judges, namely either being a judge of a court having unlimited civil and criminal jurisdiction or having been qualified for ten years as an advocate.
the power to delay for six months amounts to very little when the lower House can last for five years, and there is little sign that the politicians or administrators take the Senate very seriously.

In the Constitution various attempts are made to ensure that neither Federal nor Regional governments encroach on each other's spheres the simplest method being the use of entrenched clauses. The sections dealing with the basic federal framework, fundamental human rights, the electoral commission, legislative powers, the offices of Governor-General and Prime Minister, the Council of Ministers, the Police, the Supreme Court, and the High Court of Lagos, the Judicial Service Commission, the Director of Public Prosecutions, the Director of Audit, public funds and allocation of revenue, and the Public Service Commission, cannot be altered unless the Bill in question is passed by two-thirds of the members of each House of Parliament and has been accepted by both Houses of at least two of the Regions. A special further degree of entrenchment is provided for Section 3 of the Constitution which declares the extent of the three Regions and of the Federal territory of Lagos. A Bill to create a new Region must be passed by two-thirds of the members of each Federal House and accepted either by each House of a majority of the Regions or by each House in two Regions, including any Region which would lose territory to the new state (5). Then the Bill becomes an Act but it can only take effect if a plebiscite is held in the proposed new Region and the change is approved by 60% of those entitled to vote, and if the proposal is again consented to by each House of at least two Regions. No Region can be deprived of its “appropriate proportion” of the members of either the Senate or the House of Representatives unless each House of the Region in question gives its assent.

It is further laid down that the law of the Constitution is supreme and when any issues involving the interpretation of the Constitution

(5) Much the same procedure applies over proposals to alter regional boundaries except that to be valid, acceptance by a majority of the Regions must include acceptance by the Region gaining territory. In both cases, the two alternatives offered - a majority of the states or two states including those affected - must be read in the light of the conditions of 1958 when the Southern Cameroons constituted a forth Region in Nigeria. The object was to protect the Regions which feared separatist tendencies especially the North, and the choice was to be a 3 to 1 majority of states in favour of the change or two states including which was to lose territory. These conditions together with the need for a two-thirds majority in both Federal Houses and a 60% plebiscite seemed to give real security to the existing Regions.

or conflicts between Regions and the Federal Government arise, they may be referred to the Federal Supreme Court. In matters at issue between the Northern or Eastern governments and the Federation, the fact that the parties in command in these regions (the N.P.C. and N.C.N.C.) also share power in the Federal coalition almost certainly means that major differences will be settled at the political level. Only in disputes between the centre and the Western Region when it was dominated by the Action Group (then recognised as the opposition at the Federal level), has there been any tendency to raise actions in the courts.

The first case since independence dealing with the structure of powers of the governments was a highly political conflict between the Federal Government and the National Bank of Nigeria (in which the government of the Western Region holds a controlling interest).

In this instance the Supreme Court revealed a tendency to a narrow or strict construction of federal powers. The Court decided that Tribunals of Enquiry could be set up only to examine problems connected with one of the specific powers granted to the Federation. It also considered the clause in the Act stating that “neither the Commission itself nor any action of the Prime Minister in relation thereto shall be enquired into in any court of law” and declared it to be contrary to the provisions of the Constitution allowing for citizens access to the Courts (Section 21, 31 an 108). Finally the Court held that giving the Commissioners authority to impose prison sentences was invalid as the declaration of fundamental rights (section 20) insists that persons cannot be deprived of their liberty except by the normal courts (6).

A second case dealing with federal-regional relations was started in early 1962 when the Western Region Government challenged the validity of the Act which declared the intention of creating a Mid-Western state and provided for the necessary plebiscite. The major objection was that the constitution-makers had intended “a majority of the states” to mean three out of four and not two out three (see footnote 5 above). A more clearcut objection was on the purely legal grounds that the Eastern House of Assembly which had passed the Bill was elected according to rules laid down by the Governor and not by the Eastern House, as required by the Constitution (7). What


(7) Section 15 (4) of the Fifth Schedule to the Constitution (reference given above) which reads: — “Every constituency established under section 14 of
would have happened had the case been heard cannot be said but the Federal Government clearly considered it a serious challenge. When a state of emergency was declared and an Administrator was appointed to take over the West, one of his first steps was to withdraw this action. He said "I think it is not my place as Administrator of Western Nigeria to question the legality of another regional government." (8)

Two major cases arose out of the declaration of a state of emergency in the West in May 1962. In the first, Chief F.R.A. Williams contended that the Emergency Powers Act 1961, the Emergency Powers (Restriction Orders) Regulation 1962, and the restriction order served upon him, were all ultra vires (9). He argued that there was no emergency, that Parliament had no right to delegate legislative powers to the Governor-General who could not therefore delegate them to the Administrator, and that the powers were used in a manner contrary to some of the fundamental human rights. The Court refused to consider the question of whether an emergency existed, and passed over the difficult question of precisely what powers sections 64 and 65 (legislation for peace and order and in times of emergency) confer on the Federal Government. They agreed that under either section a law or regulation to restrict a person is subject to the control set out in section 28. It must be "reasonably justifiable for the purpose of dealing with the situation that exists" and they concluded that as Chief Williams was Chairman of the "peace committee" set up by the A.G. there was not adequate evidence to warrant his restriction (10).

In the second case, Alhaji Adegbenu appealed against his restriction but not on the grounds that it was hard on him as a person so much as on the unconstitutionality of the entire emergency and the emergency regulations. The Court agreed that his case was "much more fundamental" but refused to consider whether the Emergency Powers Act of 1961 was constitutional, whether Parliament could delegate these particular tasks to the Governor-General, whether they included the power to remove the Governor, Premier, Ministers and Legislature of the Region, or whether the emergency regulations were "reasonably justifiable... for dealing with the situation". The Justices brushed aside these questions and based their decision on one point: that the only requirement for a state of emergency is a resolution of both Houses of Parliament (11). Thus the Supreme Court has given the Federal Government its support in a drastic extension of Federal powers which has definitely altered the balance between the central and Regional governments in favour of the former. By making full use of the Supreme Court, the Action Group has tried to force the government to keep to the letter if not the spirit of the Constitution. There is evidence that several Ministers have found this process exceedingly annoying. Before the state of emergency enabled the Federal Government to withdraw the case against the Mid-West Bill, the Prime Minister Sir Abubaker Tafawa Balewa said "we were dragged to court on the bank inquiry and now we are being dragged to court on the Mid-West. Well, if our courts will allow themselves to be used in the way they are being used on any minor thing, I am afraid people will make mockery of our courts... Personally, I think it is wrong for every small constitutional matter to go to court; people will soon come to laugh at the courts..." (12). At this stage and before the judgments on the issues raised by the state of emergency in the West, it appeared quite possible that if the Supreme Court had continued to interpret federal powers in a narrow sense, there might have been a move to end its right of review of some aspects of federal-regional relations.

Besides this elaborate institutional structure supported by entrenched clauses and by judicial interpretation, some of the other arrangements either provided for in the Constitution or inherited from earlier decisions affect federal-regional relations. In 1954, the essentially unitary legal system was regionalised, the final court of appeal in many cases being the High Court of the Region or the High Court of Lagos. Each region has been passing its own laws and recording its own judicial decisions since 1954 while the North produced a new Criminal Code in 1960. As a result differences of substance have emerged and lawyers accustomed to working in one Region are not so ready to take cases in another or

this Constitution shall return to the House of Assembly one member who shall be directly elected in such manner as may be prescribed by the Legislature of the Region." In fact the Eastern (and the Northern) Region simply passed an enabling Act allowing the Governor of the Region to make the necessary electoral rules.

(10) No sooner had Chief Williams won his case than a new restriction order was issued confining him to his house in Ibadan. It is curious that Chief Williams did not see it fit to appeal against this order.

to appear in Lagos. At the same time, (1954) each Region was allowed to set up its own Public Service Commission and recruit young civil servants in competition with the Federal Service. Men from the majority tribes in a given Region often fancied that their chances of promotion would be best in their home area and Nigeriaisation was carried out most rapidly in the Regions. The effect was to create separate services with a Regional spirit and loyalty and there has been little interchange between them and the Federal Service. Again in 1954, the reserves of the Crop Boards were divided among the Regions and they were allowed to set up their own Marketing Boards which in turn were able to supply funds for many regional projects and helped in the creation of the Regional Development Corporations.

The exception to this process of regionalisation was the Nigerian Police Force, which had always been a single organisation although local authorities in the Western and Northern Regions were allowed to maintain local government police forces. At the Constitutional Conference of 1957-8, there were pressures to break up the Nigerian Police, but these were resisted chiefly by the spokesmen of the Colonial Office who feared for the unity of the country if each Region was allowed to run what might have been regarded as its own private army. Yet the whole trend of these successive conferences was to give the Regions the maximum autonomy and Regional leaders would naturally resent a force operating in their territory but under Federal control. An ingenious compromise was eventually evolved. The Nigerian Police was to remain a single body under the control of the Prime Minister but in each Region the force was to be commanded by a Commissioner who was to comply with the directions of the Regional Premier. If, however, the Commissioner felt that these directions were contrary to national interests, he could, at his own discretion, request that they be referred to the Prime Minister of Nigeria. Thus the constitutional provision for the police attempted to assuage regional feeling and yet retain an essentially unitary force with an ultimate loyalty to the Federation.

The working of the Constitution
I. — Political factors (13)

Having examined the structure established by the Constitution, there remains the question of how it has worked in practice. As the

(13) The material for this and the next section was collected from the Press, reports of Federal and Regional debates and from extensive interviews in 1961-2 with civil servants and politicians in all four governments.

history of the changes from 1947 to 1960 would suggest, Nigerian leaders and parties have tended to emphasise the strength and autonomy of the Regions. The Federal Government has taken over the role of the British in as much as the problems of administering the country and furthering its development have led ministers to stress the importance of the central machinery and to increase the influence of Federal agencies.

The main factor which has strengthened the Regions and given them weight in all their dealings with the Federal government has been the increasingly regional character of the political parties (14). The N.C.N.C. was intended to be a nation-wide party and had its main base in Lagos, but since 1951 it has become more and more identified with the Ibos and the Eastern Region. By 1961 the N.C.N.C. and its ally, the Northern Elements Progressive Union were able to win only one out of 170 seats in the North while the N.C.N.C.'s share of the poll in the west has fallen from 45% in 1956 to 40% in 1959 and 36% in 1960. The National Chairman of the party, Dr. M.I. Okpara prefers to remain as Premier of the East and clearly regards the N.C.N.C. ministers in the Federal Coalition as his subordinates. When there was some talk of inviting the Action Group to join the Coalition in early 1961, Dr. Okpara, though he holds no position in the central government, announced that he would forbid any such move. On the other hand, the East has always been (till the discovery of oil) the Cinderella of the Regions. It did not choose to maintain its own police force and most of its roads were tarred by the central administration, so that Eastern leaders have always been more conscious of the need for unity and for a fair distribution of resources throughout the nation.

The Northern People's Congress has by name and intention always remained a regional party and has increased its grip on the North till in 1961 it won 94% of the seats in the regional elections. As with the N.C.N.C., the President of the party, the Sardauna of Sokoto had always elected to remain Premier of the North while the Vice-President (referred to on occasion by the Sardauna as "my able lieutenant") had become the Federal Prime Minister. It might be supposed that since the N.P.C. holds the dominant position in the Federal House of Representatives and in the Coalition Cabinet, there

would be easy and intimate relations between the two governments. Though there is considerable consultation and mutual trust, recent political developments cannot obliterate the feelings of generations, and the North still remains suspicious of any government miles away in the foreign capital of Lagos.

In the West the Action Group was founded to safeguard the Yoruba nation against alien and above all Ibo domination. The Party had to struggle to assert its control of the Western Region but while this was increasingly successful, attempts to infiltrate the North and East steadily lost ground after 1959. In the Federal Election of that year, the Action Group made a major effort to win a national majority and when this failed, the Party was left to constitute the Federal Opposition in Lagos. Its leader, Chief Awolowo remained at the federal level and persistently attacked the N.P.C-N.C.N.C. Coalition so that some Ministers soon became willing to use federal power whenever possible to damage the Western Region. While Chief Akintola, the Deputy Leader of the Party, was Premier of the West these antagonisms were muted by the good personal relations between himself and Sir Abubakar Tafawa Balewa. Also Chief Akintola appreciated that the Action Group was becoming so deeply involved in the life of the Region that it might be worth winning general acceptance of the West as an A.G. stronghold in return for less virulent attacks on the other parties in their Regions. Indeed Chief Akintola appeared to welcome the prospect of some A.G. members joining the Federal Coalition as a recognition that each of the three parties had an uncontested hold on its own Region and a share in the central government. These views contributed to a clash between the Western Premier and the Party Executive under Chief Awolowo which led to the expulsion of Chief Akintola and his dismissal by the Governor of the West. Chief Akintola refused to resign and when his supporters created a riot in the Western House, a state of emergency was declared in May 1962. After six months of emergency administration and the trial of its leaders for treason, the A.G. was in shreds and Chief Akintola was reinstated as Premier at the head of a Coalition of the N.C.N.C. and his section of the A.G. now renamed the United People's Party. Although this administration is much closer to, and perhaps even dependent on, the Federal Government, it will defend the interests of its Region with increasing vigour as it acquires a degree of political and financial stability.

The crisis in the A.G. and the revelations of the Commission of Inquiry into the affairs of six Western Region Statutory Corporations all underlined the fact that the parties have become increasingly enmeshed with the administrative, professional and commercial structure in each Region. Through the Development Corporations and Public Works Departments contacts flow out to businessmen who may think it helps their case to subscribe to party funds. It is commonly held that progress in every branch of the public service, legal briefs from the government, and even appointments in educational institutions do not require violent partisanship, but that a general sympathy with the policies of the governing party is not a handicap. It is significant that in the North the approach to this is quite open and the civil service is being 'Northernised' rather than Nigerianised. Appointments to chieftaincies and the creation of Emirs are in practice under the control of the Regional governments which can investigate and suspend local authorities and appoint alternative local administrators. Scholarships, roads, hospitals, schools and the siting of industrial developments are often thought to depend in part on the political loyalty of the area. All this meant that as each party tightened its hold on its own domain, it acquired a greater interest in defending the freedom of each regional government to make its own decisions.

Thus the main effect of the party system is to provide powerful organisations intent on maintaining regional rights. But it is also possible that the parties may ease the task of the Federation in handling the Regions. The N.P.C. and Sir Ahmadu Bello are jealous of Northern autonomy yet that party holds an absolute majority of eighteen in the Federal House of Representatives and has an even larger potential majority if it wins all the Northern seats. The effect has been to reduce suspicion and relations between the two governments are sufficiently close for some observers to allege that Sir Abubakar and his colleagues are controlled from the North. This assertion neglects the sheer weight of Northern government on Sir Ahmadu Bello who, with his senior Ministers, is engaged eighteen hours a day on the administration of the Region and has little time and some disfavour for the problems of the Federation. But there is regular consultation between the Prime Minister and the Premiers of the North and the East while N.P.C. emissaries are constantly carrying message, requests and advice between Kaduna and Lagos. Besides easing relations with the North, the strength of the N.P.C. in the Federal House makes the task of Ministers simpler. The evidence
that the Premier and the Prime Minister consult together and that
there is general agreement, helps the Cabinet to dominate the House.
If the Sardauna publicly condemned a federal policy, N.P.C. members
of the House of Representatives would be in a difficult position but
it is almost certain that matters would never be allowed to reach
such a pass. The activities of the Federation seldom cut across
the interests of the North and should this appear likely, as is possible
in economic and financial questions, the two N.P.C. leaders would
only make public statements after they had settled any differences in
private (15). Likewise relations between the Federal Government
and the Eastern Region are kept on a friendly and informal basis
because the Cabinet contains such N.C.N.C. stalwarts as Chief F.S.
Okonkwo-Eboh, the Hon. Jaja Wachuku, T.O.S. Benson, and the
Hon. J.M. Johnson. After the N.C.N.C.-U.P.P. Coalition assumed
power in the West in January 1963, the same relatively cordial
relations arose with the Federal Government and a few weeks later
it was announced that the three Premiers and the Prime Minister
would meet regularly once a month to settle matters of high policy.
These relations appear in contrast to the tensions that existed, at
a political level, between the Western Region and the Federal Govern-
ment before the collapse of the A.G. in May, 1962. In this case,
the N.P.C. and N.C.N.C. were tempted to use their position in the
Federal Coalition to attack their opponents in the Action Group and
this involved attempts to weaken the latter's stronghold in the West.
For instance, when it was reported that the National Bank, with all
its Action Group affiliations, might be open to charges under the
Banking Act, the matter was not settled by direct consultation and
adjustment. Instead the National Bank Directors refused to disclose
information and the Federal Government sought to set up a Commissi-
on of Inquiry which could extract the facts, report and imprison
those it considered guilty. When the A.G. as the Opposition in
the Federal House, attacked the Government (over the Anglo-
Nigerian Defence Pact or alleged financial extravagance) it was
not just regarded as criticism from a group of Members of Parliament
but as in some sense "coming from the West". So when Ministers
considered retaliation, one obvious method was to threaten institutions
based in the West or to reduce the size or strength of that Region.
An extra advantage which would have come from clipping segments
off the West was that Action Group candidates in the detached
constituencies would no longer have had all the machinery and patron-
age of the Region at their disposal. There was talk in 1959 and again
in 1961 of extending the boundary of the Federal territory in the
South and in 1961 of the removal of part of Oyo Province to the
North but neither of these proposals were taken very seriously as
there was no popular demand for such changes.

In the Mid-West, however, there has been a movement to detach
the area from the West based on minority ethnic group feelings and
a general sense of neglect. All that the Constitution requires is a
two-thirds majority in each of the Federal Houses and the assent of
two Regions to start the project. The Mid-Western movement is
sponsored by the N.C.N.C. and offered a wonderful opportunity to
strike a blow against the A.G. and the Western Region. With its
connections in the other two Regions, the Federal Government had
no difficulty in passing the necessary legislation early in 1962. It
now remains to hold the plebiscite and obtain the approval of 60%
of the electorate. Then each House in two Regions must pass
resolutions of consent and the new state is created.

The culminating example of the opportunities open to the parties
in control of the Federal Government occurred when the conflict
between the Premier of the West, Chief Akintola and the National
Executive of the A.G. under Chief Awolowo became acute. The
latter body unanimously censured the Premier for "anti-party activi-
ties" and by 81 to 29 votes requested him to resign his post. Sixty-five
A.G. members of the 124 strong House of Assembly (16) signed
a letter expressing lack of confidence in the Ministry and the
Governor dismissed the Premier, appointing Alhaji Adegbenu in
his place. Chief Akintola refused to accept his dismissal and though
the Western civil service recognised the new Premier, the Nigerian
Police, acting on orders from Lagos, did not acknowledge either
claimant. When the Western House met on 25th May, 1962, the
Akintola faction numbering 60 proceeded to smash the furniture
and threaten the person of the Speaker. The sitting was abandoned

(15) The Northerners are peculiarly good at keeping their differences to
themselves. There is evidence that at times relations between the Sokoto
leaders and the Emir of Kano have been as acute as any between Chiefs
Awolowo and Akintola but this never reached the public till the final
inquiry and the deposition of the Emir.

(16) The Western House of Assembly has 124 members of whom 82 were
A.G., 35 N.C.N.C. with 7 unfulfilled vacancies. Of the 82 A.G. supporters,
on the day of the riot 66 backed the new Premier, Alhaji Adegbenu, 10
remained faithful to Chief Akintola while six were absent or refused to take
votes.
and the Nigerian Police asked the Federal Premier if they could be present in the House to maintain order during a sitting. Sir Abubakar said he would refuse to recognise any decision (i.e. a vote of confidence in the new Premier) reached under these conditions and instructed the Police to clear and lock up the Chamber if there was renewed violence. The Akin~ola group then repeated their conduct and the Police released tear gas and closed the House. The Federal Parliament met and passed a resolution declaring a state of emergency. The Government then appointed an Administrator who removed the Governor of the West, suspended all Ministers and Members of the House, banished most leading politicians to outlying areas and removed office-holders in the public corporations so that there could be an enquiry into the whole administrative record of the A.G. This inquiry, usually referred to as the Coker Tribunal, became a massive indictment of the A.G. and those of its leaders who remained loyal to Chief Awolowo. By the end of 1962, these men found themselves accused of financial malpractices following the Coker Report and were put on trial for treason. The A.G., despite a victory in the Lagos Town Council elections, crumbled at the Federal and Regional levels. In Lagos desertsions reduced the Opposition from an original 135 M.P.s to 21 and the Prime Minister refused to recognise it as an official Opposition any longer. In Ibadan, 33 of the 65 members of the House crossed over to support the new regime of Chief Akin~ola which was installed in January 1963. The A.G. had its funds placed under court restraint, its leaders discredited or in prison and was ousted from almost all its centres of power and influence. The history of these months affords a telling demonstration of what the Federation backed by a majority of the Regions can do to a Regional Government which is under the control of an opposition party.

While these political battles rage, there is however evidence that at certain levels the advantages of co-operation between the Regions and the Federation are becoming more evident. Chief Akin~ola has always stressed this point and it is being realised that while the Regional governments lead in internal matters, on most national issues within and without Nigeria, the Federal Government must take the initiative. In the early days after independence Sir Abubakar Tafawa Balewa's prestige was low and the more active nationalist elements spoke of the Federal Government with disdain. But before long the Prime Minister took a leading part in the Conference of Commonwealth Prime Ministers that ended in the withdrawal of

South Africa from the Commonwealth. He also set the tone at the Monrovia Conference of African States. All literate and politically conscious Nigerians wish the country to advance and play the part in African affairs which its size merits. The effect is to focus attention on economic development, defence and foreign affairs all of which are largely or solely in the hands of the Federal Government. Thus while Regional leaders still excite intense loyalties and receive great publicity, it is now evident that in their own sphere, Sir Abubakar and his colleagues speak for Nigeria and in that sense stand at a higher level than the spokesmen of the Regional Governments.

The working of the Constitution
II. — Administrative factors

The way on which the actual conduct of government has increased the stature of the Federation is evident in the point just made about foreign policy and defence. These subjects were always on the Federation's "exclusive" list but they were left to the central government in the deeper sense that all the ideas and practices had to be evolved by the Prime Minister and the new Ministry of Foreign Affairs. The parties and the public had no very positive views on external relations before 1960, and since independence there have been only a few critics in Parliament and the Press urging the Government to be more "dynamic". Even these critics however have concentrated chiefly on the language and tone of official policy rather than on its content (17).

Thus Sir Abubakar (who was his own Foreign Minister till June 1961) and his officials framed the country's policy, attended international conferences, and took a stand on each of the major issues affecting Nigeria. The Regions were only considered over the few points where their susceptibilities or interests were involved. The leaders of the preponderantly Muslim North are bound to react to any references to their co-religionists in the Middle East. On the other hand, the Eastern and Western Regions have such extensive economic connections with Israel and Israeli firms that this could not be ignored in any dealings with that country and its Arab rivals.

(17) The major achievement that these critics, including the official Opposition would claim is that the Government repudiated the Anglo-Nigerian Defence Pact in March, 1962. But the wording of the communiqué made it clear that this was a change of form or language rather than an actual shift in the basis of Nigerian policy.
While taking account of regional sentiments in a few such special cases, the Prime Minister and Foreign Secretary have built up their policy and insisted that other Ministers and regional leaders must obtain permission before they make any statements on international questions and that invitations to the heads of other states to visit Nigeria can only be issued by the Governor-General acting on the advice of the Prime Minister. When the Northern Government denounced the Federation for negotiating a loan from Israel in June 1961, Sir Abubakar explained that the North did not need to take any of the money but general comments of this kind infringed the exclusive right of the Federal Government to manage all external borrowing (18). That month, when on a tour of the Middle East, Sir Ahmadu Bello (in Karachi) spoke of the possibility of promoting a pan-Islamic commonwealth or confederation. The Sardauna later denied these remarks but again the Prime Minister intervened to say that he was sure such a statement had never been made since the Northern Premier had no right to speak on foreign policy (19).

Some of the other functions of government have been tacitly left to the Federation or its advice has played an important guiding role. Labour is a concurrent subject and in the Western Region one Minister has had Labour matters specifically included in his portfolio, but in practice, the Federal Ministry has been left to do the work. The 17 Labour Exchanges throughout the Regions are Federal offices staffed by federal civil servants and if the Regional Minister wants anything done, he consults the central department or simply asks the federal officers in his Region to act. Labour is not a question out of which much political capital can be made, there is a great need for uniformity of policy and it seems likely that it will remain in the hands of the unobtrusive but helpful federal ministry.

Education, on the other hand, is a matter which excites tense political feelings and where the Regions and indeed the local authorities within the Regions had strong views and were determined to strike out on their own. But here financial problems arose when the plans for free primary education were implemented in the West, the recurrent costs on education soared till it was absorbing over 50% of the Regional Budget. The same problem in the East forced that Region to retain and in 1961 to increase school fees. As a result the Regions were anxious for federal money and for foreign aid.

import duties on petrol and diesel oil, mining royalties, the Distributable Pool and certain internal licence fees and reimbursements. Only in the case of mining royalties in the Eastern and Western Regions has there been any rapid rise in the product. On the other hand, Federal revenues shot up from £77 million in 1958-59 to £112 million in 1961-62 and while some of this has gone through the Distributable Pool to the Regions, instead of a surplus of three falling to two million pounds, the Federation has had balances of £11 million in 1958-59, £7 million in 1959-60, reaching a peak of £17 million in 1960-61. In the coming year, 1962-63, the surplus is estimated to fall to £3.5 million chiefly because of increased interest payments on internal and external loans.

The difficulties of the Regions have been intensified in that while their revenues have proved most inelastic, they have to pay for all the services that involve heavy and increasing recurrent expenditure. Statutory payments from federal sources have remained static for the West, largely because of the declining yield of export duties (especially on coca). The share going to the North has risen only slightly for the same reason, while the East has received a million more largely to the royalties from oil wells. As a result, the Regions have been driven to examine their own sources and to face the odium of higher direct taxation or to turn to the Federal Government and request the floating of a loan. The total effect has been to strengthen the position of the centre in matters of finance and to make the Regions conscious of a degree of dependence.

The Constitution places the raising of all external loans of over a year's duration on the exclusive list and to avoid competition and waste, the Regions have agreed to leave the floating of all internal loans to the Federation. Over the past year and a half the major donors of overseas assistance have indicated that technical and financial aid is to be channelled through the National Government and that its approval is essential if any regional project is to be supported. As a result the central government has acquired a dominant position in matters of finance and the general conduct of economic policy. The process has been made easier in that all Nigerians, whether organised in parties or as individuals, agree that rapid development is essential (21).

(21) The Eastern Nigeria Development Plan 1962-68 states that "it is regarded as of the highest importance that the economic development of Nigeria should, as much as possible, be removed from the political arena... The Government of Eastern Nigeria stands ready to harmonise its policies with those of the other Governments and to join in the frequent consultations necessary to promote that harmony". Official Document, No. 8 of 1962, p. 11.

Mission recommended the formation of an Economic Committee to prepare the 1955-60 plan and out of it grew the National Economic Council consisting of the Premiers and Ministers of Finance and Economic Development of the four governments in Nigeria. This body in turn set up the Joint Planning Committee manned by the Permanent Secretaries of all departments concerned with economic affairs under the chairmanship of Mr. Prasad, the Economic Adviser to Sir Abubakar Tafawa Balewa.

Introducing the 1962-8 Development Programme, the Federal Minister of Economic Development, the Hon. Waziri Ibrahim said that in 1960, the National Economic Council felt that "the economic development of Nigeria could no longer depend on the accidental relationship between what each Government decided in respect of economic planning within its own jurisdiction, and that, therefore, every effort should be made to draw up a National Plan which would serve the needs of Nigeria as a whole" (22). The work was done by the Joint Planning Committee advised by the experts in the Federal Ministry of Economic Development. The proposals of the various Regional and Federal Departments and Statutory Corporations were then, by a process of discussion and peroration, tailored to fit into a single national plan which envisages the expenditure of £670 million over a six-year period.

It is clear from the policy statements and debates on the Development Plan that the Northern Region started with proposals amounting to nearly double the £57 million which they ultimately accepted. Such a vast expenditure could only have been financed by increasing Federal taxation and by altering the basis of revenue allocation thus denuding both the central government and the other Regions. The federal planners, clearly would not consider such proposals and laid down a general rule that "Regions must be capable, of meeting the entire recurrent cost and half the capital expenditure and it was on
this basis that the Northern plan was ultimately formulated. The East was more modest but wanted to start a number of industrial projects which showed no sign of ever paying their way and these had to be tactfully eliminated. The West presented both the most modest plan (in view of its resources) and the one which gave most evidence of careful preparation.

Gradually the various proposals were modified and worked into a single national plan. The Regions combatted the rule about meeting all recurrent expenditure (and half capital costs) by trying to cut down or transfer to the Federal Government some of the heaviest items under this head. They reached an agreement that the priority given to education should be reduced and that more money should be raised in school fees. But it was the field of agriculture that the Regions felt more alarm. Any proper development would lead to vast recurrent costs. The debate began with the Regions attacking the Veterinary and Forest Research Schools run by the Federation and asking what they had contributed that was of any help. The central government retaliated by saying it would be glad to sponsor field research in the Regions but it must control the projects. The reply was simply to ask for outright grants to enable the Regions to carry on their own development, but the central experts wanted to make sure that the money was properly spent and insisted on an element of supervision. The Eastern spokesmen appear to have been most vigorous in their complaints about the lack of money and suggested changes in the bases of revenue allocation. They were, however, prepared to hand over agriculture (a purely regional task) to the Federation. No final agreement was reached and the Development Plan merely states that the Federation has agreed “to take the bold step of providing up to £35 million to assist Regional Governments in the expansion of their programmes for agriculture, veterinary, forestry and fisheries services” (23).

In the general task of starting or helping new industries which was, by implication, left to the Regions, the Federal Government has also decided to take a hand. Besides the Niger Dam project, it will find the £30 million needed to prevent any delay in starting the new steel mill and has allocated £5 million “to establish new plants in viable projects of strategic importance” (24). £4 million has been set aside to finance a National Development Bank which will “work closely with the various Regional Governments and the Regional Development Corporations” (25) while a further £500,000 has been provided to aid Nigerian businessmen in the petty trades.

Besides these projects which either invade the province of the Regions or give the Federation greater influence over industrial life in the Regions, the Development Plan assumes that “the role of the Federal Government within the overall National Plan must necessarily differ considerably from those played by Regional Governments... it must be responsible for providing a bold lead” (26). Of the total capital expenditure programme of £676 million, £238 million is to be incurred directly by the Federation and a further £174 million by bodies owned or controlled by it (27). Under this heading there stands the Electricity Corporation of Nigeria, the Ports Authority, the Coal Corporation, the Nigerian Airways, and the Nigerian National Line which together will invest £85 million over the six years (28). Coupled with the £68 million to be spent on the Niger Dam and £54 million on trunk roads, this represents a massive and growing intervention by the Federation in the economy of the country. Another body which may well provide a growing point for Federal influence is the Niger Delta Development Board. At the request of the Minority Commission, it was written into the preamble to the Constitution in order to assure the feeling of neglect among the Ijaws and other Delta tribes. Since the area straddles East-West boundaries, it was laid down that the Board would only prepare schemes to be implemented by the Regional Governments but it was given federal moneys and £2 million has been allocated to it under the Plan. Already this situation is not proving very satisfactory and most of the members would like the Board to have the power to

(25) Idem.
(26) Ibid., p. 1.
(27) These figures vary slightly in the plans of the various governments and in ministerial speeches, Chief Festus Okotie-Eboh giving them as £243 million by the Federal Government and £169 by the Statutory Corporations and public companies. Parliamentary Debates, 3rd Session 1962-3, Thursday, March, col. 553.
(28) Chief Festus Okotie-Eboh also announced in his Budget Speech that “In order to ensure compliance with the objectives and priorities of the National Development Plan, the Federal Government has already taken steps to control the capital expenditure programmes of these Corporations and companies and will introduce amending legislation to enforce this should the need arise”. Idem.
execute its own proposals. If such powers and more money were forthcoming, it might develop a widespread influence in the whole Delta area. It can never rival the massive Kainji (Niger) Dam project which, with £68 million to invest, may well become a Niger Valley Authority and a key factor in the growth of federal influence throughout the economy.

Not merely has the production of the Development Plan meant cooperation between the governments and their acceptance of a national scheme, but there will have to be a continual process of review conducted from the centre. It is likely that in addition to the National Economic Council and the Joint Planning Committee there will have to be a Committee on Financial Resources to determine the pace at which the Plan can be carried out.

In his Budget speech on 29 March, 1962, the Federal Minister of Finance, Chief F.S. Okorie-Eboh carried matters to a stage further by announcing that the Federation would apply existing laws or take further powers over banking and borrowing in order to exert a general control over the price level, the balance of payments and the rate of growth of the economy. He explained that "the way is now clear for the Central Bank to assume a positive and dynamic role in our nation's affairs" (29). This was to be achieved in two ways. In the first place the Federal Government, the Corporations, all public bodies and, he urged, the Regions should place all their external reserves in the hands of the Central Bank. This would both strengthen the foreign reserve position of the Federation and allow the Central Bank to control credit more closely than before. To reinforce this control a Banking Amendment Act was introduced which permits the Central Bank to regulate the minimum interest rate charged by the Commercial Banks and to approve their "interest rate structure" (30). A further device enabling the Central Bank to manage other banks was the power (in clause 7 of the Act) to fix the liquidity ratio and to determine which types of assets would be accepted in assessing the holdings of the banks.

Secondly Chief Okorie-Eboh explained that since the prices offered by the Regional Marketing Boards had such a large bearing on the supply of money in the economy, it was essential that these prices should be settled in consultation with the Central Bank. The difficulty here is that Section 71, Clause 3, subsection C of the Constitution explicitly forbids the Federal Parliament "to regulate the prices to be paid by a purchasing authority established by the legislature of a Region." The way round this prohibition was to exercise "normal" banking precautions. In 1956, the Marketing Boards held reserves of £67 million but these have steadily dwindled to a mere £8 million in 1961-2. Nor can the Regions offer any aid as their reserves have fallen from £42 million in 1957 to £21 million in 1961-2 and they expect to receive money from the Marketing Boards rather than provide loans themselves. With this shortage of funds (and there is pressure to hand over even the remaining foreign assets to the Federation), the Marketing Boards will have to approach the commercial banks for loans of several million pounds to cover each season's operations. When this happens, the bank in question will have to discover whether the Central Bank will accept Marketing Board Bills as part of its assets. If the Board has failed to consult the Central Bank about its price policies, it may well be offered a loan at an increased rate of interest with the implication that the next time there will be no loan unless there has been proper cooperation. It is unlikely that matters will ever reach such a pass and the probable outcome is that Marketing Board representatives will sit on an informal Committee with representatives of the finance ministries and the Central Bank to settle producer prices.

Thus an examination of financial and economic policies suggests that in these matters Nigeria is beginning to operate in much the same way as a unitary state. The explanation lies in the universal and ardent desire for rapid development. No Region has any interests which detract from this objective. If one of the Regions did decide that the National Plan was pernicious, it could refuse to take part. The consequences might be lack of foreign aid and of federal loans and federal projects in its territory but such a disagreement would produce a political crisis long before the economic implications for the Region began to take effect. Even when there is the present strong agreement on the main lines of development, every care was taken to draw suggestions from the Regions and to build on them rather than on a blueprint imposed from above. And when the plan was finished, it was cut up into four sections and each

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(29) Ibid., col. 405.
(30) Banking Amendment Act, 1962, Clause 6.C. (Federation of Nigeria Official Gazette, vol. 49, No. 26, 30 March 1962). The meaning of this clause is not entirely clear but it seems to give the Central Bank power to ask the commercial banks to charge different customers or classes of customers different rates.
was presented to the appropriate legislature in a manner which respected the formal division of powers between the Federation and the Regions.

This division of powers has also been emphasised by the operation of some other sections of the Constitution. While the existence of a Supreme Court has given the legal system a focal point and a single source of decisions in certain classes of cases, and while the profession would prefer a unitary system, the existence of Regional High Courts, each issuing its own Law Reports, has retained the divisions in the legal system. The Attorney-General's Office in Lagos has countered by setting up the Unitary Law Committee, a meeting of the Attorneys-General of the Regions and of the Federation to discuss legislative proposals to seek a measure of uniformity. The same office has also started a National Council for Law Reporting to produce all-Nigeria Law Reports in the hope that the Regions will give up their own reports and accept one common list of precedents. It would be a great step towards a unitary legal system if the regions would all adhere to a single criminal code but the Emirs were very reluctant to place Muslims under the modified Northern Code of 1960 and they would certainly resist any further dilution of Muslim principles. It may be possible to prevent any further divergence between the principles and practices in the various Regional and Federal Courts but it is unlikely that the divisions introduced in 1954 will be formally abrogated in the foreseeable future.

The delicate constitutional compromise over the Nigerian Police has worked well but much depends on the personalities of the leaders of the four governments and of the Inspector-General and Regional Commissioners. So far no Regional Commissioners has had to refer a directive from a Regional Premier to the Federal Prime Minister on the grounds that he thought it might be contrary to the public interest (31). In part the Nigerian Police has remained a unitary force because the North has its native authority police (often regarded by the Emirs as being their private armies) and because the West has its local government police. These forces are under local control and while officered by serving members of the Nigerian Police, there has been easy and fruitful co-operation. But if the connection is broken by other appointment policies, the Nigerian Police will be left controlling the borders, traffic on federal highways, and law and order but the enforcement of all local regulations and by-laws will remain in the hands of the local police forces. It is in this way possible for politicians to allege, as the N.C.N.C. leaders did in August 1961, that law and order has broken down (in the Mid-West) and blame the local authority police, while the Nigerian Police can confidently assert that it has in no way failed in its duty.

The chief and very real danger is that when the Regional Commissioners are Nigerianised, the men appointed will tend to come from the Region in question and share the outlook of its leaders. Thus when issues of a semi-political nature arise, they may genuinely entertain concepts of the national interest which deviate slightly from those of their expatriate predecessors and which are not acceptable to the Nigerian Policemen at Federal headquarters. It is quite possible that if this happens, the Nigerian Police will remain Federal in name but become regionalised in practice, absorbing the native authority or local government police into its ranks (32). Some federal leaders, above all the Governor-General and the Prime Minister, have been repeatedly congratulated on the conduct of the Nigerian Police and are on guard against any such developments. But the constitutional provisions require the initiative in any difficult situations to come from the Regional Commissioners and if they feel no need to refer matters to the Federal Premier, nothing can be done.

In the wider field of the civil service, there have been some attempts to build up connections between senior administrators in the four governments so as to prevent wide divergences in practice and to preserve a national outlook. In 1957, a National Council on Establishments was formed with members from the Federation and the Regions to ensure that grades and salaries remained uniform. When Nigerianisation began to gather way in the Regions after 1954 those in the Federal service flocked back to their respective Regions but since then, the tendency has been for each service to take most of its entrants direct from the universities. The Public Service Commission does inform the Regions of all vacancies in the Federal Service and some established men do move to Lagos, but since there

(31) This was avoided during the riot in the Western House of Assembly on 25 May, 1962, by the decision not to recognise either claimant as Premier

(32) It is significant that one of the first acts of the Nigerian Police after the declaration of emergency in the West was to absorb the local government police and some senior officers have doubted whether this decision will ever be reversed. Most Nigerian officers, however, believe that the Regions will fight to the last gasp before they will leave themselves solely in the hands of the Nigerian Police.
is no salary differential and there is a fear among Southerners (however unfounded) that at any time a Northerner may be promoted above them, the flow is small. Now it appears that almost all applicants for the Regional services come from the majority tribes in the area so that it has become unusual to look elsewhere for recruits, and there is no reverse movement of Federal civil servants to the Regions. Nigeria is not developing the single cadre of administrators with a national outlook that has done so much to strengthen the forces making for unity in the Indian Federation.

Thus the task of governing Nigeria has led to an emphasis on centralised economic planning and extra financial resources have given the Federation an advantage in dealing with the Regions. But the latter still have large powers and there is an expanding group of politicians, civil servants, business and professional men whose lives are bound up with the progress and separate identity of the Regions. Political events in 1952 have shown that the Federal Government can discipline and even crush Regional Governments and parties that oppose it too strongly — but this was only possible because two of the three Regions and a faction in the West backed the federal action. Nigerian federalism on both the political and administrative levels is becoming a matter of co-operation and consultation between the heads of the four governments with the central Government having certain slight but definite advantages over the Regions.
CHAPTER III

THE OPTION FOR UNITY

The White Paper presenting to the people of Ghana a draft republican constitution declared that the present frontiers of Ghana, like so many other frontiers on the African continent, were drawn merely to suit the convenience of the Colonial Powers who divided Africa between them during the last century. This arbitrary quality of national boundaries presents one of the principal challenges to the new states of Africa, and it is one of the hypotheses of this study that it has been a dominant factor in determining how the organized legal force would be used. The effective organizing of public force within the area of Ghana, as it was delivered by colonial hands to an indigenous elite, has necessitated the placing of nationhood high among the values to be implemented by law. This chapter continues the discussion of this problem at the level of general structures: should Ghana be a more or less loosely knit assembly of regional centers of power or a tightly knit unitary state? The discussion will show how Ghana exercised the option for unity.

The territory of modern Ghana possesses no natural unity. Aside from the Gulf of Guinea which forms its southern border, it is not defined by natural boundaries of significance. With its greater extension northward from the coast, it overlays the main geographic divisions of West Africa, the great forest area and the savannah, extending northward toward the Sahara. Although all the people are of Negro stock, there are important linguistic and cultural divisions between the people of the high forest area and the southern grasslands and those of the north. There is also religious diversity; the northern parts have felt the impact of Islam while

1 Government Proposals For a Republican Constitution, p. 4.
W.P. 1/60 (March 7, 1960).
the religion of the south is animist—ancestor worship modified by Christianity.

Throughout most of its history, Ghana has felt little pressure for unity from either Europeans or the indigenous leaders. Though the European presence on the Guinea coast dates from the fifteenth century, its effectiveness was lessened by national economic rivalries and extreme reluctance to assume the responsibilities of civil administration. It was also limited largely to the littoral by these factors as well as by the extreme hardship of life for the white men. A major departure from these patterns began only in the latter half of the nineteenth century when Great Britain finally excluded its European rivals from this part of the Guinea coast.

Indigenous institutions provided no base for the development of a modern national state. The Fante states of the coastal regions were small, territorially organized units which occasionally joined together for military purposes largely under pressure from the Ashantis. In the extreme southeast, political organization among the Ga-Adangbe people was even more elementary, the principal unit being the independent town or village. Further inland, larger and more powerful states did develop, first Akwamu for a brief period, and later the powerful military state of Ashanti. While Ashanti was primarily a confederation for military purposes (with civil government remaining the function of component units), it is significant for present purposes in that it created some perception of a unity larger than the small Akan state in the people of a large central part of modern Ghana. In the Northern Territories, again the pattern was a large number of small relatively autonomous units and fragmentary groups.

In the century between Britain's exclusion of her European rivals and her transfer of the powers of government to an independent Ghana, a number of events occurred which augured the drive toward a larger unity. These need be sketched only briefly. During the 1830's, when the British responsibilities on the Gold Coast were in the hands of a group of London merchants, Captain George Maclean, a young Scotswoman in their employ, laid the foundations of British government over a larger area; he arranged an acceptable peace between the Fante states and Ashanti and secured the voluntary acceptance by the local rulers and people of himself as judge in a variety of disputes. Maclean's activities lacked a legal foundation, but this was supplied in 1843 by the resumption of British governmental control over the Gold Coast and by the enactment of the Foreign Jurisdiction Act. Shortly thereafter, a number of Fante chiefs, in the so-called "Bond of 1844," acknowledged British jurisdiction in areas adjacent to the coastal forts and accepted the "general principles of British law" as the standard for remolding some of the customs of the country. In the Bond may be seen some concession of the sovereignty of the several native states and their search for a more inclusive organizing structure under the protection and guidance of the British.

British intent, initiative and foresight did not cultivate the seeds implicit in the Bond. Military incursions of Ashanti resumed without effective British response. In 1865, following a parliamentary inquiry, the British Government announced its intention of abandoning the Gold Coast and pursuing a policy which would enable the natives to take over "as speedily as possible." Responding to this apparent invitation, a number of chiefs and educated Africans met at Mankesim and adopted a constitution for the Fante Confederation. This remarkable document is reproduced as Appendix C in Casely-Hayford, Gold Coast Native Institutions (1903).
functionaries and for the improvement of education, roads and agriculture, as well as for common defense against Ashanti. Again the British vacillated, representing the unifying drive toward a larger measure of self-government, and the ambitious Mankessim Constitution came to nothing. In fact, on July 24, 1874, the Gold Coast was declared a British colony and such basis as was thereafter laid for the unification of the native states was found within the framework of colonial administration.

New impetus for drawing together diverse elements of the native population came in the 1890's from the reaction to proposals of the Gold Coast Government for legislation that would regulate the granting of mining and timber concessions. Viewing the proposed law as a step toward vesting ownership of “unoccupied land” in the government, the lawyers, businessmen and chiefs of the coastal areas organized the Gold Coast Aborigines' Rights Protection Society to oppose the measure. The proposed land legislation was withdrawn, but the Society remained a unifying political force in the Colony until the mid-twenties. Not all the groups looking toward the formation of wider associations and increased political participation for Africans had a purely Gold Coast focus, however. In the period immediately after World War I, largely under the leadership of J. E. Casely-Hayford, a Cape Coast barrister, the National Congress of British West Africa was formed, with representation from the Gold Coast, Sierra Leone, the Gambia and Nigeria. Early in its existence, the efforts of the Congress were undercut by some of the Gold Coast chiefs; such clashes of interest between the traditional rulers and educated, politically aware Africans were recurrent in the Colony. During certain periods, however, the two groups cooperated—such as in the organization in 1930, under the leadership of Dr. J. B. Danquah, of the Gold Coast Youth Conference which met periodically for discussion of the ways to attain social and economic advancement.

All of these movements had their center of gravity in the Colony, though the later ones such as the Youth Conference had representatives from Ashanti. Developments in that important region must be sketched briefly since they not only provide a testimonial to the capacity of African societies to create and operate large and complex governmental structures but also serve to explain one of the principal obstacles encountered by the governing elite of an independent Ghana in creating a viable perception of nationhood. As has been seen, European intervention in West Africa was for centuries limited to a thin area along the coast. Secure in the high forests, the Akan states of the interior were left alone to evolve their own social and political organizations. During the eighteenth century, sparked mainly by the rulers of Kumasi State, the Ashanti Union was formed. Civil government remained the function of the several divisions of the Union under their Paramount Chiefs, but in military operations, first defensive but later aggressive, the Union was an effective, operating unit. The details of its history, largely military, do not concern us here; the important fact is that Ashanti did achieve a higher unity than the characteristic, small territorial state of the Akan. This unity was symbolized by the Golden Stool of Ashanti which was believed to embody the spirit of the entire Ashanti people. The Paramount Chief of Kumasi, as Asantehene, was the custodian of the Golden Stool and thus had the allegiance of the Ashanti people.

The military pressure of Ashanti, impinging as it did on the smaller states to the south, increased the dependence of the latter on the Europeans and explains in part the unifying tendencies epitomized in the Fante Confederation. During the nineteenth century, the British participated in six wars with Ashanti; in the sixth war, although British forces captured and burned Kumasi, they then withdrew almost immediately. In 1896, Kumasi was again occupied, the Asan-
The Option for Unity

The Ashante Order in Council, 1901, 1 STAT. RULES & ORDERS Rev. to Dec. 31, 1905, at 1.

1 Ashanti (1923); Religion and Art in Ashanti (1927); Ashanti Law and Constitution (1929).

4 The campaign for Prempeh's release was led by J. E. Casey-Hayford, a Cape Coast barrister and political leader, and Nana Ofori Atta, Paramount Chief of Akim Abuakwa. This cooperation suggests the interplay of Ashanti and Colony politics. Wight, The Gold Coast Legislative Council, 50 (1947).


6 The voters in the plebiscite had the choice of union with an independent Gold Coast or separation of the territories from the Gold Coast and continuation under trusteeship with the possibility of ultimate union with the French-administered section of Togoland as an independent state. A total of 194,230 persons was registered to vote in the plebiscite; of these 160,587 voted. The breakdown of the vote was as follows:

<table>
<thead>
<tr>
<th>District</th>
<th>Union</th>
<th>Separation</th>
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</thead>
<tbody>
<tr>
<td>Manprusi District</td>
<td>27,210</td>
<td>3,349</td>
</tr>
<tr>
<td>Dagomba District</td>
<td>26,521</td>
<td>6,549</td>
</tr>
<tr>
<td>Gonja District</td>
<td>3,166</td>
<td>2,772</td>
</tr>
<tr>
<td>Buem/Krachi District</td>
<td>24,697</td>
<td>17,674</td>
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<tr>
<td>Kpandu District</td>
<td>8,581</td>
<td>18,981</td>
</tr>
<tr>
<td>Ho District</td>
<td>7,217</td>
<td>24,957</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>93,695 (58%)</td>
<td>67,492 (42%)</td>
</tr>
</tbody>
</table>

The two remaining areas included in modern Ghana are the Northern Territories and Togoland. The former came within British influence in 1897 after the conclusion of agreements with some of the chiefs; its boundaries were subsequently determined, and it was declared a Protectorate in 1901, governed by a Chief Commissioner responsible to the Governor of the Gold Coast. This status was preserved until the Coussay Constitution of 1950 provided Legislative Council representation for the Northern Territories. Thus the north remained in the backwaters of Gold Coast political and governmental development until virtually the eve of independence. The fourth area, Togoland, was a former German colony divided under a League of Nations mandate between France and Great Britain. The southern area of the British mandate was administered as part of the Gold Coast Colony and the northern area as part of the Northern Territories. In 1956, the people of both areas in a plebiscite held under United Nations auspices chose to become part of Ghana upon its achieving independence.
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In summary, one can only conclude that neither indigenous institutions nor colonial developments nurtured a consciousness of higher unity upon which the underpinnings and superstructure of a nation could readily be built. Among the Akan (with the exception of Ashanti), traditional loyalties ran to small, territorially organized states which moved in and out of loose alliances under the exigencies of military pressure. These exigencies resulted mainly from the recurrent threat of Ashanti which thus introduced historic fears and suspicions to complicate the molding of a nation. As later discussion will show, the unification of Ashanti produced allegiances which have erected some of the most difficult obstacles to the recasting of the component elements into a viable national entity. Linguistic, cultural and economic diversities, while perhaps not major factors, have also rendered the task more difficult. Through most of the British experience on the Gold Coast, the practice of administering the several areas as separate entities at least diffused the unifying impact of a single colonial power. It is against this broad background that we turn again to the base line under the Nkrumah Constitution of 1954 and other relevant legislation. From that line we will then trace the efforts toward unification under the elite that has manipulated the legal force in Independent Ghana.

The 1954 Constitution defined the Gold Coast to mean the Colony, Ashanti and the Northern Territories, and, for purposes of the constitutional allocation of powers, Togoland under British trusteeship as well. The general governmental structure previously described was for the Gold Coast as thus defined. It was made entirely clear, of course, that the integration of Togoland into the Gold Coast order would not permit any action by the indigenous legislative or executive organs that would be incompatible with the responsibilities of the British Government under its Trusteeship Agreement with the United Nations. Insofar as those responsibilities were involved, the metropolitan power reserved ultimate authority. The National Assembly might legislate for the entire Gold Coast, but laws repugnant to the Togoland Trusteeship Agreement were, to the extent of the repugnancy, void. Executive functions, insofar as they affected Britain’s responsibility under the agreement, were to be exercised on the direction of the Governor. In defining the Gold Coast proper the 1954 Constitution merely continued integrations previously achieved.

Nevertheless, it is significant because for the first time all of the areas of modern Ghana were brought, to some extent, within a single political and governmental framework. Each area had representation in the Assembly: 39 from the Colony, 13 from southern Togoland, 19 from the Ashanti and 26 from the Northern Territories and Northern Togoland; in addition, 7 members represented the municipalities of Accra, Cape Coast, Kumasi and Sekondi-Takoradi.

Prior to the 1954 Constitution, efforts toward unification had been evident in revisions of the scheme of local government. For decades, British policy had revolved around efforts to make the chiefs and their councils effective instruments of local government. Separate legislation for the three major areas had provided for designating traditional rulers as Native Authorities, defining their powers and providing for the

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10 1954 Constitution, secs. 16, 17, 36.
11 As already noted, the 1946 Constitution had provided a Legislative Council representing both the Colony and Ashanti; the 1950 Constitution was applicable to the Colony, Ashanti and the Northern Territories.
12 Id., sec. 28.
establishment and control of treasuries. In this body of enactments, the traditional separateness of the Colony, Ashanti and the Northern Territories is manifest. Ferment for change in local government was stimulated by the report of the Watson Commission following the disturbances in 1948; it also figured prominently in the study and report of the Coussey Committee in 1949. The Coussey recommendations were largely followed in the Local Government Ordinance of 1951, one of the first major pieces of legislation enacted after Nkrumah and the C.P.P. came to power.

The Local Government Ordinance provided for the establishment of a substantially uniform system of local government throughout the entire country. On ministerial order, urban and local councils might be set up, two-thirds of the members of which would be popularly elected while one-third would be appointed by the traditional authorities, unless the Governor in Council determined that it was not practicable or appropriate to maintain this proportion. Substantial legislative and executive functions, including the levying of taxes, were to be exercised by the councils. Council bylaws were not, however, to have effect until approved by the Minister responsible for local government who was also granted the power to amend or revoke bylaws. Provision was also made for district councils composed of representatives of the urban and local councils within the district, the proportion between representative and traditional members to be fixed by the Minister. Adoption of the new system of local government was a signal defeat for the traditional forces, whose orientation was local or regional and politically exclusive, and a major victory for the new elite working within the secular framework of a national political party and the institutions of modern parliamentary government.

A more dramatic illustration of the conflict between these factions was the dispute over regionalism that reached crisis proportions in the mid-fifties on the eve of independence. Again a brief historical review is essential. In 1948, the Watson Commission had recommended the establishment of regional councils in the three principal areas with largely executive functions, including the supervision of local authorities, but with some power to make bylaws under a definition of function and a delegation of authority from the National Assembly. The Commission thought a taxing power in the Regional Councils might be necessary, though normally the councils were to be financed by grants from the Assembly. A somewhat different membership scheme was proposed for each region, but the common denominator was a limitation on the number of members selected by or identifiable with the traditional authorities. While announcing general agreement on the desirability of developing Regional Councils, the British Government withheld comment on most of the details. Significantly, however, it declared that the Regional Councils should be “developed from” the existing regional councils of traditional authorities—the Joint Provincial Council in the Colony, the Ashanti Confederacy Council and the Territorial Council for the Northern Territories.

The Coussey Committee in 1949 rejected the existing territorial councils as the foundation for new regional organs but continued the pressure for “a large measure of decentralization of functions and of devolution of power by the Central Government.” Regional functions in the fields of health, education, public works and social services were envisaged, but without a support...
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ing power to tax. Regional administrations were to be financed by central government revenues granted to the regions. The point of emphasis at the moment, however, is the Coussery Committee’s underlying theory of the relationship between the central government and each region: while the principle of maximum decentralization should be stated in a new constitution, the regional administrations were to be merely agents of the central government exercising such powers and functions as might be defined by legislation. These recommendations of the Coussery Committee were in general accepted by the Secretary of State for the Colonies.22

The Local Government Ordinance of 1951 did not implement the Watson and Coussery recommendations on regional organization. By the time of the Nkrumah Constitution of 1954, which is used here as the base line, the complex of views and political forces affecting this issue had changed radically. In September, 1954, the National Liberation Movement was organized, drawing its main support from the traditional authorities and their supporters, principally in Ashanti, but also profiting from the economic disaffection of the cocoa farmers. The N.L.M.’s importance lay in its transformation of the question of regionalism from the rational allocation of functions between a supreme central government and its regional agents to one involving the very nature and power of the central government itself.

The N.L.M. declared for a federal government under the Independence Constitution then emerging on the horizon. This position was supported by the traditional authorities in Ashanti. On October 21, 1954, the Asanteman Council adopted a resolution endorsing the demand for a federation and requesting the British Government to establish a commission of inquiry to examine the proposal. The British Government replied that agreement on constitutional structure should result from internal discussions. To that end, Dr. Nkrumah subsequently proposed a round-table discussion, but this proposal was rejected by the Asanteman Council and the N.L.M. on the ground that they would consult with the Governor but not with a mere party leader. Again on December 30, Dr. Nkrumah proposed a conference on fundamental constitutional questions but the proposal was rejected by the N.L.M. and the Asanteman Council on February 5, 1955. On March 9, the Northern People’s Party announced that it would support federation. As the movement gained strength during the early months of 1955, there were riots and other forms of violence against C.P.P. supporters in Ashanti, which led to the declaration of a state of emergency there.

On April 5, a Select Committee of the Legislative Assembly was appointed to study the proposals for federation and a second chamber. Its report, submitted on July 27, rejected federation on the grounds of cost and the inadequate number of qualified Africans to fill governmental posts.23 It recommended, however, that consultative councils be established in the regions to assure collaboration in the planning of development. The Committee also rejected the proposal for a second chamber, suggesting that this might be reconsidered after independence.

The opposition parties decided to boycott the Legislative Assembly debates on the report of the Select Committee because they had taken no part in its appointment or proceedings. This failure had resulted from an earlier decision of the opposition groups to boycott the Assembly proceedings, to refuse to serve on the Select Committee and to reject invitations from the Committee to submit memoranda or give evidence. The demand of


powers to the regions. Before his arrival, however, the opposition parties informed the Governor that they would boycott Sir Frederick unless he was also authorized to inquire into the political crisis in the Gold Coast.

On Bourne’s arrival in Accra on September 26, the official announcement of his mandate was broad indeed. He was to advise the Government on the organization and functions of regional councils and to assist in reconciling the competing views so as to resolve the constitutional crisis. Specifically, Sir Frederick was authorized to receive the views of the National Liberation Movement and to place them before the Government with his observations.

Despite this broad mandate, the boycott by opposition groups continued, though on somewhat different grounds. Contending that the Government’s pressing passage of legislation dealing with the traditional state councils in Ashanti had impugned the sincerity of the Government in dealing with the constitutional question, the N.L.M. leaders and their supporters in other opposition groups refused to see Bourne officially or to discuss their views with him.24 The Bourne Report, submitted to the Governor on December 17, 1955, rejected the federalism of the N.L.M., declaring that...

24 The State Councils (Ashanti) (Amendment) Ordinance, 1955, No. 38 of 1955. The critical part of the amendments authorized the Governor to provide for the hearing of matters of a constitutional nature, that is, involving the enstoolment and de-stoolment of chiefs, by a specially appointed committee of enquiry rather than the traditional council, and for the extension of rights of appeal from certain prior decisions of these councils. Nkrumah recognized that many people felt the ordinance was badly timed. In justification of the Government’s action he has said: “... circumstances in the country at that particular time warranted passing into law an ordinance of that nature, when chiefs were being unjustly de-stooled for not supporting the federalist idea. They had no right of appeal, and it was high time that the Government took measures to protect them from such unfair treatment. If the bill had been withdrawn, it would have weakened the Assembly, and the chiefs for whose benefit it was being put through would have suffered at the hands of those who dealt in corruption, violence and injustice.” Autobiography, 243 (1957).
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"experience has shown that the fragmentation of existing states is, on general grounds, mistaken: on the contrary the tendency has been toward greater consolidation."23 The Report did, however, recommend the establishment of regional assemblies, financed by central government grants.26 These regional bodies would lack the power to tax and would have consultative and deliberative functions as well as certain executive responsibilities.27 The proposed constitution and any ordinance establishing a regional assembly would make it "clear that the supreme legislative power remained at the centre"; regional legislation would be limited to bylaws and regulations made under delegation of authority to implement national enactments.

The Bourne Report thus rejected the demands for a federal structure in which the powers of the central government were defined and delegated to it while all residual power remained in the regional units. A conference to consider the report was convened at Achimota in February, 1956, but the federalists declined to participate. While varying somewhat in details, the Achimota Conference recommendations and the Gold Coast Government's proposals for an Independence Constitution firmly adhered to the Bourne rejection of federalism. The Government sought28 the vesting of supreme

26 The stated purposes of the Regional Assemblies were "(1) to afford an effective link between regions and the Central Government and thereby to remove any danger of excessive centralization; (ii) to provide for the formation and ventilation of local opinion on matters of national importance; (iii) to procure the use of local knowledge and experience to ensure that legislation is devised and implemented and schemes and projects involving expenditure in the region designed, and the required money provided, in a manner suited to the circumstances of the region concerned" P. 5.
27 The areas mentioned in which these functions might be exercised were local government, agriculture, animal health and forestry, education, regional roads, health, water development, town and country planning, housing and appointment of regional representatives to statutory boards and committees.
28 Constitutional Proposals for Gold Coast Independence (1956).
Nkrumah moved a resolution in the National Assembly calling for independence in accordance with Mr. Lennox-Boyd's earlier assurances. The opposition groups again boycotted the Assembly on this occasion, and the resolution was unanimously adopted.

The election results stimulated the agitation of the opposition groups for federation. Professor K. A. Busia issued a statement on August 12, before leading an opposition delegation to London for talks with Mr. Lennox-Boyd, which asserted that the results in Ashanti and the Northern Territories strengthened the case for a federal constitution. The Asanteman Council issued a similar statement on August 16, emphasizing the separate identity of the Ashanti people and their determination to preserve it. Although on September 18 Mr. Lennox-Boyd announced the British Government's intention to grant independence to the Gold Coast on March 6, 1957, he continued his efforts to reconcile the conflicting constitutional views. In the Gold Coast, discussions between the Government and the opposition and Territorial Councils finally took place in October, 1956. Thereafter the Gold Coast Government issued its revised constitutional proposals for independence. After Assembly debate in which the opposition for the first time participated, these proposals were approved by a vote of 70 to 25. On November 20, a joint resolution of the National Liberation Movement and the Northern People's Party demanded "separate independence for Ashanti and the Northern Territories." On November 27, the N.L.M. forwarded to Mr. Lennox-Boyd a plan calling for the establishment of Ashanti or a union of Ashanti and the Northern Territories as an independent state within the British Commonwealth. However, it was not until after the Colonial Secretary had visited the Gold Coast in January, 1957, that seemingly viable compromises were reached. These were reflected in a British White Paper, published on February 8, one day after the Ghana Independence Bill had been passed by the United Kingdom Parliament.

The Independence Constitution represented a compromise between the opposing views, though the major concessions were made by the opposition parties. No provision was made for a second chamber or a council of state. The important innovations were certain limits on the power of the central government, introduced to allay the suspicions of the traditionally oriented groups in Ashanti and the Northern Territories. Those provisions pertaining to changes in the constitution and in the status and functions of the chiefs have been discussed in earlier chapters. Primary attention here is directed to the structure of the regional organizations upon which certain powers and functions might devolve.

The constitution provided for the division of the country into five regions; in each of these there was to be a head of the region chosen by the regional House of Chiefs, except for Ashanti where the Asantehene was to be the head. In recognition of "the need for a body at regional level with effective powers in specified fields," Parliament was required to establish a Regional Assembly in each region. The specified fields were local government, agriculture, animal health and forestry, education, communications, medical and health services, public works, town and country planning, housing, police and such others as Parliament might determine. Within these areas, however, the Regional Assemblies had no

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24 On constitutional amendment, see ch. 1; on the status and functions of chiefs, see ch. II.
25 The regions were the Eastern Region, made up of the former Eastern and Accra Regions of the Gold Coast; the Western Region, preserved intact; the Ashanti Region, consisting of all of Ashanti; the Northern Region, made up of the Northern Territories and Northern Togoland; and the Trans-Volta/Togoland Region, preserved intact. 1957 Constitution, sec. 63.
actual constitutional power or function. The supremacy of the central government was made entirely clear; the Regional Assemblies would "exercise authority, functions, and powers to such extent as may be prescribed by Act of Parliament."

The only constitutionally assured function of the Regional Assemblies was the review of certain kinds of legislation with the possibility of exercising a qualified veto. Two types of legislation required a special procedure which included approval by the Regional Assemblies: 1) any bill enacting, modifying, repealing or re-enacting the provisions of the constitutional Order in Council defining the basic governmental structure and the public service, guaranteeing regional organizations and chieftaincy and assuring compensation on the compulsory acquisition of property; and 2) any bill abolishing or suspending a Regional Assembly or diminishing its functions or powers. It is noteworthy that this second limitation on parliamentary power did not provide constitutional assurance of any devolution of powers and functions to the Regional Assemblies. Devolution required legislation which could be passed by a simple majority in Parliament. Once delegating legislation was passed, however, it came within the protection of the procedure. Thus, a grant of powers or functions once made to the Regional Assemblies could not be easily revoked.

Bills falling within these two categories were subject to two special requirements. The first was approval by two-thirds of the entire membership of Parliament, the same percentage required in the case of any amendment of the constitution. The second was reference of the bill, after the committee stage in the National Assembly, to each Regional Assembly. Two-thirds of the total number of Regional Assemblies, including any assemblies whose powers or functions were affected by the bill,

24 Id., sec. 64.
25 Id., sec. 32.
26 These "entrenched" provisions are listed in the Third Schedule to the constitutional Order in Council.

had to give their approval before further action on it could be taken by Parliament. In the Regional Assemblies themselves, approval required only a simple majority of those members present and voting. This more modest requirement may have been directed at the tactic often employed by the opposition groups during the disputes occurring since the establishment of responsible indigenous government, i.e., boycott of the proceedings of the National Assembly or special conferences. A similar assurance that dilatory tactics in the Regional Assemblies would not unduly impede the legislative process at the center was provided by the stipulation that unless a Regional Assembly certified to the Speaker of the National Assembly its action on a bill within three months of the reference, the bill would be deemed approved by the Assembly. Further, if a Regional Assembly certified its disapproval of a bill affecting its own powers or functions, the Governor General was authorized to submit the measure to a referendum of the registered electors in the region, and if a majority of the electors voting approved it, the bill would be deemed approved by the Regional Assembly. Thus, in the case of measures affecting the powers and functions of the assemblies themselves, though not in the case of proposed legislation affecting the entrenched provisions, the assemblies were not given an ultimate veto. The central government was able to take the issue to the people themselves.

A further limitation on the central legislative power applied to measures altering the boundaries of regions. The relevant constitutional provisions are extended and rather complex, and for this reason a detailed summary is essential:

1. No bill effecting any alteration in the boundaries of a region by transferring an area containing less than ten thousand registered electors, other than a bill creating a new region, could be introduced in the

27 1957 Constitution, sec. 33.
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National Assembly unless the alteration had been previously approved by a majority of the members present and voting at a meeting of the Regional Assembly of every region whose boundaries would be affected.

2. If a bill would effect such an alteration in regional boundaries as to transfer ten thousand or more registered electors, it could not be introduced without the prior approval of a majority of the voters participating in a referendum in the region from which the transfer would be made, as well as the prior approval of a majority of the members present and voting in the assembly of the region into which any part of the transferred area would be incorporated.

3. No bill affecting regional boundaries by the creation of a new region could be introduced without prior referendum approval in every affected region, and the approval of enough additional assemblies (by majority of those members present and voting) to bring the number of regions in which one form of approval or the other had been given to two-thirds of the total number of regions.

Measures effecting either of these three purposes were required to contain the provisions necessary for the delimitation of new electoral districts or the appropriate modification of existing districts. Thus, significant safeguards were erected around the territorial integrity of the regions specified in the constitution.

When the 1957 Constitution came into force, there were no Regional Assemblies which could merely be preserved. Before such assemblies could be established, basic legislation was required; but until the Regional Assemblies were established, the members of Parliament from each region were constituted an Interim Regional Assembly for that region. These interim bodies were authorized to offer advice to a Minister on matters affecting their regions. They could not, however, give the requisite assent to proposed legislation amending the constitution, affecting the existence, functions or powers of the Regional Assemblies or altering regional boundaries (except to create a new region). Where the proposed legislation would create a new region, the Interim Assemblies were expressly authorized to give the requisite assent.29

In the establishment of regional organizations and the devolution of powers to them, the study and recommendations of a special commission were contemplated. The constitution provided for the appointment by the Governor General of a regional constitutional commission to be chaired by the Chief Justice or a judge nominated by him and to include Commissioners from Parliament and from the Territorial Councils of traditional authorities as well as others.29 Upon the report of the commission, implementing legislation was to be introduced. The commission was duly appointed under the chairmanship of Mr. Justice William B. Van Lare of the Supreme Court and received testimony and other evidence from a wide variety of witnesses. Included among them were spokesmen for the traditional authorities and the opposition political parties, the National Liberation Movement and the Northern People's Party.

The commission's report carefully stated the competing views on the relevant issues, evaluated the arguments and formulated its own recommendations.41 It also incorporated a draft bill to implement these recommendations. In the light of later developments, the commission's conclusions need only be summarized. Regional organizations with substantial powers and functions in the several areas listed in the constitution were envisaged. The commission rejected the proposal for parliamentary structures at the regional level, preferring popularly elected assemblies, with executive functions

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29 Id., sec. 33(3).
30 Id., sec. 87.
being performed by bipartisan committees and a competent professional staff. In the initial period after establishment, the functions of regional organizations would be largely deliberative and supervisory, with executive functions increasing as sound administrative organizations were developed. The steady accretion of powers and functions at the regional level would be at the expense of both the central government and existing local government units. The constitutional status of the new regional assemblies was most clearly articulated in the commission's views on the legislative powers they should enjoy. The commission declared:

To attempt any sharing of original legislative powers would, we consider, be to strike at the roots of the unitary nature of our constitution and to introduce a quasi-Federal state. We do not recommend that Regional Assemblies should have any original legislative powers.

We consider that Regional Assemblies should have subordinate legislative powers, including the making of bye-laws, such powers being derived from the Act establishing Regional Assemblies or other Acts specifically conferring powers on Regional Assemblies.\(^4\)

The dependent nature of the regional organizations was emphasized by the recommendation that all taxing power be withheld from them at least initially. The Regional Assemblies were to be financed by grants-in-aid from the central government or public corporations, by issuing precepts to local government rating authorities and by borrowing.

The Government’s statement on the Commission’s Report was quite brief.\(^5\) With respect to the form and organization of the Regional Assemblies, it indicated an intention to prepare amendments to the bill drafted by the commission, dealing only with administrative functions. With respect to the functions of the Regional Assemblies, however, the Government declared its intention to introduce amendments to the commission’s bill which would leave with local government authorities a number of functions the commission would have committed to the regional organizations. The Government’s view of the central function of the Regional Assemblies was thus stated:

5. The Government considers that the main value of Regional Assemblies is that there will be, in them, available to the Central Government, directly elected representative bodies which can tender advice either on their own initiative or at the request of the Government. The Government therefore proposes that there should be the fullest development of the advisory powers of Regional Assemblies.

The Government’s views of course prevailed in the Regional Assemblies Act of 1958\(^6\) as finally passed. Members of the assemblies were to be elected in regional electoral districts, each parliamentary constituency being divided into two such districts except in Trans-Volta Togoland where each constituency was to be divided into three. Affirmative qualifications for election were the same as those for Parliament, but a person was not eligible if he was a member of Parliament, head of a region, a member of a House of Chiefs, an employee of the central government, of a Regional Assembly, local authority, House of Chiefs or state council, or was engaged in instruction in any educational institution wholly or partly supported by Parliament.

The functions of the assemblies were limited to advising and making recommendations to Ministers of the central government in a number of areas. It is not entirely clear from the several relevant provisions of the act whether a Regional Assembly might take the initiative in giving advice and making recommendations or whether even this function was merely to respond to a ministerial request. With respect to the form and organization of the Regional Assemblies, it indicated an intention to prepare amendments to the bill drafted by the commission, dealing only with administrative functions. With respect to the functions of the Regional Assemblies, however, the Government declared its intention to introduce amendments to the commission’s bill which would leave with local government authorities a number of functions the commission would have committed to the regional organizations. The Government’s view of the central function of the Regional Assemblies was thus stated:

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\(^4\) Id., at p. 93.
\(^6\) No. 25 of 1958.
request. The Government's statement on the Van Lare Commission Report had conceded such an initiative to the assemblies, however.

It is very clear that the act left unimpaired the full substantive control of the central government. This fact is well illustrated by the form of the authorization to a Regional Assembly to make bylaws for the purposes of its functions under the act. The act provided expressly that such "by-laws shall not have effect until they are approved by the Minister [for local government] who, before approving, may amend them..."45 While the act contained extended provision for the preparation of estimates of expenditure46 and the auditing of the accounts of Regional Assemblies, there were no express provisions relating to sources of income. Central government control over regional activity, clearly manifested by the delegated nature of the limited advisory powers of the assemblies, was reinforced by a firm hold on the purse strings.

Elections to the Regional Assemblies were held on October 16 and 21, 1958. The opposition, now substantially unified in the United Party, decided to boycott the elections on the stated ground that the Government had refused to take appropriate steps to check voting malpractices. The U.P. boycott elicited from the Government the curious response of a ban on all rallies of the Party, which lasted from September 26 until October 31, 10 days after the elections were completed. Without significant opposition, the Convention People's Party won 43 out of 44 seats in the Western Region Assembly, 41 out of 44 in the Eastern Region, 41 out of 42 in Ashanti, 38 out of 39 in Trans-Volta Togoland and all 52 seats in the Northern Region.

Thus, firmly in control of both the organs of central government and the Regional Assemblies, the Nkrumah Government was in a position to abandon the compromises of the Independence Constitution and strike vigorously at the traditionally and regionally oriented groups. In December, 1958, Parliament repealed the restrictions on its legislative power, which had established a special procedure for constitutional amendments and had required reference to the Regional Assemblies and Houses of Chiefs of bills affecting them or the boundaries of Regions.47 The Speaker duly certified that the bill had been approved by the requisite two-thirds of the entire membership of Parliament, had been referred to all Regional Assemblies and Houses of Chiefs and had been approved by all the Regional Assemblies. Thus, the requirements of the Independence Constitution for such legislation were fully met by the measure which eliminated the requirements for the future. The legislative supremacy of Parliament was now clear. Neither revision of the constitutional Order in Council nor any other measure required more than a simple majority in the Assembly and executive assent. The final blow at regionalism was a gratuity. In early 1959, the existing Regional Assemblies themselves were dissolved and the Regional Assemblies Act repealed.48

Subsequent modification of the regional structure is of little interest here. In 1959, Parliament created a new region, called the Brong-Ahafo Region, out of the northern part of Ashanti and a small part of the Northern Region.49 Later, the name of the Trans-Volta/Togoland Region was changed to the Volta Region.50 In 1960, the Constituent Assembly divided the Northern

44 The Brong-Ahafo Region Act, 1959, No. 18 of 1959.
45 The Volta Region Act, 1959, No. 47 of 1959.
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Region into two new regions, to be known as the Upper and the Northern, and divided the former Western Region into the Central and the Western. These adjustments did not affect the status, functions or powers of the regions, and they remained administrative subdivisions of a unitary government.

The victory of the proponents of unitary government in 1958 and 1959 seemed complete. Nevertheless, with a view toward Ghana's becoming a republic, the fundamental issue of governmental structure and the distribution of power was injected into the plebiscite in 1960. The White Paper presenting to the people a draft constitution declared: "The Government asks the people, by voting for the draft constitution, to show that they believe in the unity of Ghana and reject any form of federalism. The Government will consider a vote in favour of the draft Constitution as a mandate to maintain the unity of Ghana." It is noteworthy that the opposition United Party no longer insisted on a federal structure and, in fact, did not make an issue of regional powers and functions. Dr. J. B. Danquah, in his policy statement for the United Party, did revive the old plea for an upper chamber of Parliament, but on the issue of the distribution of power between the center and the regions he was silent. Indeed, it could be argued that by implication he declared for the complete sovereign power of Parliament. The first of his list of immediate targets when the Government came under United Party control was "to restore to Parliament and affirm for all time its great power and status as the articulate expression of the legislative sovereignty of the country, the representative of the people, responsible not to the President or the Governor-General, but to the Constitution, to the people and to God." If the results of the plebiscite may be interpreted as the Government proposed, the people firmly rejected

52 Danquah, What the People Want (1960).
53 Id., at 7.

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federalism. Thus, the republican constitution declares that "Ghana is a sovereign unitary Republic" and that the power to change the form of government from that of a unitary republic is reserved to the people.

Thus, the drive toward unity has dominated the structuring and manipulation of public power in Ghana. The full array of legal power has been used to neutralize subnational orientations and power structures. The constitution organizes government on a unitary basis; the traditional authorities have been progressively limited to ceremonial, nongovernmental roles. A unified, national system of courts administers the law which is increasingly national in scope, the customary law with its essential localism now confronting in all cases a rebuttable presumption of nonapplicability. The legal apparatus of political monopoly, to be considered later, can fairly be seen in part as an effort to suppress local and regional divisiveness and to organize political power on the firm basis of the nation-state. Indeed, this entire study might be entitled, "The Legal Aspects of National Unification."

Ghana's role in the broader sweep of Pan-Africanism has been that of the constant agitator, the gadfly whose sting has offended perhaps more often than it has stimulated or attracted. By obvious conviction since his days as a student agitator, Dr. Nkrumah has been an Africanist; as he has gathered the reins of national power into his own hands, he has reached as well for the leadership of a supra-national movement looking ultimately toward the unity of all of Africa. Pan-Africanism in its various aspects, including legal implementation, merits extensive study. It is viewed here from the perspective of Ghana merely as the logical extension of the processes of internal unification that have claimed high priority under the Nkrumah Government. It may therefore be useful to sketch the principal polit-
the chief must exercise his powers only as *prinus inter pares*. Second, the old councils have been reorganized to differentiate administrative from judicial functions within the local or native authority bodies. With the differentiation of functions has also come differentiation of those engaged in pure administration from those who adjudicate disputes. Third, the membership of the traditional local authority councils has been broadened to take in a reasonable proportion, varying in some places from one-third to one-half of the members, of ordinary individuals who were formerly regarded as outside the pale. Similarly, traditional tribunals, membership in which has never been based upon systematic training in the applicable customary law, have been modernized to take in only those who, either through long experience of local customs and usages or through practical administration as registrars in British-established courts, have acquired the necessary competence to administer not only the customary law but also a limited number of simple legislative enactments, dealing with traffic offenses and the like. Finally, the advent of independence has blurred for all practical purposes the erstwhile distinction between British subjects in the colonies and British-protected persons in the protectorates. There is now only one territory and only one citizenship in each of the newly independent, sovereign states of Africa. This merging together of the various ethnic communities within the territory of a single state into one common citizenship is a significant event in the evolution of political societies in Africa. As Fortes and Evans-Pritchard have pointed out, African societies may be roughly classified into two main categories: (1) those with well-organized political and administrative machinery and judicial institutions, under a paramount chief or king; and (2) those with rudimentary political and administrative arrangements and insufficiently institutionalized judicial organs, usually lacking a well-defined chiefly system. Societies of the first type are often more heterogeneous, cosmopolitan, and sophisticated than the latter, which are characterized by homogeneity, close kinship ties, and a republican arrangement of communities into mutually balancing segments. The effect of the recent constitutional changes is therefore more profound on chieflyless than on chiefly societies.

The examination of the effects of recent constitutional changes and political developments upon the traditional institutions of African societies leads to a consideration of the position of chiefs within the existing framework. As we have seen, the chief-in-council has replaced the chief who was a sole native authority. A further development has been the separation of the chief from the newly reformed local govern-
ment councils; the chief has in most instances become merely the president, that is, the ceremonial head of a local council who formally opens each session and delivers an address once or twice a year. The day-to-day business of the council is entrusted to an elected chairman chosen from among the councilors on personal merit, insofar as possible. By far the most important problem relating to chiefs, however, has been to decide what use can be made of them under modern constitutional arrangements. In some countries, what many regard as a proper place for the chief has been found by the creation of bicameral legislatures with an elected lower house and an upper house made up of chiefs. This plan has been implemented in each of the regions of Nigeria, for example, even in the Eastern Region, where the institution of chieftaincy has not always been a marked feature of the republican polity. At the federal level, some lesser chiefs have been elected as members of the House of Representatives, and chiefs from all parts of the country, selected by electoral colleges set up by the regional legislatures, constitute nearly a third of the Senate. By and large, this system has proven satisfactory in Nigeria.

In other countries, such as Ghana and Tanganyika, the adoption of a unicameral legislature has relegated the chief to at least a secondary position. Ghana's regional assemblies, composed predominantly of chiefs, perform purely advisory functions related to chieftaincy and other traditional matters. This arrangement was intended to preclude the possibility of divided loyalties on the part of the people toward chiefs, as traditional rulers, and toward the new charismatic leader, as head of state or government. It has been argued, however, that some of Ghana's present-day political and governmental problems can be traced to the manner of handling chiefs under the new constitutions. In Tanganyika, the chief seems to have fared even less well than in Ghana; there is neither an institutional assembly of chiefs, nor specific constitutional machinery for consulting with them. They are apparently expected to take their place in the queue of ordinary men and women as electors or candidates for election. This solution looks democratic enough, and should work well in the absence of paramount or other strongly established chiefs in the local polity. Time alone will test the wisdom of the arrangement in Tanganyika. If it succeeds, it may well set the course of advance in chiefless societies in other parts of Africa.

No proper appraisal of the political problems of Uganda should underestimate the importance of the chief. The existing constitution is a compromise solution to the thorny problem of the relationship between Buganda on the one hand, and the kingdoms of Toro, Ankole, and Bunyoro, as well as Busoga, on the other. The current dispute between Buganda and Bunyoro over the so-called lost counties is an illustration of the problem. Any parliamentary arrangement that fails to find a proper place for the Kabaka of Buganda, in particular, and the other paramount chieftains in the rest of the country would be doomed to failure from the outset.

During our work in the Congo in the summer of 1963 as the United Nations Commission of Constitutional Experts charged with the task of drafting a federal constitution for the Congo, several informants from Katanga assured us that the success of Moise Tshombe's intransigence should be partly attributed to his reliance on an unofficial body of local chiefs for advice on all important issues between him and the rest of the Republic. The central government agreed with us that the federal constitution must provide for the participation of chiefs, not only in the provincial assemblies, but also in the central legislature, along the lines followed in Nigeria. This constitution also reorganizes the legal system of the country so as to ensure the integration of traditional tribunals, and of the various bodies of customary law which they administer, with the national system of administration of justice.

In the ex-French territories, as we have seen, the application of Direct Rule has so emasculated the chief, with his trappings of traditional authority and influence, that he no longer constitutes a real problem for the "new" men now in authority. It has thus been possible for most of these territories to adopt presidential systems of government, usually on the de Gaulle model. The question remains, however, as to whether the peculiar circumstances that justified the emergence, as well as the maintenance, of the de Gaulle hegemony over France could be said to exist in these territories, or whether the new African presidents necessarily stand in relation to their respective peoples as de Gaulle seems to stand in relation to the French people.

Almost all the postindependence agreements which these territories, as members of the French Community, concluded with France have retained some form of judicial association with the Conseil d'Etat and the Cour de Cassation of France, thus establishing a system of references and appeals from their highest local tribunals to those of France. There is some similarity between this system and the system of limited appeals from the highest courts in some ex-British territories to the Judicial Committee of the Privy Council. But the comparison would be superficial if it did not differentiate between the judicial appeals of the British system, restricted to well-defined categories of cases and circumstances, and judicial appeals of the French system, extended to administrative
as well as legal relationships between African institutions and the French. Moreover, the French system permits the continued association of the African republics with French administrative and judicial institutions in Paris, whereas the British system recognizes the legal fact that a republican member of the Commonwealth maintains no system of appeal to the Judicial Committee of the Privy Council.

Another interesting aspect of the comparison between ex-French and ex-British territories in Africa is the difference in attitude toward the former metropolitan legal systems and institutions. Whereas ex-British territories tend to be selective, even eclectic, in their adoption of English and other systems of law in their postindependence judicial and legal experiments, ex-French territories, almost without exception, have adopted not only the text but also the machinery and the procedures of the Code Napoléon and other French laws. In these territories the study of indigenous customary law and of comparative law in general forms little or no part of the legal curriculum in local universities. In contrast, many ex-British territories, while continuing to base their legal systems upon the British common law, have shown a desire to improve their own systems by borrowing freely from other legal systems and by encouraging the study of comparative law, as well as the progressive development of various bodies of customary law, in their universities. This is not to say that French jurists have not made scholarly contributions to the study of the customary laws of French dependencies. The point is that such efforts have yet to provoke complementary contributions from French African jurists.

What has been the effect of the interaction between imported ideas of law and government and those of customary law and politics on the ordinary people in African countries? For all the recent judicial and constitutional developments, the task of nation building is yet to be accomplished in Africa. On the whole, the recent changes have tended toward the securing of common legal principles in the sphere of nationality and citizenship; nevertheless, ethnic particularisms too often tend to assert themselves amid the general clamor for self-determination and national sovereignty. Whenever the stage has been reached that the metropolitan power is about to withdraw from a dependent territory, new demands on the part of elements in the local community have come to the fore. These may be summarized into three main groups.

The first demand has arisen out of the fears and anxieties of certain ethnic minorities that the group that would assume power at political independence might oppress them in one way or another. They accord-

ingly demand that, for the existing unitary system of government, a federal one that would allow, insofar as possible, for a measure of regional or ethnic autonomy within the federal constitutional framework should be substituted. Nigeria affords a unique example of this process, although Uganda and Kenya seem to be following suit. When a similar demand was made by the opposition parties in Ghana in 1956, Nkrumah’s Convention People’s Party successfully resisted the suggested adoption of a federal system, mainly on the ground that it would promote the fissiparous tendencies engendered by tribal loyalties and assertiveness. The most that was conceded was the advisory regional assemblies, to which I have referred earlier. The relatively smaller size of Ghana, in terms of both population and territory, might be regarded as justifying such a stand, but a country with the size and population of Nigeria could not have ignored the demand.

In the ex-French African territories, the reverse process has in fact taken place. The quasi-federal government of former French West Africa, consisting of eight territories, and of former French Equatorial Africa, made up of four territories, broke up, at independence, into twelve separate sovereign states, all but one of them remaining in the French Community. In only one instance did two of these territories—Senegal and the French Sudan—attempt a federal union after independence, under the name of the Federation of Mali, but the experiment was short-lived. It is possible that some of the ex-French territories would be better served by some form of wider political aggregation.

In addition to demanding a federal system of government, ethnic and other minority elements have insisted on the incorporation of a set of fundamental rights and freedoms into the independence constitutions. Here, again, Nigeria is the exemplar. It was not that the existing legal system or the administration of justice had not recognized the personal liberty of the subject or the inviolability of property rights, but that many minority groups felt that the spelling out of these fundamental rights and freedoms in considerable detail would serve as an effective bulwark against possible tyranny. Many African territories have since followed the Nigerian experiment, including a country like Sierra Leone, which has no federal constitution but does have ethnic problems. It is significant that Ghana has not included in her constitution the bill of rights demanded by the opposition parties on the eve of independence; the Ghana government felt that litigation in court in connection with such entrenched rights could give rise to intertribal or even personal conflicts within the new state. Possibly, also, it feared that a system that permits the interpretation of a written constitution
by the courts would give the judiciary too much power. Tanganyika, following Ghana's example, has given the latter reason, among others, for excluding a bill of rights from its independence constitution.

Ethnic considerations have led to the entrenchment of fundamental rights in the recent constitutions of Uganda, Kenya, and almost all the ex-French African territories. In order to allay the anxieties and the mutual suspicions of rival ethnic and provincial groups in the Congo, we have recently incorporated in its federal constitution fundamental rights provisions which are at least as detailed as those in the Nigerian Constitution. The strength of ethnic self-assertiveness may be judged from the sudden breakup of the former six provinces into seventeen to twenty new provinces which are apparently based on ethnic considerations alone. Such a development could create more problems than it is intended to solve, and it seems a mere concession to expediency. In addition to guaranteeing the usual freedoms of speech and expression, of assembly and association, of conscience and of political and religious beliefs, all these recent bills of rights contain provisions forbidding all forms of slavery and slave dealing, inhuman treatment, and discrimination on the ground of tribe, religion, or other group affiliation.

A third feature of recent independence constitutions has been the demand of whole communities or groups, or even administrative units, for the allocation of the total revenue of the state on the basis of the production or the consumption of the various sources from which particular revenues are derived. It has often been claimed that, under the former centralized system of government, certain areas of the country benefited more than others in the use of the national revenue for social and economic development. To redress the balance, an often complicated formula for the division of revenue has been embodied in some of these constitutions, the Nigerian one being probably the most detailed. The revenue allocation system under the federal constitution of the Congo has been modeled on the Nigerian system, though in a more simplified form.

In addition to these three major characteristics of the recent constitutions, there are other less spectacular, but equally important, devices for allaying the fears of individuals as well as of ethnic minorities. (1) The Public Service Commission is designed to ensure absolute impartiality in appointment, discipline, and termination of service of public servants. (2) The Judicial Service Commission, presided over by the chief justice of the country and composed of other judges, is responsible for all judicial appointments. (3) The electoral commissions are responsible for the delimitation of constituencies as well as the organization and supervision of all elections. The independence and impartiality of the judiciary is further guaranteed by the constitutional provision that the salaries of all judges are first charges upon the Consolidated Revenue Fund of the country; in other words, the emoluments of judges are not subject to the annual parliamentary debates on the budget. There is also a provision that judges' salaries and other conditions of service may not be altered to their detriment during their tenure of office. Nor may judges be removed from office except by a complicated procedure involving the setting up of a special judicial tribunal which must recommend such removal, and the subsequent approval of that recommendation by the Judicial Committee of the Privy Council. This last provision does not apply to Ghana, which, as a republic owing no allegiance to the Crown, no longer uses the machinery of the Privy Council. But even in territories like Nigeria, there is already a feeling that the removal of judges should be made subject to some other purely internal procedure compatible with democratic principles.

The survey attempted here has touched upon so many issues of contemporary government and politics in Africa that full justice can hardly be said to have been done to any one subject. The nature of the intersection between African institutions and laws and those imported from Europe is such that, in an interdisciplinary seminar, it would be unwise to specialize. I hope, however, that I have pointed up a number of vital questions for students of sociology, law, government, politics, and economics.
THE DETERMINATION OF CHIEFLY STATUS

A fundamental premise of indirect rule was that indigenous institutions should be utilized and guided by the colonial power. This policy in the Gold Coast did not involve, at least in theory, the creation of new tribal structures or the participation of colonial administrators in the selection or installation of functionaries in the indigenous order. To be sure, unfamiliarity with the tribal governmental order did lead to the development of some nontraditional institutions, for example, the court of the Ga Manche, and some chieftaincies in the Northern Territories; also in Ashanti, after the creation of the Protectorate in 1901, British efforts secured the enstoolment of some chiefs having no valid status under customary law. In general, however, the official position was that the Africans determined their own rulers according to traditional law and custom, and the elite group so identified was then enlisted in the scheme of colonial administration.

The first reflection of a shift from this policy came in 1904 when chiefs and head chiefs in the Colony were permitted, at their discretion, to apply to the Governor for confirmation of their election and installation. If the Governor was satisfied that these proceedings had been in accordance with native custom, he was authorized to confirm the applicant, thus determining the lawfulness of his status in all courts of the Colony. Hailey is certainly correct in asserting that "this provision was only intended to render the posi-

22 The Chiefs' Ordinance, No. 4 of 1904, Cap. 21, 1 Laws of the Gold Coast 151 (1928).
tion of a Chief unassailable in law; it did not enable the Government to maintain that a Chief can exercise no legal powers till formally recognized as a Native Authority. Yet the wedge of governmental participation was thus inserted into the procedures of the indigeneous order by which chiefs were elected and installed.

Governmental power to determine chiefly status may be manifested not merely in processes of selection but often more dramatically in deposition. An early ordinance in the Colony authorized the Governor in Council to suspend for a period or depose any chief who appeared to the Governor "to have abused his power, or be unworthy, or incapable of exercising the same justly, or for other sufficient reason." As will be seen, both aspects of governmental power over the determination of chiefly status have been fully developed in subsequent legislation.

There is, however, a significant gap between the claim of a power to render chiefly status unassailable by confirmation or to depose a chief who is found objectionable and the generalized assertion that status as a chief depends on recognition by the Government. Government recognition as the hallmark of chiefly status was first articulated for the Colony by the Legislative Council Order of 1925—but only with respect to head chiefs, later called Paramount Chiefs. This scheme was applied to all chiefs in Ashanti in 1935.

Thus, when the Nkrumah Government assumed office in 1957 under the Coussy Constitution, only in Ashanti had status as a chief been legally defined in terms of Governmental recognition, though status as a Paramount Chief in the Colony or as a member of a territorial council in any region also depended on recognition or appointment by the Governor.

In the constitutional struggle preceding independence in 1957, the chiefs, particularly in Ashanti, were prominent in opposition to Nkrumah's goal of a unitary government. Among the concessions to this opposition, incorporated in the Independence Constitution, was a House of Chiefs in each region; its functions will be discussed later. The constitution required legislative implementation, however, and this came in 1958 in the House of Chiefs Act. While membership in the new Houses was determined by schedules prepared and promulgated by the Government, these schedules only indicated that the occupants of designated stools should be members of specified Houses. The act did not purport to deal with the problem of determining who the legitimate occupants of these stools might be.

Continued political involvement of the chiefs, and the recurrent efforts through traditional means to depose those who were sympathetic to the Convention People's Party, turned the serious attention of the Government to the problem of recognition and determination of chiefly status. Any constitutional impediments to a legislative attack on the problem were eliminated by the Constitution (Repeal of Restrictions) Act of 1958, which established the supremacy of the national Mount Chiefs (Ashanti) Recognition Instrument, 1958, L.N. 179/58 (1958).


40 Id., sec. 4 and the First, Second, Third, Fourth and Fifth Schedules.

41 Act 38 of 1958.
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The following year, Parliament enacted the Chiefs (Recognition) Act. This provided that no enstoolment or de-stoolment of a chief after December 18, 1958, should have effect unless recognized by an Order of the Governor General. Thus, for the first time in all of the areas comprising modern Ghana, the ultimate determination of who could legally become or remain a Chief (recognized or in the process of being recognized) was in the hands of the Governor General. The Governor General was further authorized to, so deemed it in the public interest, to direct any person purporting to exercise the functions of a chief to desist from doing so and to order any such person to reside outside the state concerned. It was thus made evident that the Government would not tolerate the functioning of "unofficial chiefs."

Extensive though the powers conferred by the Chiefs (Recognition) Act on the Government were, they still limited the Government to the function of approving or refusing to approve actions affecting the status of a person as a chief that had been initiated by traditional processes. Only after these traditional steps had been taken could the Government refuse to recognize a chief and thus prevent his functioning. Similarly, it could refuse to recognize a customary law de-stoolment and thus preserve some functions in a chief who had lost his traditional support. At the level of legal authorization, the Government could not, however, initiate either enstoolment or de-stoolment, but this gap in the array of legal powers was closed in part by the Chieftaincy Act of 1961. The Act defines a chief as "an individual who—(a) has been nominated, elected and installed as a Chief in accordance with customary law, and (b) is recognized as a Chief by the Minister responsible for Local Government." The Minister is authorized to withdraw recognition from a chief who has been de-stooled, or when "the Minister considers it to be in the public interest to withdraw recognition." Upon the withdrawal of recognition, the Minister, "if he considers it to be expedient in the public interest," may prohibit a former chief (or a person who has never been recognized) from purporting to function as a chief, require him to live outside a specified area, and prohibit other persons from treating him as a chief. Thus the ring has virtually been closed. Only with respect to the initiation of selection and installation procedures does the present law of Ghana leave full responsibility in the traditional authorities. Their action may be rendered ineffectual, however, by a refusal or withdrawal of recognition. The legal tools of a modern state have operated so effectively on the institution of chieftaincy that one may accurately say that the chief in Ghana today achieves and retains his office only by the sufferance of the national government.

The Ghana Government has now issued regulations establishing procedures to be followed in the de-stoolment of chiefs and in reporting enstoolments, de-stoolments, abdications and other matters affecting chieftaincy. Despite the complex web of Governmental control, status as a chief appears to be extremely unstable. The extent of Government involvement in determining chiefly status, and the insecurity of that status, are reflected in the substantial flow of Executive Orders recognizing enstoolments and de-stoolments and withdrawing such recognition. The Nkrumah Government has sought to assure its participation in the processes for determining chiefly status in large measure by the adoption and extension of devices first employed by the colonial power. The social and economic

42 Act II of 1959.
43 By the Chiefs (Recognition) (Amendment) Act, 1959, No. 48 of 1959, the residence ban authority was changed to permit a direction that the named person "shall not reside within a defined radius of any place named therein."
44 The Chieftaincy Act, 1961, Act 61, sec. 1(1).
45 Id., sec. 1(3)(b).
46 Id., sec. 4.
currents which have long tended to undermine the institution of chieftaincy have not subsided. Indeed, those currents have been strengthened by the political relations of the chiefs to the national Government. It is perhaps arguable that the legal controls over status as a chief have made the chiefs less objectionable and less dangerous to the Nkrumah Government—but they have not contributed to the security of chiefly tenure.

THE EVOLUTION OF LOCAL GOVERNMENT

By the late 1940s, it was quite generally recognized that the scheme of indirect rule at the local level required substantial modification. The traditional state councils, operating under legislative fiat as Native Authorities, had justified neither in the range of functions undertaken, in efficiency of operation nor in honesty of dealing with community resources any reasonable hope that they would evolve into acceptable units of local government. The Watson Commission, reporting on its investigations after the 1948 disturbances, could not "envisage the growth of commercialisation in the Gold Coast with the retention of native institutions, save in a form which is a pale historical reflection of the past." The Commission did not find general agreement on the place to be occupied by the chief in the new order but observed: "Among Africans with modern political outlook we found that their conception of the place of the Chief in society was ornamental rather than useful; a man not necessarily of any particular ability, but of good presence, expressing in his person but never in his voice the will of his people; exercising the office of pouring libations to ancestors; remaining always among his people and never speaking save through his linguist; he must either remain on his Stool and take no part in external politics or forgo the office—he should not attempt a dual role." In commenting on the report, the British Government took a more positive view of the status and future of the chief. In the modernization of Native Authorities, the British regarded the "... Chiefs as having an essential part to play. In general the Chiefs in the Gold Coast are the traditional leaders of the people. Their functions in regard to local administration are based on popular support; and the transfer or delegation of any of their functions would require popular sanction, since the position of the Chiefs affects the whole system of relationships on which community life is traditionally based."*

The 1949 Coussey Committee on Constitutional Reform had strong representation from the traditional elements, and, not surprisingly, it too rejected the Watson Commission view and claimed a place for the chiefs in the new constitutional arrangement. It nevertheless conceded that "the existing system of local government has proved unable to meet the requirements of an efficient and democratic administration," largely because of the narrowly traditional composition of the chiefs' councils, the predominance of illiteracy among the members, the large size of the councils, and the shortage of trained personnel.** The Committee therefore recommended a clear separation of the traditional state councils and the new Local Authorities to which local government functions would be committed. In the composition of the local authorities, the Committee recommended an elected majority with reservation of at least one-third of the seats on all Authorities for appointees of the traditional councils.*** These views of the Coussey Committee were approved by the British Government**** and by select committees of the Legis-

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** Gold Coast: Report to His Excellency the Governor by the Committee on Constitutional Reform, p. 14, Colonial No. 246 (1949).
*** Id., p. 12.
**** Gold Coast: Statement by His Majesty's Government on the
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tive Council appointed to study local government in the Colony and Ashanti.

It will thus be seen that both the British and the traditional leaders of the Gold Coast had endorsed changes in the scheme of local government which would have increased popular representation while retaining a substantial link with the chiefs and their councils. Before these changes could be implemented, however, a profoundly significant political event occurred to alter the expected consequences of the formal structural changes—the electoral victory of the Convention People’s Party in 1950. As a consequence, when the new Local Government Bill was introduced in the Legislative Assembly in 1951, it raised the spectre of complete domination of the traditional regimes by the newly organized and aggressive forces of the C.P.P. led by Nkrumah.

The Local Government Ordinance of 1951 authorized the establishment of local and urban councils by ministerial instruments, which were also to define the functions of the councils. Each council was to include both popularly elected and traditional members, in a ratio of 2 to 1, unless the Governor in Council deemed some variation expedient, as well as such members representing special interests as the Governor in Council might think desirable. The traditional members were to be appointed by the traditional authorities in the council area. In an effort to expedite the establishment of the new councils, the Government did not attempt

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54 Report by the Select Committee on Local Government (Colonies), 1950 (1951).
56 Asper, supra note 15, at 241-56, usefully analyzes in political terms the handling of the Local Government Bill in the Legislative Assembly.
57 Ord. No. 29 of 1951, Cap. 64, 2 Laws of the Gold Coast 370 (1951).
58 The Municipal Councils Ordinance, 1953, No. 9 of 1953, secs. 6, 7 and First Schedule.
59 Id., sect. 15.
60 In a memorandum given to me by Alan P. Greenwood, he summarizes some of his findings as Commissioner to inquire into local government as follows:

“in this rapid establishment of Local Government [after passage of the 1953 Ordinance] many units were set up which were not only small in area and resources but also in population. In the North eight councils had less than 5,000 inhabitants, and there were 24 between 5,000 and 10,000. In Ashanti the policy of producing small councils was pursued to an extent unsurpassed in any other part of the country. For a population of 750,000 (excluding Kumasi) there were 83 local and urban councils (20 under 5,000 and 32 between 5,000 and 10,000) and 26 district councils. The largest local council had a population of 29,000. In Volta Region (then Trans-Volta Togoland) there were 7 local councils with populations under 10,000, and five district councils. In the other Regions, Eastern and Western, the problem of the
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Later, in 1957, a further enquiry into local government produced two principal recommendations for change: the abolition of district councils and the re-grouping and amalgamation of existing local councils into units with sufficient population and resources to become responsible for all local government services in their areas. Commissioner Greenwood reported, however, that most of the chiefs opposed amalgamation:

A chief whose area of authority coincides with an existing local council feels that if it is joined with its neighbor his status will in some way be affected and make him subservient to the chief of the neighboring area. There is still a deep-rooted feeling—particularly in Trans-Volta/Togoland—that areas of local government and traditional authority must coincide. It is a matter of personal prestige on the part of individual chiefs to have a council which coincides with his area of authority. To countenance an amalgamation would be a blow to that prestige. Moreover, I have gained the impression that in the minds of some chiefs independence for Ghana means casting aside all forms of local administration established in the past 15 years and reverting to small independent units with themselves in undisputed control.

very small units did not arise to the same extent, but the [Greenwood] Commission found that many of the local councils had inadequate financial resources. It was apparent from the Commission's Report that not only were there many small ineffective units but also that the 'two-tier' system, i.e., District Councils and local and urban councils, had not proved successful. The District Councils were not themselves authorised to levy rates and therefore were obliged to call upon the local councils, by a process known as 'precepting,' for money to carry out their functions. In some cases the amount of the precept was more than the local council could raise by its basic rate collection. In these circumstances some of the smaller local councils were only being kept alive by grants which they received from the Central Government."

The decision of the Government to accept the findings and implement the recommendations of the Greenwood Report meant the complete exclusion of the traditional authorities from the processes of local government. This trend was indicated by an Executive Order in 1958 which reduced the number of traditional members on each municipal council to one. When legislation was introduced the following year to eliminate the traditional members of all councils, to abolish district councils and to permit the consolidation of smaller units, the measures caused hardly a ripple in Parliament. In introducing the bills, the Minister for Local Government, Mr. Ofori Atta, himself a member of the royal family of Akim Abuakwa, merely commented that the reasons which had prompted the Coussey Committee to recommend the reservation of council seats for the traditional authorities were no longer valid and that local government bodies should become entirely elective. When an independent member inquired how the proposed legislation could be reconciled with the frequently declared intention of the Government to

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92 Report of the Commissioner for Local Government Enquiries, June, 1957 (1960). This is commonly referred to as the "Greenwood Report."


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preserve the traditional authorities, the Minister replied with technical accuracy that there was nothing in the bills to stop a chief from becoming an elected member of a local or municipal council. More realistically, however, another Government spokesman, Mr. Kofi Baako, emphasized "the fact that what we are doing is really consistent with our policy of keeping the chiefs away from politics and making them the fathers of our country through the State Councils and the Regional Houses of Chiefs."

By the time of enactment of the post-Republic Local Government Act of 1961, the re-structuring of local government was virtually complete. The 380 local urban and district council's had been replaced by 35 urban and local bodies, with membership of all of these, as well as the 4 municipal councils, entirely elective. Local government bodies are now supervised and related to the central Government by administrative personnel responsible in each region to a Regional Commissioner, a political functionary with the rank of Minister, to whom certain local government functions are delegated by the Minister for Local Government. In this re-structuring, the traditional, sacred and local repositories of authority and responsibility have been definitively displaced by secular, representative organs intimately related to the center, under at least formally guiding criteria of rationality and efficiency.

STATUS AND FUNCTIONS OF TRADITIONAL COUNCILS

State councils composed of the chiefs and their councillors played a significant role in legal and governmental affairs of the Akan. These were, of course, traditional institutions, although as has been seen, they were progressively brought within the scheme of secular government under the British policy of designating the councils as the Native Authorities in their areas. As state councils, however, they possessed a range of discrete functions, some conferred by British law, others originating in customary law.

Immediately preceding the advent of the Nkrumah Government, systems of state councils existed in the Colony, British Togoland and Ashanti. The legislatures defining and regulating the functions of the councils varied somewhat in detail; only the more significant differences need be noted here.

1. State Councils had jurisdiction to try and determine "matters of a constitutional nature"; these included the election, installation, deposition or abdication of a chief, the right of any person to take part in such procedures, related questions concerning the recovery or delivery of stool property and political or constitutional relations between chiefs under customary law. These matters were not exclusively within the province of the councils, however. A Commissioner representing the Government was authorized in his discretion to withdraw such questions from the state councils and commit them to specially appointed committees of enquiry. Final powers of review and modification of the decisions of either state councils or committees of enquiry on constitutional matters were granted to the Governor. Thus, the Government claimed an important role in the decision of questions ordinarily falling within the competence of the traditional councils themselves.

2. A council on its own initiative or on the require-

66 The Native Authority (Colony) Ordinance, 1914, No. 22 of 1914, secs. 2, 23-32; The Native Authority (Southern Section of Togoland under British Mandate) Ordinance, 1919, No. 7 of 1919, secs. 22-32. There was no legislation of comparable breadth for Ashanti, but the Ashanti Confederacy Council Order, No. 1 of 1905 as amended, Cap. 70, 3 Laws of the Gold Coast 273 (1957) provides for the composition, proceedings and powers of the Confederacy Council. The Council was given the powers with respect to customary law, discussed in the text by the Native Law and Custom (Ashanti Confederacy Council) Ordinance, No. 8 of 1910, Cap. 90, 3 Laws of the Gold Coast 250 (1957), and with respect to constitutional issues by the Native Authority (Ashanti) (Amendment) Ordinance, No. 2 of 1910.

67 The Colony Ordinance of 1914 (supra note 66) did not include this matter in the definition of constitutional matters; see sec. 2(1).
ment of the Governor was authorized to declare the existing customary law or to recommend its modification.19 Such action by a council was subject to review by the Governor in Council to determine whether the law as declared or the modification proposed accorded with natural justice, equity and good conscience and did not conflict with any ordinance. If approved on these criteria, the customary law was declared to be in force. Since the great majority of people were subject to customary law, these powers of the state councils might have been used to affect substantially the development of some of the most socially significant legal institutions. In fact, however, the powers were rarely exercised.20

3. The provincial councils, and later the Joint Provincial Council in the Colony and the Ashanti Confederacy Council, served as electoral colleges for the election of the traditional members of the Legislative Council.21 In the general political and legal development of the Gold Coast, this was doubtless the most significant function of the councils of chiefs. This function of the territorial councils was preserved by the Coussy Constitution of 1950 and even extended to Togoland and the Northern Territories.22

4. Certain of the councils were expressly granted the privilege of meeting from time to time "for the purpose of deliberating upon matters affecting the welfare or interests of persons" within the area of the council.23 Such powers were not granted to state councils in the mandated areas of Southern Togoland. They were granted to the Ashanti Confederacy Council by the Native Law and Custom (Ashanti Confederacy Council) Ordinance, No. 4 of 1940, Cap. 102, 3 Laws of the Gold Coast 220 (1951).

23 For example, The Native Authority (Colony) Ordinance of 1944, secs. 28-29, grants such privilege to the Provincial Councils and to the Joint Provincial Council. Technically the grant to the Southern Togoland Council would seem to be made in its role as a representative body of a number of Native Authorities rather than as a traditional council. The Native Authority (Southern Section of Togoland under British Mandate) Ordinance of 1949, No. 7 of 1949, sec. 29.
24 The State Councils (Ashanti) Ordinance, No. 4 of 1952; The State Councils (Northern Territories) Ordinance, No. 5 of 1952; The State Councils (Colony and Southern Togoland) Ordinance, No. 8 of 1952.
procedures to be followed in their deliberations. While customary sanctions and awards in connection with constitutional disputes were permitted, the actual enforcement procedures required the assistance of a competent court. Provision was made to regulate traditional oath procedures, but, except in constitutional disputes, the use of such oaths initiated no judicial processes in the councils. Rather, the use of oaths merely created an entitlement of the councils to certain traditional fees, stated and limited by the ordinances, while the actual disputes were passed on to the Native Courts. Long-standing concerns were reflected in the provisions prohibiting, under penalty, the charging of excessive fees and such corrupt practices as bribery in connection with council proceedings.

The general pattern of role definition and regulation of the state councils articulated in the 1952 legislation survived until the major readjustments shortly after independence. One important function was taken from the territorial councils, however, when the 1954 Constitution made the entire Legislative Assembly subject to popular election, eliminating the representatives formerly chosen by the territorial councils. The Joint Provincial Council in the Colony was itself dissolved in 1958, and the Asanteman Council was dissolved on October 17, 1958, when the Houses of Chiefs Act came into force. Other significant amendments reflected the increasingly bitter contest being waged in the mid-1950’s between the chiefs and the ruling Convention People’s Party. It was the belief of Party leaders that chiefs sympathetic to the C.P.P. were being subjected to unwarranted complaints and even de-stoolments. Consequently, legislation was enacted for the Colony, Southern Togoland and Ashanti which not only extended the range of constitutional cases appealable to the Governor from state councils, from the trial committees which functioned where no state council existed, and from the Asanteman Council, but went so far as to render appealable certain prior decisions that when made had not been subject to appeal. The Governor was also authorized to extend the previously authorized time for appeal. In Ashanti, jurisdiction to hear de-stoolment cases against Paramount Chiefs was removed from the Asanteman Council and vested in committees of enquiry. For the first time in Ashanti, the Governor was authorized to appoint such committees to decide whatever de-stoolment questions and other constitutional matters the Governor deemed inexpedient for decision by a state council or the Asanteman Council.

The Houses of Chiefs Act of 1958, implementing the Independence Constitution, effected sweeping changes in the status and functions of the traditional councils. The constitution itself had provided for the establishment, within twelve months of independence, of a House of Chiefs for each of the five regions of Ghana; these Houses would consider matters referred by a Minister or the National Assembly, offer advice to any Minister and declare the customary law. The implementing legislation did not limit its effect to the establishment of a new tier of Houses or councils, for it simultaneously modified substantially the status and functions of the older state councils. As noted earlier,

97 The Joint Provincial Council (Dissolution) Act, 1958, No. 51 of 1958; The Houses of Chiefs Act, No. 20 of 1958, sec. 47(1) and Tenth Schedule.

99 The State Councils (Colony and Southern Togoland) (Amendment) Ordinance, 1955, No. 37 of 1955; The State Councils (Ashanti) (Amendment) Ordinance, 1955, No. 33 of 1955. The lodging of appeals even beyond this extended period was permitted on order of the Governor by the State Councils (Ashanti) (Amendment) Ordinance, 1957, No. 8 of 1957, and the State Councils (Colony and Southern Togoland) (Amendment) Ordinance, 1957, No. 8 of 1957.
98 The State Councils (Ashanti) (Amendment) Ordinance, 1955, No. 38 of 1955, secs. 6, 8. The power to commit constitutional matters to such special committees of enquiry rather than the regular state councils had previously been available in the Northern Territories, the Colony and Southern Togoland.
the Asanteman Council (Ashanti Confederacy Council) itself was abolished as an incident of the creation of a House of Chiefs for Ashanti.

The regional basis on which the new Houses of Chiefs were established followed the earlier divisions of the Gold Coast, except that the Colony was divided into an eastern and a western region. The membership of each House was fixed by a Schedule to the Act which the Governor General (after the Republic, the President) was authorized to amend at any time. Ordinary meetings of a House were limited to two in any financial year, and only the Minister for Local Government could convene an extraordinary meeting. The Houses possessed no revenue sources in their own right; each was required to prepare annual estimates of expenditure which, on receiving ministerial approval, become charges on the Consolidated Fund of Ghana.

The powers and functions of the Houses of Chiefs were not extensive. On reference of any matter by the National Assembly or a Minister, a House might report its views. The Independence Constitution, in fact, required that any bill for the modification of a number of entrenched provisions be referred to all Houses of Chiefs and their views considered by the Regional Assemblies in reaching their decisions on the bills; similarly, any bill affecting the traditional functions or privileges of a chief required reference to the affected House or Houses. It should be emphasized, however, that in neither case was the approval of the Houses of Chiefs required for the enactment of the bill. Their function was purely advisory, and even the requirement of such advice was eliminated by the Constitution (Re-

81 Id., sec. 69.
82 The Houses of Chiefs Act, No. 20 of 1958, secs. 4, 46.
83 Id., sec. 11, as amended by sec. 8 of the Houses of Chiefs (Amendment) Act, No. 8 of 1959.
84 Id., sec. 32, as amended by sec. 4 of the Houses of Chiefs (Amendment) Act, No. 4 of 1958.
85 The Ghana (Constitution) Order in Council, 1957, sec. 32 and Third Schedule, sec. 35 (1957), 1 STAT. INST. 1036 (No. 277).

86 The power of declaring the prevailing customary law or recommending its modification was entirely removed from the state councils and vested in the new statutory Houses of Chiefs. Declarations might be made on the initiative of a House or on the request of the Governor General or Assembly, and recommendations for modification could be initiated by a House. The Minister for Local Government, if of the opinion that a declaration of customary law was repugnant to the laws of Ghana, was authorized to require further consideration by the House of Chiefs making the declaration. He could go so far as to direct, by a published order, that the law which the chiefs had declared to be customary not apply to a specified region. On the other hand, if satisfied that the declaration was not "repugnant to the laws of Ghana or contrary to natural justice, equity and good conscience," he could direct that it be in force in a specified area. Strangely, the act did not indicate the procedures for handling recommendations which a House of Chiefs might make for modification of customary law. Only two declarations of customary law have thus far been made, each resulting from a recommendation of a House of Chiefs that the customary law of succession to a stool or skin be modified. In each case the procedure followed was that set out in the act for a declaration of customary law.

The former jurisdiction of state councils in constitutional matters was retained except in instances in-

88 Act No. 38 of 1958.
89 The Houses of Chiefs Act, No. 20 of 1958, sec. 17.
89a Id., sec. 47(1) and Tenth Schedule; secs. 16, 17.
89b Id., sec. 44.
volving a Paramount Chief of Ashanti. In fact, the original jurisdiction of state councils in constitutional matters was secured by the repeal of provisions earlier applied in the Colony, Southern Togoland and the Northern Territories which had authorized the Governor to refer such matters to a committee of enquiry if he deemed it expedient. Original jurisdiction in matters involving a Paramount Chief in Ashanti was placed in a committee of the Ashanti Region House of Chiefs.91 Appeal as of right lay formally to the House of Chiefs of the region from decisions involving a Paramount Chief or dealing with a constitutional matter arising in a state where there was no Paramount Chief, but the actual hearing of the appeal was by an Appeal Commissioner. Subchiefs could appeal from constitutional decisions only with the leave of the Governor General.92 An Appeal Commissioner was authorized in his discretion to sit with assessors, and, with any clarification requested by the House of Chiefs or its president, the Commissioner's decision was made final.93 Later legislation eliminated the finality of the Appeal Commissioner’s decision, however; he was required to forward his findings to the Minister for Local Government who would then refer the report to the Governor General. The latter was authorized to confirm, vary or refuse to confirm the report. The decision of the Governor General, when published, was final and conclusive.94 Once again, central political control of the constitutional aspects of chieftaincy was confirmed.

The comprehensive Chieftaincy Act of 1961 consolidated most of the earlier legislation but contained a few innovations. Divisional councils were recognized

91 Houses of Chiefs Act, No. 20 of 1958, sec. 19.
92 Id., secs. 18, 19, as amended by sec. 2 of the Houses of Chiefs (Amendment) Act, No. 4 of 1960.
93 Id., sec. 22(1); sec. 27.
94 The Houses of Chiefs (Amendment) Act, No. 8 of 1959, sec. II. This act required the publication not only of the decision of the Governor General but of the ultimate findings. The necessity of publishing the findings was eliminated by the Houses of Chiefs (Amendment No. 2) Act, No. 38 of 1959.

and their customary functions preserved, but the act itself merely authorized the Minister for Local Government to assign to them such functions as he thought fit.95 The state councils were re-named traditional councils and they retained the major share of their role in hearing and determining matters affecting chieftaincy.96 All cases in which a Paramount Chief is a party were withdrawn from the jurisdiction of traditional councils, however, and committed to hearing officers, now called Judicial Commissioners.97 The only other function of the traditional councils, aside from those assigned by customary law, is to make representations to the appropriate House of Chiefs looking to the clarification or modification of customary law.98

Under the act, the Houses of Chiefs may still report on such matters as are referred to them by the National Assembly or any Minister,99 and may declare or recommend modifications of the customary law. In the latter function, however, the role of the central government has been significantly enlarged. Formerly, the Minister merely approved or disapproved the action of the House of Chiefs. Now, he is authorized to make such modifications as he deems necessary and to make effective in the area in question the declaration or modification as presented by a House of Chiefs or as it has been modified.100 One significant extension of the functions of the Houses of Chiefs involves their participation in the procedures by which certain rules of customary law may be assimilated by the common law of Ghana.101 This process is discussed in the later chapter on the hierarchy of legal norms in Ghana.

As mentioned above, the role of traditional councils and Houses of Chiefs in the decision of cases affecting chieftaincy has been somewhat reduced. Judicial Commissioners have original jurisdiction to hear and deter-

95 The Chieftaincy Act, 1961, Act 81, sec. 10.
96 Id., sec. 15.
97 Id., sec. 40.
98 Id., sec. 28.
99 Id., secs. 59, 60.
100 Id., secs. 62-64.
mine all causes to which the Asantehene or a Paramount Chief is a party, all causes affecting chieftaincy arising in areas for which no traditional councils exist and even cases affecting chieftaincy falling within the competence of a traditional council if, in the opinion of the Minister, the council has not decided the matter within a reasonable time. An amendment to the Chieftaincy Act grants the Minister absolute discretion to refer any cause affecting chieftaincy, including stool property, to a Judicial Commissioner or to withdraw any case already before a council and refer it to a Commissioner. While the latter action is to be based on the opinion of the Minister that the public interest calls for such withdrawal and reference, the discretion of the Minister is in fact absolute. The Commissioners also hear appeals by leave of the Minister from decisions of the traditional councils. Findings of a Judicial Commissioner are reported through the Minister to the President who may confirm them, order further hearings or amend the findings as he thinks fit. The President’s action, when published, is conclusive.

The Houses of Chiefs are avowedly statutory bodies, and the present traditional councils are much in name only. Through a complex evolution of legislative and executive action, the councils of chiefs have, in fact, been stripped of their traditional status and made the limited instruments of the new national state.

The Economic Status of the Chiefs
In the older customary practices of the Akan people, a chief had no economic life apart from that of his stool. On election as chief, a person was privileged to dispose of property he had acquired, but on his installation any that he had retained became stool property. The new chief received the ceremonial paraphernalia and other personal property of the stool, but more import-

102 Id., secs. 40-42.
105 Id., sec. 39.
106 For a summary of shifting attitudes on these matters in the Ashanti Confederacy Council, see Busia, supra note 1, at 199-205.
services declined, the revenues realized from the chiefly courts became more attractive. The proliferation of courts, excessive fees, repeated delays and large panels of members anxious to share the profits were all responsible for a diminished confidence in traditional justice and for evoking widespread demands for reform. These developments are fully discussed in the chapter on the judicial system. More pertinent here is the administration of stool lands. The development of the cocoa industry, especially in Ashanti, and increasing interest in the exploitation of mineral and timber resources made the chiefly function of administering unoccupied stool lands an attractive source of revenue and a fertile soil for the growing tension between chiefs and subjects. Particularly in the Colony, but to some extent also in Ashanti, the chiefs developed a lucrative business by granting mining and timber concessions to foreign exploiters. It has been estimated that at one time in the Colony the area of concessions granted by the chiefs exceeded the total area of the Colony itself.\footnote{107}

Legal regulation of the economic activity of the chiefs was begun during the colonial period. The Concessions Ordinance of 1900\footnote{108} provided for the validation of a concession after a judicial inquiry to determine whether it had been granted by the proper persons without fraudulent or other improper inducements and for an adequate valuable consideration. Certification of validity also required a finding that the customary rights of natives in the concession lands had been protected. It should be emphasized, however, that this ordinance did not attempt to determine the use to which royalties would be put or to impose on the chiefs accountability for the proceeds. Over the years, legislative efforts to regulate the size of Native Courts, to standardize fees and to enforce accounting for revenues have met only indifferent success.

The principal effort of the colonial regime to deal with the economic aspects of chieftaincy took the somewhat indirect form of pressing for the establishment of regulated treasuries in the various authorities charged with local government responsibilities. In view of the prevailing practice of designating the chiefs and their councilors as Native Authorities, the imposition of a treasury system affected the chiefs and their councilors to some extent. In both Ashanti and the Colony, legislative attempts were made to make stool revenues from lands and other sources a part of the Native Authority income and thus subject to accounting through a regulated treasury.\footnote{109} Undoubtedly some accountability for stool revenues was achieved by the treasury system, but the Coussy Committee was still able to report in 1949: "It is a well-established fact that in almost all areas, it has been impossible to enforce this provision [for the payment of stool revenue into the treasury] to the full and to ensure that land revenues are brought to account. Moreover, the Ordinances do not stipulate what proportion of the revenue from these sources may be used for local authority services, and in many places the Stool Treasuries receive the monies only to pay them out again as shares to chiefs."\footnote{110} It should be remembered that the Coussy Committee was not hostile to the chiefs; in fact, the chiefs and their supporters were well represented on the Committee.

Except in the Northern Territories, most legal regulation of stool resources did not impinge on traditional notions that the chiefs held or owned the land as trustees

\footnote{107} Halley, supra note 1, at 221.

\footnote{108} Ord. No. 14 of 1900, as amended, Cap. 27, 1 Laws of the Gold Coast 250 (1923). A Concessions Ordinance for Ashanti was passed in 1903 (No. 3 of 1903). Both the earlier ordinances were replaced by the Concessions Ordinance, No. 79 of 1933, Cap. 135, 3 Laws of the Gold Coast 485 (1951).

\footnote{109} The Native Authority (Ashanti) Ordinance, No. 1 of 1935, as amended, Cap. 79, sec. 16, 2 Laws of the Gold Coast 128 (1936); The Native Authority ( Colony) Ordinance, No. 21 of 1944, sec. 32. Similar legislation was enacted in 1939 for Southern Togoland, The Native Authority (Southern Section of Togoland under British Mandate) Ordinance, No. 7 of 1949, sec. 32.

\footnote{110} Gold Coast: Report to His Excellency the Governor by the Committee on Constitutional Reform, p. 39, Colonial No. 243 (1943).
for their people. The sole exception outside the Northern Territories involved the Kumasi Town Lands which, after the annexation of Ashanti in 1901, were treated as vested in the Crown by right of conquest. In 1943, however, with the exception of limited areas used for Government residences and railways, these lands were revested in the Asantehene. In the Northern Territories, where land never achieved significant commercial value, the Government early assumed ownership and powers of disposition over native lands. Legal regulation, in general, took the more limited form of imposing accountability for revenues through the treasury system or of defining the legal consequences of transactions into which the chiefs might enter in dealing with stool lands or other property.

Illustrative of measures of the latter type was the Stool Property Protection Ordinance of 1940, applicable only in Ashanti. By the ordinance, it was made unlawful for any Native Authority or other person to alienate, pledge, or mortgage any stool property without the written consent of the Chief Commissioner—and any attempt to do so was declared void. Exempted from this restriction were concessions granted to nonnatives (and regulated by the Concessions Ordinance), as well as pledges or mortgages by a native in his personal capacity of rights in a farm made on stool land. Stool property was also rendered immune from execution or from being sold in satisfaction of a pledge or mortgage unless the security interest was created with the Chief Commissioner’s consent. Only in Ashanti had such legal limits on dealing with stool property been imposed prior to the advent of the Nkrumah Government in 1951.

At the 1951 base line, the economic position of the chiefs was perilous, although substantial resources remained in their effective control. In all areas, certain dealings in stool property were regulated, but in Ashanti the regulations were especially stringent. In theory, the ordinary revenues of the stools were payable to regulated treasuries, but substantial sums found their way directly into the private purses of the chiefs. Even treasury management of stool revenues did not prevent private use of funds by the chiefs, since the chiefs and their councils were the recognized Native Authorities, and the law did not determine the portion of stool revenues committed to public purposes. In part, at least, the deterioration of traditional taboos against private business activity by the chiefs compensated for the insecurity of their hold on traditional sources of stool income.

The need for change was clearly indicated by the findings and recommendations of the Coussye Committee. While declaring its devotion to the institution of chieftaincy and its belief that the chiefs should have an important role in the emerging constitutional order, the Committee recognized the necessity “to arrange that all revenue from Stool Lands, and all lands held in trust for the people or sections of them, is accounted for and that there is as little opportunity as possible for such monies to go astray. It is also necessary to ensure that not only a fair proportion of this money is appropriated to the services of the community, but also that adequate allowances are provided for the chiefs to maintain themselves in their position of dignity.” The Committee itself did not attempt to determine a fair division of stool land revenues between the chiefs and local governmental authorities; this it thought should be fixed by agreements made locally or, in cases of inability to agree, by the Regional Administration. It also

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112The Land and Native Rights (Northern Territories) Ordinance, No. 8 of 1951, as amended, Cap. 147, 3 Laws of the Gold Coast 581 (1951).
114Gold Coast: Report to His Excellency the Governor By the Committee on Constitutional Reform, p. 30, Colonial No. 448 (1949).
recommended that the local government bodies should act as “estate agents” for all stool revenues, but not, however, so as to “deprive the stool of any rights of ownership over their lands.”

The support given by the chiefs to the recommendations of the Coussey Committee vanished in the political climate generated by the dramatic emergence of the Convention People’s Party. When the Nkrumah Government moved to implement certain of the Coussey recommendations by the Local Government Bill of 1951, it was entirely clear that the newly organized political forces would control the local government agencies on which the chiefs would be a one-third minority. In reaching agreements, therefore, on the division of stool revenues, the chiefs could anticipate hard bargaining, with any impasse subject to resolution by a higher authority also controlled by the C.P.P. The scheme involved not merely a loss of income to the chiefs; it meant also an increase of the resources to be controlled by and used for the programs and prestige of political elements appearing to threaten the very institution of chieftaincy itself.

The Local Government Ordinance of 1951 went beyond the Coussey recommendations in its treatment of stool lands. While any effect of the ordinance on the ownership of stool lands was expressly disavowed, management of these lands was placed in the new urban and local councils which also were to collect the revenues and deposit them in funds in the custody of the Accountant General. Stools could be required to declare their interest in any land; on their failure to do so, or on any disagreement between a stool and a council as to the interest of a stool in land, the issue could be submitted to a Land Court for determination. The distribution of stool land revenues was subject to determination by agreement between the stool and the

115 Id., at 31.
116 The Local Government Ordinance, No. 29 of 1951, Cap. 64, a Laws of the Gold Coast 370 (1951).

117 The stool lands provisions of the ordinance were not applicable to the Northern Territories. The modified restrictions on alienation of stool lands rendered the 1930 Ashanti Ordinance superfluous and it was later repealed. The State Councils (Ashanti) (Amendment) Ordinance, No. 41 of 1952.
118 Quoted in Apter, supra note 15, at 248.
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Further restrictions on the powers of the individual chiefs to deal with stool and skin properties. Any alienation of stool property without the consent of the affected state council was declared void and the maker subjected to criminal penalties. These restrictions were cumulative; they left unaffected the restraints on dealing with stool land imposed by the Local Government Ordinance and the special laws for the Northern Territories.

The responses of the chiefs and their supporters to the threats they saw in the C.P.P. and in the consolidation of powers in the national government are considered more fully in other chapters; they need only be summarized here. Organization of the National Liberation Movement in September, 1954, evidenced the close political cooperation between the chiefs, particularly in Ashanti, and the middle class-intellectual groups opposing the C.P.P. The chiefs thus played a prominent role in the pre-independence controversy over federalism and a second chamber of the legislature.

In succeeding years, government leaders frequently reiterated their support for the institution of chieftaincy while insisting that the chiefs should stay out of politics. The chiefs, on the other hand, publicly denied any partisan identification while giving both open and covert support to the groups opposing the C.P.P. In October, 1957, in response to an invitation from Dr. Nkrumah that they state their positions with respect to party politics, both the Asantehene and the Okyenene (the Paramount Chief of Akim Abuakwa, Nana Ofori Atta II) in statements to their councils denied partisan involvements. Nevertheless, the Government in October, 1957, suspended Nana Ofori Atta from the exercise of his functions pending the submission of the report of a commission of enquiry into the affairs of Akim Abuakwa State. In February, 1958, a similar enquiry was ordered into the affairs of the Asanteman Council and the Kumasi State Council.

The latter commission reported in September, 1958, that the Kumasi State Council had improperly diverted funds to the National Liberation Movement and that the Asantehene’s Lands Department had been guilty of general maladministration. The report of the Akim Abuakwa Commission (have been unable to procure a copy of this report) alleged, according to a Government White Paper published in 1959, that Nana Ofori Atta II had used his influence to have some £10,000 deducted from the salaries of subchiefs and moneys due to elders, linguists and stool dependents, and that this money had been used to support a body of “Action Groupers”—terrorists who preyed on C.P.P. and Government supporters.

In the light of these developments, it is not surprising that the Government focused on Akim Abuakwa as the pilot project for a new plan to deal with stool revenues and thus with the political activities of the chiefs. On June 20, 1958, the Government introduced the Akim Abuakwa (Stool Revenue) Bill upon a Certificate of Urgency. The Minister of Local Government, Mr. Ofori Atta, himself a member of the royal family of Akim Abuakwa and eligible for election to that distinguished stool, briefly presented the bill. He observed that local authorities had found difficult the task assigned them by the Local Government Ordinance of managing stool lands and collecting revenues “partly because the persons from whom the revenues are collected are apparently under no legal obligation to pay to the local authority and partly, in some cases, to lack of cooperation between the local authorities and the Stool.” The more efficient system authorized by the

119 The “skin” is the traditional symbol in the Northern Territories, roughly analogous to the “stools” of Ashanti and the southern areas.

120 The State Councils (Ashanti) Ordinance, No. 4 of 1952, sec. 2d; The State Councils (Northern Territories) Ordinance, No. 5 of 1952, sec. 15; The State Councils (Colonial and Southern Togoland) Ordinance, No. 8 of 1952, sec. 16.

121 W.P. No. 10/59, p. 28.

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The bill was to be applied only in Akim Abuakwa, but the Minister significantly added that "if the proposals in it are accepted and prove satisfactory, it may well be desirable to make similar provision for general application later." 123

In debate, the opponents of the bill made four basic points: The primary argument, which was lost on a ruling of the Speaker, insisted that consideration of the bill violated those provisions of the 1957 Constitution guaranteeing the institution of chieftaincy and requiring that any bill "affecting the traditional functions or privileges of a Chief" must be referred to the House of Chiefs of the region in which the affected chief functioned at least three months before its second reading. 124 When the Akim Abuakwa Bill was introduced, no Houses of Chiefs had been established and the constitution made no provision for an alternative reference. Yet the constitutional prohibition seemed clear. The only issue was whether the bill "affect[ed] the traditional functions or privileges of a Chief." The opposition argued cogently that a central function of the chiefs among the Akans was management of stool lands and control of their revenue. In announcing his ruling, the Speaker declared: "I also hold that there is nothing put before me that the bill seeks to undermine the chief of any state." 125 This, of course, did not address the issue raised by the constitutional language. The Government was permitted to proceed with the bill, but the argument of the opposition made a strong impression; after the repeal of the constitutional limitations on the legislative competence of the Assembly, a bill was passed to remove retroactively any doubts of the validity of the Akim Abuakwa legislation. 126

The three arguments about the merits of the bill were

123 Id., col. 238.
126 The Stool Lands (Validation of Legislation) Act, No. 39 of 1959.

repeated in various forms but may now be simply stated. 1. Stool property is private property; thus, by assuming control over stool revenues in Akim Abuakwa, the Government threatened the whole institution of private property in Ghana. 2. The bill was an act of political spite directed at chiefs who had refused to support the C.P.P. Its main objective, therefore, was not to improve the administration of stool revenues for the welfare of the people of Akim Abuakwa but to strengthen the C.P.P. and weaken the opposition. 3. Any inadequacies in the administration of stool revenues in Akim Abuakwa were not attributable to the chiefs but rather to defective legislation hastily pushed through by the Government, or maladministration by local authorities. The unwarranted attack by the Government on the chiefs could thus be explained as only part of a deliberate effort to destroy the institution of chieftaincy itself.

The opposition arguments were made with vigor and occasionally with cogency. The Government had the votes, however, and in less than four hours on June 20, 1958, the Akim Abuakwa (Stool Revenue) Bill passed through all three readings and, without a single amendment, became part of the law of Ghana.

The act 127 authorized the creation of a department within the Ministry of Local Government, headed by the Receiver of Stool Revenue to whom was assigned the full responsibility for the collection of such moneys and the management of stool lands. For purposes of the act, stool revenue was defined to include not merely the various payments due in regard to stool lands, but all levies, dues, fees and rents payable to a Stool in the Akim Abuakwa State in accordance with native customary law or any other law." 128 Under criminal sanctions, all persons and bodies were enjoined to cooperate with the Receiver by providing information and facilities for inspecting and copying records. When

127 The Akim Abuakwa (Stool Revenue) Act, No. 8 of 1958.
128 Id., sec. 2(b).
collected, funds were to be deposited in a special account against which costs of administration would from time to time be charged. Also from the account such sums as the Minister for Local Government might determine were to be paid to urban and local councils whose areas income-producing stool lands were located. In making this determination, the Minister was directed to take into consideration the needs of the traditional authorities, but he was given the full responsibility for assessing such needs. The balance remaining after payments to local government bodies was to be used to maintain the traditional authorities, to administer the Akim Abuakwa State and to support scholarships and other projects for the benefit of the people of the State. The actual sums allocated to these several purposes were to be determined by annual estimates made by the Receiver, after consultation with the Akim Abuakwa State Council, and approved by the Governor General. Up to one-third of any excess funds available after covering the estimated expenditures could be used in any manner the Minister for Local Government might approve. Provision was made for the keeping of accounts and for an annual audit to be reported to Parliament. Finally, the Receiver was granted the exclusive right to take part, in the name of the Stool concerned, in any proceedings concerning revenue-producing lands.

Superficially, it might appear that the economic relation of the chiefs to their traditional sources of income was little changed by the Akim Abuakwa Act. Before, the function of managing stool lands and collecting the revenue had been the responsibility, not of the chiefs, but of local government bodies. However, stool revenue from sources other than land was also removed by the new act from the control of the chiefs. In addition to increasing administrative efficiency, the new act effected other significant changes. Under prior legislation, determinations of the division of stool revenues between the traditional authorities and local government agencies were to be made locally by agreement between the parties, with ministerial control operating only in the absence of a local agreement. In theory, therefore, and to some extent in operative fact, the chiefs controlled or influenced the division of resources through locally negotiated agreements. The new act eliminated this element of local control: the share of stool revenues to be paid to local government bodies was fixed by ministerial order. Two aspects of the innovation bear emphasis: participation of the chiefs in the division of revenues was eliminated, and the critical decisional process moved from the local level to the office of the Minister in Accra. Contrary to some predictions made in legislative debate, the Minister for Local Government did not permit local government to monopolize the revenues administered under the act. The initial allocation to urban and local councils was 45 per cent but this was later reduced to one-third.128

In September, 1956, the Government introduced the Ashanti Stool Lands Bill to control the economic resources available to the chiefs in Ashanti for supporting political opposition. The text of the bill was made available only one day before it was brought up for second reading, the bill being handled on a Certificate of Urgency. Opposition arguments did not differ significantly from those advanced against the Akim Abuakwa Act, and they enjoyed no more success. The Government was fully cognizant that the most direct route to political neutralization of the chiefs lay in the acquisition of firm control over stool lands and their revenues.

The Ashanti Stool Lands Act130 deals separately with Kumasi Town Lands and other stool lands in Kumasi State. With respect to the latter, the property, rights

130 Act No. 23 of 1956.
and interests which had been vested in the Asantehene in 1943 were transferred to the Governor General to be held and used in trust for the Golden Stool and the Kumasi State. The transfer of ownership in trust to the Governor General also involved the transfer of management functions and the collection of rents from the Asantehene's Land Office to an officer of the central government. Such a shift of administrative responsibility might have been accomplished easily without divesting the "ownership" of the Asantehene. It is significant, however, that the Government used the more dramatic approach; as a consequence, the Asantehene, around whom opposition in Ashanti had revolved, was reduced to a landless chief—the same status his predecessor on the Golden Stool had under British fiat from 1901 to 1943. The revenues from the Kumasi Town Lands were to be spent for the benefit of the Golden Stool and Kumasi State in accordance with estimates prepared by the Governor General's appointee, the Administrator of Stool Lands, after consultation with the Kumasi State Council. The Governor General's approval made the estimates final. Thus, complete control over the ultimate use of the revenues was vested in the central government. The Asantehene and his council thereby were reduced to total economic dependence.

The act did not divest the chiefs of ownership of stool lands in Kumasi State. Rather, powers of land management and collection and administration of revenues were given to the Governor General or the Administrator of Stool Lands, these powers being identical to those developed for the handling of stool revenues in Akim Abuakwa. Although when the act took effect it applied only to the stool lands of Kumasi State, the Minister for Local Government was empowered to

112 The act was brought into operation on September 10, 1958. The Ashanti Stool Lands (Commencement) Order, 1958, L.N. 298/58, 1958 Laws of Ghana 443.
116 The State Property and Contracts Act, 1960, C.A. 6, vested the ownership of lands in the Northern Region in the President and defined his powers of administration.
117 The Stool Lands Act, 1958, Act 27.
number of occasions, with the result that even the formal ownership of stool lands, with whatever symbolic value this might have to the chiefs, has been stripped away in many areas. It does not appear, however, that the vesting of ownership of stool lands in the President significantly added to the arsenal of Government weapons against the chiefs.

Comprehensive legislation was enacted in 1962 on the administration of lands, concessions in stool lands and the ownership and control of mineral resources. In large measure this was consolidating legislation, with amendments of detail, and many of the earlier enactments were repealed. In summary, it may be said that the President retained the power to vest stool lands in himself and the management of stool lands was fully committed to a Minister. The extent to which the traditional authorities will participate in the revenues from stool lands depends on ministerial discretion. Authority is granted to a Minister to terminate an existing concession in stool lands if its terms have been breached, or if its area exceeds permitted limits, or if it has not been properly developed or exploited, or if the concession holder "unreasonably withholds consent" to a variation of such of the terms of the concession as in the opinion of the Minister have become oppressive by reason of a change in economic conditions. Beyond the ministerial powers to induce modifications of concessions, the President is granted summary power to cancel any concession held by non-Ghanian individuals, corporations or associations "if he considers that it is or may prove prejudicial to public safety or interests." The Minerals Act vests ownership and control of all the minerals in Ghana in the President as trustee for the People of Ghana; it also authorizes him to issue licenses for exploitation of the minerals.

The law of Ghana has altered radically the theoretical structure of stool property and other exploitable resources of the country. Among the most obvious explanations of the legislative development is the Government's realistic awareness that land meant economic power for the chiefs and that economic power nurtured the opposition activities of the traditional authorities. Yet the stool land legislation was by no means limited to economic effects. In the Akan traditions, to say that a chief owned the land was a mere shorthand way of referring to his special relation to the ancestral spirits to whom the land belonged and who provided it for the nurture of the living. To divorce the chief from the land, therefore, struck directly to the heart of the institution of chieftaincy itself, to the conception of the chief as a secular leader but as the priest whose ritual functions preserved a desirable relation of the living to the dead and of the human to the divine. Today, his status in Ghana is reduced to that of a stipendiary of the central government, dependent in fact for office on official recognition, limited...