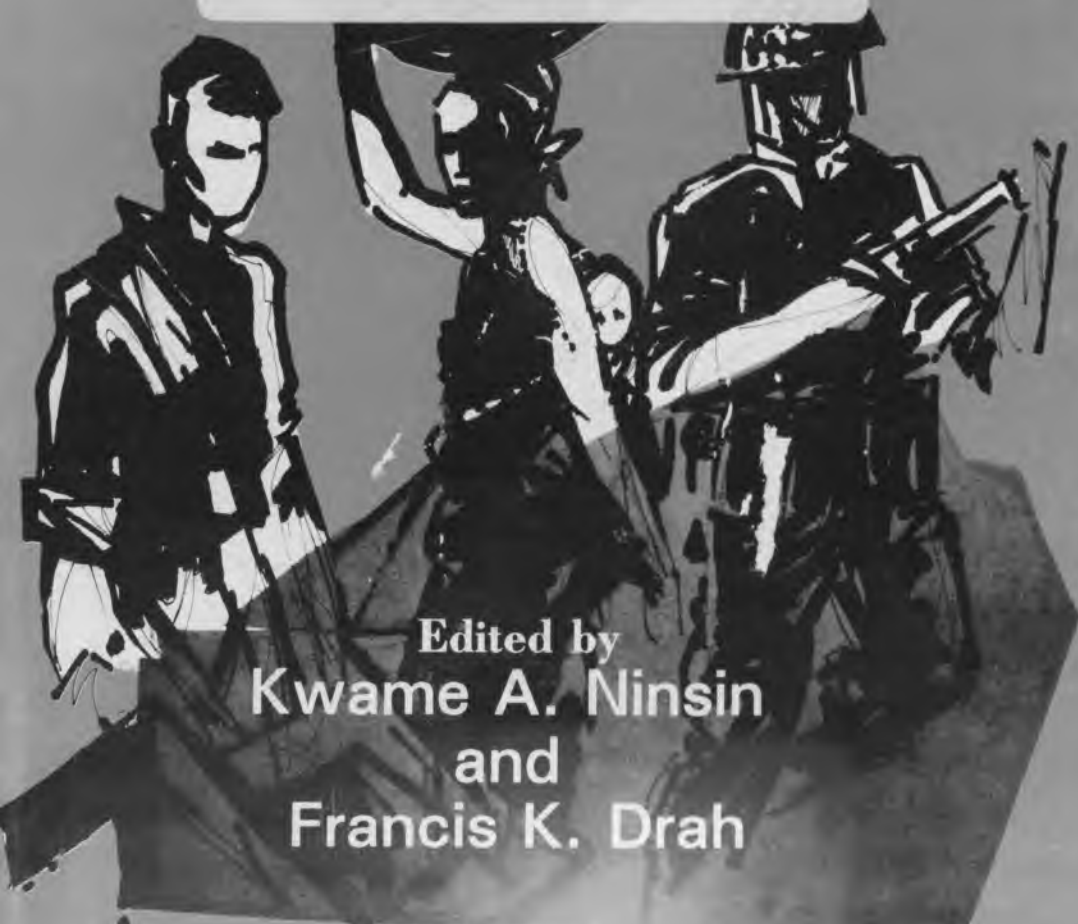


# GHANA'S TRANSITION TO CONSTITUTIONAL RULE

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Department of Political Science

*(Ghana's transition to  
constitutional rule*



Edited by  
**Kwame A. Ninsin**  
and  
**Francis K. Drah**

*Ghana's Transition to Constitutional Rule*

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*Proceedings of a Seminar Organised by the  
Department of Political Science, University of  
Ghana, Legon*

Edited by  
KWAME A. NINSIN  
and  
FRANCIS K. DRAH



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## PREFACE

A number of readers may recall that in late January 1986, the Department of Political Science organised a two-day seminar on the theme 'Democracy in Ghana: Retrospect and Prospect.' The seminar papers were eventually published as a book with the title *The Search for Democracy in Ghana: A Case Study of Political Instability in Africa*. We were then encouraged by the knowledge that we would be contributing to the country's 'search for a democratic system which ... will be free and just as well as provide a stable and peaceful environment for our country's development ...'. In that exercise, we sought to provide a rather rounded perspective on the causes of instability in Ghana; and we were sincere in our belief that we could thereby influence trends towards the building of a constitutional democratic system.

Five years have passed since then; and the search still continues. With the passing by the Provisional National Defence Council (PNDC) of the Committee of Experts (Constitution) Law, 1991 (PNDCL 252) and the Consultative Assembly Law, 1991 (PNDCL 253), the Department felt that the time was opportune to make yet another modest contribution to the search. Hence on 21 June, 1991, in collaboration with the Friedrich Ebert Foundation of Germany, we held a one-day seminar on the theme 'Ghana's Transition to Constitutional Rule.'

This theme was explored under four major heads, namely, Ghana's political past - a review, the consultative process, source of documents and relevant texts, and towards a new democratic order. In the event, thirteen papers were presented by members of the Department. In a significant sense, the direction of these papers was somewhat different from that of the 1986 seminar papers. For, instead of largely looking back, they looked forward to what could be done at this crucial juncture in our country's history when we are valiantly trying to identify the norms and the building blocks that will constitute a solid foundation for constitutional democratic politics. Thus the papers went beyond the confines of academic debate both by addressing the practical difficulties inherent in the transitional process itself and by making a number of concrete proposals for consideration by the Committee of Experts and the Consultative Assembly - although this publication has appeared too late for the former's consideration.

We would like to believe that this volume will be received, studied, and assessed by Ghanaians as a whole in the spirit in which it has been offered, namely, to contribute to the creation of a public platform for a meaningful

and fruitful debate on a subject that must be very dear to our hearts, in an atmosphere of tolerance, give-and-take, fair play, and civilised behaviour. For, clearly, constitutional democracy means *inter alia* not only freedom of expression and association as well as mutual tolerance among contending individuals and social forces; it also imposes a moral and political obligation on government to listen to its people, respect their views, and generate opportunities for the expression of such views. This is the democratic pact between citizens and their government.

We trust that the PNDC will make earnest its determination to return Ghana to constitutional rule by respecting the terms of such a pact; and that subsequent governments will make the need to listen to the views, and attend to the welfare, of the citizenry a sacred law of the constitutional-democratic order we seek to establish. Then and then only will our dear country know peace in freedom, justice, and prosperity.

In conclusion, we are happy to state that the seminar and the publication of the proceedings would not have been possible without the considerable moral and financial support of the Friedrich Ebert Foundation and its Director, Dr. G. Schirra. The constructive contribution they are unobtrusively making to ensure the success of our current search for an enduring constitutional democratic order cannot escape the notice of the careful observer. They highly deserve commendation for their foresight, courage, and support. Our heartfelt thanks also go to the audience for their active and lively participation in the seminar. The open and frank discussions were indeed a manifestation of the kind of democracy our country is yearning for. Finally, we are very grateful to the entire secretarial staff of the Department for helping with the seminar, and especially to Mr. Godfried Mantey, Ms. Selina Odame and Mohammed Osumanu for typing the seminar papers and preparing the typescripts for this book.

It can hardly be overemphasised that the Department of Political Science, Friedrich Ebert Foundation and the publishers are in no way responsible for the views expressed in this book. The responsibility lies squarely with the contributors.

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*Part I*

**THE POLITICAL PAST - A REVIEW**

# CHAPTER 1

## DECOLONISATION AND INDEPENDENCE THE PROBLEMS OF NATION-BUILDING

*Yaw Manu*

### **Introduction**

In this paper, I intend to look at the emergence and achievements of the UGCC more particularly the appointment of the Coussey Committee and its report. I shall briefly examine the Constitution of 1954, taking into account its peculiarities. I shall then look at the crises of identity and integration, and subsequently the crisis of participation - all of which constitute problems of nation-building. I shall answer the question: How has the country fared in the programme of nation-building ?

### **Post-War Nationalism in the Gold Coast**

Writing on Frantz Fanon, Rehata Zahar has suggested that Fanon's interest in the colonial question centres mainly on an analysis of intellectual alienation. All colonial peoples have been subjected to the economic conditions of alienation.

In the Gold Coast, the question could well be asked: What was it that prompted the establishment of the first post-world war II nationalist organisation, the United Gold Coast Convention (UGCC)? The truth of the matter is that the intelligentsia were unhappy with the constitution which had just been promulgated by the colonial power for the country. And yet it was the acute economic problems facing the country that impelled Mr. George Grant, the timber merchant, to convene the meeting of 1947 which led to the formation of the UGCC.

The call made by the Convention that 'by all legitimate and constitutional means ... the control and direction of Government shall within the shortest time possible pass into the hands of the people and their chiefs...' was a call for decolonisation. Frantz Fanon asserts that 'decolonisation' is simply the replacing of a certain 'species' of men by another 'species' of men. Decolonisation, which sets out to change the order of the world is, obviously, a programme of complete disorder. It is a historical process. Decolonisation is a meeting of two powers opposed to each other by their very nature. On the other hand 'independence' when

operationalised implies the exercise of sovereignty by the people through their government representing the state.

Fanon's definition of 'decolonisation' seems appropriate for our purposes; for the call of the Convention, as noted above, was no more than a demand for the replacement of the colonial government by the indigenous people and their leaders for the purposes of exercising independence and sovereignty.

In these brief introductory remarks, we have observed the emergence of the UGCC. It demanded self-government within the shortest time possible. Let me say here that this demand had some indefiniteness about it. And when another party - the Convention Peoples Party (CPP) - emerged in June 1949, it shrewdly capitalised on this indefiniteness. The CPP, apparently more radical than the UGCC, sought 'Self-government Now'.

The UGCC, from the outset, did not seem to make an impact. The Watson Commission - set up by the British Government to investigate the causes of the riots which occurred in February 1948 - observed that from the internal minutes of the Working Committee of the UGCC, actual work did not begin until the arrival of its permanent General Secretary, Dr. Kwame Nkrumah.

The Alan Burns Constitution, although an improvement on previous Gold Coast Constitutions, was described by Dr. J.B. Danquah as window-dressing. Obviously defective, it could not meet the requirements of the country. But were the people as a whole conscious of these defects and if so, were they concerned? Political observers point out that the ordinary people had little if any concern for the form of constitution for the country.

Happily, certain factors favoured the movement. For example, ex-servicemen, having returned from service abroad, needed security, shelter and material comfort. And because of monopolistic tendencies of the European firms, grouped into the Association of West African Merchants (AWAM), African traders did not fare well; school leavers were not being absorbed into the limited second cycle schools; and farmers were unhappy with colonial policy concerning agriculture and the cocoa industry. These trends seemed propitious for the success of the UGCC. On the 28 February, 1948, when an African trade boycott ended, riots ensued.

It is unnecessary here to examine thoroughly the approach of the Working Committee of the UGCC towards the crisis. Suffice it to say that it demanded an inquiry into the riots and the transfer of political power by the colonial government to it. Of the wide-ranging observations and

recommendations of the Watson Commission, the following comment by the Commission is instructive. 'The Constitution and Government of the country must be so reshaped as to give every African of ability an opportunity to help to govern the country, so as not only to gain political experience but also to experience political power. We are firmly of the opinion that anything less than this will only stimulate national unrest.'

When the Gold Coast Government appointed the Coussey Constitutional Committee to draw up a constitution for the country, it was responding to the recommendations of the Watson Commission. The composition of the Coussey Committee need not engage our attention. It is necessary, however, to note that its recommendations proffered partial self-government - a compromise type of constitution that saw to it that on the national level, traditional rulers would be represented in the legislature, while the masses of people would equally participate both in the voting and in matters of representation. Special interest groups like the mining and commercial interests as well as ex-officio members representing British interests would serve in the legislature, while the office of Governor would be retained.

### **The Crisis of Identity and of Integration**

In the above pages, we have discussed the emergence of the UGCC and its impact on the society as reflected in the constitutional changes. We need to look at the Nkrumah constitution whose implementation was closely followed by the crises of identity and integration - both of which, in a way, suggested problems of nation-building.

Dr. Nkrumah, as the leader of the nationalist party the CPP had described the Coussey Constitution of 1951 as 'bogus and fraudulent'; he added, however, that it was worth trying it. That he advocated a new constitution - the Nkrumah Constitution - shortly after 1951, indicated that his acceptance of the previous Constitution was tactical. Negotiated with the colonial authorities, the 1954 Constitution removed from membership of the cabinet all ex-officios who were British. The Governor, however, was to retain his post, presiding over cabinet meetings and exercising powers of veto and certification. No longer would the traditional leaders be privileged to sit in the national legislature simply on account of being traditional rulers - they could stand and be voted for in any elections in their own right.

There was hardly any doubt about an emergent nationhood, considering particularly the fact that under the new Constitution, the nationalist party had swept the polls across the country, thereby suggesting a national consensus on the programme of 'Self-government Now.' Here

it needs be said that if the outcome of the elections implied an emergent nationhood, the event was also the occasion for the eruption of the crises of identity and integration - which are problems of nation-building.

In a study on political development, Lucian Pye says that an identity crisis is one of achieving a common sense of identity on the part of a people. The people must come to recognise their territory as being their true homeland; they must feel as individuals that their own personal identities are in part defined by their identification with their territorially delimited country. Thus the existence of ethnic and tribal loyalties poses a grave problem for common identity which a people ought to claim within a common territory. In other words, competition tends to exist where tribal and ethnic loyalties co-exist within a nation.

What is required if a modern, stable, nation-state is to be fostered is that parochial loyalties and traditional forms of identity have to be submerged. Given this standard in the quest of nation-building, the claims posed by the new emergent political group - the National Liberation Movement (NLM)- in September 1954 seriously questioned the programme of nation-building.

Demanding a federal form of constitution backed by threats of secession, the movement advanced the following arguments. The fact of the existence of various ethnic and tribal groupings with their peculiar cultures which they had developed at their own pace and in keeping with their own peculiar circumstances supported the claim for a federal form of constitution. A further argument which was wide-ranging dwelt on the need for the social and economic development of each group to be determined by their own peculiar circumstances. And far more telling was the argument that each territory comprising present-day Ghana came under British jurisdiction at varying times. This crisis of identification, which was later resolved partially through the ballot box, was decidedly a problem in nation-building.

Independence, which was won in 1957 in the wake of an identity crisis, was a point of departure in political development which is also a process of nation-building. Under the Nkrumah regime, what was the nature of 'political development or nation-building?' How did the country fare?

### **Political Development - Nation-building under the Nkrumah Regime**

The polls of 1956, which were partly intended to decide on the identity crisis, and in which the CPP under Dr. Nkrumah triumphed, ushered in the nation-state exercising national sovereignty - a triumph in decolonisation. The event, seemingly also an end to the crisis of participation - for the colonial government had apparently been compelled to concede participation - marked the beginning of yet another participation crisis.

From 1954 onwards, the CPP appeared to have augmented its strength in the legislature. Winning 71 seats in a legislature of 104 in 1954, the CPP repeated this victory in 1956 by winning 71 seats; by 1960, however, its strength had stood at 98 in a legislature of 114 members; and, according to Dennis Austin, the opposition groups had dwindled in numbers. A *de facto* one-party system emerged under a new Republican Constitution.

Briefly stated, that Constitution centralised political power. The executive and the legislature were linked, since the head of the former was the head of government and was entitled to a seat in the legislature where he served as head of the majority party. As Chief Executive, he was also the head of state - President of the Republic. Thus the Chief Executive was both the President and head of government. The *de facto* one-party system did not leave any room for a change of government.

It was argued that political participation was possible within the context of the single-party system, the purpose of which was to serve as a mobilising agent. According to Dr. Nkrumah, after independence, 'the economic independence that should follow and maintain independence demands every effort from the people, a total mobilisation of brain and manpower resources.' But, again, he stressed: 'even a system based on social justice and a democratic constitution may need backing up, during the period following independence, by emergency measures of a totalitarian kind. Without discipline, true freedom cannot survive'.

As an agent of mass mobilisation, the single party system would constitute the framework of political participation. This trend amounted to political development : that is nation-building. And, in Lucian Pye's view, as an aspect of political development, political participation involves primarily the role of the citizenry and new standards of loyalty and involvement: 'The involvement manifests sometimes in mass demonstrations which are viewed as evidences of political awakening ... historically, the process of popular participation has varied.'

The process of participation under the one-party system is not coupled with the processes of election on the pattern of the Western countries. This notwithstanding, it is believed to play a role in nation-building; for, it represents a means of creating new loyalties and a new national identity. Criticised on the grounds that as an aspect of political development it can sometimes be fraught with sterile emotionalisms which can sap the strength of the nation, the one-party system has harboured the crises of participation, legitimacy, and authority. Commenting on the legitimacy crisis, Pye has said that it connotes 'the absence within a state of an agreement on the legitimate nature of authority.' For instance, although the CPP government had been



popularly elected earlier on, the single-party system did not seem to allow for elections on liberal-democratic principles. Thus the architects of the *coup d'etat* against Dr. Nkrumah and the CPP in February, 1966, argued that the single-party system was a denial of political participation; and that an avenue for a change of leadership did not exist other than a *coup d'etat*.

In the process of nation-building, which is the same as political development, the country's journey has been tortuous. But relying on Lucian Pye, once again, I will use two criteria of political development to offer evidences of political development attained by the country:

*Political Development as the operation of a nation-state.* This view seeks to assess the nation-state from the point of view of organised political life and how far the performance of political functions is in accordance with the standards expected of the modern nation-state. The modern state is organised along a set of requirements. To perform as a modern state, the political institutions and practices must adjust to the requirements of state performance. 'Political development is the capacity to maintain a certain level of public order, to mobilize resources for a specific range of collective enterprises and to make and effectively uphold types of international commitments...'

*Political Development as Administrative and Legal Development.* This is the belief that organised political communities need a legal and administrative order. The tradition which advocates legal and administrative order has led to theories concerning the establishment of effective bureaucracies for the development process. On this view, administrative development is associated with the spread of rationality, the strengthening of secular and legal institutions, and the elevation of technical and specialised knowledge in the direction of human affairs. No state can presume to be 'developed' if it lacks completely the capacity to manage public affairs effectively.

How far has the country fared in the matter of nation-building or political development? It does not seem to require hard data but political observation to conclude that the country has travelled far in the matter of nation-building. It is, however, necessary to observe that crises of participation, legitimacy, and authority continue to constitute major problems of nation-building for the country.

Decolonisation, apparently consummated piece-meal by 1957, has been followed by nation-building, that is, political development. And yet, unavoidably, the country still experiences crises of participation, legitimacy and authority.

## Conclusions

A necessary reaction to colonialism, nationalism manifested effectively only after the second world war. The emergence of the UGCC apparently was occasioned by the weakness of the Burns Constitution but no less by the severe economic difficulties of the post-war era.

In its aims, the UGCC desired a transfer of political power by the British government at the shortest time possible to the chiefs and people of the Gold Coast. But it was with the arrival from abroad of the General Secretary - Dr. Kwame Nkrumah - that the movement began in earnest to advance its cause. To the credit of the movement, the British Government consented to send a Commission to the Gold Coast.

The Watson Commission no doubt was persuaded by the genuineness of the claims of the nationalists. The British Government's acceptance of the recommendations of Watson led to the appointment of the Coussey Constitutional Committee and the promulgation of the 1951 Constitution.

At best this Constitution was a compromise one - ensuring that while the masses would participate in the electoral processes, traditional rulers would also be accorded a role in such processes. But the Constitution of 1954, designed to give full scope to universal adult suffrage, eradicated the concessionary privileges previously accorded traditional rulers.

It is easy to see why traditionalists would be averse to a system that gave a seemingly total recognition to the role of the masses. Perhaps, it was this element of concern that gave rise to the crisis of identity of 1954. But however one looks at it, the crisis was one of nation-building and political development.

As we have noted already, the period of Nkrumah's rule, the post-independence era, which was characterised by single-party dominance created a new awareness. Participation, in the context of the mass party, facilitated political development because it created national awareness -notwithstanding its shortcomings.

Ignoring the electoral processes of the liberal-democratic kind led to a crisis of participation. Such a crisis was compounded by the crises of legitimacy and authority. The very fact that the single-party system did not allow for a change of government led to a legitimacy crisis. Undoubtedly, there has been a measure of political development and nation-building; for although crises of participation, legitimacy, and authority prevail in the nation, the tests of a modern nation - state appear to have been met.

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## CHAPTER 2

# PARTY AND NO-PARTY POLITICS IN A NEW CONSTITUTIONAL ORDER

*Mike Oquaye*

### Introduction

An inevitable pronouncement that has accompanied all coups d'état in Ghana has been the dissolution of political parties. Where the military government happens to be a moderator type, merely stepping in briefly to restore freedom, such as the National Liberation Council (NLC), or to clean the stables and call back the politicians, such as the Armed Forces Revolutionary Council (AFRC), political parties *per se* are not attacked. However, the military junta, such as the National Redemption Council (NRC), or the institutionalised military government, like the Supreme Military Council (SMC), as well as the military regime that seeks a total, revolutionary transformation of society like the Provisional National Defence Council (PNDC), have no set datelines. They basically have come to stay. They have messianic visions of their transformation role. They seek to erect new structures that would perpetuate their rule. In the process, it is inevitable that political parties which have been the bastions of the governments overthrown must be condemned. In the quest for legitimacy, there is the strong temptation to establish other vehicles of political participation and selection of rulers, almost invariably with a view to retaining power. The road to party politics, in such a situation, should be blocked. Party politics presupposes that there is a possible alternative leader to the ruler who is being hailed for having done so much for the fatherland. The party system also assumes that an organised group of people with an alternative programme is available to lead the nation - an assumption which is as unacceptable as it is unimaginable to any messianic leader.

It is in this light that we should appreciate why there was a bitter cry against party politics during General Acheampong's desperate quest to legitimise his authority and transform, by the clever ruse of Union government (Unigov), the *de facto* power he had seized by the gun into a *de jure* and respectable government. The pattern has been common throughout Africa.

### **Critique of the Argument against Multi-Party Politics**

In the first place, the argument against party politics maintains that the state apparatus, through the political party system, has become the monopoly of a few rich and influential people. As a result, the poor have been deprived of meaningful political participation. It has been maintained that in 1979 the People's National Party (PNP), for example, became the property of financiers such as Okutwer Bekoe, Ayeh Kumi, Imoru Egala and Krobo Edusei - to the extent that President Limann was reduced to a puppet on the economic strings of the party financiers. It soon became manifest that the party financiers were anxious to reap dividends on their 'investment.'

As Adu Boahen has pointed out, soon after the PNP's assumption of office, 'an increasingly bitter fight for power and access to state patronage and contracts ensued....' These internecine struggles worsened when accusation of corruption and embezzlement of public funds were made against many of the party leaders. One of them involved a bribe of 5.2 million cedis said to have been collected from a currency printing firm in London. This 'money politics' stemming from the unbridled influence of money in party politics had so corrupted the body-politic that, in Adu Boahen's considered opinion, 'by December 1981 the PNP was on the verge of disintegration while Limann looked on helplessly, much to the disgust of his own supporters, the joy of his opponents and the dismay of the hungry workers, farmers, students and public servants.'

In this connection, party politics is seen as a corrupting influence. It is opined that there is, therefore, the need to evolve a simpler system of representation without the unfair, expense and attendant corruption of the system of party politics. We cannot gloss over the undesirable effects of the power of money in party politics. In the USA 'money power' has attained such huge proportions as to assail the virtue of officials and demoralise some state legislatures. Bryce in his study on modern democracies ascribes this to the prodigious fortunes which the swift development of a new country's resources created, and the possession of which made it possible for people to buy favours from politicians who had them to sell. Bryce then lists some of the consequences of 'money power' as follows:

- (i) the power of money to pervert administration or legislation
- (ii) the tendency to make politics a gainful profession
- (iii) extravagance in administration
- (iv) the abuse of the doctrine of equality and failure to appreciate the value of administrative skill

- (v) the undue power of party organisation
- (vi) the tendency of legislators and political officials to play for votes in the passing of laws and in tolerating breaches of order.

What we advocate at this stage, however, is that the area of participation within the party context should be broadened and political parties should not be subject to individual caprice. The problems relating to the manipulation of the party system by individuals are not unknown in the U.S.A. As Judge Parker said in a test case (*Rice v. Elmore*, 1947), American primaries were not the prerogative of party bosses. The system must operate within the state laws; party officials were state officers *de facto* if not *de jure* and were bound by the constitution. He made these observations in a case involving some Southern States including South Carolina which tried to divest parties of their official character but were rebuffed. It was held that the attempt by individuals to make nominations excluding negroes was unconstitutional, and that a party could not act in an 'illegal conspiracy.' Judge Parker, whose ruling in the Circuit Court was upheld by the U.S. Supreme Court, said further that 'the fundamental error in the defendant's position consists in the premise that a political party is a mere private aggregation of individuals,' like a country club, and that the primary is a mere piece of party machinery. The party may, indeed, have been a mere private aggregation of individuals in the early days of the Republic, but with the passage of the years, political parties have become, in effect, state institutions, governmental agencies through which sovereign power is exercised by the people.

Regarding the issue of money, it is significant to note that in its Report presented to the PNDC on a future constitution, the National Commission for Democracy (NCD) advocated state funding of elections and the abolition of deposits by candidates. One may note with concern the NCD's prescription that an 'innovation in the District Level Elections which the overriding majority of contributors wanted to have institutionalised at the national level was the creation of a common platform for all candidates to present themselves and their programmes to the electorate and to respond to questions and queries.' To say the least, it is repugnant to good conscience to restrict a free association in this manner. Parties should be free to conduct their campaigns without the undue control and supervision of regime officialdom, whose partiality can never be completely ruled out. Freedom of association cannot be given with one hand and taken away by the other. Indeed, the state should not establish a patron/client relationship with political parties in the next constitution.

The second main argument against party politics is that it is acrimonious. In advocating Unigov - a system of government comprising

soldiers, policemen and civilians and in which there would be no political parties - General Acheampong called upon Ghanaians to remember the arson, violence, general insecurity and ethnic animosity engendered by the contesting parties during the days of the Convention People's Party (CPP) and the National Liberation Movement (NLM) between 1954 and 1956. Unigov, it was asserted, would remove strife, factional hostilities, bitterness and rancour.

And in the words of Flt. Lt. Rawlings in volume two of his collected speeches, 'rivalries and animosities among political parties sharpened as the country grew older. These were not in the form of healthy competition in which one-party in power strove to do its best so that the electorate might re-elect it. Rather, while building its own funds by some dubious means, a political party also bought support by providing opportunities for bribery, theft, embezzlement and trade malpractices. Gradually these were becoming the vogue in our political and social life, while rewards for honesty turned out to be a self-inflicted punishment.'

Those who disagree to this point of view argue that military regimes have their share of corruption; that party politics *per se* is not corrupt; and that the acrimony conjured up is unfortunate. The political crisis of 1954-56 had to do with a multiplicity of factors including a call for federation by some significant sections of the Ghanaian population on one hand and total secession on the other.

Thirdly, it is argued that non-party politics would eliminate ethnic differences and foster national unity. Party politics is described as a system that exploits tribal sentiments as a basis for mobilising support. Another school of thought is quick to point out that the military governments throughout all the years have also had to confront the 'problem of tribalism' as a bane of our politics; what we must do is to acknowledge the reality of the problem and tackle it constructively.

A fourth argument against party politics is that the system of resorting to the ballot box once every four or five years is not the essence of democracy. Undue emphasis has been placed on the ballot box and the role of the citizen in putting a piece of paper therein and electing people who quickly isolate themselves from the electorate. The emphasis should, therefore, be on active participation in various aspects of government by the people. Chairman Rawlings in a broadcast on 31 December, 1983, echoed these sentiments when he said that 'some regard democracy as the process of choosing between a restricted group of people by means of the ballot box. The process of this kind of democracy ends when the voter puts his piece of paper inside the box. The winners are then free to manage or mismanage the nation's wealth, and we are all witness to the callous mismanagement

which has resulted from this type of democracy. At present, when consultations and debates go on at grassroots level and every individual has a greater opportunity than ever before to participate in the formulation of policies, the participants must be aware of all the issues involved. Asking people to take decisions when they do not know all the factors which should be weighted is to invite superficial and dangerous decisions.'

In this connection, Rawlings found it necessary to explain the handover to civilians through party politics in 1979. He said in an interview on Ghana Broadcasting Corporation in May 1989 that 'we all knew that the people were sick and tired of the military misrule of Acheampong and were hungry for elections of a civilian government, believing that party politics and parliamentary procedures would bring them relief. We had to let the elections go ahead for the people to discover for themselves that the empty forms of alien democratic procedures cannot in themselves guarantee real democracy. It was costly and probably necessary.'

Chairman Rawlings saw the salvation of the people in a party-less grassroots involvement, and in a decentralized administration. In his speech of 31 December, 1986, he said that 'decentralisation will mean that throughout the country, we all acknowledge and live up to our responsibilities for nation-building, in particular for making a contribution to the national economic recovery effort.'

The call for spontaneous mass participation saw the emergence of People's Defence Committees (PDCs) and Workers Defence Committees (WDCs). They constituted a twin system to ensure geographical as well as work-place participation. Observers point out that the system crumbled under its own weight as the Defence Committees bit more than they could chew, for they attempted to become an empire within an empire.

The fifth argument against political parties may flow from the fourth. It is that politicians, when elected into office, quickly isolate themselves from the people. This problem can be laid to rest by the exercise of the timely and welcome power of re-call recommended in section 5.4.4 of the NCD Report to the effect that it should be possible for the electorate to recall a member of parliament before the end of his tenure on grounds, and with procedures, that should be clearly spelt out in the constitution. Of course, an M.P. must come from or reside in the area he represents to make the right of recall meaningful.

Sixthly, it is opined that the multi-party system is alien to our cultural/traditional system. Acheampong said Unigov sprang from the traditional African system and was therefore autochthonous to the people of Ghana and Africa. As I pointed out in 1980, Unigov was likened to a meeting of the village elders presided over by the chief where affairs of the



village were discussed and decisions arrived at by means of consensus and implemented by the chief and his elders. The obvious answer to this argument is that the old order must yield place to the new in the face of the complexity of modern society, rapid population growth, widespread urbanisation, and industrialisation. If we seek a fetishistic invocation of our past and tradition, why do we not hand over political power to our chiefs?

A seventh argument against the multi-party system in our country stems from the socialist - one-party school, championed by men such as Kwame Nkrumah. It is an argument to the effect that the multi-party system is imperialist as well as alien. In his work on revolutionary warfare, Nkrumah saw the multi-party system as a neo-colonialist weapon to perpetuate the subjugation and economic exploitation of the developing countries. He wrote that 'a state can be said to be neo-colonialist or client state if it is independent *de jure* and dependent *de facto*. It is a state where political power lies in the conservative forces of the former colony and where economic power remains under the control of independent finance capital.' Furthermore, imperialism usually resorts to all types of propaganda in order to highlight and exploit differences of religion, culture, race, outlook and of political ideology among the oppressed masses, or between regions which share a long history of mutual commercial and cultural exchange. In the last resort neo-colonialism can set up a bogus 'progressive party' or organisation using local agents. Nkrumah added that 'the main sphere in which we must strive to defeat neo-colonialist intrigues is within the movement for true independence; that is, with the progressive political party which forms the government.'

Nkrumah's argument, which amounts to a rationalisation of his concept of one-party as against multi-party politics, holds that the problem of neo-colonialism is so gigantic that 'the only way to eradicate neo-colonialism is through a revolutionary movement springing from a direct confrontation with the imperialists and drawing its strength from the exploited and disinherited masses. Independence must never be considered as an end in itself but a stage, the very first stage of the people's revolutionary struggle'. To Nkrumah, we are in a state of war and it is only under the umbrella of the one-party that we can achieve nationalism, Pan-Africanism and socialism: 'only under Socialism can we reliably accumulate the capital we need for our development, ensure that the gains of environment are applied in the general welfare and achieve our goal of a free and united continent.'

Mussolini who preferred the one monolithic national movement which had no room for competition, once said that 'fascism has never attempted

to clothe its complicated and powerful mental attitude with a definite programme, but has succeeded by following its ever-changing individual intuition... We fascists have always expressed our complete indifference towards all theories; we have had the courage to discard all traditional, political theories. It is sufficient to have a single viewpoint, the nation.' Goerring, who subscribed to this school of thought, also said: 'And if abroad, it is believed today that chaos threatens Germany, the German people respond with the single cry: "We all approve always of what our leader does .... I do not become the follower of a leader because I have tested his political or economic progress .... Where real leadership exists, I have trusted myself to a leader whose purpose I only see in part. I give him whole trust. He has captured me. He may lead me now, either to death or to life."' Those who envisage party politics in this perspective have a pessimistic view of multi-party politics which, to them, is inconsistent with 'progressive' nation building.

The eighth argument is that multi-party politics engenders a proliferation of parties, which militates against political stability. This is a strong argument. Even in France, before de Gaulle, the dozen political parties that littered the political scene led to political instability until General de Gaulle seized power by a coup d'état. Upon the lifting of the ban on political parties in 1969 and 1979, Ghana experienced the mushrooming of a dozen political parties. Apart from Limann and Victor Owusu, the eight other presidential candidates in the 1979 elections lost their deposits, including Mr. William Ofori-Atta, Col. Bernasko, Dr. Bilson, Mr. Alhaji Mahama, Dr. R.P. Baffour, Mr. Kwame Nyanteh, Mr. Diamond Addy and Alhaji Imoro Ayarna.

We advocate here a strong two- or three-party system because, although a multi-party system may exist bona fide, unbridled multiplication of parties has an inherent weakness - no party is able to obtain a workable majority in the legislature, and the formulation of public policy lacks finality and sustainability. In this connection, a major problem that confronts the operation of our preferred system is the simple majority voting system which the NCD addressed in its Report on 'Evolving a True Democracy.' It identified the problems attendant to the winner-takes-all system as against the advantages of proportional representation. It argued that proportional representation will engender a greater feeling of participation and achieve a just and equitable representation of groups who under the simple majority system fail to obtain seats that correspond with votes obtained. But we must caution against a real danger here. Our study of the German experience, for instance, shows that the system brought in its trail such a wide array of parties that at one stage, midwives threatened the

Ministry of Interior that they would set up a political party of their own unless certain demands of theirs were met!

As a ninth argument, it is stated that in Africa, the organised opposition has been irresponsible, divisive and destructive and that the idea of an official opposition, which is an integral part of the multi-party system, has proved disastrous in Africa. But the real point is that we should all learn to cultivate tolerance.

The tenth argument is that we cannot ignore the military factor in a future political arrangement; and since soldiers cannot leave their barracks and engage in party politics while remaining soldiers, a way must be found to provide for them. Suffice it to say that a soldier who wants to enter politics and stand for election to a political office could be given leave of absence and return when he loses the election or when he completes his term of office. Furthermore, our soldiers will surely not want to give the impression that they are holding the nation to ransom by virtue of their monopolistic hold on the coercive instruments of the state. In fact it is better for a soldier who wants to do politics to retire altogether.

### **Further Argument in Favour of Party Politics**

The arguments above indicate the need for political parties, to which we may add the following:

- (i) *Parties make politics meaningful.* Lord Bryce once said that 'they bring order out of the chaos of a multitude of voters. It is a clearing house of ideas. The party system may be regarded as an institution, supplementary to the government, aiding the electorate in the selection of official personnel, in the determination of public policy and in the larger task of operating or criticising the government. In this sense the party may be regarded as a part of the government itself, an extension of officialism shading out from very definite responsibility for official acts to the less definite responsibility for shaping and building the course of public opinion.' As a connecting link in the political edifice, the party was described by Burke as 'an organic convention with all the processes of thoughts and feelings which pertain to human nature, and is subject to the play of their influence.'

Herring also observed that 'the task of leadership is to bring the diversity of our society into a working harmony. Our system of political parties is designed to implement this purpose. Through such organisation, the politicians can contribute to the process of adjustment.'

By being schooled in this manner, harmony and political stability will be achieved. We should learn from what Herring states further: 'Our party system tries to reconcile conservative elements with the forces making for change. Such reconciliation is achieved not by debate alone. Common loyalty to an organisation is no small factor in bringing men of contrary interests together. This straddle presumably can stretch only so far; but before the breaking point is reached, concessions are often made out of loyalty to the organisation which both sides value...'

- (ii) The party acts as an educator by way of persuading a person to vote for Party A as against Party B. The method is: argument and counter-argument. The resultant effect is the making of a calculated, reasoned choice based on persuasion, not force and blood. As one writer once put it, parties help to preserve the serious and objective approach to politics, the mistrust of generalisations and extremist points of view and the respect for the freedom of the citizen regardless of his opinions.
- (iii) The party is both an organiser and insurance of discipline. Non-organisation means inaction or chaos. MacIver made the most succinct statement in this regard when he observed that 'public opinion is too varied and discursive to be effective unless it is organised. It must be canalised on a broad line of some major division of opinion. Party focuses the issues, sharpens the differences between the contending sides, and eliminates confusing cross-currents of opinion. Each party formulates its platform, grooms and elects its candidates, enables the public to make its choice between sufficiently distinct alternatives.' Most constitutions rest heavily upon a probability theory to the effect that someone will contest for and accept a public office. The party makes an effort to reduce randomness of choice and to ensure that the voluntary method of filling public offices marches on. This certainly underscores the importance of political parties in the democratic political system.
- (iv) Parties are catalysts that stimulate political activity. They do not only present programmes and people, but also whip up enthusiasm, counselling the citizen on his civic responsibility to partake in the political process, not only by studying the issues at stake but also by casting a vote to influence decisions on the issues.
- (v) The party system provides the most effective means of orderly change of government. And without parties, responsibility and

accountability are empty slogans. Parties promote accountability in the sense that in the first place, a party comes to power with a manifesto and it can be queried if its actions are at variance with its avowed and known programme. Secondly, there is a clearly identified group in office who are not mere 'invitees' nor 'appointees' but members of a party who can be held responsible for all misfeasances.

### **Conclusion**

In conclusion, we may say that political parties have not failed this nation. The system has not been given a chance to work not only by politicians who have abused the process but also by soldiers who have raped it. By learning from the lessons of history - home and abroad - and ensuring the constitutionalization and proper operation of political parties, we shall enrich the political system, ensure stability, and promote the progress and liberty of us all.

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## CHAPTER 3

# ONE-PARTY AND MILITARY REGIMES

*Kwame A. Ninsin*

### **Introduction**

The problem of democratic politics and government in a developing country could be explained by a number of factors. In this paper I argue that the problem, as it has prevailed in Ghana since the 1960s, may be explained partly in terms of the country's experiences of one-party and military regimes; that the emergence of these two regime-types has violated the most elementary but primary tenets of democracy - namely, the freedom of association and expression. The logic of such regimes has impeded the full realisation by individuals and groups of the fundamental right to organise for purposes of defending and advancing the whole bundle of rights to which they are entitled. This has meant retarding the growth of a plethora of independent political organisations, representing various social forces, which could collectively articulate and defend the sum total of social interests against the claims of the state.

### **The Premise of Politics**

In all societies the struggle between the prevailing social forces of opposing interests with the intent of securing control over the state or influencing it and getting their respective interests embodied in public policy is the engine of politics. For such struggles social forces do organise, in one way or another; and pursue their political objectives either in collaboration with others or alone, but normally in opposition to one another. Politics is therefore characterised by group action, and by dissent, dispute, opposition - in short, by conflict of interests.

An equally important feature of politics is the constant drive for compromises, and coalition building in order to gain advantage over one another. Ultimately, the goal of political struggles is the attainment of consensus and a stable political life so that social progress would be achieved. Groups provide the means for attaining such ends.

But it is not any group! It is groups formed on the basis of objective and/or assumed interests and ideas determined by one's class position. Class-based groups spring up to express the interests and ideas of their class

in the sphere of public life - that is, in politics. Normally the articulation of such interests and ideas is aimed at achieving objectives that are specific to, or consistent with, the interests of the groups concerned. Political groups are, however, careful to avoid pursuing interests that are diametrically opposed to the interests of the larger society. Where there are fundamental differences between the interests expressed by a political group or groups and that of the larger society the prospects for destabilising the political order become quite high.

Though interests and ideas are determined by one's class position, other social tendencies also shape individual and group interests and ideas. There are, for example, religious, tribal, ethnic, and regional tendencies which often shape the way people see social facts and define their interests. Nonetheless, such non-class interests often subsume diffuse material or economic interests. At any rate, the emergence of a political group to articulate a body of interests is sufficient evidence that the social force whose interests it expresses has attained a measure of political consciousness and is, above all, determined to defend its interests. Interests are normally expressed as social and economic rights; and public policy is the medium by which interests or rights are pursued.

Since society comprises a variety of social forces - however, at different levels of development and self-assertion - the political action of one political group is matched by the actions of several other political groups. The struggle among political groups to shape public policy is the stuff of politics. Any attempt to restrict or stifle this logic of politics is a violation of the rights of citizens and creates potential grounds for civil disobedience.

The right of all social groups to organise themselves freely to pursue set goals in the political arena is therefore necessary if a stable political environment for the pursuit of peace and progress is to be assured. The freedom to organise for political purposes is also a precondition by which all social forces could be assured of the opportunities for achieving social justice. For the nature of the prevailing social structure is such that some social forces are more powerful than others and are therefore able to appropriate a larger share of the social wealth at the expense of others. The right to organise and engage freely in political actions guarantees all aggrieved social groups reasonable possibilities for securing redress through open and legitimate political action.

Contrary to this premise of politics, the country's political history shows that the single-party and military regimes have persistently violated the right of Ghanaians to organise in defence of their rights. Accordingly, the social and economic rights which were conceded in our constitutions have remained mere formal rights. This criticism applies equally to the 1979

constitution which provided (in Chapter 4) for *Directive Principles of State Policy*. It is noteworthy that the retention of this provision in PNDC Law 42 (Section 1) has not mitigated the severe socio-economic disadvantages suffered by large sections of the population.

### **The One-Party Regime and the Limits of Freedom**

At independence in 1957, Ghanaians enjoyed a multi-party system of politics and government. There were parties other than the Convention Peoples's Party (CPP). This meant that people were free to express their views whether or not these ran contrary to those of the ruling party and government. Similarly, people were free to form political associations other than the CPP. The freedom to hold and express contrary views and organise meant that essentially people could take on public officers for acts deemed to be violations of fundamental rights. It also meant that at elections people could choose between candidates in accordance with their perception of candidates, parties and programmes.

By 1960 it was evident that politics was taking a different turn. This was due mainly to the fact that the social forces which could operate the system were least developed, and the emergent groups who thought they could operate a democratic political arrangement could not sufficiently shoulder the discipline and responsibilities imposed by the norms of democratic life. Both government and opposition groups misunderstood their role in a democracy and abused the freedoms conferred by democratic politics. The anarchy that characterised the politics of the 1954-65 period as well as the challenges of nation-building totally discredited the freedoms that derived from democratic politics. The result was the one-party regime of the CPP that reigned from 1960 to February 1966.

The emergence of the one-party regime meant, in fact and in law, the imposition of limits on basic freedoms of speech or expression and association. This restriction was manifested in the subordination of all existing political organisations, representing key social forces in the country, to the hegemony of the party. I should simply recall that the organisations of workers, farmers, women, artisans and even *asafos* companies became auxiliaries of the CPP. Accordingly, people could form political organisations only if they were prepared to submit to the hegemony of the party. That is, the formation of independent political organisations was impossible. If we consider the fact that it is through such organisations that people could articulate their interests and aspirations effectively in politics, then that limitation was tantamount to a serious violation of democratic rights.



The emergence of the single party meant further that public discussion of national issues was possible only within the parameters set by the ruling party. The single party substituted diversity of thought and practice with uniformity. A monolithic political ideology also replaced freedom of ideas. Hence opposition, criticism and dissent were considered divisive and subversive. Their suppression could not be any better justified. In the end the politics of the single party regime destroyed the very foundations of democracy by denying independent organisations the opportunity to flourish, and Ghanaians the experience of democratic practice.

### **Military Regimes and the End of Politics**

The one-party regime of the CPP attempted to limit the freedom of action and expression entailed in democratic politics by reducing social diversity to uniformity. The politics of the single party took this form because it had to cultivate the support of its political constituency whose consent, support and interests could not be ignored. The government of a military regime, on the other hand, is not based on the stated consent of an identifiable political constituency. It derives its right to rule mainly from the power of the gun, and by appropriating genuine social discontent for its own advantage. It therefore does not worry too much about its legitimacy, and can decide to abolish independent political organisations in disregard of social reality. In pursuit of this, it exposes its essentially undemocratic character by governing in total disregard of cherished democratic norms and rights.

An early indication of this tendency among Ghana's military regimes is the 1966 decree which proscribed the CPP and its ancillary organs. In effect, that decree suppressed the legitimate right of a section of Ghanaians to freely form political associations. This tendency has persisted ever since.

The National Liberation Council (NLC), which pioneered this practice, moved several steps further by disqualifying a large number of CPP activists from engaging in open political activity and holding public office. *The Elections and Public Offices Disqualification Decree, 1969 NLCD 332* (which repealed NLCD 223 of 1968, NLCD 251 of 1968 and NLCD 273 of 1968) and the *Prohibited Organisations Decree 1969 NLCD 358* disenfranchised all Ghanaians who were affected by them. In effect, that military regime could deprive fellow Ghanaians of their democratic right to participate in choosing and changing the governments of this country.

The Union Government (Unigov) proposal of the Supreme Military Council (SMCI) government was the boldest attempt to proscribe party politics in the social life of Ghanaians. It was premised on a kind of social pact that would fuse the interests of members of the key organs of state

(viz., the security organs) with those of the key social forces. Politics was to be reduced to conspiratorial actions among the few powerful cliques who could claim to represent the political trinity of army, police and civilians. If the Unigov idea had succeeded, the military regime would have become the supreme leviathan, instead of the single party of the one-party regime, mediating directly between state and society; and democratic politics would have been outlawed.

Even though that innovation failed, the eight-year rule of that military regime was sufficient to stifle the growth of independent political organisations. Accordingly, it was only the handful of organisations - including the Ghana Bar Association (GBA) and other professional bodies, the National Union of Ghana Students (NUGS), sections of organised labour and the churches - which had been able, in the face of severe difficulties, to maintain their independence from the encroaching power of the state that could lead the rest of society to forestall the perpetuation of military dictatorship.

Equally significant is the fact that the suppression of independent political organisations and activities deprived Ghanaian society of the means for orderly change of government and policy. Hence, the transition from military rule to constitutional democracy was violent. The lessons of this period should therefore stress the need for free and independent political organisations as the mechanism for securing democratic government. We shall return to this subject shortly.

Another outcome of military rule was the emergence of radical political organisations. Admittedly, the abortion of open political activities is not the primary, let alone the sole factor that induced the growth of such radical political organisations. The primary catalyst was the seething contradictions in the relations of production as the distribution of the economic surplus became increasingly skewed against the underclass in our society. The denial of the right to organise in the political sphere in order to secure the alleviation of those inequities made radical, often covert, political activities the only option for the aggrieved underclass elements. More significantly, it also engendered the belief that the existing state institutions are undemocratic, and should be rejected.

By the time the Provisional National Defence Council (PNDC) took power, the People's National Party (PNP) government had not had sufficient time to consolidate the institutional and normative basis for resolving political conflict, especially the sharp social contradictions that had produced radical political organisations and actions. Certainly, twenty-seven months was too short for the institutionalisation of democratic political practice, attitudes and norms. Besides, the economy

had not recovered from those conditions that contributed to the deepening of social inequalities. The PNDC's success in seizing power was facilitated by this radicalisation of politics and by the fact that the institutional and normative basis of the newly established democratic order was still fragile.

### **The PNDC and Politics**

The PNDC seized power by exploiting the vigorous and radical politics of the fledgling democratic order. But its own political practice seems to have further undermined the slender institutional basis of that order. On the one hand, it has proscribed existing political parties and suppressed others of both the left and right. It has also disallowed new ones from coming into being for fear of opposition. In so doing it has stalled once more the gradual process of building democratic institutions and a culture of democratic politics. On the other hand, it has built its own political organisations and promoted a form of political practice towards its goal of establishing grassroots democracy.

Compared to previous military regimes, the PNDC government's approach to politics is similar to that of the one-party regime. The establishment of the Committees for the Defence of the Revolution (CDRs) and other political as well as quasi-political organisations, while denying others the right to form similar organisations, is an attempt to impose a single-party kind of structure on politics in the country. The only omission is a clear articulation of a monist ideology. Even so one could discern from the government's notion of grassroots democracy, signs of attempts to define a particular way of understanding politics and social development. Ultimately, the proscription of alternative political organisations has meant denying people the right to express alternative view- points and engage in open debate, the right of dissent and opposition, and the right to information.

All these have had a negative effect on the growth of the necessary political infrastructure for democratic politics and government. It has meant that Ghanaians have to start all over again to construct and nurture the political scaffold for democratic politics and government as well as instil the norms and attitudes consistent with them.

The current politics surrounding the transition to a democratic order is chilling in this respect - especially, the atmosphere of confrontation and statements of threat and condemnation that fill the air almost daily. This intolerance and acrimony is a sure sign of immaturity which could have been overcome if the country had been allowed to learn to govern itself in a democratic manner.

Furthermore, the composition of the consultative assembly illustrates the poverty of society's infrastructure for establishing even the constitutional basis for democratic politics and government. I am, indeed, referring to the extent government had to go to discover organisations that would represent a cross-section of Ghanaian society. It would not be unkind to suggest that some of the organisations do not have a coherent organisational structure. Some either may have a questionable claim to be mass organisations by any measure, or cannot articulate their interests; while others have just been cajoled by the state into existence for purposes of tax collection.

I should emphasise that the social class of members of some of these organisations is not the issue at stake here. I wish merely to raise a query about whether such organisations have demonstrated adequate levels of political consciousness to represent even the interests of their own members, let alone the rest of society.

On the question of social consciousness one's level of education or social class/status does not matter at all. It is whether or not members of a particular organisation are socially aware of their interests as well as fundamental rights as citizens of our country, and whether they are therefore able, and indeed determined, to articulate such rights as well as defend them. In politics the social forces which have attained fairly high levels of social consciousness are the ones who produce their own organisations - i.e. organisations that are independent of the state (or government). They are also the ones who are found engaged in constant struggles against attempts to violate their rights - and often by extension the rights of the rest of society.

In our history, wage and salaried workers are a good example of social groups who have shown an appreciably high level of political consciousness. Others who have demonstrated sufficiently high levels of this, and hence a high degree of political independence, are the business class, the professional strata of the middle class, farmers and students. The rest - like petty traders, artisans and craftsmen (small scale producers in general) and chiefs - have acted like the windmill: they have usually moved with the political wind. Birds of fortune indeed! I am not saying they have no interests. But have they demonstrated sufficient awareness of their own interests and rights to be able to relate them to those of society as a whole? Will they not easily flounder and, in the end, compromise the general interests and fundamental liberties of society if they should be confronted by the ominous stick and carrot of the state? Our country's history of the 1970s shows that such social elements are the raw materials for potential dictators.

In this regard, I should merely recall that the adamant advocates of the Union Government proposal had suddenly sprung from the class of small property owners, and almost took this country political captive. The heart of the matter is that by the time of the Unigov scare, Ghanaian society had not been allowed adequate time to nurture a sufficient network of independent political organisations which would be capable of defending society against the arbitrariness of their governments. It was only the militant sacrifices of students and workers supported by middle class professionals that saved this country from the scourge of Unigov. It is most likely that if the single-party and military regimes had not interrupted the normal growth of politics, such organisations that today raise doubts in our minds about their political maturity could have emerged as independent political organisations to take their legitimate place in the search for a democratic order.

### **Conclusions and Recommendations**

Clearly the single-party and military regimes have either destroyed nascent political organisations, which could have grown into independent and formidable bodies, or retarded the growth of such organisations. The growth of institutions like the press was also adversely affected by the emergence of the single-party and military regimes. They either undermined or destroyed the independent press in the same vein as they stifled free, independent and critical opinion. It is in this respect that we should understand the contribution of the one-party and military regimes to the destruction of the democratic order that we have been trying to build.

The significance of this history for all strata of society should be clear. The violation of the freedom of association, speech and the press deprived both the rich and the poor - the worker, farmer, manager, lawyer, businessman, *et. al.* - of the right to engage in open political struggle to defend and advance their respective rights.

It is important that as we make a fresh start in democratic politics, we should ensure that no government would be able to make a law that would take away any of our fundamental rights as citizens of this country. I will single out three of such rights for priority consideration. I regard these as central to the other rights. The first is the right to form political associations and engage in open political activity. In affirmation of this right, we should enshrine in our constitution a clause that prohibits the enactment of any law that seeks to register political parties, define the parameters of political practice, or recognise their existence. The right to organise political associations and engage in political activity should be absolute and

unlimited. The only certificate of registration should be the people of this country. That is, the extent of a political organisation's popularity or support should be the only basis for its existence. It should not matter whether a political organisation has one member or a million members. If the right to organise political associations is a fundamental right, then our constitution should further prohibit the passage of any law that seeks, even remotely, to disqualify a section of Ghanaians from engaging in any form of organised political activities.

The same prohibition should apply to laws affecting political activities - viz., political rallies, processions, protests, etc. The freedom of assembly is a logical part of the freedom of association for political purposes. We should therefore have the unlimited right to engage in political activities even if it would mean a lonely protest marcher bearing a placard critical of a certain public policy. I am drawing attention to the fact that the law on the statute books that oblige any person or group that intends to hold a public meeting, rally or procession to obtain police permit is a clear violation of the freedom of assembly. This law should be scrapped. The next constitution should prohibit its restoration. This will ensure that all alleged excesses in the exercise of this freedom would be settled only by the law courts.

If we should be able to imbibe the culture of building independent political organisations and engaging in democratic political practice, then the right to form political associations should extend to the smallest village or community, and to the contest for every political office from the village to the national assembly. I am proposing that people should be free to form their own village or community political parties to contest, for example, seats on unit committees, town and village councils or district assemblies; and to contest offices like district secretary, town mayor, chairman of the town development committee etc. In fact, we should demand the right to form our own 'farmers or greens' party; 'anti-drugs' party; 'anti-smugglers' party; 'anti-corruption' party, etc. Every group or individual should be free to form a political association to advance a chosen political course. This means that those who want to form or retain the CDRs, the 31st December Women's Movement, the June 4 Party, the Young Pioneers Party etc should be free to do so, and be free to contest elections at local and other levels of the polity if they have a political programme to push through.

The urgency of securing unlimited right to form political associations stems from the following: The proliferation of independent political organisations that will span district and national politics will promote structural decentralisation of power. The development of independent political bases in the districts, where partisan politics should be vigorously

pursued, will enable the electorate to secure a more effective control over, and participation in the formation and running of such organisations. The local and grassroots control that will be enhanced through the decentralisation of political organisations will further ensure that such organisations become the media for articulating the interests of citizens and influencing public policy. It is through such proliferation of centres of political power throughout society that we could secure our collective freedom against the authoritarian tendencies that are inherent in modern government.

Such democratic expressions should be manifested also in regional and national level politics. Thus settler farmers in the country should be able to organise their own political party. In such instances it should not matter whether such farmers are based in a particular region of the country. In so far as they would organise around specific economic interests, without any irredentist motives, this aggrieved group should be free to organise independently to elect parliamentary representatives with the mandate to fight for a law or laws that would address the land question in our country. They need not affiliate with either a PNP or UNC or PFP or ACP.

If we could secure such free and open local political activities, we could boast of a truly grassroots democracy. But more especially, such free political activity will enhance the growth of democratic culture and practice - of debate, tolerance, respect for the moral and legal rights of others, open political competition etc. It is through the experience, practice and enjoyment of such freedoms that we could build a truly national democratic culture and government.

The second is the freedom of speech and of the press. It is true that freedom of speech or expression cannot be as absolute and unlimited as the freedom of association and political action. Yet it should be possible to secure a protected institutional framework within which we could enjoy freedom of speech. Freedom of the press is a prerequisite in this regard. Hence, a newspaper licensing law is fundamentally a threat to our liberties. The constitution should therefore prohibit the enactment of any law which seeks to limit the freedom of the press. Everybody or company should be free to start a newspaper. The continued existence of a newspaper should be determined by the free market - just like everything else in this country. Second, the right to publish should be subject only to the laws of libel. In other words, the laws of the democratic state, as interpreted by the law courts, should constitute the sole limitation on the exercise of the freedom of speech; and they should also be the sole determinant of who is a misguided element, dissident, subversionist, etc. No government or group

of persons should ever arrogate to themselves the right to define who are the enemies or friends of state and society.

The third is freedom of information. In order to remove the scourge of state interference in the media, once and for all, we should create conditions for the free flow of information. This requires entrenching a clause that will safeguard the freedom of information. In furtherance of this, the state-owned newspapers should be privatised and the state restricted to its ownership of the Ghana Broadcasting Corporation. But even in the area of broadcasting a private Ghanaian company should be able to invest to compete with the state. The state will not lose much: it has the ministry of information - a formidable propaganda apparatus- to disseminate its views.

This proposal is not aimed at liberating the Ghanaian journalist. Rather, it is intended to remove the temptation which the state has always welcomed to destroy the private press simply because it has its own media by which it could monopolise and manipulate the dissemination of information. Without the advantage of a state-owned mass circulation newspaper, any attempt to destroy the private press would surely create an embarrassing vacuum.

Admittedly we cannot conjure these democratic conditions into existence just as we cannot banish the threat of military intervention. We can nonetheless make a resolute beginning in defence of our liberties. To this end, we only have to remember that fine constitutional provisions are not the panacea. WE, the PEOPLE of this country, have it within our power to invoke our latent sovereign right to remove dictators through civil disobedience whenever and wherever they bare their awesome fangs.

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*Part II*

**THE CONSULTATIVE PROCESS -  
TENSIONS AND CONSTRAINTS**

## CHAPTER 4

# TENSIONS IN GHANA'S TRANSITION TO CONSTITUTIONAL RULE

*E. Gyimah-Boadi*

### **Introduction**

The anxieties surrounding a country's political future are put into sharper relief during periods of political transition. Ghana's record of conceiving, framing and especially working out constitutions - the real goals of a meaningful transition - has been rather chequered. Heady expectations for a stable and democratic- constitutional order have been rapidly replaced by bitter disappointments as constitutions have been perverted in practice, regimes operating under them have been mired in immobilism and worse still, *coup-d'etats* have been staged to subvert institutions. There is every reason to be sceptical about the prospects of another transition.

A further cause for scepticism arises from the fact that the Provisional National Defence Council (PNDC) has only reluctantly conceded the possibility and desirability of returning the country to constitutional rule. This belated concession has been made, largely, in reaction to the world-wide pro-democracy trend: to pre-empt the contagious effect of the political liberalisation pressures spreading throughout western and central Africa, respond to the political conditionalities imposed by the World Bank, IMF and western donors and, to a limited extent, to respond to domestic pressures. At the same time many countervailing factors are present; and they combine to cast a shadow of doubt over the PNDCs commitment to relinquishing political power and working out a meaningful transition to constitutional rule. Furthermore, the regime which inherently evinces a considerable amount of intellectual arrogance may also have genuine fears for its physical security once it surrendered power. Thus the current programme of transition had started off on a rather sceptical note and would take a lot of effort, ordinarily, to reduce the anxieties surrounding the enterprise.

This paper examines the character of Ghana's current transition programme and highlights the tension created by the government's tight management of the process and the requirements for fairness and equity on the part of civil society in general and opposition elements in particular. I argue for the need to give equity of process as much prominence as the

need to maintain control over it; for the legitimacy of the transitional process and its outcome (a fourth republican Constitution) may well depend on the perception among Ghana's articulate public that the process would be fair.

### **A Hesitant Government**

Unlike the National Liberation Council (NLC), the Armed Forces Revolutionary Council (AFRC) and even the Supreme Military Council (SMC) military regimes, the PNDC has, almost from the beginning, given strong indications of wanting to stay much longer in power. Even though it designated itself as 'provisional' it doggedly refused to bind itself to time, choosing to refer to itself and its actions as part of an indefinite political 'process'. Pressed on when it planned to hand over the reins of government to an elected group, the answer was 'hand over to whom?' The issue of a transfer of political power continued to be treated with utmost coyness as Rawlings and key spokesmen talked vaguely of the PNDC working towards the creation of conditions necessary for its own 'redundancy' or withering away.

The political programme of transition, once it was begun, has been characterised by deliberate slowness, foot-dragging and evasiveness. A considerable amount of precious national time and other resources were spent in the mid 1980s on a government sponsored public education programme, under the auspices of the National Commission for Democracy (NCD). This was followed in 1988 by dubious elections for district assemblies. The new assemblies, originally touted as local government bodies, were later to be presented as the first building block of an undefined constitutional edifice. Once the assemblies had been put in place, the government fended off demands for a return to constitutional rule with the claim that, that was a matter better left to the assemblies (as if the district level structures were designed to be constituent assemblies) and that such issues had to wait until the assemblies had found their feet.

Then in mid-1990 came the regional fora and consultations during which the future political arrangements for the country were to be debated. But those debates were often presided over by PNDC strongmen and packed with PNDC partisans who, for the most part, used the fora to canvass positions known to be favoured by the government. They attacked the evils of the multi-party system, cited the failure of past politicians, and asserted the sanctity of the June 4, 1979, and December 31, 1981, *coups d'etat*. The occasion was also used to unveil the PNDC's peculiar definition of the concept of 'identifiable bodies' whose views must be taken into

account in the deliberations on Ghana's political future. The definition tended to favour the so-called organs of the revolution and other pro-PNDC organisations such as the June 4 movement, 31 December Women's Movement, the District Assemblies, Committees for the Defence of the Revolution (CDRs), the Ghana Private Road Transport Union of the TUC (GRPTU) etc.

In March 1991, the NCD's report on the regional fora and consultations was presented to the government. It was followed in May by a rather tendentious government response which provided for a Consultative Assembly and a body of constitutional experts that was to formulate constitutional proposals. A Constitution that would be produced by a Consultative Assembly was to be submitted to the public in a national referendum at an unspecified date.

### **Tensions in the Process**

A cursory look at the organisations selected to choose representatives to the Consultative Assembly (C.A) reveals a disguised attempt to pack it with pro-government elements and to exclude as much as possible those known to harbour anti-government views or too independent to be controlled by the government. The government's definition of 'identifiable bodies' provides it with maximum scope for playing populist political games at the expense of intelligent, mature and professional input into the constitution-making process. Thus the district assemblies, most of whom had declared their support for the position favoured by the government, have been given 117 out of a total 260 seats in the Consultative Assembly. Bodies that never expressed any interest in a return to constitutional rule, even though they never lacked opportunity to do so, such as the CDRs, have been given the same number or more seats in the assembly than bodies like the Ghana Bar Association, the Christian Council of Ghana, the National Union of Ghana Students and the University Teachers Association of Ghana which have been persistent in their demands for constitutional rule. Admittedly, the definition of 'identifiable bodies' in Ghanaian political practice has always been fuzzy. But this time, it is almost bizarre. The current definition does not seem to make functional or numerical sense. Besides, some of the bodies do not possess a truly national character.

### **Foot Dragging**

Implicit in the refusal of the government to spell out a clear time table for the transition is further evidence of a lack of or low-level commitment to the transitional process. Apart from the requirement that the Consultative

Assembly present its report by December 31 1991, no deadline has been set for concluding the transitional process. There is no date for the presentation of a government white paper after the draft constitution has been submitted; nor for the referendum. The critical issue of what would happen in the event that the draft constitution was rejected in the proposed referendum remains fuzzy. On the whole, the transitional programme has been left open-ended and vague enough for the supporters of the government to impute different interpretations to official motive and to repose blind faith in the process, while its opponents remain stuck in unremitting scepticism.

Scepticism over the intentions of the PNDC is further reinforced by the tendency on the part of the government to send confusing signals on the kinds of political arrangements and dispensations it envisages for the country. While the government appeared to have conceded that party-political competition must be a part of the future political arrangement, the PNDC leader has publicly declared his reservations about that system; and the state media continue to drum up anti multi-party sentiments. For example, Rawlings, who had said in his New Year speech to the nation that the eyes of his government were firmly fixed on a return to constitutional rule, has never lost a chance to show irritation at those within and without the country who advocate a return to civilian and constitutional rule. He was reported to have defiantly told a meeting of cadres in Cape Coast last March that his government has always composed its own tune, and that was the only tune it could dance to!

The refusal to grant general political amnesty and or to release political detainees, or to repeal repressive laws (such as PNDC Law 4 which allows indefinite detention without trial, Law 91 which limits the application of habeas corpus, and Law 78 which permits the execution of political offenders) thoroughly intimidate the general public and renders opposition to the PNDC regime too risky. Such laws restrict opposition-politics to the highly intrepid or the occasionally mad person. In general, the refusal to liberalise the political environment, the government's monopoly over the print and electronic media, the hugging of the political microphones and the use of state-media to canvass pro-government positions and, at times, to pour invectives on opposition elements and actions are not politically enabling.

### **The Impartial Transition**

The government appears to seek a tight control on the transitional process by refusing to place it in the hands of a body other than the PNDC's own NCD. Keeping the details of the transitional programme unspecified

provides the government with maximum room for political manoeuvre and an ability to call the shots, and thereby confuse its opponents. It can always be made to appear that the government was doing something to return the country to constitutional rule. Yet it is also evident that the transitional process is being controlled to ensure that the PNDC reproduces itself - in terms of policies and personnel in the next constitution and government, respectively, and to secure an indemnity for its actions.

### **Politics of Altruism**

All this is altruistic. The lessons from Ghanaian political history, especially the bitter political conflicts in the years immediately before the country became independent and the political turmoil that engulfed the country in late 1970s - notably during the Union Government debacle - have created a lasting impression on the PNDC and its functionaries of the possibilities entailed in the transition from an authoritarian to a liberal political order. The fragility of liberal political transitions has been further underscored, in recent years, by the political upheavals that have occurred in Eastern and Central Europe, (e.g. Poland, Bulgaria, Romania, Albania the Soviet Union etc) and in parts of Africa (eg. Cote I'voire, Benin, Togo, Mali, Cameroon etc.) In many of these cases, the transitional process has been accompanied by, or engendered, a revival of ethnic sub-nationalism, irredentism and other old animosities. The PNDC seems therefore to be acting to protect itself against such occurrences.

Furthermore, against the background of the economic decline and stagnation of the years preceding the Economic Recovery Programme, the government can claim some credit for the improvements in the management of the economy. The increase in the production of export commodities, increases in producer prices, increased external assistance, rehabilitation of infrastructure etc. have created a strong temptation within the PNDC to entrench the regime that has presided over these economic improvements, and to ensure their continuation in the next republic. Hence the demand by some pro-government bodies that the Structural Adjustment Programme or a version of it be written into the next constitution.

The PNDC has further insisted that it must entrench probity, accountability and other tenets of the June 4 1979 political and social upheavals in the next constitution and republic. But the operationalisation and practice of such precepts have remained rather vague and altruistic. Furthermore, the government has asserted a need to deepen democracy in Ghana by enhancing opportunities for mass participation in national decision-making. The inclusion of the CDRs, blue-collar occupational

groups and guilds (butchers, hairdressers, drinking bar operators etc) in the Consultative Assembly may be seen as an attempt to increase the range of organisations and groups able to participate in the political process and to weaken the dominance of Ghanaian politics by the Ghanaian establishment. However, the control imperative has given rise to a perception among many articulate Ghanaians and opposition elements that the management of the transitional process has been unfair. Such feeling has encouraged scepticism over the PNDC's commitment to an impartial political transition.

### Conclusion

The inconsistencies, biases and uncertainties which characterise the transitional process threaten to make the transition rather conflictful and to deny legitimacy to its outcome or outcomes. Therefore, it may be necessary for the PNDC to give as much attention to concerns of civil society in general and opposition elements in particular for equity and fairness as has been given to the government's need for controlling the process. It is difficult to see how else a peaceful transition to a stable and constitutional rule can take place.

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## CHAPTER 5

### PRELUDE TO CONSTITUTIONAL RULE: AN ASSESSMENT OF THE PROCESS

*Kwame Boafo-Arthur*

#### **Introduction**

Ghana has had two transitions from military to civilian or constitutional administration. The first was in 1969 when the National Liberation Council (NLC) handed over power to the democratically elected government of the Progress Party (PP) led by Dr. Kofi Abrefa Busia. The second instance was in 1979 when the Armed Forces Revolutionary Council (AFRC) which was under the chairmanship of Flt. Lt. Rawlings handed over power to the government of the People's National Party (PNP) under the leadership of Dr. Hilla Limann. Incidentally, the AFRC itself seized power from the Supreme Military Council (SMC) which had then initiated a return to civilian rule.

It is a sad commentary on the politics of the nation that none of the regimes that succeeded the military completed its term of office. They were all jettisoned from power by the military under various pretexts. Paradoxically, the ruling Provisional National Defence Council (PNDC) seized power from the very government to which it had handed over power.

It is almost ten years now since the PNDC seized power. In spite of notable achievements in its efforts to revive the national economy, the important issue of when it should hand over power to a constitutional authority has not been subjected to serious debate until quite recently. For reasons which will be briefly discussed below, encouraging signals have emerged and a process has been initiated to return the country to constitutional rule.

Under the auspices of the National Commission for Democracy (NCD), the government has organized regional seminars on the evolving democratic process. The NCD report on the outcome of the seminars was submitted to the government in March (1991). A Committee of Experts on Constitutions has also been constituted to make proposals for the consideration of a Consultative Assembly. To all intents and purposes, therefore, the government has set in motion a process for a transition to constitutional government. It must be underscored, however, that these are being done against the background of uncertainties as to the real motives

or intentions of the government. The crux of the matter is that the PNDC has not as yet committed itself to a definite, irrevocable and binding timetable or programme for a return to constitutional rule. This situation and the manner in which the process is being undertaken has generated mistrust and misgivings among some people. In fact, by the initial conduct of the NCD, the fairness of the whole exercise has been called into question. The mode of its organization has not only alienated a significant and articulate sections of the society. It has also engendered suspicion, distrust and apathy in some cases. The key question is whether the PNDC is being fair in its efforts to return the country to constitutional rule.

This paper is concerned with the first stage in the transition process, that is, the regional seminars and the issues arising after that. The paper is in four parts. Part I examines the dilemma that faces the PNDC government in the transition process. Part II is a critique of the way the regional seminars were organized; while Part III draws attention to some pitfalls in the constitution-making process. The final part provides a conclusion and some suggestions.

### **Dilemmas of the Constitution**

There is no gainsaying the fact that every military regime wishing to disengage is immediately faced with very complex problems. These disengagement 'blues', to a large extent, account for the rarity of military transitions to constitutional rule.

Claude E. Welch argues that military withdrawal from politics is underpinned by two main factors. First, a strong desire on the part of the military to hand over power to civilians; and second, popular civilian agitations for a return to constitutional government. The first factor – voluntary withdrawal – is rare because of the problems of disengagement. For our purpose, the question raised by this option is whether the PNDC's decision to transfer power to a constitutional government is voluntary or not.

In most cases, transitions from military to civilian rule is dictated by the second factor; that is, civilian agitation for a change. However, the two factors are complementary. Indisputably, the general mood of a nation, openly and dispassionately expressed, can set limits on the prerogatives of any government. Agitations by citizens, no matter the form they take, can affect the military's desire to divest itself of political responsibilities. Recent events in Liberia, Somalia, Zaire, Ethiopia, Togo, and Ghana under the SMC are very good pointers.

The PNDC's decision to transfer power was not immune to such pressures. For example, there have been feeble but persistent calls by the

Ghana Bar Association (GBA) on the PNDC to return the country to constitutional rule. Similar pronouncements on the same issue have come from the Christian Council, the Ashanti Youth Association, the National Union of Ghana Students (NUGS), the Democratic League of Ghana, Kwame Nkrumah Revolutionary Guards (KNRG), etc. These calls were not backed by any sustained public agitations (reminiscent of the UNIGOV era) strong enough to compel the PNDC to concede the need to usher in constitutional rule.

An element in the current transitional process syndrome which was not present in earlier instances in the country is the pressure from the external environment. The nature of global interdependence and the enervating structural dependence of most Third World countries on the western world enable Western powers to exert influence on the processes of not only military transitions, but generally the system of governance in the Third World countries. A clear example is the persistent calls by African leaders on the West not to lift sanctions imposed on apartheid South Africa. It is because the West is presumed to be capable of influencing the mode of governance through sanctions and other means that the calls are always directed at them. In fact, what used to be covert external policies - aimed at effecting changes in the system of governance in most developing countries - are now being openly canvassed by the western world. A case in point is the current rumblings in certain quarters that external assistance should be linked to a recipient government's commitment to generally acceptable democratic forms and norms of government. Sub-Saharan Africa (SSA) is a net recipient of external aid. Since most SSA countries are under military, quasi-military or civilian dictatorships, they are highly vulnerable to such external pressures.

Even though the PNDC has officially denied coming under any form of external pressure, the revolutionary leadership's initial aversion to a return to constitutional rule makes the denial questionable. I would therefore argue that a combination of the three factors outlined above underpin the politics of transition currently unfolding in the country.

One should also not forget the potential demonstration effect of current changes elsewhere in Africa on events in the country. In short, the current spate of agitation on the African political scene against authoritarian regimes provides objective lessons for other political leaders.

Whether the transition to constitutional rule is voluntary or not, its speed will, nevertheless, be dictated by the pace at which the ruling government finds solutions to the dilemmas inherent in the decision to withdraw from politics. A military government must, among other things, be clear on the 'scope of its political objectives' and the 'relative "fit" with

successor groups.' It is trite, in this regard, to state that the presence of a group of acceptable successor politicians hastened the withdrawal of the NLC from the political scene. More important, however, was the desire of that government to keep faith with the people by fulfilling its pledge made, four days after seizing political power, to withdraw from politics. The junta was emphatic on its desire to hand over power to a duly constituted civilian government as soon as possible. Plans for the promulgation of a constitution, 'in which the sovereign powers of the state will be firmly and judiciously shared between the principal organs of the state...' were also announced. It declared its commitment also to the conduct of genuine and fair elections.

Similarly, the AFRC whose chairman was Flt.Lt. Rawlings gave unqualified assurance that the election campaigns for the June 18, 1979 elections which were then in progress would continue, and power would be handed to a civilian government as planned. In the circumstances of 1979, even though a successor group was not assured, the transfer of power was imperative. The process towards a return to civilian rule was too far advanced to be aborted; and clearly any deviation by the AFRC from the process would have engendered a more serious opposition than what had paved the way for the junta's seizure of power.

These precedents stand in sharp contrast with the PNDC's position. It is remarkable that the PNDC did not make any explicit pledge to return the country to civilian rule when it seized power. It seems to me that this was due to the circumstances surrounding Rawlings' second intervention and the motive behind it. He termed it a revolution which aimed at the transformation of the socio-economic and political conditions of the country. The problem is that a time frame cannot be set on a revolution because there will always be social contradictions that will call for radical solutions. Thus, from the outset, the PNDC wanted to rule in perpetuity. It is evident that the PNDC's flirtation with constitutional rule is the result of multiple pressures, the holding of the district level elections was the first indication of a conversion to it.

The most difficult problem confronting the government is the role of the army in the Fourth Republic. With the military's assumption of civilian responsibilities for the umpteenth time and its politicisation through the activities of the Committees for the Defence of the Revolution (CDRs), the military can no longer be apolitical or ignored as a force. Nobody knows for sure to what extent the military's vaunted professionalism, discipline and command structure, which were dented on account of the events of 1979 and 1981-82, have been restored. The fact is, if military solidarity and discipline are suspect, then any precipitate transition to

civilian rule will pose problems for both the outgoing and the incoming governments. In our peculiar situation where the military command structure appears to have been brutalized by frequent military insurrections led by very junior officers and men, the portents are ominous. Many questions therefore arise: how should the highly politicised army be treated when the PNDC makes its exit? Is the army prepared to accept its traditional role in society? How can the commitment of the security forces to the disengagement process be assured? These are some of the puzzling questions the PNDC government must be grappling with in its late effort to withdraw from politics. For the incoming government the portents are equally disquieting if these issues are not satisfactorily addressed beforehand.

These concerns are compounded by the view within the military that they are marginalised in the decision-making process when civilians are in power. Chairman Rawlings has contributed to this thinking. For example, in his maiden broadcast to the nation following his seizure of power in 1981, he stated: 'The military is not in to take over. *We simply want to be a part of the decision making process in the country.*' (My emphasis.) He re-stated this in January 1991 when he asserted that;

...the security services must be seen as a part of the larger community and not relegated to some artificial vacuum.

Given the history of military interventions in the civilian administration of the country, these statements could be taken as a summary of the corporate expectations of the military. It implies that the military wants to abandon its traditional role because it seeks a direct say in the government of this country. The current attempts to find a viable system of government must not lose sight of this hidden agenda of the military.

### **The Regional Seminars**

On 1 July 1990, the NCD in conjunction with the Ministry of Local Government announced plans for the holding of regional seminars under the theme, 'The District Assemblies and the Evolving Democratic Process.' The major aim of the seminars, as implied by the theme, was to discuss the place and role of the District Assemblies (DAs) in the democratic process.

As a major step in the transition process, the mode of organization of the seminars was flawed. First, the generality of the people did not know the sort of democratic process that was assumed to be evolving apart from

the familiar DAs, contrary to what was done in the case of Unigov under General Acheampong. In fact, since the motivating factor for the seminars was to provide a platform for the assessment of the DAs, other issues crucial to the survival of any future civilian government were perfunctorily dealt with. The Chairman of the PNDC's opening address at the first seminar at Sunyani on 5 July, 1990 did not clarify the situation either. Throughout his address, Chairman Rawlings did not indicate that the seminars were meant to raise a debate on the modalities for a return to constitutionalism. In line with its theme, the Chairman of the PNDC and, in fact, many Ghanaians saw the seminars only as an evaluation of the DAs. That the seminars metamorphosed into a debate on the future governance of this country was due to external and internal pressures as well as the government's desire to give its end-product some form of respectability.

Second, since the main focus was on the relevance of the DAs to grassroots governance, weightier issues of national concern received little attention. The worse offenders were the representatives of the DAs. Most of their submissions were mere exercises in self-glorification and support of the government's position that the DAs should be the basis of a national representative body.

Third, the mode of presentation at the seminars was questionable as it did not conform to democratic norms, even of the 'grassroots' type. The debates were deliberately restricted to individuals and groups that espoused the official positions on the future system of governance as purveyed by the PNDC. As portrayed by the title and contents of the Chairman's address at the first seminar held at Sunyani on 5 July, 1990, those who were officially expected to attend the seminars were the presiding members and assemblymen and women, district secretaries, CDRs and other revolutionary cadres.

Admittedly, some known opponents of government positions had the chance to make presentations; but these were few because of the restrictions on participation. Obstacles were consciously placed in the way of those suspected of having contrary views to those of the PNDC and to what the future system of government should be. Attempts were made in some cases to either prevent or edit the presentations of distrustful elements. A case in point was the seizure of papers to be presented by NUGS in Kumasi by security personnel on the grounds that they were seditious. The fact that the NUGS' papers were returned after scrutiny did not allay the fears of those who had reasons to doubt the government's sincerity in the whole exercise. It is equally remarkable that the forum was policed in such a way as to intimidate non-government supporters. The

presence of high level government officials and the fact that the whole exercise was organised under the auspices of the NCD, whose chairman is the Deputy Chairman of the PNDC, also impugned its impartiality.

Finally, the existence of certain obnoxious laws on the statute books - such as the Newspaper Licensing Law, 1989, (PNDCL 211), and the Preventive Custody Law, 1982 (PNDCL 4) gagged Ghanaians. PNDCL 211, for example, gives unlimited powers to the government over the printing, publishing and circulation of any newspaper in the country. This law nailed the coffin of notable newspapers such as the *Catholic Standard* and the *Legon Observer*. For, even though these papers were forced to stop publication soon after the coup of 31 December, 1981, any hopes of the proprietors to revive publication were put to rest by PNDCL 211.

Under PNDCL 4 any person could be arrested and detained in 'the interest of national security.' What constitutes a threat to the national interest or security is not defined by the law. It implies that its application was mostly dictated by what those in authority defined as acts serious enough to undermine the security of government. Since the government could justify the arrest and detention of any individual, the law effectively stifled opposition to the government. Most articulate Ghanaians chose to live by 'the culture of silence.' In the light of the foregoing, the position of the government that it has given an open forum for fair and free discussions on the political future of this country is contentious. The fact that the seminars traversed the regions is not an indication of its fairness.

To compound these, the utterances of government functionaries do not engender confidence in current politics. Indirectly, some of these utterances remind some people of the existence of PNDCL 4 and the potentially adverse implications of their actions. Directly they inhibit the free expression of views and ideas; they create fear, and engender suspicion and mistrust. Two examples will suffice. Quite recently, Brigadier Akafia, the Army Commander, made the following intimidating statement while addressing officers and men of the Ghana army:

The transformation process (embarked upon by the PNDC) has a vision and the armed forces, as part of the security services, the bedrock of the process are prepared to defend it...*Any provocations and temptations of the PNDC are provocations and temptations of the Armed Forces.* (My emphasis.)

One may infer from this that the PNDC and the armed forces are

synonymous. The implications of such a linkage or equation are simply dangerous. In another instance, the Force Sergeant Major, Warrant Officer Class One, Isaac Frimpong, declared that no disgruntled politicians have the right to tell the PNDC to hand over power.

It is apparent that the inalienable rights of Ghanaians to criticise and determine their government are under siege. The government operates on the spread of fear; and many Ghanaians are inhibited by it. Many Ghanaians have not forgotten the hubbub that followed the Dr. J.B. Danquah Memorial Lectures which were delivered in 1988 by Professor A. Adu Boahen. The former Army Commander and member of the PNDC, General Arnold Quainoo, rained insults on the eminent guest lecturer for speaking his mind, and threatened that there would be conflagration in the country if the ruling government was not left in peace. In another vein, the state-owned newspapers spent weeks editorialising on what was supposed to be the 'sins' of Professor Adu Boahen.

### **Towards a New Constitution**

The next important phase in the process was the appointment of a Committee of Constitutional Experts to make proposals based on the NCD report submitted in March, and the 1957, 1960, 1969, and 1979 constitutions. At the time of presenting this paper, the committee which, according to the law establishing it (PNDCL 253), was to submit its proposals to the government on 2 July, 1991 has had its duration extended to 31 July, 1991 because of the volume of work confronting it. The proposals it was expected to submit were to be commented upon by the government before being sent to the Consultative Assembly for consideration. As the paper by Dr. E. Gyimah-Boadi in this volume indicates, the composition of the Consultative Assembly has added to the mistrust of government intentions by a significant and informed segment of the Ghanaian populace. No wonder the Ghana Bar Association and the National Union of Ghana Students have refused to send representatives to the Consultative Assembly.

Like the organisation of the seminars, there was nothing to indicate that members of the Consultative Assembly would be free to express themselves in a manner deemed fit. The Consultative Assembly Law, 1991 (PNDCL 253), does not grant total immunity to the members. Whereas article 14 (1) and (2) grants some form of immunity as was accorded parliamentarians before 31 December, 1981, sub-section (3) states that nothing in sub-sections (1) and (2)



...shall be deemed to relieve any person from any action or proceedings to which he would otherwise have been liable if this section had not been enacted, in respect of anything said or done by him against the Head of State and Chairman of Council or any member of the Council or a PNDC Secretary.

It is clear that no member can safely criticise the deeds or actions of any PNDC member or Secretary during the deliberations of the Consultative Assembly.

### **Conclusion**

We have to stress that nation-building is an onerous task, especially in a country like ours which has stagnated economically for many years. The PNDC therefore deserves commendation for its modest achievements in the area of economic development. At the same time, it must not pretend to be oblivious of the pitfalls along the way to constitutional government.

The fears harboured by the military of its being marginalised by civilian governments can be assuaged. One way out is to extend the democratic right to engage in politics to all military personnel; so that those who would like to engage in partisan politics should simply resign from active service or commission in order to do so.

Of course, the panacea for military coups generally is good government. Nevertheless, the major source of fear for those who wish to see a politically stable country is the spectre that the military now regards coups as the quickest way to economic paradise or self-aggrandisement. Hence, no amount of good government is likely to prevent the ambitious soldier from interfering in the civilian administration of the country. What we need is a strong political culture that can resist such unwarranted interventions mainly through spontaneous and protracted acts of civil disobedience.

Disdain of those with opposing views will not help the country. A gagged opposition is like an active volcano which has become dormant. When it suddenly erupts, it brings massive destruction in its trail. The PNDC is capable of preventing this by making sincere efforts to remove seeds of mistrust which have been sown over the years.

### **Suggestions**

In order to keep faith with the people of Ghana, the following suggestions are offered for consideration: (i) an unambiguous time table for a return to constitutional rule must be announced; (ii) the government and its

functionaries should stop the practice of making intimidating statements; (iii) existing laws which violate the norms of democratic government and undermine the fundamental rights of Ghanaians must be replaced without further delay; (iv) the government and its functionaries, as well as those with opposing viewpoints must demonstrate mutual tolerance in order to create a conducive political atmosphere for fruitful dialogue and a peaceful transition.

Surely, the government has a clear advantage over other groups, organised or not; because it can employ state resources to suppress other forms of opposition. The deliberate and determined deployment of these resources against other groups will not engender confidence in the transition process. Nor will it enhance peace and democracy. The PNDC has to lift the ban on party politics, stop the harassment of those with contrary views and allow other groups like the Movement for Freedom and Justice (MFJ) access to the media if it is sincerely committed to transition to a democratic government. In the same vein, those with opposing views must find an acceptable means of putting their cases across and avoid provocation and innuendos. The task ahead is enormous. It is fairness, sincerity and openness in politics that can secure a stable and democratic future for our country.

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CHAPTER 6  
THE POLITICS OF GHANA'S SEARCH  
FOR A DEMOCRATIC CONSTITUTIONAL ORDER  
1957-1991

*A. Essuman-Johnson*

**The Colonial Legacy**

On 6 March, 1957, Ghana became independent from Britain after a six-year period of dyarchy in which the Convention People's Party (CPP) and Nkrumah shared power with the British from 1951 to 1957. That was one of the periods in which the British were said to be tutoring Africans to take over and run the political institutions they had set up. This tutoring runs through the history of all British colonies when the British, as part of the crown colony system of administration, set up legislative and executive councils. The learning processes started in the legislative council where Africans were first nominated to serve. Later, Africans were nominated to the executive council until it assumed cabinet status, and members were chosen from the majority party in parliament.

The participation of Africans in the political institutions established by the British was considered to offer the Africans some training in how to run the British parliamentary system of government. That system operates on political parties; and the party that wins the majority of seats in a general election forms the government with the leader of the majority party becoming the Prime Minister. The party with the next largest number of seats in parliament becomes the opposition party; and its leader becomes the opposition leader. The opposition party forms the shadow cabinet, and together with the other parties in the opposition offer constructive criticisms of the way the ruling party handles the affairs of the state. The opposition, as it were, puts the government on its toes, thereby ensuring that the government does not get away with bad government. It is this system of government that Ghana inherited from the British at independence. This system of government and the practices that go with it were embodied in the Independence Constitution of 1957. It was a constitution that aimed at democratic rule along British traditions which the Ghanaian politicians who took over from the British at independence were supposed to have

learnt during the period of colonial rule; and they were expected to operate the system successfully.

The hopes and aspirations of the makers of the Independence Constitution, namely, that Ghana would follow in the British political tradition of constitutional-democratic politics, have been dashed over the past 34 years of independence during which the country has been searching for a democratic-constitutional order appropriate to the Ghanaian tradition. Whether Ghana will succeed in this search is yet to be seen. It is the politics of this search that this paper examines, with a view to assessing the current search led by the Provisional National Defence Council (PNDC).

### **The Search: A Periodisation**

One may identify three periods since independence during which Ghana has been searching for a system of government different from that inherited from the British. The first was the Nkrumah period, 1957-1966, when the search culminated in the one-party system in 1964. The second was the Kutu Acheampong era, 1972-1979, when a non-party system of government called Union Government was advocated by the Supreme Military Council (SMC I). The third is the PNDC period which started from 31 December, 1981. In this period the country is said to be going through a revolution, and there is talk of 'participatory democracy' and 'power to the people.'

### **The Nkrumah Search**

Questions about the inherited British traditions were soon to come into sharp focus after independence. According to Dennis Austin, the 1957 constitution had rested on the assumption that it was possible for the major political parties to co-operate with one another within mutually acceptable limits. But, as he put it: 'It was on this basis... that it foundered, for compromise required caution and prudence - qualities essential to the 1957 constitution if it was to function effectively. The reasons for its failure were ... a profound dislike by Nkrumah of any open criticism of his rule, the nationalist zeal of a recently formed People's Party which sought to identify itself with the state and the rash behaviour of the opposition which supported every group and cause that it thought might overthrow the government.' And within six months of independence, the CPP had begun to repeat the argument that since the party's opponents were 'violent, waspish and malignant' there was need for a 'temporary benevolent dictatorship.' On the basis of arguments of this kind, the CPP leaders began to augment and consolidate the power of the party by whatever means they

could devise. For their part - in the face of such pressures - the opposition hastened to support every outbreak of discontent with CPP rule, confident of bringing about its downfall. It was a disastrous policy for the simple reason that the ruling party was far better placed and armed for an all-out struggle with the opposition.

The CPP and Nkrumah thus adopted certain measures to deal with the opposition. First, the Avoidance of Discrimination Act was passed in December 1957 which forbade the existence of parties on a regional, tribal, or religious basis. Pressure also began to be exerted through the use of administrative powers to regulate the status and functions of chiefs and their state councils. Pro-opposition chiefs were destooled, while pro-CPP candidates were enstooled as chiefs. Other measures sought to centralise the authority of the government which involved the systematic dismantling of the 1957 constitution. Steps were taken to abolish the Regional Assemblies and by March 1959, the Constitution (Amendment) Act had abolished the Regional Assemblies. Other measures were taken against individual members of the opposition by use of a succession of repressive acts, namely, the Deportation Act of August 1957, the Emergency Powers Act of December 1957, and the Preventive Detention Act (PDA) of 1958 under which it was possible to detain a person for five years (without trial) for conduct allegedly prejudicial to the security and defence of the state and its foreign relations.

These measures eroded the understandings and the spirit of the inherited British political system. It will be recalled that the system required the acknowledgement of the need for opposition by the ruling party and the need for the opposition to adopt a constitutional way of removing the government from power. In the light of this situation, the stage was set for the inherited British parliamentary system of government to be thrown overboard. First, a new constitution was promulgated for the country in the form of the 1960 Republican Constitution which attempted to weld features of the British, American, French and African political traditions. From 1962, there existed a *de facto* one-party system in the country, given the fact that either members of the opposition had been enticed to cross the carpet to join the ruling CPP, or had gone into exile, or had been detained. It came as no surprise that the 1964 Constitutional Amendment made the CPP the only legal party in the country. One argument, among others, for the one-party system was that, given the development needs of the country, there was need for all hands to be on deck. From 1962, Nkrumah embarked on building a socialist state.

This left the CPP torn apart between the 'socialists' and the 'old comrades in arms'. With no opposition, dissenting views were treated

with scorn, and stifled through the use of the PDA. For example, a prominent CPP member of Parliament, Mr. P.K.K. Quaidoo, was detained for his critical views. The opposition made assassination attempts on Nkrumah's life and embarked on campaigns outside the country against the government in order to bring it down. The story of the events culminating in the fall of Nkrumah and the CPP is too well known to be repeated here.

With the downfall of the Nkrumah regime went Ghana's first search for an alternative political system to the British parliamentary system. That search was ended by the first incursion of the Ghana military into Ghanaian politics on 24 February, 1966. The aims of the National Liberation Council (NLC), among others, was to restore the democratic order inherited from the British. The NLC supervised a restoration of civilian rule, and in 1969 a democratic-constitutional order was established. Under the 1969 constitution, the country was returned to the parliamentary traditions of the British. The opponents of the CPP since 1951 now came to power as the Progress Party (PP) government led by Dr. K.A. Busia. However, some of the PP government's own supporters soon began to cast doubts on its ability to maintain the traditions of the British parliamentary system of government. The regime soon struck at the very heart of the system - the rule of law - with the infamous 'no court' speech by the Prime Minister in which he flatly refused to accept the judgment of the Supreme Court on the E.K. Sallah affair. In a similar vein the speed with which the Trades Union Congress (TUC) was dissolved by the PP government smacked of the regime's fear of opposition from the workers' front.

### **The Second Search**

This attempt at going back to the British parliamentary political system was short-lived, and on 13 February, 1972, the Ghana military reasserted itself in Ghanaian politics. The new military regime argued that the PP government had led the country into an economic mess, and it was necessary to put things right. It was this military regime, the Supreme Military Council (SMC I) under Col. I.K. Acheampong, which led the country on a second attempt at searching for a new system of government. That was in 1976 when the SMC made an attempt to move away from the Westminster system. The SMC proposed a novel system of government it called Union Government (Unigov). This was a plea for a non-party system of government which would unite the military, police and civilians in politics. It was an attempt to fashion a system of government without opposition, which, it was spuriously argued, was demanded by Ghana's political tradition - very much like Nkrumah's one-party system. The SMC had its own supporters - especially the chiefs and some politicians; but it

was obvious that the majority of Ghanaians - especially the professional bodies and students - were opposed to it. It has to be pointed out that despite the SMC government's efforts at selling Unigov to Ghanaians, it allowed those opposed to the proposal to campaign against it; and the students as well as the professional bodies did campaign against it. When the proposal was put to popular vote in the referendum, it was by all accounts rejected. A further military action on June 4, 1979, raised issues not only about politicians and corruption but also about the basis of politics in a Westminster setting. The June 4 military action was short-lived as the Armed Forces Revolutionary Council (AFRC) was forced by circumstances to supervise a transition to constitutional rule in September 1979.

The 1979 Constitution returned the country to a third civilian attempt at democratic-constitutional rule. And during the Third Republic, an attempt was made to run an American type of presidential political system. But it is arguable that the People's National Party (PNP) was ill-prepared to run such a system. Perhaps one might argue that the political, institutional framework was right; but the people who operated the system did not have what it takes the Americans, for example, to make their system work. It would seem that politics in the third Republic was mainly about how to make money out of the system: those who financed the PNP to win the 1979 elections were out to recoup their investment. Apparently, a great many of the politicians had lost their way.

### **The Third Search**

The Third Republic, like the Second, was short-lived. It lasted from 24 September, 1979 to 31 December, 1981. On 31 December, 1981, there was another coup led by Flt. Lt. J.J. Rawlings (who had been retired from the armed forces by the PNP government). The PNDC has been in power since then. For a period of time, the PNDC government has mainly been concerned with reforming the national economy with the assistance of the World Bank, the IMF, and Western donor countries. The government has thus far made some headway in this effort, although at great cost to the country. The cost has been two-fold: socio-economic and political. The socio-economic cost is summed up in the PNDC's own Programme of Action to Mitigate the Social Cost of Adjustment (PAMSCAD). However, it is the second cost - the political - that this paper is concerned with. Briefly, the current attempt to return the country to constitutional rule constitutes what may be called a programme of action to mitigate the political cost of adjustment (PAMPCAD). To the extent that one can talk of some economic recovery, it has been at a great political cost to the



country. That is to say, economic recovery has been at the expense of political freedom and political recovery. And it may be argued that it was the absence of a political democratisation process that has induced the PNDC to embark on a search for a new political order for the country.

Since the PNDC forcibly took over power, it has been talking of leading the country through a revolution to a new political order. It is clear that the regime wants to lead the country to a new political system the nature of which is not, however, clear. To the extent that the PNDC has come anywhere near what the CPP and the SMC proposed, that is to say, one-party socialist state and Unigov respectively, its philosophy of a new form of political system for Ghana revolves around what it calls 'participatory democracy' or 'power to the people' or 'grassroots democracy.' The government has not been sufficiently transparent in its search for a new democratic order. Despite this, the regime seems to want Ghana to adopt a non-party system of government as exemplified by the mode of election to the District Assemblies. The District Assemblies are, however, novel only in the sense that elections to the assemblies were held on a non-party basis with the state footing the cost of the campaigns. But local government has been with this country since the colonial era, and various attempts have been made to reform it. Owing to its belief in the non-party system of government, the regime did not allow any opposition group to contest the elections to the District Assemblies.

The problem of what should follow the establishment of the district assemblies stared the PNDC in the face; and little wonder it took the government some time to make its next move in the search for a new political system. Such a move came in the form of the regional seminars held under the auspices of the National Commission for Democracy (NCD) and the Ministries of Local Government and Information. Given the way the regional seminars were conducted, it would seem that the government was uncomfortable about the issue of the return to party politics, especially in view of the comments of some government functionaries against party politics at some of the seminars. The point is, even though the PNDC itself did not openly propose a non-party system of government at these seminars, nearly all the District Assemblies in their proposals advocated a non-party system for the country; and the way some supporters went about the whole business was very reminiscent of the Unigov days. The regional seminars, therefore, degenerated into a party vrs non-party debate, with the PNDC officially keeping quiet over the issue.

### **The NCD Report and Government Reaction**

On 25 March, 1991, the NCD presented its report on 'Evolving a True Democracy,' which is a summary of the NCD's work towards the

establishment of a new democratic order, to the PNDC. On the crucial issue of what national political institutions should be established next after the District Assemblies, the report summarises the conclusions of the regional seminars as follows:

- (a) a clear consensus on the District Assembly concept.
- (b) a consensus on a National Assembly and an Executive Presidency
- (c) a division of opinion on whether entry into the National Assembly should be through the District Assembly or through the direct election system
- (d) a divergence of views on whether the new constitutional order should be partisan or non-partisan.

The NCD report thus left the crucial decision regarding a return to party politics to the PNDC to decide. In a statement on the NDC's report, the PNDC accepted the various views expressed as the embodiment of the aspirations of Ghanaians on the future constitutional order. The statement went on further to indicate that: 'The Constitutional proposals will make provisions for freedom of association, including the formation of political parties.' The statement also indicated the government's decision to set up a Committee of Constitutional Experts to formulate a new constitution for the country. Furthermore, the PNDC has outlined an ambiguous transitional programme. Apart from the Committee of Experts, a Consultative Assembly is in the process of being formed to discuss the proposals of the former. The Consultative Assembly's new Constitution will be presented to the PNDC, and then put to popular vote in a referendum. However, the government has so far refused to set an unambiguous timetable for a return to constitutional rule as the Nigerian military authorities have done.

While this has set Ghanaians wondering, a further twist has been added to this rather nebulous transitional process. This consists in the remarks attributed to the PNDC Chairman, Flt.Lt. J.J. Rawlings, that he still has his personal misgivings about party politics in view of the danger of its misuse. He is reported to have said: 'I have my reservations and doubts but I am bound by the collective decision of my colleagues.' Taking the two issues together, that is to say, the lack of a clear-cut timetable of transition to constitutional rule and the remarks of Flt.Lt. J.J. Rawlings, the present writer is of the view that the search for a new constitutional order in the Fourth Republic might well be still-born. There is no guarantee that those who are opposed to partisan politics will not try to make things difficult. It

is obvious that the PNDC Chairman prefers a non-party system. If the PNDC Chairman is being only bound by a collective decision but has gone public about his reservations, then he should not be expected to be a part of a party political system; but he has not given any hint that he is ready to bow out of the political scene.

People are operating under the assumption that the PNDC is under pressure to steer the course of the transition to constitutional rule, given the wind of democratisation blowing all over Africa. But one does not see any massive pressure in the country on the PNDC, if one compares the current situation to the kind of internal pressure mounted against the Acheampong Union Government proposition in 1976-1979. At best, one might speak of pressure from outside the country, mainly from the Western donor group that has been the mainstay of the PNDC's economic recovery programme. Nothing prevents the PNDC from stage-managing the transition to legitimise its rule as a result of its unwillingness to allow the opposition to operate freely. If the PNDC chairman changes his mind about party politics, then the PNDC and the CDRS will in all probability transform themselves into a party to contest elections to the Fourth Republic. If that turns out to be the case, there is a good chance that the PNDC-led party will win the elections; in which case the opposition to the PNDC-led party and government will only have begun. On the other hand, if the PNDC decides to step down, then it will have to negotiate its exit. But this regime, unlike the NLC, does not appear to have a political group it is willing to hand over to. That is, a group that will assure the PNDC that no questions will be raised about its ten years or so in power. It is this that makes the process of transition rather uncertain.

## **Conclusion**

In conclusion, this writer is of the view that the search for a new constitutional order is far from over. If the PNDC is interested in forming a party, then it has to allow an interim administration to oversee the transition to constitutional rule. But the signs do not point in that direction. It would be a great act of statesmanship if the PNDC would follow the example of the AFRC. Then, and then only, would it have the moral authority to supervise the transition to a new constitutional order. On the other hand, if the PNDC chairman, Flt.Lt. Jerry John Rawlings, succeeds in legitimising himself in the style of Mobutu, Eyadema, Kerekou and Mengistu, then the country might well not have seen the dawn of the era of democratic constitutional rule, in which governments would come and go,

while the constitution endures - as the experience of India shows. It is not yet certain whether Ghana will turn out to be the India of Africa.

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## CHAPTER 7

# OBSTACLES TO AN ORDERLY TRANSITION TO CONSTITUTIONAL RULE UNDER THE PNDC

*Gilbert K. Bluwey*

### **Introduction**

In general, the notion of a transition to constitutional rule implies that there has been a period - no matter how long or short - in the life of a nation when government was in the hands of a group that ruled on an ad hoc, or provisional basis and which period is about to be replaced by a formal constitutional order. In particular, the idea of a transition to constitutional rule is associated with the process whereby a military regime abdicates power to a successor civilian government through a carefully planned and systematically executed programme of military disengagement from the political arena.

In the circumstances of contemporary Ghana, this scenario began with the successful overthrow of a constitutional regime on 31 December, 1981 by a combined group of military and civilian dissidents. The group then inaugurated the Provisional National Defence Council (PNDC) which has since then ruled Ghana. At its inception, the PNDC proclaimed an undefined revolution, implying that it has come to stay permanently. Consequently, it moved quickly to set up a number of institutions and structures - under the name of revolutionary organs - meant to carry out its policies as well as to perpetuate its rule. The first of these structures were the Defence Committees which were of two types: the Workers Defence Committees (WDCs) and the People's Defence Committee (PDCs). The defence committees were to be part of the decision-making process. (These have been renamed the Committees for the Defence of the Revolution - CDRs.). Other important structures were: the Public Tribunals, the National Investigation Committee (NIC), the Citizen's Vetting Committee (CVC), the National Youth Organising Commission, the Student Task Force and the 31st December Women's Movement. Professor A.A. Boahen, that intrepid defender of constitutional rule in Ghana, wrote that 'They were envisaged as the institutions of radical change, or as instruments for popular participation, political education,

channels of communication to and from the leadership, and political control, and they were regarded as the basis for the future revolutionary party that was to be formed.'

In spite of this unmistakable resolve to maintain a permanent hold over the nation, the PNDC began to explore the possibilities of a transition to constitutional rule around the middle of 1987. It has since last December taken a number of steps which could be interpreted as a commitment to a transition to constitutional rule. However, unlike its predecessor military regimes (for example the National Liberation Council - NLC - and the Armed Forces Revolutionary Council - AFRC), the PNDC has stubbornly refused to declare its neutrality from the envisaged contest between rival political groups for the succession. Indeed, the signals since December last year are that the PNDC is resolved to succeed itself. This posture clearly runs counter to the expectations of Ghanaians because it is obviously inconsistent with their political experience. In the two previous transitions, a constitution was promulgated after due consultation with the people; elections were held on multi-party basis and the duly elected party was inducted into office. Again, in neither case was the incumbent military government an interested party in the elections. The PNDC has thus become the basic obstacle to an orderly transition.

### **Preparation to Succeed Self**

It is, perhaps, imperative that the evidence for the conclusion that the PNDC is resolved to succeed itself be laid bare if only to keep the records straight. The PNDC chairman's New Year address to soldiers at the Elwak Stadium is the first pointer to this resolve. In that address, the chairman queried whether it was just to deny a person his/her constitutional right to seek public office simply because that person happened to be a citizen in uniform. Between January and early June this year, the PNDC chairman, and other high-ranking functionaries of the government embarked upon high profile tours of the country, making speeches and exhibiting such common touch as would leave no doubt that they were on the campaign trail. At the same time, the only declared anti-PNDC group in the country, the Movement for Freedom and Justice (MFJ) could not secure a hall for which it had paid to hold a press conference because of 'orders from above.'

Secondly, Mr. Kodjo Tsikata, the PNDC member responsible for security had issued a dire warning to presumed opponents of the PNDC in a speech to a gathering of CDR representatives in Cape Coast on 24 March, 1991. Among other things, he said: 'There is a tide of speculation on the country's political future with some people whistling and whispering in the dark... No one should imagine that the developments of the past nine years

can be wished away simply as a bad dream and that there will be a return to business as usual.' This point was reiterated in almost the same words by a certain Mr. Oŋeng Boateng in one of the June 4 Memorial Lectures organised this year in selected regional capitals, and which were given wide coverage by the national television, radio and state-owned newspapers. There had also been numerous CDR rallies particularly in the Ashanti, Brong-Ahafo and Western Regions at which Nana Akuoku Sarpong, Paramount Chief of Agogo and PNDC Secretary for the Interior had been the principal speaker lauding the 'great achievements' of the PNDC.

These are, however, not entirely new developments. As far back as February 1986, Professor A.A. Boahen had drawn attention to them in his J.B. Danquah Memorial Lectures of that year. Said he: 'The PNDC is using all sorts of means and tactics to form a political party and thereby legalise and perpetuate itself. This business of wives of PNDC members gallivanting and forming movements and of numerous organisers establishing CDRs, militias, mobisquads, etc. at public expense is palpably deceitful and unfair and should be stopped.' The escalation of campaign activities is therefore a sure preparation for a PNDC government in constitutional/civilian clothes.

The PNDC's resolve to succeed itself has been manifested in other, less subtle ways. First, the entire transition process has been tailored to suit PNDC perceptions of the nature of politics and the modes of political participation in Ghana. The PNDC began by organising 'open' seminars at the various regional centres to discover modalities for 'establishing true democracy' in Ghana. It commissioned another state organ, the National Commission for Democracy (NCD), to compile a report which was then handed to a 'Committee of Experts' whose mandate was to produce a draft proposal for a constitution. Instead of a Constituent Assembly, the PNDC has decided to submit the draft constitution to a Consultative Assembly which would review the draft and produce a final version to be ratified in a referendum. Enlightened experience in this country, as indeed in all democracies, is that an elected constituent assembly produce the final version of the constitution which is then promulgated without amendment by the incumbent regime. The fear of the public was that by designating the body which would deliberate on a draft constitution for the country, 'consultative,' the PNDC has reserved to itself the prerogative to say the last word on the content of the next constitution for the country.

But more disturbing is the composition of the assembly which leaves the impression on the public mind that the constitution would resemble those of the moribund people's democracies of the defunct Marxist-Leninist world of pre-perestroika eastern Europe. These have given rise to

widespread distrust of the intentions of the PNDC in enlightened circles in Ghana.

Another way in which the PNDC is either deliberately or inadvertently sowing the seeds of instability in the transition process is the encouragement it continues to give the military, police and civil service personnel of all ranks to denounce publicly the cherished tradition of political neutrality. There is, to hand, enough reason for us to be anxious about whether or not the military, police and civil service would submit to civilian authority after a decade of pre-eminence in public affairs. In this regard, we are reminded of the failure of the Progress Party to hold the reins of authority over the stubborn resistance of the three establishments, which accounts for that government's overthrow by the military in less than three years of its inception. Thus, to keep hammering on the pre-eminence of these personnel in public affairs on the eve of the transition, is to prepare the ground for the early demise of the new order.

Finally, the PNDC has been the source of the widespread belief in alleged difficulties in the operation of democracy in Ghana. In a bid to legitimise what it considers to be 'true democracy,' the PNDC has distorted political concepts and maligned democratic political institutions and practice in the public mind. The result is that one can hardly distinguish between what is a genuine representative government fashioned through democratic processes for democratic politics, and what is a caricature of the ideal.

It is these facts, coupled with the rigid press censorship in force and the retention of special decrees that intimidate the public that leave no doubt that the PNDC wishes not only to succeed itself, but also to do so through patently undemocratic means.

### **Politics of Self-Preservation**

But why would the PNDC wish to succeed itself at all costs? The answer is as simple as it is obvious. The imperative is the personal safety of the members of the PNDC along with those of their militant adherents in the post-transition era. The PNDC had dealt out brutal revolutionary justice to several Ghanaians so that on the eve of its abdication of power, the fear of restitution has obviously gripped its leadership. For example, the PNDC which claims affinity with the AFRC, which had executed several former public officials or imprisoned them for abuse of public office, has not been able to ensure that its members and top operatives declare their assets. The country is naturally rife with rumours about the illegally acquired wealth of some government revolutionaries. Certainly, the thought that they might be subjected to the same type of swift justice should be a matter of concern to them.



A second source of fear is the fate of the revolutionary cadres in post-PNDC Ghana. Some members of the revolutionary organs which have been instrumental in the perpetration of the PNDC's rule are not likely to feel secure under any future regime other than the PNDC because any new set of elected leaders are likely to be under pressure to avenge certain excesses perpetrated against individuals and groups in the hey days of the PNDC revolution. It is likely that such cadres, who have been trained in Cuba, Libya and Bulgaria in sophisticated security operations, may strike at their leaders before they could be sacrificed. All these dangers, should be averted by securing the metamorphosis of the PNDC into a constitutional regime of sorts. Indeed the logic of self-preservation is the application of undemocratic means to exercise or remain in power.

### **Conclusion and Recommendations**

The problems and dilemmas confronting the PNDC are of its own making. They emanate from its Machiavellian view of politics, and hence the reliance on crude, authoritarian and short-cut methods to resolve political issues. As such they are not insurmountable. I wish therefore to suggest the following solutions for the consideration of the PNDC, the consultative assembly and the people of Ghana as a whole:

First, the PNDC should resolve to disengage absolutely from the political arena before the end of the transition. This will not only give credibility to the transition but will also reduce the level of acrimony engendered by its clandestine methods of politics. The PNDC must accept that a decade in office in a country's history is enough - especially where it did not come to power on the consent of the people; it is not given to any man or group either to immortalise itself, or arrogate to itself the right to solve all the problems of society. Indeed, Professor Adu Boahen was absolutely right in saying that the PNDC has outlived its usefulness because it has apparently run out of ideas.

A pre-condition for this is the removal of all repressive and self-preserving decrees which would inhibit the free play of ideas in the country. There should be free and unfettered access to the public media as well as the freedom of journalists to publish any piece of information for public consumption subject only to the ethics of their profession and of the law.

Thirdly, the Consultative Assembly should address the issue of the rehabilitation of the personnel of all the revolutionary organs. It should be recalled that at the termination of the first Republic, the personnel of the Ghana Young Pioneer Movement, the Workers' Brigade, the CPP bureaucracy and the staff, students and graduates of the Kwame Nkrumah

Ideological Institute were callously thrown into the streets. At the collapse of the Second Republic, more hands were laid idle from parliament, the bureaucracies of the various political parties and from the National Youth Service Corps. In time, all these crystallised into a solid army of idle hands and hungry mouths which every military dictator since 1972 has used to obstruct our political development. We should therefore be instructed by the adverse social and political impact of those actions. Mr. Kodjo Tsikata's instruction referred to earlier, is that such cannot be the case again because this time, the cadres are armed. I should urge, therefore, that the security imperatives of the PNDC and our national security concerns should find common cause in the rehabilitation of the revolutionary cadres. In this regard, a rehabilitation (retraining, re-education and absorption into regular employment, programme, should be initiated as part of the progress. This would ensure that the new administration is not saddled with a dirty job it cannot do tidily.

Finally, the consultative assembly should further address the issues of military, police and civil service neutrality in politics and administration along with the more thorny issue of barracks life in post-PNDC Ghana. Certainly, the doctrine of active military, police and civil service partisanship is a recipe for instability, and requires serious attention.

In addressing the issue of barracks life in the post-PNDC era, we should be reminded that the failure of past transition programmes to deal with this issue contributed to the abrupt curtailment of the tenure of the two successor regimes. In both instances, it was naively assumed that once the military retired to barracks, the lure of the perquisites of political office would also give way to a renewed longing for military professionalism. It would certainly be in the national interest to draw a lesson from Acheampong's 'few social amenities' coup.

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*Part III*

**PAST DOCUMENTS, TEXTS AND  
EXPERIENCES AS A MODEL**

## CHAPTER 8

### A 'DEVELOPMENT-ORIENTED' CONSTITUTION?

*J.S. Pepera (Mrs)*

#### **Introduction**

The focus of this paper has been suggested by a number of statements made by members of the Provisional National Defence Council (PNDC), with regard to Ghana's proposed return to constitutional rule and issues of economic management. These statements seem to suggest at least a desire on the part of the government to work into the future constitution, provisions that would ensure a continuation of Ghana's present economic direction. This, of course, raises a number of questions in the area of constitutionalism and politics. How detailed should constitutions be? How comprehensive should statements of economic principle be? Is it possible, or even desirable, to make constitutional provisions out of economic policies? Should particular *policies* or institutions, developed without open debate and consideration, become part of the founding document of a new and supposedly open democratic order? And so on...

This paper, however, remains a constitutional feasibility study. That is, I have not made any attempt to evaluate the PNDC's economic management, or to suggest alternative economic paths. I have concentrated on source documents - specifically the 1979 Constitution, the Report of the National Commission for Democracy (NCD), and the White Paper of May 10 on 'Evolving True Democracy' - and relevant supporting texts, in an attempt to put some flesh on what I believe to be an important element in the government's thinking on the next constitutional order.

#### **A 'Development-Oriented' Constitution ?**

The title of this paper is borrowed from an article, which appeared in the *Legon Observer* of 6 April, 1979. It would seem that Ghana and the Department of Political Science were then engaged in a similar exercise. In the first paragraph of that article, the *Observer's* Correspondent mentions a proposal ascribed to Mr. Cameron Duodo, regarding the share of cocoa revenues accruing to farmers as an illustration of ideas being mooted at that time about a 'development-oriented' Constitution.

If I understand the term correctly, it refers to an attempt to include edicts of an economic nature in what has traditionally been regarded as a political document. I would readily acknowledge that it is difficult to imagine how a constitution can promote development; but it can certainly define a policy framework that would prevent the economy from being run to the ground as it was after 1974.

The Correspondent then goes on to outline a number of proposals to ensure fiscal and monetary prudence on behalf of future governments, which were to be included in the Constitution not for their intrinsically 'developmental' nature, but because first

the Constituent Assembly is more likely than the next (or any) government to enshrine such constraining (although prudent) measures; and second that Constitutional Amendments are more difficult to usher in than amendments to Acts.

A classic exposition of politics and constitutionalism! And, as I have it on the best possible authority that 'the Correspondent' in this case was none other than Professor K.G. Folson, one might be forgiven for asking what further there is to say on the matter! I believe that what Professor Folson had to say in 1979 was perfectly valid, as far as the canons of 'liberal democracy' go.

In a seminar paper presented at the Departmental Workshop in August 1980, on The Financial Provisions of the Constitution of the Third Republic, Prof. Folson describes the 1979 Constitution as being, from the financial point of view, 'in the mainstream of twentieth-century constitutionalism.' He then goes on to critically analyse the Constitution against three 'well-tested principles':

first, that in its financial behaviour the government is responsible to the people's representatives; secondly, that the national accounts are well kept; and thirdly, that certain institutions which are expected to be 'independent' of the government enjoy some financial 'autonomy'.

On the whole, the 1979 Constitution seemed to meet most of the challenges of Prof. Folson's evaluation, as an instrument fashioned to, and capable of ensuring a more responsible and accountable system of public finance, as well as the independence of certain institutions regarded as necessary for the maintenance of freedom. But, the 1979 Constitution did not ensue from what I will call the ideological background of 'radical developmentalism.' It therefore addressed itself to the prevention of the further 'institutionalisation of economic crisis,' rather than to the promotion of that

radical social, structural, and economic transformation which provides the opportunities for improving the human condition, in an environment of equity and security, that is the current general understanding of the term 'development'.

I believe that when the Chairman of the PNDC, Flt-Lt. J.J. Rawlings, in a speech at Sunyani in July 1990 talks of the need to build 'a viable economy capable of providing basic necessities affordable by the people ....,' and suggests that it is

thoughtless to speak about political reforms without paying attention to the economic justice that will make such reforms meaningful;

and when the NCD in its Report of March 1991 states that

there is no political democracy without economic democracy, and until economic democracy, grounded in principles of resource generation and equitable distribution is guaranteed. There can be no real democracy;

then they are speaking from a markedly different perspective to that of the framers of the 1979 Constitution.

Furthermore, I believe that when the Chairman of the PNDC, Flt.-Lt. J.J. Rawlings, in his Sunyani speech propounds

the need for a national consensus about the economy; a consensus which will be the basis upon which the economy will have to be built in the future by every administration

any of which may come and go, but the health of the economy and its progression will have to remain the same; and the Secretary for Finance and Economic Planning, Dr. Kwesi Botchwey, assures a special meeting of businessmen in Paris, as reported in the 3-9 June issue of *West Africa*,

that the basic thrust of the ERP would be safeguarded in any future constitution since the gains of the ERP have made the evolution of a more viable political and economic development of the country possible;

then they are indicating the inclusion of something more than the systemic and systematic fiscal 'checks and balances' usually built into constitutions based on the Western liberal tradition.

Of course, I do not believe that when the Secretary for Finance and Economic Planning, Dr. Kwesi Botchwey goes to a donor conference in Paris, or anywhere else for that matter, it would be prudent for him to

suggest anything other than continuity and stability in the political life of the nation: you cannot go to the international community and say please give me US\$800 million to pursue a particular course which I cannot guarantee will be the preferred choice of the nation's preferred government, perhaps from two years hence.' It, however, seems to me that there is quite a major leap from this latter position to the virtually unqualified guarantees outlined in the Secretary's recent press and television statements. But perhaps he knows something about the nation's future preferred government than we do.

### **Looking Back and Looking Forward**

From my reading of the debate on the financial/economic aspects of the 1979 Constitution, it seems that the main emphases were on fiscal and monetary prudence, and the financial independence of certain key institutions - the Judiciary, the Electoral Commission, the Auditor-General's Department, the Press Commission, the Ombudsman, among others.

Looking at the text of the document itself, under the Directive Principles of State Policy, Article 8 (i) and (ii), outline the 'Objectives of Economic Policy.' Article 8 (ii) rather diffidently requires the government to present to Parliament, within eighteen months, a programme to

ensure the promotion of planned and balanced economic development including planned and co-ordinated agricultural and industrial programmes at all levels and in all the Regions of Ghana.

The next constitution-type text available for examination is the Provisional National Defence Council (Establishment) Proclamation (Supplementary and Consequential Provisions) Law, 1982 - PNDC Law 42. Contained in the Directive Principles of State Policy is the language of radical developmentalism. Article 1 clearly states the ideological persuasions of the PNDC, although it does not specify the specific economic measures to be adopted in order to achieve the stated objectives. Of course, shortly after PNDC Law 42, the government embarked upon what has been described by a colleague, K. Jonah, as 'the closest and perhaps longest the period of collaboration between the Fund (IMF) and any one regime in Ghana's history.'

I have already quoted an extract from the NCD Report, 'Evolving a True Democracy'. Scattered throughout its pages are references to economic democracy, decentralisation and local accountability, balanced development between the rural and urban areas, and equitable resource

distribution. Notwithstanding all this, in Chapter 6, 'Concluding Remarks,' the NCD states:

Though economic issues are not the direct purview of the NCD, they form such an intrinsic part of the development of a true democracy that we should be failing in our duty if we do not mention some of the landmarks of the Economic Recovery Programme (ERP).

There then follows a discussion of these landmarks which presumably may or may not become entrenched aspects of the new constitution: 'growth' levels of 3%-4%, massive subventions from the international donor community, exchange rate and trade liberalisation, diversification into the mining and timber industries, infrastructural rehabilitation, reform of public sector finance and investment programmes, anti-inflationary money-supply measures, state divestiture, etc.

In its statement on the NCD's Report, the government did not feel that the NCD had gone far enough in this area, and therefore took pains to further elaborate on PNDC thinking as in the *People's Daily Graphic*, of 11 May, 1991.

There is no doubt that the continued improvement of the national economy is a necessity for ensuring the stability of the new constitutional order. There can also be no doubt that the modest but important gains that have been made in the economy would need to be consolidated and the directions of the Economic Recovery Programme continued to enable further improvements to be made in the lives of the ordinary people. Accordingly, the pertinent issues relating to the national economy and measures to sustain and enhance it will be placed before the Consultative Assembly for deliberation.

The government's statement naming the appointed membership of the Committee of Experts also stated that the committee would look at proposals to 'ensure participatory democracy and the sound management of the national economy.' This, I believe, has put the matter firmly and definitely on the agenda of the constitutional debate. What is to be done? Having provided the historical genesis of the issue, I would like to explore some of the ideas and concepts which, I believe, have informed it.

I do not entirely share the cynical viewpoint that much of what is being proposed and debated presupposes the transformation of the PNDC into the first government of the new constitutional order, although the PNDC should perhaps see the Ortega experience as a cautionary tale, the argument being that since there is no transitional government, and the parameters of the debate are being established by the PNDC, there is bound



to be a certain bias in the proposals, discussions, and possibly even in the outcome, which reflects the advantage of incumbency. If this indeed is the case, then there really is little more to be said or done in the whole matter.

Neither do I entirely share the view that the PNDC has begun to accept unthinkingly the praises of the international community with regard to the manner in which the ERP has been established and pursued over the years, no matter how seductive those praises may seem. Nevertheless, there seems to be a high degree of confidence in the ERP on the part of the government that I presume has something to do with a continuing belief that the ERP will in the future deliver the economic benefits and development, for which certain sections of the population have sacrificed their present.

If I were to embrace either of the above positions, I might just as well have ended the discussion earlier by accepting Prof. Folson's enunciation of the view widely held in academic and intellectual circles that *constitutions* cannot, and indeed should not, be 'development-oriented.' But this, too, is a view I do not entirely share.

This argument has developed over the last thirty or so years. It grew out of the debate on the priority to be given to social and economic rights, in relation to the traditional civil liberties. In the early sixties, the issue was viewed as rather zero-sum. In a nutshell, the debate distilled down to whether it was possible to grant civil and political liberties, *at the same time* as nations were pursuing rapid social and economic development. What we have seen over the years since independence in Africa is an emphasis placed by politicians and African scholars on the priority of social and economic rights, *at the expense, if not to the total exclusion*, of what are traditionally understood to be civil and political rights, in the interest of economic development. I actually found the late president, Colonel Acheampong, quoted by Prof. Shivji in a study on human rights as espousing what has been disparagingly called the 'full-belly thesis' of rights. As Acheampong had it:

One man, one vote, is meaningless unless accompanied by the principle of 'one man, one bread.'

Lately, as the promise of development under the largely undemocratic systems that have pertained in Africa has remained unfulfilled, increasing numbers of Africans themselves are challenging the line that other Africans had so convincingly sold a quarter century ago. The outgoing Chairman of the OAU, President Yoweri Museveni, has charged us to look at this issue again from the perspective that the attainment of development begins and ends with the guarantee of our fundamental human rights. Professor Shivji in the study already mentioned seems totally condemnatory of

the ideology of developmentalism which has been the hallmark of African states since independence in rationalising the depoliticisation and demobilisation of the African masses...

Yet, instinctively, perhaps even sentimentally, one does not want to throw the baby out with the bath water. If indeed some radical social, structural, and economic transformation which provides the opportunities for improving the human condition, in an environment of equality and security, is an acceptable definition of the current usage of the term 'development,' then surely this is a concept that we should all want any future constitutional arrangement to embody.

My final question then simply put is 'how do we ensure this?'

### **Back to the 'Development-Oriented' Constitution**

It seems quite obvious to me that if there is to be free and open debate on the future constitutional arrangements, then any attempt to entrench or even enshrine too specific policies will probably lead to a breakdown in the current consultative process. Much, if not most, of the PNDC's economic policy is fiercely opposed by groups from the right to the left of Ghana's political spectrum. So spelling it all out is not the way forward.

Furthermore, I have to agree with John Dunn, in his essay on political representation, that

it would be quite unreasonable to anticipate that the cognitive grasp of the dynamics of the world or domestic economy enjoyed by the populace at large will prove systematically superior to that of their past or present African rulers, and correspondingly unreasonable to expect formulations of economic policy to improve merely because of a strengthening of the system of political representation.

Although, I would add that I believe this to be equally applicable to those recently labelled 'newly-emergent democracies' of Eastern Europe, even to the Soviet Union. So increased popular participation, of itself, will not secure our objectives.

I wish to add that neither will the further proliferation of charges such as 'acts tending to subvert the economy of Ghana,' and 'economic sabotage,' nor the concurrent strengthening of parallel institutions such as the Economic Crimes Bureau, Citizen Vetting Committee (CVC), National Investigations Committee (NIC), with their tendency towards arbitrariness and non-accountability, ensure the attainment of our objectives. I believe that a 'development-oriented' constitution can be framed, if we address ourselves to the question of how we attain and maintain the quality of

government - using the term in its widest sense - over time, so that the administration of our economy will promote rather than hamper the development of the human condition of our citizens.

### Some Preliminary Recommendations

- (i) All the checks and balances of the 1979 Constitution to counter the strength of familial and other pressures on public servants should be adopted.
- (ii) There should be a committed decentralisation with the appropriate allocation of human and financial resources to promote autonomous local government rather than local administration - perhaps the allocation of a set percentage of the national budget for this purpose, as in the new Nigerian Constitution.

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## CHAPTER 9

# THE MONOPOLISATION AND MANIPULATION OF THE CONSTITUTION-MAKING PROCESS IN GHANA

*Kwesi Jonah*

### Introduction

Since 1960 it has become an established political ritual for Ghana to fashion a new constitution approximately every decade. With philosophical calmness, Ghanaians have accepted this onerous political burden imposed on them by the notorious instability of their political system.

With feverish preparations under way to return the country to constitutional rule, the germane question which should engage our attention is not the speculative one of what type of constitution we are likely to have. What is important now is: Are procedures being adopted likely to result in a constitutional document which all Ghanaians can identify with and whole-heartedly embrace as their own? This paper attempts to answer this question by arguing that almost all military regimes have monopolised and manipulated constitution-making in Ghana through the adoption of techniques which exclude significant sections of the political public from participating in the process.

An erroneous impression which seems to have gained ground within certain influential political circles is that, how a constitution is arrived at is not as important as the constitution itself. But the making of a constitution is a *national*, and not a *partisan* or *sectarian* task which requires the participation of broad sections of the people. How a constitution is made is essential to its legitimacy. Constitution-making offers a unique practical opportunity for the democratic participation of different political, economic and social interests in an important national political project. The way a constitution is made can secure essential political compromises between opposed political interests, eliminate mutual suspicions, and instil confidence in each other. If handled with care, tact and statesmanship, the process can result in a constitution that every citizen can defend with pride.

## **Conflictual Origins**

Post-colonial constitutions of Ghana are mainly (though not exclusively) the products of political conflicts that originate from dissatisfaction with military regimes. Political conflicts that precede the birth of a new constitution in Ghana are invariably a question of the legitimacy of a military regime. The central issues revolve around whether or not a military regime has acquired and used state power in ways approved by the majority of the people and for how long it should continue in office. The typical scenario is that a civilian government under the control of a political party would have been overthrown by the military. After the initial euphoria that has greeted the military take-over, the legitimacy of the regime is questioned by sections of the population, usually the most politically articulate.

To prevent its political opponents in general and the overthrown party in particular from coming to power in any form to take political vengeance, the military regime accedes to pressures for constitutional rule but devises every means to manipulate the process of transition to advantage. The main motive is either to install a friendly successor regime or at least one that would not be hostile and vindictive. However, if conditions were favourable, the regime would rather perpetuate its hold on state power by going through the necessary constitutional motions to legitimise its rule.

## **The Constitution-Making Process**

Legally-minded students of constitutions have reduced to two, the broad stages through which the constitution-making process should pass. The first stage includes everything that results in a draft constitution being considered by a constituent assembly. The second stage includes everything that results in the approval or promulgation of the constitution after it has been drafted. To determine the views of the population on the type of constitution that would be suitable for the country, a constitutional commission is usually appointed to tour the country to collect evidence and receive memoranda. Collection and collation of views can also be done by a body other than the constitutional commission, whose role in that case is restricted to the production of a draft constitution. Some regimes combine the two functions and assign them to one body - the constitutional commission.

The first stage of fashioning a new constitution is deemed completed after the draft constitution, submitted through the government to the constituent assembly, has been fully debated and dully amended. The

constitution is then ready for promulgation. The constitution becomes the basic law of the land when it is promulgated either indirectly by a truly representative constituent assembly or directly by the people at a referendum.

### **Techniques of Manipulation**

The basic technique which military governments have employed to gain monopoly control over the making of a constitution is through the determination, and chopping up into pieces, of the constitution-making process by appointing a constitutional commission of experts and public figures to tour the country, collect views, and draft a constitution.

Some regimes break up the process and appoint an independent committee or government agency, in the first place, before a constitutional commission is appointed. Separating the stages offers enormous advantages to government. Government supporters are organised to appear before the committee or agency to present the views of 'Ghanaians' on the future constitution. Opponents of government or 'enemies of the people' are not encouraged to appear before this committee with contrary views or are actually stopped by direct and indirect threats and intimidation.

Splitting the stages also enables the military government to determine with absolute certainty the precise functions it should give to a constitutional commission. Furthermore, the report compiled by the earlier committee or agency becomes one of the main working documents of the constitutional commission. The appointment of the ad hoc Committee on Union Government and the regional fora organised by the National Commission for Democracy (NCD) on Ghana's political future furnish excellent examples of this technique.

A political myth which military governments try to inculcate into the popular consciousness of Ghanaians is that the membership of constitutional commissions consists of experts and notables whose work is guided solely by the national interest. This is not the case. To keep the constitution-making process under their firm control, military regimes appoint 'experts and personalities' who are broadly supportive of the government's ideological and political line. The chairman of the constitutional commission appointed by the National Liberation Council (NLC) in 1966 was also the former chairman of the government's political advisory committee. Other members were largely NLC supporters. Members of the overthrown Convention People's Party (CPP) regime were purposively excluded. In 1978 the constitutional commission appointed by

the Supreme Military Council (SMC II) included such powerful Union Government advocates as the Editor of the *People's Evening News*.

Even constituent assemblies are not immune to government infiltration and control; for military regimes always appoint their own nominees to them, and their representatives often constitute a significant proportion of total membership. Assemblies have three categories of members: local government or district representatives; representatives elected by other bodies; and government nominees. Governments have a political leeway in determining what proportion of assembly members should be constituted by each category. In this way, military governments are able to strengthen their hold on the making of the constitution as the following table indicates:

COMPOSITION OF CONSTITUENT/CONSULTATIVE  
ASSEMBLIES IN GHANA

	1968	1978	1991
Districts	49(33%)	64(53%)	117(45%)
Other Bodies	91(65%)	2(30.7)	121(46.5%)
Gov't Nominees	10(6%)	32(24.3%)	22(8.5%)
Total	150(100%)	140(100%)	260(100%)

Sources: (a) Constituent Assembly Decree 1968 NLCD 222.  
 (b) Constituent Assembly Decree 1978 SMCD 203.  
 (c) Consultative Assembly Law, 1991 PNDCL 253.

Bodies to be represented, the number of representatives per body, and the total number of representatives in the assembly remain the discretion of military regimes which thereby derive a certain political leverage in the work of the assembly. Pro-government bodies and groups that are either not politically opposed to the government or are at least amenable to the government's political prodding may be given a greater representation. In 1968 and 1978 no body had more than one or two representatives. The Consultative Assembly law today has provided for five groups with ten representatives each while others have three or four and the majority have one.

For military regimes, appointing politically and ideologically like-minded individuals to constitutional commissions and constituent assemblies is not enough. In addition, the commissions are given specific functions from which it is virtually impossible to deviate. Though all constitutional commissions produce draft constitutions, their terms of reference differ markedly from each other. The function of each commission is to produce a constitution broadly compatible with the ideological and political objectives of the regime appointing it. Therefore no two constitutional commissions have exactly the same functions or do exactly the same job.

The constitutional commission of 1966 was charged with drafting a constitution which would ensure separation of powers and individual freedoms 'consistent with state security public order and morality.' The commission was free to visit all parts of Ghana to ascertain the wishes of all sections of Ghanaians on the question of what type of constitution would be suitable for Ghana. The constitutional commission of 1978 was assigned the duty to produce a constitution that would 'ensure that representation ... shall not be based on membership of political parties.' The constitution was further to guarantee to Ghanaians only those 'fundamental human rights enshrined in the Universal Declaration of Human Rights' and nothing more. No provision was made under the law for the commission to tour the country and find out the views of Ghanaians on non-party representation. The PNDC has directed the committee of constitutional experts to design a constitution which, among other things, will provide for a popularly elected executive president and a prime minister with parliamentary majority.

Ghanaian governments also gain an indirect control over the political transition and constitution-making through their near-total control over the media of communication - radio, television and the print media. The concrete situation varies from regime to regime but state control has ensured that only (or mainly) the official view on national political issues or officially approved views can be heard by the public. Other views are quietly ignored or shunted aside.

A more general control over the constitution-making process and transitional politics derives from the absolute monopoly by military regimes of all state institutions. Police and other security agencies will arrest with glee an opponent of the regime for even a mild criticism. They dare not touch a member of government even for a serious traffic offence. This and general disregard for human rights and civil liberties do not conduce to free and full participation by all citizens in the constitution-making process and transitional politics in general.



## Conclusion and Recommendations

We conclude, therefore, that virtually every military government has managed the constitution-making process in such a way as to exclude some sections of our people from participation. Instead of a democratic national exercise involving all sections of Ghanaians, governments have tried to keep constitution-making in their tight grip. A national political project which should have been turned into a practical example of democratic political participation has become an exercise in mutual distrust and acrimony.

Critical appraisal of current preparations towards constitutional rule does not suggest that attempts are being made to move away from past techniques and practices of manipulating and monopolising the constitution-making process and transitional politics. First, the collection of views on the country's political future was kept under the strict control of the government dominated NCD. Secondly, in principle, all Ghanaians were free to participate in the regional fora: but in practice their doors were not adequately open to organisations, groups and individuals whose political views were fundamentally opposed to those of government.

Thirdly, without any opportunity to tour all parts of the country to receive independently the views of all sections of Ghanaians on the country's future constitution, the committee of constitutional experts could be unduly influenced by the NCD report. Fourthly, the consultative assembly seems to be unnecessarily overloaded with pro-government bodies and organisations, and will therefore not be a truly representative assembly. Finally, the absence of a free press tends to restrict the opportunity for free comment and public debate on current political processes.

Urgent steps should therefore be taken to ensure that the present constitution-making process results in a true national consensus on the country's political destiny and that a constitution is produced that is viable and durable. To do this,

- (i) there is the need for a more equitable representation in the consultative assembly;
- (ii) restrictions on the operation of a free press should be removed without delay;
- (iii) organisations opposed to the government should be given the freedom to hold public meetings;
- (iv) known opponents of the government should be fully involved in all stages of the making of the constitution; and
- (v) a more conscious effort should be made by government to remove all obstacles to the full enjoyment of civil liberties in Ghana now.

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## CHAPTER 10

# THE DISTRICT ASSEMBLIES, LOCAL GOVERNMENT AND PARTICIPATION

*Joseph R. A. Ayee*

### **Introduction**

The establishment of the District Assemblies (DAs) is justified by the Provisional National Defence Council (PNDC) on the grounds that the DAs will promote popular participation in the planning and implementation of development policies and programmes in the districts. For instance, paragraph 1.7 of the 'Blue Book' states that 'the establishment of the District Assemblies is an important step in the PNDC's programme of evolving national political authority through democratic process'; and in the National Commission for Democracy Report it is stated that 'the new local government system constitutes a fulfillment of the commitment made by the PNDC to involve the ordinary people in the process of taking decisions that affect their daily lives.' Thus to the PNDC, local democracy becomes a necessary condition for national democracy. For the same reason, the powers and functions conferred on the DAs also reflect those of local government units. The Assemblies, for instance, are responsible for (i) the overall development of the districts; (ii) the formulation of programmes and strategies for the effective mobilization and utilization of the human, physical, financial and other resources; and (iii) the promotion and support of productive activity and social development and the removal of all obstacles to initiative in the process of attaining this goal. For the efficient performance of their functions, twenty-two decentralised departments were created and placed under the control of the DAs. In the light of the foregoing, one may say that the DAs were established to function as local government units and to promote popular participation. In other words, there is a link between the DAs as local government units and their role as promoters of popular participation.

Our aim in this paper is to consider some of the theoretical problems in linking local government to popular participation. The argument of this paper is that although popular participation is frequently a guiding principle behind the introduction of a local government system, it should not be identified with local government.

The paper begins by exploring the concepts of local government and popular participation. This is followed by a discussion of the participative elements of local government and some of the problems which arise when trying to link local government with popular participation. Finally, we attempt to identify some of the particular questions about participation and local government, which politicians and planners need to consider if they are concerned to introduce a system of local government primarily as an institutional and procedural means of increasing popular participation.

### **The Concept of Local Government**

There is no precise definition of the concept of local government. Baber, for example, defines it as the 'authority to determine and to execute matters within a restricted area inside and smaller than the whole state.' I would agree with Awa's definition of local government as the political authority set up by a nation or state as a subordinate authority for the purpose of dispersing or decentralising political power. The act of decentralising power may take the form of deconcentration or devolution. Deconcentration involves delegation of authority to field units of the same department. Devolution, on the other hand, refers to the transfer of authority to local government units or statutory bodies such as state enterprises.

The definitions give rise to certain characteristics of a local government unit. These are:

- (a) *A Subordinate System*: Local government implies a system of government which is subordinate to the central government, but which does not act merely as a departmental agent of the central government as do, for example, local offices of a ministry.
- (b) *Locality Principle*: The areas to be grouped together to form a local government unit should possess, to a reasonable degree, a combination of common historical, geographical, sociological, cultural and economic characteristics or what is called 'community of interest' or 'community consciousness' and should be reasonably large both in size and in population. The logic of social services demands that they be provided by a local community.
- (c) *Independent Budget*: A local government unit must have its own budget, balanced estimates of revenue and expenditure, and a separate bank account, with the cheque book held by an employee of the local authority (not a central civil servant).
- (d) *A Separate Legal Existence*: A local government unit has a corporate status, often with a common seal. It has the power to

sue and be sued. It has the power to hold land and property as its own (not the central government's).

- (e) *Allocation of Resources:* A local government unit has the authority to allocate substantial resources, for example, the quantity of finance handled; number and qualifications of the staff employed; power to decide over expenditure; power to vary revenues; decisions over staff appointments, promotion and discipline.
- (f) *Range of Different Functions:* The functions of a local government unit can vary widely, but in general, the unit is involved in the administration of functions that promote socio-economic development of the locality.
- (g) *Representation:* In a local government unit, decisions are made by representatives of the local people. Different forms of election or appointment may serve, provided that the people of the locality feel that the policy making body is really representative of them.

It must be pointed out that local government represents the generally accepted fact of political life that all the functions of government cannot be run on the basis of central administration alone. It consequently represents both the need for participation and for administrative convenience, particularly with the view to fact-finding and considerations of local variations.

### **The Concept of Participation**

Although participation is defined in different ways, the dominant view is to regard it as a strategy to improve the development process. We would therefore agree with the UNESCO's definition which is as follows: a 'collective sustained activity for the purpose of achieving some common objectives, especially a more equitable distribution of the benefits of development.'

Emrich has clarified the meaning of participation through six axioms. These are (i) participation must begin at the very lowest level. There must be real opportunities for participative decision-making for the poorest, and decisions must relate to the aspirations of the poor more than to the 'wispy musings' of those who will not identify with them; (ii) participation must take place at all stages of the development process, from the earliest pre-planning exercises, to the development of plans, the design of implementation mechanisms and the actual implementation; (iii) it must be recognised that a solitary vote is not participation. If people do not participate as members of relatively powerful groups which serve their interests, then they participate only for the benefit of their masters; (iv)

participation must have substance and usually political clubs and co-operatives do not have substance. Participative processes must deal with the allocation and control of goods and services related to the production processes; (v) participation must somehow deal with existing loyalties. If the result is merely to strengthen existing inter-class groupings, it will just strengthen existing leadership; (vi) it must be accepted that the development of effective participation will cause conflict in some form.

It must be noted that political aspects are often considered basic to participation. However, participation is a much wider concept. Politically, the elections held from time to time provide a mechanism to exercise control over institutions and resources, but such controls may prove to be illusive. Unless there are real opportunities for people to have a say in planning and implementation of development, the adult franchise alone may mean nothing at all. The real purpose of participation is to develop human capabilities for development, decision-making and action. Participation means a kind of local autonomy in which people discover the possibilities of exercising choice and, thereby, becoming capable of managing their own development.

It is important to understand the true meaning of participation, since failure to do so can lead to distortions in the processes and the end-products of development. This danger is real as participation has now emerged as a popular development idea. Participation is often endorsed unambiguously on normative grounds even if the empirical basis is not clear. A real danger is that with 'growing faddishness and a lot of lip service, participation would become drained of substance and its relevance to development programmes disputable.' Another cautionary note is that 'while participation can take the form of widespread rural mobilization to support and implement government policy, it can also serve as an effective tool for government control of the rural population.' Used without properly understanding all the implications, participation can work both ways: It could become the proverbial double-edged sword.

### **Local Government and Popular Participation: Myth or Reality ?**

We have already pointed out that local government is often justified in terms of its potential as a means of increasing popular participation in decision-making. From the planners' point of view, participation through local government may be considered desirable because it is seen as a means of making plans more closely reflective of local needs and it may be a means of mobilising local support and resources for development projects. From politicians' stand-points, local government may be advocated as a basic human right and a necessary extension of the democratic process - as a way

of achieving 'participatory democracy' rather than merely 'representative democracy.'

These objectives are in accord, as we have already noted, with the PNDC's rationale for the setting up of the District Assemblies. However, the role of local government in the promotion of popular participation is easier said than done. While the link between the two concepts may be easily and frequently enumerated, the pursuit of the objective of the link is usually doubtful. It is to the 'participative elements' of local government that we now turn.

### **Local Government and Political Education**

One of the values of local government is the promotion of political education which is an important participative element. In the words of Alexis de Tocqueville, 'town meetings are to liberty what primary schools are to science: they bring it within the people's reach, they teach men how to enjoy it.' This point was re-echoed by John Stuart Mill in his book, *Representative Government*. Mill recommended local government on the ground that it provides extra opportunities for political participation both in electing and being elected to local offices, for people who otherwise would have few chances to act politically between national elections. One of the underlying themes of *Representative Government* is the educative effect of free institutions, and Mill's belief was that 'the local administrative institutions are the chief instruments of this operation.'

The role of local government in the enhancement of political education has also been a recurring theme in discussions of political development. For instance, the objective of local government is to foster 'healthy political understanding.' The citizen learns to recognize the 'specious demagogue', to avoid electing the incompetent or corrupt representative, to debate issues effectively, to relate expenditure to income, and to 'think for tomorrow.'

The problem about local government and its promotion of political education is not so much whether local government does or does not educate, but how many it educates. In modern Britain where the only remaining survival of direct democracy is the parish meeting, the role of local government as political educator can only touch a tiny fraction of the population. According to official estimates, about 43,000 people were local councillors in England and Wales in 1968. If co-opted members, the non-participant and local authorities were added, participation within the parishes in any meaningful sense is confined to a minority. It may be contended that the 43,000 extend the educative process by carrying the message of democracy to the wider public, although it is difficult to envisage

this in practice. If it does happen, however, there is very little evidence that the wider citizenry are very 'attentive pupils.'

There are, in any case, aspects of the educative value of local government that raise one or two doubts about its complete acceptability in a modern democracy. The first, according to Sharpe, is its powerful overtones of 'paternalism.' It derives in essence from a rather pessimistic view of human nature directly descended from Aquinas' view of self-government as a means of subjecting individuals' 'irascible and concupiscible powers to the royal and politic rule.' If this sounds a bit far-fetched, the modern variant still has a distinctly 'Gladstonian, school masterish tone' that sees the special task of local government as being that of teaching the 'great unwashed that money does not grow on trees.'

Linked with this paternalist element is the fear, again stemming directly from Mill, that those who are to receive the direct benefits of training in democracy are 'petty poor stuff' anyway. The low calibre of councillors was, for Mill, the 'greatest imperfection of popular institutions.' He places great emphasis on how important it is for 'the very best minds of the locality' to be on local councils so that they may confer on the lower grade minds 'a portion of their own more enlarged ideas and higher and more enlightened purposes.' In this instance, there is widespread unwillingness to accept the full consequences of democracy where it involves the man in the street actually taking part in government. At the parliamentary level, this attitude is not nearly so evident because the 'fine sieve' of selection procedures eliminates most 'manual workers' irrespective of party; and even where members of parliament from working class backgrounds are elected, they seldom reach ministerial rank in Britain before becoming absorbed in the wider political ruling group. Local government, on the other hand, seems not to have such 'screening' devices, hence apparently the concern about the calibre of its representatives.

### **Local Government as a Training Ground for Political Leadership**

A further participatory value that is claimed for local government is its role as a training ground for national legislators. Mackenzie traces this idea back to Bentham's vision of a 'sub-legislature' constituting 'a nursery for the supreme legislature: a school of appropriate attitude, in all its branches for the business of the legislature.' Harold Laski similarly claimed that 'if members were, before their candidature, legally required to serve three years on a local body', they would gain the 'feel of institutions so necessary for success.' This claim has been exhaustively examined so far as Britain is concerned by Brian Smith but it does not emerge as a very significant one. Much depends on the emphasis placed on the difference between the



respective roles of local councillors and MPs and equally on the extent to which private politics are seen as providing a comparable training to local government units. Nevertheless, after a careful examination of the available evidence Smith's conclusion is that 'local government experience then, is relevant to central government practices because it is political experience (but) we should not overestimate the value of local political experience for national legislators and leaders.'

### **Local Government and Political Stability**

The remaining aspect of participation as a justification of local government is that which sees local government not so much as a training ground for civic virtue or for the national legislature - the 'breeder of better individuals' as it were - but as the essential element for establishing 'a stable and harmonious national state, the breeder of better societies.' For Tocqueville and Mill, these two aspects of participation are closely linked. It is only by participating in and learning the art of self-government at the local level that the individual has a stake in and comes to appreciate the virtues of free government at the national level. Local government is also seen by Warren as reconciling class, religious and sectional interests.

There are many objections and reservations that can be made to this way of thinking. First, local community interests do not necessarily coincide with individual interests, nor do they with national interest. Self-government may or may not nurture civic virtue, but if it does, there is no guarantee that this will always enhance the citizen's perception of the national interest more than it is likely to enhance local loyalties.

Second, it is possible for the main elements of a stable democracy to be achieved nationally before democratic local government has been established locally. In Britain, for instance, democracy in the 'one man one vote' sense was achieved nationally before it was locally realised; because many parts of rural England were bereft of any local representative institutions until 1888. As Keith-Lucas has reminded us, the local government franchise was not finally assimilated to the parliamentary franchise in Britain until 1948. Similarly Langrod asserts that 'when a state has long since passed from the absolutist age to that of the constitutional regime, local government has often remained (for example, in Austria from 1866 to 1918) as a veritable fortress of anachronistic privilege.' In other words, local government may be viewed as being possible only where there already exists national cohesion and sense of national identity, if not democracy. Such a distinguished authority as Fesler is also inclined to this

view. This view, however, contradicts that of the PNDC, which holds that local democracy, as enshrined in the District Assemblies, should precede national democracy.

## Conclusion

From what has been said so far, one is tempted to say that local government and popular participation may be incompatible. In other words, local government does not necessarily promote popular participation. It is interesting to note that even in countries like Britain, France and the United States, where local democratic institutions existed for some time and local democracy or popular participation is considered to be the root of national democracy, considerable doubt is expressed regarding the truly participative nature of local government. A striking example is offered by the 1969 Maud Committee Report on the Management of Local Government, which considered the operation of local government in Britain to be often highly undemocratic and non-participative. Community power structure studies carried out in the United States have sometimes led to similar conclusions.

These findings may induce people to question the validity of popular participation as an argument for reforming local government. In any case, local government is not of necessity identical with popular participation, as the PNDC has made us to believe, and that special measures must be taken to ensure that local government is participative.

When considering alternative methods of achieving participation, three different issues need to be addressed. First, it is essential to enquire about the objectives which participation is (and is not) designed to achieve; that is, its perceived or proposed rationales or functions. Thus at one extreme, participation may be intended as no more than a means of improving information available to decision-makers at the national level or merely convincing local inhabitants of the desirability of certain national policies or programmes. At the other extreme, it may be associated with the achievement of political power, the incorporation of deprived sectors of the population into the national economy or the development of community solidarity and self-esteem. The achievement of these objectives requires radically different approaches, and often different groups have differing views and expectations about even the primary purposes of any particular effort to achieve participation.

Second, it is also important to consider which individuals, groups or parties can, should or are intended to be involved as channels or agents of communication in the process of participation. Thus achieving

participation through local government councillors raises very different issues and problems from those which would arise if the concern was with, say, traditional leaders, extension workers, cadres and youth movements. Yet recourse to, and action involving, any or all these people may be seen as the means of enhancing participation.

Third, it is necessary to consider the methods or procedures which individuals and groups may use in their efforts to achieve participation. Thus, to take just one example, the effectiveness of local government councillors will depend on their access to, and their ability to use, a variety of methods - including those which determine the way in which they relate to their electorates (such as electoral procedures, formal ward committee structures and informal relations with people in the electorate) and those which affect their impact on outside events (such as their role in making and implementing council decisions and the impact of the council on regional or national issues). And this in turn will depend on the formal structure of the local government system, the councillors' status in the community, their individual aptitudes and integrity.

It must be emphasised that there is the need to examine the details of any local government reform programme - including its historical roots and its current objectives, its formal structure and the environment in which it has to operate - before attempting to predict or evaluate its impact in relation to popular participation. In the same way, it is not possible to make detailed recommendations for improving processes of popular participation without thorough knowledge of existing and potential future modes of participation. Detailed local-level studies should thus be an essential part of the design of a local government reform programme which is intended to enhance popular participation in the development process.

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*Part IV*

**TOWARDS A DEMOCRATIC  
ORDER**

## CHAPTER 11

# CONSTITUTIONALISM AND THE RULE OF LAW THE BEDROCK OF CONSTITUTIONAL RULE

*F. K. Drah*

### **Introduction**

The purpose of the paper is two-fold. It tries to, first, explain in general and simple terms the ideas of constitutionalism and the rule of law which are basic to *constitutional* rule. For, the latter is not merely rule by civilians; it is also the very opposite of military rule as such. Secondly, the paper offers a few suggestions for the consideration of the constitution-makers. It is important to state that the paper is based on the assumption that our current search for a new political order will result in devising the building blocks for the evolution of a stable and durable constitutional order. The assumption is crucial because there are in our midst a sizeable number of people (both military and civilian) who are hostile to the very ideas of constitutionalism and the rule of law. Since they see themselves as *the* prime and indispensable movers of national transformation, they must always have their own way; and, therefore, there should be no legal and other checks on their actions; while their programmes should be exempted from public scrutiny.

### **The Meaning of Constitution**

It is obvious that the term constitutionalism is derived from the word constitution. However, to know what is a constitution is not necessarily to know what is constitutionalism.

According to K.C. Wheare, there are two main different meanings of the word constitution: the one is general and the other is specific. In its general meaning, a constitution stands for the whole system of the government of a country. It is the collection of rules, legal and non-legal, which establish and regulate the organs of government. The legal rules which are embodied in statutes are recognised and applied by the law courts. On the other hand, the non-legal rules which take the form of usages, understandings, customs and conventions are not recognised by the courts as strict laws; even so they are no less than the legal rules effective

in regulating the institutions of government. It is significant to note that all these legal and non-legal rules are not embodied in a single document. When one speaks of the constitution of Britain, this is the normal, if not the only possible, meaning which the word has.

In its specific meaning, the word constitution is used to describe not the whole collection of legal and non-legal rules but rather a selection of these rules often embodied in a single document or in a few closely related documents. And it is worth noting that such a selection is nearly always that of strictly legal rules only. In its specific sense, then, the word constitution is a selection of rules, almost always legal, which regulate the government of a country and which have been embodied in a document. This is the meaning of the word which is most common in the world today. It may be added that the two meanings of the word constitution identified here correspond approximately to the popular distinction between an 'unwritten constitution' and a 'written constitution.'

It is popularly assumed that where a government rules in accordance with a documentary constitution, constitutionalism automatically operates or is acknowledged in principle. This is not necessarily so. There is a significant sense in which the constitution of a country may itself be 'unconstitutional.' For, although government may be conducted according to the terms of the constitution of a country, this constitution may do no more than lay down the institutions of government and leave them (or some of them) free to act as they like - that is, give them unlimited discretion. For example, according to the Soviet constitution of 1918: 'The basic task of the constitution is the establishment of the dictatorship of the city and village proletariat.' It is also arguable that Ghana's first republican constitution, together with its subsequent amendments, was 'unconstitutional' because it gave the president virtually unlimited discretion.

Nor is it correct to argue that constitutionalism does not operate in a particular country just because its constitution, which is not documentary, seems to put no limitations on the legislative arm of government, for instance. The reason is that it may well happen, on further scrutiny, that the ordinary laws of the country, together with usages, conventions etc, provide those checks and balances which the law of the constitution does not provide - as it is the case in Britain. And this shows that constitutionalism operates even where there is not a written constitution in the sense already indicated.

### **The Meaning of Constitutionalism**

What, then, is constitutionalism? It is hoped that some idea of what it is has emerged from the preceding paragraphs. In thought and practice,



constitutionalism consists in the belief that there must be a set of rules, procedures and institutional arrangements which effectively limit the exercise of governmental power and authority in order to safeguard such fundamental values as political stability, individual and group liberty, as well as justice. In fact, the kind of government constitutionalism insists on is limited government. In the literature on the subject, limited government is also termed 'moderate' or 'constitutional government.' A state with such a government is called the constitutional or free state.

Now, to state the obvious, limited government is the very opposite of arbitrary government. Predictability of action is the basic rule of constitutionalism; while capriciousness or unpredictability is the mark of tyranny or dictatorship. (In this respect, military government, however benevolent it may be, is by definition arbitrary government.) It is clear, then, that limited or constitutional government means freedom from capricious or unpredictable and, therefore, arbitrary rule. All this is another way of saying that, for the constitutionalist, not all things are lawful to the rulers; hence they should not have unlimited powers.

Thus conceived, constitutionalism entails the fundamental principle of the accountability or responsibility of the rulers for their policies and actions to the ruled. Authority given to rulers and their subordinates is not a legal privilege to be exercised at their absolute discretion; instead it is authority for the exercise of which these public officials are accountable. To be responsible or accountable is to be answerable for one's actions to another person. One must be able to answer questions like: 'Why did you do this?' 'Why did you fail to do that?' or 'By what authority did you do this?' To ensure that such questions are almost always asked of public officials, the citizens must have the right to criticise and assess the decisions and actions of such officials. Unless this is so, government can never be truly responsible to the citizenry.

Constitutionalism also emphasises conciliation, compromise, and self-restraint: the ability and willingness to make just decisions that take into consideration the interests of the various groups in the society; the ability and willingness to undertake many-sided and often prolonged negotiations while respecting and considering the other person's point of view; and the ability and willingness to employ the means at one's disposal to achieve one's objectives without overstepping the bounds of the law - without recourse to violence.

### **Constitutional Limitation and Constitutional Criticism**

There are two broad ways whereby the belief that a government should not enjoy unlimited powers can be realised in practice. On the one hand, given

that not everything is lawful to a government, one may proceed to lay down in a documentary constitution some of those things which are considered unlawful. It is acknowledged, though, that it is not always possible to spell out precisely what the bounds of lawful authority are. Even so one might specify what could be termed 'outside' limits to the powers of government. This principle was embodied in the American Constitution by its Founding Fathers, as well as in the second and third republican constitutions of Ghana by the constitution-makers. This is the principle of Constitutional Limitation. On the other hand, one may not commit oneself in advance to these 'outside' limits. Instead, one may decide to hold in reserve the right to criticise at any time the decisions or actions of the governmental authorities as being 'unconstitutional' or 'not in accordance with the spirit of the constitution.' This is what may be called the principle of Constitutional Criticism; and it is the underlying principle of British constitutional practice.

Of course, these two broad ways of ensuring limited or responsible government need not exclude each other; in fact, in a country like the United States of America, both operate side by side and reinforce each other. It is common knowledge that some African countries, including Ghana in 1969 and 1979, have tried to follow the American example by deliberately adopting the principle of Constitutional Limitation in the hope that in the course of time, the principle of *Constitutional Criticism* might evolve.

### **Devices of Constitutionalism**

A written constitution is, in modern times, considered one of the major devices or institutional arrangements for ensuring limited or constitutional government. It sets out in more or less clear terms the legal limitations on the powers of government. But, as already indicated, the very fact that a constitution is written does not mean necessarily that it upholds the idea of limited government. On the contrary, it is possible for such a constitution to be the very embodiment of arbitrariness. Therefore, in the modern era, especially, *if* a written constitution is to be regarded as 'constitutional' at least in theory, then it must contain a number of the crucial devices or procedural rules whereby limited government can be ensured in practice. Without these devices, no written constitution can be considered 'constitutional.'

Some of the well known crucial devices are: the separation of powers, the independence of the judiciary and judicial review, an entrenched bill of rights, popular representation and free elections, an entrenched amendment procedure, and the rule of law. For our purposes, the rule of

law is discussed fairly extensively in the following section; while a couple or so of the others are treated briefly in a later section devoted to 'suggestions'.

### **The Rule of Law**

It is indisputable that constitutionalism demands legality which in turn requires laws. The laws must be laid down in advance and published. They direct public officials with regard to what decisions they must make and how to make those decisions, and the citizens with regard to what the legal consequences of their actions will be. The laws once passed are supreme; and all, including the public officials, must obey them. This, in a nutshell, is legality: that is, strict adherence to the letter of the law.

In the popular understanding, the rule of law does not go beyond legality: the two are the same. However, for the constitutionalist, the matter is much more complex than this. It is not accidental that, historically speaking, the rule of law, as indeed the very idea of constitutionalism, has been connected closely with the idea of Natural Law. But so vast and complex is this idea that it cannot be discussed extensively here. For our purposes, it is enough to state, in the most simplified way, a basic tenet of the various classical theories of Natural Law. It is that there are certain principles of human conduct, discoverable by human reason, to which man-made laws must conform if they are to be valid and obeyed.

Many critics have stressed the vagueness of the various versions of Natural Law. For us here, however, the importance of the idea of Natural Law is its underlying assumption that man-made laws are not necessarily just laws; therefore, they cannot be considered supreme once they are passed.

In his formulation of the rule of law, the constitutionalist also proceeds on a similar assumption. For him the rule of law articulates the fundamental belief of constitutionalism which, to repeat, is that not all things are lawful to government. On this view, the rule of law is concerned as much with the form of the law as with its substance. In other words, the rule of law constitutes a limitation both on *how* the authorities may reach a decision and on *what* they may do. Thus the rule of law is used in two senses - specific and general.

In the specific sense, it stipulates certain rules of procedure which must be followed scrupulously by the authorities. Some of these rules are: (i) the authorities should hear both sides of a case; (ii) they should not be judges in their own cause; (iii) they should consider all the relevant factors of an issue; (iv) they should not be biased by fear, or favour, or private interest; (v) not only shall justice be done, but it shall be seen to be done; and (vi) good reasons should be given for decisions reached.

These procedural rules are known as rules of natural justice. Although they have been formulated with legal adjudications primarily in mind instead of any other sort of public dispute, these rules should not be seen to be limited to disputes which only the law courts decide. They are meant for the administrative, security and legislative authorities as well. And they are designed both to safeguard the citizens against abuse of power and to make the authorities open to the influence of reason.

There are other procedural rules. Some provide safeguards concerning arrest and detention pending trial, thereby protecting the individual from arbitrary arrest and imprisonment or detention without trial. Others provide for speedy trial of accused persons and adequate judicial control over police methods of securing confessions from accused persons. Moreover, no person shall be found guilty of an offence which is not specifically laid down in some criminal prohibition established prior to the date when the offence was alleged to have been committed. Thus penal legislation which is retrospective is abominable.

In the general sense, the rule of law has to do with the substance of what the authorities may do. This is because not everything is lawful to them. They are not entitled to make any decisions or laws they like. If, for example, the laws they make are to be effective, then the laws must be considered just by the citizens as a whole. But if they are far removed from the values held in common by the citizens, then they will not command the respect of the citizens.

Accordingly, the rule of law in the general sense is expressed in such broad principles as freedom, justice and humanity which are expected to guide the authorities. These principles must be regarded as guidelines of political and legal arguments - rather than as rigid rules - in terms of which the substance of legislation and decisions by the authorities are criticised and assessed. It is in this sense that the rule of law is considered to be something more than legality, and hence an invaluable device of constitutionalism. Perhaps this may explain why some people have gone so far as to equate the rule of law with constitutionalism.

## **Some Suggestions**

### *The 1979 Constitution*

Like its predecessor, the 1969 constitution, on which it was largely based, the main body of the 1979 constitution is a constitutionalist's constitution. It places reasonable limitations on the powers of government by providing for the rule of law, the independence of the judiciary and judicial review, fundamental human rights (including press freedom), an elaborate

amendment procedure, popular representation, a competitive party system and free and fair elections, as well as the separation of powers of the American variety. Essentially, therefore, the main body of the constitution embraces constitutionalism. Accordingly, it is suggested here that with some modifications, due alterations of detail, and a few additions, the 1979 constitution should be re-enacted.

### *Separation of Powers*

In constitutional thought and practice, considerable importance is attached to the manner in which the broad powers and functions of government - executive, legislative, and judicial - are at once divided and inter-related. This is well executed in the 1979 constitution. Although the chief executive enjoys considerable powers, the constitution provides mechanisms for controlling his use of those powers. The executive presidency should be retained, for reasons given below.

As is well known, the National Commission for Democracy (NCD) and the Provisional National Defence Council (PNDC) have recommended a modification of the executive presidency. It involves, one may conjecture, a division of the executive power between an executive president and a prime minister - French style. The president should appoint and dismiss a prime minister who should command a majority in the legislature.

It has been observed that this modification harbours the seeds of instability because of possible conflicts between the two. Even if both of them belong to the same majority party, they may turn out to be highly strong-willed people who are likely to clash on policies or on the manner of their implementation. Besides, the strong possibility of buck-passing and recriminations in the event of failed policies cannot be ruled out. Dismissals are likely to result in a political stalemate; and, in our circumstances, their consequences can only be imagined. Worse still, suppose the president's own party fails to win a majority of seats in the general election? What then? Will the president appoint as prime minister the leader of another party with a majority of seats and a different programme?

It may be countered that even under the sole executive presidential system, the president's own party may be in the minority in the legislature as happens sometimes in the United States of America. But, then, the issue of appointing a prime minister hardly arises in this case. It is possible, though, that under the proposed presidential-prime-ministerial system, in the event of a stalemate, a sort of accommodation will be worked out. All the same, the possibility of a stalemate must not be self-inflicted.

The NCD-PNDC proposal raises another fundamental issue. To split the executive power poses a grave danger to effective governance, which is not so in the unified executive presidency. The latter most admirably expresses the basic unitary nature of executive power. For, in virtue of this feature, it acts as a single entity with a fairly clear direction. And when things go wrong, the blame will be put where it belongs. To say all this is not to ignore, to repeat, the possibility of the president's own party being in the minority in the legislature.

### *Judicial Independence and Review*

In whatever way the powers of government may be divided or shared, it is now clear from our own experience that the judicial arm of the state must be considerably independent of the legislature and the executive. The independence of the judiciary is a cardinal requirement of constitutional government; and it is demanded by the rule of law in the strict sense, at least.

It is important to state the argument for the independence of the judiciary. First, in discharging the responsibility of interpreting the laws, judges should not be subject to such pressures as would make them change or distort the meanings of the laws to suit the whims and caprices of those affected by them, or of their patrons. Secondly, in finding out what are the 'facts' of a case, judges should not be influenced by considerations of expediency. Thus conceived, the independence of the judiciary is clearly necessary to the maintenance of that predictability and stability of the laws which are at the very heart of constitutionalism and the rule of law.

Fortunately, judicial independence is amply protected in chapter 12 of the 1979 constitution. It should be retained. It is further suggested that the next constitution should empower parliament to establish a special fund for the efficient and smooth operation of the judiciary. Disbursement of monies from the fund should be administered by the chief justice with the support of a competent accounting staff. He should be accountable for such administration, *not* to the president, but to parliament through the Auditor-General. This will give it financial independence.

Judicial review of the constitutionality of acts of government and its officials is another significant device of constitutionalism, especially in a developing country like Ghana. Since the constitution specifies the limits of governmental powers, there must be a body to decide whether or not the public officials have exceeded these limits. And since these are essentially legal, *only* a competent and impartial body like the judiciary can discharge this crucial function of judicial review. It is suggested that no body other than the judiciary should undertake this task.

### *Fundamental Human Rights*

For the constitutionalist, as already mentioned, limited government necessarily entails the citizens' enjoyment of fundamental civil and political rights like the freedom of expression (including press freedom), of association, of the person, of assembly, of conscience, etc etc. Of course, these rights are not absolute; for liberty is not licence. But there is no doubt that without such rights, the government cannot be subjected to effective criticism, and minorities cannot make themselves heard; in short, the citizens as a whole cannot be safe against their rulers - as Ghanaians know all too well.

Accordingly, these fundamental civil and political rights, with reasonable and civilised modifications, are secured through their entrenchment in a Bill of Rights in constitutions by constitution-makers whose sincere goal is limited government. Hence, such rights are not mere declarations of intent but are made justiciable and enforceable by the courts. Any citizen who feels that any of his or her civil and political rights has been infringed, especially by the action of the government and its subordinate authorities, can take the matter to court. This further shows why the judiciary should be independent of the executive and the legislature if it should adjudicate such actions impartially. The 1979 constitution's provisions on this subject should be retained.

On the other hand, the economic and social rights including the rights of women, children, and the handicapped, unlike the civil and political rights, cannot be made justiciable and enforceable by the courts. For instance, how can one take the government to court for being unemployed? But one can do so if one is illegally arrested and detained by the military police, and then only, of course, in a constitutional state. That is why these other rights are provided for in *Directive Principles of State Policy*, as for example in chapter 4 of the 1979 constitution. They serve as a kind of guide to the government in its effort at economic and social development for the benefit of all citizens, especially for the poor and deprived members of the society. However, the constitution-makers may provide for the establishment of national commissions to promote and protect the special interests and rights of women and the handicapped.

### *Commission on Civil and Political Rights*

It is well known that in civilian and military regimes (although particularly so in the latter), a great number of the personnel of the security services, whether or not on the instructions of higher authorities, have trampled on the civil and political rights of a sizeable number of individuals. They have harassed, intimidated, beaten, maimed, arrested and detained without trial

for long periods, or even murdered, many individuals on the slightest suspicion of having allegedly committed crimes against the state, etc etc.

It is true to say that the judiciary, as already indicated, and perhaps the Ombudsman, perform the useful role of protecting the liberty of the individual. But such a role is limited in scope; they can deal only with cases brought before them.

Therefore, it is suggested that it is high time a special national body on fundamental civil and political rights was established. It must be tasked to monitor the activities of the major public organisations - including the security services - which impinge directly on such rights and take the appropriate remedial measures. The constitution-makers must provide for this by mandating parliament to set it up. It must be independent like the judiciary. Parliament may invite experts to help it work out the details including its functions and powers. But irrespective of the establishment of such a national body, parliament should itself form a standing committee on human rights and the security services.

### *A Second Chamber*

Although a bicameral (two-chamber) legislature is not necessarily a device of constitutionalism, our present circumstances demand it. The reasons will be given soon.

In its *Report* of 1949, the Coussey Constitutional Committee recommended, by a majority of 20 votes to 19, the establishment of a second chamber of the legislature. Unfortunately, the colonial government vetoed the recommendation in favour of a unicameral (one-chamber) legislature. Since then the persistent demand for a second chamber by certain individuals and organisations has been rebuffed by subsequent governments aided and abetted by constitutional commissions and constituent assemblies. It is hoped that our constitution-makers will not follow suit.

The NCD, in its *Report* of 1991, remarks that: 'The general opinion was that there should be a unicameral legislature.' Only a few people suggested a bicameral legislature; and some thought it should be 'an alternative to a Council of State.' But, the NCD concluded interestingly, '... it is proper for the merits of such a chamber as an avenue for mature contribution to public affairs to be considered.' Has the NCD broken new grounds? It will be recalled that the Constitutional Commissions of 1968 and 1979 also considered the issue and reported negatively.

The case against a second chamber may be summarised briefly here. A second chamber, it is argued, will not only be financially expensive; it will also duplicate the functions of the first chamber. The legislative power, as



one of the significant powers of government, should rest with the democratically elected representatives of the people. Therefore, such a power should not be shared with what will most likely be an undemocratically elected body. Besides, to try to subject the democratically elected representatives to the judgment of another undemocratic body is likely to end in conflict, thereby creating crises of a political and constitutional nature 'which may be as unnecessary as they surely will be subversive of the good order and progress of the country' as the Constitutional Commission of 1978 put it. Finally, it is an anachronism in this era of the explosion of 'participatory democracy' world-wide.

This is a powerful case; and the serious nature of the issues raised must not be underestimated, much less ignored. But it may be observed that these are not ordinary times. Our expectations of a better life have been raised sky-high; and we are a people in a hurry. There is also the 'military factor' to be reckoned with; we should remember 24 September, 1979. And, to repeat, Ghana has its fair share of people - call them desperadoes if you will - who are fairweather friends of constitutionalism and the rule of law.

In these circumstances, any party which hopefully forms the next government is likely to be tempted to do too many things in a rush in order to satisfy a population, which, as a whole, has for so long suffered severe deprivations. And then things may turn sour ... It is precisely at this point that democratic impatience will need to be tempered with sobriety.

Fortunately, Ghana has the experienced elder statesmen of wisdom, expertise, patience, and dispassion to perform just this task. Besides, it will be most unfortunate to let them go to seed by failing to make a demand on their services when and where these are most needed. A second chamber will play the normal role of advising and restraining, typical of second chambers elsewhere. By reviewing bills passed by the first chamber and its other decisions, the second chamber will serve as a beneficial check on hasty legislation and decisions. This will enable emotional issues to be considered dispassionately and in a calmer atmosphere than will otherwise often be the case in the first chamber. It should delay financial bills for only one month, and other bills for between three and six months, depending on the degree of their controversial nature. It should also have equal power with the first house in such critical areas as the amendment of the constitution, judicial independence, protection of fundamental rights, the vetting and approval of the relevant presidential appointments, and the impeachment of the president, etc.

Membership of the second chamber should be fixed in order to avoid its being too large, and should be drawn from elder statesmen (including

women, of course) of various occupational backgrounds. One-third of it may be reserved for chiefs and their nominees. In addition to the fixed number, all ex-Heads of State and ex-Chief Justices, who retired honourably, should be made life-members. Other members may not serve more than one eight-year term. There should be no government nominees, for obvious reasons.

Its members may be elected through electoral colleges. For the chiefs, the regional houses of chiefs are already in place. The non-chiefs may be elected on a regional, but non-party, basis through special colleges comprising a specified number of the representatives of identifiable bodies in each region. Parity of regional representation in the chamber must be ensured.

It is suggested, then, that the next constitution must provide for a bicameral legislature. The nation should be prepared to absorb the financial cost of the invaluable services a second chamber of eminent elder statesmen will certainly render.

### *Electoral Commission*

Constitutionalism, we have seen, insists on the accountability of the rulers for their actions and policies to the ruled. In modern times, *free* and *fair* elections as well as a competitive party system (rather than a nebulous no-party system) are two of the cardinal devices for making this a reality. These two devices afford the citizenry the opportunity to vote out the incumbent rulers and vote in a new set of rulers - if they so choose. These devices also make possible the peaceful change of rulers without recourse to violence. Indeed, these devices ensure that civil disobedience carried to the point of violence will be unnecessary.

It is suggested that an electoral commission should replace the present NCD to take charge of the electoral process. Its composition, appointment, functions, and status, etc. must be the same as are provided in chapter 7 of the 1979 constitution. To avoid a repetition of the wrangle over funds between the electoral commission and the president during the Limann administration, parliament should be mandated to institute a special fund for the running of the commission. The commission must be accountable for the uses to which it puts the fund to parliament through the Auditor-General. It is suggested also that the commission should be given the additional function of instituting measures for the education of Ghanaians on their rights and duties not only as voters but also as *citizens*. It cannot be overemphasised that its independence must be guaranteed.

## Conclusion

Constitutionalism, it has been seen, is the belief in limited government. Without certain devices, including the rule of law, it cannot be realised in practice. It goes without saying that constitutionalism is difficult to evolve; it cannot be had for the mere asking. No wonder, in most developing countries, it is non-existent. And this, according to some commentators (especially the Marxist socialists), is precisely because constitutionalism is incompatible with rapid economic development which is what these countries must achieve. What they need most are governments armed with unlimited powers. Such a claim would appear to be based on the belief that rapid economic development is necessarily promoted by a government with unlimited powers. This belief is not borne out by our own experiences and those of the erstwhile Eastern European communist countries.

What happens more often than not is that a government with unchecked powers ends up being more incompetent, inefficient and corrupt. The level of the development that takes place is not matched by the huge price the people pay in giving up their rights.

On the other hand, constitutionalism simply affirms that the framework of government must be such that the effort to satisfy material needs will be made in certain ways which do not rule out individual freedom. If some people intensely dislike the necessarily restrictive character of constitutionalism, that is largely because freedom is not a value they cherish. Of course, one may legitimately talk about the *extent* of limitations on government imposed by a particular constitution; but this is different from saying that there should be none at all.

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## CHAPTER 12

# A PESSIMISTIC VIEW OF THE SPLIT EXECUTIVE PROPOSED FOR GHANA'S FOURTH REPUBLIC

*Amos Anyimadu*

### **Introduction**

In this paper, I want to concentrate attention on the major proposals and instructions that have so far been made concerning the nature of the executive in the post-PNDC government in the Fourth Republic for Ghana. I would argue that the proposals and instructions so far made on the executive, particularly with regard to the intended division of powers between a President and a Prime Minister, deserve a very pessimistic look. The views of both the NCD and the PNDC on the executive propose a kind of split form of executive that is unprecedented in the constitutional history of this country. I would try to argue that this is fundamentally wrong-headed and can have very significantly bad effects on the nature of the post-PNDC regime that we are likely to have.

I would try to address three basic concerns. First, I would attempt to highlight the recommendations of the NCD and the PNDC on the executive. Second, I would briefly go through some notions of the executive that we have had in our constitutional history and also address some relevant international experiences. Finally, I shall seek to make my particular argument that we have to be very pessimistic about a split executive for Ghana.

### **The NCD-PNDC Recommendations on the Executive**

The relevant text in the NCD report is quite precise and can be quoted at length. It is stated in Chapter Five of the report, which raises 'main issues for Consideration by the Consultative Assembly' that:

Opinion was overwhelmingly in favour of an Executive Presidency... There were also views that government machinery headed by a Prime Minister be instituted to be responsible directly to the Executive President who should appoint and dismiss the Prime Minister and his Cabinet. The Prime Minister also receives approbation from the National Assembly or its committee delegated to do so.

In its White Paper on the NCD report, the PNDC promises that:

The constitutional proposals will make provision for an Executive President to be elected on the basis of universal adult suffrage. Provision will also be made for a Prime Minister who must command a majority in the National Assembly.

Accordingly, in the decree establishing the Committee of Experts the PNDC instructed the Committee to provide for an Executive President as well as a Prime Minister.

From the above, it appears that the critical decisions on the executive were made by the NCD, based on the submissions made to it. However, these points, especially the latter, are by no means clear-cut. For instance, what exactly is the relationship between the 'overwhelming' opinion the NCD reports in favour of an Executive Presidency and the views 'also' expressed in favour of a Prime Minister as the head of 'government machinery'? Unfortunately the NCD report is of very little use in answering such a query mainly because the Commission surprisingly made 'a deliberate attempt not to numerically weight the views and ideas expressed at the regional seminars.' From a close following of the regional seminars, I, myself, do not recall any significant call for a sharing of executive power between an Executive President and a Prime Minister. Indeed there was overwhelming support for an Executive Presidency. But these were calls for a traditional, that is American or Ghana Third Republic, type Executive Presidency. Thus, in an 'Executive Summary of Report on Regional Seminars,' which is an appendix to the NCD report, all that is said on the aspects of the executive that is of interest is that there was a consensus on the need to have an Executive Presidency; there is no mention of a Prime Minister. It is therefore reasonable to suggest that on this issue, the NCD was, to a significant extent, using its own discretion. This is not surprising. As Kwesi Jonah points out in his paper (in this volume), whenever such an official committee is established, it has very significant discretion in the scheme of things. However, when such discretion is exercised on significant issues, it is fair to expect that it would be clearly stated.

The PNDC's White Paper on the NCD's report seems to make significant modifications to the NCD's suggestions. The different ways in which the relationship between the Prime Minister and the National Assembly is described in the NCD report and in the PNDC White Paper deserves particular attention. The NCD recommends that the Prime Minister should receive 'approbation from the National Assembly or its committee delegated to do so', whilst in its White Paper, the PNDC suggests that the Prime Minister 'must command a majority in the National

Assembly.' It appears to me that the PNDC assumes that the Prime Minister would be part of the National Assembly whilst the NCD leaves this in the air. Perhaps it even implies that the Prime Minister would not be part of the National Assembly. Luckily, even within the confines of the decree setting it up, the Committee of Experts would have to pronounce on this.

The proposals and instructions surveyed above clearly point towards a split or bi-cephalous executive. In most constitutions, the executive power is exercised by more than one person. In this regard, the American constitution, (and those it has strongly influenced), is a significant exception in that executive power is expressly vested in the President who is not even required to share it with a Cabinet. There are peculiar reasons explaining this. Normally, there is a Head of State, who may be a hereditary monarch or an elected citizen, and a Head of Government. The executive is split or bi-cephalous when the Head of State is more than a figurehead. The latter would of course be a relative judgement. However, if the President in Ghana's Fourth Republic is going to be elected by universal suffrage, if he is going to have real powers to ordinarily appoint and dismiss the Prime Minister who is in charge of the government machinery, then the President is going to be much more than a figurehead in any reckoning and our executive would therefore be split.

### **Ghana's Experience**

We have had instances of the split executive in our history. In Prof. Manu's paper, he dilated on the immediate pre-independence period when there was a division of executive power between a Leader of Government Business (later Prime Minister) and the Governor. As Prof. Manu explained, this division, or 'dyarchy,' was a convenient, temporary arrangement which somewhat reflected the contemporary division of power between the colonial government and the nationalists. In our post-independence period, the most important period when a split executive was discussed for this country was in 1968/1969 when the Akuffo-Addo Constitutional Commission recommended an unambiguously split executive. Although some basic features of a Westminster government were recognisable from its recommendations, the Head of State, the President, was given unusually significant powers of appointment. For example, the President was to have significant personal discretion in appointing the Governor of the Bank of Ghana, the Attorney-General and some other crucial public officials. The proposed splitting of the executive was very controversial, and so failed to pass at the Constituent Assembly stage. In the end, the 1969 Constitution of Ghana's

Second Republic was indeed a clear Westminster/Cabinet Government constitution, that is, without a split executive. The governmental order established by the creation of the Supreme Military Council in 1975 also created some kind of split executive. Similarly to the extent that the PNDC published decrees proclaiming itself, its governmental arrangements exhibit some features of a split executive.

### **The French Example**

In Comparative Government, the most important example of a split executive is the present French Constitution of the fifth Republic which was passed in 1958. Thus Dr. S.K.B. Asante, the Chairman of the Committee of Experts, has cited this constitution in connection with the instruction to his committee to provide for a split executive. As is well known, the French Fifth Republican Constitution was quite tailor-made for General Charles de Gaulle. In fact, the split executive in France is very controversial. The Communist Party of France, which has been very strong, never really accepted it. The Socialist Party of President Mitterrand very grudgingly accepted it. I suspect that quite a significant section of informed opinion in France is even today very sceptical about the split executive. But it appears to have remained part of the republican constitution because General de Gaulle intensely disliked the rough and tumble of politics. He had no parliamentary experience and he did not like the instability of the French fourth Republic which was mainly the result of political manoeuvres in parliament. Thus, for the Constitution of the fifth Republic, the post of President, which was crafted with General De Gaulle firmly in mind, ensures that the occupant could 'arbitrate' above normal politics.

The emerging governmental arrangements in now liberalising Eastern and Central Europe also confirm that the main attraction of a split executive is the opportunity that it gives a powerful Executive President to appear to be above politics. In the USSR, the difficulties that have emerged between President Gorbachev and the various Prime Ministers he has appointed appear to have been caused mainly by the former's desire to appear as a statesman, rather than a politician. In Poland, which has the first written constitution in Europe, there is now an interesting row on the merits of a split executive between Constitutional Committees established by the two houses of parliament. The Upper House, which with President Walesa, favours a French-style presidency (that is a split executive), argues 'that this is the most stable solution for the difficult economic and social conflicts facing Poland. Such a system would reconcile democratic government with



President Walesa's charismatic style of leadership and would provide a stronger national image abroad.'

### **The Cost of the Split Executive**

I suspect that elements of the argument that have been raised in support of a split executive in Poland would appear, most probably on their own force, in Ghana soon. However, we have to reckon, at least, with two general costs of a split executive. First, a split executive generally makes the ownership of public policies unclear. Second, a split executive is likely to weaken the legislature.

A government has to be seen to own its policies: it has to be seen to be responsible for the public policies it devises and/or implements. No matter how clearly the distribution of powers is between the President and a Prime Minister, it is likely that differences between them on public policy would publicly surface. If these develop to a head, it can result in the nasty showdowns that have been recorded in history between Presidents and Prime Ministers. Perhaps even more sinister, the conflict can simmer for a long time, not show itself well enough for resolution processes to be activated, but can have the terrible effect of making government tardy and messy.

Our political history clearly shows that one of the biggest hurdles to responsible government is the absence of a strong legislature. Our legislatures have often been too weak a link in our governmental apparatus. It would therefore appear clear that a major aim of any attempt at constitutional-engineering in this country must be to ensure a strong legislature. I am convinced that a split executive in this country would result in a very weak legislature. In our Third Republic, the separation of the legislature from the executive in an Executive Presidential system resulted in a weak legislature.

As noted above, the exact relationship envisaged between the executive and the legislature in the proposed split executive is unclear. It is, however, clear that the legislature could become even worse than it would under a proper Executive Presidential system. It would be recalled that the ambiguity is about whether the Prime Minister would be part of the legislature. Now, if it turns out that the Prime Minister and his government are not made part of the legislature, the situation would be relatively similar to what prevails under an Executive Presidency, except that in trying to exact executive accountability, the legislature would suffer in its relationship with the Executive President himself, who does need the legislature's approbation or majority support. The legislature's situation

would only slightly improve if it turns out that the Prime Minister and his government would be made part of it. The subordination of the Prime Minister to the Executive President, and the association of the Prime Minister with the legislature would rub strongly against the latter. Controversial executive issues would (as the division of executive powers between the President and Prime Minister are also bound to be murky) be pushed to the Presidential sector of the executive to escape the legislature's serious scrutiny.

### Conclusion

In sum, I would say that the splitting of the executive is an unnecessary encumbrance on Ghana's Fourth Republic. We do not need a president who would have to pretend to be above politics but an *executive*. We do not need a president who may have to be prancing around, playing God, perhaps even stoking fires whilst a poor Prime Minister carries the burden of government with insufficient powers but powerful enough to smoulder a precious but structurally weak legislature.

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## CHAPTER 13

# SAFEGUARDING HUMAN RIGHTS IN GHANA'S FOURTH REPUBLIC

*Kumi Ansah-Koi*

### **Introduction**

In this era of worldwide and activist pursuit of people's rights, and especially given the ideological and unabashedly partisan often propagandist, thrust of such pursuits, it will be helpful to define the term 'human rights.' Human rights may be defined as 'universal moral rights, something which all men, everywhere, at all times ought to have, and something of which no one may be deprived without grave affront to justice. Something which is owing to every human being simply because he is human.' In Osita C. Eze's formulation, 'human rights represent demands or claims which individuals or groups make on society, some of which are protected by law and have become part of *ex lata* while others remain aspirations to be attained in the future.' Human rights inhere in human beings simply by virtue of their humanity alone. They are neither privileges nor contingent upon a prior performance of any duties. The most widely recognised statement of human rights remains the United Nations' Universal Declaration of Human Rights which was adopted and proclaimed by the General Assembly of the United Nations on December 10, 1948. That Declaration, together with the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, constitute the so-called International Bill of Rights. Together with their Optional Protocols, they define the scope and content of contemporary conception of human rights.

The present paper focuses on proposals and other measures which, when put in place, would ensure the uninterrupted promotion and safeguarding of human rights in Ghana.

### **Historical Review**

The struggle for human rights and allegations of their violation are perennial issues in Ghanaian politics. Concrete historical instances can be

cited to bear up the claim. The pre-colonial social formations in what constitutes the modern state of Ghana had definite but varying conceptions of human dignity, human worth, and human rights.

For example, the right to self-determination and the quest for civil and political rights fuelled the nationalist agitation against British colonial rule. As the nationalist paper of the Convention People's Party (CPP), *The Accra Evening News*, put it variously on its masthead, 'we have the right to live as men'; 'we prefer self-government with danger to servitude in tranquility'; and 'we have the right to govern ourselves.' Such slogans could not have been motivated by economic and material interests alone. Surely the struggle for independence from colonial rule was a quest for human rights. Similarly, in as much as the intense rivalry which erupted within the ranks of nationalists during 1951-1959 concerned the alleged incipient dictatorship of the CPP government, that rivalry was about the need to safeguard the basic human rights.

Ghana's Independence Constitution, based largely on the Westminster model of government, went to great lengths to lay out explicit constitutional provisions which were meant to ensure civil and political liberties. In the best traditions of the departing colonial authority, Ghana's Independence Constitution provided for 'limited government,' 'rule of law,' and 'judicial independence' with a view to safeguarding civil and political liberties and providing the institutional framework for the promotion of human rights in general. It anticipated the now increasingly accepted notion of 'group rights' - a facet of human rights through its provisions on the Regional Assemblies. Those provisions afforded creative constitutional mechanisms to resolve any political impasse involving national versus group rights.

The 1960 Republican Constitution also had provisions geared at promoting and safeguarding human rights. The provisions included a 'Bill of Rights which was later declared to be non-justiciable.

The military-cum-police juntas which have ruled the country since 1966 also espoused, at least verbally, human rights and related issues. The National Liberation Council (NLC) presented itself as marking the termination of an epoch of human rights abuses and infringements of civil liberties, and further as being single-mindedly committed to the restoration of rights and the institution of the rule of law. And so did the Supreme Military Council (SMC), the Armed Forces Revolutionary Council (AFRC) and the Provisional National Defence Council (PNDC). When Nkrumah's regime was ousted, there was the parading of a caged Boye Moses, an Nkrumah assistant, who had come from exile in Conakry ostensibly to subvert the regime, through some of the principal streets of Accra.

An outstanding feature of the Second Republican Constitution was its explicit concern with the promotion of human rights and its meticulously designed recommendations directed against tyranny and arbitrary rule. As was the case with succeeding regimes, the pursuit of rights in particular and human rights issues in general were at the fore of politics in Ghana during the Second Republic. The constitutional and political crises over the so-called Apollo 568 episode, (especially the related Salla case), are illustrative of that fact.

On the fall of the Second Republic, human rights issues remained at the fore-front of national politics in Ghana. The 1972 coupists presented the economic choices and policies of the supplanted Busia regime as asphyxiac, as being intolerably suppressive of the economic rights and aspirations of Ghanaians in general; and as offering more than an adequate justification for their forceful and unconstitutional seizure of power. In addition, that regime's Charter of National Redemption made claims and assertions most of which bordered on rights.

The succeeding short-lived AFRC regime, in a similar vein, kept the tradition alive. Supporters of that regime stressed economic rights, rather than the purely civil or political. The rights and interests of socially disadvantaged groups and the mass of the populace were emphasised at the expense of legality and relatively privileged elite groups.

The Third Republic was similarly marked by contentions and struggles relating to rights. Thus it also kept the tradition alive. Following the example of India and Ireland, for instance, the Third Republican Constitution had 'Directive Principles of State Policy' which sought to let the state mandatorily pursue the promotion of economic and social rights.

Perhaps the most significant of these regimes on the question of human rights is the incumbent PNDC. In this regard, we may point at the establishment of such institutions as the National Commission on Children, the 31st December Women's Movement, the Committees for the Defence of the Revolution and the Public Tribunals. These bodies each either has to promote one aspect or the other of fundamental human rights as its basic concern, or advance the interests and rights of socially disadvantaged and unprivileged groups. The government has also enacted the Marriage Registration Law, the Family Head and Accountability Law, and the Intestate Succession Law which advance the rights of relatively disadvantaged social segments.

Allegations of human rights violations have also been a perennial problem in Ghanaian politics. The July 1958 Preventive Detention Act and the numerous arrests and detentions that followed it earned the Nkrumah regime considerable notoriety as far as its human rights record went. That

regime was also accused of undue and improper interference with the judiciary, harassment of political opponents, and the suppression of dissent. The NLC also passed a ten-year disqualification law against a particular section of the population for belonging to the CPP. The NRC/SMC epoch was also marred by numerous violations of civil, political, and other rights. Some of the violations were so severe that they drew the attention of such human rights groups as Amnesty International and Africa Watch. The AFRC and the successor Limann administration of the Third Republic were no exception.

In contrast with achievements, the incumbent PNDC regime has been also cited by some as offering the worst record of human rights violations thus far. Specific instances include reports of physical abuse and mistreatment of suspects, offenders, dissenters, detainees; interference with the judiciary, suppression of political dissent, and impairment of the freedom of conscience and of belief. As Ghana stands on the threshold of yet another attempt at constitutional rule, there is an urgent need to consider appropriate constitutional arrangements which would safeguard human rights in the country.

### **Safeguarding Human Rights in Ghana's Fourth Republic**

Like liberty, which really constitutes only an aspect (though a significant aspect of the notion of rights), human rights have to be fought for; and when won, steadfastly guarded and maintained with eternal vigilance. Besides, human right prescriptions need be situated historically and socially; for, notwithstanding their universal applicability and dimensions, institutional perspectives and socio-economic variables considerably mediate their realisation.

In the present socio-economic and historical circumstances of Ghana, I wish to offer the following proposals. I consider them to be requisite if human rights goals are not to remain elusive.

### **Constitutional and Institutional Proposals**

The Fourth Republican constitution should carry explicit provisions safeguarding human rights. These provisions should form part of the entrenched clauses of the constitution. In particular, the so-called first generation of rights encompassing civil and political rights and meant to ensure liberty against tyrannical and arbitrary rule, should be enshrined in the constitution. The time-tested procedures and institutions for realising human rights - such as the independence of the judiciary, due process of

law, judicial review of legislative and executive acts, a free press and an independent ombudsman - should also be entrenched in the constitution; and parliament should have no powers to enact retrospective legislation.

The provisions on the Directive Principles of State Policy contained in the 1979 Constitution should be inserted in the next constitution to ensure that due regard is given to economic and social rights. Besides, the executive organ of state must be constitutionally required to present annual reports to parliament on specific measures it has taken to promote human rights.

It is conceded that most of these institutional and constitutional proposals have been tried before in Ghana. However, the appalling record of human rights in the country suggests that they do not constitute sufficient conditions for the promotion of human rights. It is in the light of this that the following additional proposals are made.

### **Statutory Requirements**

All public officials should be statutorily required to take an oath to promote human rights and to refrain from subverting the constitution. All public officials should take this oath within a month of the coming into force of the constitution. All subsequent appointees into public service should be required to take it as a condition of their appointment.

Parliament should be debarred from passing legislation which would make newspaper registration or licensing mandatory; or which would empower government to ban political organisations. Existing laws of libel, slander and sedition should constitute adequate checks against irresponsible conduct in the public domain.

### **Public Education**

It is erroneously assumed that only governments or agents of the state are capable of human rights violations. Human rights violations could characterise private inter-personal or inter-group relations. Furthermore, it is often assumed that individuals become almost not only intuitively aware of human rights but also of their violations.

Part of the problem of human rights awareness arises from the controversy surrounding the interpretation of what constitute human rights - e.g. 'the right to life.' While some contend that it is tantamount to disapproval of capital punishment in all its forms and under whatever circumstance, others do not regard judicial execution as a breach of this right. The point is that the meaning of rights is rarely cut and dry.

Consequently there is an urgent need for continuing public education regarding human rights. This need is particularly strong in countries like Ghana where aspects of popular culture and traditional beliefs and assumptions occasionally clash with aspects of contemporary notions of rights. To illustrate: popular culture finds nothing wrong with a thief being severely abused physically if caught in the act. Traditionally, women are not regarded as the equals of men. Given such realities, which are further complicated by the staggering rate of illiteracy in the country and the complexity of modern government, there is the need for constant civic education to enhance human rights awareness.

Given the political prejudices, acrimony and suspicions which surrounded the activities of the Centre for Civic Education, it is proposed that the function of public education should be assigned to the University of Ghana's Institute of Adult Education. This Institute already has a net work of offices spread through the length and breadth of the country. To ensure that the Institute is not starved of financial and logistical support for undertaking this task, a fixed percentage of the annual defence budget (five per centum, it is proposed) should be statutorily set aside for the Institute. Further to this, human rights education should be incorporated in the curricula and syllabi of all educational institutions in the country.

### **External Relations**

Human rights issues cannot, and should not be confined to the domestic relations of the state. As the British Broadcasting Corporation (BBC) daily makes evident, and as the issue of sanctions against apartheid South Africa and Iraq illustrates, the state's external relations offer a powerful field for the pursuit of human rights objectives. The potential of that arena should not be lost on Ghana as it seeks to promote human rights. The country can take the following measures.

There should be a constitutional provision mandating parliament to investigate and publicly make known its findings on any adverse report, internal or external, regarding the human rights situation in the country. In this regard, it should be the statutory responsibility of Ghana's missions abroad (and the patriotic duty of all Ghanaians) to report on the content and nature of such reports. Reports of such human rights monitoring groups like Amnesty International, Africa Watch and PEN as well as the USA Congressional and State Department Reports on human rights, should be given serious attention and investigated.

Finally, the promotion of human rights should be part of Ghana's foreign policy objectives; and the state should take a principled stand on



human rights matters at the UN and other international fora. In fact the country's government should be constitutionally obliged to actively work for human rights issues and considerations. In that regard, Ghana should not enter into bilateral economic, cultural, diplomatic or political alliance with states guilty of gross human rights violations.

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