

*Studies in Colonial Legislatures*  
*Edited by Margery Perham*

**The  
Gold Coast  
Legislative  
Council**

*by Martin Wight*

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# THE GOLD COAST LEGISLATIVE COUNCIL

by MARTIN WIGHT

This book is the first study ever made of a colonial Legislative Council in action, written primarily from the Council's official *Hansard*, and containing copious and vivid quotations from debates and speeches. A Legislative Council, composed partly of British officials and partly of the inhabitants of the colony, is a parliament in embryo: besides being the centre of the local administration, it is the great training-ground for the colonial people in parliamentary democracy.

This is a political as well as a constitutional study. The Legislative Council is set in its place against the background of the life and society of what is perhaps the most progressive of the British dependencies in Africa. The debates of the Council illustrate the clash of personalities, interests and principles in a colony which is striding towards self-government. We see a primitive society under the impact of economic development and administrative unification; tribal government evolving into parliamentary government; the interplay of the chiefs representing the rural masses, the rising professional and educated class in the towns, and the British officials who still control the administrative machine. It is a scene of vigorous promise and expanding life that has similarities to eighteenth-century England.

This is the second volume of a series of Studies in Colonial Legislatures, edited by Miss Margery Perham under the auspices of Nuffield College. The first volume, an introductory study by Mr. Wight of the history and constitution of the Legislative Council in the British Empire generally, has already been acclaimed as an outstanding contribution to the literature of colonial history and administration. The present book stands by itself, but the reader who wants a wider view of the Legislative Council in British colonial government will refer to the earlier volume.

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STUDIES IN COLONIAL LEGISLATURES  
EDITED BY MARGERY PERHAM

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VOLUME, II  
THE GOLD COAST  
LEGISLATIVE COUNCIL

by  
MARTIN WIGHT

‘The result of my observations is, that in every colony where the population is homogeneous . . . a Legislative Assembly is an inestimable benefit; that it executes its proper functions with a degree of ability for which it rarely obtains sufficient credit; that it either prevents discontents or gives them a safe direction; that it creates most useful exercise of the understanding; affords much innocent pleasure; and creates a subject of permanent interests in societies which would otherwise stagnate in a listless unconcern about all questions of a public character.’

JAMES STEPHEN,  
19th December 1831.



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LEGISLATIVE COUNCIL

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MARTIN WIGHT

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Nuffield College was founded to promote research into modern political and economic questions. As a College it has no opinions and the responsibility for those expressed in this book rests entirely upon the individual writers.

## EDITOR'S PREFACE

This volume is the second of a series. The first volume, entitled *The Development of the Legislative Council, 1606-1945*, is a general introduction to the subject and gives a brief account of the long and somewhat complex historical evolution of the council and also a general survey of the forms it takes in the dependencies to-day. The second book will therefore gain from being read in succession to the first. Both studies have been written by Mr. Martin Wight. He will supply his own preface to this volume but it rests with the editor to explain how this series came to be written; what are its purpose and scope and why the Gold Coast was chosen for the initial study. The first two of these questions were treated at some length in my introduction to Volume I and they will therefore be dealt with very briefly here.

The series was planned in 1941 as a contribution to the constitutional study of the British colonial empire, a rich subject which has been rather surprisingly neglected by its constitutionally-minded rulers. It was already clear in 1941 that the war was likely to force the pace of colonial political developments and so give this subject an immediately practical as well as an academic interest. A generous grant from the Trustees of the Higher Studies Fund of the University of Oxford provided the means for this and for other projects of colonial research. The grant was administered by Nuffield College. The task was one that was especially appropriate to the Founder's purpose which was the study of contemporary political and economic questions through the co-operation between those with academic and those with practical knowledge. Very considerable and most unselfish help was, indeed, given to the research staff by those with experience of the various aspects of colonial affairs studied under this scheme, and to Mr. Wight's acknowledgements I must add, as Editor, my warmest thanks to those who helped in this way.

The College appointed a Colonial Research Committee to supervise the project. War-time conditions made continuity of membership difficult and, in the following list of members, dates have been added to give the periods of those whose other duties made continuous membership impossible.

The Warden (Sir Henry Clay); Dr. A. J. Brown (1944-5); Professor G. D. H. Cole (1941-4); Professor Sir Reginald Coupland; Professor A. G. B. Fisher (1942-3); Professor C. D. Forde (1944-5); Lord Hailey (1941-2); The Master of Balliol (Lord Lindsay) (1941-4); Professor D. H. Macgregor (1942-5); Miss Margery Perham; Sir Alan Pim.

The College commissioned me to draw up plans and direct the re-

search under the guidance of this Committee; a small staff of research workers was appointed and the work began in 1941.

It is not difficult to justify the choice of subject for the constitutional series. The legislative council, as the first volume of this series shows, has for long been the growing point of constitutional development in the colonies. Other analogies will illustrate its other functions: it is the central communicating link between colonial opinion and imperial government: it is the chief—though not the only—political school for the colonial peoples: under whatever degree of restriction it may work it is the source of legislation: in colonial eyes it is the future national parliament. While this institution provides the central theme of our studies, it must be related to the other branches of the government and to the general background of the country. Thus an understanding of the nature and working of the legislative council is likely to illuminate the whole political character and status of a colony. Further, since the contributors to this series have agreed to illustrate freely from the records of the debates, the reader will be shown not only an institution but the men who work it. On the official side the leadership and political art of the imperial agents will be under scrutiny; the unofficials on their side will reveal their grievances, loyalties and ambitions, their groupings, their political competence and their oratorical skill in a foreign language.

There is certainly a need for more intimate knowledge of the political structure of the British colonies. To-day the very word Colony has become a focus of controversy and even a term of abuse and this, with the complexity and variety of the British Colonial Empire, has led to the crudest generalizations being made, quoted and misquoted until the popular conception of a colony comes to bear little relation to the reality. It may therefore be useful to subject what must be the most controversial institution of a colony to a detailed and objective scrutiny of its day-to-day proceedings and development.

The choice of the Gold Coast for the first study must be justified. There appeared to be good reason to begin the series with a dependency in Africa, since that continent represents in numbers and in political education much the largest imperial task which Britain has still to perform. Among African dependencies the Gold Coast was chosen because it has not only the longest constitutional history, except for its smaller neighbour, Sierra Leone, but also because it seemed to be the most politically advanced. The Gold Coast in 1946 has more than justified the expectations that were entertained when it was selected for study in 1941. Even while Mr. Wight has been writing this book, the territory has made a most impressive constitutional advance. Upon the very day upon which this introduction is being written, the newspapers print an account of the opening of a new legislative council. *The Times*, under the heading, 'Historic Council Opened', reports:

## EDITOR'S PREFACE

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'In the presence of many African chiefs in their bright robes Sir Alan Burns, Governor of the Gold Coast, to-day opened the colony's new Legislative Council, which has an African majority for the first time in the history of colonial Africa.'

The Governor, after reading a message from the King, pronounced the new constitution to be 'a landmark in the history of British tropical Africa'. It is indeed a most interesting commentary upon both African competence and British policy that among the eleven British dependencies of the continent, this purely African territory should be the first to achieve representative government through an unofficial and an African majority. How this has been possible, and what are the political conditions and prospects of the peoples of the Gold Coast, are questions to which it is hoped this book will provide the answers.

Nuffield College,  
Oxford.  
24th July 1946.

MARGERY PERHAM

## AUTHOR'S PREFACE

**T**he present volume is a study of the Gold Coast legislature, its working and its place in the political life of the colony, based on the printed sources available in England. It was written in close connection with its predecessor, *The Development of the Legislative Council, 1606-1945*. The reader must be referred to that book for information on the colonial legislative council in general, and especially on the nature and contents of the letters patent, royal instructions and orders in council which are the basic instruments of a colonial constitution. The present study takes this introduction for granted: its scope is the detailed field of legislative practice which is regulated by the Standing Orders and Rules of the Legislative Council. But though it is primarily a constitutional study, the attempt has been made to put the Council in its political and social setting, and to make a contribution, however slender, to the political history of the Gold Coast.

The book began as a study of the Legislative Council between 1933 and 1941, that is to say during the governorships of Sir Shenton Thomas and Sir Arnold Hodson. The latter date marked a convenient epoch in the subject; it was also the point beyond which materials were not available in England at the time when the book was begun. But in 1941 the Gold Coast was standing on the verge of great political changes, and the announcement of the new constitution in 1944 offered a more proper terminus for a constitutional study. The book went to press in 1945, and was in proof when the new constitution came into force on 29 March 1946, and when the new Legislative Council met for the first time on the following 23 July. It was impossible at this stage to make a complete revision of the text, and the old constitution is referred to throughout in the present tense. Nor was it possible to make a detailed analysis of the new instrument. But where possible references have been added in footnotes to the new constitution, and both the new and the old Legislative Orders in Council are printed in appendices. The book is therefore, in a wide sense, an examination of the history and practice of Legislative Council under the constitution of 1925, covering the twenty years up to 1945, and might be considered as an introduction to the constitution of 1946. But it has a core in a more detailed investigation of the years 1933 to 1941, and it is to these, as the text makes plain, that some of the generalizations and analyses refer.

The main source is the printed debates of the Council, a series which began apparently in 1916. Since 1933 they have been printed with the date at the top of every right-hand page, so that references are easily made by quoting simply date and page; this has been done throughout the book, even when referring to debates earlier than 1933. I have tried

to reproduce quotations from debates with typographical exactitude. Perhaps there has been an error on the side of copiousness in quoting; but it is hoped that most of the examples chosen are not without an intrinsic interest; and it is in general true that the members of the Council, official and unofficial alike, are their own best interpreters.

The other primary sources, publications of the Gold Coast government and of the imperial government, need not be specified closely; full references have been given in footnotes, and the Gold Coast press is discussed in the text. The secondary authorities are not numerous, though the Gold Coast, by reason of its longer history of Westernization, is probably less neglected in this respect than most other British colonies. Everyone must start from Claridge, but those fascinating volumes are deficient on the constitutional side. Crooks' *Records relating to the Gold Coast Settlements* and Sir William Brandford Griffith's *Notes on the History of the British Courts* are of great value. But a constitutional and political history of the Gold Coast is badly needed, to carry on the story from where Dr. E. C. Martin's *The British West African Settlements, 1750-1821* breaks off. It is probable that the field of legal and constitutional studies, which was covered for an earlier generation by the respectable works of Sarbah and Casely Hayford, might now be profitably surveyed afresh in the light of wider knowledge, and of a longer perspective of development under British rule. One book may be mentioned, which is of value and interest for the recent political history of the Gold Coast, Mr. Magnus Sampson's *Gold Coast Men of Affairs*. This little work stands out, not only for its intelligent conception, but also by its isolation; and it suggests forcibly that a biographical dictionary is an elementary requirement in the development of colonial political studies. In the present book I have tried wherever possible to give exact biographical data; but in the absence of a *West African Who's Who* it has been possible neither to treat all African personalities in this way, nor to have entire confidence in the accuracy of one's information from other sources. I offer this in apology for any inadvertent misstatement of fact.

The war-time circumstances in which this study was undertaken prevented the writer from visiting the Gold Coast himself. It could not have been written but for the generous and sustained co-operation of members of the Colonial Service and the Colonial Office, who showed every kindness in reading the draft in whole or in part, and in discussing general matters of fact and interpretation. It is the greatest pleasure to express my gratitude for this, and a matter of regret that the acknowledgement cannot be more particularized. It will be unnecessary to add, I hope, that this assistance has not in any way given official authority to the book. In the course of several years' study of the materials I slowly formed my own views about the constitutional problems of the Gold Coast, and I have found that rightly or wrongly I have

adhered to most of them. Nobody has any responsibility for my conclusions and errors except myself.

If a general conclusion is asked for, it may be given in the words of Sir James Stephen on an earlier page, for I believe that though the forms and content of British colonial government have changed in the past four generations, the spirit has remained that of the greatest of the rulers of the Colonial Office.<sup>1</sup>

Other acknowledgments must be made. To Miss Perham is due the conception both of this book and of the series to which it belongs, and I have had the benefit at every stage of her editorial guidance. I have a great obligation to Dr. Meyer Fortes, who subjected the first draft to the astringent and vivifying criticism of a sociologist, and purged it of many mistakes and over-simplifications. I learnt from him, I hope, a little of the diffidence and scepticism about one's own conclusions which are needed in writing of African politics and society. Dr. Korsah, on two recent visits to England, was kind enough to read parts of the book and to discuss them with me, to my very great advantage. My colleague, Mrs. Wheare, has tried to guide me through the intricacies of legislative and financial procedure, and has saved me from many pitfalls by her mordant and searching criticisms. I am indebted to the Controller of His Majesty's Stationery Office for permission to print the two Legislative Council Orders in Council. It is a pleasure in conclusion to thank the library staffs of Rhodes House and the Colonial Office for their courtesy, tolerance and helpfulness.

MARTIN WIGHT

New York,  
21st October 1946.

<sup>1</sup> The quotation facing the title page is from a memorandum on constitutional reform in Newfoundland, printed in A. H. McClintock, *The Establishment of Constitutional Government in Newfoundland, 1783-1832*, pp. 207 ff.



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# CHAPTER I

## INTRODUCTORY

### I. GEOGRAPHICAL AND POLITICAL DIVISIONS

**T**he Gold Coast is the second of the British West African dependencies in extent and population. Its area is 91,843 square miles, a little bigger than that of Great Britain, but just under a quarter of that of Nigeria. Its estimated population is slightly below four millions,<sup>1</sup> while of that Nigeria is twenty millions.<sup>2</sup> It can be divided geographically into three areas.<sup>3</sup> 1. Along the coast from Sekondi eastwards is the most thickly populated part of the country, a strip of grassy plain and scrub, deepening from west to east and reaching a depth of fifty or sixty miles between the Volta River and the eastern frontier.<sup>4</sup> 2. To the north-west of this lies an area of high forest, which may be considered as a great wedge with its base on the western frontier from the sea up to Sampa in Ashanti, and its tip at Akuse on the Volta where the river turns to flow south-eastwards for the last sixty or seventy miles of its course. The line from Sampa through Nkoranza to Akuse gives roughly the north-eastern boundary of the wedge; the south-eastern boundary is the coastal plain from Akuse to Sekondi.<sup>5</sup> This forest region is the economic heart of the Gold Coast. It has the mineral deposits; of extraordinary

<sup>1</sup> 3,786,659 in 1938, with 3,078 resident non-Africans; *C.O. List*, 1940, p. 327. For further details see *1931 Census*.

<sup>2</sup> As Nigeria exceeds the other three British West African dependencies put together, so the Gold Coast exceeds Sierra Leone and the Gambia put together: Sierra Leone with area of 27,925 square miles and population of 1,770,000 and the Gambia with area of 4,068 square miles and population of 200,000.

<sup>3</sup> See *The Gold Coast Handbook*, 1937 (London and Accra), p. 3, and the map at the end of this book.

<sup>4</sup> This area covers the coastal part of the Central Province, and all the southern third of the Eastern Province, of the Gold Coast Colony.

<sup>5</sup> The forest area covers the western two-thirds of the Gold Coast Colony (all the Western Province, most of the Central Province, and the western part of the Eastern Province), and the south-western half of Ashanti.

fertility, it contains the chief farming districts; above all it is the centre of the cocoa industry.<sup>1</sup> The forest is steadily being denuded by natural and human agencies, and its preservation is an urgent problem.<sup>2</sup> 3. The remaining northern two-thirds of the whole territory is the savanna of the Southern Sudan, covered for the most part with low forest and scrub, but open country compared with the high forest to the south.<sup>3</sup>

Politically and constitutionally the country is divided into four.

1. The southern part is the Gold Coast Colony, a 'settled colony' governed under the British Settlements Act.<sup>4</sup> Here was the original seat of British trade and power. Hitherto it has been administratively subdivided into the Eastern Province, the Central Province, and the Western Province.<sup>5</sup>
2. Ashanti, roughly bounded by the Pra River on the south and the Black Volta on the north<sup>6</sup> is a conquered colony, with a different legislature from the Gold Coast Colony.
3. The Northern Territories of the Gold Coast, between the Black Volta and the French border in the north<sup>7</sup> are a protectorate. The Gold Coast comprises properly these three territories<sup>8</sup> but in ordinary usage the term includes also:
4. Togoland under British mandate, which is that part of the old German colony of Togoland, on the east of the Gold Coast, which Britain acquired

<sup>1</sup> See the map showing the area of maximum productivity and the geological map, in Cardinall, facing pp. 82, 74.

<sup>2</sup> Hailey, p. 1002. 'To the forest alone is due the success of the Gold Coast, for without its humidity neither cocoa nor any other product will be able to withstand the invasion of the dry life-taking climate of the western Sudan,' *The Gold Coast Handbook, 1937*, p. 3.

<sup>3</sup> The savanna area covers the north-eastern half of Ashanti and the whole of the Northern Territories.

<sup>4</sup> "'The Colony'" shall mean the Gold Coast Colony as defined in . . . the Gold Coast Boundaries Order in Council, 1906,' Interpretation Ordinance, section 3 (13) (*Laws, 1936*, cap. 1.)

<sup>5</sup> Supreme Court Ordinance, 1876, section 23. These were judicial divisions, which were adopted also for administrative purposes until 1944: see below, p. 204, n<sup>3</sup>.

<sup>6</sup> Ashanti is defined in the Ashanti Order in Council, 1934 (*Laws, 1936*, iv. 69).

<sup>7</sup> The Northern Territories are defined in the Northern Territories Order in Council, 1934 (*Laws, 1936*, iv. 78).

<sup>8</sup> "'The Gold Coast'" used without qualifications shall mean the Colony, Ashanti and the Northern Territories as though they were a single territory,' Interpretation Ordinance, section 3 (14).

as a mandated territory in 1919.<sup>1</sup> It is divided into two sections of which the Southern Section is administered as if it formed part of the Eastern Province of the Gold Coast Colony, and the Northern Section as if it formed part of the Northern Territories.<sup>2</sup>

Of the three parts of the Gold Coast, the Colony is the smallest in extent and the greatest in population:

	<i>Area in sq. m.</i>	<i>Population in 1938<sup>3</sup></i>
Colony	23,937	1,863,321
Ashanti	24,379	703,319
Northern Territories	30,486	852,899
Togoland under British mandate	13,041	370,370
	<hr/> 91,843	<hr/> 3,789,909

Of the former three Provinces of the Colony, the Eastern was the most populous:

	<i>Population in 1931<sup>4</sup></i>
Eastern Province	856,398
Central Province	431,786
Western Province	285,586

## 2. HISTORICAL DEVELOPMENT

In origin as well as in size the Gold Coast is the second of the British West African territories. The first English settlement in West Africa was made on the Gambia about 1615,<sup>5</sup> the first English fort on the Gold Coast was not built until 1631 or later.<sup>6</sup> The Portuguese had already then been trading with the Gold Coast for

<sup>1</sup> The mandate was not published until 1922, but Togoland was partitioned between Britain and France by the Declaration of 10th July 1919 (*Laws*, 1936, iv. 88, 92).

<sup>2</sup> Togoland under British Mandate Order in Council, 1923 (*Laws*, 1936, iv. 97).

<sup>3</sup> See *C.O. List*, 1940, p. 327.

<sup>4</sup> 1931 *Census*, table i, page 1.

<sup>5</sup> W. R. Scott, *Joint Stock Companies to 1720* (1910), ii. 11.

<sup>6</sup> At Kormantyne; Claridge, i. 90, ii. 600; Scott, *op. cit.*, ii. 16. Cape Coast was finally taken by the English in 1664, after having been occupied by the Dutch and the Swedes (Claridge, i. 103-6, ii. 595); it became the seat of British administration and remained so until 1876.

150 years. Before the end of the seventeenth century they were replaced by the Dutch, the English, the Swedes, the Danes and the Brandenburgers.<sup>1</sup> The competition between these rivals was purely commercial, above everything for the slave trade; the Swedes and Germans were quickly eliminated, and the British became predominant. But after the slave trade gave way to more civilized commerce in the early nineteenth century, political occasions developed out of economic interests, and it became necessary to establish order among the coastal tribes, and especially to organize their resistance to the Ashanti kingdom in the interior. When Britain purchased the Danish settlements in 1850, and in 1872 at last acquired the Dutch possessions, it became the exclusive inheritor of a tradition of European commercial activity going back for four centuries, and in spite of manifest reluctance could not escape the task of the political unification of the Gold Coast.

The coastal tribes with whom Europeans first came into contact were mostly Fantis, divided into innumerable small states. But in the interior was a powerful kingdom, the Ashanti Confederacy, with an extraordinary degree of political and military organization. The Fantis and Ashantis are the two main branches of the Twi-speaking or Akan peoples, originally a single tribe, but separating in the legendary past, and becoming historically differentiated: the Fantis into a commercial, colonizing, politically dispersed people, civilized and socially weakened by long intercourse with Europeans; and the Ashantis into a highly centralized aggressive military power.<sup>2</sup> The Ashanti kingdom was established in the seventeenth century; in the course of the eighteenth the British and Dutch came increasingly into contact with it; and the nineteenth century was occupied by a succession of wars between the Ashantis and the British, the ultimate aim of which was the control of the Fantis. If it had not been for the European penetration from

<sup>1</sup> See Claridge, ii. 581. The French claim to have been the pioneers of European discovery and enterprise along the Guinea Coast (*ibid.*, i. 48-53) is discredited. 'Nowadays . . . the view generally taken is that the French government, after the accession of Louis XIV, desiring to provide an historical justification for its territorial claims in West Africa, invented the whole story,' J. W. Blake, *European Beginnings in West Africa, 1454-1578* (1937), p. 3.

<sup>2</sup> See Claridge, chaps. i, x. Balmer says pleasantly: 'In this matter of colonization and relation to central government these two branches of the Akan race might be compared to the Greeks and Romans,' *A History of the Akan Peoples* (1925), pp. 67-8.

the south, the Ashantis would probably have unified all the Akan peoples from the north, by extending their empire to the coast.<sup>1</sup>

#### THE FORMATION OF THE GOLD COAST COLONY

For nearly 200 years, the British possessions on the Gold Coast consisted only of forts and trading stations leased by English merchants from native rulers. At the beginning of the nineteenth century, as a result partly of the first three Anglo-Ashanti Wars,<sup>2</sup> and partly of the unrest caused among the coastal Africans by the abolition of the British slave trade,<sup>3</sup> the British government decided to take over the West African settlements. In 1821 Parliament abolished the African Company, in which since 1750 the settlements had been vested, and annexed them to the Crown. But the government was not yet prepared to undertake the full responsibilities of administration, and for half a century its policy fluctuated. At the times when it wished to minimize its West African commitments, it united the various settlements of the Gambia, the Gold Coast and Sierra Leone for the sake of economy under one colonial government. At other times, when a more positive policy was predominant, it divided the settlements, erecting a separate government in each. The history of the Gold Coast went through the following alternating phases:

1. From the abolition of the African Company in 1821 until 1850, the Gold Coast was annexed to Sierra Leone. After the disasters and expenses of the fourth Ashanti War (1823-6) the British government wished to destroy the forts and withdraw from the Coast altogether. It compromised by restoring the forts to the administration of the merchants in 1828; they formed a committee in London which appointed the local governor. But on the recommendation of the Select Committee of 1842 the Colonial Office resumed direct control in 1843, and in 1850 separated the Gold Coast from Sierra Leone, establishing a separate government.

2. From 1850 to 1866 the Gold Coast was for the first time a distinct dependency of the Crown, with its own governor, executive council and legislative council. This is where the history of

<sup>1</sup> Claridge, vol. i, pp. x, 181.

<sup>2</sup> 1806, 1811, and 1814-15. See the enumeration of Anglo-Ashanti Wars in Claridge, ii, 591-2, which is followed here.

<sup>3</sup> See E. C. Martin, *The British West African Settlements, 1750-1821* (1927), pp. 152-3; Claridge, i, 255.

the Gold Coast Legislative Council begins. But the Select Committee of 1865, which was reluctantly unable to propose a complete withdrawal from West Africa, reversed the advice of its predecessor and recommended the reunion of all the settlements in the interests of economy.

3. From 1866 to 1874, the Gold Coast was once more administered from Sierra Leone, as part of the government of the West African Settlements. Its executive council was abolished; it had an administrator subject to the governor at Sierra Leone and a legislative council reduced in size. But the administrative necessities which led to the acquisition of the Dutch settlements in 1872, together with the sixth Anglo-Ashanti War in 1873-4, showed the impossibility of evading the burdens of government and the advantage of undertaking them with efficiency.

4. In 1874, therefore, the Gold Coast was finally erected into a separate government, with its own governor and a restored executive council. From this point its executive and legislative councils have an uninterrupted growth. But the definition and status of the Gold Coast remained uncertain. First, there was the dependency of Lagos. Lagos had been part of the West African Settlements since 1866; in 1874 it was annexed to the Gold Coast, retaining its own administrator. In 1883 the post of administrator was abolished and Lagos was merged into the Gold Coast. In 1886 the centrifugal tendency triumphed, and Lagos was separated from the Gold Coast and erected into an independent colony. This made possible the development of the modern Gold Coast no less than that of modern Nigeria. From this date the Gold Coast finally became a distinct territorial unit. No longer a dependency of Sierra Leone, nor itself having non-contiguous dependencies, it was freed from inter-colonial connections east and west along the coast, and began the expansion northwards that led to the conquest of Ashanti and the acquisition of the Northern Territories. There was a second important question. Hitherto a settlement with an indefinite hinterland of protected territory, the Gold Coast was in 1874 for the first time declared the Gold Coast Colony. The change of style, reflecting the change of British policy, provoked a twofold controversy: concerning the legal status of the country as a whole, and concerning the extent of the Colony and its relations with the adjacent protected territory. The latter issue was



solved by the conquest of Ashanti, which provided a clear northern border for the Gold Coast Colony; and the Gold Coast Order in Council, 1901, removed uncertainties by annexing all territories south of Ashanti hitherto unannexed.<sup>1</sup> But the wider question of the validity of such annexation in the first place, continued to agitate nationalist opinion, and has not even yet wholly disappeared.<sup>2</sup>

#### THE CONQUEST OF ASHANTI

The Anglo-Ashanti Wars, which in the 1820s and again in the 1860s had been a major factor in disposing the British to withdraw from the Gold Coast altogether, ended with the annexation of Ashanti in 1901. In the first five Ashanti Wars, the British part had been confined to organizing, supporting and sometimes abandoning their Fanti allies against an Ashanti invasion of the protected territories. At the end of the fifth Ashanti War in 1863, the most disastrous and disgraceful, the governor of the Gold Coast had argued that there would be no security against the Ashantis until British power had been established at Kumasi, their capital.<sup>3</sup> In the sixth war (1873-4) British forces for the first time invaded Ashanti; Sir Garnet Wolseley captured and burned Kumasi; but he at once withdrew, and the Treaty of Fomana restored peace between King Koffee and Queen Victoria as between two mutually independent sovereigns.<sup>4</sup> The defeat, however, disrupted the Ashanti empire and led to a state of disorder and civil war that was almost more troublesome for the Colony to the south than a united Ashanti's periodical aggressions. The necessity for securing control in Ashanti at length triumphed over the traditional policy of non-intervention; and in 1891 the Gold Coast govern-

<sup>1</sup> *Ordinances*, 1903, ii. 1348. See Griffith, pp. 21-3.

<sup>2</sup> Cf. *Aborigines' Petition*, paras. 32-49, and *Quo Vadimus: or Gold Coast Future* (Achimota Press, 1940), pp. 9-10. In 1944 the Cape Coast municipality could still assert that 'The only treaty between the Chiefs of this part of the country, namely, Cape Coast District, and the British is the Bond of 1844. Provisions therefore which are inconsistent with the terms of that treaty are *ultra vires*'; see resolution read in Legislative Council by Moore, 4th October 1944, p. 30.

<sup>3</sup> Claridge, i. 521-2.

<sup>4</sup> *Ibid.*, ii. 152-3. The king of Ashanti agreed to a heavy indemnity, abandoned his claim to suzerainty over certain Fanti tribes, accepted freedom of trade between Ashanti and the coastal forts, and promised 'to use his best endeavours to check the practice of human sacrifice'.

ment offered a treaty to Prempeh, the Asantehene, extending British protection.<sup>1</sup> It was rejected, and the British resorted to force, for which the non-fulfilment of the Treaty of Fomana provided the pretext. In 1896 Kumasi was occupied by British forces for the second time, Prempeh failed to comply with the terms dictated to him and was arrested and deported,<sup>2</sup> and a British resident was installed in his place.

The Ashanti dynasty was thus overthrown, the Ashanti Confederacy dissolved, and Ashanti became a British protectorate. The Ashantis had submitted without firing a shot, because they feared the loss, in a war they knew they could not win, of something more important than their king—the Golden Stool. Every Akan ruler has a 'stool' which is the traditional symbol of his office, but the Ashanti Golden Stool is of unique sanctity, containing the soul of the Ashanti nation, their power, their courage and their welfare.<sup>3</sup> In 1896 it was hidden in the forest and kept closely guarded. The Gold Coast governor, ignorant of its real nature, determined upon its surrender. In 1900 he visited Kumasi, announced that Prempeh would never be restored, and demanded the Golden Stool.<sup>4</sup> A few days later the Ashantis gave their answer when they opened the last of the Anglo-Ashanti Wars. After their defeat, Ashanti was annexed by the Ashanti Order in Council, 1901, and a chief commissioner responsible to the Gold Coast governor was installed at Kumasi.<sup>5</sup> Prempeh had been removed from the Gold Coast to Sierra Leone, where his subjects still contriving to communicate with him, he was deported to the Seychelles. But the British authorities never discovered the Golden Stool, and when, twenty years afterwards, it reappeared, they had acquired better information and greater wisdom.<sup>6</sup>

<sup>1</sup> *Ibid.*, ii. 353-4. *Asantehene* is the title of the Ashanti king.

<sup>2</sup> Prempeh I. (1872-1931): became Asantehene under the title of Kwaku Dua III, 1888; formally enstooled, 1894; deposed by the British, 1896; kept as a political prisoner in Elmina Castle 1896-7, Sierra Leone 1897-1900, Seychelles 1900-24; allowed to return to Ashanti, 1924; appointed to Kumasi Public Health Board, 1925; re-elected Kumasihene, 1926; King's Medal for African Chiefs, 1930. See Sampson, pp. 187-93.

<sup>3</sup> The classic account of the Golden Stool is in R. S. Rattray, *Ashanti* (1923), ch. xxiii. See also Edwin Smith, *The Golden Stool* (1927), ch. i.

<sup>4</sup> Claridge, ii. 437-8, 443-5; Rattray, pp. 293-5.

<sup>5</sup> *Ordinances*, 1903, ii. 1757.

<sup>6</sup> See below, pp. 29-30.

## THE ESTABLISHMENT OF THE NORTHERN TERRITORIES

The reduction of Ashanti was accompanied by the extension of British influence still farther northwards. In 1897 a sphere of influence was established over a large area which was named 'the Northern Territories', and an administration was established for it. The region had no intrinsic unity, and was inhabited by a variety of different tribes. Its boundaries were determined subsequently by international agreements, which traced back arbitrary lines from the British coastal territories until they met the Sahara zone claimed by the French, who had penetrated eastwards from Senegal. It was declared a protectorate at the same time that Ashanti was annexed in 1901, and placed under a chief commissioner responsible to the governor of the Gold Coast.<sup>1</sup>

The Gold Coast thus acquired its shape as a roughly rectangular territory stretching inland from the Gulf of Guinea, bounded on the west by the French Ivory Coast and on the east by German Togoland. To this the long strip of mandated territory was added when Britain and France partitioned German Togoland in 1919.

## 3. POLITICAL DEVELOPMENT OF THE GOLD COAST COLONY UP TO 1919

The tribes of the Gold Coast Colony have had organized political intercourse with Europeans for over a hundred years, a history without parallel in Tropical Africa save for Sierra Leone. While the policy of the British government wavered, British political influence in the Gold Coast itself was uninterruptedly growing throughout the nineteenth century. It had a twofold result, direct and indirect. On the one hand, the British imported their own institutions into the Gold Coast, of which the most important in the constitutional field was the Legislative Council. On the other hand the native states, caught between British pressure from the south and Ashanti pressure from the north, were stimulated into a series of experiments in political organization of their own. The

<sup>1</sup> Northern Territories Order in Council, 1901 (*Ordinances*, 1903, ii. 1782). In 1907 the capital was moved from its original position at Gambaga near the northern frontier to Tamale, in the centre of the protectorate, and a military regime was superseded by civil administration.

interplay between these two—the institutions of British crown colony government, and organizations created by Africans themselves under the inspiration of British ideas—forms the internal constitutional history of the Gold Coast, and is the background to the political and constitutional problems of the present day.

Maclean, who was governor from 1830 to 1843, organized the jurisdiction of British magistrates far beyond the confines of the forts to which British sovereignty was restricted. The system had no legal foundation, but arose out of the necessities of a commerce extending into the interior; and it was so efficient that natives of their own accord transferred their judicial allegiance from the native courts to the British courts. This was the beginning in practice of the British protectorate on the Gold Coast, which was given a legal basis by the Foreign Jurisdiction Act of 1843.<sup>1</sup> The following year about a dozen Fanti chiefs signed a treaty with the British governor which became famous as the Bond of 1844. The chiefs acknowledged the British criminal jurisdiction hitherto exercised over their districts, and agreed that the customs of the country should be moulded 'to the general principles of British law'.<sup>2</sup> The Bond was of small intrinsic importance, but by seeking to define and legalize British jurisdiction, through agreement with the native rulers, it became the symbol of their independence. The policy of government by agreement with the rulers was carried further in 1852 when a gathering of chiefs under the governor constituted itself 'the Legislative Assembly of native chiefs upon the Gold Coast', with power to make laws binding upon the whole of the population under British protection. 'I am persuaded I do not overrate the importance of the establishment of this rude Negro Parliament', wrote Earl Grey, who was Colonial Secretary at the time, 'when I say, that I believe it has converted a number of barbarous tribes, possessing nothing which deserves the name of a government, into a nation, with a regularly organized authority,

<sup>1</sup> See Wight, *Development*, pp. 62-3. George Maclean (d. 1847) was the real founder of the Gold Coast; his name is still known and revered in Cape Coast. But there is no satisfactory account of his administration, and he is not included in the *Dictionary of National Biography*. See Claridge, vol. i, chaps. xxiii-xxiv, and Griffith, pp. 6-13.

<sup>2</sup> Claridge, i. 452. The phrase was quoted by Sir Ofori Atta in defence of the Native Administration Treasuries Ordinance (23rd March 1939, p. 176).

and institutions simple and unpretending, but suited to the actual state of society, and containing within themselves all that is necessary for their future development, so that they may meet the growing wants of an advancing civilization.<sup>1</sup> But the first and only measure of the Legislative Assembly was a Poll Tax Ordinance, imposing one shilling annually on every African soul under British protection, the earliest instance of direct taxation in the Gold Coast's history.<sup>2</sup> It was not properly an ordinance, since it was not enacted by the Legislative Council which had been established two years before, but it was formally adopted as the first of the laws of the Settlements.<sup>3</sup> The poll tax was discontinued after 1861,<sup>4</sup> and despite the original hopes, the Legislative Assembly never met a second time.

These political developments had been directly inspired by the British colonial government. But British prestige was shaken by the failure of British forces to support the allied Fanti levies during the fifth Ashanti War in 1863,<sup>5</sup> and by the Anglo-Dutch exchange of territory in 1868, whereby the British arbitrarily transferred to another power tribes that had hitherto been in treaty-relations with Britain and relied on British protection.<sup>6</sup> As a result a number of Fanti kings and chiefs met together in 1868 and formed a Fanti Confederation for mutual assistance in war.<sup>7</sup> In 1871 they assembled again at Mankesim, together with many educated Africans; and drew up a constitution, which declared that the objects of the Confederation were mutual defence and the material improvement of the country at large, that the representatives of the kings and chiefs assembled in council should be known as the Representative Assembly of the Fanti Confederation and should exercise all the functions of a legislative body, and that the Con-

<sup>1</sup> Earl Grey, *The Colonial Policy of Lord John Russell's Administration* (1853), ii. 285-6.

<sup>2</sup> Claridge, i. 478-81.

<sup>3</sup> It is printed in *Ordinances*, 1860, p. 34. See also 'Ordinance to explain and amend an Ordinance commonly called the Poll Tax Ordinance', 10th May 1858 (*ibid.*, p. 63).

<sup>4</sup> Crooks, *Records*, p. 343. Hailey, p. 585, says that the Poll Tax Ordinance was repealed in 1866, but gives no authority.

<sup>5</sup> Claridge, i. 516-20.

<sup>6</sup> *Ibid.*, i. 560-2.

<sup>7</sup> *Ibid.*, i. 567.

federation should co-operate with the British administration.<sup>1</sup> The project was impracticable, for the Fantis had achieved no such degree of unity as it assumed;<sup>2</sup> but its significance, like that of its august counterparts in the early constitutional history of Western nations, is one not of practicability but of aspiration. The local government promptly arrested the newly elected officers of the Confederacy on a charge of treason; the Secretary of State as promptly ordered their release and the abandonment of the charge; and the main anxiety which had promoted this extraordinary constitution was allayed when the British made it plain, by the acquisition of all the Dutch settlements in 1872, that they were not intending to withdraw from the Coast.

The sixth Ashanti War in 1873-4 led to the proclamation of the Gold Coast as a colony in 1874,<sup>3</sup> and the beginnings of the modern development of the country. In 1876 the capital was moved from Cape Coast to Accra, and the division into three provinces was established. In 1877 Europeans began prospecting the mines that had originally given the Coast its name. In 1879 Tetteh Quarshie, a Fanti labourer, founded the national industry of the Gold Coast, when he smuggled some cocoa beans out of the Spanish island of Fernando Po, and planted them at Mampong in the Akwapim state.<sup>4</sup> Political progress slowly followed the rise of the country to prosperity. In 1888 the first African unofficial member was nominated to Legislative Council.<sup>5</sup> In 1894 the three municipal councils were established.<sup>6</sup> But in the nineties the ambiguity in the legal status of the Gold Coast led to a situation like that which had evoked the Fanti Confederacy. To control concession-hunting

<sup>1</sup> The Mankesim Constitution is printed in Casely Hayford, *Gold Coast Native Institutions* (1903), pp. 327-40.

<sup>2</sup> 'The whole Constitution seems to have been framed by a few educated and semi-educated men, primarily no doubt for the good of their country, but secondarily for the benefit of themselves; and it was alleged that many of the chiefs whose marks were appended to the documents had no knowledge of their contents and had not even been present at the meetings,' Claridge, i. 619.

<sup>3</sup> Claridge, ii. 172-7.

<sup>4</sup> Sampson, pp. 206-11; 'Tetteh Quarshie, Cocoa Pioneer', *West Africa*, 28th June 1924, p. 640. Cocoa cultivation did not develop on a wide scale until the late nineties, when coffee had proved unprofitable.

<sup>5</sup> John Sarbah, a merchant of Cape Coast, the father of John Mensah Sarbah. *C.O. List*, 1889, p. 129.

<sup>6</sup> Though there had been an ordinance to provide for the establishment of municipalities as early as 1858: see *Ordinances*, 1860, p. 68.

the government in 1897 introduced a Lands Bill into the Legislative Council 'to regulate the administration of public land'. A political crisis ensued. Since the Crown owned no land except the sites of the forts annexed in 1821, and under native law there was no land without an owner, there could be no such thing as 'public land',<sup>1</sup> and the bill was consequently represented as a threat to the lands of the African population in general. A group of educated Africans, chiefs, barristers, teachers and merchants, of whom J. M. Sarbah<sup>2</sup> was the leading figure, founded the Gold Coast Aborigines' Rights Protection Society at Cape Coast in the same year. The bill was enacted by the Legislative Council, but in 1898 the Aborigines' Society sent a deputation to London which interviewed Joseph Chamberlain and secured the withdrawal of the bill.<sup>3</sup> This was the earliest instance of a measure before Legislative Council evoking organized opposition outside the Council and ending with a deputation to the Secretary of State; and its success established the tradition of opposing government measures, as much for the sake of opposition as because of their intrinsic demerits, which has played a leading part in Gold Coast political history.<sup>4</sup>

The Aborigines' Society did not die away immediately, as the Legislative Assembly of 1852 and the Fanti Confederacy had done. It claimed to be the duly constituted and solely authorized representative of the kings and chiefs, most of whom were members. For several years the Gold Coast government sought its assistance

<sup>1</sup> Casely Hayford, *Gold Coast Native Institutions*, pp. 194-7.

<sup>2</sup> John Mensah Sarbah (1864-1910): born at Cape Coast; the first Gold Coast African to be called to the bar, 1887; unofficial member of Legislative Council, 1901-10; author of *Fanti Customary Laws* (1897) and *The Fanti National Constitution* (1906); C.M.G., 1910. See Sampson, pp. 212-24.

<sup>3</sup> Nationalists like to regard 5th August, the anniversary of the day in 1898 when Joseph Chamberlain received the petition on the Lands Bill, as an annual commemoration entitled 'Aborigines' Day' (see *Aborigines' Petition*, annex C). It does not seem that public interest supports them at all widely.

<sup>4</sup> The tradition had its origins still earlier. Governor Hill, in a despatch to the Secretary of State in 1852, used words which may still stand as a comment on Gold Coast history and in particular as a description of the Aborigines' Society: 'Certain educated Natives with no real pretensions to any power were in the practice of assuming an authority with the people that did not belong to their position, by such means exercising an undue influence with the Chiefs and Headmen, and generally opposing in an underhand manner the efforts of the Governor.' See Claridge, i. 482-3.

and discussed policy with its members. The duality of an African system of political representation side by side with the Legislative Council thus reappeared. But the last occasion on which the Society received official recognition was in 1923, when the governor discussed the proposed constitutional reforms with its leaders. The Society was deprived of its standing in 1926 by the creation of the Provincial Councils, towards which it has maintained an unrelenting hostility; in 1932 it was officially notified that the government did not recognize it as the medium of communication with the chiefs and people;<sup>1</sup> and it sank into the organization of the more intransigent nationalists, tinged with the resentful archaism of the ex-capital where it has had its headquarters from the beginning. It is now dying out, though it might become a nucleus for future discontent.

In 1916 the Legislative Council was enlarged by Sir Hugh Clifford.<sup>2</sup> Since 1901 it had contained four unofficial members; they were now increased to nine, and the practice was adopted of nominating three Europeans, three paramount chiefs and three representatives of the educated Africans.<sup>3</sup> This advance, however, was not sufficient to satisfy the ambitions for constitutional progress that had been aroused by the First World War. In 1917 Casely Hayford<sup>4</sup> founded the National Congress of British West Africa, which sought to unite the four West African colonies in the demand for 'self determination' and 'no taxation without representation'. Mr. Hayford led a deputation of the Congress to the Secre-

<sup>1</sup> See *Aborigines' Petition*, paras. 1-13.

<sup>2</sup> Sir Hugh Clifford (1866-1941): Malay States civil service, 1883-96; British resident, Pahang, 1896-99 and 1901-3; governor of British Borneo and Labuan, 1900-1; colonial secretary, Trinidad, 1903-7; colonial secretary, Ceylon, 1907-12; governor of the Gold Coast, 1912-19; governor of Nigeria, 1919-25; governor of Ceylon, 1925-7; governor of the Straits Settlements, 1927-9.

<sup>3</sup> This arrangement was conventional, not obligatory; see royal instructions of 20th September 1916 (printed in *Gold Coast Handbook, 1923*, p. 486), and Clifford's addresses in Council, 8th August 1916, pp. 181-5, and 25th September 1916, pp. 16-22.

<sup>4</sup> Joseph Ephraim Casely Hayford (1866-1930): born at Cape Coast; called to the bar, 1896; editor at different times of the *Gold Coast Chronicle*, the *Wesleyan Methodist Times*, and the *Gold Coast Leader*; author of *Gold Coast Native Institutions* (1903), *The Truth about the West African Land Question* (1913); nominated unofficial member of Legislative Council 1916-27, municipal member for Sekondi 1927-30; M.B.E., 1919. See Sampson, pp. 160-73, and the tributes in Legislative Council, 4th December 1930, pp. 392-403.



tary of State in 1920-1, to ask for a legislative council one half elected, a 'house of assembly' containing the legislative council plus six financial members to control revenue and expenditure, municipal corporations with unofficial majorities, the appointment of Africans to judicial offices, and the establishment of a West African university.<sup>1</sup> While the delegation was in London, several Gold Coast chiefs and members of the Aborigines' Society cabled that the Gold Coast part of the delegation was not representative of the Gold Coast chiefs and people; Lord Milner was therefore the more easily enabled to reject the petition.<sup>2</sup> This was the first important instance of a divergence of interest between the chiefs and the intelligentsia. The Congress languished thenceforward, and ceased to have any influence after the death of Casely Hayford in 1930. He had been its dominant figure, and it had always drawn its main vitality from the Gold Coast.<sup>3</sup> It had had no direct effect, but it crystallized demands which received partial fulfilment in the Constitution of 1925, and in the foundation of Achimota College.

#### 4. THE GOLD COAST BETWEEN 1919 AND 1945

In the inter-war period the Gold Coast attained an extraordinary prosperity. Between the first census in 1891 and the latest in 1931 the population of the Colony had exactly doubled, with the greatest rate of increase in the last ten years.<sup>4</sup> On the basis primarily of the cocoa industry, and secondarily of mining, the Gold Coast became the most materially successful of all British African colonies. Its predominant class, numerically and economically, was native small farmers;<sup>5</sup> their production of nearly 50 per cent of total

<sup>1</sup> *The Times*, 16th December 1920.

<sup>2</sup> His reply to the delegation of 26th January 1921; *The Times*, 23rd February 1921.

<sup>3</sup> The Freetown branch still has some influence in Sierra Leone politics.

<sup>4</sup> 1931 *Census*, table ii, p. 1.

<sup>5</sup> The main occupations in the Gold Coast, according to the very dubious statistics of the 1931 census, were as follows:

Agriculture of all kinds	39,829
Labourers, presumably agricultural	17,998
Mining	14,107
Industry (comprising clerks, contractors, drivers, and mechanics)	12,769
Traders	10,698

See 1931 *Census*, tables xvi and xvii, p. 19, together with Cardinall, pp. 169-76.

world cocoa exports brought the Gold Coast a higher standard of living than was enjoyed by other African territories, but left it dangerously dependent on the uncertainties of the world market.<sup>1</sup> At the same time, throughout this period, there was a strong tendency towards commercial combination. In 1920 Lever Bros. purchased the assets of the Niger Company, and in 1929 a merger between the Niger Company and the African and Eastern Trade Company brought into existence the United Africa Company, 'the commercial colossus of West Africa'.<sup>2</sup> The tendency culminated in 1937 in the monopolistic buying agreements between the U.A.C. and the other European firms, which led to the cocoa hold-up of 1937-8.

In the same period, if not earlier, the Gold Coast Colony and Ashanti became unified economically and administratively; and though they remained constitutionally distinct, it is henceforward difficult to separate their affairs. In 1934 the Executive Council of the Colony became the Executive Council of Ashanti and the Northern Territories as well, and the legislation of the three dependencies was unified.<sup>3</sup> In 1935 the Supreme Court of the Colony was replaced by a Supreme Court of the Gold Coast, with jurisdiction throughout the whole country.<sup>4</sup> A generation after the end of the century-old Anglo-Ashanti rivalry by the final British conquest and annexation of Ashanti, it was becoming clear that the Ashantis would yet, under new conditions, by political influence instead of military force, play a leading part in the consolidation of a Gold Coast nation.

In 1919 Sir Hugh Clifford was succeeded as governor by Sir Gordon Guggisberg.<sup>5</sup> Guggisberg was the greatest of modern Gold

<sup>1</sup> For a general picture of the economy of the Gold Coast see Rita Hinden, *Plan for Africa* (1941), part three.

<sup>2</sup> W. K. Hancock, *Survey of British Commonwealth Affairs*, vol. ii, part 2, p. 208.

<sup>3</sup> See below, pp. 53-4.

<sup>4</sup> Courts Ordinance, 1935 (*Laws*, 1936, cap. 4, part B); it repealed the Supreme Court Ordinance, 1876 (*Ordinances*, 1903, i. 8). Previous editions of the consolidated laws had been entitled *The Laws of the Gold Coast Colony*, with the laws of Ashanti and the Northern Territories in appendices or supplementary volumes; the edition of 1934 was, for the first time, *The Laws of the Gold Coast*.

<sup>5</sup> Brigadier-general Sir Gordon Guggisberg (1869-1930): Royal Engineers, 1889-1902; on special survey work in the Gold Coast and Ashanti from 1902, director of surveys 1905-8; surveyor-general of Nigeria, 1910-14; rejoined the army and served in France 1914-19, brigadier-general 1917; governor of the Gold Coast, 1919-27; governor of British Guiana, 1928-30.

Coast governors; he had an understanding and sympathy for African aspirations that won him a unique place in the memory of the people.<sup>1</sup> His administration, stretching through the prosperous years of the middle twenties, was a period of notable material and political progress, with a series of great constructive achievements. The most influential in its effect on African opinion, and perhaps in its promise for the future, was Achimota College, begun in 1921 and formally opened by Guggisberg in 1927. In 1923 the Korlebu Hospital<sup>2</sup> was opened in Accra, which has the reputation of being the best equipped hospital in tropical Africa. In 1921 the construction of a deep-water harbour at Takoradi was undertaken; it was opened to traffic in 1928. In 1925 the new constitution was established, providing for elected representation; in 1926 the new Provincial Councils began to function; the Native Administration Ordinance of 1927 reorganized, though not yet satisfactorily, the system of native tribunals. But more important in impressing African opinion than any of these concrete measures was Guggisberg's great scheme, perhaps visionary, for the Africanization of the civil service. In nothing did he show himself so closely in touch with the needs and ambitions of Africans as in this. The legend of Guggisberg is the standard by which subsequent governors have been judged, and sometimes found wanting, by African Members of Legislative Council.

'If they refer to Legislative Council Debate Session 1926-7 page 25 and see what Governor Guggisberg of blessed memory said—what he outlined as the policy to be followed—would to God they follow it.'<sup>3</sup>

At the same time there began the process of restoration in Ashanti. In 1920 the Golden Stool was unearthed by labourers cutting a new government road. Its custodians managed to rescue it, but the secret of its new hiding place was not preserved, and

<sup>1</sup> See the resolution congratulating and thanking Guggisberg, moved by the African members at the last Council meeting at which he presided, 19th April 1927, pp. 452-5.

<sup>2</sup> The Gold Coast Hospital.

<sup>3</sup> Christian, 23rd March 1937, p. 114; he was speaking of the Africanization scheme, see below, pp. 176-7. Cf. *African Morning Post*, 11th July 1942: 'Sir Gordon Guggisberg of blessed memory . . . that genial Administrator. . . ' Sir Ofori Atta played a large part in the canonizing of Guggisberg.

certain Ashantis, led by a convert to Christianity, gradually stripped it of its massive gold ornaments. When the desecration became known, the whole of the Ashanti nation went into mourning, and feeling ran high with the fear that the government was again going to demand or seize the Stool. The authorities were now informed, however, as to the Stool's character. The Chief Commissioner, Mr. Harper,<sup>1</sup> summoned a meeting of the Kumasi chiefs, declared that the government made no claim to the Stool, and handed over to them for trial those who had been guilty of the sacrilege. This probably averted another Ashanti war, and certainly confirmed the loyalty of Ashanti to Britain as nothing else could have done.<sup>2</sup> The restoration of the Golden Stool was followed by the return of Prempeh from exile in 1924; the campaign by Casely Hayford and Ofori Atta for his release showed how Ashanti politics were becoming involved in those of the Colony. In 1925 the Kumasi Public Health Board was established, which developed into a successful municipal administration. Prempeh was appointed to the Board from the beginning, and in 1926, with the government's permission, was once more elected Kumasi-hene.<sup>3</sup>

Guggisberg's successors had not only the prestige of their predecessor to contend with, but also the onset of economic crisis. Between 1928 and 1932 the value of the cacao harvests declined and the revenue shrank by almost one half;<sup>4</sup> and economic distress brought political discontents. This was the background of Sir Ransford Slater's regime, who was governor from 1927 to 1932.<sup>5</sup> It was Slater's policy to amend the Native Administration Ordinance so as to introduce a full system of indirect rule, and he brought in an income tax bill in 1931, but both schemes had to be withdrawn because of strong opposition. The taxation project had an

<sup>1</sup> Sir Charles Henry Harper (1876-): chief commissioner of Ashanti, 1920-3; governor of St. Helena, 1924-32.

<sup>2</sup> See Colonial Reports, Annual, *Ashanti, Report for 1921*, pp. 21-9; Rattray, *Ashanti*, pp. 9-10, 293. The new policy towards the Stool was the result of Captain Rattray's work as government anthropologist.

<sup>3</sup> Head chief of the Kumasi Division.

<sup>4</sup> See Colonial Reports, Annual, *Gold Coast, 1931-2*, p. 70, and Governor, 1st March 1932, pp. 5-6.

<sup>5</sup> Sir Ransford Slater (1874-1940): Ceylon civil service, 1898-1914; colonial secretary, Gold Coast, 1914-22; governor of Sierra Leone, 1922-7; governor of the Gold Coast, 1927-32; governor of Jamaica, 1932-4.

indirect result in the first Joint Conference of the Provincial Councils.<sup>1</sup> Sir Shenton Thomas succeeded him as governor from 1932 to 1934.<sup>2</sup> His administration was notable for the political controversies over the Sedition Bill and the Waterworks Bill; and he was responsible for the restoration of the Ashanti Confederacy which occurred the year after he left the Gold Coast.<sup>3</sup>

When Sir Arnold Hodson<sup>4</sup> became governor in 1934 the economic situation was already improving. There were two outstanding political events during his regime. In 1935, in accordance with the wishes of the Ashanti people, the government proclaimed the restoration of the Ashanti Confederacy. Prempeh did not live to see the completion of the process that had begun with his return from exile, but his nephew and successor, Agyeman Prempeh II,<sup>5</sup> was now recognized under the ancient title of Asantehene, and the Golden Stool was given official recognition.<sup>6</sup> The second event was the great cocoa hold-up and boycott of 1937-8, when the farmers of the Colony and Ashanti, acting in opposition to the monopolistic buying agreements of the European firms, brought the economic life of the country to a standstill, and had their grievances substantially endorsed by the Nowell Commission. The hold-up was a sweeping mass-emotional upheaval, remarkable for its spon-

<sup>1</sup> See below, pp. 49-50.

<sup>2</sup> Sir Shenton Thomas (1879-): East Africa Protectorate civil service 1909-18, Uganda 1918-21, Nigeria 1921-7; colonial secretary, Gold Coast, 1927-9; governor of Nyasaland, 1929-32; governor of the Gold Coast, 1932-4; governor of the Straits Settlements, 1934-42; in captivity to the Japanese, 1942-5.

<sup>3</sup> See Sir Arnold Hodson's address at the Kumasi durbar, 25th September 1941 (*Spectator Daily*, 6th October 1941).

<sup>4</sup> Sir Arnold Hodson (1881-1944): worked on a sheep farm in Central Queensland, 1900-2; various posts in Transvaal, 1902-4; Bechuanaland Protectorate civil service 1904-12, Somaliland 1912-14; British consul in Abyssinia, 1914-26; governor of the Falkland Islands, 1926-30; governor of Sierra Leone, 1930-4; governor of the Gold Coast, 1934-41. See *The Times*, 29th May 1944.

<sup>5</sup> Otumfuo Sir Osei Agyeman Prempeh II (1892-): nephew of Prempeh I; educated at Wesleyan School, Kumasi; succeeded his uncle as Kumasihehene, 1931; proclaimed Asantehene, 1935; K.B.E., 1937.

<sup>6</sup> See Hodson's description of the durbar at Kumasi, 19th March 1935, p. 3. The process was crowned by the restoration of the Kumasi lands to the Asantehene in 1943 (Kumasi Lands Ordinance, no. 17 of 1943; Acting Governor, 17th February 1942, p. 3; and see below, p. 200).

tancity and discipline over a wide area and a protracted period,<sup>1</sup> and significant for the future as the first instance of unanimous popular action throughout the Colony and Ashanti together. In the last two years of Sir Arnold Hodson's governorship the Second World War brought a new phase of rapid change and of closer economic integration with the rest of British West Africa. He was succeeded as governor in 1941 by Sir Alan Burns,<sup>2</sup> whom character and circumstances have made the most actively progressive governor since Guggisberg. Under him these new developments have come to a head in every department of Gold Coast life, but especially so in the political and constitutional, with the reorganization of native administration and municipal government, the framing of a new constitution for Legislative Council, and the union of Ashanti with the Colony.

#### 5. THE INDIGENOUS POLITICAL SYSTEM OF THE GOLD COAST COLONY<sup>3</sup>

In Ashanti almost all the native states were, and are, united into the Ashanti Confederacy under the rule of the paramount chief of Kumasi, who is the Asantehene. But the states of the Colony never coalesced; they were united only by the shadowy tradition of the Fanti Confederacy; and they are now in process of being unified by the imposition of a single European administrative system. The census of 1931 recorded 62 recognized African states in the Colony, ranging from Akim Abuakwa, with a population of over 150,000, to Himang, with a population of 830.<sup>4</sup> Racially and culturally the Colony has a considerable degree of homo-

<sup>1</sup> The extraordinary sureness of political touch and economy of illegal coercion with which the Gold Coast farmers carried out the hold-up, suggest that political maturity is not to be defined only in terms of experience of advanced political machinery. See Hodson, 14th March 1939, p. 5; 23rd March, p. 193; cf. Nowell Report, pp. 66-8.

<sup>2</sup> Sir Alan Burns (1887-): Leeward Islands civil service 1905-12, Nigeria 1912-24; colonial secretary, Bahamas, 1924-9; deputy chief secretary, Nigeria, 1929-34; governor of British Honduras, 1934-40; assistant under-secretary of state for the Colonies, 1940-1; governor of the Gold Coast since 1941; acting governor of Nigeria, 1942; author of *History of Nigeria* (1929).

<sup>3</sup> See Casely Hayford, *Gold Coast Native Institutions* (1903), ch. ii; J. B. Danquah, *Akan Laws & Customs* (1928); Hailey, pp. 465-77.

<sup>4</sup> 1931 Census, table xx, p. 21; cf. Native Administration (Colony) Ordinance,

genicity. The majority of the tribes and states are Akan; and Twi, the main Akan language, is penetrating among the non-Akan peoples, and on the way to becoming the *lingua franca* of the whole of the Gold Coast, including Togoland and the Northern Territories.<sup>1</sup> Nationalist opinion emphasizes and perhaps exaggerates this point in urging more rapid political development.

'There are no political difficulties in the Gold Coast, no minority question, no religious factor, no division or clefs between political ideals, no white and black problems in the labour field. All is clear and straightforward, and a homogeneous community deserves a homogeneous condition.'<sup>2</sup>

The characteristic political institution of the Colony tribes is the Akan *stool* or chiefdom, an elective and limited magistracy. The chief is elected by his people from the stool family, in which descent is through the female line. He is the judge and executive head of his community, but he exercises his functions only with the advice and consent of the council of elders, of which he is president. The council of a village chief is composed of the heads of families; such chiefs themselves form the council of the division. The six largest states according to the 1931 census were as follows:

Akim Abuakwa	150,698
Awuna	148,976
Ga	111,263
Ada	90,690
Manya Krobo	84,797
Akwapim	81,193

They are all in the Eastern Province.

<sup>1</sup> The main non-Akan groups, in a linguistic classification of the Colony peoples, are the Ga-Adangme and Ewe tribes of the Eastern Province. 'The Akan form a social group organized on democratic, quasi-military lines, the men not being circumcised; the Ga-Adangbe practise circumcision and being in the intermediate cultural stage between the Akan and the Ewe have a constitution which is semi-military and semi-sacerdotal and less inclined to democracy; the Ewe society is built on a religious base, circumcision is practised and a democratic form of government non-existent, it not having yet wholly evolved from the patriarchal state,' Cardinall, p. 9. Cf. Danquah, *op. cit.*, p. 1.

<sup>2</sup> Memorandum submitted to Lord Hailey by the Executive Committee of the Youth Conference (Accra, 1940), para. 60. (The second sentence relates to a proposal for a legislative assembly for the whole country with a wide suffrage, instead of the Legislative Council in which the rural population are represented by their chiefs and the urban population by elected municipal members.) Contrast the different emphasis of the government view, in Sir Arnold Hodson's speech quoted below, pp. 85-6.

sional chief; and the divisional chiefs in their turn form the state councils of the paramount chiefs, who are subordinate to no other chief, and were treated by Europeans in the nineteenth century as the kings of native states.<sup>1</sup> The authority of the chief is thus closely circumscribed by native custom and the popular will, and the people who elect him to the stool can in like manner *destool* him.<sup>2</sup>

The chiefs' most important officer, from the constitutional point of view, is the *linguist*, who would be better translated as the spokesman or mouthpiece of the chief. He is the interpreter between the sacred person of the chief and non-sacred persons; the chief cannot therefore appear in public without his linguist; he may not speak, nor may he be addressed, except through the linguist. In the state council it is the linguist, holding the chief's staff, who sums up and declares the will of the chief.<sup>3</sup>

In very broad terms, Africans may be said to have two fundamental political attitudes. They are temperamentally law-abiding, and they resent and resist government by dictation. There is no intrinsic disharmony between the indigenous institutions of the Gold Coast and the imported Western representative system. There is no *a priori* reason of political tradition why the Gold Coast African should not receive the institution of Legislative Council and make it his own. For the purposes and methods of the indigenous and the imported institutions are the same: both embody the representative principle, and both are government by discussion.<sup>4</sup> When the Provincial Councils were instituted in 1926, Guggisberg quoted the following words to describe their nature:

'It may be asked by the stay-at-home Briton whether a body composed solely of Chiefs can be fairly regarded as representative of a democratic people? The anxious enquirer may assuage

<sup>1</sup> The Akan word for a paramount chief is *Omanhene*; he is addressed as *Nana* (Danquah, pp. 24-5). Among the Ga-Adangmes the paramount chief is *Mantse*; among the Ewes, *Fia*; among the Krobos, *Konor*.

<sup>2</sup> Cf. Magnus Sampson: 'A Starting Point in Native Institutions', in *Pointers to Progress*, pp. 28-30.

<sup>3</sup> Hayford, *op. cit.*, pp. 68-72; Danquah, *op. cit.*, pp. 41-3.

<sup>4</sup> The fundamental difference between African and Western political ideas lies in the fact that African political systems, reflecting temporary military needs instead of permanent social needs, were decentralized and fostered lesser loyalties, contrary to all the tendencies of the modern Western state. See R. S. Rattray, 'Present Tendencies of African Colonial Government', *Journal of the African Society*, 1934, vol. xxxiii, pp. 29-33.



his fears. The Gold Coast native is no fool, he had thought this question out long before Christopher Columbus and Bartholomew Diaz visited the Gold Coast in 1481. Sovereignty in the Gold Coast tribes lies in the people themselves who elect their Chiefs and can, if they so desire, deprive them of office. Each Chief is, in fact, but the mouthpiece of his State (Oman) Council without whose approval no Chief can perform any executive or judicial act. Accordingly, when the Head Chiefs of a Province are summoned to the Provincial Council in order, say, to elect representatives of their peoples as Members of the Legislative Council, each Chief carries with him instructions which he is to pursue and the manner in which he is to record his vote. The system of election is, it will be noticed, very similar to that in use in the United States of America for the election of a President. The great body of electors is there also represented at the actual election by its elected representatives who attend and vote in accordance with the mandates given them by their constituents. In order to satisfy themselves that the Head Chief carries out his duties in the manner which the State Council has prescribed, he is accompanied by eight councillors who report the result of the mission on its return home. Could anything be more democratic or more representative of the wishes of a people? It was well said by one of the Head Chiefs recently that:

“When you are installed as a Chief you become the humblest servant of the State; you are absolutely under the influence and guidance of your councillors, so that there is nothing whatever to fear as to the powers of a Chief being misused, or misapplied by such Chief, without a check.”<sup>1</sup>

The frequent corruption and misgovernment of chiefs, and the constant litigation concerning destoolments,<sup>2</sup> disputed elections

<sup>1</sup> H. G. Newlands, at that time Acting Secretary for Native Affairs, quoted by Guggisberg, 3rd March 1927, pp. 20-2.

<sup>2</sup> ‘From enquiries I have made I learn that within the last ten years no less than 22 Paramount Chiefs have been destooled, in addition to 22 others who have abdicated in that period—in most cases in order to forestall destoolment; that seven stools of Paramount Chiefs are now vacant and that in many States no Paramount Chief has succeeded in maintaining his place on the stool for more than a very short time. In the case of subordinate chiefs I understand that the position is as bad or worse,’ Burns, 29th September 1942, pp. 3-4. Cf. Shenton Thomas, 14th March 1934, p. 10.

and state boundaries, are not of significance in destroying the truth of this picture. The real problem lies, not in the difference between theory and practice, but in the transformation of the office of chief itself. Its original function was military. By imposing peace the British regime has deprived it of this *raison d'être*, but has at the same time given it a new one as the unit of local government. The tribal leader is slowly becoming the local administrator.<sup>1</sup> For the chiefs this has meant both loss and gain. They are less autocratic than they used to be, because peace has weakened their position; on the other hand, they have had greater opportunities to enrich themselves. The value of land has been revolutionized by its use for permanent purposes such as mining and cocoa-farming, and it can now bring in handsome revenues from concession rents and royalties. Land and its products belong to the tribe; the chief is only their caretaker. But until stool treasuries were introduced, it was easy for chiefs to use the revenues for private instead of public ends, spending them on lavish living and litigation, luxuries confined to themselves and their immediate counsellors. Destoolments arise largely from struggles to control stool wealth and to enjoy the perquisites of office, and many of them are the constitutional expression of land disputes, which in the old days would have been settled by going to war. This state of affairs will be remedied when stool treasuries are fully organized and stool revenues are applied to the purposes of native administration.

It has been the most important result of the ambiguity in the constitutional status of the Colony that native administration, in the Nigerian sense, was not introduced before 1944.<sup>2</sup> It is an irony that though Maclean was one of the earliest British exponents of indirect rule, the Gold Coast, partly for that very reason, did not have the clearly defined system of indirect rule that is found in newer dependencies. The chiefs of the Gold Coast, appealing to the precedents of the Bond of 1844 and the Legislative Assembly of 1852, have consistently claimed that their jurisdiction is inherent and not derivative. Even after the annexation of 1874 the British

<sup>1</sup> Cf. below, p. 182, n.<sup>3</sup>.

<sup>2</sup> "The system of government generally may be described as a mixture of direct and indirect rule with a steady bias towards the latter," *Colonial Reports, Annual, Gold Coast, 1931-32*, p. 4; repeated in subsequent Annual Reports and in the *Gold Coast Handbook, 1937*, p. 33.

government did not make any declaration of principles nor define the constitutional position of the native rulers. Neither in the Native Jurisdiction Ordinances of 1878 and 1883, nor in the Chiefs Ordinance of 1904 (though these gave the Governor considerable powers in suspending, deposing or confirming the election of chiefs), 'had the Crown taken the position which it assumed in Nigeria or Tanganyika, that the chiefs can exercise no legal powers until formally recognized as native authority'.<sup>1</sup> The question was shelved again in the Native Administration Ordinance of 1927, which remained until 1944 the basis of the chief's position. And while stool governments had no defined legal basis, they were slow to acquire a financial organization, and to take on the functions of local government. Chiefs continued to depend on fines from native courts and revenue from stool lands; no distinction was established between their personal income and the stool revenue; and there was no system of control to ensure that their expenditure should be on public purposes. Chiefs and people looked to the government to bear the cost of all local improvements except roads—village water supplies, schools, dispensaries, and sanitary improvements—and claimed that stool treasuries should be financed by grants from the central revenue.<sup>2</sup>

Proposals for introducing a proper native administration were discussed between successive governors and the Secretary of State. Slater in 1931, and Hodson in 1936, were concerned with schemes for establishing the principle that the judicial powers of tribunals were derived from the Crown, for disposing of the chiefs' claim to inherent jurisdiction, and for equipping each native authority with a properly regulated stool treasury financed out of local revenues, which is the most essential feature of indirect rule. In 1932 the government hoped to bring in a Native Administration Revenue Bill at the same time as imposing income tax,<sup>3</sup> but the bill had to be abandoned because of public opposition, and in its stead the Native Administration Amendment Ordinance of 1936 was passed, empowering chiefs to impose levies at their discretion.<sup>4</sup> This was replaced in 1939 by the Native Administration Treasuries Ordi-

<sup>1</sup> Hailey, p. 470.

<sup>2</sup> 1934 *Delegation*, pp. 38-9.

<sup>3</sup> Cf. below, p. 189.

<sup>4</sup> Attorney-General, 25th February 1936, pp. 60-1.

nance, for establishing and regulating stool treasuries, whose operation also was optional.<sup>1</sup> But a comprehensive system of native administration was at last introduced by two measures of 1944, the Native Authority (Colony) Ordinance and the Native Courts (Colony) Ordinance.<sup>2</sup> The first vests the appointment of native authorities in the Governor, defines their powers and establishes their financial organization. It enacts that the Governor may appoint any chiefs and native councils, or if this is inexpedient any other persons, as native authority in any area; and that such a native authority besides its traditional sources of revenue may impose an annual rate, and shall set up a finance committee to manage its revenue and expenditure.<sup>3</sup> The second vests the appointment of native courts in the Governor in Council.<sup>4</sup> This new system brings the Gold Coast into closer line with the policy of indirect rule that is generally prevalent in British territories, and at the same time it provides the foundations of the new Gold Coast constitution.

As in every colony where the principle of indirect rule in some form obtains, the central political problem of the Gold Coast is to fuse the ancient indigenous institutions of primitive society with the elaborate and alien institutions of the intruding civilization. At one end of the scale are the chiefs and councils of the native states; at the other end is Legislative Council in the capital; for the past fifteen years they have met and interpenetrated in the Provincial Councils. It is now necessary to sketch the European-constructed constitution which unites them all, in the form it was given in 1925.

<sup>1</sup> No. 16 of 1939; Secretary for Native Affairs, 21st March 1939, pp. 86-9.

<sup>2</sup> Nos. 21 and 22 of 1944.

<sup>3</sup> Native Authority (Colony) Ordinance, 1944, sections 3, 40 and 33.

<sup>4</sup> Native Courts (Colony) Ordinance, 1944, section 4.

## CHAPTER II

# THE CONSTITUTION OF 1925

In 1925 the Gold Coast Colony made a radical constitutional advance, with the establishment of a new Legislative Council containing elected members, and the creation of the Provincial Councils. The formal provisions of this constitution are described in the present chapter; its interpretation, conventions and working, in the next two.<sup>1</sup>

### I. THE EXECUTIVE COUNCIL

The Executive Council consists of certain officers named in the royal instructions, who are members *ex officio*, together with such other persons as the Governor with the approval of the Secretary of State may appoint. It is thus a non-representative body, and its members are the Governor's personal advisers, not in any sense a cabinet.<sup>2</sup> The present Executive Council was constituted by the royal instructions of 23rd May 1925, three times amended<sup>3</sup> since. It consisted in 1940 of eight *ex officio* members:

Governor,  
Colonial Secretary,  
Chief Commissioner of Ashanti,  
Chief Commissioner of the Northern Territories,  
Attorney-General,

<sup>1</sup> The constitution is contained in three main instruments: the letters patent of 23rd May 1925, which constitute the office of Governor and Commander-in-Chief; the royal instructions of the same date with their amendments (see below, n. 3); and the Gold Coast Colony (Legislative Council) Order in Council, 1925, with its amendments (see below, p. 41, and Appendix 1). On these constitutional forms in general, see Wight, *Development*, pp. 142-4.

<sup>2</sup> On the nature and powers of an executive council, see Wight, *Development*, pp. 149-5.

<sup>3</sup> *Laws*, 1936, iv. 17. The amendments were made by additional instructions of 23rd November 1934, 12th July 1937, and 6th March 1945. For the new constitution, all these instructions have been revoked and replaced by the royal instructions of 7th March 1946.

Financial Secretary,<sup>1</sup>  
 Director of Medical Services,  
 Secretary for Native Affairs.

In 1942 for the first time two unofficial members, Sir Ofori Atta and Mr. K. A. Korsah, were added.<sup>2</sup>

The Governor may appoint further official members, on the instructions of the Secretary of State, by an instrument under the public seal of the Colony. When on any special occasion he wishes for the advice of any person in the Colony, he may in the same way appoint that person as an extraordinary member. The Ashanti and Northern Territories Orders in Council of 1934 set up Executive Councils for Ashanti and the Northern Territories, viz. the Executive Council of the Gold Coast Colony;<sup>3</sup> to which the Chief Commissioners of Ashanti and the Northern Territories were added by amendment of the royal instructions in the same year,<sup>4</sup> with the proviso however that they were not thereby to have *ex officio* seats in the Legislative Council.<sup>5</sup>

The proceedings of Executive Council are confidential, and the layman can investigate its working only in general terms. Under Sir Arnold Hodson, it met once a week, every Thursday at 10 a.m. When the unofficial members were added to the Council, the weekly meeting was changed for their convenience to Monday at 10 a.m., so that they could come to Accra at the weekend. The Chief Commissioners, because of their distance from the capital, can only attend infrequently,\* when they happen to be in Accra or if the particular concerns of their territories are to be discussed. Full memoranda on each item in the agenda are prepared by the Secretariat and circulated to members during the preceding week. At the meeting, each question is first explained by the departmental head concerned; there follows general discussion; then the Governor asks each member of the Council in

<sup>1</sup> Until 1937, the Treasurer; additional instructions of 12th July 1937. See below, p. 63, n.<sup>1</sup>.

<sup>2</sup> Governor's announcement in Legislative Council, 29th September 1942, p. 3.

<sup>3</sup> Ashanti and Northern Territories Orders in Council, 1934, section 6 of each (*Laws*, 1936, iv. 69, 78).

<sup>4</sup> Additional instructions of 23rd November 1934 (*Laws*, 1936, iv. 25).

<sup>5</sup> Gold Coast Colony (Legislative Council) Amendment Order in Council, 1934 (*Laws*, 1936, iv. 54).

turn, in ascending order of seniority, for his advice, which usually takes the form of a yes or no. The Council is purely advisory: members do not vote. They are precluded from bringing up a question at a meeting of the Council, and it is very rarely that a member exercises his right of submitting a question for discussion to the Governor in writing beforehand.

## 2. THE LEGISLATIVE COUNCIL

The Legislative Council was constituted by the Gold Coast Colony (Legislative Council) Order in Council of 1925, four times amended.<sup>1</sup> According to the Order in Council, it is lawful for the Governor, with the advice and consent of the Legislative Council, to make laws for the peace, order and good government of the Colony. Such laws are styled ordinances, and the enacting words were to be 'Enacted by the Governor of the Gold Coast Colony, with the advice and consent of the Legislative Council thereof';<sup>2</sup> these were slightly modified in 1934. The Legislative Council has not hitherto legislated for Ashanti or the Northern Territories.<sup>3</sup>

The Legislative Council consists of thirty members: the Governor as President, fifteen official members, and fourteen unofficial, as follows:

The Governor, with an original and a casting vote;<sup>4</sup>

Thirteen *ex officio* members, viz. the *ex officio* members of Executive Council (excluding the Chief Commissioners of Ashanti and the Northern Territories), together with eight other government officers *ex officio*, as listed in the order in council;

Two nominated official members;

Nine African unofficial members, viz. six provincial members and three municipal members;

<sup>1</sup> *Laws*, 1936, iv. 27; see Appendix 1. Most of the formal provisions of the Order in Council of 1925 are reproduced in the Order in Council of 1946; see Appendix 2.

<sup>2</sup> Section 49.

<sup>3</sup> See below, pp. 53-4.

<sup>4</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, sections 3 and 57.

Five European unofficial members, viz. a mercantile member, a mining member, and three nominated unofficial members.<sup>1</sup>

Nominated members, both official and unofficial, are appointed by the Governor by commission under the public seal of the Colony, published in the *Gazette*. Originally the appointments had to be confirmed and might be disallowed by the Secretary of State; but this formal restriction upon the Governor's discretion, which was never employed, was abolished at the outbreak of the Second World War.<sup>2</sup> Nominated official members are appointed for a term of four years, and are capable of reappointment. Unofficial members also have a term of membership of four years, and are eligible for any number of further terms.<sup>3</sup> The difference between a legislative council and a parliament is illustrated by the provision that if an unofficial member is absent from the Council for more than two months without the Governor's leave, or for more than twelve months with it, his seat falls vacant.<sup>4</sup>

Of the elected members, the provincial members and the European elected members are elected by electoral bodies; the municipal members by an electorate. The provincial members<sup>5</sup> are elected by the Provincial Councils; one by the Provincial Council of the Western Province; two by that of the Central Province; and three by that of the Eastern Province, which is divided into three sections, the Ga-Adangme Section, the Ewe Section, and the Akan Section, one member for each.<sup>6</sup> There are two alternative qualifications for election as a provincial member; either to be a paramount chief, that is to say, a member of the Provincial Council of the Province concerned, 'certified in writing by the Provincial Commissioner to be able to read and speak the English language sufficiently well to enable him to take an active and in-

<sup>1</sup> See Appendix 3.

<sup>2</sup> Gold Coast Colony (Legislative Council) Amendment Order in Council, 1939, sections 3 and 7 (*Statutory Rules and Orders*, 1939, ii. 3568).

<sup>3</sup> Gold Coast Colony (Legislative Council) Amendment Order in Council, 1933, section 9 (*Laws*, 1936, iv. 52).

<sup>4</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 28.

<sup>5</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, sections 18-19.

<sup>6</sup> See below, p. 45-6.



telligent part in the proceedings' of the Legislative Council;<sup>1</sup> or to be a native owing allegiance to the stool of a paramount chief in the Province.<sup>2</sup>

Of the two European elected members, the mercantile member is elected by the electoral committee of the Chambers of Commerce; the mining member, by the Chamber of Mines.<sup>3</sup> For the election of the mercantile member, the Chamber of Commerce, such as are declared so recognized by the Governor, each nominate one of their European officers, who form the Mercantile Electoral Committee. Its only function is to elect the mercantile member; the President of the Accra and Eastern Provinces Chamber of Commerce is *ex officio* president of the Committee. The Chamber of Mines, on the other hand, is empowered to regulate its own proceedings for the election of the mining member. It has for-gone this right, preferring to have the Governor nominate the mining member on its recommendation. Both these members have to be Europeans of over twenty-five years of age, but whereas the mining member must be himself a member of the Gold Coast Chamber of Mines, the mercantile member need be only a 'representative' of the Chambers of Commerce.

There are three municipal members,<sup>4</sup> one for each of the three coastal towns in which municipal government has been established: Accra, Cape Coast and Sekondi. They are elected, not by the Municipal Councils acting as electoral bodies, in the way in which the Provincial Councils act as electoral bodies, but by the municipal electorates. The franchise for these electorates until recently was open to persons of either sex and full age, in occupation of a house of rateable value of £6 per annum.<sup>5</sup> Figures for the registered electors of the three towns together in 1939 were as follows:

<sup>1</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 18(3).

<sup>2</sup> Gold Coast Colony (Legislative Council) Amendment Order in Council, 1939, section 10.

<sup>3</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, sections 21-2, 24, and Legislative Council Electoral Regulations, sections 39-51 (*Laws*, 1936, iv. 59).

<sup>4</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, sections 20, 23; Legislative Council Electoral Regulations, sections 16-38.

<sup>5</sup> Adult suffrage was introduced in Accra in 1943 and in Cape Coast in 1944; see below, p. 52.

Total population	114,003
Male electors	4,903
Female electors	2,160
	7,063

This electorate thus represented 6·2 per cent of the total population of the three towns, and ·4 per cent of the total population of the Gold Coast Colony.<sup>1</sup> The qualifications for election as a municipal member are to be twenty-five years of age, to be able to read and speak English, and to own property of £250 value per annum. It seems to have been legally possible, therefore, for a European to be elected to represent a municipality; but it may be assumed that this neither was intended by the government when the constitution was devised, nor has been likely ever to happen; and the municipal members may be classified among the African members of the Legislative Council.<sup>2</sup>

The members of the Council take precedence, first the official members, primarily according to their office, and then the unofficial members, primarily according to their length of continuous membership of the Council. First the members of Executive Council according to seniority, the other *ex officio* officers in the order named (the three Provincial Commissioners ranking among themselves by seniority), and the nominated official members according to the order assigned to them in the official precedence list for the Colony; then the unofficial members, ranking

<sup>1</sup> *British Colonies, Protectorates, etc. (Local Legislatures)*, House of Commons paper 169 (1939), p. 4.

<sup>2</sup> Cf. *Aborigines Petition*, para. 57, concerning 'the comparatively small proportion of Africans to Europeans in the fourteen seats for the unofficial members of the Legislative Council. This proportion appears really to be six Africans to five Europeans. As the three Municipal Members may be either African or European the proportion might conceivably be six Africans to eight Europeans. If it is only six Africans to five Europeans this is very far from corresponding with the ratio of population, which is about one European to 1,000 Africans. If the five Europeans are added to the thirteen *ex officio* members (all of whom are and seem likely to continue to be Europeans), the proportionate membership of the Legislative Council would be six African members to eighteen European members. The comment in any case is that representation of the indigenous population who really constitute the great bulk of the taxpayers is for all practical purposes illusory.' Cf. Appendix 5.

by seniority, and those elected or nominated at the same time, alphabetically.<sup>1</sup>

The Governor may appoint a provisional member to fill the place of any nominated member, official or unofficial, who has in any way vacated his seat or is temporarily absent therefrom; such provisional member being to all intents and purposes a full member of the Council until his appointment is superseded by a definitive appointment.<sup>2</sup> The Governor may also appoint any person an extraordinary member of the Council for any special occasion on which he wishes to obtain such person's advice.<sup>3</sup> It is specially provided that women are not disqualified by sex or marriage either from the franchise or from election or nomination to the Council.<sup>4</sup>

### 3. THE PROVINCIAL COUNCILS

The Legislative Council containing elected members is an institution the Gold Coast has in common with a dozen other colonies.<sup>5</sup> But the Provincial Councils were, at the time of their creation, peculiar to itself, and were the outstanding feature of the Constitution of 1925. It will be necessary here to give some account, not only of their constitutional basis, but also of their development in practice.

The Legislative Council Order in Council of 1925 established, in each of the three Provinces into which the Colony has hitherto been divided, a Provincial Council, 'which shall consist of the Head Chiefs whose headquarters are situated within the Province'.<sup>6</sup> The Provincial Council of the Western and Central Provinces form each one undivided body. But the Provincial Council of the Eastern Province, which is at the same time the most thickly populated and the least racially homogeneous, was at first divided into three linguistic Sections, the Ga-Adangme, the Ewe and the

<sup>1</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 11.

<sup>2</sup> *Ibid.*, section 13.

<sup>3</sup> *Ibid.*, section 10.

<sup>4</sup> *Ibid.*, section 11.

<sup>5</sup> See Wight, *Development*, appendix 8.

<sup>6</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 16(1).

Akan.<sup>1</sup> The main, but not the only function of these Councils, has been to elect the provincial members of the Legislative Council: the Council of the Western Province electing one member; that of the Central Province, two; and that of each of the three Sections of the Eastern Province, one. The Councils first met on 17th May 1926.<sup>2</sup> Those of the Central and Eastern Provinces elected their members forthwith, but the Provincial Council of the Western Province did not send a member to Legislative Council until 1928.<sup>3</sup>

The three Sectional Councils of the Eastern Province never functioned effectively as separate bodies save in minor matters of tribal and stool disputes, and soon coalesced into a single Provincial Council like those of the Central and Western Provinces. This development was endorsed by the Legislative Council Amendment Order in Council of 1939, which provided that the electoral functions conferred in 1925 on the Sectional Councils should henceforward be exercised in the joint meeting of the Eastern Province Provincial Council, electing one member to the Legislative Council for each Section.<sup>4</sup> Its three component linguistic groups make the combined Eastern Province Provincial Council a multilingual body.

Head chiefs, who since the Native Administration Ordinance of 1927 are styled paramount chiefs, are defined as those 'who, in the opinion of the Governor, are Chiefs not subordinate in their ordinary jurisdiction to any other Chief, and whom the Governor shall, from time to time by an Instrument under his hand declare to be recognized Head Chiefs for the purposes of this Order'.<sup>5</sup>

<sup>1</sup> Legislative Council Electoral Regulations, section 11(1).

<sup>2</sup> See Guggisberg, 3rd March 1927, pp. 9-11, 17ff.

<sup>3</sup> Acting Governor, 25th October 1928, p. 257.

<sup>4</sup> Gold Coast Colony (Legislative Council) Amendment Order in Council, 1939, section 9; Electoral Law (Amendment) Ordinance, 1940 (no. 10 of 1940), section 6.

<sup>5</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 16(1); cf. Native Administration Ordinance, 1927, section 2, 'Paramount Chief' (*Laws*, 1936, ii. 1162). The list of the 63 paramount chiefs (in 1936) is contained in schedule 1 to the Ordinance (*ibid.*, ii. 1216-17). 'Head Chief' was similarly defined in the Native Jurisdiction Ordinance, 1883, section 2 (*Ordinances*, 1903, i. 392) and in the Chiefs' Ordinance, 1904, section 2 (*Laws*, 1928, i. 151). The term 'Paramount Chief' was substituted for 'Head Chief', in the Gold Coast Colony (Legislative Council) Order in Council, 1925, by the Gold Coast Colony (Legislative Council) Amendment Order in Council, 1939, section 8.

Each member of the Provincial Council has one vote for every unit of 10,000 inhabitants (or part of such unit, not being less than 5,000 inhabitants) in his state; in the case of a state with a population of less than 5,000, he has one vote.<sup>1</sup> Every member may be accompanied by not more than eight of the members of his state council, who are not entitled to vote or to take part in the proceedings, except to advise the member whom they accompany.\*

Each session of a Provincial Council is formally opened by the Provincial Commissioner; there is a good deal of ceremony, and the expenses of the chiefs and their retainers are paid by government. The Provincial Commissioner presides while he is present. In this capacity he can make communications from the government to the assembled chiefs: he explains government policy, and the intention of all bills which affect African life or are likely to be controversial.\* The Provincial Council for its part can communicate, by letter to the Provincial Commissioner, with the Governor; this is an alternative channel for expressing its views to that provided by its member in the Legislative Council; and the possibility is not excluded that the two methods may clash, as an example quoted below in connection with the problem of the representative function of the provincial member suggests.<sup>4</sup> The Provincial Council proceeds to choose a president, and the Provincial Commissioner withdraws.<sup>5</sup>

The Legislative Council Order in Council laid down that besides their duty of electing provincial members to the Legislative Council, 'the Provincial Councils may also discharge such other functions as may from time to time be assigned to them by Ordinance'.<sup>6</sup> This was emphasized by the government at the outset.

'No actual functions or powers', said Guggisberg in his annual address of 1927, 'have as yet been assigned by Ordinance to the Provincial Councils, but provision therefore has been made in

<sup>1</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 18(1). Cf. *Gazette* Notice as to Election of Provincial Members (*Laws*, 1936, iv. 57).

\* Legislative Council Electoral Regulations, section 6.

\* *Ibid.*, section 8.

<sup>4</sup> See below, p. 98.

<sup>5</sup> Legislative Council Electoral Regulations, section 10.

<sup>6</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section

the Native Jurisdiction Bill which will be introduced this session. Apart from discharging any function that may be allotted to them by legislation, and also apart from their electoral powers, the Provincial Councils fulfil three very valuable objects: they give the Head Chiefs and their Councillors the opportunity of uniting for the preservation of their national institutions, of consulting together on subjects to the common welfare of their respective peoples, and, finally, of examining and advising Government on any proposed legislation affecting the people.<sup>1</sup>

A little later he quoted Mr. W. J. A. Jones, the Provincial Commissioner of the Eastern Province,<sup>2</sup> to the same effect:

‘Far too much stress has been laid on the electoral functions of the Provincial Councils, which are exercised under ordinary circumstances only once in every four years, and far too little on their other duties. . . .

‘They constitute the channel through which Government for the first time becomes acquainted with the views of the people as a whole. The Head Chiefs do not decide as to their attitude towards any legislative measure, or express their opinions on any subject, without first consulting their respective Aman,<sup>3</sup> and can therefore with every reason maintain that they are in the fullest sense of the word the representatives of their people when they attend the meetings of the Provincial Councils. . . .

‘Nationhood, which the opponents of the Provincial Councils have taken as their slogan and which they accuse us of deliberately retarding, will surely be the more rapidly achieved by uniting the Chiefs, and through them their people; and, when achieved, prove the more solid and lasting if built up on native institutions which have been evolved by long experience as best befitting the people of this Colony. Foreign political organization and methods of representation conflict with and, if sanctioned by Government, must lead to the destruction of these native institutions, at all events in the present stage of the

<sup>1</sup> 3rd March 1927, p. 17.

<sup>2</sup> Sir Andrew Jones (1889-): Gold Coast civil service, 1913-33; chief commissioner of the Northern Territories, 1933-41; deputy chairman of the West African Governors’ Conference since 1941; joint secretary of the West African War Council, 1941-5.

<sup>3</sup> State councils, the plural of *Oman*.—M. W.

Colony's constitutional development. It should be remembered and emphasized that the principle of the Provincial Council is not an innovation: for Chiefs have met in Council before now, and functioned whenever the necessity arose. What Government has done is to recognize them as advisory bodies on behalf of the people, with power to elect their own representatives to the Legislative Council.<sup>1</sup>

Thus it will be seen that from the beginning there was contemplated for the Provincial Councils those activities whose development throughout the subsequent twenty years has made them an essential supplement to the Legislative Council. This is particularly true with regard to the function of examining and advising government upon proposed legislation.<sup>2</sup>

Much of the working of the Provincial Councils appears to be conventional and without statutory basis. They meet without regularity, two or three times a year, according to the volume and importance of the business to be discussed.<sup>3</sup> It seems, too, that by convention the president of the Council is chosen as the provincial member for the Legislative Council. The most obvious tendency of all has been for the Councils to coalesce: as the three Sections of the Eastern Province Provincial Council have coalesced into a single Provincial Council, and as the three Provincial Councils themselves have united to produce the Joint Provincial Council.

There is a sense in which the Joint Provincial Council is prior to the Provincial Councils of which it is formed, for it is the successor of gatherings of paramount chiefs from all parts of the Colony in days before the Provincial Councils themselves were instituted, and is indeed, in a long perspective, the descendant of the Legislative Assembly of 1852 and the Fanti Confederacy of 1871. When Sir Ofori Atta described it as a 'Gold Coast Council, which for purposes of convenience, is divided into three sections under the name, "Provincial Council",<sup>4</sup> he was expressing a view legally inaccurate, but historically true. The immediate germ of the Joint Provincial Council may be discerned in the conference

<sup>1</sup> 3rd March 1927, pp. 22ff.

<sup>2</sup> See below, pp. 117-19.

<sup>3</sup> 'The Governor shall as occasion requires . . . appoint some convenient day for the meeting,' Legislative Council Electoral Regulations, section 3.

<sup>4</sup> 19th April, 1927, p. 481.

of paramount chiefs at Nsawam in 1925, with which the Native Administration Ordinance originated.<sup>1</sup> In the following year the Provincial Councils were instituted, and Guggisberg suggested at the outset that they might profitably meet to discuss common questions, quoting the Nsawam meeting as a precedent.<sup>2</sup> The first united conference of the Provincial Councils was held at Saltpond in the Central Province in April 1932.<sup>3</sup> It was sponsored by the government, primarily in order to get a decision from the native authorities concerning the proposed Native Administration Revenue Bill.<sup>4</sup> Thenceforward the Joint Conference became a regular annual event, though it remained without statutory authority until 1944.<sup>5</sup> Its president is elected for each session. Questions are referred to it by the local Provincial Councils, and the minutes of its discussions are published, as are those of the local Councils. The organization was crowned by the establishment of a Standing Committee of the Joint Provincial Council, which consists of four representatives from each Provincial Council, and elects its chairman for two years. This body acts in an advisory capacity to both the Joint and the individual Provincial Councils, by whom questions are referred to it; it meets together with the secretaries of the three Provincial Councils.<sup>6</sup>

The Joint Provincial Council has become second in importance only to Legislative Council in the political life of the Colony; and

<sup>1</sup> Ofori Atta, *ibid.*, pp. 461-2; 4th March 1943, pp. 166-7. See below, p. 115.

<sup>2</sup> 3rd March 1927, p. 26.

<sup>3</sup> See *Minutes of the Meeting of the Joint Conference of the Provincial Councils held at Saltpond in April 1932* (Government Printer, Accra, 1933). 'I say this meeting opens a new chapter; because never before in the history of our land has an intense desire for the welfare of the country taken possession all at once of the entire country from the Volta even to the Tano and has drawn the Natural Rulers to a common ground and for a common purpose. Even the Great Fanti Confederation of 1871 limited its activities to Fantiland only. This day is the birthday of our nation,' Rev. J. Evans Appiah, of the Wesleyan Mission, address of welcome to the Conference (*ibid.*, p. 17). The earliest mention in Legislative Council of the Joint Conference came in the Governor's address, 1st March 1932, p. 59, which implied that the Joint Conference was already in the habit of meeting to discuss questions submitted by government.

<sup>4</sup> See above, p. 37. The Conference drew up a memorial on various desired reforms; see *Joint Conference of the Provincial Councils: Memorial and Governor's Reply*, sessional paper no. iv of 1933.

<sup>5</sup> Native Authority (Colony) Ordinance, no. 21 of 1944, section 29.

<sup>6</sup> See Magnus J. Sampson, 'A Starting Point in Native Institutions', *Pointers to Progress: the Gold Coast in the Next Five Years*, p. 34.



it is to play the part in the new constitution which the Provincial Councils themselves have played in the constitution of 1925, becoming the electoral body for provincial members.<sup>1</sup>

#### 4. THE MUNICIPAL COUNCILS

It was intended to reorganize the Municipal Councils at the same time that the new Legislative Council and the Provincial Councils were established, but the project was not carried through. The three town councils of Accra, Cape Coast and Sekondi were set up in 1894.<sup>2</sup> They consisted of ten members, five official and five unofficial; of the unofficials, one was a European member of the local chamber of commerce, nominated by the Governor, and the other four were elected biennially.<sup>3</sup> The Governor appointed one of the official members to be president and treasurer of the council. The councils may levy rates and receive grants-in-aid from the central government. The Governor has power, which has never been exercised, by proclamation to extend the Ordinance to any town.

In 1924 a Municipal Corporations Ordinance was passed,<sup>4</sup> giving town councils an elected majority; a mayor and deputy mayor were to be elected by the councillors, and the head chief of every division included in a municipality was to be an extraordinary member of the council with the right to speak but not to vote. Because of the public opposition to it, the application of the Ordinance was in 1927 deferred indefinitely.<sup>5</sup> But since 1943 a new municipal policy has been introduced, in conjunction with the general remodelling of the constitution. Elected majorities have been established on the municipal councils, and this has been done by individual ordinances instead of an ordinance for general application. The Accra town council was the first to be reformed, with three official members, three nominated (two by the Ga Manche<sup>6</sup> and one by the Chamber of Commerce), and an elected member

<sup>1</sup> See below, p. 203.

<sup>2</sup> Town Councils Ordinance, 1894 (*Laws*, 1936, cap. 51).

<sup>3</sup> The franchise was held by £6 ratepayers of either sex; see above, p. 43.

<sup>4</sup> No. 29 of 1924.

<sup>5</sup> Guggisberg, 3rd March 1927, p. 16. See below, p. 185.

<sup>6</sup> Accra is capital not only of the Colony, but also of the Ga state, of which the Ga Manche is paramount chief.

from each of the wards of the urban area, of which there are seven,<sup>1</sup> making an elected majority. The elected members are returned by adult franchise of both sexes, triennially. The Governor appoints a president from among the members of the council, until such time as he shall authorize them to elect their president.<sup>2</sup> The first election for the new council was held in April 1944. The Cape Coast town council was reformed on the same lines in 1944,<sup>3</sup> and it is intended to amalgamate Sekondi with Takoradi and to provide this new municipality with a similar constitution.<sup>4</sup>

The most successful municipal administration in the Gold Coast has been that of Kumasi.<sup>5</sup> In 1925 the Kumasi Public Health Board was set up, consisting of ten members: five official members appointed by the Chief Commissioner, and five nominated members: two nominated by the Kumasi Council of Chiefs, two by the Kumasi Chamber of Commerce, and an African ratepayer other than an Ashanti native, nominated by the Chief Commissioner.<sup>6</sup> The Board had the powers and resources of the town councils of the Colony. In 1943 it was superseded by a Kumasi Town Council, composed of three official, three nominated, and six elected members; the nominated members being nominated, two by the Asantehene, and one by the Kumasi Chamber of Commerce; and the elected members being elected by adult franchise of both sexes. The Assistant Chief Commissioner is president of the council until the Governor shall authorize the council to elect its president.<sup>7</sup>

In two smaller towns there is a modified form of municipal organization. In 1935 the Obuasi Sanitary Board was set up for the mining town of Obuasi in Ashanti. It consists of six members: three official members appointed by the Chief Commissioner, and three members nominated by the Ashanti Goldfields Corporation Ltd.<sup>8</sup> In 1940 a similar board was established for the mining area of Tarkwa, in the Western Province of the Colony, consisting of

<sup>1</sup> *Gazette*, 29th April 1944, p. 273.

<sup>2</sup> Accra Town Council Ordinance, no. 26 of 1943; see Acting Attorney-General, 18th August 1943, pp. 20-1.

<sup>3</sup> Cape Coast Town Council Ordinance, no. 18 of 1944.

<sup>4</sup> Governor, 6th March 1945, pp. 9-10.

<sup>5</sup> See *Gold Coast Handbook, 1937*, pp. 149-51.

<sup>6</sup> Kumasi Public Health Board Ordinance (*Laws of Ashanti, 1928*, cap. 13); replaced by no. 18 of 1937.

<sup>7</sup> Kumasi Town Council Ordinance, no. 18 of 1943.

<sup>8</sup> Obuasi Sanitary Board Ordinance (*Laws, 1936*, cap. 52).

eight members; three *ex officio*, the district commissioner, the chief inspector of mines, and the medical officer of health; and five nominated, one to represent the railway, one to represent mercantile interests, and three Africans to represent the three divisions of the Wasaw Fiase state.<sup>1</sup> Each of these boards has similar powers and resources.

It is important to note that the establishment of a municipal system has not meant the abrogation of the pre-existing state system. This has sometimes produced a problem of dual control, the municipal council encroaching upon the state council, with rivalry and friction between them which are increased when the town is divided between the jurisdictions of more than one stool.<sup>2</sup>

#### 5. ASHANTI AND THE NORTHERN TERRITORIES IN RELATION TO LEGISLATIVE COUNCIL

The power of legislating for the Gold Coast Colony has hitherto resided in the Governor and Legislative Council, the power of legislating for Ashanti and the Northern Territories in the Governor alone. Therefore, although through their contiguity and similarities the legislation of the three parts of the Gold Coast was largely identical, until 1934 it had to be effected in every case by three separate ordinances. In 1934 the Gold Coast Ordinances Order in Council was issued, enabling laws to be enacted either for the Colony and Ashanti together or for the Colony, Ashanti and the Northern Territories together, as though they were a single territory.<sup>3</sup> Henceforward one ordinance could be passed, enacted by the Governor and Legislative Council in respect of the Colony, but by the Governor alone in respect of Ashanti and the Northern Territories.<sup>4</sup> The first ordinance to be enacted in this manner was

<sup>1</sup> Tarkwa Township Ordinance, no. 50 of 1940; see Colonial Secretary, 2nd October 1940, pp. 14-16.

<sup>2</sup> Cf. Kwadade II, 4th October 1944, pp. 50-1; and see below, p. 185.

<sup>3</sup> *Laws*, 1936, iv. 1; see Griffith, pp. 29-30. The Order in Council of 1934 has been replaced by the Gold Coast Ordinances Order in Council, 1946.

<sup>4</sup> The enacting words now became: 'Enacted by the Governor of the Gold Coast, by and with the advice and consent of the Legislative Council, so far as the provisions hereof relate to the Colony', and the form of the Governor's assent, 'Assented to in His Majesty's name in so far as the provisions hereof relate to the Colony, and enacted by me in so far as the provisions hereof relate to Ashanti and the Northern Territories.'

the Ordinances Authentication Ordinance of 1935, which itself regulated the new method of enactment.<sup>1</sup>

There remained however an important anomaly in the relation of Ashanti and the Northern Territories to Legislative Council. The annual estimates have had to be passed by the Council, and they cover the whole of the Gold Coast. The Unofficial Members therefore have voted supplies, and might debate matters concerning Ashanti and the Northern Territories where direct questions of finance are concerned, but they have been precluded from discussing their administration.<sup>2</sup> This state of affairs will come to an end with the representation of Ashanti in Legislative Council under the new constitution.

<sup>1</sup> *Laws*, 1936, cap. 2; see Attorney-General, 26th March 1935, pp. 28-9.

<sup>2</sup> See below, pp. 195-6.

## CHAPTER III

# THE NATURE AND COMPOSITION OF THE COUNCIL

### I. SESSIONS AND ORGANIZATION

**T**he sessions of Legislative Council are held at such times and places as the Governor appoints by proclamation. In the first sixty years of its history the Council used to meet in Government House. In 1912 it was provided with a Council Chamber in the public offices at Accra. This was damaged in the earthquake of 1939; since when the Council has met, once or twice in the Colonial Secretary's office, but generally in the Supreme Court Building. In 1944 a Select Committee was appointed to make recommendations for a new Legislative Council Chamber, in order that 'this Council should be housed in its own building and one suitable to the dignity of the Council'.<sup>1</sup>

'There shall be at least one session of the Council in every year, and there shall not be an interval of more than twelve months between the last sitting of one Session and the first sitting of the next following Session.'<sup>2</sup> The Clerk of the Council gives written notice of a meeting to members not less than fourteen days before the date; but in case of emergency, of which the Governor is sole judge, shorter notice suffices.<sup>3</sup> The Governor may also at any time prorogue a session, but it is interesting to notice that the Council cannot be *dissolved*, as are those of Kenya and Northern Rhodesia.<sup>4</sup> This is one of several illustrations that the Gold Coast Council has been in a more primitive state of formal constitutional develop-

<sup>1</sup> Acting Colonial Secretary, 3rd October 1944, p. 6; cf. Colonial Secretary, 5th September 1939, p. 2.

<sup>2</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 55.

<sup>3</sup> Standing Orders and Rules, no. 1.

<sup>4</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 56; contrast Kenya Royal Instructions, 11th September 1920, section xxx, and Northern Rhodesia (Legislative Council) Order in Council, 1924, section 21. Contrast also the new constitution, Gold Coast Colony and Ashanti (Legislative Council) Order in Council, 1946, section 43 (1) (see Appendix 2).

ment than the Councils of the settler colonies—more conciliar and advisory, less parliamentary and representative.

The estimates session, ceremonially inaugurated, and introduced by the Governor's budget address, is always held in February or March. There has usually been another session in the summer, at any time between June and September, and perhaps another in December. But this varies greatly: in 1933 and in 1935 there was only one session in the year; in 1925 on the other hand there had been seven, and in 1927 eight.<sup>1</sup> The length of a session can vary almost as much. The estimates session usually lasts a week, but a session sometimes opens and is adjourned on the same day. In the years 1933-43, the average number of sessions each year was  $2\frac{1}{2}$ , the average length of each session in days was  $3\frac{1}{2}$ , and the average number of days that the Council sat each year was roughly  $7\frac{1}{2}$ . Over the whole of the two inter-war decades, one great tendency is apparent: sessions are fewer now than they were twenty years ago, but they are longer. Guggisberg during his governorship (1919-27) called on an average  $5\frac{1}{2}$  sessions in the year, of less than a day and a half in length. Hodson (1934-41) called on an average  $2\frac{1}{2}$  sessions in the year, three days in length. Under Guggisberg, the Council was sitting on an average of eight days in the year; under Hodson,  $7\frac{1}{2}$ . It is in the intervening years, the period of the economic crisis and of Slater's and Shenton Thomas's governorships, that there is an appreciable decline in the number of sessions and the time given to them.

Since so small a proportion of the year is spent in session, many events can be discussed in Council only retrospectively. Legislative Council is not like Parliament, able to keep critical developments under review from day to day;<sup>2</sup> herein has been one of its

<sup>1</sup> It may be pointed out that there is an ambiguity in the use of the word 'session'. The printed debates usually (but not always) apply it to the sum of a year's debates; the report of each series of consecutive debates is an 'issue'. This seems to be an abuse of the word session, dictated by the conveniences of publication. It is not the use of section 55 of the Order in Council, which implies the possibility of several sessions in a single year. I have used the word throughout to mean a series of consecutive sittings, terminated by an adjournment *sine die*. (See however the definitions of 'meeting' and 'sessions' in the Gold Coast Colony and Ashanti (Legislative Council) Order in Council, 1946, section 1.)

<sup>2</sup> But see p. 160, below, on the recent development of the Standing Finance Committee.

advantages for Official Members. It is not summoned in an emergency, as the representative assembly through which the government keeps in touch with public opinion, and to which it explains the course of events and answers for its own policy. Emergency meetings of the Council have the limited object of passing emergency legislation. The Council was summoned two days after Britain declared war on Germany in 1939, not for the brief resolution of loyalty to the King with which proceedings opened, but to pass the Trading with the Enemy Bill through all its stages as quickly as possible.<sup>1</sup> The most striking example of the detachment of Legislative Council from immediate events is afforded by the history of the cocoa hold-up. In 1937, the Council rose on 27th August. The hold-up, which began with mass-meetings at the end of October, was complete by the middle of November. The Nowell Commission was appointed on 14th February 1938, so that when the Council met again on 15th March, the cocoa dispute was already *sub judice*.<sup>2</sup> The Commission arrived in the Gold Coast on 23rd March, which was the last day of the estimates session, and left on 27th April; and the truce between the farmers and the firms came into effect on 28th April. It had not been until the Council met on 13th April, to pass the Cocoa (Control of Exportation) Bill under a certificate of urgency,<sup>3</sup> that the hold-up became the subject of any direct discussion in the Gold Coast legislature. The Council had not been a safety-valve during the height of the crisis, and its debates have no contemporary evidence thereon.

The infrequency with which the Council meets has its corollaries in other features that distinguish it from a parliament. In its physical embodiment it has consisted of no more than a debating chamber, without the addition of members' offices, smoking-rooms, dining-rooms, or libraries. Thus there has been no club spirit, and the only social intercourse arising out of the meetings of the legislature is the 'Legislative Council Dinner', given by the Governor at Government House each session, at which the opportunity is always taken to discuss informally with members any

<sup>1</sup> Colonial Secretary, 5th September 1939, p. 4.

<sup>2</sup> 'It would be out of place and inappropriate for me to mention anything about this crisis because we have the Cocoa Commission in our midst,' Hodson, 23rd March 1938, p. 99.

<sup>3</sup> No. 21 of 1938; Colonial Secretary, 13th April 1938, p. 3.

pending issues of especial interest to them. The appearance of a large African majority under the new constitution, and the provision of a special building to house the Council, may modify this.

Moreover, sitting with infrequency, the Council has to work with unrelieved application. Members cannot come in and out as they please, leaving a quorum to carry on the debate. Every member has to lend his attention, or at least his presence, to the discussion of every measure before the Council. 'Every Member in this House will no doubt admit that we have worked hard this session, without rest. We have worked day in and day out, morning and afternoon,' said Nana Ayirebi Acquah at the end of the 1937 budget session,<sup>1</sup> possibly with an eye on sceptical public opinion beyond the Council Chamber. This enforced assiduity has been more irksome to official than to unofficial members. Sir Ofori Atta expressed the African view at the end of the 1940 budget session, seemingly in answer to a hint that greater expedition would be welcome.

'It must always be assumed that we will make full use of the opportunity that is placed at our disposal; and therefore when we meet we must not be told to hurry up. It does not matter if it takes 10 to 12 days or even a fortnight, because when you lay before us your address or budget, and we agree to give our approval we are so to speak, bound by everything in it; an opportunity must therefore be given to us to scrutinize minutely everything that is said in your address and everything that is provided for it in the Budget.'<sup>2</sup>

The African unofficial members clearly enjoy sessions of the Council, quite apart from the particular political objectives they may have there. The formalities of debate; the sense of contact with government and of sharing in political decisions; the right of declaiming their opinions on policy openly and at length before a conscript audience of the highest government officers; the multifarious activities that attend a Council session—the meetings of the Select Finance Committee, perhaps of other select committees, and of the advisory bodies that arrange their sittings to coincide with the Council, where the unofficials can feel still more closely

<sup>1</sup> 23rd March 1937, p. 114.

<sup>2</sup> 20th March 1940, p. 158.



acquainted with the details of high policy—these give them a sense of pride in their part in a Council session, which for the majority of the official members, taking no part in debate themselves except at the divisions, have been apt to be a long tedium interrupting their real administrative work. It must be added, moreover, that unofficial members receive travelling expenses at the rate of ninepence per mile for a motor car to and from the Council, and an allowance of five guineas a day for a chief and three guineas for an ordinary member while attending sessions. In addition to the claims of public duty and the excitements of public life, unofficial members have the further cause for enjoying prolonged meetings of the Council that these represent a holiday with handsome pay.

The Clerk of the Council is a member of the Colonial Secretary's office. Since 1933 the post has been held by Mr. H. H. Malm, M.B.E., an African Assistant Colonial Secretary. The public are allowed to attend the Council, and there are usually half a dozen or more in the gallery on ordinary days. The opening of the budget session at the beginning of each year attracts a larger crowd, and on such an occasion it has even been possible to see the senior classes of two girls' schools in the gallery.<sup>1</sup> Debates are fully reported in the press, especially the Governor's address and speeches of unofficial members.

## 2. THE ELEMENTS IN THE COUNCIL

### THE GOVERNOR

The Governor is the President of the Council. It is psychologically significant that in the Gold Coast he is not referred to as 'the President', nor is he printed thus in the published debates. In other colonies he is given his functional title in relation to Legislative Council;<sup>2</sup> it is an indication that the Council thinks of itself as an embryonic parliament.<sup>3</sup> The Governor's double vote seems never to have been the subject of comment in the Council, nor

<sup>1</sup> I owe this detail to Dr. M. Fortes.

<sup>2</sup> E.g. in Northern Rhodesia. See vol. iii of this series, *The Northern Rhodesian Legislative Council*.

<sup>3</sup> Cf. Wight, *Development*, pp. 102-4. Guggisberg referred to himself in Council as the President, e.g. 22nd February 1926, p. 8.

indeed has even his original vote ever proved necessary to carry a government measure. Under the new constitution both votes are to be abolished.

After ceremonially opening the estimates session at the beginning of each year, the Governor makes his budget address.<sup>1</sup> He often has opened other sessions with a short speech or with public announcements, and has usually wound up important debates. For the rest, apart from acting as speaker, his share in debate has depended upon his temperament and inclination. Sir Arnold Hodson frequently intervened to argue with members or correct them, but the only instance of his speaking because he was interested in the matter under discussion was his advocacy of the Wild Animals Preservation (Amendment) Bill of 1939 in his character of a keen big game hunter.<sup>2</sup> The Governor does not leave the chair, but speaks sitting.

Officials are often inclined to depreciate Legislative Council; for the Governor, on the other hand, who has no contact with public opinion except through the Council, the temptation is perhaps to overvalue it. Conversely, the Governor's personality and the prestige of his office are a constant factor in the presentation of policy and in the background of debates. This factor operates outside the walls of the Council Chamber too; though the extent to which the Governor's personal and social influence may be brought to bear upon unofficial members without raising counteracting resentments, is impossible to appreciate with any exactness. It seems that a great part of Guggisberg's remarkable success was due to the grace and tactfulness of his extra-conciliar contacts. During the Sedition Bill controversy the leading unofficial members were invited to Government House by Sir Shenton Thomas to discuss the issue;<sup>3</sup> and the leader of the African members thought it necessary to declare in Council afterwards that they were proof against these blandishments—partly, no doubt, for the information of the government; mainly to allay their constituents' suspicions of a private conference attended by chiefs without linguists and councillors in their customary attendance;

<sup>1</sup> See below, pp. 154-5.

<sup>2</sup> 20th March 1939, p. 65.

<sup>3</sup> See below, p. 117.

but also, perhaps, in order to restore the confidence of the African members themselves.

'In coming to this Chamber to discuss bills or other matters,' he said, 'I would like to make it plain, if I may say, Sir, that the personality of the Governor who presides over the Council, however charming, however affable, should not be allowed to influence the members in their consideration of such bills and other matters laid before us. We are legislating', he continued, 'for the present and for the future generations and, as Sir John Rodger told us some time ago when dealing with a particular Bill (which is on record): ". . . but as not infrequently happens in West Africa, one Governor, Chief Justice or Attorney-General is succeeded by another holding quite different views from those of his predecessor?"'<sup>1</sup>

There was a marked difference of atmosphere between the regime of Sir Shenton Thomas and that of Sir Arnold Hodson. Sir Shenton Thomas took office at a moment of economic crisis and political unrest. He believed that what the Gold Coast needed was strong government, and was determined not to be thwarted by the childish and interested opposition that had obstructed essential measures in the past. He presided over only two sessions of the Council, and handled it in a firm manner which could suggest impatience. It was in his view a platform for publishing government measures rather than an incipient parliament, and he tried to discover public opinion through other channels as well. He left the Colony without any of the formal tributes having been offered by the unofficial members in Legislative Council, and since his departure scarcely a reference has been made to him or to his governorship, when Clifford, Guggisberg and Slater are constantly cited as having contributed one thing or another to the development of the country. Sir Shenton Thomas, however, left one lasting memorial in the definitions of constitutional principle in his opening address,

<sup>1</sup> Ofori Atta, 21st March 1934, p. 143. The controversy over the Waterworks Bill in the same year was partly concerned with the interpretation of a pledge said to have been given by Sir Hugh Clifford in 1913 that rates would not be charged for water drawn from street fountains (Nanka-Bruce, 20th March 1934, p. 78; Colonial Secretary, pp. 104-5; Governor, pp. 111-12). African members emphasized the dependence of the public upon the inviolability of governors' pledges (Nanka-Bruce, p. 79; Ofori Atta, p. 100).

from which quotations are given elsewhere—in themselves the expression of a mind that preferred issues clearly stated to the genial ambiguities of convention.

Sir Arnold Hodson had something of the personal touch that was Guggisberg's great strength and charm; his informality gained him the name of 'the sunshine Governor'. He became associated in the public mind with football competitions, wireless rediffusion at a cheap rate with loud-speakers in the markets, and the Accra Town Hall with its sprung dance floor and fully equipped modern stage. Wherever possible he avoided political controversies, and when the cocoa hold-up involved him in the greatest political controversy in Gold Coast history, his tact and impartiality were recognized cordially by African unofficial members.<sup>1</sup> Sir Ofori Atta defined their criterion of a governorship, during the last session over which Hodson presided, in terms of the manner rather than the matter of policy:

'One thing I must say is this, you have shown sympathy with the people in your dealings so far. Any Governor who comes to administer the affairs of this country without sympathy cannot succeed—he may have the power to rule but without sympathy, I am afraid he is bound to fail—and we are satisfied that you have shown sympathy.'<sup>2</sup>

Latterly, Hodson seemed content to let much of the chairmanship of the Council pass into the hands of his brilliant Colonial Secretary, Sir G. E. London.<sup>3</sup>

#### THE OFFICIAL MEMBERS

The government officials sitting in Legislative Council have fallen into three groups:<sup>1</sup>

1. The holders of the five greater offices, with *ex officio* membership of Legislative Council by virtue of *ex officio* membership of Executive Council.<sup>4</sup> These are the

<sup>1</sup> Ofori Atta, 27th February 1941, p. 99; Korsah, 23rd March 1939, p. 139. Cf. *Spectator Daily*, 18th October 1941.

<sup>2</sup> 11th June, 1941, p. 33.

<sup>3</sup> See below, pp. 64-5.

<sup>4</sup> See above, p. 41.

Colonial Secretary  
 Attorney-General  
 Financial Secretary<sup>1</sup>  
 Director of Medical Services<sup>2</sup>  
 Secretary for Native Affairs

2. Eight further officers with *ex officio* seats, listed in the Legislative Council Order in Council. These are the

Comptroller of Customs  
 Director of Public Works  
 General Manager of the Railway  
 Commissioner of the Western Province  
 Commissioner of the Central Province  
 Commissioner of the Eastern Province  
 Director of Agriculture  
 Director of Education

The composition of this group has undergone only one alteration since 1925: when the Director of Agriculture replaced the Surveyor-General in 1933.<sup>3</sup>

3. Two nominative seats, which have been allotted by the Governor on functional rather than on personal grounds. In the first eight years of the Council, the Conservator of Forests, the Director of Agriculture, the Solicitor-General, and the Commissioner of Lands<sup>4</sup> at various times held the two nominative seats; since then the Director of Education, the Postmaster-General, the Surveyor-General, the Commissioner of Police,<sup>5</sup> and (with the approach of war) the Commandant of the Gold Coast Regiment have held them. There seems, indeed, to have been little real distinction between the last two *ex officio* seats and the two nominative seats: Between 1933 and 1938 three of the seats were interchanged, with varying precedence, between the Directors of Education and Agriculture and the Surveyor-General, although there was no change

<sup>1</sup> A Financial Secretary was first appointed in 1937; previously there had been a Treasurer. See *Financial Organization of the Government of the Gold Coast*, sessional paper no. 5 of 1936; *Gazette*, 19th June 1937, p. 581.

<sup>2</sup> 'Director of Medical and Sanitary Services' up to 1934.

<sup>3</sup> Gold Coast Colony (Legislative Council) Amendment Order in Council, 1933, section 3 (*Laws*, 1936, iv. 52).

<sup>4</sup> This was personal to H. E. G. Bartlett, the first Commissioner, in office from 1930 to 1933. Under his successor the Lands Department sank into legislative obscurity.

<sup>5</sup> 'Inspector-General of Police' up to 1937.

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in the holders of those offices; until his retirement in 1938 the Surveyor-General, Mr. J. Clendinning, continued for the most part to hold an *ex officio* seat in the Council after the amendment of 1933.<sup>1</sup> Convention has been more important here than law; the only tendencies to be discerned are the gradual consolidation of their *ex officio* representation by the Departments of Education and Agriculture, and on the other hand the disappearance from the Council altogether of the Conservator of Forests and the Solicitor-General.

There have been two additional categories in which officials can sit in Legislative Council: temporary nominated official member and extraordinary member. The former is a substitute for a nominated official who is absent from the Colony, and sits under a Governor's commission provisionally appointing him temporarily an official member of the Council<sup>2</sup> in the place of that member. (*Ex officio* members when absent from the Colony are represented in the Council by the acting heads of their departments, who require no such commission). Extraordinary members, on the other hand, are appointed for the space of a meeting or of a session, under a Governor's commission requiring their advice 'touching certain matters about to be brought before the Legislative Council'.<sup>3</sup> Thus the Chief Inspector of Labour sat in Council in 1940 and 1941, while labour legislation was under discussion. The Income Tax Commissioner to four West African governments was appointed an extraordinary member in 1943, during the passage of the Income Tax Ordinance.<sup>4</sup> But it is usually unofficials rather than officials that have been recruited in this way.

It may be added that there has been only a single instance under the 1925 constitution of one who had been an official member re-appearing as an unofficial: Mr. R. A. Kelly, who after being Treasurer from 1929 to 1936, sat as mining member in the first session of 1937.<sup>5</sup>

The Colonial Secretary normally manages the government's business in the Council. But Sir George London, who became

<sup>1</sup> See above, p. 63, n.<sup>2</sup>

<sup>2</sup> E.g. *Gazette*, 28th September 1940, p. 778.

<sup>3</sup> E.g. *Gazette*, 11th March 1940, pp. 197-8.

<sup>4</sup> See below, p. 138.

<sup>5</sup> See below, p. 79.

Colonial Secretary in 1935,<sup>1</sup> was a man of outstanding ability, and soon established for himself the position of Sir Arnold Hodson's mentor. It was the Colonial Secretary who took charge of debate; with the deference due to the chair as the source of authority, it was he who appointed Select Committees,<sup>2</sup> and called upon a colleague to speak next;<sup>3</sup> and even called the President himself to order, when the President sought to continue an argument with an African member who had already been ruled out of order.<sup>4</sup> Sir George London's handling of the Governor had its obverse in his imper-turbable courtesy and *bonhomie* towards the unofficial members:

'I myself rely a great deal upon the criticism of Hon. Mem-bers. We officers are public servants and endeavour to live up to that ideal.'<sup>5</sup>

Apart from the Governor and the Colonial Secretary, the officials who have the most opportunity to make a personal impression on the Council are the Attorney-General and the Financial Secretary. The Attorney-General no longer introduces all legislation,<sup>6</sup> but he usually seconds; he is frequently called upon to agree to amend-ments; and his readiness and adroitness in adapting bills so as to meet the wishes of unofficial members without losing the substance of the legislation has a great influence on its outcome. The Finan-cial Secretary has the important function of chairmanship of the Select Committee on the Estimates and the Standing Finance Committee, and tributes to him in this capacity from unofficial members are sometimes given a more than formal emphasis. Mr. G. N. Farquhar, who was Financial Secretary from 1939 to 1943, won the hearts of African members, and received a singular com-plaint from the municipal member for Accra, which illuminated that member's qualities in the Council and the Finance Committee no less than Mr. Farquhar's:

<sup>1</sup> Sir George Ernest London (1889-): Malay civil service, 1911-35; on military service, 1916-19; under-secretary to the government of the Federated Malay States, 1934; colonial secretary, Gold Coast, 1935-44; knighted, 1942; member of Commission of Government of Newfoundland, 1944-5.

<sup>2</sup> 17th March 1937, pp. 62, 64. See below, pp. 145-7.

<sup>3</sup> 26th August, 1937, p. 16.

<sup>4</sup> 12th December 1931, p. 21; see below, pp. 133-4.

<sup>5</sup> 23rd March 1937, p. 123.

<sup>6</sup> See below, p. 138.

'I reiterate what I said last year with regard to the Honourable Financial Secretary. I said then that the Honourable Financial Secretary had an outstanding ability and that he was one of the few Europeans we have had here who possessed brains. I repeat the same thing now and say that he is a thorough gentleman, because I have personally tested him by actually treading on his toes to see what he would do. I have tried to test his temper many a time but he has kept very cool and has always proved a thorough gentleman.'<sup>1</sup>

Mr. Farquhar replied urbanely that he had been unaware that his temper was being 'subjected to a deliberate and scientific test' by the Honourable Member, but he was glad to know he had come through it successfully.<sup>2</sup>

It is seldom that the personality of other official members is reflected or mentioned in the Council debates, except in the conventional tributes paid to an officer on his promotion or transfer to another colony. On one occasion the long-standing unpopularity of the Department of Agriculture developed into an attack upon the Director himself; at the demand of European and African unofficial members alike he was replaced by the Comptroller of Customs as licensing authority for the export of cocoa; but 'tomorrow', said one of the African members as an afterthought, with sudden insight into the uncertainties of every political solution, 'we may have a Comptroller of Customs whom we will not want to see either.'<sup>3</sup>

#### THE UNOFFICIAL MEMBERS

Like the official members, the unofficial members have fallen into three divisions: 1. the six provincial members, who are African chiefs; 2. the three municipal members, who are also Africans, from the educated urban class; 3. the five European un-

<sup>1</sup> Kojo Thompson, 3rd March 1943, p. 107 (referring to 25th February 1942, pp. 82-3). Cf. R. S. Blay, *ibid.*, p. 114: 'There are times when Mr. Kojo Thompson had so worried him and trodden on his toes that I had expected something explosive from him but he always kept cool and answered him calmly'; and Moore, *ibid.*, p. 154.

<sup>2</sup> *Ibid.*, p. 186.

<sup>3</sup> Christian, 13th April 1938, p. 21; debate on Cocoa Exportation Control Bill.



official members, who are representatives of commercial and financial interests.

The provincial members are the core of the unofficials, and will still be so under the new constitution. They are paramount chiefs, elected by their fellows in the Provincial Councils, and they come with all the pageantry of their authority, wearing their native robes, arriving at the Council Chamber beneath their umbrellas, with their standard-bearers and followers in attendance, bringing the staff emblems which are the traditional symbols of the power vested in a chief by his council and his people—the power that is a revocable mandate. These staff emblems are placed against the wall behind them where they sit in Legislative Council.<sup>1</sup>

The essential qualification for the provincial members is that they should be able to speak English. The recent amendment that has made non-chiefs eligible as provincial members, to allow for the representation of the rural masses by educated Africans,<sup>2</sup> has not yet been made use of. The majority of chiefs still cannot speak English, and the linguistic restriction narrows the field from which provincial members can be drawn. This has had two results: to keep their personnel constant, and to limit the value of their individual contributions to debate. Once a provincial representative has been found, he tends to retain his seat.<sup>3</sup> And on the whole the provincial members have said little, leaving the task of spokespersonship to one or two of their number best qualified, and not embarrassing themselves and their listeners by lengthy speeches in uncertain English. They sometimes speak, not to contribute to the debate, but simply to give verbal notification of their impending vote; three or four of them in succession will 'rise to associate myself with the views of the previous speakers'.<sup>4</sup> It is unlikely that the linguistic qualification could ever be removed. It implies a certain standard of education, without which there would be no

<sup>1</sup> In the state councils and the Provincial Councils, the linguist holds the staff emblem while he is speaking, as a sign of his authority; in those Provincial Councils where the tradition of speaking through a linguist has broken down, the chief himself holds the staff emblem while he is speaking. In Legislative Council this too is dispensed with.

<sup>2</sup> See above, pp. 42-3.

<sup>3</sup> See Appendix 6.

<sup>4</sup> E.g. 20th March 1939, p. 63.

understanding of legislative business. The courts, and to some extent the Provincial Councils, have to use interpreters; but the vernaculars are both too numerous and too verbally limited, the ideas they express too primitive, for them to deserve or achieve official currency. English is the necessary language of progress and civilization, and the African wants to speak it.<sup>1</sup>

The outstanding figure among the unofficial members in the past twenty years has been Nana Sir Ofori Atta, the paramount chief of Akim Abuakwa.<sup>2</sup> He was the ruler of the largest state in the Gold Coast, and by far the ablest and most experienced politician in Legislative Council. He sat in the Council without a break from 1916 until his death in 1943; when he did not come as a provincial member, government nominated him as an extraordinary member;<sup>3</sup> and he was recognized as the leader of the unofficials. Largely self-taught, trained first for the ministry and then successively a solicitor's clerk and a government clerk in Accra before returning to Kibi<sup>4</sup> to administer the affairs of his state, he proved himself more brilliant and versatile than any of the educated intelligentsia, with whom he often came into conflict. His political superiority over them lay in an extraordinary capacity for hard work, and in an equally remarkable command of English and skill in debate.<sup>5</sup> He was a vigorous and assertive personality, a strong character from among a race that has not yet been fertile in strong characters. He had something of the tem-

<sup>1</sup> Cf. Elliot Report, p. 10.

<sup>2</sup> Nana Sir Ofori Atta, Omanhene of Akim Abuakwa (1881-1943): through his mother, eligible for election to the Akim Abuakwa stool; his father was drummer to the omanhene, and a convert to Christianity. Educated for the ministry, but became instead a clerk in Accra, 1899. Served in Ashanti campaign, 1900. Secretary to the omanhene of Akim Abuakwa (his uncle), 1903-11, and reorganized the administration of the state. Elected to the stool, 1912. Nominated unofficial member of Legislative Council, 1916-27; provincial member for the Akan section of the Eastern Province, 1928-43. First president of the Eastern Province Provincial Council, 1926. Introduced Native Administration Bill into Legislative Council, 1927. K.B.E., 1927. Visited England to receive the accolade from George V, 1928 (see his account of it in the Council, 24th February 1936, pp. 27-8), and again with the delegation to the Secretary of State, 1934. One of the first two unofficial members of Executive Council, 1942. See biographical sketch by J. B. Danquah in the *Akim Abuakwa Handbook* (1928), pp. 105ff.; Sampson, pp. 47-52; *The Times*, 26th August 1943.

<sup>3</sup> 28th February 1936, p. 99; 12th March 1940, p. 2.

<sup>4</sup> The capital of Akim Abuakwa.

<sup>5</sup> 'A very astute debater', Colonial Secretary, 29th September 1942, p. 65.

perament and qualities of a great conservative statesman: a high sense of responsibility towards his subjects, seen in his punctiliousness over the duties of his stool; the ability to move with public opinion, and to time his concessions so as to forestall opposition; the readiness to adapt the customs and institutions of his country, being neither a diehard traditionalist on the one hand nor an Amanullah on the other; the power, which is the strength of the chiefly class, of looking far ahead and being prepared to wait. His first loyalty was to Akim Abuakwa, which developed under his guidance into a rudimentary modern state, the best organized and most influential in the Colony.<sup>1</sup> This was the nucleus of his Gold Coast patriotism.<sup>2</sup> He was the great champion of the chiefs as the 'natural rulers of the Gold Coast'; it was in the name of this principle that he took the lead in breaking the West African National Congress in 1922-3, and did more than any other man to fashion the Provincial Councils into a living institution. Consequently he was in the closest relations with the administration, and had great influence as unofficial adviser on native affairs to every governor from Sir Hugh Clifford onwards. In the course of his lifetime he incurred much unpopularity, partly as the opponent of the intelligentsia, partly from the belief that he used his position to further his private interests,<sup>3</sup> and partly from a natural sus-

<sup>1</sup> See J. B. Danquah, *Akan Laws and Customs*, which is an account of the Akim Abuakwa constitution, and *Akim Abuakwa Handbook* (1928). The modernization of the state's legal system owed much to Dr. Danquah, who is legal adviser to the Akim Abuakwa state council, and Sir Ofori Atta's half-brother. But since Sir Ofori Atta's death the modernized state-system has tottered, and it has become apparent how much it depended on one man's personality.

<sup>2</sup> It was also the basis of another factor that can be discerned in the background of his policy: a fear of the Ashanti colossus to the north. By ancient tradition the Akims were the only successful opponents of Ashanti imperialism; 'the King of Ashanti treats with none but the King of Akim on familiar and equal footing' is a common Akan saying (Danquah, *Akan Laws and Customs*, p. 3). In status and in personality Sir Ofori Atta and the Asantehene were the two most powerful men in the country; their relationship seems to have had the formality of almost rival monarchs.

<sup>3</sup> Cf. the exchange between him and Kojo Thompson in Council, 17th March 1937, pp. 59 f., at the back of which lay the suggestion that Ofori Atta was promoting legislation in the Council to further his interests in his long-standing legal dispute with the Asamangkese Division. Ofori Atta was very wealthy, both as a landowner and as the possessor of lucrative mining interests; but in this he was in no different position from other chiefs, who have equally benefited from a system that has not distinguished between the stool revenue and the chief's private income.

picion of his intimacy with the government. It was his greatness that few of the criticisms of him remained unrefuted by his subsequent actions. His sense of the common interest of all classes in the Gold Coast was never more strikingly shown than by the reconciliation between chiefs and municipal members in 1929.<sup>1</sup> He proved his disinterestedness as well as his political judgement when he agreed to the principle of the separation of the chief's income from the stool treasury.<sup>2</sup> And in the last ten years of his life he rehabilitated himself as the leader of African opinion by the vigour of his opposition to government over the Waterworks and Seditious Bills, by his advocacy of constitutional reform, and by his championship of the farmers during the cocoa hold-up. His pre-eminence in Council was complete; in experience of the world, in cultivation of mind and in the quality of his speaking he had no rival; and the greater number of the constitutional arguments quoted here will be found to be by him.<sup>3</sup>

Nana Ayirebi Acquah, the Omanhene of Winneba, who was a member for the Central Province from 1926 to 1938, was twenty years younger than Sir Ofori Atta. He acted in Council as Sir Ofori Atta's lieutenant, and was spokesman of the Africans in his absence. He was a Methodist schoolmaster in Winneba for some years before being elected to the stool; and he had the power of stating issues plainly and clearly in debate. Since Sir Ofori Atta's death the leading provincial member has been Nana Tsibu Darku IX, the Omanhene of Asin Atandasu, a young and progressive chief, who was a clerk in the Civil Service for ten years before his enstoolment, and has been one of the members for the Central Province since 1932.<sup>4</sup> In 1943 he was appointed an un-

<sup>1</sup> See below, pp. 73-4.

<sup>2</sup> Over the Native Administration Treasuries Bill, 1939 (23rd March 1939, pp. 176-7).

<sup>3</sup> A reference to Sir Ofori Atta's funeral may be added here, which will perhaps illustrate the stage of social development that the Gold Coast has reached more vividly than a chapter of description. The obsequies of the statesman who had been given the accolade in Buckingham Palace, were celebrated according to African rites with human sacrifice. (Cf. Claridge, i. 437-8, ii. 252-6.) This is often still the clandestine observance for the deaths of greater chiefs; in this case the murderers were convicted. For an account of the final funeral ceremonies see Kwame Frimpong, 'The Final Obsequies of the Late Nana Sir Ofori Atta, K.B.E., Abuakwahene', *Africa*, April 1945, vol. xv, pp. 80-5.

<sup>4</sup> See Mr. Korsah's appreciative sketch of Nana Tsibu Darku in *West Africa*, 18th December 1943, p. 1147.

official member of Executive Council in succession to Ofori Atta. Until recently the other chiefs did not often contribute to general debate, though voicing when necessary the interests of their own states. Usually they have not been of a high standard of literacy,<sup>1</sup> and their experience has been limited to the lower reaches of business. Speeches are sometimes repetitive, with verbatim quotations from previous debates. But this is a general characteristic of African oratory: the municipal even more than the provincial members like reading to the Council copious extracts from resolutions, documents and reports; and they receive an extraordinary indulgence from the chair.<sup>2</sup>

The municipal members, the politicians who represent the three urban constituencies, are detribalized and Europeanized compared with the chiefs. But they have not always found a settled synthesis between the Europeanism which they inherit from their coastal environment, and the traditional culture and state organization which they understand less than the chiefs, but of which they sometimes feel called upon to be the self-conscious champions. They are generally lawyers, and play an important part in Council debates, especially in the detailed discussion of legislation. There have been several notable figures in the years since 1933. Mr. K. A. Korsah, who represented Cape Coast from 1928 to 1940, has been the most distinguished of the municipal members since the death of Casely Hayford.<sup>3</sup> He is a lawyer, with an interest in trading

<sup>1</sup> The most notable example of a chief being handicapped in Council by his uncertain English is that of Nene Sir Emmanuel Mate Kole, Konor of Manya Krobo (1860-1939). Sir Emmanuel Mate Kole was the most distinguished chief of his generation, a nominated unofficial member of the Council from 1911 to 1916 and from 1921 to 1926, and provincial member for the Ga-Adangme section of the Eastern Province from 1926 to 1930. But he had been educated in the vernacular, with the result that though he attained intellectual maturity at an early age, he never became good at expressing himself in English. See Guggisberg, 24th March 1927, p. 437; with the tributes to Mate Kole in Council, 14th March 1939, pp. 16-17, and 15th March 1939, pp. 30-3; and Sampson, pp. 174-7.

<sup>2</sup> E.g. Moore, 3rd March 1943, pp. 139-52.

<sup>3</sup> Kobina Arku Korsah (1894-): born and educated at Saltpond; Fourah Bay College, Freetown 1909-15, B.A. 1915; in England 1916-20, B.C.L. Durham 1917, called to the bar 1919, LL.B. London 1920; entered Gold Coast politics as assistant secretary of Cape Coast branch of West African National Congress, 1921; member of executive committee of Aborigines Rights Protection Society, 1922; member for Cape Coast in Legislative Council, 1928-40; un-

companies, coming from a family of U.A.C. agents. Educated in England, he is familiar with European modes of thought; his speeches in the Council were considerably weightier than his colleagues'. In 1942 he became an unofficial member of Executive Council along with Sir Ofori Atta, and in 1943 he was appointed to the Secretary of State's Commission of Enquiry on Higher Education in West Africa.<sup>1</sup> Mr. G. J. Christian, who was member for Sekondi from 1930 to 1940, was a West Indian by birth, an able lawyer and a highly respected personality, with a cosmopolitan character and interests, valuable in Council and showing a particular interest in commercial policy.<sup>2</sup> His successor as member for Sekondi, Mr. R. S. Blay, though lacking Mr. Christian's more striking qualities, was perhaps a truer representative of the Western Province. Dr. F. V. Nanka-Bruce, who represented Accra from 1931 to 1935, is a successful and popular doctor, founder and sometime editor of the *Gold Coast Independent*, slow, honest and undistinguished in speech.<sup>3</sup> Mr. A. W. Kojo Thompson, who was member for Accra from 1936 to 1944, was also a lawyer; his role in the Council was more extravagant than constructive.<sup>4</sup> He often appeared as the bitter critic of Sir Ofori Atta. In June 1944 he was convicted on a charge of corruption and extortion, and his career as a member of Legislative Council came to an end.<sup>5</sup>

It is difficult to describe the municipal members in terms of policy. In the absence of party organization, their importance lies in their personal qualities, not in what they 'stand for'. Mr. Kor-

official member of Executive Council since 1942; on West African Higher Education Commission, 1943-4; C.B.E., Hon. D.C.L. Durham, 1944.

<sup>1</sup> Governor, 17th August 1943, p. 4.

<sup>2</sup> George James Christian (1869-1940): born in Dominica; educated in Antigua; schoolmaster in Dominica; took up law and entered Gray's Inn, 1899; called to the bar, 1902; set up practice in Cape Coast, but soon afterwards moved to Sekondi; twice unofficial member of Sekondi town council; member for Sekondi in Legislative Council, 1930-40. See tributes in Council by Colonial Secretary and Korsah, 1st October 1940, pp. 5-6.

<sup>3</sup> See Sampson, pp. 178-82.

<sup>4</sup> Mr. Thompson was sketched by a reporter of the *Spectator Daily* in these words: 'The most talked of politician in the Gold Coast, A. W. Kojo Thompson, fearless, independent, outspoken, conscientious and self-sacrificing patriot and leader, hero of the people, and a terror at the Legislature. Above all Mr. Thompson aims at one great thing in life for politician, press and people: purity and the highest probity in thought and action,' 25th April 1941.

<sup>5</sup> See *West Africa*, 22nd July 1944, pp. 689-90; and below, pp. 85, n. <sup>2</sup>, 173.

sah and Dr. Nanka-Bruce were professional men, finding it easy to mix on close terms with government officials and Europeans. Mr. Christian was not primarily interested in politics; he had won the seat without programme or promises; he had no strong links with his constituency, and spent his holidays in England. Mr. Kojo Thompson got in on a slogan of 'oppose the government', which not unfairly describes his activities as a legislator. It would be false, however, to give the impression that the municipal members are free-lances and nothing more, and that the African unofficial members lack unity or common purpose. This is sufficiently shown by the history of the reconciliation of 1929 between the chiefs and the intelligentsia.

The breach between chiefs and intelligentsia dated from the time of the West African National Congress,<sup>1</sup> when the chiefs resented that they had not been consulted by the promoters of the Congress. The intelligentsia in their turn were aggrieved that the government made concessions to the chiefs but declined to admit their own claims, and that on the introduction of elective representation in 1926 the chiefs were given a majority in the Council of six to three over the municipal members. A feud thus developed between the two groups of politically educated Africans, which impaired their co-operation throughout the Guggisberg regime. It was partly, too, a hostility between the older generation and the younger. Reconciliation did not come until 1929, when it was brought about by a conjunction of personalities. The leaders of the rival parties were the two greatest Africans in Gold Coast political history: Casely Hayford, of the intelligentsia, and Sir Ofori Atta, of the chiefs. In the previous year Mr. Korsah had been first elected for Cape Coast, and had become Mr. Hayford's principal adviser and supporter. He found that his old class-mate, Nana Ayirebi Acquah III, was occupying a similar position with regard to Sir Ofori Atta. The decision to end the quarrel was Mr. Hayford's. Mr. Korsah's link with Nana Ayirebi Acquah was the means for bringing about a meeting between the municipal members and the chiefs, which took place in Sir Ofori Atta's house in Accra in March 1929. Mr. Hayford had the vision to accept the Provincial Councils as an integral part of the political system, recognizing their promise; recriminations were waived, and it was

<sup>1</sup> See above, pp. 26-7.

agreed to co-operate henceforward. This settlement led to the establishment of what Mr. Korsah has called a 'shadow cabinet'. It became the custom for the provincial and municipal members to meet together before every session of the Council, sometimes more than once, to discuss their attitude towards government policies and new legislation. Each member has retained his independence of action, and occasionally the old division has reappeared, but on the majority of issues there has been a united front. The meetings continued in an unbroken succession, in Sir Ofori Atta's house, until his death. When Mr. Hayford died in 1930 a strong confidence and friendship had already grown up between Sir Ofori Atta and Mr. Korsah, and so long as Mr. Korsah was in the Council, the collaboration of these two men remained the fundamental personal factor in the politics of the African members.<sup>1</sup> In 1944, when Sir Ofori Atta himself was no longer alive, the 'shadow cabinet' broke down with a disagreement between provincial and municipal members over the new Native Authority Ordinance. But even if the breakdown were to prove permanent, the 'shadow cabinet' has played an important role in preparing African politicians for the new Council which is to have an African majority.

There has been, however, a small dissident group of the intelligentsia who refused to accept the reconciliation with the chiefs. For many years they have centred round Mr. W. E. G. Sekyi<sup>2</sup> and the remnant of the Aborigines Society at Cape Coast. They illustrate the paradox of every incipient nationalist movement, the demand for the fullest immediate political Westernization, combined with a reluctance to co-operate with existing Westernized institutions in practice. Mr. Sekyi and Mr. Korsah are contemporaries, and were friends and associates in early life. But when the new constitution came into effect in 1926, Mr. Sekyi rejected it as a spurious concession to the cause of self-government; Mr.

<sup>1</sup> I am indebted for this account of the facts to the kindness of Dr. Korsah. See also his article in the *Spectator Daily*, 9th December 1940.

<sup>2</sup> W. Esuman-Gwira Sekyi (1892-): born and educated in Cape Coast; in England 1910-14, B.A. London 1914; in England again 1917-18, called to the bar 1918; secretary to Cape Coast branch of West African National Congress, 1919; member of executive committee of Aborigines Rights Protection Society, 1921; member of Cape Coast Town Council, 1925-30; member of the Board of Education, 1928-34.



Korsah on the other hand was prevailed upon to stand for Legislative Council, and when elected, crowned his betrayal of the nationalist cause as Mr. Sekyi sees it by the reconciliation with Sir Ofori Atta. Mr. Sekyi is a lawyer; his briefs are always against chiefs or government officials. He has exercised an intangible influence as the moving spirit of the Aborigines' Society, the reputed author of its petition to the Secretary of State in 1934, and the central figure in all nationalist politics. He is not simply the leader of the intelligentsia; his thoughts and motives are often beyond their range; he is, rather, an intellectual, something almost uniquely rare in African life. He himself has never stood for Legislative Council, but in 1940 his chief supporter, Mr. George Moore, succeeded Mr. Korsah as member for Cape Coast,<sup>1</sup> so that since then the views of the 'Cape Coast school' have found expression in the Council. Mr. Moore was one of the two signatories of the Aborigines' Society's petition of 1934, who took it to London. His maiden speech was a notable statement of policy, a manifesto of a kind not heard in the Council before.\* Mr. Sekyi and Mr. Moore were often swelled to a triumvirate of discontent by the accession of Mr. Kojo Thompson, who in general occupied a position in Gold Coast politics somewhere between the majority group represented by Sir Ofori Atta and Mr. Korsah, and the small extremist minority.

The European unofficial members require less discussion: their role has been smaller as well as their numbers. The mercantile member is by custom a representative of the United Africa Company. Of the three nominated European unofficials, one is by custom a representative of the firms other than the U.A.C., usually of John Holt; one is a shipping representative, usually of Elder Dempster; and one is a banking representative, from either Barclay's or the Bank of British West Africa. The U.A.C. repre-

<sup>1</sup> Mr. Korsah did not contest the seat. Dr. Danquah hailed Mr. Moore's election as 'a swing of the pendulum from the professional man to the lay man' and as showing that 'the day of the lawyer, as lawyer, is over in the Legislative Council', and argued that the new member had a policy while the old member had none (*Spectator Daily*, 25th November 1940; see Mr. Korsah's reply, *ibid.*, 9th December 1940, and Dr. Danquah's rejoinder, *ibid.*, 12th December 1940).

\* 26th February 1941, pp. 76-8. Mr. Moore's attitude and tactics in the Council were criticized in a friendly way by the Attorney-General, 4th March 1943, pp. 187-8.

sentative is normally their spokesman. They hold a watching brief, remaining silent until their immediate interests are touched, and they never speak except to their book. They are business men, not politicians, in general matters supporting the government from the conviction that the government knows best.<sup>1</sup> There have been few debates in which both African and European unofficials figured prominently. The mercantile and mining members have been among the senior unofficials: Mr. R. Harris was mercantile member from 1927 to 1937, Mr. J. D. McKay was mining member from 1929 to 1936. Under the new constitution there are to be no specific European unofficial members; nor have they shown any dissatisfaction at this disfranchisement. Nowadays the effective representation of commercial interests lies, not in the possession by local agents of seats in Legislative Council at Accra, but in direct contacts between head office in London and the Colonial Office.<sup>2</sup>

There have been supplementary categories of unofficial as of official member, making the Council an elastic body. Temporary nominated unofficial members are appointed to fill the place of an unofficial member absent from the Colony, and for particular purposes there are appointments of extraordinary members. In the years 1933-41 there were thirteen appointments of the latter sort, four official and nine unofficial. But it appears that by a curious distinction Africans have not been appointed as temporary nominated unofficials, presumably on the principle that European unofficial members will return to England at regular intervals on leave, and so regularly need substitutes in Council, whereas African unofficial members will have no regular reason to be absent from sessions. Consequently when Sir Ofori Atta, Mr. Korsah and Dr. Nanka-Bruce were in England on the delegation to the Secretary of State in 1934, they were replaced by Nana Ofori Kuma and Messrs. Ward Brew and Quist in the capacity of extraordinary members; Messrs. Whitfield and Johnston, two of the European nominated unofficials, were absent from the same session on leave, and their seats were filled by Messrs. Davies and Boret in the capacity of temporary nominated unofficial mem-

<sup>1</sup> See below, p. 90.

<sup>2</sup> Wight, *Development*, p. 86.

bers.<sup>1</sup> Since the appointment of a temporary nominated member, being the replacement of an existing member, has carried with it a suggestion of right, while the appointment of an extraordinary member is a matter of the Governor's grace, a racial distinction between the two categories might have seemed invidious.

### 3. THE OFFICIAL MAJORITY

The theory of a Legislative Council with an official majority is that of a morally homogeneous advisory body.<sup>2</sup> Its subordination to the executive government is its primary feature, its composition only secondary; and the organization of a party system would be as improper as it is unnecessary. 'As the Honourable Mr. Casely Hayford expressed it some years ago there are no parties in this Council.'<sup>3</sup> Sir Shenton Thomas gave a full exposition of this principle in his first budget address to the Council in 1933,<sup>4</sup> but it will be convenient to quote the more pithy statement of the case which Sir Hugh Clifford made when opening the reconstituted Council seventeen years earlier:

'There is a great difference between a Legislative Council and a House of Parliament. In the latter you have a Government in contradistinction to an Opposition, and if the Opposition is strong enough it can turn the Government out and take its place. In a Legislative Council, on the other hand, in no circumstances whatever can the unofficial members displace the official members and take over their duties from them. There is no such thing in such an Assembly as a Government and an Opposition—instead we have to realize that we form a single corporate Body all of whose members are working equally for the attainment of a single end—the prosperity of the Gold Coast Colony.'<sup>5</sup>

It follows from this character of Legislative Council, no less than

<sup>1</sup> 27th July 1934, p. 196. Cf. the commissions in the *Gazette*, 25th July 1934, pp. 571-3; 9th June 1934, p. 404; 21st July 1934, p. 522.

<sup>2</sup> On the Legislative Council as an advisory body dressed in a legislative guise, see Wight, *Development*, p. 100-1.

<sup>3</sup> Colonial Secretary, 23rd February 1926, p. 288.

<sup>4</sup> 22nd March 1933, pp. 3-4.

<sup>5</sup> 25th September 1916, p. 21.

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from the tendency of many members to remain silent unless their opinions are directly asked for, that debate has sometimes proceeded through the recurrent interposition of the Governor, calling upon this member and that to state his views.

Under the 1925 constitution the official members of Legislative Council have had a double function: to present and explain the legislation with which, as heads of departments, they are concerned, and to secure its passage into law by their votes. The latter is the corporate aspect of the official members as 'the official majority'. The working of Legislative Council has depended upon general and effective support being given by official members to government measures. This principle, whose interpretation has varied from time to time,<sup>1</sup> was the subject of renewed definition by Sir Shenton Thomas in his budget address of 1933:

'I desire also to say that, in the ordinary course of events, reasonable latitude will be allowed in the matter of the vote to official members, when in my judgement the interests of the public service do not forbid the expression of a diversity of views among its officers.'<sup>2</sup>

It was not for several years, however, that government saw fit to concede the free votes implicit in this.

In an assembly more than half of whose members are committed in advance to supporting government measures, it may be expected that despite the party-less theory, there will be a natural alignment along the division between those who are so committed and those who are not. The seating arrangement of the Council Chamber itself suggests this, when the Governor sits at the centre of a horseshoe curve, with the official members in front of him on his right facing the unofficial members on his left. Nana Ayirebi Acquah vividly described his first impression of the physical environment:

'When this Council's seating arrangement was first made we said to ourselves but particularly I said to myself that there are seated the officialson one side and the unofficialson the other. Now

<sup>1</sup> See Wight, *Development*, p. 108-12.

<sup>2</sup> 22nd March 1933, p. 4. Cf. the Nigerian government's sessional paper of the same year (no. 14 of 1933) on the position of official members of Legislative Council.

supposing we have guns in hand we would shoot at the other side and the officials will also shoot at this side and vice versa; but we have arrived at the conclusion that this was not the idea at all.<sup>1</sup>

This attitude has sometimes been reflected by official members falling into the language of Westminster. When a treasury official reappeared in the Council as mining member, Sir Arnold Hodson remarked: 'I am glad to see that although he has crossed the floor Government will still retain the benefit of his valuable advisory services', an observation in which the parliamentary and the advisory conceptions of the Council are seen side by side.<sup>2</sup> The division between official majority and unofficial minority inevitably gives the broad arrangement of forces in the Council, although it is modified in practice by the division between European majority and African minority.<sup>3</sup>

It is a mark of the success with which Legislative Council has filled the place it was designed for, that the unofficial members' resentment of their numerical inferiority has grown so slowly. In the Waterworks Bill debate of 1934 the demand was made that the official majority should not be used to impose new taxation on the country.<sup>4</sup> Nana Ayirebi Acquah argued that the existence of the official majority made the antecedent discussion of draft legislation by the Provincial Councils all the more necessary:

'Our impression is that as soon as the measure gets to the Secretary of State and a decision thereon is arrived at, we shall find it very difficult to put up a real fight by way of making any objections, because we shall, as usual, be beaten down by the prevailing official majority.'<sup>5</sup>

The position was not referred to again until 1938, in the debate on the Cocoa Exportation Control Bill:

'I want you to consider the matter very seriously,' said Sir Ofori Atta, 'and not to overwhelm us with the official majority vote. It is a very important matter and you have to do your best

<sup>1</sup> 29th March 1933, pp. 98-9.

<sup>2</sup> 15th March 1937, p. 26.

<sup>3</sup> See below, pp. 89 ff.

<sup>4</sup> Christian, 20th March 1934, p. 108. See below, p. 189.

<sup>5</sup> 27th July 1934, p. 218.

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to see that all parties concerned are satisfied. It is not a matter of being forced to accept. It is not a matter of using the official majority vote to overwhelm us.<sup>1</sup>

In recent years, however, the abolition of the official majority has been a central demand in the movement for constitutional reform. An illuminating remark was made by Mr. Korsah in 1939, when the Governor asked him if he wished to press an amendment:

'Your Excellency,' he replied, 'I wish the amendment to stand because I think it is a point which we ought to stress for many years to come if we do not succeed now.'<sup>2</sup>

In proportion, indeed, as the unofficial members desire and deserve political responsibility, it becomes impossible to withhold what they demand; and the existence of the official majority under these circumstances simply lengthens the interval between the first voicing of those demands and the inevitable time when they will be met.

The government's response to unofficial complaints about the official majority was to permit free votes in the Council. There was a free vote in 1936, another in 1938, and three in 1940. The first arose out of a clash between the municipal members and the provincial members over the Native Administration Amendment Bill, a government measure which the former opposed and the latter warmly supported. 'Let me say at once', said Sir Arnold Hodson, 'that Government does not intend to use any force or pressure to pass their amendment through the Legislative Council, and a free vote will be taken.'<sup>3</sup> The wrangle between the two groups of African unofficial members gave government the tactical victory of conceding a free vote over a foregone conclusion: the two municipal members divided against the six provincial members plus the twenty of the European majority.<sup>4</sup> In 1938, over the Native Administration Ordinance Further Amendment Bill, the Acting Governor used words which implied a free vote, though they were perhaps not intended to do so: 'I do not feel

<sup>1</sup> 13th April 1938, p. 19.

<sup>2</sup> 21st March 1938, p. 105.

<sup>3</sup> 26th February 1936, p. 89.

<sup>4</sup> *Ibid.*, p. 91; Christian was absent from the Council.

justified in accepting the amendment. . . . However, the amendment is before the Council. . . . We will put it to the vote.<sup>1</sup> An interesting situation would have arisen if, after a declaration in these terms, the vote had gone against government. The three such votes in 1940 were less equivocal. One was on the cocoa buying scheme, which originated with the imperial government and was not altogether welcome to the local government; the Director of Agriculture abstained from voting.<sup>2</sup> One was on the issue of restricting the powers of district commissioners in connection with the Tarkwa Township Bill; the Director of Agriculture actually voted with the unofficial members, and the Director of Education abstained.<sup>3</sup> One was on a minor point of legal principle in connection with the Diamond Industry (Amendment) Bill.<sup>4</sup> The first two of these afford the only exceptions to the consistency with which the fifteen official members have voted as a bloc.

The unofficial members were not without disappointment at free votes which overrode them as smoothly as an ordinary vote. The following exchange suggests the sense of frustration of one municipal member, though Mr. Kojo Thompson should perhaps not be taken as typical:

**MR. KOJO THOMPSON:** . . . we are suggesting that when Your Excellency is in full possession of the prayer of the African Unofficial Members you will make favourable recommendations to the Secretary of State, notwithstanding the arguments advanced by the Colonial Secretary on the defective wording of the motion. We did not expect to win on the motion when put to the Council because of Government's majority; yet we trust Your Excellency will give the matter the consideration it deserves and make the necessary recommendations to the Secretary of State.

**COLONIAL SECRETARY:** I would remind the Honourable Member that it was a free vote, and there was no Government majority as such.

**MR. KOJO THOMPSON:** How can we succeed when you are

<sup>1</sup> 16th September, 1938, p. 64.

<sup>2</sup> 19th March 1940, p. 121; see below, pp. 105-6.

<sup>3</sup> 2nd October 1940, p. 20.

<sup>4</sup> *Ibid.*, p. 28.

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always in the majority? The whole thing is absurd as we have no chance whatever.<sup>1</sup>

His words had their point. Any measure before the Council is generally understood by only a few of the official members, and in a free vote the rest will follow the lead of an expert colleague unless they have a very strong reason to the contrary. Unofficial members might be excused for failing to distinguish between the disciplined vote and a sheep-like freedom.

As the form of Legislative Council is not parliamentary, so its psychology is paternalistic and not democratic. It can sometimes take on the air of a talking shop for the politically immature under the indulgent but wearied supervision of European officers; and inevitably there are occasions when the government, for all its deference to unofficial views, is driven back upon the consciousness of its supreme powers, and forgets to show the tact and respect for members' feelings that are essential for handling the House of Commons. The *ultima ratio* of the government in constitutional practice has hitherto been its official majority; its *ultima ratio* in controversy is an appeal for the recognition of its beneficent wisdom. The arguments used to defend government measures have frequently shown the assumptions of this paternalism; the arguments used by the unofficials in reply have less frequently shown the counter-assumptions of a rising democracy. Unofficial members are constantly enjoined to trustfulness: to trust the discretion of the Governor in Council in the framing of regulations, to trust the judgement of the Attorney-General in instituting proceedings.<sup>2</sup> But there has been a growing volume of discontent among unofficials with the discretionary powers of Governor in Council,<sup>3</sup> and a growing refusal to respond uncritically to the appeal for trust. The government argues that responsibility is upwards, that abuses of authority will be corrected from above. Heads of departments are controlled by the wisdom of the Governor; the Governor is controlled by the greater wisdom of the Secretary of State. It was argued by the Acting Attorney-General in the debate on the Cocoa (Control of Exportation) Bill, that the power of issuing licences under the bill might safely be left to the

<sup>1</sup> 20th March 1940, p. 151. Cf. below, p. 150.

<sup>2</sup> E.g. Attorney-General, 21st March 1934, p. 150.

<sup>3</sup> E.g. Ofori Atta, 13th April 1938, p. 5. See below, pp. 110-13.



Director of Agriculture if its exercise be made subject to the direction of the Governor.<sup>1</sup> But Sir Ofori Atta replied:

'We have been told that the Director of Agriculture will be subject to the direction of the Governor but what use would we have of that. In matters of agriculture Your Excellency will not act until you are so advised by the Director of Agriculture. He is your expert adviser and I cannot contemplate that any suggestions or recommendations which he makes to you will be disregarded.'<sup>2</sup>

It was argued by the Attorney-General in the debate on the Seditious Bill, that the Governor in Council might be trusted to use his powers wisely.<sup>3</sup> But Sir Ofori Atta again replied:

'The Honourable the Attorney-General has told us that we may trust the Governor to use his discretion wisely and that if he attempts to prohibit the importation of any book which is not seditious, he will get into trouble with the Secretary of State. That may be so, Sir, but if the Governor does prohibit a book which comes under this category, how could the people of this country know that that type of book which has been prohibited is or is not seditious? How can it be disputed whether a book or paper is seditious or not if that book or paper has not been seen, read or known by the people.'<sup>4</sup>

In his speech on the same bill the Colonial Secretary enumerated the constitutional safeguards against the abuse of the powers conferred by it on the government. Regulations under the ordinance would be framed by the Governor in Council; no proceedings could be taken under it without the Attorney-General's sanction; trials would be held before the Courts of the Gold Coast, whose good sense and justness have never been impugned; 'and apart from them I turn confidently to the reputation which British administration bears throughout the world for justice and fairness and humanity'.<sup>5</sup> But it was impossible for him to admit the fundamental premiss of political opposition—that those in power are

<sup>1</sup> 13th April 1938, p. 15.

<sup>2</sup> *Ibid.*, p. 17.

<sup>3</sup> 21st March 1934, p. 133.

<sup>4</sup> *Ibid.*, p. 143.

<sup>5</sup> *Ibid.*, p. 142.

likely to abuse their power. The highest authority to whose wisdom and providence the official members of the Legislative Council can appeal is the Secretary of State: he is the ultimate guardian of the interests and welfare of every section of the population of the Colony. If the Customs Tariff Amendment Order of 1933 had appeared in any way likely to affect or injure manufacturers in the United Kingdom, 'the Secretary of State would have refused to give his sanction to the measure'.<sup>1</sup> If the Customs Tariff Amendment Regulations of the same year, imposing an export duty on gold, were likely to frighten capital away from the country, 'the point could not have escaped the Secretary of State when he considered this proposal—and this proposal was given close consideration by him', and he 'would not have given his approval to the proposal in its present form'.<sup>2</sup> If the Governor in Council were to abuse the powers conferred upon him by the Sedition Bill, 'it is obvious in such circumstances he will be called upon to account for it by the Secretary of State'.<sup>3</sup> For two very good reasons, said the Governor, such abuse of his powers would be impossible: 'One is, that I do not want to, and the other is that the Secretary of State would not allow it'.<sup>4</sup> Into these lofty regions, criticism by unofficial members has never aspired to pursue their rulers, and it was left for an imperial commission of inquiry to point out that a Secretary of State, too, can sometimes misinterpret his trust, as well as any local official.<sup>5</sup>

The real argument against the principle of the official majority is not the limitations it places upon legislative freedom; these are inherent in crown colony government; but the drag on the Council's vitality when so many of its members have neither a talent for general policy and legislation nor a skill in debate nor an interest in these things, but are simply civil servants. The more the unofficial element grows strong and active, the more the official majority becomes an obstruction screening the real seat of responsibility, which is the Governor himself. The free votes suggest the disadvantage of maintaining legislative control by packing the Council with administrative officers whose natural

<sup>1</sup> Shenton Thomas, 24th March 1933, p. 70.

<sup>2</sup> Colonial Secretary, 29th March 1933, pp. 77 f.

<sup>3</sup> Attorney-General, 21st March 1934, p. 133.

<sup>4</sup> *Ibid.*, p. 154.

<sup>5</sup> Nowell Report, para. 169.

wish is for the proceedings to be over as quickly as possible. Under the new constitution this dead hand will be removed.<sup>1</sup> The Council will attain the maximum representativeness possible under present conditions, and will be able to develop into a true forum of opinion; responsibility will be seen to reside in the Governor, to whom it belongs; and he will still have ultimate legislative control. The problem of the self-determination of the legislature will have been solved. The problem of the next age will be the relations between the legislature and the executive.

#### 4. THE ROLE AND POWERS OF THE UNOFFICIAL MEMBERS

Unofficial members, no less than officials, are public officers.<sup>2</sup> This fact serves to emphasize their function as councillors. Under the old constitution they have been in a minority, though under the new constitution they are to be in a majority; and neither under the old nor the new constitution are they able to turn the government out of office. It would be unrealistic to analyse this position, on parliamentary assumptions, in terms of its weakness. In practice it has certain advantages for the unofficial members. It endows them with the strongest moral right to have their views taken into account, and at the same time relieves them of any responsibility.

In his farewell speech at his last estimates session in 1941, Sir Arnold Hodson made a statement of the constitutional position which must be quoted at length:

‘Let us examine for a moment our present Legislative Council. It is true we have an official majority, but that, in my opinion, is absolutely necessary in a country like the Gold Coast which does not consist of one people but several distinct races, speaking different languages, and with their own customs. It is a mistake, and even a wicked mistake, when certain people state

<sup>1</sup> See below, pp. 203 ff.

<sup>2</sup> This was definitely established by a ruling of the West African Court of Appeal in the Kojo Thompson case in 1944. Mr. Thompson was therefore convicted under section 394 of the Criminal Code (*Laws*, 1936, cap. 9), and when convicted was disqualified for life from membership of the Council under section 23 (6) of the Gold Coast Colony (Legislative Council) Order in Council, 1925.

that the unofficial members have absolutely no authority and are like sheep in a pen. Nothing could be farther from the truth. The unofficial members have a very real authority and their wishes are in most cases carried out. Their speeches are listened to with the greatest interest and their suggestions highly valued. Any member of the community can always air his views through one of the unofficial members, so that the Government is well informed of public opinion. I should not have the slightest objection to increasing the unofficial members of the Legislative Council, but it appears to me quite unnecessary for the reasons I have given above and the larger the assembly the longer it takes to transact business. The Opposition in the Mother of all Parliaments in London is infinitely worse off than the unofficial members out here. Their views are not treated with the sympathy that your views are, and their speeches, however impassioned, have no effect on the passing of a Bill. One thing I must make quite clear is that I do not look upon the unofficial members here as the Opposition, but as part and parcel of the Government. I cannot emphasize this too strongly, and I only give the above instances to show you how much worse off the Opposition is in England compared to the Honourable Unofficial Members out here. Time and tide stand for no man, and I am aware that in years to come our constitution is bound to change. People never know when they are well off. You may then have election campaigns and party factions, and politicians seeking election for their own advancement, and not really for the good of their country. When that time comes, look back on the present and, I feel certain, you will say in your heart of hearts that the change has not been for the best and you will pine for the peace and security of our present form of Government.<sup>1</sup>

The argument proceeds from the classic justification of crown colony government—the existence of racial and linguistic differences, which impose upon the government the duty of protecting native or minority interests; though it is to be noted that the political effect of such racial and linguistic differences is possibly less in the Gold Coast than elsewhere in West Africa. We may ex-

<sup>1</sup> 27th February 1941, p. 117.

amine the subsequent contrast drawn between the position of the Opposition at Westminster and the position of the unofficial members at Accra from two points of view. If we consider it in a parliamentary light, the suggestion that the sympathy with which the views of unofficial members are heard is an equivalent to the possibility enjoyed by every parliamentary opposition of forming an alternative government, may seem to be the *reductio ad absurdum* of the theory that the unofficial members are 'part of the government', and to show the level of argument to which it is possible to resort in order to defend in democratic terms a system which is not built on democratic premisses. But the strength of British political systems has always lain in their usage more than in their logic; and if we consider Hodson's statement in the light of Legislative Council practice, it appears not greatly exaggerated. The views of unofficial members are indeed as carefully weighed and scrutinized as those of the House of Commons Opposition. The very strength of the government's legislative position makes it extremely chary of overriding dissentients. It aims, unless vital principles are at stake, at consent before efficiency. In Gold Coast history there have been many retreats by government in face of a public clamour, several of them on a long view unfortunate for the Colony. The abandonment of the Public Lands Ordinance of 1897, the Municipal Corporations Ordinance of 1924, the Income Tax Bill of 1931, and the Native Administration Revenue Bill of 1932, are instances that come under our notice in the course of this study. And the constant consultation with unofficial persons and bodies at every stage of the legislative process will be described at length.<sup>1</sup>

The unofficial members themselves have shown no disposition to contest the party-less conception of the Council.

'In Your Excellency's address to this Council,' said Mr. Kor-sah in reply to Sir Shenton Thomas's statement in 1933, 'you made reference to members of this Council as forming a co-operative body and not one opposing the other; this reference has been received in the spirit in which it was made. That reference will go far to make our constituents have more con-

<sup>1</sup> See below, pp. 115 ff., 140 ff.

fidence in us and to prove the necessity for the representation of all sections of the community on this Council.'<sup>1</sup>

The principal reaction of the unofficial members to Sir Shenton Thomas's statement was to consider not so much how the Council should best function as a legislative body, as the pressure of public opinion outside the Council upon themselves.

'The question of opposition in the sense that obtains in the Parliaments in England and other European countries is not what obtains here,' said Dr. Nanka-Bruce. 'It is not a question of ousting the Government, and therefore I do not think members or elected members of this Council have ever seriously entertained that idea. They know that they are here to watch and criticize Government's methods and to offer valuable advice, so that the public whom they are representing would feel that their interests are being well looked after. If we are not strong in our representations, the people outside who are now becoming race-conscious and are reading the papers from other countries, will say we are here only to concur and second the motions of Government.'<sup>2</sup>

This shows the potential conflict for unofficials between their role as councillors and their role as representatives. The tradition of opposition springs less from inside than from outside the Council. Unofficial members have to justify themselves in the eyes of their constituents, and so long as they are in a minority in the Council the most effective way of doing it is by opposing the government. Thus they come to regard this as part of their function. There is a sense in which the existence of the official majority gives elected unofficials no alternative but to enjoy the irresponsibility of permanent opposition.

A parliament is an arena where conflicts of organized interests are fought out in debate and effective compromises arrived at; which implies the existence of party. The unofficial members of Legislative Council, on the other hand, have not sat as representatives of the political continuity of organized interests, but in order simply to contribute their isolated experience in relation to an

<sup>1</sup> 29th March 1933, p. 83.

<sup>2</sup> *Ibid.*, p. 97. See below, p. 165.

immediate issue. Sir Shenton Thomas qualified his statement of the theory of the Council with these words:

'I should like the Legislative Council to regard itself, not as a machine assembled for the automatic registration of the decisions of me and my Executive Council, but as a body of persons called together freely and frankly to debate the *pros* and *cons* of any measure that may be brought before it, in the best interests of the Gold Coast.'<sup>1</sup>

In theory, a majority among the unofficials has had no necessary connection with the preceding majority or with that which follows; the principle of combination is kaleidoscopic and not continuous; continuity and stability have been provided by the official bloc. In practice, however, this is not what has happened. Voting inevitably shows a degree of continuity and consistency. In a colony where there is still an official majority, the tendency is for incipient party feeling to form along the line of unofficials versus officials;<sup>2</sup> and when representative government is achieved, the parties in the legislature begin to reflect the social structure of the country.<sup>3</sup> The balance of forces in every legislative council represents some point in the development from the one to the other; and it may be expected that in the Gold Coast Council a distinct shift from the first towards the second will become visible when the new constitution comes into operation.

The unofficial members have hitherto comprised both Africans and Europeans, which complicates the simple political alignment. The effective division has been not political but racial. In the period from 1933 to 1941 the Council divided on twenty-three occasions,<sup>4</sup> and on none of them were the unofficials unanimous. Once they attained unanimity with a single exception, and on this occasion the exclusiveness of their opposition to the official bloc was marred by the accession of the Director of Agriculture—it was the free vote on the Tarkwa Township Bill.<sup>5</sup> Two-thirds of the divisions have

<sup>1</sup> 22nd March 1933, p. 4. See above, p. 77.

<sup>2</sup> Cf. above, p. 79.

<sup>3</sup> Cf. *Ceylon: Report of the Special Commission on the Constitution*, Cmd. 3131 (1928), p. 41.

<sup>4</sup> Counting double divisions, when a division on a negative amendment is immediately followed by the identical division on the positive motion, as single.

<sup>5</sup> 2nd October 1940, p. 20; see above p. 81.

been the African unofficial members against the rest: on eleven occasions without qualification, on one occasion with a single defection to the ranks of the Europeans,<sup>1</sup> on one occasion with a single abstention,<sup>2</sup> and twice with a single accession from the European unofficials.<sup>3</sup> The six provincial members have always voted as a bloc. On three occasions they have divided against the municipal members, once when it was the provincial members against the rest of the Council,<sup>4</sup> twice when it was the municipal members against the rest of the Council.<sup>5</sup> The European unofficial members have never voted as a bloc except with the official majority, though on the Tarkwa Township Bill division all but one of them joined the African unofficials.<sup>6</sup>

Thus the racial division has prevented the cohesion among unofficial members that marks East African legislative councils. This is to be explained in two ways. On the one hand, the European unofficial members represent only the extra-territorial economic interests; they have no constituents to think of, and they have had no part in the political history of the country. On the other hand Europeans, both unofficial and official alike, are more resolute than Africans to do unpleasant things. It is an African weakness to take the short view, contesting a thing because it is immediately distasteful. There are many progressive measures, afterwards welcomed by Africans, which would never have been passed if it had rested with themselves. One of the reasons for the division between the European unofficials and the African has been that the Europeans do not share in the Gold Coast tradition of gratuitous opposition to government.

Their racial division has to some extent impaired the unofficial members' effectiveness in the Council, where their power is natur-

<sup>1</sup> Christian, on the Additional Customs Duties Bill, 27th July 1934, p. 206.

<sup>2</sup> Christian, in the committee stage of the Concessions Bill, 21st March 1939, p. 106.

<sup>3</sup> Harris, in the committee stage of the Waterworks Bill, 20th March 1934, pp. 118, 119.

<sup>4</sup> On the Native Administration (Colony) Amendment Bill, 14th March 1940, pp. 85-6.

<sup>5</sup> In the committee stage of the Native Administration Amendment Bill, 26th February 1936, p. 91, Korsah and Kojo Thompson being the minority (and Christian absent); and in the committee stage of the Cocoa Industry (Regulation) Bill, 23rd March 1937, p. 91 (vote by show of hands).

<sup>6</sup> 2nd October 1940, p. 20.



ally proportionate to their unanimity. Though in the last instance they have been overborne by the official majority, they have had an essential consultative and revisory function; and in practice, though not in law, their unanimous opposition has ensured reference to the Colonial Office before a measure was proceeded with.

'It may be said that the majority of the members of this Council are officials and that therefore criticism on the part of unofficial members is unavailing. I reply that, so far as my memory serves me, I can recall no occasion since 1921, when I first came to West Africa, where the Governor of a West African Colony has refused to listen to the unanimous advice of the unofficial members. I quote here from a speech by Sir Hugh Clifford in the Legislative Council of Nigeria in 1924: "In the event—in the very unlikely event—of my Government majority on this Council finding itself opposed by a solid wall of opposition from the unofficial members, I think I can undertake to say that, as soon as the vote has been registered, no action will be taken in the matter until further consideration has been given to it, or reference had to the Secretary of State for the Colonies."<sup>1</sup>

In answering the debate on the Waterworks Bill, Sir Shenton Thomas said that if the great majority of the unofficial members were against the measure he would reconsider it;<sup>2</sup> but when the unofficial members divided, four with the official members in favour of the bill and ten against, being reminded of his undertaking, he replied, not unenigmatically:

'I said that if there were any substantial opposition among the unofficials, I would give the matter consideration, but I do not call nine to five a substantial majority.'<sup>3</sup>

The African unofficial members did not neglect the implications of this, and asked that their unanimity should be accorded the same rights as unanimity of all the unofficials. In reply to Sir Shenton Thomas's declaration on the matter Sir Ofori Atta said:

'I thank you very much for that assurance; but may I be

<sup>1</sup> Shenton Thomas, 22nd March 1933, p. 4.

<sup>2</sup> 20th March 1934, p. 111.

<sup>3</sup> *Ibid.*, p. 119.

allowed to go a little farther. If there is any measure before this Council where it is found the *African* unofficial members are unanimous in opposition to views expressed from the official side, take it from us, Sir, that we do so as a result of deliberations with our Chiefs and people, and we ask you to extend to us the same indulgence as you would show in the case of unanimous unofficial opposition. This is a very great point, Sir, because after all there may be certain questions on which it may not be quite possible for the African and European unofficial members to agree.<sup>1</sup>

Sir Shenton Thomas's answer took the view that the African community had not yet reached the stage where its representatives might be given the power of obstruction in Council. Sir Ofori Atta, he said, is

'leading me into very deep-waters when he asks me to agree to suspend action if the African members oppose a measure even though the rest of the Council is in favour. That would be, as the Honourable Member himself is aware, a request which in the past I should not have been able to accept because it was my unfortunate duty as Acting Governor in 1928 to pass a motion for the payment of a large sum of money despite the opposition of the African unofficial members. But I would say this. I think members will understand from what I said in my address that it is my aim to get government by consent and I can say that, if at any time a measure which directly affects the native population is vigorously opposed by all the African unofficial members, I should think very carefully indeed before going on with it. I have no desire whatever to pass any legislation which is opposed by the great majority of the people; but there are occasions where one is convinced that a thing is right and then one must follow one's conviction.'<sup>2</sup>

The issue became acute in 1934 over the Waterworks Bill. 'Among those members of the community who will be willing to support the passage of the Bill,' said Nana Ayirebi Acquah, 'are the commercial men, because I have been hearing news about, and probably with our official majority in this House together with the

<sup>1</sup> 29th March 1933, p. 102.

<sup>2</sup> *Ibid.*, p. 119.

European Unofficial, the country will be nowhere.<sup>1</sup> This was probably the most contentious measure ever discussed in Legislative Council, and the one over which the Africans showed the most disciplined unanimity. They forced a division on the second reading, four times in committee, and again on the third reading; they insisted that the Governor should send a cablegram to the Secretary of State in the name of 'the African Unofficial Members backed by the African Community';<sup>2</sup> and the delegation to Whitehall in the same year asked that, pending wider constitutional reform which would give half the membership of the Council to Africans, it might be understood that no financial measure which was opposed by two-thirds of the African members would receive the Governor's assent without the opposing members being able to put their views before the Secretary of State.<sup>3</sup>

In the long view it has always been the African and not the European unofficials that mattered. If the Council was to develop along the quasi-parliamentary lines of the East African legislatures, it was the Africans who would play the oppositional role. In theory they may have been isolated and independent councillors; but as we have seen, they are not politically unorganized,<sup>4</sup> and government policy is based on the recognition that the provincial members represent a profound social continuity. With the new constitution, which establishes an African unofficial majority, the political demands of the former African minority are fulfilled. But how the role and powers of the unofficial members will develop under conditions of representative government unprecedented in a colony of African population, and whether the evolution will be towards the British parliamentary model, it is impossible to foresee.

##### 5. PROBLEMS OF AFRICAN REPRESENTATION

The deliberativeness of the African political tradition finds a natural fulfilment in the forms of Western parliamentarism, in debate and committee and reference back to the constituent

<sup>1</sup> 20th March 1934, p. 89.

<sup>2</sup> *Ibid.*, p. 114.

<sup>3</sup> 1934 *Delegation*, p. 3, para. 10; cf. p. 21, para 7 (v). Cf. below, p. 189-90.

<sup>4</sup> Above, pp. 73-4.

authority.<sup>1</sup> Nevertheless there are important differences between the African and the European representative systems, and the blending of the two is one of the central problems of British administrators and the frequent complaint of nationalist politicians.

The point of intersection between the African political system and the European Legislative Council is represented by the provincial members, and objections have been raised against provincial membership by traditionalists who resent the modifications in native institutions which are inevitable if these are to survive.<sup>2</sup> Such objections were very fully laid out in the Aborigines Society's petition of 1934. First and foremost is the obsolescence of the linguist's office, as a result of the chiefs' taking part in the Legislative and Provincial Councils.

'It is the very foundation of Native policy that no Chief can speak in public on any public matter whatsoever or perform any public function even amongst his own people, except in the presence of and in consultation with and on the advice of his Elders and Councillors; and, as if to proclaim to his people that he is acting on their advice, native custom demands that a Chief should only act or speak through his Linguist. To establish, therefore, a Council in which the Head Chiefs of the various Divisions are to meet to perform so solemn a public act as the election of a member to represent their people on the Legislative Council, without the Sub-Chiefs of the various Divisions and their Elders and Councillors, is so revolutionary a proposal that the people would only submit to it through fear of the strong arm of the Government, and that if persisted in, it would shake to their very foundations the Constitution of our Native States.'<sup>3</sup>

The constitutional development of Legislative Council in the last twenty years has already deprived this argument of most of its force. There is a further and related difficulty. Even if a chief takes part in discussions without his linguist, he would be bound by tradition to give a full report to his state council afterwards. The proceedings of Executive Council, however, are confidential, and

<sup>1</sup> See, for example, Nana Amanfi III's description of the procedure of the Provincial Councils, in the debate on the Native Administration Treasuries Bill, 23rd March 1939, p. 156.

<sup>2</sup> Cf. Guggisberg, 22nd February 1926, pp. 31-2.

<sup>3</sup> *Aborigines' Petition*, cap. 52.

its members take an oath of secrecy. It was therefore an act of high political courage in Sir Ofori Atta to accept membership and risk the consequences of breach of custom. Nana Tsibu Darku's being able to follow suit after Sir Ofori Atta's death suggests that the constitutional precedent is accepted in the Colony. But Ashanti is more conservative, and it was perhaps on grounds of this sort that the Asantehene declined to become an unofficial member of Executive Council in 1942.<sup>1</sup>

A chief, moreover, is not a legislator. The laws are made (that is to say, custom is defined) by his state council without his participation; he is only their executor. Therefore it has been argued that it is against native law and custom for a chief to sit in a legislative assembly. It is characteristic of this barren traditionalist controversialism that the Assembly of 1852 can be quoted as a constitutional precedent in the same document which asserts that it is 'an entirely new departure from existing law and custom for a Head Chief to be a legislator'.<sup>2</sup>

Again, under the Legislative Council Order in Council the question of whether a chief is a paramount chief (that is, a person qualified to sit on the Provincial Councils and thus to be elected to Legislative Council) is a matter to be decided by the Governor and not by the courts.

'The question whether or not he is a Chief "not subordinate in his ordinary jurisdiction to any other chief" is treated not as a question of fact, but one of "the opinion of the Governor".'<sup>3</sup>

The Aborigines' Society's petition quoted the case of the Ohene of Nyarkrome, a subordinate chief of the Omanhene of Agona, who in 1932 was declared by the Governor to be not subordinate, and recognized as a paramount chief. Thus

'an alteration of the status of a Paramount Chief, elected and installed in accordance with native customary law as a Paramount Chief . . . was made purporting to deprive him of his position in order to enable the Executive to put his Sub-Chief

<sup>1</sup> See below, p. 194.

<sup>2</sup> *Aborigines' Petition*, caps. 22 and 52. Cf. Kojo Thompson, 19th April 1927, p. 100, and Ofori Atta, *ibid.*, p. 481.

<sup>3</sup> *Aborigines' Petition*, cap. 55. Cf. above, p. 46.

on the Provincial Council, as representing a State which had objected to the Provincial Council System',<sup>1</sup>

and Nyarkrome became the capital of Agona in place of Nsaba, the capital for 200 years. This however was not an arbitrary act of government's, but was recommended as the result of an inquiry into the constitution of the Agona state by the District Commissioner and three chiefs nominated by the Provincial Council.<sup>2</sup> It might be expected, rather, that the interminable litigation of stool disputes and inter-state disputes would sometimes need to be cut short in the interests of the country at large by an executive decision open to the criticism which besets all political acts in the juridical sphere.

The most important of the problems of African representation, however, is the nature of the provincial member's representative function. Is he a representative or a delegate? Has he a mandate from his constituents or can he act at discretion? It must be emphasized that the African tradition is that of the *delegate*, with a definite mandate. 'After all said and done, we are merely here as messengers', said Sir Ofori Atta, 'and we carry messages from the people to you and vice versa.'<sup>3</sup> Provincial members are given the most detailed instructions by the Provincial Councils, and are apt to be called to account afterwards if they have not carried them out; and this is the reason why, in the view of the Provincial Councils, it is essential that their members in the Legislative Council should make no unexpected concession and strike out no new line without reference back to the Provincial Councils for authorization; and why the secrecy of Executive Council raises difficulties about having chiefs on it as unofficial members. In 1933, for example, Sir Ofori Atta refused to express definite opinions upon the problem of illicit liquor distillation 'until we have had time to discuss the matter thoroughly with our people in our State Councils and in our Provincial Councils'.<sup>4</sup> And the criterion of fulfilment of duty which these constituents apply to their members in the Legislative Council is apt to be very pragmatic. 'I am

<sup>1</sup> Ibid.

<sup>2</sup> Ofori Atta's question in Council and the reply of the Secretary for Native Affairs, 8th March 1932, p. 168.

<sup>3</sup> 28th September 1931, p. 403.

<sup>4</sup> 23rd March 1933, p. 38. Cf. Tsibu Darku, *ibid.*, p. 40.

afraid', said Nana Ayirebi Acquah, 'our people will not understand us and they will likely say that the farmers are not having good price for their cacao, but that when we as their representatives go down to Accra to guide their interests we simply sit down tight without saying anything in their favour with the result that now the import duty on cotton goods is increased to their detriment.'<sup>1</sup>

In practice, in this situation, the more nervous and inexperienced provincial members will tend to conduct themselves as delegates; but as their confidence increases they may swing to the other extreme, and run the danger of assuming too wide a discretion. The question concerns the formation of party. The non-party principle of the Council tends to support the theory of the delegate. But if members are representatives, they may combine to find a common interpretation of their duty to their constituents.

In 1934, in the debate on the Sedition Bill, the Attorney-General attacked Nana Hima Dekyi with unusual violence for an uncommunicative speech in which that member had begged to associate himself with the previous speakers and all their sayings.<sup>2</sup>

'Another Member of this Council', said the Attorney-General, 'said that he had been asked by his people to say that if this Bill were passed the confidence of the people in the Government would be lost. Again I should like to ask that member whether he regards himself merely as a delegate from his people whom he represents when he says they would be disturbed if this Bill is passed. Does he come here merely as a delegate to register what his people wish him to say. The Council would like to hear why his people are alarmed and whether he himself thinks they have cause for alarm. He seems to have no sense of responsibility whatsoever.'<sup>3</sup>

Three years later, in the debate on the Native Administration Amendment Bill, the government perceived danger in the other direction.

'I notice', said the Secretary for Native Affairs, 'that the two Members for the Central Province have risen to associate them-

<sup>1</sup> Debate on order in council under Customs Tariff Ordinance, 24th March 1933, p. 66.

<sup>2</sup> Hima Dekyi, 21st March 1934, p. 147

<sup>3</sup> *Ibid.*, p. 150.

selves with the Honourable Member for the Akan Section who has raised these queries. Well, I am a little surprised at their attitude, because it appears they have changed their opinions since coming here and I do not know who is responsible for this. It seems to me that they were given mandates by the Central Province Provincial Council, and I am just wondering whether they are carrying out the wishes of the Provincial Council of the Central Province for they wrote to the Provincial Commissioner: "The bill (The Native Administration Ordinance amendments) has been approved by that body except that in the case of clause 10 it is desired before any regulation is made by the Governor an opportunity is given to the Council to submit its views." Now the Honourable Members for the Central Province seem to hold different views. I am therefore wondering who is responsible for this change of mind since they have been to Accra.<sup>1</sup>

In a party-less Legislative Council, indeed, the only solidarity among the unofficial members that can escape being unwelcome to the government is solidarity with the government. The two members for the Central Province gave the reply of Burke in speeches that were powerful and dignified:

'As Provincial Members on this Board,' said Nana Tsibu Darku, 'we are expected by our constituents to seek unreservedly the best interests of the indigenous peoples of the Central Province and the Country general. We are, therefore, entitled to use our discretion in matters which come before this House but when we are told that we have no mandate from our Provincial Council in a particular small point we are at a loss to understand. Provincial Councils are as democratic as our own State Councils and its accredited members have their full authority on this Council.'<sup>2</sup>

To which Nana Ayirebi Acquah added the following:

'Before I say anything at all I should like to associate myself first of all with the remarks passed by the second Provincial Member for the Central Province with regard to a matter which

<sup>1</sup> 17th March 1937, p. 58.

<sup>2</sup> 23rd March 1937, p. 107.



we do not regard as absolutely necessary for any comments to be made thereon. It is this: not very long ago during last week we were told in this House on a particularly simple question of amendment that we had no mandate; but in my opinion it is the practice in all civilized countries that once a person is elected by his constituency he automatically receives their mandate there and then and can represent their interest in any matter of vital importance whether charged or not. Under the circumstances, I think it is my duty and within my province as a Provincial Member for the Central Province to voice the sentiments of my people and to express my views in the best sense of the word in any matter in their absence but affecting their interests. It does not matter what a secretary writes to Government, I feel that it is my duty to argue any point that may be raised so long as I do so in the interest of the Central Province.<sup>1</sup>

The future perhaps lies with this interpretation of the duty of provincial members, but it is not that generally accepted, especially by their constituents. More than once a provincial member has been held to account by his Provincial Council for not having fulfilled his mandate in the Legislative Council; and in this contrast between the African and the British traditions of representation lies one of the most interesting and ambiguous problems of the political development of the Gold Coast.

<sup>1</sup> Ibid., p. 108. 'Your representative owes you, not his industry only, but his judgment. . . . *Authoritative* instructions; *mandates* issued, which the member is bound blindly and implicitly to obey, to vote, and to argue for, though contrary to the clearest conviction of his judgment and conscience—these are things utterly unknown to the laws of this land, and which arise from a fundamental mistake of the whole order and tenour of our constitution. Parliament is not a *congress* of ambassadors from different and hostile interests; which interests each must maintain, as an agent and advocate, against other agents and advocates; but parliament is a *deliberative* assembly of *one* nation, with *one* interest, that of the whole; where not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member indeed; but when you have chosen him, he is not member of Bristol, but he is a member of *parliament*,' Edmund Burke, speech to the electors of Bristol, 3rd November 1774 (*Works* (ed. 1842) i. 179–80.)

## CHAPTER IV

# THE WORKING OF THE COUNCIL

### I. THE SOURCES OF POLICY

**B**etween 1937 and 1939 there was frequent discussion in Legislative Council of the failure of Guggisberg's scheme for the Africanization of the Civil Service,<sup>1</sup> which led the African members to reflect on the nature of colonial policy.

'Here', said Sir Ofori Atta, having described the history of the Guggisberg scheme, 'we have all the ingredients, all the essential ingredients, that make for what is called "policy" in any colonial administration. The Governor conceives a scheme. The scheme is examined locally and approved of by the administration. Then it is submitted to His Majesty's Principal Secretary of State for the Colonies and it is approved of and highly commended by him and sanctioned to be carried out. Finally, and most significant of all, the scheme, which is now no more a scheme in the head of the Governor, but a policy to which the whole of the Executive is committed, is deliberately announced and declared to the Legislative Council in the clearest possible terms. Above all, and in confirmation of it, it is put into operation and successfully worked for some five or six years. Then some thirteen years after we are invited to witness a spectacle of everything being in almost utter chaos, and we are invited to witness a new beginning, a new creation.'<sup>2</sup>

He implied that policy which has been formed and implemented thus should be binding upon the government, and not abrogated except by the same process—which was in fact denied by the instance of which he was speaking. What then is the relation between Legislative Council and the making of policy?

The policy of the Gold Coast, like that of any colony, can derive

<sup>1</sup> See below, p. 176.

<sup>2</sup> 23rd March 1939, p. 171.

from three sources: 1. external to the Colony, from the imperial government; 2. internal, from the local government in Accra; 3. internal, from the various popular and non-official organizations, which usually impinge upon Legislative Council in the persons of the unofficial members, and sometimes (as the Joint Provincial Council) have an influence parallel to and nearly as important as that of Legislative Council itself. Any given measure is the result of an unequal combination of these three influences, but one or another is usually predominant, and it will be convenient to consider them separately.

#### THE IMPERIAL GOVERNMENT

The Legislative Council debates show much Gold Coast policy originating with or being guided by the Colonial Office. The Gold Coast has been visited and reported upon by a succession of Colonial Office officials. In 1931-2 there was a visit by Mr. Grattan Bushe, the Legal Adviser to the Secretary of State.<sup>1</sup> In 1935-6 there was a visit by Mr. Stockdale, the Agricultural Adviser.<sup>2</sup> In 1936 Dr. Cunyngham-Brown 'was sent out by the Secretary of State to examine our system of dealing with persons of unsound mind'.<sup>3</sup> In 1940 there was a visit by Major Orde Browne, the Labour Adviser.<sup>4</sup> Their recommendations have often resulted in legislation. The unification of legislation in 1934 and the Courts Ordinance of 1935 were the direct result of the Legal Adviser's visit.<sup>5</sup> The Co-operative Societies Ordinance of 1937 was the result of the recommendations of Professor C. Y. Shephard and the Agricultural Adviser during their visits of investigation.<sup>6</sup> But the Colonial Office origination of policy is not confined to the visits of its official representatives. The Import Quotas Bill of 1934 embodied the Secretary of State's desire for uniformity throughout

<sup>1</sup> Attorney-General, 26th March 1935, p. 29; Governor, 20th February 1936, p. 6.

<sup>2</sup> Governor, *ibid.*, p. 7, and 15th March 1937, p. 6. See *Report by Mr. F. A. Stockdale on his Visit to Nigeria, Gold Coast and Sierra Leone* (Colonial Office, 1936).

<sup>3</sup> Governor, 15th March 1937, p. 26.

<sup>4</sup> Governor, 12th March 1940, pp. 22-3. See *Labour Conditions in West Africa*, Report by Major G. St. J. Orde Browne, Cmd. 6277 (1941).

<sup>5</sup> Attorney-General, 26th March 1935, p. 29; Governor, 20th February 1936, p. 6.

<sup>6</sup> Director of Agriculture, 17th March 1937, p. 60.

West Africa in respect of import licenses.<sup>1</sup> The Savings Bank Bill was recommended to unofficial members for passage without amendment in virtue of the fact that all its clauses 'have been very carefully considered by a committee appointed by the Secretary of State'.<sup>2</sup> The Workmen's Compensation Bill followed a model ordinance submitted by the Secretary of State to the West African governments and slightly amended to meet the peculiar needs of the Gold Coast.<sup>3</sup>

Two particular aspects of the imperial source of policy may be touched upon: international conventions, and uniformity of law and administration throughout West Africa. In 1934 the government introduced a Labour Bill in the Council which followed the draft convention on compulsory labour adopted by the International Labour Conference at Geneva in 1930.

'The Imperial Government has accepted the Convention', said Sir Shenton Thomas, 'and to give effect to it legislation is necessary in the various dependencies of the Empire. I have seen it stated that, as there is no forced labour in this country, the Bill is unnecessary. That may be so, but without such legislation the acceptance of the Convention by the Imperial Government would be incomplete. In these matters the various dependencies comprising the British Empire are as one, though modifications may, of course, be made in local legislation to meet local conditions provided that they do not conflict with the spirit of the Convention.'<sup>4</sup>

Sir Ofori Atta remarked that, since it was an imperial order that it should be applied to the Colony, the Council was unable to debate the bill. The Attorney-General corrected him, saying that the order concerned the Convention, which was to be applied to the Colony, but not this particular bill.<sup>5</sup> A debate accordingly ensued; Sir Ofori Atta and Nana Ayirebi Acquah attacked the bill as both unnecessary and subversive of the customary services

<sup>1</sup> Acting Governor, 12th June 1934, p. 189.

<sup>2</sup> Attorney-General, 25th February 1936, p. 73.

<sup>3</sup> Chief Inspector of Labour, 14th March 1940, p. 89.

<sup>4</sup> 14th March 1934, p. 12.

<sup>5</sup> 19th March 1934, p. 42.

allowed by native law; and it was referred to a Select Committee.<sup>1</sup> All the amendments put forward by the Committee were accepted, with the exception of one formal provision for the punishment of chiefs failing to comply with the Ordinance;<sup>2</sup> and the two earlier opponents of the bill expressed their appreciation of the consideration the government had shown them.<sup>3</sup>

The aim of uniform legislation and administration throughout British West Africa is prominent. 'Uniformity is the key-note and I think Honourable Members will agree that uniformity of procedure is very desirable wherever practicable.'<sup>4</sup> The Folded Woven Goods Bill,<sup>5</sup> the Sedition Bill,<sup>6</sup> the Customs Tariff Ordinance (Amendment) Bill,<sup>7</sup> the Workmen's Compensation Bill,<sup>8</sup> were recommended to the unofficial members in the light of Nigerian and Gambian precedent or intention. In reply to complaints about the pensions of African civil servants, the Colonial Secretary argued that 'in connection with matters of this nature we are more or less bound up with the other West African Colonies. Although the circumstances and conditions may not be exactly identical in all respects, there must be a certain degree of uniformity which we, on our own initiative, cannot abrogate'.<sup>9</sup> The appeal to the other colonies, which can thus serve as a line of defence for official members, is frequently resented by the unofficials. 'A Registration of Business Names Ordinance', said the Attorney-General, 'which is based upon a similar legislation in other colonies—I was going to say that similar legislation existed in Nigeria, but I am afraid Honourable Members don't care for that as a precedent for the Gold Coast.'<sup>10</sup> Yet the unofficials themselves can find it useful to quote Nigerian authority. Mr. Korsah

<sup>1</sup> *Ibid.*, pp. 47f.; report laid before Council, 23rd November 1934, p. 241. See below, pp. 144-5.

<sup>2</sup> Attorney-General, 27th March 1935, p. 81.

<sup>3</sup> *Ibid.*, p. 82.

<sup>4</sup> Acting Comptroller of Customs, 16th September 1938, p. 58.

<sup>5</sup> Comptroller of Customs, 23rd March 1933, p. 52.

<sup>6</sup> Attorney-General, 21st March 1934, pp. 130, 135. The precedents of Hong Kong, Malay, Trinidad 'and all the East African and Mediterranean Colonies' are also quoted here.

<sup>7</sup> Acting Comptroller of Customs, 16th September 1938, p. 58.

<sup>8</sup> Chief Inspector of Labour, 14th March 1940.

<sup>9</sup> 23rd March 1937, p. 125.

<sup>10</sup> 27th August 1937, p. 28.

pointed out that if the Customs Tariff (Amendment) Bill was being based on the Nigerian model, the rate of *ad valorem* duty would have to be reduced by 5 to 10 per cent;<sup>1</sup> and Mr. Kojo Thompson appealed to Nigerian practice—'and we always do things in line with Nigeria'—in proposing his bill to amend the Town Councils Ordinance.<sup>2</sup> The political interdependence of the four Colonies was institutionalized by the establishment of the West African Governors' Conference in 1939, and the appointment of a Minister Resident in West Africa during the War (1942-5).

The external origin of policy passes unmentioned on the whole by the unofficial members. But Sir Ofori Atta was concerned to emphasize the ultimate responsibility of the local government. In the budget debate of 1938, at the end of a long speech in which he had touched upon the traditional grievances concerning African appointments and education, and the inadequacy of the traditional governmental excuses for inaction, he quoted from a speech of Mr. Ormsby-Gore's about the extraordinary local diversity of policy and administration among the territories of the Empire,<sup>3</sup> and continued:

"That, to my mind, places upon you great responsibility. He has told us that what the Colonial Office does will depend upon what you do and what you tell them in so far as this country is concerned. I am submitting, Sir, that the policy which he told us was the policy of the Colonial Office at the time should be the policy of to-day. That is not all, Sir, he went on to say:

"Consequently although what are called Crown Colonies and Protectorates and the Mandated Territories are still through the Secretary of State subject to the British Parliament at Westminster, that does not mean that either the British Parliament or the Secretary of State who is held responsible to Parliament for each and every action of a Colonial Government desires or seeks to govern places from Westminster or Downing Street."

"That is quite clear. There again he leaves the responsibility for the administration of the affairs of this country to rest entirely

<sup>1</sup> 16th September 1938, p. 18.

<sup>2</sup> *Ibid.*, p. 24.

<sup>3</sup> Mr. W. G. A. Ormsby-Gore's address to the Council, 22nd March 1926, pp. 421-2 (cited in Wight, *Development*, pp. 140-1); it was quoted again in Council by Nana Tsibu Darku, 29th September 1942, pp. 49-50.

with Your Excellency. That being the case, anything that happens, the Secretary of State says *you* have done it, whether good, or bad, because he does nothing which is contrary to the wishes of the local administration. I understand him also to mean that the policy of the local government is based upon the wishes of the people of this country. It is quite clear.<sup>1</sup>

The difference of opinion between the local government and the Colonial Office over the cocoa hold-up and the resulting situation gave a striking example of Accra being subordinated to London. The hold-up had defeated the pool of the cocoa-buying firms, but the subsequent scheme by which the imperial government undertook to purchase the whole of the cocoa crop seemed at first to be very like the pool *redivivus*.<sup>2</sup> Sir Ofori Atta vigorously attacked the local government for its acquiescence.

'We are aware that this scheme is not yours. The Honourable Colonial Secretary has told us that "this government did not devise or invent this scheme, but we were able to consider the points put forward in it, and, where we thought certain interests were not being properly looked after we did our best to get some modifications made. . . . Why should it be so? Why should not the local Government, which is aware of the condition of things here, be allowed to think freely in a matter of this kind? Why should it be dictated to by the Powers above, in a matter which affects us locally and which concerns the Gold Coast and nobody else? and why should you not, as our Governor, call upon us to assist you, advise you and tell you what is the proper thing to do? Why should you be forced to do things which you yourself think are not good for us? And for that reason alone, Sir, we come here to tell you that the scheme is defective.'<sup>3</sup>

Mr. Korsah emphasized the same sense of frustration from the

<sup>1</sup> 23rd March 1938, p. 94.

<sup>2</sup> 'The farmers are firmly of opinion that the pool which existed a few years ago came to this Colony dressed in a frock coat suit and it is the same pool which has come through the back door dressed in a double-breasted suit,' Kojo Thompson, 13th December 1939, p. 70; cf. below, p. 173. On the imperial government's purchasing scheme, see *Report on Cocoa Control in West Africa, 1939-43*, Cmd. 6554 (1944).

<sup>3</sup> 19th March 1940, p. 97.

experience of the local branch of the Food Control Committee, which was set up to handle the cocoa-buying scheme:

‘Those African Members who were appointed to serve on the committee have already reported to us that it is one of the queerest and most peculiar committees on which they have ever served. They were required to be present to hear orders sent out by a committee in England; and whenever they made any suggestions they were told that the suggestions could not be carried out or that they were contrary to the orders that had been received or that they should be sent home and would have to await reply from a certain committee.’<sup>1</sup>

Here are perhaps signs of a beginning of the transference of the unofficials’ main antagonism from the local government to Downing Street, which in East Africa has accompanied the development of political consciousness.

#### THE LOCAL GOVERNMENT

The great bulk of legislation has its origin with the local government: inspired by the needs of the departments, drafted by the Attorney-General, and sanctioned, if not fully discussed, by the Governor in Council.<sup>2</sup> It is necessary to emphasize here that the Executive Council is not a cabinet, but an advisory body; it is not the Executive Council that submits bills to Legislative Council, but the Governor; and the consideration of bills by the Executive Council has no constitutional basis beyond usage. Nevertheless, in practice such consideration always takes place, and it provides the first stage in the process of shaping legislation at which the proposals of the departments can be submitted formally to external criticism. Moreover, the powers of supplementary legislation, of issuing orders and making regulations to implement every administrative ordinance, are normally conferred upon the Governor in Council. We have two questions to consider: the composition of Executive Council, and the degree of control the

<sup>1</sup> Ibid., p. 103.

<sup>2</sup> ‘“Governor in Council” shall mean the officer administering the Government with the advice of the Executive Council of the Colony but not necessarily in such Council assembled,’ Interpretation Ordinance, section 3 (5); cf. Gold Coast Colony and Ashanti (Legislative Council) Order in Council, 1946, section 1 (see Appendix 2).



Legislative Council can exercise over Executive Council's supplementary legislation.

Until 1942 the interests of African members and of their constituents in general were nominally represented upon Executive Council by the Secretary for Native Affairs. From time to time the African members raised the demand for permanent unofficial representation on Executive Council. They did not refer to the precedents of the East African or West Indian colonies in which there had been long experience of unofficials on Executive Council.<sup>1</sup> Their demand was related to supposed practical grievances. In 1932 a Memorial on the subject was presented to the Governor by the Joint Conference of the Provincial Councils:

'During the past years up to the present time, it has been observed with much concern that certain important matters arising and materially affecting the interests of the African, and requiring to be so treated, have been dealt with by His Excellency the Governor in the Executive Council without African opinion of any kind being sought for to the detriment of our peoples; the latest instance of which, may be cited as Executive Council Order No. 3/1932, relating to "Prison Diet and Bedding Regulations", under Section 9 of the Prisons Ordinance with stated exception of Europeans; which, in effect, means that every African or every person of African extraction in this country, getting into debt by some misfortune and confined by writ of Ca. Sa. as a debtor prisoner, is to be treated with regard to diet and bedding as a convict, without a Court of Justice having first satisfied itself as to whether such judgement debtor ought to have been confined in prison at all, much more being classed as a felon in diet and with the significant exception of Europeans.

'We would also bring into recollection the Diamond Regulations made by the Governor-in-Executive Council during the early part of 1926, which subsequently became the subject of an important debate at the Legislative Council, when the iniquitous nature of such Executive act was explored with the result that the Regulation was subsequently entirely obliterated from the Statutory enactments of this country. There are mani-

<sup>1</sup> Wight, *Development*, p. 130-5.

fold instances, where for want of representation of African interests the people of this country have had cause to complain of acts done or made at the instances of the Governor-in-Executive Council which we need not enumerate here.<sup>1</sup>

The Memorial went on to point out that the Governor had the power to appoint extraordinary members to the Executive Council in particular circumstances, which was 'a precaution, evidently, against the King's representative unconsciously wounding the susceptibilities or infringing the rights of some of His Majesty's subjects or passing unconscionable regulations under the specious powers of an enabling Ordinance';<sup>2</sup> and submitted that the time had arrived for African representatives to be taken into confidence on questions affecting African interests discussed in Executive Council.

The Governor stated the official reply to these contentions as follows:

'in principle he would have no objection to summoning a Chief or other person to the Executive Council when an important matter of native policy is being discussed; but in actual fact such a procedure should rarely be necessary if proper use is made of the existing organization. Furthermore, there would be the obvious difficulty of making certain that the person who was summoned would be in a position to give advice which would be acceptable to the whole of the country.

'On the other hand, His Excellency thinks that the existing system has many advantages. All important matters affecting the native population are referred to the Provincial Councils for their consideration and the Provincial Councils represent, or should represent, the population of the provinces. From the Provincial Councils are chosen certain members to attend the Legislative Council and it seems to His Excellency therefore that under the present system the population is represented on the Legislative Council to an extent which it would be difficult to ensure by other means. His Excellency notes that in support of their suggestion the memorialists quote only two cases, one

<sup>1</sup> Memorial of a Joint Conference of the Provincial Councils, 30th June 1932, sections 45-6 (sessional paper no. iv of 1933, p. 17).

<sup>2</sup> *Ibid.*, section 47, pp. 17f.

of which goes back as far as 1926; and he would assure the memorialists that he will always endeavour not to take any action on any subject of importance until the views of the various parties interested have been sought and considered.<sup>1</sup>

The argument of the constitutional precisian, that Executive Council consists of the Governor's personal advisers and nobody can claim to sit on it as of right, was not used, and so by implication it was conceded that the Council has a representative function.

The demand for African representation upon the Executive Council was one of the pleas of the delegation to the Secretary of State in 1934, and it was rejected. After an interval Sir Ofori Atta raised the matter in connection with the Native Administration (Amendment Bill) in 1937:

'There is no representation of native interest on the Executive Council. With all deference to the Secretary for Native Affairs, we would be expecting too much of him if we thought he would be able to represent us in *all* matters affecting the Native Administration. Your Excellency, the Native Administration Ordinance deals with matters peculiarly native to the country and there are a lot of them which cannot be properly dealt with by anybody except by the Chiefs with the advice of their Councils. We say, Sir, that the Executive Council are being given powers which would not be quite correct in our view. As already said there is no representative of the Provincial Councils on the Executive Council.'<sup>2</sup>

In 1938, in the aftermath of the cocoa hold-up, the issue was strongly debated in Legislative Council in connection with the Cocoa (Control of Exportation) Bill, and regulations made thereunder by the Governor in Executive Council.

'The Governor-in-Council has made regulations', said Sir Ofori Atta, 'and they have become law. There was no representation of our interests when the regulations were made at the Executive Council, and if anything that becomes law under these regulations proves harmful to the interest of the African com-

<sup>1</sup> Governor's Reply to the Memorial of a Joint Conference of the Provincial Councils, 9th March 1933, section 15 (*ibid.*, p. 5).

<sup>2</sup> 17th March 1937, p. 50.

munity, the farmer principally, there is no means of remedying it.<sup>1</sup>

Sir Arnold Hodson always hedged when the claim to permanent unofficial representation was brought up. A little later in the same debate, Mr. Christian argued:

'During the Great War when it became necessary to control the export of certain goods from Britain, it was referred to a Committee but was not vested in an individual; it was not as is sought to be done now.

'GOVERNOR: But it will come before the Executive Council.

'MR. CHRISTIAN: May I say, Sir, that no African is there; no farmer is there.

'GOVERNOR: It is true there are no African representatives on the Executive Council at present but in the future there may be. There is nothing to prevent it.'

The appeal for representation of African interests in the immediate controversy was answered by a draft upon the uncertain potentialities of the future. Three years later, in his maiden speech, Mr. George Moore renewed the attack:

'To say the least, it is not fair that the African is not represented on the Executive Council of the Gold Coast where the policies of the administration of the Government of his country are formulated. And I am asking that it is time that Africans were elected to the Executive Council.'<sup>2</sup>

and in winding up the debate the Governor replied:

'With regard to the Executive Council, there has never been any objection to an African serving on it provided he held the necessary position. For instance, Mr. Justice M'Carthy, when he was Acting Attorney-General, was an honoured and welcomed member of the Executive Council for many months.'<sup>3</sup>

The composition of Executive Council bears upon the problem of Legislative Council's control of subordinate legislation, for it is upon the Governor in Council that the power of making admin-

<sup>1</sup> 13th April 1938, p. 6.

<sup>2</sup> 26th February 1941, p. 78.

<sup>3</sup> 27th February 1941, p. 117.

istrative regulations is usually conferred. What power of supervision has Legislative Council over the increasing mass of supplementary legislation? Regulations by the Governor in Council have to be placed on the table of Legislative Council, but there are several complaints that this is done so short a time before the Council sits that members are virtually prevented from considering them.<sup>1</sup> Sometimes a bill provides that orders made thereunder require the subsequent confirmation of Legislative Council, when such orders have the character rather of fresh legislation than of the administrative application of the original bill; but the distinction is not clear-cut. As Mr. McKay suggested in opposing the Customs Tariff Amendment Bill of 1933, by that time it is in effect too late for the unofficials to alter the government's policy;<sup>2</sup> the official majority will always secure the confirmation desired. During the debate on the Waterworks Bill, the Africans asked that the power of bringing the Ordinance into force should lie with the Legislative Council and not the Governor in Council.<sup>3</sup> Sir Shenton Thomas replied that the proposal 'seeks to abrogate the power of the Executive Council', and that were it passed he would have to report the position to the Secretary of State.<sup>4</sup> The Africans none the less forced a division on it; but when three years later the government began to use its powers under this ordinance by an order for the categorization of premises, they made no attempt to renew the fight.<sup>5</sup> The Carriage of Goods by Roads Bill of 1938 contained a clause whereby orders made thereunder should be laid as soon as convenient before Legislative Council, which might annul them within forty days. Sir Ofori Atta asked for elucidation.

**'ACTING ATTORNEY-GENERAL:** The idea is that these Orders will be gazetted and brought into operation and they will be laid on the table at the next session when there will be full opportunity for debate.

**'NANA SIR OFORI ATTA:** When the Governor in Council has made the Order and it is already operating with all its legal effect how can the unofficial members come to the Council to

<sup>1</sup> See below, pp. 135-6.

<sup>2</sup> 29th March 1933, p. 75.

<sup>3</sup> Korsah, 20th March 1934, pp. 114f.

<sup>4</sup> *Ibid.*, pp. 115.

<sup>5</sup> 26th August 1937, pp. 5f.

challenge or change it? It is a very nice suggestion, but in actuality what arguments can the unofficial members advance to get Government to change an Order which the Governor-in-Council has made and is operating with all its legal effect. I wonder?

'GOVERNOR: I can assure the Honourable Unofficial Members that if they take objection to any Order their views will be carefully considered.'<sup>1</sup>

In introducing the Native Administration (Amendment) Bill in 1937 the Attorney-General referred to this, as a precedent for the powers of the Governor in Council to make regulations in respect of certain aspects of native administration.<sup>2</sup> Sir Ofori Atta argued that this was improper, because native interests were unrepresented on Executive Council,<sup>3</sup> and impracticable, because native custom could not be subjected to the danger of arbitrary definition followed by arbitrary reversal—an argument verging upon deeper matters than the responsibility of the Governor in Council to the Legislative Council.

'The learned Attorney-General', he said, 'has just quoted the case of the "Carriage of Goods Ordinance"'. You may remember, Sir, that when that amendment came up for discussion the Unofficial Members had some qualms about it. Well, we thought that it was impossible for Unofficial Members to oppose successfully an Order by the Governor-in-Council which had been in operation for some time. . . .

'As already said there is no representative of the Provincial Councils on the Executive Council. If any question which affects the Native Administration goes to that Council, and an order is made, according to the bill, such order takes effect immediately it is published in the *Gazette*. If it takes about two months before the Legislative Council meets to discuss it, the order has had the effect of law already. If the Legislative Council with extraordinary efforts on the part of African Unofficial Members taking exception to the order succeed to carry the day, and the order is thereby annulled the evil or damage already done to the community cannot be remedied.

<sup>1</sup> 31st July 1936, p. 36.

<sup>2</sup> 17th March 1937, p. 47.

<sup>3</sup> See above, p. 109.

'I daresay, Sir, that since matters relating to the Native Administration Ordinance affect native interests, they could be best discussed by the Chiefs themselves in consultation with their Councils. . . . We think that the Legislative Council is the only appropriate body which can decide as to whether any rule which is made under the Native Administration Ordinance is the proper one. . . .'<sup>1</sup>

Mr. Korsah supported Sir Ofori Atta: government should grant the African members some say in changes in the working of native administration; the power of making regulations 'would practically mean that the Government may at any time amend any section of the Native Administration Ordinance by the Executive Council and that Honourable Members of this Council may have no right whatsoever to express their views on any proposed amendment'.<sup>2</sup> As a result of this opposition, the Attorney-General proposed an amendment in committee restricting the obnoxious powers of the Governor in Council to a minimum that was satisfactory to the chiefs.<sup>3</sup>

The question came up acutely, intertwined with that of the composition of Executive Council,<sup>4</sup> in the debate on the Cocoa (Control of Exportation) Bill in 1938, after the cocoa hold-up.

'We are being asked', said Sir Ofori Atta, 'to approve a bill which will empower the Governor-in-Council to make certain regulations but what the regulations are going to be, nobody knows. In my experience as Member of this Council, I know when legislation of this kind authorizing regulations comes to be promulgated, the country finds later itself in a different position because regulations subsequently made go beyond the understanding arrived at when the principal measure was under discussion at the Legislative Council. I can quote instances where after passing a Principal Ordinance the Governor-in-Council had also gone beyond the scope of the Principal Ordinance, and it was with very great difficulty that we could persuade the Government to acknowledge that they had made a mistake and

<sup>1</sup> 17th March 1937, pp. 50f.

<sup>2</sup> *Ibid.*, p. 52.

<sup>3</sup> 18th March 1937, p. 77.

<sup>4</sup> See above, pp. 109-10.

rectified it. There is another instance where the regulations passed by the Governor-in-Council after the passing of the Principal Ordinance had also gone beyond the scope of the Principal Ordinance, and there again the Government may have recognized that a mistake had been made, yet no attempt was made to rectify it. . . . I am therefore asking that the power of making such regulations should be left in the hands of a Board on which the Director of Agriculture will sit and I should like to see the Comptroller of Customs as Chairman of such Board for making or submitting regulations for the Governor's approval. I may say that if the Governor is jealous of his powers and will not delegate them to the Board I should suggest that before these regulations become law they should be submitted to that Board for their scrutiny and recommendations.<sup>1</sup>

The Acting Attorney-General answered that the government's exercise of its powers would be open to public criticism, and that it would not be necessary to wait for the next session of Legislative Council since representations could be made at any time.<sup>2</sup> But Mr. Korsah summed up the whole case of the African members, regarding the composition of Executive Council as well as the problem of subordinate legislation, in simple words: 'We are asking and we feel that those who are to be governed by those regulations should be given an opportunity of joining in making those regulations.'<sup>3</sup>

The addition of unofficial members to Executive Council came within the first year of Sir Alan Burns's governorship;<sup>4</sup> the initiative was apparently his own and not Lord Cranborne's.<sup>5</sup> It is interesting to note that Mr. Korsah no longer had a seat in the legislature when he was appointed to Executive Council, a precedent which illustrates the government's freedom of choice, and might provide a constitutional issue for the future.<sup>6</sup> After Sir Ofori Atta's death, Nana Tsibu Darku IX was appointed to Executive

<sup>1</sup> 13th April 1938, pp. 5-7.

<sup>2</sup> *Ibid.*, p. 15.

<sup>3</sup> *Ibid.*, p. 17.

<sup>4</sup> He announced it in Legislative Council, 29th September 1942, p. 3.

<sup>5</sup> 'The Secretary of State for the Colonies has now approved my recommendation . . .', 29th September 1942, p. 3. Membership was offered to the Asantehene as well who refused; see below, p. 194.

<sup>6</sup> See below, p. 205.



Council in his stead.<sup>1</sup> The appointment of unofficial members has not altered the formal character of Executive Council, nor changed it from an advisory into a representative body. But it is the first step in the evolution of the Council towards a cabinet, which in the long run is the only alternative to its obsolescence and abolition.<sup>2</sup>

#### POPULAR

It is convenient to consider under this head all legislation which is in some degree shaped by public discussion and criticism before it is introduced into Legislative Council. Of legislation originating in a purely unofficial source there is naturally little.<sup>3</sup> The classic example is the Native Administration Ordinance of 1927. The government's Native Jurisdiction Bill of 1922 was withdrawn because of opposition from the chiefs, and Guggisberg said explicitly that as a result the government would make no further move but would await proposals from the paramount chiefs themselves.<sup>4</sup> The result was the series of meetings of chiefs in 1925 and 1926 which drafted a bill that was submitted to the government and became the basis of the existing Native Administration Ordinance.<sup>5</sup>

On later occasions the Provincial Councils have taken initiatives in policy which have led to legislation. In 1933 the Provincial Council of the Eastern Province passed a resolution in favour of encouraging food crops,<sup>6</sup> with which Sir Shenton Thomas expressed his agreement.<sup>7</sup> The Provincial Council of the Central Province, giving its approval to the Cocoa Inspection Bill of 1934, expressed a strong wish that government would pass similar measures to safeguard the palm kernel and palm oil industries as well;<sup>8</sup>

<sup>1</sup> *West Africa*, 18th December 1943, p. 1147. During Mr. Korsah's absence from the Colony as a member of the Secretary of State's Commission on Higher Education in 1943-4, the Governor appointed Mr. J. H. Coussey to act as a member of Executive Council in his stead: Governor, 17th August 1943, p. 4. Mr. Coussey is an African barrister who has since become a judge.

<sup>2</sup> Wight, *Development*, p. 135.

<sup>3</sup> Private motions and bills in the Council are considered below, pp. 143-4.

<sup>4</sup> 3rd February 1925, p. 130.

<sup>5</sup> Ofori Atta, 19th April 1927, pp. 461-3; Acting Secretary for Native Affairs, *ibid.*, p. 527.

<sup>6</sup> Ofori Atta, 29th March 1933, p. 105.

<sup>7</sup> *Ibid.*, p. 120.

<sup>8</sup> Ayirebi Acquah, 19th March 1934, p. 53.

Sir Shenton Thomas promised that careful consideration would be given to this 'very constructive proposal'.<sup>1</sup> The Immigration Restriction Bill of 1937 was presented to Legislative Council by the Attorney-General as 'consequent upon a resolution by the Joint Provincial Council of Chiefs in which they asked that steps might be taken to deport or, in other words, keep out of the country, agitators who are not indigenous to the Gold Coast'.<sup>2</sup> Parts of the Native Administration Amendment Bill in the same year were proposed by the Provincial Councils.<sup>3</sup> But the organization of public discussion of bills before their enactment, especially discussion by the Provincial Councils, has been so successful in recent years that practically all legislation may be said now to have a mixed origin in this respect, and a great part of it consists of agreed measures. In 1934 the Provincial Councils rejected outright two government bills that were subsequently passed by the Legislative Council; but this was when their co-operation with the government was in its infancy, and the bills were the two most controversial that have ever been debated by Gold Coast public opinion—the Waterworks Bill<sup>4</sup> and the Sedition Bill.<sup>5</sup> Since then their co-operation seems to have become so harmonious that almost every bill represents some degree of compromise between them.

The agreed preparation of legislation in this way was perhaps stimulated by Sir Shenton Thomas's policy of 'trying to get at the thoughts and ideas of the people',<sup>6</sup> with the implication that there were alternative methods to listening to the unofficial members' speeches in the Council Chamber. 'Steps will be taken, at an early date, to ascertain local opinion, particularly African opinion,'<sup>7</sup> said his Colonial Secretary with regard to the liquor problem; and this policy, consistently pursued, was the obverse of the apparent depreciation of Legislative Council during the Shenton Thomas regime. Public opposition had already made its mark upon the

<sup>1</sup> *Ibid.*, p. 54.

<sup>2</sup> 17th March 1937, p. 36.

<sup>3</sup> Secretary for Native Affairs, 17th March 1937, p. 48.

<sup>4</sup> Resolution of the Joint Provincial Council read by Ofori Atta in Legislative Council, 20th March 1934, p. 98.

<sup>5</sup> Resolution of the Joint Provincial Council read by Ofori Atta in Legislative Council, 21st March 1934, p. 145.

<sup>6</sup> 29th March 1933, p. 118; see below, p. 164.

<sup>7</sup> 23rd March 1933, p. 45.

Sedition Bill before the Attorney-General rose to move the second reading, and Sir Shenton Thomas had received the most prominent unofficial personages, both members of the Council and outside it, at Government House. 'It is quite true', said Mr. Korsah, while he continued to voice the opposition in Council, 'that Honourable Members of this Council and certain gentlemen of Accra, including the African Unofficial Members of this Council and some of the Paramount Chiefs interviewed His Excellency in the presence of the Attorney-General, the Colonial Secretary and the Secretary for Native Affairs; and I take it as a result of the interview certain amendments have been made to meet some objections raised at the time.'<sup>1</sup> Mr. Korsah subsequently had had a second interview alone with the Attorney-General, in which he was acting as the representative of a committee of barristers and members of the Council.<sup>2</sup>

Sir Shenton Thomas's policy was already having a mollifying effect upon public opinion. In the debate on the Textiles Quotas Bill a few months later, Nana Ayirebi Acquah felt it his bounden duty,

'as I have been charged by my respective Provincial Councils of the Colony, to place on record our high appreciation of the policy which is being adopted by Government by first of all interviewing the chiefs and the important members of the community for their concerted views regarding a measure which affects generally the interests of the whole country. It is sincerely hoped that such a policy will survive.'<sup>3</sup>

But there was a struggle before the government formally committed itself in Legislative Council to the principle of prior discussion by Provincial Councils. In the same session an Additional Customs Duties Bill was brought in, for further protection against Japanese imports, and the government, regarding it as a matter of urgency, moved the suspension of standing orders so that the

<sup>1</sup> 21st March 1934, p. 135. Cf. Ofori Atta, *ibid.*, p. 143.

<sup>2</sup> *Ibid.*, p. 151.

<sup>3</sup> 12th June 1934, p. 176. The three Provincial Councils supported the bill in principle, but the Central Province Provincial Council opposed it on certain grounds of detail, set out in a letter read in Legislative Council by Ayirebi Acquah, *ibid.*, pp. 177f.

second reading might follow immediately upon the first. The African members strongly opposed the procedure.

'The bill was only served on the Provincial Councils about two days ago,' said Nana Ayirebi Acquah, 'and now it is the pleasure of Government to have same introduced into the Legislature and at the same time pass it through all its stages by the suspension of the Standing Rules. I submit, Sir, that if this is done at the present moment, I am afraid it will create any amount of unpleasantness and hardship in the Country because the Provincial Members will not be in a position to explain the policy to their constituents. Under the circumstances, Sir, I pray that the passage of this bill be deferred till such time that the Provincial Councils will have had the opportunity of discussing it fully; because it has something to do with foreign countries as a whole<sup>1</sup> and also something to do with taxation.'<sup>2</sup>

But the government insisted on the necessity of haste, and the African members forced a division.<sup>3</sup> This served to crystallize the issue. Nana Ayirebi Acquah asked that since the members of the Provincial Councils were present in Accra, the second reading of the bill should be adjourned while they met and discussed it. The Acting Governor consented; and representatives of the three Provincial Councils had a meeting with the Attorney-General and the municipal members, at which they were able to express their assent to the principle of the bill, in time for the debate in Council to be resumed the same afternoon.<sup>4</sup> But when the government was unable to accept an amendment proposed by Nana Ayirebi Acquah as spokesman of the morning's unofficial meeting, on the grounds that it might frustrate the whole intention of the bill, the question of principle came up unavoidably.

'NANA TSIBU DARKU IX: Your Excellency, will it be possible then, Sir, for the Provincial Councils to be given an opportunity, not as the one we have had now, to consider bills properly in all details before they are introduced into this Council?

<sup>1</sup> Nana Ayirebi Acquah meant that it affected the foreign cocoa market.—M.W.

<sup>2</sup> 27th July 1934, pp. 203f.

<sup>3</sup> *Ibid.*, p. 206.

<sup>4</sup> *Ibid.*, p. 211.

'ACTING GOVERNOR: I will undertake that so far as it is possible, that will be done, but I cannot bind future Governors. . . . The principle of giving sufficient notice of bills for discussion in the Provincial Councils is one which the Government has always supported and put into practice, when possible.'<sup>1</sup>

Sir Arnold Hodson confirmed this declaration when, at the end of the same year, he presided over Legislative Council for the first time: 'I should like to say now that as far as it lies in my power and whenever it is possible I hope to consult the views of Unofficial Members before any controversial matters are introduced.'<sup>2</sup>

Subsequent reference to the legislative co-operation of the Provincial Councils and the Legislative Council has emphasized its success.

'The bill which is before Honourable Members to-day', said the Secretary for Native Affairs, introducing the Native Administration Treasuries Bill to the Council, 'replaces the bill which was published in the *Gazette* last year; and the reason for the substitution perhaps may be explained. When the original bill was first published it was sent to all the Chiefs in this Colony and their opinions and comments were asked for. Now, an important bill of this description drafted without reference to the Chiefs must necessarily excite a certain amount of criticism and comment, as indeed it was intended to do and, in November last, the joint Provincial Council of Chiefs met at Swedru and they formed themselves into a committee to consider this important measure. After they had examined the bill I again went to Swedru to listen to their comments, and the bill before us to-day is more or less the result of that meeting. In principle, the bill has not been altered, but it has been recast to conform with the wishes of the Chiefs and their people.'<sup>3</sup>

Sir Ofori Atta expressed the satisfaction of the chiefs with this procedure;<sup>4</sup> as also with a similar procedure a little later when the Attorney-General attended the meeting of the Joint Provincial

<sup>1</sup> 27th July 1934, p. 213.

<sup>2</sup> 23rd November 1934, p. 241.

<sup>3</sup> 21st March 1939, pp. 86f.

<sup>4</sup> *Ibid.*, p. 89.

Councils to explain the Medical Practitioners' Bill.<sup>1</sup> Nana Amanfi III delivered a panegyric on the Native Administration Treasuries Bill:

'I desire it to be placed on record that this is a measure which was not forced by Government upon the people of this country. In my opinion this would appear to be the only legislation affecting the interest of the people of this country when the people have been given more than ample opportunity to examine it and study its provisions within recent years.' He went on to describe the procedure in fuller detail than the Secretary for Native Affairs had done. 'The Chiefs appreciate very much the procedure adopted by Government in introducing this measure—a procedure which has enabled the Chiefs to give the provisions of the bill as much publicity as possible to their people. It is sincerely hoped that this policy will be followed in all future enactments so that the people's representatives can come here fully satisfied that they are speaking with the full knowledge and consent of their people.'<sup>2</sup>

And in 1941 the Central Provincial Council was discussing the Conscription Bill for four whole days before deciding its policy.<sup>3</sup>

On some occasions the urgency of a bill has made it impossible in the government's view to send it to the Provincial Councils for prior discussion. When the unofficial members complained of the lack of notice for the Customs Tariff Amendment Order of 1935,<sup>4</sup>

'I quite realize', said Sir Shenton Thomas, 'the difficulty in which the Chiefs find themselves when they come here and are asked to agree to certain proposals on which they have not had an opportunity of consulting their people and I shall be glad if the Chiefs, when they go back to their people, will tell them that I personally accept all responsibility for this, and if their people have any cause for complaint, they are to make their complaint to me and not in any way against their Chiefs.'<sup>5</sup>

Sir Ofori Atta found it regrettable that the Plant Pests and Dis-

<sup>1</sup> 13th December 1939, p. 56.

<sup>2</sup> 23rd March 1939, p. 156.

<sup>3</sup> Tsibu Darku and Amanfi III, 11th June 1941, p. 11.

<sup>4</sup> See below, pp. 135-6.

<sup>5</sup> 24th March 1933, p. 69.

eases Bill, hurriedly brought in by the government in 1937 to meet the menace of swollen-shoot, had not, for all its obvious urgency, been discussed by the chiefs whose peoples it so closely affected.<sup>1</sup> In the estimates debate of 1939 the Colonial Secretary took the opportunity of making a statement on this point.

'As Honourable Members are aware', he said, 'it is the usual practice to send these bills to the various Provincial Councils as soon as possible and on some occasions they are actually sent more than two months before a meeting of the Legislative Council. But within that two months' period the question that has to be considered by the Government is this: is this bill of the type that we need send to the Provincial Councils and give them two months to consider it or is it so urgent that we should try to get it through at the next meeting of the Legislative Council after carrying out the statutory requirements of two publications in the *Gazette*? We have had a bill the importance of which Honourable Members appreciated—the Local Forces Bill—which had to be dealt with as expeditiously as possible and which could not, owing to lack of time, be sent to the Provincial Councils for consideration. . . .

'There are of course one or two bills which are of no particular interest to the Provincial Councils—technical bills and bills which do not concern them intimately. In the case of such bills Government has less reluctance in publishing them at short notice.'<sup>2</sup>

A similar procedure is sometimes adopted in respect of the other constituent bodies of Legislative Council, and the Chamber of Mines and the Chamber of Commerce will usually be given the chance to consider a draft of legislation affecting their interests.\*

The closest co-operation between the government and the un-officials in originating legislation is represented by the growing number of advisory boards and committees, which both help to form policy, and supervise in a general way the processes of departmental administration. These boards can be of great value in giving scope and experience to African politicians. The most

<sup>1</sup> 27th August 1937, p. 36.

<sup>2</sup> 23rd March 1939, p. 190.

\* Cf. McKay, 29th March 1933, pp. 73-4.

important is the Board of Education, a statutory committee set up under the Education Ordinance of 1925.<sup>1</sup> It has fifteen members:

The Governor, as president

The Colonial Secretary

Four nominated official members, one of whom represents the Department of Agriculture

The Director of Education

The Principal of Achimota

Four nominated members to represent missionary and educational societies

Five nominated African members, one of whom is a paramount chief, and one a representative of the Gold Coast Teachers' Union.

The four nominated official members are normally the Colonial Secretary, the Financial Secretary and the Secretary for Native Affairs, and the Director of Agriculture himself. The four nominated members representing missionary societies consist of one representative each from the English, Scottish, Methodist and Roman Catholic missions. These and the African members are appointed for a term of five years, with the possibility of re-nomination for another five years. The Governor may appoint extraordinary members for any particular session, and the Chief Commissioner of Ashanti has lately sat on the board in this capacity. The Board is empowered to make rules subject to the approval of Legislative Council. It normally meets once a year, at the same time that Legislative Council assembles for the introduction of the estimates, and its minutes are published in the *Gazette*. The Board now operates rather as a select committee of Legislative Council, and deals largely with matters that might otherwise be the subject of formal questions and answers in the Council.

In 1937, as the result of a proposal in the Board of Education, the Governor appointed a committee 'to examine the existing educational system in the Gold Coast and to make recommendations where necessary for its modification'.<sup>2</sup> The committee was

<sup>1</sup> *Laws*, 1936, cap. 97, and Education (Colony and Ashanti) (Amendment) Ordinance, no. 27 of 1942.

<sup>2</sup> Board meeting of 19th March 1937 (*Gazette*, 24th July 1937, pp. 679f); Hodson, 15th March 1938, p. 8. Cf. Mr. Korsah's mysterious allusion to a committee on education which had not yet sat, 28th February 1936, p. 102.



composed of the Director of Education, Sir Ofori Atta, Mr. Korsah, the Principal of Achimota, a representative of the Methodist and a representative of the Scottish Missions, the Senior Inspector of Schools and the Vice-President of the Gold Coast Teachers' Union (the last two gentlemen being Africans).<sup>1</sup> The work of the committee was protracted,<sup>2</sup> and it did not report until 1941.<sup>3</sup> On its recommendation a Central Advisory Committee was set up in 1942, to advise the Director of Education on all educational matters.<sup>4</sup> This consisted of ten members: the Director of Education and the Principal of Achimota; three members to represent missionary and other educational interests; one member to represent female education; three African members, one a paramount chief and one representing Ashanti (Sir Ofori Atta, Mr. Korsah and Dr. I. B. Asafu-Adjaye were the first appointments); and an African member to represent the teaching profession.<sup>5</sup> All save the first two members are nominated by the Governor for one year, but may be reappointed. The Advisory Committee has five sub-committees, dealing with boys' primary education, girls' primary education, secondary education, the training of teachers, and textbooks and publications. It meets at least once every three months, and is able to consider in detail educational matters that cannot conveniently be dealt with by the Board of Education, since the Board is a formal body and it is neither necessary nor desirable for the Governor as its chairman to be present at lengthy meetings. The Advisory Committee has proved a brilliant success and has indeed largely superseded the Board of Education altogether.

When in 1939 the British government undertook to purchase the whole of the Gold Coast cocoa crop,<sup>6</sup> the Governor appointed an advisory committee, consisting of ten members: the Director of Agriculture as chairman, the Deputy Comptroller of Customs, five commercial members, and three Africans, one of whom repre-

<sup>1</sup> Board meeting of 14th March 1938 (*Gazette*, 23rd July 1938, p. 617).

<sup>2</sup> Board meeting of 13th March 1939 (*Gazette*, 19th August 1939, p. 647); Hodson, 14th March 1939, p. 7.

<sup>3</sup> Board meeting of 17th February 1941 (*Gazette*, 19th July 1941, p. 551); Board meeting of 16th February 1942 (*Gazette*, 13th June 1942, p. 370).

<sup>4</sup> Education (Colony and Ashanti) (Amendment) Ordinance, no. 27 of 1942, section 3A.

<sup>5</sup> See *Gazette*, 23rd February 1943, pp. 97-8.

<sup>6</sup> See the debate in Council, 19th March 1940, pp. 95-121.

sented the Joint Provincial Council (Sir Ofori Atta), another represented the Asantehene, and the third represented the African shippers.<sup>1</sup> When the functions of the Cocoa Control Board in the United Kingdom were merged into an enlarged West African Produce Control Board, the Cocoa Control Advisory Committee was correspondingly enlarged in 1942 into an Export Produce Control Advisory Committee, by the extension of its terms of reference to include other products, and the addition of three more members, one of whom represented African rubber processors and another represented rubber plantations.<sup>2</sup> In its latest form this Committee contains five Africans (representing the Colony, Ashanti, African shippers, producers and rubber processors) as against five European commercial members.

A Central Welfare Advisory Committee has been established as part of the planning machinery for development and welfare after the War. It is presided over by the Governor; its official members are the Colonial Secretary, the Directors of Medical Services, of Agriculture, and of Education, and the Secretary for Native Affairs; its unofficial members are the Director of the Institute of West African Arts, Industries and Social Science, a representative of the missions, and four African members, one of whom is a woman. The function of this Committee is to consider plans for social welfare and to ensure the co-ordination of the activities of the various departments concerned. The secretary of the Committee is the Secretary for Social Services, who also acts as liaison officer between the Committee and similar welfare committees that have been set up in every province and district of the Gold Coast. These committees have large non-official majorities, mostly of Africans; and they discuss all development and welfare projects relating to their region.

These are the most important official boards on which there are African members,<sup>3</sup> and their influence in shaping policy and per-

<sup>1</sup> *Gazette*, 12th December 1939, p. 1027.

<sup>2</sup> *Gazette*, 14th November 1942, p. 642.

<sup>3</sup> There is also a Central Town Planning Board set up under the Town Planning Ordinance (*Laws*, 1936, cap. 68, section 3), consisting of six *ex officio* members, two unofficial members of Legislative Council, and three other nominated members; it is the central authority for town planning. The Central Board of Health (*Gold Coast Handbook*, 1937, p. 138) does not appear to have been set up under statutory authority.

haps preparing legislation may be expected to grow. Besides the permanent advisory boards there can be *ad hoc* committees in connection with particular legislation; sometimes confined as regards unofficial membership to members of Legislative Council, sometimes drawing from a wider range. In the debate on the Moneylending Bill in 1940, Mr. Korsah prefaced his speech by saying: 'I am sure Honourable Members are aware that before this bill was submitted to this Council, a committee was appointed and some of us served on that committee,'<sup>1</sup> and proceeded to come to the assistance of the Attorney-General in explaining the provisions of the bill. The hostile criticism was coming from the provincial members, and it may be presumed that the personnel of this committee had been predominantly legal. In introducing the Pensions Amendment Bill in 1941, the Financial Secretary announced that as soon as the session closed, a committee including the three municipal members together with senior representatives of the African Civil Service would be appointed 'to consider and recommend to the Government whether in certain circumstances, or in all circumstances it would be practicable to provide for pensions, instead of gratuities, for the dependants of African officers killed on duty.'<sup>2</sup>

## 2. THE PROCEDURE OF THE COUNCIL

### GENERAL

The main lines of Legislative Council procedure are defined, along with its composition and its powers, in the constituent Order in Council. The details are left to be regulated by the Standing Orders and Rules of the Council, which the Governor, with the advice of the Council, and subject to the Secretary of State's approval, is empowered by the Order in Council to make.<sup>3</sup> In cases of doubt the Standing Orders are interpreted in the light of the relevant practice of the House of Commons, but no restrictions which the House of Commons has introduced by Standing Order are deemed to extend to the Council until the Council has itself

<sup>1</sup> 14th March 1940, p. 66.

<sup>2</sup> 13th June 1941, p. 24.

<sup>3</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 55.

provided by Standing Order for such restriction.<sup>1</sup> Any of the Standing Orders may be suspended with the consent of the President and a majority of the members present.<sup>2</sup>

In practice, Legislative Council procedure is consciously based on the model of the House of Commons. The Clerk of the Council keeps near his hand the standard works on parliamentary procedure, and they are always referred to when obscure points arise.

The present Standing Orders and Rules replaced those which had been in force since 1916; they were drawn up in 1931 and referred to a committee of the Council consisting of the Colonial Secretary, the Attorney-General, Sir Ofori Atta and Messrs. McKay and Korsah; and with the amendments of that committee they were accepted by the Council in 1934.<sup>3</sup> They underwent one amendment in 1940 by reason of the War.<sup>4</sup> It is too early yet to know whether they will need to be modified when the new constitution comes into operation.

The Governor presides at Council meetings; in his absence, such member as he shall appoint, or failing that the member first in order of precedence.<sup>5</sup> Ten is a quorum.<sup>6</sup> The proceedings and debates are in the English language, but a member may present a petition in any other language if it is accompanied by an English translation.<sup>7</sup>

The Clerk of the Council circulates copies of the agenda if possible a fortnight before the meeting.<sup>8</sup> The daily order of business is as follows:<sup>9</sup>

Confirmation of minutes of the previous meeting,  
Oath of allegiance by new members,  
Announcements by the President,  
Papers to be laid on the table,

<sup>1</sup> Standing Orders and Rules, no. 115.

<sup>2</sup> *Ibid.*, no. 116.

<sup>3</sup> Acting Colonial Secretary, 23rd November 1934, pp. 242f.

<sup>4</sup> 20th March 1940, p. 122; see below, p. 135.

<sup>5</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 50.

<sup>6</sup> *Ibid.*, section 53; Standing Orders and Rules, no. 2.

<sup>7</sup> Standing Orders and Rules, no. 3. On one occasion the Attorney-General ventured a Twi proverb in debate, which Sir Ofori Atta hastened to cap (14th March 1940, pp. 61, 64).

<sup>8</sup> Standing Orders and Rules, no. 5.

<sup>9</sup> *Ibid.*, no. 8.

Petitions,  
Notices of motions (or questions),  
Questions,  
Public business.

The laying of papers on the Council table<sup>1</sup> raises a question which in various forms has exercised unofficial members for some years: the insufficient publicity the government is apt to give, whether to its executive decisions or to draft legislation.<sup>2</sup> By the Standing Orders, 'all Rules, Regulations and Orders made by the Governor in Council under the authority of an Ordinance which are not subject to the approval of the Legislative Council shall be laid on the Table at the next Meeting of Council immediately succeeding the making of the same'.<sup>3</sup> In 1934, attacking the excessive powers of making regulations conferred on the Governor in Council by the Waterworks Bill,<sup>4</sup> Mr. Korsah added the complaint that

'it has been the practice in recent years to have on the table of this Council piles of regulations and other sessional papers put before members a few minutes before the Council sits. All I ask is that we should have the opportunity of so very closely scrutinizing them before they are placed on the table.'<sup>5</sup>

In 1940 he voiced a more fundamental criticism: that government had ceased publishing sessional papers on policy altogether. He expressed uncertainty as to the purpose of the new cocoa buying scheme; was it part of the Empire's general scheme of economic warfare, and if not, why could the documents that had passed between the Central Control and the government in Accra not be published? ..

'About the year 1938, or up to that time, it was the practice of this Government to publish, as sessional papers, all despatches and communications between the Secretary of State and this Government, affecting matters of public policy which were not regarded as confidential. By that means the people of this country were informed of the reasons why Government acted in one

<sup>1</sup> Standing Orders and Rules, no. 10.

<sup>2</sup> See below, pp. 135-6.

<sup>3</sup> Standing Orders and Rules, no. 11.

<sup>4</sup> See above, p. 111.

<sup>5</sup> 20th March 1934, pp. 114f.

way or the other, or of changes of Government policy. About that year 1932 the Government suspended that practice as one of the economy measures, the reduction of expenditure. Since then this Government has restored many of the other things or cuts which the Government had made in connection with the economic stringency at the time; but this practice has not been resumed, with the result that nowadays, not only are the general public not able to understand, but members of this Council are unable to explain to the public reasons why changes of Government policy are made, reasons why new schemes are introduced. . . . I propose that the system which enables the Government to change its policy, which enables the Government to introduce new schemes without being in a position to inform Honourable Members of this Council and the country of the details, reasons and objects for the changes, is bad. Such a policy would lead to misunderstanding, and even, in some cases, to suspicion; and you cannot blame the public if, not being informed of the facts, they either misunderstand the motives or suspect the intentions of anyone who has anything to do with any of these schemes.

‘Apart from the Cocoa Scheme’, he continued, ‘Your Excellency will observe that during the session of the Select Committee Honourable Members repeatedly requested the Financial Secretary to produce despatches and papers supporting schemes and changes of policy which Government had introduced. Members of Council knew nothing about them, and had to listen to the explanations contained in documents which the Financial Secretary read to us. This is due to the fact that we have stopped the practice of publishing, as sessional papers, documents supporting actions and changes of policy. I am therefore suggesting that as soon as possible Government revert to the old scheme. . . . I urge that, wherever possible, new schemes and changes of policy should be brought to the notice of members of this Council, by publication of the sessional papers and documents relating to them.’<sup>1</sup>

This plea had the backing of the Colonial Secretary later in the debate, who asked the Governor to consider it very seriously, and

<sup>1</sup> 20th March 1940, pp. 124f.

said that they would not be too much influenced by consideration of the paper shortage.<sup>1</sup>

The right of petitioning Legislative Council is seldom exercised; most matters that could form the subject of such petition are dealt with by the Provincial Councils. Between 1933 and 1941 only one petition was presented to Legislative Council: in 1940 Sir Ofori Atta presented a petition from the claimant to the stool of the New Juaben state together with certain sub-chiefs of that state. The Governor ordered that it be laid on the table;<sup>2</sup> and there was no further reference to it.

Questions have not formed a prominent part of the procedure of Council.<sup>3</sup> They may be put to official members relative to public affairs with which they are officially connected; or to other members relative to a bill or public matter connected with the business of the Council for which such members are responsible;<sup>4</sup> there has not been occasion for the exercise of the latter right. 'The reply to any such question shall, when practicable, be put in writing and a copy thereof supplied to the Member putting the question at least ten minutes before the time fixed for the meeting of the Council at which the question is to be answered and shall be read by the Member to whom the question is addressed, or, in his absence, by such member as the President may direct.'<sup>5</sup> The incidence of questions varies widely; several sessions pass without any being asked. On the whole, therefore, it may be said that they represent real issues and a genuine need for information. No unofficial member has acquired, as in some other colonial legislatures, a vested interest in the asking of questions, for purposes of self-expression or to embarrass officials. On one occasion Sir Ofori Atta put twenty-two,<sup>6</sup> and on another Mr. Kojo Thompson seventeen,<sup>7</sup> but these seem the maximum that have been asked by a single member at any one time. Supplementaries are scarcely ever

<sup>1</sup> *Ibid.*, p. 166.

<sup>2</sup> 13th March 1940, p. 43.

<sup>3</sup> But questions on all matters affecting the administration are now permitted at the monthly meeting of the Finance Committee: see below, p. 160.

<sup>4</sup> Standing Orders and Rules, no. 20.

<sup>5</sup> *Ibid.*, no. 21.

<sup>6</sup> 16th March 1938, pp. 24ff.

<sup>7</sup> 15th March 1939, pp. 37ff.

asked.<sup>1</sup> Questions have been almost exclusively the affair of the African members; only once have they been put by a European unofficial.<sup>2</sup> The following analysis of the subjects of the questions that were asked between 1933 and 1941, suggests the relative interests that prompt them:

Cocoa industry, including the hold-up	24
Civil Service, especially status of Africans	13
Education	13
Immigrants, especially Syrians	13
Judicial administration	13
Medical and sanitary	13
Transport and communications	13
Africanization	10
Liquor problem	9
Public works	8
Native Administration	7
Personal	6
Commercial policy	5
Government lands	5
Mining industry	3
Finance and revenue	3
Military	2
Labour	2
Legislative Council machinery	1
Miscellaneous	5

Apart from their inability to move financial resolutions,<sup>3</sup> the unofficial members seem to have experienced certain difficulties in raising other matters in a formal way. The Legislative Council Order in Council says: 'It shall be competent to any Member of the Council to propose any question relating to the affairs of the Colony, for debate therein, and, if seconded by any other Member, such question shall be debated and disposed of in accordance with

<sup>1</sup> African members were strongly criticized for this in the *Spectator Daily*, 9th March 1942. 'The follow-up was entirely absent. . . . The situation became so ignobly bad that when the Acting Colonial Secretary stated that there was no profiteering in the country, ready-wit had so ebbed that no one could challenge him.'

<sup>2</sup> Harris, mercantile member, 22nd March 1933, pp. 24-5.

<sup>3</sup> See below, pp. 160-2.



the Standing Orders and Rules', provided that such question be not a financial question.<sup>1</sup> Notice of a motion should be given at the preceding meeting of the Council, or to the Clerk of the Council ten days before it meets; but there is the usual list of motions which require no such notice—motions for reference to a Select Committee, for the adjournment of the Council or of a debate, for the suspension of the Standing Orders and Rules, and others.<sup>2</sup>

On two occasions unofficial motions have been debated by the Council. In 1933 Mr. Harris, the mercantile member, moved that government should reconsider its liquor restriction policy,<sup>3</sup> and a full discussion ensued. The constitutional purpose of the motion was summed up by Sir Shenton Thomas:

'As I understand it the Honourable the Commercial Member in moving this resolution has merely drawn the attention of this Chamber to an evil which he feels exists, and he is inviting the Government to take steps which will enable this House to become fully acquainted with the facts. The motion is, I assume, designedly drawn in wide terms so that to-day it may be ascertained whether an investigation is desired; if so, the Government will consider what action should be taken. I think that this is what is implied by the mover of the resolution.'<sup>4</sup>

Mr. Harris readily concurred, and the Colonial Secretary wound up the debate by promising to take steps to ascertain local opinion.<sup>5</sup> The second instance was Sir Ofori Atta's motion on the cocoa purchasing scheme in 1940, of which he gave notice two meetings in advance.<sup>6</sup> He moved that the control of the purchasing scheme from England was inequitable and fell harshly upon the African community, and that the control of local purchases should be left in the hands of the Gold Coast government assisted by a representative committee.<sup>7</sup> This motion, too, initiated a lengthy debate

<sup>1</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 59.

<sup>2</sup> Standing Orders and Rules, no. 15; Gold Coast Colony (Legislative Council) Order in Council, 1925, section 59.

<sup>3</sup> 23rd March 1933, p. 34.

<sup>4</sup> *Ibid.*, p. 39.

<sup>5</sup> *Ibid.*, p. 45.

<sup>6</sup> 13th March 1940, p. 56.

<sup>7</sup> 19th March 1940, p. 95.

which led to a division, the Governor permitting the free vote in which the Director of Agriculture abstained from voting.<sup>1</sup>

The requirements for notice, however, mean that it may be difficult for unofficial members to call the attention of the Council to sessional papers etc. on the day on which they are tabled: impossible, indeed, if those papers have not been circulated to members more than ten days before the session. In the third session of 1938, immediately after the Colonial Secretary had tabled papers, Sir Ofori Atta asked permission to call attention to certain items in the Orders in Council made under the Concessions Ordinance.

**'ACTING GOVERNOR:** Will the Honourable Member please refer me to the Standing Order under which he is speaking.

**'NANA SIR OFORI ATTA:** There is no provision in the Standing Orders but I think we are entitled to make any remarks in respect of any paper or document placed on the table.

**'ACTING GOVERNOR:** I do not think so, unless it is done by a motion; I know of no provision in the Standing Orders or of any rule at this moment under which this can be done otherwise.

**'NANA SIR OFORI ATTA:** I have read the Standing Orders already.

**'ACTING GOVERNOR:** I am referring to the formal aspect of the matter. However, apart from the rules, I am prepared to grant the Honourable Member a few moments of the Council's time.

**'NANA SIR OFORI ATTA:** I thank you so much, Sir. I remember that I have had to raise one or two points like that before.'<sup>2</sup>

This provides an instance of the rather special position in which Sir Ofori Atta entrenched himself in respect of Council procedure.

In more general matters the unofficial members lack skill as yet in manipulating the rules of procedure and bending them to their own purposes. The right of moving the adjournment of the Council has never been used as the method of introducing a debate on a matter of urgent importance to members, in the manner of

<sup>1</sup> *Ibid.*, p. 121.

<sup>2</sup> 15th September 1938, p. 6.

the House of Commons. Here again the unofficial member tends to sue for the Governor's grace, and may be mollified by an *ad hoc* arrangement. In the third session of 1939, the Council was debating the increased duties under the Customs Tariff Order, which the Acting Financial Secretary introduced by pointing out that the budget would scarcely be balanced if the United Kingdom government had not undertaken to buy the entire Gold Coast cocoa crop.<sup>1</sup> The African members touched lightly upon the unsatisfactoriness of the cocoa buying scheme in their speeches; but Mr. Kojo Thompson strove with determination to make it an opportunity for expressing the farmers', or rather his own, discontent, in a dialogue which illustrates Mr. Thompson's pertinacity, Sir Arnold Hodson's discursiveness of mind, and the way in which the control of debate lay ultimately in the firm and tactful hands of Mr. London:

'MR. KOJO THOMPSON: The most important point that I wish to impress upon Your Excellency's mind is this: that the farmer is not satisfied with the price and the quota. No African is satisfied.

'COLONIAL SECRETARY: But, on a point of order, Your Excellency, what has this got to do with the resolution.

'GOVERNOR: Nothing as far as I can see. The Honourable the Municipal Member is really wasting time.

'MR. KOJO THOMPSON: This is the only time I shall have to express the feeling of the people, but if Your Excellency does not wish to hear me, then I am prepared to sit down.

'COLONIAL SECRETARY: I suppose I can help the Honourable Member. At the moment we are discussing this specific motion. There will possibly be an opportunity for general statements later on, but at the moment let us finish with the motion that we are discussing otherwise we will be here all day. . . .

'MR. KOJO THOMPSON: What opportunity will the farmer or anybody get to put this grievance before Your Excellency? There will be no other opportunity to speak about it; I wish to let Your Excellency know what the people feel. Nobody wants to go and disturb the Government in the scheme that is being put forward to the farmers, but we do not want Government to get

<sup>1</sup> 12th December 1939, p. 12.

away with the impression that the farmers are satisfied. They are not satisfied.

'GOVERNOR: You will never find a farmer who is really satisfied. It is the same in England as it is here. If the weather is dry they want it wet, and if it is wet they want it dry. Taking the farmers in the Gold Coast as a whole, I am perfectly certain they are very grateful to the British Government for what it has done to help them in the world crisis. It must be remembered the British Government may lose a very large sum of money over this deal.

'COLONIAL SECRETARY: Your Excellency, will it do, Sir, if you could promise the Honourable Member an opportunity to make a general statement when we finish the business of this Council?

'GOVERNOR: I am quite prepared, when the main business of the Council is finished, to give the Honourable Member an opportunity of stating what he wants.

'MR. KOJO THOMPSON: What I want to convey to this Council is that the African farmer is not satisfied with the cocoa scheme.

'GOVERNOR: Do you mean the price or the scheme?

'COLONIAL SECRETARY: On a point of order, the Honourable Member admits that he is not speaking to the motion. I suggest that Your Excellency rule that this is the time for discussing the motion only.<sup>1</sup>

Accordingly the following day, at the end of the meeting, Mr. Kojo Thompson was given the opportunity to speak. He was supported by Mr. Korsah, who asked for an opportunity to debate the cocoa scheme:

'The only point is that it is the duty of the members of this Council to bring to the notice of Government as soon as possible what the people of this country feel about any measure introduced by Government, and we regard this occasion as the opportunity for making our comments. . . . If we have the opportunity now we shall inform Government what the country feels about the whole scheme, we hope thereby to be able to help the Government in coming to a correct conclusion which would assist the

<sup>1</sup> Ibid., pp. 20f.

Country generally. If this Council is not closing till to-morrow, we might be given the opportunity to discuss the scheme.

'GOVERNOR: If that is the case you may propose a motion.'<sup>1</sup>

But the Colonial Secretary for the official members, and Sir Ofori Atta for the Africans, smoothed out the creases, and within ten minutes the Council adjourned *sine die*.

#### THE LEGISLATIVE PROCESS

Bills are normally published in at least two consecutive issues of the *Gazette* before being introduced into Council, and distributed to members with the agenda of the meeting at which they are to be introduced.<sup>2</sup> By an amendment of 1940, 'as a temporary measure for the period of the present emergency', it was ruled that bills should be published once only in the *Gazette* prior to introduction into the Council.<sup>3</sup> But if a certificate of urgency signed by the Governor has been laid on the table, any bill mentioned in the certificate may be introduced without publication or distribution.<sup>4</sup> In the same way, notice of any motion must be given at the previous meeting of the Council, or to the Clerk of the Council two days before the meeting, so that the motion may be included in the agenda; but it is likewise provided that in cases of urgency these necessities may be waived.<sup>5</sup> The practice of government in these respects has sometimes given the unofficial members reason to complain. A general exception seems to be made, by convention, in respect of resolutions to approve Orders in Council altering duties under the Customs Tariff Ordinance.

'I very much like, Sir,' said Nana Ayirebi Acquah, concerning a resolution of this kind in 1933, 'to draw Your Excellency's attention to the fact that we came in to the Chamber and found a motion on the Agenda placed on our desks to be put by the Honourable Comptroller of Customs, and we were all the time expecting to know exactly what sort of motion it was but in vain. When a question is put we are told it is confidential and

<sup>1</sup> 13th December 1939, p. 71.

<sup>2</sup> Standing Orders and Rules, no. 61 (i).

<sup>3</sup> 20th March 1940, p. 122.

<sup>4</sup> Standing Orders and Rules, no. 61 (ii).

<sup>5</sup> *Ibid.*, no. 15.

could not be placed before us until Your Excellency's arrival.'<sup>1</sup> Moreover, while the members of Legislative Council were thus kept in the dark, news of an increase in import duties had leaked out to the public; 'before this motion came before this Council everything connected with it was almost out'.<sup>2</sup> Sir Shenton Thomas promised to investigate the breach of secrecy, and explained the reason for government procedure:

'In a matter of this sort, Government sympathizes very strongly with the Unofficial Members, and particularly with the Chiefs, in that it is not possible for us as a rule to announce beforehand any changes in the tariff, for the reason that if these changes were announced importers or merchants might possibly take advantage of them before Council meets. That being so, we have to come to Council with proposals of which Honourable Members have not previously been informed.'<sup>3</sup>

The emergency procedures have been employed several times in the various recent crises. Twice in 1938, in connection with the cocoa crisis,<sup>4</sup> and twice in 1939, in connection with the War,<sup>5</sup> the Council was asked to consider matters without proper notice. On one occasion this caused trouble. The second session of 1938 was called at the shortest notice in order to hurry the Cocoa (Control of Exportation) Bill through all its stages. There was much dissatisfaction that a bill dealing with so crucial an issue should be presented in this way.

'Your Excellency,' said Mr. Christian, 'I may say that I first saw this bill or draft bill last evening at 6.30. I feel that as a member of the Council one is responsible for what one says and he cannot say that he agrees to this or that measure not having

<sup>1</sup> 24th March 1933, p. 65; cf. above, pp. 120-1.

<sup>2</sup> Ibid. Cf. Shenton Thomas, 22nd March 1933, p. 17: 'I have . . . been disturbed to find the readiness with which all too many members of the African staff impart to outside persons information which they have obtained in the course of their official duties, and the readiness with which those persons accept it.'

<sup>3</sup> Ibid., p. 69.

<sup>4</sup> Commissioners' Powers (Conferment of) Ordinance, 16th March 1938, p. 35; Cocoa (Control of Exportation) Ordinance, 13th April 1938, p. 3.

<sup>5</sup> Trading with the Enemy Ordinance, 5th September 1939, p. 4; resolution to approve order in council under the Customs Tariff Ordinance, 12th December 1939, p. 11.

had time to consider it, neither can he say he disagrees for the same reason.<sup>1</sup>

Mr. Kojo Thompson argued that a bill of such import and magnitude, dealing with the existing crisis in the country, needed serious and close discussion; moreover, that there was no need for rushing it through the Chamber in an emergency meeting while the Commission of Inquiry was still sitting.

'We are here representing the people,' he said, 'and what opportunities have we had to consult with our constituencies? None. I do not think that even the Chiefs have had any opportunity of consulting the farmers for whom they have been acting in this crisis; yet we are asked to pass such an important bill after 24 hours' notice.'<sup>2</sup>

Not only was the subject of the bill of such importance; but it conferred wide and indefinite powers upon the Governor in Council, which the haste of the procedure and the uncertainties of the changing situation made it impossible for the government to explain with any precision. The shipping member no less than the African members spoke strongly on this.<sup>3</sup> But in the end, after much buffeting, the bill passed through all its stages without a division.

The Standing Orders provide, with regard to prior notice of legislation, that 'every Bill shall be accompanied by a memorandum signed by the Attorney-General in the case of Government Bills and by the mover in the case of other Bills stating fully the objects and reasons for the Bill.'<sup>4</sup> On one occasion such a statement of objects and reasons achieved political importance, when Sir Shenton Thomas in an *Extraordinary Gazette* explained to the public the necessity for the Sedition Bill.<sup>5</sup> The Colonial Secretary attributed this statement to the Governor himself, as distinct from the Attorney-General: 'I refer, Sir, to the course which you took in publishing in a special *Gazette* an explanatory minute dealing with the reasons for and the effects of this Bill, an explanation which

<sup>1</sup> 13th April 1938, p. 9.

<sup>2</sup> *Ibid.*, p. 11.

<sup>3</sup> Whitfield, *ibid.*, p. 18. See above, pp. 109, 113.

<sup>4</sup> Standing Orders and Rules, no. 62.

<sup>5</sup> Attorney-General, 21st March 1934, p. 133.

made many matters clear and stated facts which had until then been dark or concealed or, even, had been twisted deliberately.<sup>1</sup> Explanatory memoranda on the principles of Orders in Council made under the Waterworks Ordinance were published in the *Gold Coast News* as well as the *Gazette* and were also broadcast.<sup>2</sup>

The first reading of a bill is confined to the reading of its short title, without question put;<sup>3</sup> and notice is given immediately that it is intended to proceed with the second reading at a later meeting.<sup>4</sup> The motion for the second reading initiates a debate upon the general merits and principles of the bill.<sup>5</sup> Until about 1937 bills were generally introduced into the Council, that is to say, the motions for the first and second readings were made, by the Attorney-General, and seconded by the head of the department with which the legislation was connected. More recently the head of the department or the official primarily concerned has usually introduced the bill, and the Attorney-General has seconded: for example, the Officer Commanding the Gold Coast Regiment introduced the Gold Coast Regiment Bill in 1939.<sup>6</sup> The estimates and financial motions are introduced by the Financial Secretary. On a famous occasion an unofficial member introduced what was in every other respect a government bill, when in 1927 Sir Ofori Atta moved the second reading of the Native Administration Ordinance.<sup>7</sup> On another notable occasion a government bill was moved by an extraordinary member appointed for that purpose: the Income Tax Ordinance of 1943 was introduced by Mr. W. B. Dare, the technical adviser on income tax matters to the governments of the West African Colonies, who sat in the Council for the three days' passage of the bill.<sup>8</sup> The bill having been read a second time, the committee stage may be taken forthwith or at

<sup>1</sup> 21st March 1934, p. 140.

<sup>2</sup> Director of Public Works, 17th March 1938, p. 57.

<sup>3</sup> Standing Orders and Rules, no. 63.

<sup>4</sup> *Ibid.*, no. 64.

<sup>5</sup> *Ibid.*, no. 66.

<sup>6</sup> 21st March 1939, p. 90.

<sup>7</sup> 19th April 1927, p. 460. 'The occasion is unique, for it has never before happened in the history of this Colony that an Unofficial Member has introduced a Bill into the Legislative Council,' Guggisberg, 3rd March 1927, pp. 244-5. See above, p. 115.

<sup>8</sup> 18th August 1943, p. 29.



some subsequent time;<sup>1</sup> then the principle of a bill is not discussed but only its details.<sup>2</sup> The third reading, like the first, is formal, the Clerk reading the long title;<sup>3</sup> the motion for the third reading is meant to give the opportunity for obstructive amendments no less than the motion for the second reading; but only once has a division been forced at this stage.<sup>4</sup> Almost always the battle is by then over, and the bill is immediately thereafter submitted to the Governor for his assent.<sup>5</sup> Divisions are taken by the Clerk of the Council calling the roll of members, who respond Aye or No.

For at least ten years past it has been the practice to deal with legislation before the Council, not bill by bill, but stage by stage: so that all bills to be considered at any one meeting were successively given a second reading before the Council went into committee and considered them successively in detail. This seems to have been determined by convenience simply, and to have no written sanction; now and then the arrangement was altered, especially in the case of involved and technical legal bills, when it was desirable that the thread of the discussion should not be lost, and the debate proceeded naturally from general principles to particular details without interruption.<sup>6</sup> But in 1939 the Colonial Secretary announced that

'we propose to revert to the former arrangement under which we took each bill from its second reading right through to the final reading before proceeding with the succeeding bill. Under the recent system of taking all bills into committee stage together there is the danger that Honourable Members may forget what has been said in the course of second reading debate on particular bills.'<sup>7</sup>

To expedite the passage of a bill, Standing Orders have from time to time been suspended, so that all stages from first reading to

<sup>1</sup> Standing Orders and Rules, no. 71.

<sup>2</sup> *Ibid.*, no. 72.

<sup>3</sup> 19th April 1927, p. 460.

<sup>4</sup> Standing Orders and Rules, no. 86. The African unofficial members refused to allow the third reading of the Waterworks Bill without a division, 20th March 1934, p. 126.

<sup>5</sup> Standing Orders and Rules, no. 89.

<sup>6</sup> E.g., on 26th March 1935: the Courts Ordinance (p. 31) and the Criminal Procedure Code (p. 42).

<sup>7</sup> 13th December 1939, p. 30.

third may be taken on the same day. This procedure naturally follows upon the introduction of a bill without proper notice under a Governor's certificate of urgency.

A remarkable feature of the legislative procedure is the extent to which custom allows the passage of a bill to be interrupted, in order that discussion of it may proceed outside the Council. This is a corollary of the elaborate antecedent discussion of legislation described above, and at times becomes indistinguishable from it. It illustrates how the Legislative Council is only the central piece in a complex mechanism of interlocking wheels. It illustrates, too, the persistence with which government consults unofficial members and seeks their approval and co-operation for its measures. This privileged discussion can take various forms. Sometimes it is extra-conciliar contact between the unofficials and the government that is desired, and then something much in the nature of an informal select committee can arise. In 1940, in the discussion of the Courts (Amendment) Bill, Mr. Korsah made a practical proposal for judges going on circuit which strongly commended itself to the Attorney-General, and he asked that the bill might be adjourned to allow him to consider it with some of the unofficials;<sup>1</sup> the Council was accordingly adjourned till next day, while the Attorney-General had a meeting with Mr. Korsah and Sir Ofori Atta (to which through some misunderstanding Mr. Kojo Thompson did not turn up) and came to an agreement on all points.<sup>2</sup> Something similar was done in the case of the Geological Survey (Facilities) Bill, consideration of which was postponed to allow the drafting of an amendment by the Law Office to meet the suggestions of Mr. Korsah.<sup>3</sup>

Sometimes the interruption takes place to enable the unofficial members to clarify their opinions by discussion among themselves. In 1934, the Provincial Councils not having had time to discuss the Motor Traffic Bill, the provincial members asked for the opportunity of considering it thoroughly among themselves between the second reading and the committee stage, which the Governor permitted;<sup>4</sup> but there seems to have been no question of postponement

<sup>1</sup> 2nd October 1940, p. 42.

<sup>2</sup> Attorney-General, 3rd October 1940, p. 43. Cf. below, p. 142.

<sup>3</sup> *Ibid.*, p. 61.

<sup>4</sup> Ayirebi Acquah, 27th July 1934, p. 225.

of the committee stage here, and that it was open to the provincial members to pursue their private discussions without the formality of asking the Governor's permission. When the Courts Bill was in the committee stage, and a particular disagreement arose between the municipal members and the Attorney-General, Mr. Korsah said that if the Attorney-General

'would allow this matter to stand over till the next sitting—say to-morrow or this afternoon—we may, I am sure, be able to also convince him or come to a decision in this matter. This has been suggested in fact after consultation with my friends and it is quite clear that we have at our disposal the experience of a gentleman who has practised for nearly forty years.<sup>1</sup>

' . . . I would ask that if the learned Attorney-General desires this matter to be considered again we might allow it to stand over until this afternoon or to-morrow when we hope to satisfy ourselves by referring to authorities on the point.'<sup>2</sup>

The clause in question was therefore left for discussion next day, when the Attorney-General asked if it might stand over again till to-morrow, since what had now developed into extra-conciliar negotiations between himself and the municipal members were still in train.<sup>3</sup> On the third day he announced that he had decided to meet the objections of the municipal members by deleting the controversial clause.<sup>4</sup> Another example of the interruption of the legislative process for the convenience of unofficial members was provided by the Commissioners' Powers (Conferment of) Bill of 1938, the second reading of which was postponed until the end of the session five days later, because 'Honourable Members opposite have represented that they would like a little more time in order to consider their attitude to the bill'.<sup>5</sup> The value of the postponement was seen in the subsequent passage of the bill without any debate whatever.<sup>6</sup>

Sometimes, again, the postponement of the consideration of a

<sup>1</sup> Mr. Korsah was presumably referring to a legal colleague outside the Council.—M.W.

<sup>2</sup> 26th March 1935, pp. 52f.

<sup>3</sup> 27th March 1935, p. 73.

<sup>4</sup> 28th March 1935, p. 105.

<sup>5</sup> Acting Attorney-General, 16th March 1938, p. 55.

<sup>6</sup> 21st March 1938, pp. 71ff.

bill already launched upon its passage through the Legislative Council, is to permit the unofficial members to refer back to their constituents. Here the African tradition of the delegate is given great play; the African members like to stand up in mid-session freshly clothed in a new authorization from those for whom they speak. Reference back to the Provincial Councils is infrequent in proportion to the regularity of their antecedent discussion of bills. It has been described above how the passage of the Additional Customs Duties Bill of 1934 was interrupted at the demand of the African members, to allow for consultation with representatives of the Provincial Councils then present in Accra.<sup>1</sup> When the Courts Amendment Bill of 1940 was postponed to let the Attorney-General discuss Mr. Korsah's proposals with some of the unofficials,<sup>2</sup> Mr. Korsah took the opportunity of referring back to a body as whose representative he regarded himself:

'Fortunately I was able to inform the members of the Bar who then were assembled in the Court holding a meeting. So that I am now able to say that I did not only act upon instructions which I had received before the meeting but I was able to inform them of the result of the meeting, and the Bar Association at their meeting accepted the amendment which has been proposed this morning.'<sup>3</sup>

In the debate on the Concessions Bill in 1939, when the African members moved an amendment that the provisions for the validation of concessions should have retrospective effect, the government refused to accept the amendment without reference to the Chamber of Mines, which in considering the first draft of the bill had particularly asked that the clause in question should be declared not to have retrospective effect.<sup>4</sup> The African members agreed. By preserving the formalities of an agreed measure the government was able to protect the interests represented by the European unofficials against the greater voting power in Council of the Africans, without an invidious resort to the use of the official majority.

<sup>1</sup> 27th July 1934, pp. 203-11; see above, pp. 117-18.

<sup>2</sup> 2nd October 1940, p. 42; see above, p. 140.

<sup>3</sup> 3rd October 1940, p. 44.

<sup>4</sup> Solicitor-General, 21st March 1939, p. 112.

The government has not shown itself unready to withdraw legislation in the face of unofficial opposition. The modification of the Courts Bill in this way has already been mentioned.<sup>1</sup> In 1937 parts of a Native Administration Amendment Regulation were withdrawn as a concession to provincial members;<sup>2</sup> and so strong was their opposition, voicing the decision of the Provincial Councils, to the Tribunals Process Service Amendment Bill of 1938, that government withdrew the entire bill in so far as it applied to the Colony, and enacted it for Ashanti alone.<sup>3</sup>

The Standing Orders provide that any member desiring to introduce a bill other than a government bill shall apply to the Council for leave to do so, stating at the same time the objects and main features of such a bill.<sup>4</sup> It has been noticed above that government paid the unofficial members the compliment of allowing the Native Administration Ordinance of 1927 to be introduced by Sir Ofori Atta as a private bill. There has been only one instance since of an attempt made to bring in an unofficial member's bill. In 1938 Mr. Kojo Thompson asked leave to introduce a bill to amend the Towns Ordinance;<sup>5</sup> Sir Ofori Atta seconded him. 'I would like to mention', said Nana Tsibu Darku, 'that this is the second unofficial bill which has been introduced under the New Constitution and I feel that another opportunity should be given.'<sup>6</sup> The African members one by one rose to support the motion. The government showed signs of embarrassment. The Acting Colonial Secretary explained that official proposals with the same object as Mr. Kojo Thompson's were under consideration:

'In view of Government's intention, the Honourable Member will, no doubt, agree that it would hardly be appropriate that a Government bill and a private Member's bill, both seeking to amend the same Ordinance, should be introduced into the Council at the same time, and Government trusts that now that Government's intention in the matter has been made clear, the

<sup>1</sup> 28th March 1935, p. 105; see above, p. 140.

<sup>2</sup> 26th August 1937, p. 17.

<sup>3</sup> Acting Governor and Secretary for Native Affairs, 16th September 1938,

p. 43.

<sup>4</sup> Standing Orders and Rules, no. 92.

<sup>5</sup> 16th September 1938, p. 22.

<sup>6</sup> *Ibid.*, p. 25.

Honourable Member will agree not to proceed with this particular motion any farther.<sup>1</sup>

Mr. Kojo Thompson replied that if nothing was done, and the government amendment were not moved at the next session of the Council, he would seek to pursue the matter. 'I think a good deal of credit is due to the Honourable the Municipal Member for Accra for bringing this matter forward in this way,' said the Acting Governor. But the other preoccupations of the next session seem to have prevented the matter from coming up again.

Select Committees of the Council 'may on motion be appointed to report upon any matter on which information may be required by the Council';<sup>2</sup> the members of the Committee being appointed by the President of the Council, who may also nominate the Committee's chairman.<sup>3</sup> The wide possibilities for discussion of bills both before and during their passage through the Council, which have been described above, limit the scope for the formal procedure of a Select Committee. In the years from 1933 to 1941 there were five only, which may be briefly commented upon:

1. Select Committee on the Forced Labour Bill, 1934. This bill was the outcome of the imperial order in council of 1931 applying the International Convention to prohibit forced labour to the British Colonies.<sup>4</sup> It was strongly attacked by Sir Ofori Atta and Nana Ayirebi Acquah, who suggested 'a thorough revision of its provisions'.<sup>5</sup> Sir Shenton Thomas agreed to a Select Committee, and appointed the Attorney-General, the Secretary for Native Affairs, and the Commissioner of the Eastern Province, together with three unofficials: he suggested Sir Ofori Atta, Nana Ayirebi Acquah, and Nana Hima Dekyi. 'As to the other Chiefs, I do not wish to trouble them, but if they too would wish to join the Committee, I will put them on.'<sup>6</sup> Nana Tsibu Darku and Togbi Sri accordingly expressed their desire to serve, and Mr. Korsah was added to the Committee, bringing its number up to nine: three officials and six

<sup>1</sup> 16th September 1938, p. 30.

<sup>2</sup> Standing Orders and Rules, no. 100. For the Select Committee on the Estimates see below, pp. 154-8.

<sup>3</sup> Standing Orders and Rules, no. 101 (i).

<sup>4</sup> Attorney-General, 19th March 1934, p. 38.

<sup>5</sup> Ofori Atta, *ibid.*, p. 46.

<sup>6</sup> Governor, *ibid.*, p. 47.

unofficials. The report of the Committee was sent to the government, and all the amendments put forward by it were accepted, with the exception of one clause which the government considered to be part of the obligations undertaken as a result of the Convention.<sup>1</sup>

2. Select Committee on the Co-operative Societies Bill, 1937. This bill had important bearings upon native authorities, and the appointment of the Committee was arranged outside the Council, at the instance of Sir Ofori Atta, who with other unofficials approached the Director of Agriculture to request the opportunity of further discussion of the bill with him.<sup>2</sup> The Colonial Secretary proposed all the provincial members, 'or as many of them as may be considered necessary to put forward their case to their own satisfaction', together with Mr. Korsah, the Commissioner of the Eastern Province, the Comptroller of Customs, and the Director of Agriculture in the chair. This was put and carried without Sir Arnold Hodson saying a word, as if the composition of the Committee were a matter the Council was entitled to vote on.<sup>3</sup> The Committee reported at the end of the same session,<sup>4</sup> and Sir Ofori Atta and Nana Ayirebi Acquah expressed gratification that all the amendments asked for had been accepted.<sup>5</sup>

3. Select Committee on the Cocoa Industry (Regulation) Bill, 1937. This was appointed immediately after that on the Co-operative Societies Bill, upon the motion of Sir Ofori Atta.<sup>6</sup> The Colonial Secretary again proposed the members of the Committee, suggesting the Director of Agriculture as Chairman, the Comptroller of Customs, the Commissioner of the Eastern Province, together with the Mercantile Member (Mr. Harris), the Banking Member (Mr. Johnston), and two provincial members; Sir Ofori Atta asked that there should be three paramount chiefs since there were three Provinces, and this was agreed; the names of the pro-

<sup>1</sup> Attorney-General, 27th March 1935, p. 81. See above, p. 102-3.

<sup>2</sup> Director of Agriculture, 17th March 1937, pp. 61f.; *Gazette*, 25th March 1937, p. 310.

<sup>3</sup> 17th March 1937, p. 62.

<sup>4</sup> Colonial Secretary, 23rd March 1937, p. 82; report adopted on motion of Director of Agriculture, p. 84.

<sup>5</sup> *Ibid.*, pp. 83, 84.

<sup>6</sup> 17th March 1937, p. 63.

vincial members were not specified.<sup>1</sup> The Colonial Secretary then said:

'Firstly it is very important that the Select Committee get through their work in good time so that the Council may not be delayed in passing the Finance Bill and secondly, that although the Attorney-General has not been nominated a member of the Select Committee it is understood that he will attend the meeting, because he is the officer responsible for the framing of bills and his advice and assistance will be of great value.'<sup>2</sup>

This Committee reported at the end of the session together with that on the Co-operative Societies Bill, and the satisfaction expressed by the provincial members at the acceptance of their amendments applied to both bills. When the bill was considered by committee of the whole Council, however, a breeze arose between the provincial members and the municipal members, who criticized the conclusions of the Select Committee on a minor point and forced a division, to display their independence of spirit.<sup>3</sup>

4. Select Committee on the Workmen's Compensation Bill, 1940. This bill arose from the modification of a Colonial Office model ordinance to meet the special needs of the Gold Coast, and the decision to refer it to a Select Committee was made before it was introduced into Legislative Council.<sup>4</sup> The Colonial Secretary suggested the Chief Inspector of Labour as Chairman, the Attorney-General, the mining member (Colonel Bamford), the shipping member (Mr. Avezathe), Mr. Korsah, and one of the chiefs to be selected by themselves.<sup>5</sup> The Committee's report was presented to the Council in the following session.<sup>6</sup> When the Council itself went into committee upon the bill, there was a long debate, appropriate to what Colonel Bamford called 'one of the most important Acts of legislation in the Gold Coast for many years',<sup>7</sup> and remarkable in being confined almost entirely to the European unofficial members.<sup>8</sup>

<sup>1</sup> Ibid., p. 64.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid., pp. 90f.

<sup>4</sup> Colonial Secretary, 14th March 1940, p. 89.

<sup>5</sup> Ibid., p. 90.

<sup>6</sup> Chief Inspector of Labour, 1st October 1940, p. 5.

<sup>7</sup> 4th October 1940, p. 78.

<sup>8</sup> Ibid., pp. 77ff.



5. Select Committee on the Trade Unions and Trade Disputes Bills, 1941. 'This bill', said the Chief Inspector of Labour, 'has been under consideration for about five or six years, and we are the last of the West African Colonies to have such a law,' though he did not say that it was the result of model legislation suggested by the Secretary of State; he emphasized that the legalizing of trade unions would not encourage any organizations hostile to native authorities.<sup>1</sup> Sir Ofori Atta took up the last point, and asked for a Select Committee, quoting the precedent of that upon the Co-operative Societies Bill. Sir Arnold Hodson said he had no objection, and the Colonial Secretary proposed the Chief Inspector of Labour as Chairman, the Attorney-General, Sir Ofori Atta, Mr. Kojo Thompson, Mr. Blay (the member for Sekondi), and the mercantile member (Mr. Sutherland): 'the proposal is that the Select Committee should meet next week'.<sup>2</sup> Immediately afterwards the Trade Disputes Bill was read a second time, and Sir Ofori Atta proposed that it be referred to the Select Committee.<sup>3</sup> The Committee reported to the Council at the end of the same session.<sup>4</sup>

It seems, then, that on two occasions the Select Committee procedure was decided upon before the Council met, but more often a Select Committee is a spontaneous result of debate. Probably, too, Select Committees are the procedure especially appropriate for discussing legislation that originates in London; when legislation originates in the Gold Coast itself the more usual methods of ancillary discussion are employed before and during its passage through the Council.<sup>5</sup> Unofficial members have no difficulty in securing representation upon any committee that interests them. It is noteworthy, too, how in every case the initiative was due to Sir Ofori Atta, who made this procedure peculiarly his own; and how in most cases Sir Arnold Hodson was content to let his Colonial Secretary exercise the President of the Council's function of appointing the Select Committee.

In its final phase, legislation passes beyond the influence of

<sup>1</sup> 20th February 1941, p. 43.

<sup>2</sup> *Ibid.*, p. 44.

<sup>3</sup> *Ibid.*, p. 45.

<sup>4</sup> Chief Inspector of Labour, 27th February 1941, pp. 88, 120.

<sup>5</sup> In 1943 the African unofficials asked for a Select Committee on the Income Tax Bill, and Sir Alan Burns appointed a committee of the Acting Attorney-General, the Financial Secretary, Mr. Dare, Nana Tsibu Darku, Nene Nuer Ologo and Major Kingsford (20th August 1943, p. 62).

the Legislative Council, and is determined by the Governor and the Secretary of State. The Governor may veto a bill, refusing the assent in His Majesty's name which transforms a bill into an ordinance with legal force; or he may (as with certain classes of bill he is obliged to do) reserve it for the signification of His Majesty's pleasure through the Secretary of State. Every ordinance passed, as well as every reserved bill, must be transmitted by the Governor to the Secretary of State for his final approval, disallowance, or other direction thereupon; and the Secretary of State has in the last resort the overriding power of advising the Crown to disallow a measure already enacted.<sup>1</sup> The control which government has over the legislative process from its beginnings, and the security which has been hitherto provided for its measures by the existence of the official majority, make the *a posteriori* blocking of legislation very seldom necessary. The published sources give evidence of only one instance of refused assent since 1930: in the case of the 'Ordinance to appropriate lapsed personality to the general revenue of the Colony', which passed through the Legislative Council as Ordinance No. 15 of that year,<sup>2</sup> but assent to which was subsequently withheld.<sup>3</sup>

The unofficial members as well as the government have the opportunity of reference to the Secretary of State in connection with contentious legislation. The only statutory requirement in this respect is that the minutes of the Legislative Council sittings shall be transmitted to the Secretary of State as soon as possible after every session;<sup>4</sup> but in practice, the Secretary of State of course receives all reports of debates and printed matter connected therewith; and conventions have grown up, of which the most important, that unanimous unofficial opposition to a measure shall cause it to be reserved for his consideration, has been discussed above.<sup>5</sup> Usually it is the government that promises to transmit the arguments of the unofficials to the Secretary of State. Sometimes the unofficials are persuaded to agree to the enactment of an ordinance by the suggestion that the Secretary of State

<sup>1</sup> See Wight, *Development*, pp. 152-3.

<sup>2</sup> 4th December 1930; *Gazette*, 28th February 1931, p. 328.

<sup>3</sup> *Ordinances of 1930*, pp. iii, 45.

<sup>4</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 60.

<sup>5</sup> Pp. 91-3.

will subsequently amend it. In 1934 the government introduced a bill to continue in force the Official Emoluments Levy Ordinance of 1932; the shipping and commercial members opposed it as no longer a necessary economy and as reducing the spending power of the people.<sup>1</sup> The Governor replied that the budget could probably not be balanced without this economy, 'and so, in accordance with instructions from the Secretary of State, I have to put this Bill before the House. I will report to the Secretary of State the views that have been expressed and give him the position as we see it, and leave the decision to him.'<sup>2</sup> The bill was accordingly passed through all its stages, and was not subsequently amended or revoked.<sup>3</sup> Again, during the committee stage of the Savings Bank Bill in 1936, Mr. Kojo Thompson raised objections which had the agreement of both the Attorney-General and the Governor;<sup>4</sup> but the Attorney-General thought it advisable not to amend the bill in the sense Mr. Thompson desired.

'What I would suggest is', he said, 'that the Honourable Member allow the Section to be passed now as it is. I may say that all clauses in this bill have been very carefully considered by a committee appointed by the Secretary of State and that the Honourable Member should consult the Postmaster-General with regard to the drafting of the regulations.'<sup>5</sup> He continued: 'Perhaps the Honourable Member will be satisfied if the Ordinance is passed in its present form and when the enactment is reported to the Secretary of State the representations of the Honourable Member with regard to this clause are transmitted as well, and the hardship to which the Honourable Member has referred is taken up with the Secretary of State, and he is asked to consider the question of amending the Ordinance.'<sup>6</sup>

Mr. Korsah added that in communicating this to the Secretary of State it might be stated that it was not one person's view but that the names of the other members of the Council be associated with Mr. Thompson's representations, as that would add weight

<sup>1</sup> Whitfield, 19th March 1934, p. 58.

<sup>2</sup> *Ibid.*, p. 59.

<sup>3</sup> *Ibid.*, pp. 68, 71.

<sup>4</sup> Kojo Thompson, 25th February 1936, pp. 71f.

<sup>5</sup> *Ibid.*, p. 73.

<sup>6</sup> *Ibid.*, p. 74.

in the consideration of the matter; the Governor agreed.<sup>1</sup>

Mr. Thompson showed less faith in the transmission of unofficial members' views to the Secretary of State, in connection with the debate on Sir Ofori Atta's motion against the cocoa buying scheme in 1940. During that debate the Colonial Secretary said that he himself could not subscribe to the motion as it was worded,<sup>2</sup> but assured the unofficial members that as soon as he had a transcript of their speeches they would be sent to the Secretary of State.<sup>3</sup> Mr. Thompson reverted to this during the budget debate the following day:

'MR. KOJO THOMPSON: How can we succeed when you are always in the majority. The whole thing is absurd as we have no chance whatever. Apart from that you are so highly technical that you would not, as you told us, recommend anything to the Secretary of State owing to the wording of the motion.

'COLONIAL SECRETARY: I did not say that at all. All I said was that I did not agree with the motion and I explained why. I said nothing about recommending, or not recommending, the motion to the Secretary of State. I said members' speeches would be transmitted to the Secretary of State.

'GOVERNOR: If there is any special point you wish to put forward to the Secretary of State and will come to my office and tell me exactly what it is I will write a despatch to the Secretary of State.

'MR. KOJO THOMPSON: Write a despatch!

'GOVERNOR: I only make this suggestion to help you, I should not like you to feel that we are trying to suppress your views in any way.

'MR. KOJO THOMPSON: Well I am done, Sir. I however wish to say that I agree with all the previous speakers in all what they said with regard to the loyalty of the people of this country; and wish that the war will be brought to a victorious end on behalf of Great Britain and her Allies.'<sup>4</sup>

At the next session of the Council, however, the Colonial Secretary

<sup>1</sup> Ibid.

<sup>2</sup> 19th March 1940, p. 115.

<sup>3</sup> Ibid., p. 121.

<sup>4</sup> 20th March 1934, p. 151. Cf. above, pp. 81-2.

was able to read a telegram from the Secretary of State, saying that the debate on the cocoa buying scheme had been read with interest and the points which it raised 'kept carefully and constantly in mind during the discussions just concluded on next year's arrangements'; these arrangements amounted to a reorganization of the control of the purchasing scheme so as to vest it in the hands of a special West African Control Board appointed by the Secretary of State with a chairman who had no connection with Gold Coast trade.<sup>1</sup>

Sometimes the government will make itself the intermediary for conveying a communication from the unofficials to the Secretary of State. After the division on the second reading of the Waterworks Bill, Sir Ofori Atta announced that 'the African Unofficial Members backed by the African community wish to ask Your Excellency to send a cablegram to the Secretary of State requesting him to stay further consideration of the Water Rate Bill until he has received our representations on the question'. Sir Shenton Thomas said that he had already sent others. 'That may be so,' said Sir Ofori Atta, 'but not from us'; and the Governor replied that he would send the cablegram when it was presented.<sup>2</sup> Similarly, when at the end of the December session of 1939 Mr. Thompson had succeeded in raising the question of the cocoa purchasing scheme,<sup>3</sup> and Mr. Korsah came to his aid with the request that the Council might have the opportunity to discuss the scheme, Sir Arnold Hodson replied:

'if you will send a letter to the Government the contents will be carefully studied and then sent on to the Secretary of State with my remarks. You may state your objections in that letter, your reasons, and so forth.'<sup>4</sup>

It would appear that such a letter was not sent, but that the resolution which Sir Ofori Atta moved at the following session, with the subsequent report to the Secretary of State, took its place.<sup>5</sup>

But the last resort of the unofficial members is a delegation to the Secretary of State, combined with a petition to the Crown. The

<sup>1</sup> Colonial Secretary, 1st October 1940, p. 12. See above, pp. 123-4.

<sup>2</sup> 20th March 1934, p. 114.

<sup>3</sup> See above, pp. 133-4.

<sup>4</sup> 13th December 1939, p. 71.

<sup>5</sup> 19th March 1940, pp. 95ff.; see above, pp. 131-2.

Gold Coast seems more given to this method of making representations than other colonies, and it would be interesting to trace its development from the earliest days. It is an aspect of the litigiousness that has taken the place of tribal warfare. Every litigant pursues his case on appeal as long as he has funds, irrespective of whether he is likely to succeed or not. In the same way every political cause is pursued at first by agitation in the press and by the normal methods of representation in Legislative Council, but in the last instance by a delegation to the Secretary of State, which corresponds to the final judicial appeal to the Privy Council. A delegation is resorted to when there is what the intelligentsia will describe as a sense of national danger. In the inter-War period there were four such delegations and petitions. 1. The delegation of the West African National Congress of 1920-1, led by Casely Hayford.<sup>1</sup> 2. The Aborigines' Society's petition in 1926 against the new constitution, which was taken to the Colonial Office by Casely Hayford.<sup>2</sup> 3. The Colony and Ashanti delegation of 1934, led by Sir Ofori Atta and Mr. Korsah, with a petition.<sup>3</sup> 4. The Aborigines' Society's delegation of the same year, with another petition.<sup>4</sup> The Congress delegation of 1920-1 and the Colony and Ashanti delegation of 1934 were received by the Secretary of State, but on neither occasion that they appeared in London did the representatives of the Aborigines' Society obtain an interview. The petitions of 1934 were both inspired by the controversy over the Waterworks and Sedition Bills: they illustrate the two schools of political thought in the Gold Coast. The Aborigines' Society's petition rehearses the antiquarian arguments of the Cape Coast school, starting from Maclean and the Bond of 1844, and representing the letters patent which constituted the Colony in 1874, the annexation of 1901, and the creation of the Provincial Councils, as successive stages in the subversion of the free status and ancient laws of a protected people. The petition of the Colony and Ashanti delegation is progressive by comparison; starting at the point at which the other leaves off, it makes specific demands for constitutional

<sup>1</sup> See above, pp. 26-7.

<sup>2</sup> *Aborigines' Petition*, paras. 4 (12) and (13), 50-8.

<sup>3</sup> See *Papers Relating to the Petition of the Delegation from the Gold Coast Colony and Ashanti*, sessional paper no. xi of 1934.

<sup>4</sup> See *Petition to the Gold Coast Aborigines' Society of the new Rights Protection Society*, November 1934.

reform which have subsequently been granted.<sup>1</sup> There was a contrast between the delegations as well as between the petitions: the one consisted of two officers of the Aborigines' Society,<sup>2</sup> the other was eight in number, broadly representing the whole of the political life of the Gold Coast.<sup>3</sup>

#### FINANCIAL PROCEDURE

The most important piece of legislation annually is the Supply Ordinance. It is the chief business of the first session each year, and the occasion for the year's most important debate, giving the opportunity for a general review of the country's progress not only by government but by the unofficial members as well.

In the United Kingdom, the budget is translated into legislation in two bills: an appropriation bill, authorizing and appropriating the issue, out of the consolidated fund, of sums to meet the required grants in supply; and a finance bill, to reimpose the annual taxes and to make any changes in taxation. In the Gold Coast, where direct taxation was not introduced until 1943, an appropriation ordinance has been the only financial legislation that has needed annual enactment. The revenue has rested upon continuing ordinances; over two-thirds of it has hitherto been derived from customs duties.<sup>4</sup> It is, therefore, an appropriation bill only, and

<sup>1</sup> See below, pp. 196-7.

<sup>2</sup> Mr. Moore, who was linguist of the Society, and Mr. S. R. Wood, its senior branch secretary.

<sup>3</sup> Sir Ofori Atta, Dr. Nanka-Bruce, Mr. Korsah, Mr. A. Sawyer (a barrister), Dr. Danquah, Mr. James Mercer (a surveyor), Mr. E. O. Asafu-Adjaye (a barrister), and Mr. I. K. Agyeman. This was Sir Ofori Atta's second visit to England. His visit in 1928, when he was knighted, also had political implications: he received publicity on that occasion as an example of the intelligent and educated African chief, not without the encouragement of the Gold Coast government.

<sup>4</sup> The revenue of the Gold Coast in 1938-9 was as follows:

	£
Customs	2,694,959
Licences	308,628
Fees	300,853
Posts and Telegraphs	133,331
Sundry and Extraordinary	342,517
	£3,780,288

See *Annual Report on the Social and Economic Progress of the People of the Gold Coast, 1938-9*, p. 109. Part of the customs is represented by an export duty on cocoa.

not a finance bill, that has been the subject of the estimates session.<sup>1</sup>

The preparation and passing of the estimates is a lengthy annual process. In June, an estimates call circular is sent round the departments, requiring draft estimates of revenue and expenditure to be submitted for the year beginning the following April. In about October the estimates come in, and their criticism and revision by the Governor and Financial Secretary begins. By December revised estimates have been received, and have had the Governor's final approval. In January they are published. It is often a rush to get them printed in reasonable advance of the meeting of the Council; in 1939 an unofficial member asked if longer time than the fortnight which was usually allowed could be given for consideration of the draft estimates, and the Financial Secretary promised to make every endeavour to meet the request the following year.\* In February or March they are submitted to Legislative Council with the Appropriation Bill, minutely discussed in Select Committee, and passed with amendments. The volume of the estimates is then sent with explanatory memoranda to the Secretary of State, and his approval is invited. The major items in the estimates are generally reproduced from earlier estimates, or have already been discussed with the Secretary of State at some length in despatches; his approval is therefore almost automatic; and is received, according to constitutional requirements, by 1st April.<sup>2</sup>

The estimates session is the first of each year, held in February or in March. The Governor opens the session with his annual address, which is a combination, in United Kingdom terms, of the King's speech and the Chancellor's budget speech. It is composed of paragraphs supplied by heads of departments, and contains a detailed account of every branch of government activity, together with such statements of policy as the Governor sees fit to make. It used to be of prodigious length, sometimes amounting to a separate volume of the published debates. In his first address in 1933 Sir Shenton Thomas announced the discontinuance of this practice, following upon the precedent of the other British West

<sup>1</sup> Since 1941 it has been called the Appropriation Ordinance: previously, the Supply Ordinance.

<sup>2</sup> Financial Secretary, 23rd March 1939, pp. 138-9.

<sup>3</sup> Colonial Regulation 194. See Wight, *Development*, p. 153-4, 60.



African Colonies, and said that he would henceforward confine himself so far as possible to short statements on questions of policy.<sup>1</sup> None the less, the budget addresses show an inexorable tendency to expand again: Sir Shenton Thomas managed to keep his down to sixteen and a half printed pages in 1933, and to ten in 1934; but Sir Arnold Hodson's swelled to twenty-seven and a half in 1939, and to thirty-seven in 1940. In 1942 Sir George London was Acting Governor, and cut his address to ten and a half pages, giving statistics and the exposition of departmental activities in a printed appendix which members could study at leisure.<sup>2</sup> Sir Alan Burns's first address, in 1943, commended this admirable precedent, and followed it to the extent of issuing a printed appendix to the address,<sup>3</sup> but his address itself once more filled thirty-two printed pages. The justification of the tendency to growth, and the chief importance of the annual address itself, lie in the fact that the Governor has few opportunities of this sort to gain the confidence of a country that largely lives on words.

The Governor's annual address is at once followed by the introduction of the Appropriation Bill. The first reading of the bill, with the heads of expenditure, is frequently followed by the suspension of Standing Orders to make possible an immediate second reading, so that the Select Committee may get to work; for the pace of the bill is the pace of the session.<sup>4</sup> The motion for the second reading sometimes gives the Financial Secretary the opportunity to explain financial policy, but this has usually been sufficiently done in the Governor's address, which though not constitutionally a stage in the passage of the Supply Bill, has close reference to it; and the draft estimates and a printed memorandum upon them are already in Members' hands. Immediately upon the second reading the bill is referred to the Select Committee on the Estimates, consisting of all the unofficial members, the three Provincial Commissioners, and the Financial Secretary as chairman.<sup>5</sup> The Committee sits for two or two and a half days,

<sup>1</sup> 22nd March 1933, p. 3.

<sup>2</sup> 17th February 1942, p. 3.

<sup>3</sup> 23rd February 1943, p. 2.

<sup>4</sup> Colonial Secretary, 16th March 1937, p. 32; Financial Secretary, 16th March 1938, pp. 35-6.

<sup>5</sup> Financial Secretary, 16th March 1938, p. 36. The Select Committee on the Estimates was introduced by Sir Hugh Clifford (Magnus Sampson, pp. 166-7,

usually from 10 to 1 o'clock in the morning and from 2 to 5 o'clock in the afternoon. It might well take longer, but it acts more in an administrative than in an exactly financial capacity.<sup>1</sup> Its main feature is the cross-examination of heads of departments about departmental expenditure and policy, and it is here that unofficials' criticism can be most effective, though they are usually repeated in a general form in the subsequent debate. In the debate of 1941, Mr. Kojo Thompson made a strong attack upon the Law Officers' Department for the inadequacy of its Africanization policy.

'These questions', replied the Attorney-General, 'are usually asked in Select Committee. I was not however called before the Select Committee. The Honourable Member has taken a leaf out of Hitler's book, believing I suppose in the element of surprise. However, he is quite entitled to raise it on the floor of the Council. . . .'<sup>2</sup>

It is in Select Committee, too, that the unofficial members have some compensation for their constitutional inability to move a financial resolution in Council, and that the recommendations of the interests which they represent can have effect.<sup>3</sup> In 1941, when Sir Ofori Atta raised the matter of the position of unofficial members in their relation to government expenditure,<sup>4</sup> he said: 'I was gratified to learn from the Honourable the Financial Secretary the other day that he proposes now to introduce a system whereby the Unofficial Members would be required to exercise their brains a bit, and not merely called upon to say "Yes" to what Government has done';<sup>5</sup> he was presumably referring to the new system of monthly meetings of the Standing Finance

citing Casely Hayford). Until the creation of the Financial Secretaryship in 1937, both the Treasurer and the Colonial Secretary sat upon the Committee and the Colonial Secretary was chairman. Cf. Colonial Secretary, 20th February 1936, p. 25.

<sup>1</sup> 'The Committee devoted themselves purposely in a much greater degree to questions of principle rather than to petty details than has been the case in former years and that expedited our work very considerably,' Colonial Secretary, 21st March 1934, p. 162.

<sup>2</sup> 27th February 1941, pp. 161-2.

<sup>3</sup> Cf. Sutherland, the mercantile member, 27th February 1941, p. 99.

<sup>4</sup> See below, pp. 161-2.

<sup>5</sup> 27th February 1941, p. 89.

Committee.<sup>1</sup> The minutes of the Committee are not published, so there is no printed evidence on the most important question of all, the degree of competence and responsibility shown by African members in the discussion of financial questions. There is nothing to suggest that it is yet considerable.

It is clear that the proceedings of the Committee are conducted in a spirit of great good-nature. Afterwards in Council the un-officials will thank the Financial Secretary in cordial terms for his chairmanship of the Committee, and he thanks them for 'that spirit of sweet reasonableness which is characteristic of the deliberations of that body'.<sup>2</sup> Sometimes these courtesies carry a breath of the Committee's atmosphere and working.

'The Committee sat for two and a half days', said the Colonial Secretary in 1933, 'and worked very intently upon their task. But close though their scrutiny was, very few amendments were pressed at all strongly, a fact which reflects credit not only on Mr. du Boulay's compilation of the Estimates but also upon the clear-eyed appreciation with which the members of the Committee regard current financial circumstances. Many projects, in themselves desirable, were laid aside after mention had been made of them, in acknowledgement of the inability to provide for them from public funds.'<sup>3</sup>

Two years later Mr. du Boulay himself, in the capacity of Acting Colonial Secretary, gave his impression of the Select Committee on the Estimates:

'Speaking for myself, Sir, I always derive some benefit from the deliberations of the Select Committee as, though it has fallen to my lot to prepare the annual estimates for many years, I generally learn something new about the financial details of the estimates from the replies given by Heads of Departments to the searching questions put by unofficial members.'<sup>4</sup>

The Select Committee, with its great majority of unofficials, provides extraordinary opportunities for obstruction by African

<sup>1</sup> See below, p. 160.

<sup>2</sup> Financial Secretary, 23rd March 1939, p. 138. Cf. Kojo Thompson's curious tribute to Farquhar, above, p. 66.

<sup>3</sup> 29th March 1933, p. 81.

<sup>4</sup> 27th March 1935, pp. 102f.

members if they chose to use them, but they have never attempted to do so.

The report of the Select Committee is laid upon the table, and motion is made that it be adopted by the Council. It is upon this motion, normally, that the main debate arises.<sup>1</sup> This is 'the budget debate', when by convention nothing is irrelevant, and each of the unofficial members speaks in turn. There is seldom criticism of financial policy or of the appropriations; the unofficial members discuss and criticize the government's policy at large and the work of individual departments, and the official members reply. Until 1940 the main reply from the government side was made by the Colonial Secretary, but in that year a new procedure was adopted of calling upon the heads of departments to answer criticisms of their several spheres, leaving the Colonial Secretary only a few general questions to deal with,<sup>2</sup> 'because replying to Honourable Members' remarks used to be a very arduous task for a single officer to undertake'.<sup>3</sup> The Governor usually winds up the debate with a final speech which relates the remarks of the unofficials to his opening address. The Council then goes into committee on the Supply Bill; the necessary amendments are rapidly made, in accordance with the report of the Select Committee; and the bill is read a third time.

Besides the Select Committee on the Estimates, there is also a Standing Finance Committee (the only standing committee of the Council), 'to whom the Government will, except in cases of extreme urgency, refer for advice proposals for expenditure not included in the Estimates covered by the Annual Supply Ordinance'.<sup>4</sup> Excess expenditure, like the annual estimates, must be approved by Legislative Council and the Secretary of State,<sup>5</sup> and the Standing Finance Committee in effect saves a meeting of the Council.

<sup>1</sup> This became the practice in 1937; previously the main debate arose on the motion that the Council resolve itself into a committee of the whole Council upon the Supply Bill. The advantage, from the point of view of official members, of having the debate not on the second reading, but after the Select Committee has reported, is that they are to some extent forewarned by what passed in the Select Committee of the subjects on which unofficial members are going to express views; their replies need not therefore be entirely extempore.

<sup>2</sup> Colonial Secretary, 20th March 1940, p. 165.

<sup>3</sup> Colonial Secretary, 27th February 1941, p. 113.

<sup>4</sup> Standing Orders and Rules, no. 96 (i).

<sup>5</sup> Colonial Regulation 265.

It consists of the unofficial members with the Financial Secretary as chairman.<sup>1</sup> It meets whenever convened by the Financial Secretary whether the Council is in session or not,<sup>2</sup> and its proceedings are tabled at the earliest possible meeting of the Council.<sup>3</sup> It used to meet twice a year. In 1934 the Colonial Secretary, moving the approval of its report, said:

'The schedule went through the Standing Finance Committee with one comment only and that was one of regret that the Finance Committee had not met previously in order to consider it. We discussed the situation which arose in the interim and we agreed that in future the Finance Committee should meet if four months should elapse after the last meeting and there should be no prospect of a Legislative Council meeting in the next two months. That will ensure that the Finance Committee will meet with such regularity as is consistent with economy in expenditure.'<sup>4</sup>

When the new Standing Orders were being discussed in Council in the same year, Sir Ofori Atta asked that in the rule that the government would 'when practicable' refer excess expenditure to the Standing Finance Committee, the words 'when practicable' might be deleted, since in practice the government had always done so.<sup>5</sup> Sir Shenton Thomas suggested 'except in cases of extreme urgency', to which Sir Ofori Atta replied that even then, members in Accra or accessible to government should be consulted. The Acting Colonial Secretary said:

'Speaking from my own experience I know of only one case in which the Finance Committee was not first consulted and this occurred this year when funds not provided for in the Estimates had to be issued urgently for the relief of persons in the Northern Territories who were threatened with famine. I mention this because emergencies are bound to arise from time to time which will require prompt action by Government;'

<sup>1</sup> Standing Orders and Rules, no. 96 (ii), amendment of 1st October 1940, (p. 7). Previously both the Treasurer and the Colonial Secretary sat on the Committee and the Colonial Secretary was chairman.

<sup>2</sup> Standing Orders and Rules, no. 97.

<sup>3</sup> *Ibid.*, no. 99.

<sup>4</sup> 19th March 1934, p. 36.

<sup>5</sup> 23rd November 1934, p. 243.

and the rule was amended as Sir Shenton Thomas had proposed.<sup>1</sup>

More recently, there has been a considerable advance in constitutional practice, precluding the need for emergency meetings of the Finance Committee. Since 1941 there has been a meeting of the Committee every month, and it is understood that to save summoning members from a distance, only those attend who are available in Accra. Requisitions for additional expenditure can therefore now be submitted before the expenditure is incurred, in contrast to the former practice of less frequent meetings and retrospective approval. But the monthly meeting of the Finance Committee does not only pass supplementary provisions. Without any constitutional warrant it has acquired the privilege of asking the Financial Secretary, who presides, any question affecting the government and administration of the Colony. Such questions are by no means restricted to financial matters. The Finance Committee has thus become an instrument for keeping current questions under review, a constitutional development that is potentially of great importance for the future.

The Legislative Council Order in Council lays it down that every member may, upon due notice, 'propose any Ordinance or resolution which does not impose any tax or dispose of or change any part of the public revenue';<sup>2</sup> no member may propose any ordinance, vote or resolution with the latter object, 'unless by the direction or with the express sanction of the Governor'.<sup>3</sup> In other words, financial motions must be made by government. This restriction upon unofficial members became an issue in the Council on the most innocent occasion: the Gold Coast Fund for War Charities. Entering the Council Chamber on the morning of 13th December 1939, Sir Ofori Atta was handed a leaflet appealing for support of this Fund. As he read it, he was tempted to put down a motion in the Council, asking the government to contribute to so deserving a cause. He was advised that he had no right to do so. He could accordingly do no more than suggest that government voted a substantial amount in support of the Fund, and inquire whether £4,000 might not be found. The Governor thought £200

<sup>1</sup> *Ibid.*, p. 244.

<sup>2</sup> Gold Coast Colony (Legislative Council) Order in Council, 1925, section 51.

<sup>3</sup> *Ibid.*, section 52.

would do to begin with, 'I think', said the Colonial Secretary, 'this, as a financial matter, will have to be moved from this side of the House. The Financial Secretary can make a motion.' This was done and carried.<sup>1</sup>

But Sir Ofori Atta had established a precedent. At the next session of the Council he again 'suggested'—he had not the right to 'move'—that the sum voted should be doubled. 'Your Excellency,' said the Colonial Secretary, 'I rather think that the Honourable Member should move a resolution, and if it is authorized by Your Excellency, the motion could stand in the Honourable Member's name.' Sir Arnold Hodson expressed doubt as to the propriety of this procedure; but was reassured when the Colonial Secretary read him section 52 of the Legislative Council Order in Council. Sir Ofori Atta therefore proposed the motion.<sup>2</sup> In the next session, he carried his advance a stage farther, moving a financial resolution to which the Governor's consent had been apparently obtained before the session, and another £4,000 were voted to the Lord Mayor's Fund for air raid victims.<sup>3</sup> At the session after that he announced that he had His Excellency's permission to move a vote of £2,000 to the Greek War Charities Fund.<sup>4</sup> This progression acquired a perhaps deeper significance, when at the end of the last mentioned session he proceeded to raise the whole question of unofficial members' incapacity in respect of financial proposals, as a matter of principle; but hanging the discussion now upon a quite different particular issue:

'We are aware, Sir,' he said, 'that the Standing Rules do not permit any Unofficial Member to make any proposal which would add to Government expenditure or which would entail a charge on the revenue. We are aware of that. But the question is, Sir, whether it is wise for Government to turn down a proposition or request made by Unofficial Members in regard to certain matters in which finance is involved. I may recall to mind the question which has engaged the attention of this Council for about three years; when we proposed to Your Excellency

<sup>1</sup> 13th December 1939, p. 69.

<sup>2</sup> 20th March 1940, p. 123.

<sup>3</sup> 2nd October 1940, p. 13.

<sup>4</sup> 19th February 1941, p. 30.

that a personal allowance be granted to Captain A. D. Mackenzie, late Comptroller of Customs. It may be, Sir, that the request was turned down because we were not too familiar with the work of that officer; perhaps we had not the right, as I have said, to make that proposal; or for some other reason we are not aware of. . . . When the recommendation came from the Unofficial Members as a whole—not only the African Unofficial Members but also the European Unofficial Members—the Mercantile Member, the Mining Member, the Banking Member and everybody—when it came from us as a body who knew the nature of the work that Captain Mackenzie had done, it came to me as a great surprise indeed that the proposal should be turned down by the Secretary of State. I urge it as a principle that where the Unofficial Members, no matter what the law says about it, unanimously come to a decision that certain things should be done which involve or entail expenditure by Government, I submit that they are entitled to favourable consideration; otherwise it becomes very painful to us and makes it necessary for us to repeat that we are not being given a voice in the administration of our own affairs and the finance of the country.<sup>1</sup>

<sup>1</sup> 27th February 1941, p. 89.



## CHAPTER V

### POLITICAL SURVEY

#### I. THE COUNCIL AND THE COUNTRY

**D**oes Legislative Council represent the country? Is it a success? These questions admit of no simple answer. Neither the Gold Coast, nor even the Gold Coast Colony, has yet attained the self-aware unity that is the essence of nationality; and a representative body in a pre-national community must always be representative in a different sense from the parliament of a Western state. The Legislative Council cannot be the main focus of national consciousness, for national consciousness is only embryonic; it cannot be the main arena for the resolution of conflicts of organized interests, for interests are only now beginning to be organized. It may develop into this. Whether an institution is a success is the administrative official's criterion, not the sociologist's nor the historian's. Legislative Council originates to meet the needs primarily of the colonial government. But the strength of the British colonial system is that it takes cognizance of the needs of the colonial people as well, and the Council provides a form for the colonial people to *grow into*. It is the paradox of the Council with an official majority, as of every aspect of colonial government, that it commits suicide by success: the better it fulfils its functions the more it renders itself inadequate. The great test is its power of growth and adaptation to rapid social change.

The Council does not remain untouched by the characteristic African spirit. The importance of membership, the dignity of the Chamber and of its function are understood. There is an atmosphere of good-nature and restraint about its proceedings, in which the willingness to compromise of the African tradition conforms to the political ritualism of the British. There is a notable absence of bitter emphasis upon the racial issue. The Africans have no more strongly felt grievance than the government's slowness in African-

izing the civil service, yet an African member can say genially to the Governor:

'One cannot help feeling sorry for Your Excellency—your ears must be falling deaf at times with a continual *djng, ding, ding* of more appointments for African officials.'<sup>1</sup>

'The constructive and reasonable spirit which is so characteristic of this Council'<sup>2</sup> is not simply the formality of an official speech. It is true that the lack of acrimony depends largely on lobbying; when the African members have been consulted beforehand they are usually satisfied. None the less, there is a natural tact and pragmatism about both official and unofficial members, capable of sinking at times into hypocrisy and unreality, but capable also of rising to political wisdom. The African contribution cannot be estimated solely in terms of passivity or political immaturity. Legislative Council is a remarkable instance of cultural assimilation, and will establish the pattern of whatever self-government ultimately emerges.

Neither is the Council otiose or merely decorative. It has come increasingly to reflect the main currents of popular opinion, and to be used for the expression of particular grievances. In 1933 Sir Shenton Thomas's policy rested upon the belief, which he stated plainly, that the unofficial members could not speak with exclusive authority on behalf of their nominal constituents. The unofficial members, he said,

'and especially the African members, represent a very considerable body of people throughout the country, and it is by listening to such speeches that we can understand something of what the people are thinking in the bush. That is one of the aims to which I am going to set myself while I am in this country: to try and get at the thoughts and ideas of the people. I hope to achieve this partly by going about and getting into touch with the people myself and partly by insisting that all Government officers . . . shall regard it as their first duty to get into touch with the native.'<sup>3</sup>

<sup>1</sup> Christian, 23rd March 1938, p. 89.

<sup>2</sup> Acting Colonial Secretary, 23rd March 1939, p. 187; cf. Governor, 20th March 1940, p. 169.

<sup>3</sup> 29th March 1933, p. 118. Cf. above, p. 116.

Legislative Council, for him, was only one among several means whereby government would be enabled to adapt its policy to popular feeling. Public opinion was referred to at this time as something hostile to Legislative Council, and unofficial members were very conscious of the need to justify themselves before external critics. In the debate upon Sir Shenton Thomas's first address to the Council, Dr. Nanka Bruce observed:

'Elected Members have some trouble in getting the people outside the council to understand that they are doing their best in their interests and in those of the electorate. Some go to the extent of thinking that the elected member is a sort of man seeking his personal welfare. But that sort of thing of course is due to lack of the right conception of things and I daresay that in course of time that attitude will right itself. The electorate will come to think better of their representatives in this Council.'<sup>1</sup>

'Most of us,' said Sir Ofori Atta a little later, 'who in the teeth of opposition come here to take part in the deliberations of this Council believe in the sincerity of Government.'<sup>2</sup> It was in the same vein that Nana Hima Dekyi referred to his having been publicly hooted by his brother chiefs for supporting the Provincial Councils.<sup>3</sup>

The turning-point came about 1934, with the great debates on the Waterworks Bill and the Sedition Bill, when the unofficial representation on the Council became the vehicle of the strong opposition throughout the country to taxation and apparent restrictions on civil liberties. Since then it has been possible for public opinion to be referred to as something with which to co-operate, or to which to respond. Nana Hima Dekyi had argued as early as 1933 that it was not enough simply to balance the budget, because

'among the more thoughtful and better informed Africans there is emerging a strong opinion which must be informed and satisfied by Government, far more than has been the case hitherto, that the public expenditures made are essential, and represent value for money. In this regard, Sir, it is hoped that Your

<sup>1</sup> *Ibid.*, p. 97. Cf. above, p. 88

<sup>2</sup> *Ibid.*, p. 101.

<sup>3</sup> 15th March 1939, p. 33.

Excellency will not find it difficult to satisfy such an apparently new spirit of inquiry in a way as will make for understanding.<sup>1</sup>

During the Waterworks Bill controversy, Togbi Sri said that the agitation was less in his own state, but that when he came up to Accra 'men and women held successive meetings with us the African Unofficial Members of this Council both night and day, and asked us to speak to Government that they are not prepared to pay the water rate'.<sup>2</sup> Sir Ofori Atta referred in the same debate to the necessity for respecting the general fears of an extension of the bureaucracy: 'the Government will be at liberty to use the money as they think fit and what they think fit will not be what the people think fit. There is a great difference between what Government thinks in certain matters and what the people think, and as the people would not be taken into confidence by Government in regard to suggestions made from time to time, it means that Government will have a free hand in duplicating and multiplying offices.'<sup>3</sup> The Sedition Bill controversy in the same year produced similar organized contact between the unofficial members and the public, though more with a view to transferring the agitation to Whitehall than to maintaining it in Legislative Council. 'In 1934, when the Sedition Bill came up,' said Nene Nuer Ologo V, 'a Committee of Twelve was formed in Accra and we the Chiefs were approached to aid them to send a deputation to England. We did so. We did not disappoint them. We helped with even money [*sic*] collected from our States.'<sup>4</sup> Since then, the increasingly effective interaction between Legislative Council and the Provincial Councils, which has been a regular initial stage in the legislative process, has done much to shape what public opinion there is and to link it to the legislature.<sup>5</sup>

Whom exactly, then, do the unofficial members individually represent? The question as it has arisen now reflects the social problem of the Gold Coast. It is possible to ask whether the provincial member represents the chiefs who elect him, because it has become possible to ask whether the chiefs themselves any longer

<sup>1</sup> 29th March 1933, p. 86.

<sup>2</sup> 20th March 1934, p. 97.

<sup>3</sup> *Ibid.*, p. 102.

<sup>4</sup> 26th February 1936, p. 88.

<sup>5</sup> See above, pp. 116-20.

represent the people. With the latter question goes the implied answer that the chiefs have been superseded, as the true representatives of the nascent Gold Coast nation, by the educated Africans.

'Listening to the remarks of the Municipal Member for Accra,' said Sir Ofori Atta, in the debate on the Native Administration Amendment Ordinance in 1936, 'I think they are more those of one I may call a professional agitator. He puts the matter in such a way as to make the Country stir up. Unnecessarily of course.

'He says that the people are not represented on this Council. The Chiefs are here in their own interest and do not represent the people he says. If the Municipal Member for Accra regards himself as representative of the Accra community on the Council, let him, for decency sake, give due consideration to position of the Chiefs on this Council. Then he says the Chiefs here would not say what their people would say themselves. He accuses us of bad faith. It is most unbecoming for him to say so.'<sup>1</sup>

And as Nana Tsibu Darku pointed out, Mr. Kojo Thompson had accepted the provincial members as representative of the people in 1934, when the Accra Committee of Twelve to fight the Sedition Bill—of which Mr. Thompson was himself a staunch member—had approached the chiefs for their political and financial aid.<sup>2</sup>

The provincial members, as representatives of 'the natural rulers of the Gold Coast', who are themselves raised to their stools by popular vote, claim to speak for the entire African community, and would repudiate the implications of Sir Shenton Thomas's view, that they represent a *very considerable body* of people and that their speeches express *something of what* the people are thinking in the bush.<sup>3</sup> It is perhaps no more than the declamatory style of their oratory, that they sometimes seem to refer to themselves as a kind of corporation, as if any single chief were competent to voice the opinions of all, and so of the whole population beyond the chiefs. The individual provincial member effectively represents the interests of the other states in his Province besides his own:

<sup>1</sup> Ofori Atta, 25th February 1936, pp. 8of., referring to Kojo Thompson, *ibid.*, p. 79.

<sup>2</sup> Tsibu Darku, 26th February 1936, p. 87. Cf. Nuer Ologo V, *ibid.*, p. 88.

<sup>3</sup> See above, p. 164.

'Now, Sir,' says Sir Ofori Atta, the paramount chief of Akim Abuakwa, 'speaking as a Member for the Akan Section to which Kwahu State belongs, I am asked by the Kwahu State to make strong representations on their behalf in this matter.'<sup>1</sup> Any necessary prior adjustment of the interests of Kwahu State and Akim Abuakwa would have taken place in the Provincial Council. The chiefs do still represent African public opinion, where that public opinion emerges. The municipal members, by contrast, have nothing to represent: they have no social unit; they speak only for a small discontented bourgeois class.

This is the issue on which co-operation between provincial and municipal members has sometimes broken down. The provincial members think in terms of the entire population, the municipal members in terms of the educated coastal electorate. While the former talk of the general good, the latter appeal to the standards of an *élite*. The provincial members supported the municipal members in the struggle over the Waterworks Bill, but the municipal members did not in their turn support the provincial members in the struggle over the Native Administration Amendment Bill: the chiefs could see resistance to taxation as an issue demanding co-operation among all the African unofficials, the municipal members for their part could not see in the same light the unimpaired maintenance of the chiefs' jurisdiction. Sir Ofori Atta cordially supported a motion by Mr. Kojo Thompson for the reform of the Town Councils, 'not only because I am a ratepayer myself but because as a Provincial Member we feel it our duty to bring to the notice of Government anything that is going wrong in any part of the country so that it may be remedied'.<sup>2</sup> But in the debate on the Native Administration Amendment Bill, Nana Ayirebi Acquah had bitterly to bring to the notice of Honourable Members

'the undoubted fact that the two Municipal Members who just spoke, one representing the municipality of Accra and the other of Cape Coast, had in view determined efforts to make representations of only their constituents and ever to seek the interests of the Towns of Accra and Cape Coast.'<sup>3</sup>

<sup>1</sup> 31st July 1936, p. 22.

<sup>2</sup> 16th September 1938, p. 25.

<sup>3</sup> 25th February 1936, p. 82. On the cleavages between the chiefs and the intelligentsia, see further below, pp. 180-6.

It must also be asked whether the debates of the Council are more representative of political tendencies than the press. The newspapers of British West Africa (a striking contrast with those of French West Africa) are run almost exclusively by Africans.<sup>1</sup> Every literate African reads them, but their influence extends to an indefinite penumbra of the illiterate, to whom they are read aloud. Even more than in a European country, circulation figures are no guide to real influence.

The most important, or at least the most widely read, of the Gold Coast papers is the *Spectator Daily*, which is published in Accra under the editorship of Mr. R. B. Wuta-Ofei, and has a circulation of about 2,500. The *African Morning Post*, edited by Mr. George Hughes, has a circulation of under 1,500. Both these papers belong to the Occanseys, a prominent merchant family of Accra. Two other Accra papers belong to Dr. Nanka-Bruce: the *Daily Echo* and the *Gold Coast Independent*, a weekly, each of which has a circulation comparable to that of the *African Morning Post*. The *Echo* is edited by Mr. D. G. Tackie, who is also editor-in-chief of the *Independent*, delegating the office of editor to Mr. J. Plange. There is a Cape Coast weekly, the *Gold Coast Observer*, owned by Cape Coast lawyers, to which Dr. Danquah is a regular contributor, and a Kumasi daily of considerable merit, edited by Mr. Emmanuel Baiden, the *Ashanti Pioneer*. The circulation of the former is about 1,000, and of the latter perhaps rather more.

The aspirations of the press are soaring, but its level of judgement and treatment of news is still low. To turn to it from the Council debates is to pass from an atmosphere of sheltered and reasonable discussion into the storms of popular prejudice, sensationalism, and misrepresentation. The press has been the chief means of self-expression for the politically active urban intelligentsia. In the past it has reflected the radical or discontented elements in society, with their hostility to the government and their strong colour feeling. The Council debates give a clearer picture of the forces making for continuity of growth.

'Ninety-nine per cent of the inhabitants of the Gold Coast are perfectly satisfied with the Government in its present form.

<sup>1</sup> The only non-African Gold Coast paper is a government weekly, *The Empire at War*, which is published in Accra under the editorship of the Public Relations Officer, and has a very large circulation.

The views of the one per cent who want a change are being continually aired in the Press and elsewhere, whereas the ninety-nine per cent contented people do not air their views.<sup>1</sup>

Since 1939 several developments have improved relations between the press and government. A Public Relations Office has been established, which has done much to gain the co-operation of the press by being able to provide news, features, illustration blocks, and other assistance. The Public Relations Officer himself edits an illustrated weekly called *The Empire at War*, published in Accra, with a circulation of more than 17,000. Early in the War, moreover, Sir Arnold Hodson started a Governor's Press Conference, which has been continued by Sir Alan Burns. The Governor and the Public Relations Officer meet the editors regularly at these conferences, and mix news and information with a certain amount of straight talk on government policy, which has done much to bring them round to a more reasonable point of view.

It must be added that the press always gives great publicity to the debates and activities of Legislative Council, and has done more perhaps than anything else to make the ordinary African aware of the legislature as having a bearing on his own life.

## 2. THE GOLD COAST AND BRITISH RULE

The attitude of a subject people towards its rulers is always ambiguous. That of the great majority of the inhabitants of the Gold Coast towards the British is contented without being assertive, and complaisant without being overwhelmed.

'It is admitted we are a loyal, peaceful, law-abiding and probably lovable people,' said Dr. Nanka-Bruce. 'We have had our connection with the British for so long and it is so beneficial to us, that I do not think you can get anybody in this country say that we should exchange British Rule for any other rule in the world to-day.'<sup>2</sup>

There is a sense of historical pride in the British connection. In

<sup>1</sup> Hodson, 27th February 1941, p. 116. During the controversies of 1934 Sir Shenton Thomas threatened that if the press took to fostering race prejudice it might become necessary to regulate its conduct by special legislation (21st March 1934, p. 155).

<sup>2</sup> 21st March 1934, p. 147.



1944 the centenary of the Bond was celebrated at Cape Coast, and the Joint Provincial Council marked the occasion by sending a message of loyalty to the King and passing a vote of confidence in the present administration of the Gold Coast.<sup>1</sup>

Yet in proportion as the African grows politically conscious, and finds a connection between self-government and self-advancement, his thoughts and activities become in varying degrees tinged with or dominated by xenophobia. This pervasive force binds together all classes of politically active African, so that the chief, the bourgeois politician and the trade union leader, despite their differences among themselves, are closer to one another than any of them is to the European administrator who rules them all.<sup>2</sup>

Broadly speaking, Gold Coast Africans have no philosophy of their own about the relations between their country and Britain, and they accept that of the British. Discontent or xenophobia is not systematized or coherent; the African is unready to interpret his inferior position in terms of anti-imperialist theories of exploitation. The native rulers, who still represent the interests of the rural population, have at the same time common interests with foreign capital. Chiefs draw concession rents and mining rents from the mining companies, and a provincial member in Legislative Council will echo the arguments of the mining member, that an export duty on mining profits will disadvantage the African landowner as well as the companies, by scaring away capital from the Colony.<sup>3</sup> There has been no labour problem and no Communism; the political unrest at the time of the economic crisis, which provided the background to the passing of the Sedition Bill in 1934, had purely local causes.<sup>4</sup> The Second World War saw the beginnings of labour

<sup>1</sup> Amanfi III, 23rd March 1944, p. 111-12; Tsibu Darku, p. 123.

<sup>2</sup> Cf. the Elliot Report, pp. 3-4, on the West African friendliness to individuals but suspicion of alien groups, 'that combination of interest and wariness, which is the hallmark of Africa all over'.

<sup>3</sup> Ayirebi Acquah, 29th March 1933, p. 76; cf. Korsah in the debate on the Concessions Bill, 21st March 1939, pp. 100-1.

<sup>4</sup> Cf. Ofori Atta, 29th March 1933, p. 108. 'We have all this political unrest where every little man wants a higher seat, with the result that every week I receive petitions from minor chiefs to recognize them as something which they are not and never will be,' Shenton Thomas, *ibid.*, p. 122. 'I think I am right in saying that most of the political unrest is due to dissatisfaction at the way in which stool funds are spent and with the working of the native tribunals,' *id.*, 14th March 1934, p. 10.

organization as the First saw the political organization of the intelligentsia, but the intelligentsia organized themselves, while trade union organization has been encouraged and guided by the government from above.<sup>1</sup> The great bulk of labour comes down from the Northern Territories, much of it having crossed the frontier from the French territory beyond. Tribal and kinship ties remain predominant, and what self-consciousness it gains is that of locality, not of class-interest.

Even an economic conflict on the scale of the cocoa hold-up did not give rise to any general social theories of the state of affairs that made the conflict possible. There was only the pervasive feeling of resentment that the white man was trying to do down the African.

‘The progress of the struggle from day to day and from month to month’, said Sir Ofori Atta, ‘gave rise to serious cogitations which I am happy to say, can now be regarded as misapprehension on the part of the people; for, it seemed as if it was not merely an economic struggle between the parties thereto but a struggle between Black and White.

‘Discouraging words to this effect were commonly used: “What are you going to gain out of this? Whiteman is a whiteman, he will not leave his brother whiteman and support you. Do you think the Government will support you black men?” And even when the news of the appointment of a Commission of Inquiry by the Secretary of State reached us here, a good deal of doubt was shown as to the benefit that would accrue to the “blackman” from the result of an inquiry by the “whiteman’s brother”. Doubts and uncertainties prevailed all the time, and I would say that the exhibition of courage and conviction in the pursuit of the struggle to an end and, more so, in the submission of the farmers’ case to the Cocoa Commission was entirely due to the unshakable belief and confidence of the

<sup>1</sup> Trade Union Ordinance, no. 13 of 1941. See *Labour Conditions in West Africa*, Report by Major G. St. J. Orde Browne, Cmd. 6277 (1941), pp. 101-3. According to latest information there are four registered trade unions, the Western Province Motor Drivers Union, the Cooks and Stewards Union of Ashanti and the Northern Territories, the Central Province Motor Drivers Union, and the Railway African Employees Union, of which the latter has the biggest membership and activity; *Reports on the Labour Department for the Years 1941-3*, para. 21, and 1943-4, para. 24.

people of this country in British Justice and fairplay.<sup>1</sup>

This confidence, he concluded, had been justified by the result.

Hostility to the United Africa Company is deep-seated and widespread, but it is found among European officials as well as among Africans, and in neither case will the evidence be seen in the debates of the Council. 'Our friends the United Africa Company,' says Dr. Nanka-Bruce with complacency.<sup>2</sup> The only instances of adverse criticism of the U.A.C. in Council debates come from the speeches of Mr. Kojo Thompson. In supporting Sir Ofori Atta's resolution against the imperial government's cocoa buying scheme in 1940, Mr. Thompson assailed the scheme as being controlled by the U.A.C., Cadbury and Fry.<sup>3</sup> He extended his hostility to the Association of West African Merchants, an organization in which the U.A.C. plays a chief part. The criminal charge he was convicted on in 1944, was for having demanded £25,000 from Mr. Barrow, the local chairman of the Association of West African Merchants and an extraordinary member of the Council, as the price of withholding an attack upon the Association which Mr. Thompson intended to deliver in the Council. This undelivered speech was published in full during the progress of the case by the *Spectator Daily*.<sup>4</sup> The last speech that Mr. Thompson himself ever made in the Council, some few weeks earlier, consisted of a long quotation from a speech by Mr. R. H. Turton in the House of Commons, severely critical of the United Africa Company.<sup>5</sup>

The educated African continues to repeat his belief in British justice and fair play;<sup>6</sup> he has not in general become a cynic or an embittered nationalist. It is common form, but worth noticing, how the strongest African critics of the government will round off their attacks by a declaration of loyalty to the Empire.<sup>7</sup> In the reverential loyalty to the Crown; in the paternalism of the govern-

<sup>1</sup> 23rd March 1939, p. 167.

<sup>2</sup> 29th March 1933, p. 91.

<sup>3</sup> 19th March 1940, p. 111-12. Cf. above, p. 105, n. 2.

<sup>4</sup> *Spectator Daily*, 13th-16th May 1944. See further 'The Kojo Thompson Case', *West Africa*, 29th July 1944, pp. 714-15.

<sup>5</sup> 23rd March 1944, pp. 133-4, quoting 391 H. C. Deb. 58, 109-10.

<sup>6</sup> The phrase recurs: Ofori Atta, quoted above; cf. Korsah, 23rd March 1939, p. 139; R. S. Blay, 18th August 1943, p. 53.

<sup>7</sup> Cf. Kojo Thompson, 20th March 1934, p. 151 (quoted above, p. 150); Moore, 26th February 1941, p. 78.

ment's attitude; in the widespread acquiescence in the existing political system; in the high-mindedness of all African public utterances, infused with the spirit of what used to be called in England the Nonconformist conscience; in the unquestioning and sometimes pathetic optimism of the public outlook, the unshaken belief in the old simple creed of progress which saturates the press;<sup>1</sup> the records of the Gold Coast give the impression of a country psychologically two generations behind the United Kingdom. But the important point is that cultural development can still be reckoned in terms of a time-lag in relation to the metropolitan country. There have been few signs yet in the Gold Coast of the self-conscious and exclusive emphasis on indigenous traditions, which has been so marked a feature of the development of nationalism among every non-Western people.<sup>2</sup>

The frequent expressions of loyalty to the British Empire in Council debates imply a sense of the advantages of the British connection, the desire for a rightful share in the profits and prosperity brought by British administration and capital, and most important of all, the desire for the feeling that the African is considered as an equal, that his views and his assistance are sought in the joint adventure of developing the country.

'The full co-operation of the African must be sought', said Mr. Blay, 'so that any African may proudly say "I am a British subject"', and say it in the full knowledge that it implies what was implied when the Roman citizen said "I am a Roman citizen" or even to come to modern times when a French subject say "I am a *citoyen*". That is the privilege every African wants to enjoy.'<sup>3</sup>

In the past few years Dominion status has had some currency as

<sup>1</sup> The usual meeting place of the Provincial Council of the Western Province is the Optimism Club, Sekondi. Among the well-educated, however, the belief in progress is breaking down (see C. S. Deakin, 'Total Progress', in *Pointers to Progress*, p. 9).

<sup>2</sup> Sir Ofori Atta established or consolidated the tradition among chiefs of attending all public functions in native dress. Among the educated class European dress is general, though Mr. Sekyi at one time resumed native dress by way of an isolated protest.

<sup>3</sup> 26th February 1941, p. 73.

an ideal political objective in pronouncements of the intelligentsia,<sup>1</sup> though the vision of a progress from Akan stool government to Dominion status means nothing to the mass of the people. But if the African realizes by implication that he still falls short of the standard of Commonwealth membership, he does not hesitate to point out the equivalent shortcomings of the government. On his lips, the doctrine of trusteeship becomes a criterion of unceasing application.

'This is a Colony which is having the British Trusteeship. We have our own country, you are our trustees and you have to bear with us. If you are going to squeeze us as you would do to a sponge with water and take our life blood, when we come yearning to you and you say you are not going to give any ear, then we have no alternative than to bow. But remember that it remains, and the day of reckoning will come and it will be put on you that we are what you have made us.'<sup>2</sup>

This admonition may appear rhetorical when it is seen as arising out of the agitation over the Waterworks Bill, but the occasion does not invalidate the principle. The matter was summed up, at a more fateful moment, by Nana Ayirebi Acquah. On the morrow of the German conquest of Austria, he reaffirmed in Council the loyalty of the Gold Coast to an Empire whose capable senior statesmen had preserved it from embroilment in war without diminishing its prestige;<sup>3</sup> but he went on, with true insight, to emphasize the inexorable connection between Britain's policy in Europe and the moral foundations of her Empire.

'It is our desire also, Sir, to see that the Empire's promises to smaller States be it African, European or otherwise ever be kept without any ultimate sudden violation. Whatever the situation may be, I very respectfully submit, Sir, that such undertakings be still kept in view so as to maintain and preserve the

<sup>1</sup> E.g. Memorandum submitted to Lord Hailey by the Executive Committee of the Gold Coast Youth Conference (Accra, 1940), cap. 58; and *Things to Change in the Gold Coast*, Memorandum by the Youth Conference for the Joint Provincial Councils, for changes to be effected during or after the present War (Accra, 1941), part iv. The objective of Dominion status was referred to as early as 1926 by the Colonial Secretary (23rd February 1926, p. 288).

<sup>2</sup> Christian, 20th March 1934, p. 108; cf. Blay VI, 3rd March 1943, p. 130.

<sup>3</sup> He was echoing the Governor's words: Hodson, 15th March 1938, pp. 2-3.

integrity of the British Commonwealth of nations to the extent that those of us in this part of the world who are members of the great Empire might ever look to our trustees with admiration expecting that when the time arrives for according us a greater status, we shall not be denied.<sup>1</sup>

It is on the twin issues of education and the Africanization of the service that there is the most constant criticism of government. In the last century the service was small, its scope was restricted, conditions of living were low, and educated Africans and half-castes lived close to the few Europeans. In those days Africans could rise comparatively easily to become magistrates or district commissioners. It has been a misfortune that educated Africans began to appear in considerable numbers just at the time when the service was being revolutionized and demanding more exacting qualifications. To-day, though the service has increased several times in size, the responsibilities of its members and the range of their duties are greater; its scope has widened with the creation of the technical services which need a specialized training; and Africans do not often rise above the lower grades. In the halcyon pre-crisis years of the twenties, Guggisberg laid down a progressive programme of African appointments, which were to increase from 28 in 1925-6 to 148 in 1935-6, while European appointments were to sink from 481 to 396.<sup>2</sup> When the latter date arrived, the African members did not fail to point out that the scheme was in ruins, and that there were now 27 African appointments to 685 European.<sup>3</sup> In one form or another this problem of jobs for educated Africans comes up year after year: it is the source of half the political discontent in the country. In 1941 it was being discussed with increasing vehemence, and associated with the wider question of whether the Gold Coast had benefited at all from British rule. 'Of course', said Mr. Kojo Thompson, 'if we are not properly treated and our standard of living is not raised to live as human beings, then I assume that you take us in the same way that the Germans take us.'<sup>4</sup> The case was put in extreme terms by Mr. Moore:

<sup>1</sup> 23rd March 1938, p. 82.

<sup>2</sup> 22nd February 1926, p. 25.

<sup>3</sup> Korsah, 23rd March 1937, pp. 96-7; cf. Christian, *ibid.*, pp. 114-15; Ofori Atta, 23rd March 1939, pp. 17e-8. Cf. above, p. 100.

<sup>4</sup> 26th February 1941, p. 60.

'We are not, they say, sufficiently educated and we have not got the requisite qualifications. But whose fault is this? About 50 years ago, Africans held high appointments in the Government. Africans were heads of departments in this country, and if, after 50 years, the education of the African has not improved, the fault is at the door of the Government. If after 300 years' contact with the British we are not sufficiently cultured, we are not sufficiently educated as to be able to have an effective voice in the administration of our country, then, I say, either the Africans are useless and hopeless, and should be relegated to their former position, condition or state of apes or semi-apes as described in Hitler's book (if it is a fact that we are semi-apes) or the British Government have been a total failure in this country in their duty as our trustees and tutors and it is time they packed up and cleared away and left us to ourselves. We have been with them too long and we have been under their tutelage too long; and it would not be a surprise if to-day, we have been elevated to their level. But, it appears, it is not their policy to train us and bring us to their level. . . . If you go through the country, you find that the vast majority of the people are illiterates. It is the fault of the Government—a Government who has thought it fit in the headquarters of the Empire, to provide or insist on compulsory education; but it is deplorable that after so many years' contact with the British Government, in a place like the Gold Coast, there is not one free elementary school.'<sup>1</sup>

But the emphasis on education as a main objective of government policy has altered since the twenties. Year after year in his budget addresses Guggisberg had reiterated the policy of the maximum spread of education:

'The first policy is that of Education; on this the general policy of progress mainly depends: with it all other policies are interlocked.'<sup>2</sup>

This lack of reluctance in reaffirming general principles was one

<sup>1</sup> Moore, 26th February 1941, p. 77.

<sup>2</sup> 22nd February 1926. For an outline of the history of education in the Gold Coast, see *Report on the Education Department for the year 1937-8*, preface; cf. Elliot Report, ch. ii.

of the characteristics of Guggisberg's statesmanship, and nothing could have done more to endear him to the Africans he ruled. Slater and Shenton Thomas, with decreasing confidence as the world moved forward into the economic crisis, echoed his words:

'I stand by the policy of my predecessors, and especially do I stand by Achimota. A system of education which includes the training of character is of vital importance to this country, and I shall make every effort to provide adequate facilities.'<sup>1</sup>

But in Hodson's first budget address a new note was struck. He warned the Council that education was not a solution but a problem, that character was more important than intellect, and that the unemployment of so many educated Africans was a grave danger; and went on to propose a propaganda campaign to popularize manual labour, and the limitation of higher education by a quota system based on the number of available openings.<sup>2</sup> The emphasis on character is significant. It is impossible to judge the failure of the Guggisberg scheme without taking into account the difficulty of getting the requisite number of recruits of the standard of education and character necessary.

The Second World War has brought new departures in the spheres of Africanization and education as in every other. In 1942 two African district commissioners were appointed, and as the administrative service has always been regarded as the inner citadel of the governing power, this was received with expressions of approval and gratitude by African members of Legislative Council.<sup>3</sup> In 1943 a new higher education policy was inaugurated by the appointment of the Elliot Commission, which made far-reaching proposals for the development of university colleges and professional schools throughout West Africa.<sup>4</sup> In 1944 the West African Institute of Industries, Arts and Social Science was established for research in these subjects, with its seat at Achimota.<sup>5</sup>

The frustration generally felt by educated Africans is natural and understandable. Politics is for them a new game, and neither its complexity nor its Western standards are always understood.

<sup>1</sup> Shenton Thomas, 22nd March 1933, p. 14.    <sup>2</sup> 19th March 1935, pp. 4ff.

<sup>3</sup> E.g. Tsibu Darku, 3rd March 1943, p. 108; Blay VI, p. 133.

<sup>4</sup> See the Elliot Report.

<sup>5</sup> West African Institute of Industries, Arts and Social Science Ordinance, no. 13 of 1944; see Colonial Secretary, 14th March 1944, pp. 64-5.



There is sometimes the illusion among them that governing a country is a very easy business, and that the intelligentsia could take over the administration of the Gold Coast to-morrow and carry on without any loss of efficiency or lowering of standards. It is said that when African unofficial members were first appointed to Executive Council they were amazed at the thoroughness with which they found business investigated and transacted, and expressed the view that much good would be done if Africans generally could be brought to appreciate the details of government. It is unfortunately true, moreover, that many of the intelligentsia are attracted to politics because they think it is remunerative, and are not prepared to work for a position of influence if they think this can be got by demanding it. The dissatisfaction described as 'wanting a say in affairs' would often be quickly banished by the grant of a well-paid post in the government service. Among the chiefly class the standard of disinterestedness and responsibility is a great deal higher. If these things must be pointed out, it is a matter of fact and not in criticism. Adaptation from the experience and traditions of primitive society to those of Western politics cannot come in a couple of generations. Harassed European administrators and ambitious African intelligentsia are apt, for their different reasons, to have a similar impatience on this score. But to the detached observer it may seem remarkable, not that after a hundred years of political intercourse with the British the Gold Coast has made so little progress towards British standards, but that after immemorial centuries of isolation, disunity and backwardness it has made so much.

Education is a question in which all Africans share the same interest, whether they are in the towns or in the bush. The same is not yet true of political reform. The majority of the population seem at present more concerned with social progress than political rights. Of the achievements of the Guggisberg regime, it is Achimota and the Korlebu Hospital, the educational system and the water supply, that are remembered rather than the beginning of elections to the legislature. Neglect of social advance is a stronger line of attack against the government than hesitation over political advance.<sup>1</sup> The demand for political advance is not exclusive to the

<sup>1</sup> Cf. Ofori Atta, 20th March 1934, p. 8; 23rd March 1937, p. 121; 13th April 1938, p. 8.

intelligentsia, but it comes from them first of all: in the assertion of the demand no less than in its fulfilment there lies greater influence for themselves. But the mass of Africans still care not about the existence of a paternalistic regime but about its results. To the ordinary man, a hospital in the village and a high price for cocoa mean more than an unofficial majority on Legislative Council; and the general attitude towards the new constitution might be described as watchful expectancy rather than enthusiastic anticipation.<sup>1</sup>

### 3. POLITICAL FORCES AND CONSTITUTIONAL REFORM

#### THE COLONY

There are two indigenous political forces in the Colony: the native rulers and the educated class of the coastal towns. Both are represented in the Council, and together they provide the main impulse towards constitutional reform. But the chiefs, as we have seen, speak for the great rural mass of the population of the Colony, the intelligentsia for a minute fraction whose political weight is out of all proportion to its numbers.<sup>2</sup> There are important cleavages between them, which we must consider at the outset.

In the legal sphere, there is a conflict between English law and native customary law, with a resulting conflict between legal organizations. Customary law, which is administered by the native tribunals, covers the entire social structure: marriage and the custody of children, the use of land, the succession to estates. For these purposes, English law could never serve the country, and native law, except in the commercial sphere, can be developed to keep up with modern needs. In 1944 the government appointed a Judicial Adviser to this end, with the task of systematizing and where necessary codifying native law, so as to build up a mass of positive Gold Coast law suited to the country, which shall be tempered with English ideals but not merely a modified English law. Barristers, however, are not allowed to appear in native tribunals,

<sup>1</sup> That social takes precedence of political progress is emphasized in the two valuable publications resulting from study groups held at Achimota in 1939 and 1941, *Quo Vadimus: or Gold Coast Future* (Achimota Press, 1940) and *Pointers to Progress: the Gold Coast in the Next Five Years* (Achimota Press, 1942).

<sup>2</sup> See above, pp. 44, 168.

and consequently have an interest in the growth of English law at the expense of native law. The municipal members, being mostly barristers, reflect this interest in the system of English courts. The provincial members, being chiefs, reflect the interest of their native tribunals.<sup>1</sup>

In the political sphere, there is a conflict of electoral principle between the old liberal conception of direct representation, exemplified in the municipal franchise, and the more modern conception of indirect representation through the pyramidal structure of state councils and Provincial Councils. This crystallizes in the recurrent disagreement between the chiefs and the intelligentsia over native administration. From time to time the educated Africans attack both the native authorities and the system of indirect rule.<sup>2</sup> They criticize the backwardness, inefficiency and corruption of stool government. They use the frequency of destoolments as an argument against the chiefs, and as evidence of the spread of literacy and the broadening of young men's minds.<sup>3</sup> The chiefs retaliate by calling them agitators against the established constitution. 'Ever since his election to this Council, and prior to the passing of the Native Administration Ordinance', said Sir Ofori Atta of Mr. Thompson, 'he has been known to be hostile, condemning native authorities at all time.'<sup>4</sup>

Because of these divisions of interest and policy, a triangular pattern of forces often appears in the Council, between the provincial, the municipal and the official members. The official members hold the balance between the other two, but in spite of the criticisms which government and chiefs constantly address to one another, the government's inclination in favour of the chiefs is generally plain.

'What I have always wanted to see', said the Colonial Secretary in 1937, is 'a closer approximation between the views of the Chiefs and the Government. In many matters there is, I

<sup>1</sup> See Ofori Atta, 18th March 1937, p. 71, and 4th March 1943, pp. 165ff.

<sup>2</sup> See R. S. Rattray, 'Present Tendencies of African Colonial Government', *Journal of the African Society*, 1934, vol. xxxiii, pp. 22-36.

<sup>3</sup> See the discussion between Ayirebi Acquah and Christian, 29th March 1933, pp. 99-100, 110-11.

<sup>4</sup> 26th August 1937, pp. 16-17; cf. 25th February 1936, pp. 8of., quoted above, p. 167.

believe, a much closer agreement than some people think. I hope they will believe, and I think they are beginning to realize, that a motion or suggestion that comes from Government has not necessarily got some ulterior motive behind it. . . . The one-half of the chain emanating from the Government side has been, and is still, extended. It remains for the Chiefs to construct and extend their half, so that the two may join in the middle and become one strong whole. When the two ends—the Native Administrations and the Government—are linked together progress will be ensured.<sup>1</sup>

The collaboration of chiefs and government dates back to the founding of the Provincial Councils. After some hesitation the chiefs accepted these new-fangled institutions, rightly seeing in them their own best line of defence; and thenceforward their place in the political structure of the country was assured.<sup>2</sup> They and the government have been able to pursue a common policy in working and developing institutions which both of them accept and value; but no such institutional bridge has been established between the government and the intelligentsia.<sup>3</sup>

Underlying the intelligentsia's hostility to native administration is jealousy and suspicion of the chiefs, and especially of the chiefs' co-operation with government. Sometimes this jealousy takes the paradoxical form of championing native law and custom. The most recent example is the opposition of the municipal members,

<sup>1</sup> 23rd March 1937, pp. 126-7.

<sup>2</sup> The development of the Provincial Councils is described above, pp. 45ff.

<sup>3</sup> A British critic adds the following comment on this paragraph: 'The triangular pattern. The Chiefs are by far the most important. They are often criticized—often very severely, but their work as Chiefs gives them a feeling of responsibility and they constantly render acts of service to Government and people which go unrecorded. They report infectious diseases, disasters, recovery of dead bodies, arrest escaped prisoners and suspected malefactors, certify the next-of-kin of deceased persons, deliver letters which the Post Office cannot. And all this willingly and outside the scope of their ordinary duties. Indeed the better they are, the more we put on their shoulders. Ninety per cent of the country has faith in them. Our policy should be to *make* them run their local governments and tribunals properly—and to give them help financially. There is plenty of scope for a large part of the intelligentsia in local government if they were not (as they often are at present) excluded from local "affairs" by "not belonging to a stool family". This is just another example of how customary law must be developed—such people must be taken into the local councils.'

and of Dr. Danquah outside Legislative Council, to the Native Authority (Colony) Ordinance of 1944. Mr. Sawyer (Mr. Thompson's successor as Member for Accra) summed up his case against the bill in the Council thus:

'Our objection is, as I have said over and over again, to the main principle of the bill whereby contrary to the accepted principle of native customary law, under which our Chiefs have authority in their own country, the Governor is now clothed with power to invest the Chiefs with such authority.'<sup>1</sup>

But the municipal members could not carry conviction in their guise as defending the rights of chiefs, when the Provincial Councils themselves were in favour of the bill, and when Sir Ofori Atta was known to have had a large part in preparing it and to have approved it before his death.<sup>2</sup> Mr. Moore took the opposition case rather deeper:

'Sovereignty is not in the Chiefs but in the people, and the people have exercised that sovereignty from time immemorial in electing, installing and deposing Chiefs according to native custom and law. If this bill . . . is passed, that inherent right, that power, that sovereignty of the people, go to the Governor.'<sup>3</sup>

These arguments were very fully countered by the provincial members, especially in a powerful reply from Nana Tsibu Darku. He pointed out that what the bill did was to enable government, not to create chiefs, but to appoint them as native authorities with appropriate powers, and that the whole purpose of the bill was 'to develop traditional form of government and gradually to bring into conformity with modern democratic ideas'.<sup>4</sup>

The core of independence or intransigence among the intelligentsia is provided by the Cape Coast school. For the most part their opposition is for opposition's sake, and if sometimes they chance to voice the naive and genuine grievances of the man in the street, these are politically marginal. The Cape Coast school display most vividly the inconsistencies in the aims of the intel-

<sup>1</sup> 4th October 1944, p. 28.

<sup>2</sup> Secretary for Native Affairs, *ibid.*, pp. 14-15.

<sup>3</sup> *Ibid.*, pp. 31-2.

<sup>4</sup> *Ibid.*, pp. 43, 45.

ligentsia. Sometimes they hope for the rapid decay of native administration,<sup>1</sup> the replacement of native custom by the ballot box, and the immediate introduction of universal education, adult suffrage, and African control of the legislature and the government. Dreams of this kind inspired the various constitutions drafted by Dr. Danquah.<sup>2</sup> At other times they uphold the sacrosanct immutability of native law and custom, as in the Aborigines' Society's petition of 1934<sup>3</sup> and the opposition to the Native Authority Bill in 1944. In the debate on the latter, Mr. Moore read to Legislative Council a resolution by the Cape Coast municipality, demanding the withdrawal of the bill and the re-enactment instead of the Native Jurisdiction Ordinance of 1883.<sup>4</sup> Nana Kwadade II commented ironically: 'It has been said that the Native Jurisdiction Ordinance of 1883 ought to be re-enacted. Where a people want self-government I wonder whether they would want it under that old and obsolete Ordinance. . . . Recently we were being advised to have our own Navy, Air Force, and Army and perhaps our own Prime Minister and I wonder if we are going to have all these things under the old Native Jurisdiction Ordinance of 1883.'<sup>5</sup>

To Mr. Sekyi himself no coherent political programme can be attributed. He is the outstanding example of a tragic and unresolved conflict, desiring to be at once Christian and pagan, aboriginal and European, Akan traditionalist and Western progressive. Though the leader of the Cape Coast school, he has taken very little direct part in political life, and has been something of a prophet-recluse. He could be most fairly described, perhaps, not as the Nehru of the Gold Coast, but as the Gandhi *manqué*. And if he has failed to acquire the extraordinary general ascendancy over the mind of his people that defines Gandhi's position, it is not a reflection on Mr. Sekyi's ability, still less on his passionate sincerity, but an indication rather of the difference between an ancient, sullen and self-contained civilization possessed of illimitable spiritual resources, and a small and vigorous people, just emerging out of the stage of primitive society, and grasping eagerly and confidently at every promise of advancement that the West can offer.

<sup>1</sup> Cf. Ofori Atta, 20th March 1940, p. 158.

<sup>2</sup> See below, pp. 199, 201.

<sup>3</sup> See above, pp. 94-6.

<sup>4</sup> 4th October 1944, pp. 28-9.

<sup>5</sup> *Ibid.*, p. 52.

While the chiefs accepted the Provincial Councils the intelligentsia, for their part, have hitherto failed to make anything of the Municipal Councils. These were to be the training ground in self-government for the educated African and his link with the central legislature,<sup>1</sup> but they are recognized to have been a failure.<sup>2</sup> They were hampered from the outset by the indefiniteness of their relations with the original state organization in the towns. This produced a conflict of loyalties, which became institutionalized in a party system. 'There are at present in the Municipal towns two political parties known as the Ratepayers Party, usually identified with the Town Council and regarded as pro-government, and the Oman (i.e. the National) Party, identified with the Native State and regarded as anti-government.'<sup>3</sup> The rivalry of the two systems combined with the irresponsibility of the townspeople to defeat the government's scheme of municipal reform in 1924.<sup>4</sup> The Municipal Corporations Bill was supported by the African members in Legislative Council, but there was strong public opposition after its enactment, especially in Accra, where chiefs feared the encroachment of an elected mayor, and public opinion disliked the reorganization of the rating system.<sup>5</sup> Guggisberg called it the only disappointment he had had as Governor.<sup>6</sup> Meanwhile the nationalists continue to assail a system which they have not yet proved themselves competent to supersede,<sup>7</sup> and which the electorate have been too apathetic, or rather ignorant, to make effective.<sup>8</sup> The reform of the town councils since 1943 offers hopes of revivifying the municipal system. But it is generally agreed that a new bridge needs to be established between the government and the intelligentsia, and that this should be the increased association of edu-

<sup>1</sup> Guggisberg, 3rd March 1927, p. 16.

<sup>2</sup> See M. A. Ribeiro, 'The Political History of the Gold Coast', *Quo Vadimus: or Gold Coast Future*, pp. 14-16.

<sup>3</sup> *Ibid.*, p. 16.

<sup>4</sup> See above, p. 51.

<sup>5</sup> See *Report on the Objections Lodged with the Colonial Secretary against the Application of the Municipal Corporations Ordinance, 1924, to the Town of Accra, with Minutes of Evidence*, sessional paper no. i of 1925-6.

<sup>6</sup> 3rd March 1927, p. 16.

<sup>7</sup> See Moore, 26th February 1941, p. 77.

<sup>8</sup> 'I hope that in future the residents of Accra will take more interest in its municipal progress; I am informed that at the last Town Council election only 426 people out of 3,932 on the register took the trouble to vote,' Shenton Thomas, 22nd March 1933, p. 15. Cf. Hailey, p. 523.

cated Africans with native administration. Reform of Legislative Council has been unavoidable and salutary in order to satisfy their growing aspirations, but none the less real political progress still depends on attracting their loyalty and talent into the development of local government.

It has been necessary to dwell at some length on these cleavages between the chiefs and the intelligentsia. They are the immediately obvious feature of the political life of the Colony, and that which naturally tends to impress itself upon the European administrator. But on a broader view it may be questioned whether they are the fundamental political reality, either in Legislative Council or in the country at large. No divisions between sections of the African community can ever be so deep as the division separating Africans as a whole from their European rulers. It is the great achievement of the British regime in the Gold Coast that it has elicited the cooperation of the chiefs, and that the basic racial alignment has thus been modified so nearly into what has been called above 'the triangular pattern'. Nevertheless the general arrangement of forces in the Council, as we have seen, has been the African unofficial members against the European majority.<sup>1</sup> And though the distinction of function between chiefs and intelligentsia of course remains, the distinction of class and interest is becoming blurred, as the older generation of illiterate chiefs disappears, as new chiefs are increasingly men with administrative or professional experience, and as stool government itself is transformed and modernized. Despite their divergences, the chiefs and the intelligentsia are two wings of the same class: the class of government officials, lawyers and professional men; the class of the well-to-do. They have a common and predominant concern with high-grade clerical conditions and the endless problem of jobs for educated Africans. They are united in being the ruling class among Africans: they alone have access to posts in the government employment, the object of practically all African ambition.

The fundamental unity of the political class in the Gold Coast is seen in their common efforts to obtain the reform of the constitution and greater political power for Africans, and in their common opposition to direct taxation. But before describing these, a reference may be made to the Youth Conference, which also illustrates

<sup>1</sup> See above, pp. 73-4, 89-90.



that unity, and which was originally created in order to promote it. The Youth Conference was founded and has been guided by its General Secretary, Dr. J. B. Danquah, Sir Ofori Atta's half-brother.

'The Gold Coast Youth Conference has no Constitution if by the term is meant a system of fundamental rules and regulations set forth to govern a corporate body. The Conference is neither a League nor a Society. At best, it is only a convention or convocation, the calling together, from time to time, of different societies and clubs to discuss affairs of common interest to their members and the country.'<sup>1</sup>

The first such Conference met at Achimota in 1930, on Dr. Danquah's inspiration, to discuss 'the Essentials in the Progress and Development of the Country'; its results were not published through lack of funds. There was no further meeting until 1938, when the second Conference was held at Mfantshipim. Its purpose had been defined in the resolutions of a preliminary meeting the previous year, which form

'the only articles of a "constitution" for the Conference:

'That the 1938 Conference following the precedent of the 1930 Conference, should be non-political. Its main purpose is to focus the mind of Youth on the Country's social and economic problems and invite suggestions for solution.

'That all social, literary, educational and industrial Clubs, Unions, Societies, and Associations should be invited to participate in the forthcoming Conference.'<sup>2</sup>

The real purpose of this Conference was to build a bridge between the Provincial Councils and the Aborigines' Society, which in a sense were the two parents of the new movement. But its most important practical result was the establishment of a permanent organization for the Conference—a continuation committee, a paid secretary, and regular contributions from member societies; it was also arranged that there should be a third conference at Kumasi the following year, and thereafter annually. As the Mfant-

<sup>1</sup> *First Steps towards a National Fund*, being the Resolutions of the Second Gold Coast Youth Conference (Achimota, 1938).

<sup>2</sup> Resolutions of the meeting of September 1937, quoted *ibid.*

sipim Conference had aimed at co-operation between the two main political forces in the Gold Coast Colony, so the Kumasi Conference of 1939 aimed at co-operation between the Colony and Ashanti. A fourth Conference met at Akropong in 1940, to discuss 'The Problems of our Social and Economic Reconstruction in War and Peace'. It directed its attention towards concrete reforms, and drew up a memorandum of proposals for discussion with the Governor. The ensuing interview between the Youth Conference delegation and Sir Arnold Hodson was most unsatisfactory to the delegates; none of their proposals were accepted, and they met with no concessions of any kind.<sup>1</sup> The Akropong Conference arranged for the 1941 Conference to be held at Sekondi.

By origin and declared policy the Youth Conference is non-political in its aim, but its implications are inevitably political, and it has published schemes of constitutional reform. The Conference has a good press, but it has never been mentioned in Legislative Council, and it is difficult to estimate its influence throughout the country. In a recent manifesto it based its complaints about customs tariffs upon an obsolete list, an example of political amateurishness that did much to lower its prestige. Latterly it has been in abeyance, and it played no part in the controversy over the Native Authority Ordinance of 1944 nor in the framing of the new constitution. While Sir Ofori Atta was alive, Dr. Danquah played the part of his brother's loyal supporter and publicist; but since Sir Ofori Atta's death, he has tended to move towards the extremist wing of the intelligentsia, perhaps to the detriment of his political influence and reputation even among Africans.

The demand for greater self-government has been connected with the traditional struggle against direct taxation, which it is convenient to notice here because it has concerned the Colony more than Ashanti. The poll tax of 1852 was almost impossible to col-

<sup>1</sup> 'The report . . . has come as a great shock to the country. . . . On every question His Excellency was inflexible. In fact to the observer, the official attitude seemed Spartan, with a large measure of light indifference. For, when the Governor suggested that those wishing to learn carpentry should go to the Prison Inspector, which phrasing might also mean that one should be imprisoned only to learn joinery, the public cannot help thinking that the question had been dismissed in too humorous a manner,' *Spectator Daily*, 2nd April 1940.

lect, and was repealed in 1866.<sup>1</sup> Since then there has been a steady resistance to direct taxation, as alien to the traditions and oppressive to the poverty of the country. The revenue for the whole of the modern development of the country has been raised from customs on imports and the export duty on cocoa; and this has been the central obstacle to establishing effective native administrations.<sup>2</sup> One governor after another has sought to introduce direct taxation, both to stabilize the revenue and to educate the population in a sense of financial responsibility. In 1931, at the height of the economic crisis, Sir Ransford Slater announced an income tax bill, imposing sixpence in the pound on incomes over £40 per annum. Demonstrations and riots resulted, partly owing to the inadequate preparation of public opinion; and since an income tax had been intended only as supplementary to a system of direct taxation by native authorities, it was postponed until it could be introduced together with a Native Administrative Revenue Ordinance.<sup>3</sup> The African members' opposition to 'that dreaded "Kom Kom Tax"' <sup>4</sup> was extended to broad constitutional grounds. 'Direct taxation', said Togbi Sri II, 'must go hand in hand with full representation.'<sup>5</sup> The conflict was transferred to a new field when the Waterworks Ordinance was passed in 1934, imposing a general water rate in areas with a public water supply.<sup>6</sup> The bill provoked stormy debates in Council and the African members voted unanimously against it.<sup>7</sup> 'The Government should impose no new taxation without the consent and concurrence of the people's representatives,' said Mr. Korsah. 'The Government should not use the official majority to impose new taxation.'<sup>8</sup> The delegation to the Secretary of State in the same year demanded that no financial measure opposed by two-thirds of the African members should receive the Governor's assent without the opposing members being able to put their views before the Secretary of State:<sup>9</sup> a request for a big constitutional advance from the existing

<sup>1</sup> See above, p. 23, n. 4.

<sup>2</sup> See above, p. 37.

<sup>3</sup> Governor, 1st March 1932, pp. 23-4; see above, loc. cit.

<sup>4</sup> Christian, 29th March 1933, p. 111.

<sup>5</sup> 28th September 1932, p. 396; cf. Korsah, p. 367.

<sup>6</sup> Attorney-General, 19th March 1934, pp. 73-7; *Laws*, 1936, cap. 55.

<sup>7</sup> 20th March 1934, p. 113.

<sup>8</sup> *Ibid.*, p. 120; cf. Ofori Atta, 28th March 1935, p. 140.

<sup>9</sup> 1934 *Delegation*, p. 3, para. 10.

restricted competence of unofficial members in financial matters towards a power of veto similar to that in the then Jamaican constitution.<sup>1</sup> The backwardness of the public attitude towards the question of direct taxation discredited at the same time as it inspired such claims.

Under Sir Arnold Hodson the financial position was improving; the necessity for a reorganization of the revenue was not so pressing; and even when the War began he preferred not to raise the question of income tax again for fear of rousing civil disorder.<sup>2</sup> It was clear that though income tax would affect only the well-to-do, they would have no difficulty in gaining the support of the urban masses against the government on this issue. It was not until 1943 that an Income Tax Ordinance was at last enacted.<sup>3</sup> The measure had been sweetened in advance by the appointment of Africans to Executive Council and of African district commissioners, and by the new town councils for Kumasi and Accra. The popular reaction was a notable example of the periodical *voltes-face* in public opinion which temper the great tradition of opposition and keep it in touch with political realities. The press was favourable at the first announcement,<sup>4</sup> and the Joint Provincial Council, in a memorandum to the Governor, accepted the bill in principle.<sup>5</sup> In Legislative Council the only opposition came from Mr. Moore and Mr. Kojo Thompson, who having lost an amendment to postpone the bill,<sup>6</sup> withdrew from the Council chamber when it went into the committee stage.<sup>7</sup> The corollary of income tax was the establishment of a system of rating by native authorities under the Native Authority (Colony) Ordinance of 1944.<sup>8</sup>

<sup>1</sup> Cf. the proposal that in a legislative council of fifteen official and fifteen unofficial members, any ten unofficial members should be able to veto a financial measure, subject to review by the Secretary of State, *ibid.*, p. 21, para 7 (v). See Wight, *Development*, pp. 115-16.

<sup>2</sup> Hodson, 12th December 1939, pp. 2-3.

<sup>3</sup> No. 27 of 1943. Announced by the Governor, 23rd February 1943, pp. 6-7; introduced into Council by Mr. Dare, 18th August 1943, pp. 29-36.

<sup>4</sup> Tsibu Darku IX, *ibid.*, pp. 46-7; Amanfi III, p. 57; Governor, p. 61.

<sup>5</sup> Tsibu Darku IX, *ibid.*, pp. 37, 42.

<sup>6</sup> *Ibid.*, pp. 38-41.

<sup>7</sup> *Ibid.*, p. 62; 20th August, pp. 64-5. (Cf. the weightier protest of the Sierra Leone unofficial members on the same occasion: see Wight, *Development*, p. 115.) The votes on the second reading are not recorded: Messrs. Thompson, Moore and Blay and Nana Blay VI abstained (18th August, p. 61).

<sup>8</sup> See above, p. 38.

The African members did not accept the Income Tax Ordinance unconditionally. Both in the memorandum of the Joint Provincial Council and in Legislative Council, the demand for a concurrent reform of the constitution was renewed with the greatest emphasis. 'We want a more effective representation on this Council to control the distribution of the increased revenue,' said Nana Tsibu Darku IX, 'that is, we must have an effective guarantee that the revenue will not be spent on things we do not approve of. . . . "No taxation without Representation."' <sup>1</sup> There was almost an assumption behind members' speeches that constitutional reform was already on the way, which the Governor, though he hastened to guard himself against a future charge of breach of faith,<sup>2</sup> did not discountenance. 'I can assure you', he said, 'that constitutional questions have been and are receiving attention.'<sup>3</sup> But before describing the fulfilment of this intimation, we must consider the separate problems of Ashanti.

#### ASHANTI

In the twentieth century as in the nineteenth, the politics of the Colony have been played out against a background of relations with Ashanti. But the historical roles have been reversed. In the nineteenth century the impulse for union came from Ashanti; in the twentieth it has come, in a different way, from the Colony peoples, and it has been the Ashantis who have tended to hold back. Such seemed to be the position until as recently as 1943, when a revolution in Ashanti opinion took place that played a major part in the framing of a new constitution.

Hitherto Ashanti has been an independent political unit. The Governor of the Gold Coast has been its sole legislature;<sup>4</sup> and it is presided over administratively by a Chief Commissioner responsible to the Governor, who is in effect, within Ashanti, a governor in little.<sup>5</sup> Its political condition has by no means compared un-

<sup>1</sup> *Ibid.*, pp. 49-50; Blay, pp. 52-3; Amanfi III, pp. 59-60. Cf. Blay VI, 3rd March 1943, pp. 130-2; and Moore and Ofori Atta on the meaning of the Atlantic Charter, *ibid.*, pp. 136-8 and 4th March 1943, p. 162.

<sup>2</sup> 18th August 1943, p. 53.

<sup>3</sup> *Ibid.*, p. 37.

<sup>4</sup> See above, p. 53.

<sup>5</sup> From 1936 to 1941 the Chief Commissioner was Sir Hubert Stevenson, who then became governor of Sierra Leone; he was succeeded as Chief Commissioner by Mr. E. G. Hawkesworth.

favourably with that of the Colony. In the twenty-five years since the restoration of the Golden Stool Ashanti has undergone notable developments. Prempeh's return from exile, the establishment of the Kumasi Public Health Board, the restoration of the Ashanti Confederacy in 1935 and the recognition of Prempeh II as Asantehene, have been described in an earlier chapter.<sup>1</sup> Since 1935 the Chief Commissioner has worked in close co-operation with the Asantehene. The Confederacy Council established in that year consists of the divisional chiefs together with the chiefs of the seven Kumasi clans; the latter form the Kumasi Council of Chiefs which assists the Asantehene in his capacity as Kumasihene. The Confederacy Council is the supreme native authority in Ashanti, and has legislative powers.<sup>2</sup> It is not, however, completely representative, for the Confederacy does not comprise the whole of Ashanti; there are certain unconfederated units with a population amounting to about 10,000. The restoration of the Confederacy has allowed developments in native administration along Nigerian lines, and considerable progress has been made recently with the establishment of native treasuries.<sup>3</sup>

In 1943 a measure was enacted providing for an Advisory Council, to be composed not of chiefs but of young men of the educated class. This lost much, perhaps all, of its importance, when immediately afterwards Ashanti asked for representation in Legislative Council under the new constitution.<sup>4</sup> It may be that the Confederacy Council, although they had originally asked for the establishment of an Advisory Council, grew reluctant when faced with the prospect of a body in which the chiefs would lose much of their influence to the young intelligentsia. For in Ashanti the erosion or adaptation of native custom has gone much less far than in the Colony: society is more conservative, and the authority of the chiefly class is more stable. At the same time the intelligentsia are relatively fewer, so that in general the educated class and the chiefs work together better in Ashanti than in the Colony.

Kumasi has never been in danger of becoming detached from the life of the country like the coastal towns. Hitherto it has had

<sup>1</sup> See above, pp. 30-1.

<sup>2</sup> Ashanti Confederacy Council Order, 1935, issued under the Native Authority Ordinance, 1935.

<sup>3</sup> Hailey, pp. 473-5; Governor, 6th March 1945, p. 10.

<sup>4</sup> See below, pp. 200-1.

the best municipal administration in the Gold Coast.<sup>1</sup> In 1943 the Kumasi Public Health Board was replaced by a town council with an unofficial majority elected by adult suffrage, the model for the reform of the Colony's municipalities.<sup>2</sup> The view has indeed been held that in course of time Kumasi might supersede Accra as the capital of the Gold Coast. It is the equal of the coastal towns (except Accra) in commercial and social importance, and exceeds them (except Accra) in population.<sup>3</sup> Apart from its traditions as the most ancient centre of political power in the Gold Coast and the seat of the greatest of the Gold Coast's native rulers, it is the node of modern road and rail communications. When the Labour Department was created in 1938 its headquarters were established at Kumasi as 'the confluence of the three main labour routes in this country',<sup>4</sup> and although they were transferred to Accra in 1942 for closer contact with the Governor and the other departments,<sup>5</sup> the main work of the Labour Department is still done at Kumasi. Accra has only prescriptive claims to be capital; it has few natural advantages, and its chiefs are inferior in status. On the other hand, both government and commerce have been based on Accra for seventy years, with all that this means in terms of capital expenditure, of offices, stores, buildings and bungalows; and when it is remembered that Accra has grown in size and importance probably more than any other town during the war years, and that it now has one of the most important airfields in Africa, it may seem improbable that it will lose its primacy.

There has hitherto been a potential conflict between what might be called Pan-Akan sentiment on the one hand and Ashanti nationalism on the other. The old Ashanti attitude of superiority over the Colony has not altogether disappeared. The question of closer union was raised from time to time in the Colony, but it had no effect in modifying Ashanti particularism. Despite the Kumasi

<sup>1</sup> See above, p. 52.

<sup>2</sup> But in Kumasi, as in the coastal towns, there have been difficulties in getting more than a fraction of the electorate to register as voters. At the first elections in 1943, only 828 voted out of the 14,000 eligible; Governor, 23rd March 1944, p. 11.

<sup>3</sup> Accra, 74,937; Kumasi, 44,627; Sekondi, 22,356; Cape Coast, 19,689 (*C.O. List*, 1940, p. 327).

<sup>4</sup> *Report on the Labour Department for the Year 1938-9*, para. 25; cf. para. 207.

<sup>5</sup> *Annual Report on the Labour Department for the Year 1942-3*, para. 7.

Conference of 1939, the Youth Conference has gained no hold north of the Pra. It seemed that the development of regional organization before any attempt at a wider constitutional assimilation of the three parts of the Gold Coast might not only be desirable on general grounds,<sup>1</sup> but would be in accord also with Ashanti opinion. The establishment of the Advisory Council represented the temporary agreement of the government and Ashanti on such a policy.

Some of the difficulties of closer association with the Colony were suggested by the Asantehene's refusal to join Executive Council. He was invited to become an unofficial member at the same time as Sir Ofori Atta and Mr. Korsah, but he declined.\* The grounds of his refusal were not published, but it is not hard to see constitutional questions that perhaps contributed to it. By tradition, the Asantehene is unable to set foot outside Ashanti. The custom that makes the chief dependent upon his linguist in any public function has lost none of its force in Ashanti as it has done in the Colony. Perhaps most important, the oath of secrecy to be taken by Executive Councillors would have prevented the Asantehene from divulging the proceedings of Executive Council on his return to his own council. Such reasons as these might alone be sufficient to preclude the Asantehene from sitting himself in either Executive or Legislative Council.

The most important issue, however, was not the Asantehene's personal representation, but the general representation of Ashanti in Legislative Council. For a long time Ashanti showed no interest in this. The position of the Colony politicians was plain: they wanted Ashanti representatives in the Council as the easiest means of gaining a large addition to the African unofficial bloc. For the Ashantis, however, who because of their smaller population would be unable to claim the same number of representatives as the Colony, such representation would seem to mean that their members would be swamped by the Colony members, and to offer no advantages except in so far as Ashanti members might be able to hold a balance in the Council.

<sup>1</sup> See below, pp. 198-9.

\* 'I invited the Asantehene to become one of the unofficial members of my Executive Council. He did not feel able to accept the invitation, for reasons which I fully appreciate, and which, in my opinion, do him credit,' Sir Alan Burns, speech at Kumasi, quoted in *West Africa*, 9th January 1943, p. 4.



It was the realization of Legislative Council's financial control over Ashanti that changed Ashanti opinion. There was some jealousy in Ashanti of disproportionate government expenditure on the Colony;<sup>1</sup> but the converse of this, the anomalous constitutional position whereby Ashanti expenditure was subject to the approval of a legislature in which Ashanti was not represented, was being criticized by Colony politicians from their own point of view a number of years before its disadvantages became apparent in Ashanti itself. In 1929 Mr. Casely Hayford asked a question in Legislative Council concerning judicial procedure in Ashanti and the Northern Territories. The Colonial Secretary replied that 'it does not lie within the proper province of the Legislative Council of the Gold Coast Colony, to deal with questions of administration in Ashanti. The constitution of Ashanti is as separate and distinct from that of the Gold Coast Colony as is, say, the constitution of Sierra Leone'.<sup>2</sup> Mr. Hayford was not satisfied with this rather exaggerated statement of the position, and a week later took occasion to point out that while Legislative Council voted supplies for Ashanti it was precluded from discussing its administration. 'The time has come', he concluded, 'when Ashanti should be represented on this Council, if we are required to approve of these votes, so that we may get the information where necessary, and we might also be able to criticize where necessary.'<sup>3</sup> The Governor replied that it was competent for the Council to discuss the details of the estimates for Ashanti and the Northern Territories, but not administration in general; and that to revise the Ashanti constitution was the affair of an imperial order in council.<sup>4</sup> The restriction was probably not very irksome in practice: there was only one instance, in the fifteen years after Mr. Hayford raised the question, of a member being ruled out of order for attempting

<sup>1</sup> Cf. Dr. Nanka-Bruce, 29th March 1933, p. 93, who seemed at that time to regard Ashanti and the Northern Territories as unproductive and a burden on the general revenue. Contrast Sir Ofori Atta, 28th February 1936, p. 115: 'Care should be taken, Sir, that the revenue available is not overspent in particular localities only; but that whatever benefit may be derived therefrom may be spread over the whole country—the Gold Coast, Ashanti and the Northern Territories.'

<sup>2</sup> 15th February 1929, pp. 121-2. Cf. Annor Adjaye's question and the Acting Colonial Secretary's answer, 19th September 1929, pp. 282-3.

<sup>3</sup> 25th February 1929, p. 156.

<sup>4</sup> 26th February 1929, pp. 227-8.

to discuss the excluded territories.<sup>1</sup> In 1935 Nana Ayirebi Acquah renewed the demand that Ashanti should be represented in the Council. He argued it on several grounds, of which the most important were that it would be the natural consequence of the restoration of the Asantehene, and presumably in accordance with the Asantehene's own ambitions; and that it was the corollary of the unification of legislation throughout the Gold Coast.<sup>2</sup> Since then the question has not been referred to in the Council, but it has been closely involved in the discussions elsewhere of constitutional reform. The Kumasi Youth Conference of 1939 reflected the same general desire of the Colony intelligentsia for a closer association with Ashanti. It was not, however, until Legislative Council's financial control was illustrated in practice by the Kumasi Lands Bill in 1943, that the value of representation on the legislature was brought home to Ashanti opinion. This important reversal must be described in relation to the general movement for constitutional reform, since it was one of the events immediately responsible for the new constitution.

A word may be added here about the Northern Territories, which cannot yet claim separate treatment in a constitutional study. They are backward in everything except native administration, which is well developed; there are few schools, and the educated class is negligible. In December 1938 a conference was held at Tamale of all the divisional chiefs and most of the sub-divisional chiefs. It was hoped that this would become an annual event, and grow into a Protectorate Council of chiefs; but the following year it was discontinued because of the outbreak of war.<sup>3</sup>

#### THE MOVEMENT FOR CONSTITUTIONAL REFORM

The unity of the chiefs and the intelligentsia has been most clearly seen in their broad agreement (with the exception of the Aborigines' Society) about constitutional reform. The delegation to the Secretary of State in 1934 represented both groups, and reversed the unhappy precedent of the West African National

<sup>1</sup> Mr. Korsah, for making observations on the Northern Territories Native Rights Ordinance, 8th March 1932, pp. 180-1.

<sup>2</sup> 28th March 1935, pp. 121-2.

<sup>3</sup> Governor, 14th March 1939, p. 19 and 12th March 1940, p. 25.

Congress delegation of 1920-1.<sup>1</sup> The 1934 delegation were asking in the first instance for the disallowance of the Criminal Code (Amendment) Ordinance<sup>2</sup> and the Waterworks Ordinance of 1934, but they also made specific suggestions for constitutional change: the increase of African representatives on Legislative Council to one-half of the total, African representation on Executive Council, election of the provincial members for the Eastern Province by the whole Provincial Council instead of by the three Sections, and the eligibility as provincial members of persons other than chiefs.<sup>3</sup> The Secretary of State refused the requests concerning African representation on Legislative Council and Executive Council, but undertook to give further consideration to the suggestions about the election of provincial members.<sup>4</sup>

Dr. Nanka-Bruce emphasized the municipal aspect of Legislative Council representation, a year later:

‘No doubt, Your Excellency will have seen from the various publications and have heard from various sources, how very much the people are in earnest that the Constitution should at least be changed to suit present conditions. I am not going to labour the point but this much I would say that the people of Accra consider it very inadequate to be represented by only one member on this Council. They argue that the population of Accra is over 60,000 which compares favourably with that of Freetown and falls little short of that of Lagos in Nigeria, where they have two or more representatives on the Council, and I have been asked to put before Government, that in any considered change in the Constitution, Accra, at least, should be placed on the same footing as Freetown or Lagos.’<sup>5</sup>

When George V died, Nana Ayirebi Acquah adumbrated a new imperial role for the Crown as the patron of constitutional reformers: ‘the elective principle which though still far from being satisfactory, we venture to hope will shortly be improved to be something worthy of the name and to serve as a memorial to the

<sup>1</sup> See above, pp. 152-3.

<sup>2</sup> The Sedition Bill.

<sup>3</sup> *1934 Delegation*, pp. 2-3, 20-1.

<sup>4</sup> Telegram from the Secretary of State, read in Legislative Council by the Acting Governor, 27th July 1934, p. 226; cf. *1934 Delegation*, p. 79.

<sup>5</sup> 28th March 1935, pp. 120f.

late King.<sup>1</sup> Two of the requests of the 1934 delegation were fulfilled by the Legislative Council (Amendment) Order in Council of 1939, providing for the union of the three Sections of the Eastern Province Provincial Council for the performance of their electoral functions, and for the eligibility of non-chiefs as provincial members.<sup>2</sup> But in 1941 the wider issue was restated by Mr. Moore in his maiden speech:

‘It is time we are given better constitution and I respectfully draw Your Excellency’s attention to the constitution just given to Trinidad where the elected members of the Legislative Council are equal with the appointed members—nine officials and nine unofficials, the Governor having a casting vote.’<sup>3</sup>

When in 1942 African representatives were nominated to Executive Council by Sir Alan Burns, all the demands of the 1934 delegation had been met apart from the central one for increased African representation on Legislative Council; and this no longer seemed a remote objective. During the Second World War, the development of opinion in the Gold Coast, and what is more important, of the forces in Britain and the world at large which ultimately determine British policy, was making constitutional reform a matter of general expectation. A change in the climate of official opinion could be observed, reflecting the change in the balance of political forces. Officials now emphasized the defects and illogicalities of the official majority instead of its advantages. The argument became current that the official majority breeds irresponsibility in the unofficial members, and that it would be ‘more honest’ to make the Council legislative in fact as well as in form: to abolish the official majority, to give the officials who remain in the Council freedom of vote, and to concentrate the responsibility of the government veto upon the Governor alone.<sup>4</sup>

Various schemes of constitutional reform were discussed. There was great authority for the view that the development of regional

<sup>1</sup> 24th February 1936, p. 27.

<sup>2</sup> See above, pp. 43, 46.

<sup>3</sup> 26th February 1941, p. 78. Cf. the West African National Congress delegation’s appeal to the model of the old British Guiana constitution (see above, p. 27), and the 1934 delegation’s appeal to the Jamaican model (see above, pp. 189–90).

<sup>4</sup> Cf. Wight, *Development*, p. 98.

organization should come before the remodelling of Legislative Council or its enlargement to embrace Ashanti and the Northern Territories. The setting up of the Ashanti Advisory Council was itself a tentative advance along this line. Being generally agreed that the growth of local government is even more urgent than reconstruction of the central legislature, it seemed to follow that the Joint Provincial Council and the Ashanti Advisory Council should be developed into regional legislatures, linking Legislative Council with native administrations. The principle of an unofficial majority could thus have been tried out in bodies with a limited competence, but dealing with vital local issues. Sir Hubert Stevenson, indeed, carried the idea of regional development to the point of suggesting that Ashanti should have a separate legislative council and a separate budget, with a similar system for the Northern Territories. To have instituted three budgets for the Gold Coast might be thought a retrograde financial step; but to build political institutions in general from below upwards appeared the logical and healthy principle.<sup>1</sup>

Gold Coast politicians were busy with more far-reaching projects. The Youth Conference put forward a plan, the work of Dr. Danquah, for fusing the Joint Provincial Council and Legislative Council into a new central legislature of two houses: the Joint Provincial Council to become a House of Chiefs, and Legislative Council to be transformed into a Legislative Assembly of from thirty to fifty members elected by manhood suffrage.<sup>2</sup> In a more developed form this project contemplated the new legislature as containing members from Ashanti and Togoland and the Northern Territories as well as from the Colony.<sup>3</sup> A little later Mr. Korsah, Mr. Kojo Thompson and Dr. Danquah formed a committee to draft a new constitution on behalf of the chiefs and the intelligentsia. They proposed an unofficial majority, with seven

<sup>1</sup> Such a view was expressed by Lord Hailey in the debate on the final constitutional proposals in the House of Lords, on 20th December 1944, 134 H. L. Deb. 55, 469.

<sup>2</sup> Memorandum submitted to Lord Hailey by the Executive Committee of the Gold Coast Youth Conference (Accra, 1940), caps. 58-61. Cf. *Pointers to Progress: the Gold Coast in the Next Five Years*, p. 41.

<sup>3</sup> *Things to Change in the Gold Coast*, Memorandum by the Youth Conference for the Joint Provincial Councils, for changes to be effected during or after the present war (Accra, 1941), part iv.

municipal members, three from Accra and two each from Cape Coast and Sekondi, and fourteen 'country members', indirectly elected by state councils, who might be either chiefs or members of the intelligentsia; in addition to these, four European heads of departments as official members. But the centre of their scheme was a ministerial system, whereby an elected African member would become the political head of a department while the European officer remained the permanent head, in a relationship modelled on the British system. Four departments were suggested as lending themselves to this experiment: the Interior—a new name for the Department of Native Affairs—Agriculture, Health, and Education.

In 1942 the movement for constitutional reform received a new and unexpected impulse from Ashanti. A motion was put forward in the Confederacy Council, praying for the representation of Ashanti on Legislative Council. The Confederacy Council decided that it did not want such representation so long as there was an official majority, and asked for the establishment of an Advisory Council instead. In response to this the Ashanti Advisory Council Bill was drafted. Under it an Advisory Council was to be set up for considering draft legislation and all financial questions. It was to consist of seven members nominated by the Confederacy Council, to be not chiefs but young men of the educated class; three officials; one member of the Kumasi Chamber of Commerce; and one other nominated member; and it was to sit under the chairmanship of the Chief Commissioner.<sup>1</sup>

But in 1943 the existing constitutional relationship between Ashanti and the legislature at Accra was forced upon the attention of Ashanti by the Kumasi Lands Bill. The purpose of the bill was to complete the process of restoration in Ashanti by vesting the lands of Kumasi once more in the Asantehene and his successors, in trust for the Golden Stool and the Kumasi Division; but the financial adjustments consequent upon the re-vesting were to require the approval of Legislative Council.<sup>2</sup> This provision caused a controversy in Ashanti, which seems to have been decisive in swinging Ashanti opinion in favour of obtaining Legislative Council representation. The bill eventually received the approval

<sup>1</sup> Ashanti Advisory Council Ordinance, no. 19 of 1943.

<sup>2</sup> Kumasi Lands Ordinance, no. 17 of 1943, section 3.

of the Asantehene and the Kumasi Divisional Council, and was enacted by the Governor; but the Confederacy Council now asked for the withdrawal of the Advisory Council Bill, with which they were dissatisfied,<sup>1</sup> and for the addition of three Ashanti members to Legislative Council. At the same time they set up a joint committee with the Joint Provincial Council of the Colony to arrange for their further collaboration. Consequently, though the Advisory Council Ordinance was enacted immediately afterwards, it was not put into force, and it seems possible that it may become a dead letter.<sup>2</sup> When the Secretary of State addressed the Confederacy Council during his visit in the autumn, he pointed out to them their rather bewildering change of demands.

The Secretary of State's visit to the Gold Coast, in September 1943, provided an opportunity for the leading political figures to clarify their constitutional proposals. A new memorandum on constitutional reform had been drawn up by Dr. Danquah. It took four hours to read to the Confederacy Council, and marks the zenith of Dr. Danquah's celebrity as the Siéyè of the Gold Coast. It was based on the division of the whole country into equal constituencies. One of its principal features was the creation of a powerful post of Home Minister, for which he himself would no doubt have proved a strong candidate. This document was endorsed by the Confederacy Council, the Joint Provincial Council, and the municipal members of Legislative Council; but perhaps their agreement was in some cases due less to the merits of the proposed constitution than to circumspection with regard to the press. The memorandum was presented to the Secretary of State as the demands of every section of responsible political opinion in the Gold Coast, and he took it back to London with him.<sup>3</sup>

In the course of the following summer (1944) Sir Alan Burns visited London and had discussions on the constitutional question, which led to a statement that the Secretary of State rejected the Danquah memorandum, and that there would be further consultation between unofficial representatives and the Governor. In July Sir Alan Burns had returned to the Gold Coast, and sum-

<sup>1</sup> See above, p. 192.

<sup>2</sup> It is not the Advisory Council, but the Confederacy Council, that is the electoral body for Ashanti members on Legislative Council under the new constitution; see below, p. 203.

<sup>3</sup> Cf. *Spectator Daily*, 25th September 1943.

moned a conference at Government House. It was attended by representatives of the Joint Provincial Councils, the Ashanti Confederacy Council and the municipal members, together with the two Chief Commissioners. The Governor explained that the Danquah constitution was unacceptable, and offered to help in formulating new proposals. Proposals were accordingly drawn up; referred immediately to the Joint Provincial Council and the Confederacy Council, and accepted by them; considered at a second meeting at Government House in August; and then submitted to the Secretary of State. On 4th October the Governor was able to announce in Legislative Council that the Secretary of State had accepted all the proposals save two;<sup>1</sup> and the following day the Secretary of State made the same announcement in reply to a question in the House of Commons.<sup>2</sup>

The history of these constitutional discussions illustrates strikingly the ethos of British rule. The government makes laborious and painstaking attempts to elicit and co-operate with public opinion. Public opinion is characterized by its inchoateness and instability, and the government's duty proves to be not so much consultation as education. In the end an outstanding constitutional advance is arranged, but is given no publicity. The last point was the subject of a debate in the House of Lords on 20th December 1944,<sup>3</sup> in which it was emphasized that the announcement in the House of Commons had been followed by no further publicity and had led to no debate there. 'What has been done', said Lord Ammon, 'redounds very greatly to the credit of the Colonial Office and of the Government. But it has been done in secret so that the full credit and the necessary kudos do not accrue.'<sup>4</sup> The Lords' debate allowed for a full discussion of the principles of the new constitutional proposals, and was probably the cause of the fact that the corresponding proposals for constitutional reform in Nigeria were laid before Parliament as a white paper at the beginning of 1945.<sup>5</sup>

<sup>1</sup> 4th October 1944, pp. 85-6.

<sup>2</sup> 403 H. C. Deb. 5s, 1161-2; cf. *ibid.*, 1759-60.

<sup>3</sup> 134 H. L. Deb. 5s, 461-77. Cf. the debate of 26th October 1944, on the principle of parliamentary discussion of colonial constitutional changes, 133 H. L. Deb. 5s, 714-24.

<sup>4</sup> 134 H. L. Deb. 5s., 464.

<sup>5</sup> Cmd. 6599 (1945), para. 2.



## 4. THE CONSTITUTION OF 1946

In his address to the Council at the beginning of 1945 the Governor said that he hoped the new constitution would come into being before the end of the year, and that elections for the new Council might be completed in time for him to convene a meeting early in 1946.<sup>1</sup> But the preparation of the legal instruments is a laborious and protracted business, and the constitution was not in fact ready until the spring of 1946.<sup>2</sup>

The new constitution of 1946 may be broadly considered under four heads: the reform of the Council, the Governor's reserve powers, administrative reorganization, and the proposals which the Secretary of State rejected.

1. The composition of Legislative Council. The Council is now to consist of:

The Governor, as President, with no vote;

Six official members, viz. the Colonial Secretary, the three Chief Commissioners, the Attorney-General and the Financial Secretary;

Nine provincial members for the Colony, five from the Eastern Province and four from the Western;

Four Ashanti members;

Five municipal members, two for Accra and one each for Cape Coast, Sekondi-Takoradi and Kumasi;

Six nominated members.

The provincial members are to be elected by the Joint Provincial Council; the Ashanti members by the Ashanti Confederacy Council; the municipal members, as hitherto, by ballot, the electorates being the same as for municipal elections. The nominated members are to be appointed at the Governor's discretion. It is intended that they shall be Africans rather than Europeans; they will be drawn from interests that are otherwise unrepresented or

<sup>1</sup> Governor, 6th March 1945, pp. 2-3.

<sup>2</sup> The new constitution is contained in the Gold Coast Colony and Ashanti Letters Patent, 1946; the royal instructions of 7th March 1946; and the Gold Coast Colony and Ashanti (Legislative Council) Order in Council, 1946. For the last, see Appendix 2. These all came into force on 29th March 1946 (*Gazette*, 23rd March 1946, supplement).

under-represented—minorities (e.g. the Ewes, Togoland, the unconfederated units in Ashanti), commercial interests, missions, education, the co-operative movement, etc. The Governor may in addition appoint extraordinary members.

2. The Governor's reserve powers. The reform of the Council has affected the Governor's position: he is still the President of the Council, but he no longer has either an original or a casting vote. The abolition of an official majority, however, is always accompanied by granting the Governor, outside the legislature, the substance of the powers that are thus abandoned inside the legislature.<sup>1</sup> The Governor is now to have reserve powers which permit him to enact legislation over the heads of Legislative Council in the interests of public order, public faith or good government; these expressions, without prejudice to their generality, including the responsibility of the Gold Coast as a component part of the British Empire, and all matters pertaining to the appointment, salary, and other conditions of service of public officers.

3. Administrative reorganization. The post of Secretary for Native Affairs has been abolished, and from 1st April 1945 there has been instead a Chief Commissioner for the Colony, with headquarters at Cape Coast.<sup>2</sup> The Central Province of the Colony is also to be divided between the Western and Eastern Provinces, so as to leave only two Provinces in the Colony instead of three; but this has been deferred until the new constitution comes into being.<sup>3</sup>

4. There were two proposals put forward by the Government House conference in 1944 which the Secretary of State was unable to accept.<sup>4</sup> One was the request that at least two unofficial members of Executive Council should be drawn from the elected members of Legislative Council. This would have meant a breach in the principle that Executive Council is an advisory and not a

<sup>1</sup> See Wight, *Development*, pp. 104-5.

<sup>2</sup> The necessary change in the constitution of Executive Council was made by additional instructions of 6th March 1945.

<sup>3</sup> Governor, 6th March 1945, p. 7. The separation of judicial from administrative divisions was made by the Courts (Amendment) Ordinance, 1944, section 4; the new Provinces were established, simultaneously with the new constitution, by the Provinces and Districts (Colony) Order, 1946 (made under section 19 of the Courts Ordinance).

<sup>4</sup> See Governor, 4th October 1944, p. 86.

representative body and that its members are appointed by the Crown or by the Governor, and a constitutional advance in the direction of the semi-responsible system established in Jamaica in 1944.<sup>1</sup> The case of Mr. Korsah supplied an illustration of how it may be desirable at times for the Governor to choose his unofficial advisers from outside rather than from inside the legislature, and the Secretary of State refused to fetter his discretion. But while this was not conceded as a matter right, the Governor has recommended that a second elected member of Legislative Council besides Nana Tsibu Darku shall in fact be appointed to Executive Council when the new constitution comes into being.

The second proposal was that a Standing Committee of Legislative Council should be established for the discussion of policy with the Governor and of legislation before its introduction into the Council. The proposal was rejected because the function of such a committee is already performed by the Joint Provincial Council and the Ashanti Confederacy Council, which have standing committees for discussing legislation with the Chief Commissioners, as well as by the Standing Finance Committee of the Council and by Executive Council itself.

The new constitution presents two great contrasts with the old. Legislative Council has become the legislature for Ashanti as well as for the Gold Coast Colony, and at the same time it has been transformed into a representative legislature. The first change marks the political union of the Colony and Ashanti, and it brings five Ashanti members to the Council at Accra: four representing the Confederacy Council, the fifth representing Kumasi. It is contemplated, moreover, that though the Governor will continue to legislate for the Northern Territories at present, these too will come under the authority of Legislative Council when their unofficial representation upon it becomes possible.<sup>2</sup> The unification which Ashanti failed to accomplish by military force in the eighteenth and nineteenth centuries has been brought about, within a framework of British power, in terms of Western constitutionalism. The year 1946 may well come to have the same significance in Gold Coast history as 1707 has in British.

But if the new constitution thus makes a landmark in Gold Coast

<sup>1</sup> Wight, *Development*, pp. 133-4.

<sup>2</sup> Secretary of State in the House of Commons, 403 H. C. Deb. 5s, 1759.

history, it has also a wider significance. For with the replacement of the official majority by an elected majority the Council becomes a representative legislature.<sup>1</sup> The contrast between the old and the new Council is striking. Its total number has been increased by no more than one, and this only if the new position of president without a vote be included in the reckoning; but whereas in the old Council the fourteen unofficial members faced the impregnable majority of sixteen official members, and only nine of the unofficials were Africans, in the new Council there are eighteen elected African members against six officials, and the remaining six are nominated unofficial members who may as likely be Africans as Europeans.<sup>2</sup> The Council has thus advanced at a bound from an official majority to an unofficial majority, an elected majority, and an African majority.

It is probably true that if the real change were as great as it can be made to appear in terms of constitutional classification, it would not have been possible to make it, and that the abolition of the official majority is only the removal, for some time overdue, of a façade. There is no particular likelihood, whether from tradition or from present political personalities, that the new legislature will assert its independence in obstructive and unco-operative ways, and the Governor's reserve powers will in any case prevent such abuse. It is certainly true, and a more important criticism, that the change is democracy only at the top and not at the bottom. This has been emphasized, with a note of warning, by Lord Hailey: 'I do not think the present step is momentous in itself, but it might prove to be so if it should lead to an undue absorption in political advance at the expense of securing reforms in the administrative system and in the attainment of a more solid and dependable basis of representation.'<sup>3</sup> The Colonial Office and the Governor no doubt hope that the constitution will for several decades satisfy the legitimate aspirations of the political class, and thus at the same time afford a period for the healthy growth of local government. None the less, in the general context of British colonial government the constitution is a remarkable advance. The only precedents for the establishment of a non-European majority

<sup>1</sup> Colonial Laws Validity Act, 1865 (28 and 29 Vict. c. 63), section 1.

<sup>2</sup> See appendix 5.

<sup>3</sup> 134 H.L. Deb. 5s, 470.

in a colonial legislature are those of Ceylon and Jamaica. This is the first introduction of representative government into Africa outside the colonies of white settlement.<sup>1</sup> The announcement of the constitution might well seem to Gold Coast minds to have been a fitting centenary commemoration of the famous Bond;<sup>2</sup> and now, far more than in the days of Maclean, the Gold Coast people find themselves the pioneers of political advance and the touchstone of political competence in Africa.

<sup>1</sup> Wight, *Development*, p. 82.

<sup>2</sup> Cf. Amanfi III, 23rd March 1944, pp. 111-12; Tsibu Darku, pp. 123-4.

## APPENDIX I

### GOLD COAST COLONY (LEGISLATIVE COUNCIL) ORDERS IN COUNCIL, 1925 TO 1939<sup>1</sup>

ORDER OF THE KING IN COUNCIL, PROVIDING FOR THE CONSTITUTION OF A LEGISLATIVE COUNCIL FOR THE GOLD COAST COLONY

AT THE COUNCIL CHAMBER, WHITEHALL,  
THE 8th day of April, 1925.

Present:

HIS ROYAL HIGHNESS THE PRINCE HENRY.

ARCHBISHOP OF CANTERBURY.      LORD CHANCELLOR.

PRIME MINISTER.

LORD EUSTACE PERCY.      SIR JOHN GILMOUR, BT.

MR. EDWARD WOOD.      SIR WILLIAM MITCHELL-THOMSON, BT.

Recites Letters  
Patent of 20th  
September  
1916.

WHEREAS by certain Letters Patent passed under the Great Seal of the United Kingdom of Great Britain and Ireland bearing date at Westminster the twentieth day of September, 1916, His Majesty the King did constitute the Office of Governor and Commander-in-Chief in and over the Gold Coast Colony, and did amongst other things provide for the establishment of a Legislative Council for the said Colony, and did further reserve to Himself, His heirs and successors, His and their undoubted right, with the advice of His or their Privy Council, from time to time to make all such Laws or Ordinances as might appear to Him or them necessary for the peace, order, and good government of the Colony:

<sup>1</sup> The principal order was the Gold Coast Colony (Legislative Council) Order in Council, 1925. It was amended by the Gold Coast Colony (Legislative Council) Order in Council, 1927, and by the Gold Coast Colony (Legislative Council) Amendment Orders in Council of 1933, 1934, and 1939.

And whereas His Majesty was pleased by His Commission, dated the seventeenth day of March, 1925, to nominate and appoint His Royal Highness The Prince Henry, K.G., G.C.V.O., His Grace the Lord Archbishop of Canterbury, G.C.V.O., the Lord High Chancellor of Great Britain, and the Prime Minister and First Lord of the Treasury, or any two of them, in His Majesty's absence from the United Kingdom, to summon and hold on His Majesty's behalf His Privy Council, and to signify thereat His Majesty's approval of any matter or thing to which His Majesty's approval in Council is required:

And whereas His Royal Highness The Prince Henry, His Grace the Lord Archbishop of Canterbury, the Lord High Chancellor of Great Britain, and the Prime Minister and First Lord of the Treasury, being authorized thereto by His Majesty's said Commission, have this day, by and with the advice of His Majesty's Privy Council, on His Majesty's behalf, been pleased to direct that Letters Patent be passed under the Great Seal of the United Kingdom of Great Britain and Ireland for the purpose of providing for the government of the Gold Coast Colony, as in the said Letters Patent more fully appears, and have this day approved the draft of the said Letters Patent:

Recites Letters Patent approved in draft.

NOW, THEREFORE, His Royal Highness, the Prince Henry, His Grace the Lord Archbishop of Canterbury, the Lord High Chancellor of Great Britain, and the Prime Minister and First Lord of the Treasury, by virtue and in exercise of all the powers enabling His Majesty in that behalf, and being authorized thereto by His Majesty's said Commission, are pleased, by and with the advice of His Majesty's Privy Council, on His Majesty's behalf, to order, and it is hereby ordered, as follows:

I. This Order may be cited as 'The Gold Coast Colony (Legislative Council) Order in Council, 1925'. Title of Order.

Definition of terms.

II. In this Order, unless the context otherwise requires:

'Colony' means the Gold Coast Colony;

'Governor' means the Governor and Commander-in-Chief for the time being of the Gold Coast Colony, and includes every person for the time being administering the Government of the said Colony;

'His Majesty' includes His Majesty's heirs and successors;

'Secretary of State' means one of His Majesty's Principal Secretaries of State;

'The Council' means the Legislative Council established by or under the provisions of the last herein before recited Letters Patent, which Council shall be known as 'the Legislative Council of the Gold Coast Colony';

Words importing the masculine gender shall include females.

Constitution of Legislative Council.

III. The Council shall consist of the Governor, as President, together with fifteen Official Members and fourteen Unofficial Members.

Official Members.

IV. The Official Members of the Council shall be the following persons:

(1) The *Ex officio* members for the time being of the Executive Council of the Colony other than the Chief Commissioner of Ashanti and the Chief Commissioner of the Northern Territories of the Gold Coast. (*Substituted by Order in Council of 1934.*)

(2) The Officers for the time being lawfully discharging the functions of the respective offices of:

- (a) Comptroller of Customs;
- (b) Director of Public Works;
- (c) General Manager of the Railway;
- (d) Commissioner of the Eastern Province;
- (e) Commissioner of the Central Province;
- (f) Commissioner of the Western Province;
- (g) Director of Agriculture; (*substituted by Order in Council of 1933.*)



(h) Director of Education; and

(3) Such other persons holding public office under the Crown in the Colony and not exceeding two in number at any one time as the Governor may from time to time nominate and appoint by an Instrument under the Public Seal of the Colony subject to disallowance by His Majesty signified through a Secretary of State. (*Amended by Order in Council of 1939.*)

The persons referred to under heads (1) and (2) of this clause shall be styled 'Ex Officio Members' of the Council, and those referred to under Head (3) of this clause shall be styled 'Nominated Official Members' of the Council.

V. The Governor shall without delay report to His Majesty, through a Secretary of State, every appointment of any person as a Nominated Official Member of the Council. Every such person shall hold his place on the Council during His Majesty's pleasure. (*Amended by Order in Council of 1939.*)

VI. Every Nominated Official Member of the Council shall vacate his seat at the end of four years from the date of the Instrument by which or in pursuance of which he is appointed or at such earlier date as may be provided by that Instrument, but may be reappointed by the Governor by an Instrument under the Public Seal of the Colony for a further period or periods, each period not exceeding four years, subject to disallowance by His Majesty signified through a Secretary of State. (*Amended by Order in Council of 1939.*)

Provided that if any such Member is provisionally appointed, as hereinafter provided, to fill a vacant seat in the Council, and his provisional appointment is immediately followed by his definitive appointment, the aforesaid period of four years, or such less period as may be provided by Instrument as aforesaid, shall be reckoned from the date of the Instrument provisionally appointing him.

Ex officio  
Members.

Nominated  
Official  
Members.

Appointments  
to be reported  
immediately.

Term of Mem-  
bership of  
Nominated  
Official  
Members.

Provided further that if any Nominated Official Member of the Council ceases to hold public office under the Crown in the Colony, his seat in the Council shall thereupon become vacant.

Provisional  
appointment of  
Nominated  
Official  
Members.

VII. (1) Whenever any Nominated Official Member shall, by writing under his hand, resign his seat in the Council, or shall die, or be suspended from the exercise of his functions as a Member of the Council, or be declared by the Governor, by an Instrument under the Public Seal of the Colony, to be incapable of exercising his functions as a Member of the Council, or be temporarily absent from the Colony, or shall be acting in an office the holder of which is an *ex officio* Member of the Council, or whenever the seat of any such Members shall become vacant, the Governor may, by an Instrument under the Public Seal, provisionally appoint some person to be temporarily an Official Member of the Council in the place of the Member so resigning or dying, or being suspended or declared incapable, or being absent or sitting as an *ex officio* Member.

(2) Every person so provisionally appointed shall be to all intents and purposes a Member of the Council until his appointment shall be disallowed, or revoked, or superseded by the definitive appointment of a Nominated Official Member of the Council, or until the person in whose place he has been appointed shall be relieved from suspension, or declared by the Governor by an Instrument under the Public Seal of the Colony to be capable of exercising the functions of a Member of the Council, or shall return to the Colony, or shall cease to be an *ex officio* Member, as the case may be.

Such  
provisional  
appointments  
to be reported  
immediately.

(3) The Governor shall, without delay, report to His Majesty, through a Secretary of State, every provisional appointment of any person as a Nominated Official Member of the Council. Every such person shall hold his place in the Council during His Majesty's pleasure, and the Governor may by an

Instrument under the Public Seal revoke any such appointment. (*Amended by Order in Council of 1939.*)

VIII. The Unofficial Members of the Council shall consist of the following: Unofficial Members.

(1) Six Provincial Members; namely, three for the Eastern Province, two for the Central Province, and one for the Western Province; Provincial Members.

(2) Three Municipal Members; namely, one each for the towns of Accra, Cape Coast, and Seccondee, respectively; and Municipal Members.

(3) Five European Unofficial Members; namely:

(a) One representative of the firms which for the time being are members of a recognized Chamber of Commerce in the Colony; such representative to be styled 'the Mercantile Member'; Mercantile Member.

(b) A representative of the mining industry in the Colony; such representative to be styled 'the Mining Member'; and Mining Member.

(c) Three European Unofficial Members to be nominated and appointed by the Governor by an Instrument under the Public Seal of the Colony subject to disallowance by His Majesty signified through a Secretary of State. (*Amended by Order in Council of 1939.*) Nominated Unofficial Members.

IX. Whenever upon any special occasion the Governor wishes to obtain the advice of any person touching any matters about to be brought before the Council, he may by an Instrument under the Public Seal of the Colony appoint any such person to be, for such occasion, an Extraordinary Member of the Council. Extraordinary Members.

X. No woman shall be disqualified by sex or marriage from exercising the political franchise under this Order, or from being elected, nominated, or appointed, to serve as a Member of the Council. Female sex not to constitute any disqualification for purposes of Order.

XI. The Members of the Council shall take precedence amongst themselves as His Majesty may Precedence of Members.

## APPENDIX 1

especially assign, and in default thereof, as follows:

(1) First, the Official Members in the following order:

- (a) The Members of the Executive Council, according to their seniority therein;
- (b) The officers named under Head (2) of Clause IV of this Order according to the order in which they are there named; provided that substantive holders of the office of Provincial Commissioner shall take precedence of officers acting in that capacity, and amongst themselves shall rank according to the date of their appointment as Provincial Commissioners; and
- (c) The officers referred to under Head (3) of Clause IV of this Order, who shall rank among themselves according to the order of precedence for the time being assigned to them by His Majesty on the official precedence list for the Colony.

(2) Secondly, the Unofficial Members of the Council, according to the length of time during which they have been continuously members of the Council; Members elected, nominated, or appointed at the same time taking precedence amongst themselves according to the alphabetical order of their names. Provided nevertheless that any such Member re-elected, re-nominated, or re-appointed immediately on the termination of his term of office shall take precedence according to the date from which he has been continuously a Member of the Council.

XII. No Member of the Council shall sit or vote therein until he shall have taken and subscribed the oath of allegiance in accordance with the provisions of the Oaths Ordinance of the Colony or has made the appropriate affirmation in lieu thereof as provided in the said Ordinance.

XIII. (1) Whenever any Nominated Unofficial Member of the Council shall die or his seat in the Council shall become vacant, or whenever he shall, with the permission of the Governor, by writing under his hand addressed to the Governor, resign his seat in the Council, or shall be suspended from the exercise of his functions as a Member of the Council, or shall be declared by the Governor by an Instrument under the Public Seal of the Colony to be incapable of exercising his functions as such Member, or shall be temporarily absent from the Colony, the Governor may by an Instrument under the said Seal appoint some other person resident within the Colony to be provisionally a Member of the Council in the place of the Member so dying, resigning or being suspended, or declared incapable, or absent.

Provisional  
appointment of  
Nominated  
Unofficial  
Members.

(2) Every such provisional appointment may be disallowed by His Majesty through a Secretary of State, or may be revoked by the Governor by any such instrument as aforesaid.

(3) Every person so provisionally appointed shall be to all intents and purposes a Nominated Unofficial Member of the Council until his appointment shall be disallowed or revoked, or superseded by the definitive appointment in his place of a Nominated or Elected Unofficial Member of the Council, or until the person in whose place he has been appointed shall be relieved from suspension or declared by the Governor by an Instrument under the said Seal to be capable of exercising the functions of a Member of the Council, or shall have returned to the Colony.

XIV. The Governor shall, without delay, report to His Majesty through a Secretary of State, every appointment whether definitive or provisional of any person as a Nominated Unofficial Member of the Council. Every such person shall hold his place in the Council during His Majesty's pleasure. (*Amended by Order in Council of 1939.*)

Appointment  
of Nominated  
Unofficial  
Members to  
be reported  
immediately.

Suspension of  
Official or  
Nominated  
Unofficial  
Members.

XV. The Governor may by an Instrument under the Public Seal of the Colony suspend any Official Member or any Nominated Unofficial Member of the Council from the exercise of his functions as a Member of the Council. Every such suspension shall forthwith be reported by the Governor to a Secretary of State, and shall remain in force unless and until it shall either be removed by the Governor by an Instrument under the said Seal, or disallowed by His Majesty through a Secretary of State.

Establishment  
of Provincial  
Councils.

XVI. (1) There shall be established in each Province of the Colony a Council which shall be called 'The Provincial Council', and which shall consist of the Paramount Chiefs whose headquarters are situated within the Province. Provided that for the purposes of this Order those Chiefs only shall be deemed to be Paramount Chiefs who, in the opinion of the Governor, are chiefs not subordinate in their ordinary jurisdiction to any other Chief, and whom the Governor shall from time to time by an instrument under his hand declare to be recognized Paramount Chiefs for the purposes of this Order. (*Amended by Order in Council of 1939.*)

(2) The Governor shall have power to vary, alter, amend, or revoke any such instrument.

(3) The validity of the contents or provisions of any such instrument, variation, alteration, amendment, or revocation, shall not be liable to be impugned in any Court of Law or otherwise. Provided that any Chief who has not in manner as aforesaid been declared to be a recognized Paramount Chief and who claims to be so declared may present his case for recognition to the proper Provincial Council for consideration; and the Provincial Council shall in due course submit its recommendations in the matter to the Provincial Commissioner for the information of the Governor. (*Amended by Order in Council of 1939.*)

(4) (*Revoked by Order in Council of 1939.*)

(5) (a) A Paramount Chief who is unable to attend any particular session of the Provincial Council may send as his accredited representative a person selected from among the following: Ohene; Manche; Fia; Asafohenega; Asafoiatsewa; Mankrado; Mankralo; Tufuhene; Awadada; Chief Linguist.

(b) Any such representative shall for the purposes of such session enjoy the same powers and be charged with the like duties and obligations as a member of the Provincial Council in like manner as if he were the Paramount Chief whose representative he is. (*Amended by Order in Council of 1939.*)

(6) (a) A Paramount Chief who has been deposed under the provisions of any law which may for the time being be in force in the Colony or who has resigned from such position shall, as from the date of his deposition or resignation, as the case may be, cease to be a member of the Provincial Council and his seat shall thereupon become vacant.

(b) A Paramount Chief who has been suspended from such position under the provisions of any law which may for the time being be in force in the Colony shall, during the period of his suspension, not sit or vote in or take any part whatsoever in the proceedings of the Provincial Council. (*Paragraph substituted by Order in Council of 1933, amended by Order in Council of 1939.*)

(7) In the case of a vacancy of the Stool of a Paramount Chief entitled to be a member of a Provincial Council, the rights of the Paramount Chief of such Stool to attend the Provincial Council and to vote for the election of a representative to serve as a Provincial Member of the Council shall be in abeyance until the election and installation of a Paramount Chief to fill the vacancy is published in the Gold Coast Gazette under section 26 of the Native Administration (Colony) Ordinance, or any enactment substituted therefor. (*Paragraph substituted by* Cap. 76. *Order in Council of 1939.*)

Functions of  
Provincial  
Councils.

XVII. (1) Subject to the provisions of this Order, each Provincial Council shall elect, in accordance with the provisions of this Order, a representative or representatives to serve as Provincial Member or Members of the Council for the Province in which the Provincial Council is established.

(2) Provincial Councils may also discharge such other functions as may from time to time be assigned to them by Ordinance. (*Clause substituted by Order in Council of 1939.*)

Election of  
Provincial  
Members.

XVIII. (1) Each Member of the Provincial Council shall have one vote for every unit of ten thousand inhabitants (or part of such unit, not being less than five thousand inhabitants) in his state; the population being deemed for the purposes of this clause to be that recorded at the most recent official published census:

Provided that, in the case of a state with a population of less than five thousand inhabitants, the Paramount Chief shall have one vote.

(2) For the purpose of determining the eligibility of a person for election by the Provincial Council of the Eastern Province to serve as a Provincial Member of the Council the said Province shall be deemed to be divided into three sections, namely:

- (a) The Ga-Adangme Section, comprising the states of Ada, Ga, Yilo Krobo, Many Krobo, Osudoku, Prampram and Shai;
- (b) The Ewe Section, comprising the states of Awuna and Peki;
- (c) The Akan Section, comprising the states of Akim Abuakwa, Akwapim, Akwamu, Kwahu and New Juaben,

and one member shall be elected to represent each section.

(3) No person shall be eligible for election as a representative of a Provincial Council to serve as a Provincial Member of Council or, having been elected, shall sit or vote as such in the Council unless:



- (i) he is a native of the Gold Coast; and
  - (ii) in the case of the Central Province and the Western Province, he is either a Paramount Chief, or owes allegiance to the Stool of a Paramount Chief of the Province; and
  - (iii) in the case of the Eastern Province, he is either a Paramount Chief or owes allegiance to the Stool of a Paramount Chief of the section of the Province which the person elected is to represent; and
  - (iv) he is certified in writing by the Provincial Commissioner to be able to read and speak the English language sufficiently to enable him to take an active and intelligent part in the proceedings of the Council.
- (4) Immediately after the election of a representative, the President of the Provincial Council shall report to the Provincial Commissioner the name of the representative elected.

The Provincial Commissioner shall communicate the report to the Governor; and such representative shall become a Member of the Council as from the date of his election.

(5) Should the Provincial Council be unable or fail to elect a qualified representative or qualified representatives, as the case may be, then and in any such case the Governor may fill the vacancy or vacancies by nominating the necessary number of persons, duly qualified for election, to serve as Provincial Members.

(6) Where the result of an election is that there is an equality of votes between any candidates and the addition of a vote would entitle any of those candidates to be elected, one re-vote shall be taken in respect of the vacancy or vacancies. If the re-vote has a like result, the Governor may fill the vacancy or vacancies by nominating from the candidates receiving an equal number of votes on the re-vote a

person or persons, duly qualified for election, to serve as Provincial Members.

In this paragraph, the expression 'vacancy or vacancies' shall be construed as excluding any vacancy filled by a candidate receiving more votes than the candidates receiving an equal number of votes.

(7) In this clause:

'Allegiance' means the duty which according to native customary law a person owes to the Stool to which he is subject;

'Native of the Gold Coast' means a person whose parents are or were members of a tribe or tribes indigenous to the Colony.

'State' means *Oman, Ma, Man, Dua* or *Duo*, being one of the territorial areas of the Colony under the administration of a Paramount Chief. (*Clause substituted by Order in Council of 1939.*)

Effect of deposition, resignation, or suspension, of a Provincial Member from the position of Head Chief.

XIX. (1) A Provincial Member of the Council who, having at the time of his election been a Paramount Chief or Chief, has been deposed under the provisions of any law which may for the time being be in force in the Colony or has resigned from the position of Paramount Chief or Chief shall, as from the date of his deposition or resignation, as the case may be, cease to be a member of the Council, and his seat shall thereupon become vacant.

(2) A Provincial Member of the Council who, having at the time of his election been a Paramount Chief or Chief, has been suspended from the position of Paramount Chief or Chief under the provisions of any law which may for the time being be in force in the Colony shall during the period of his suspension, not sit or vote in or take any part whatsoever in the proceedings of the Council. (*Clause substituted by Order in Council of 1933, amended by Order in Council of 1939.*)

Municipal Members.

XX. (1) The towns of Accra, Cape Coast and Secondee, shall each be represented by one Municipal Member in the Council.

(2) In the case of each of the aforementioned

towns, the representative shall be elected by the electorate of the town; the electorate for this purpose coinciding with the electorate for the time being for the purpose of the election of a member of the Town Council. Provided always that if only one person is nominated as a candidate for election, such person shall be deemed to be elected.

(3) In the case of the election of a Municipal Member, the Returning Officer shall report to the Governor the name of the representative elected; and such representative shall become a Member of the Council as from the date of his election. (*Clause substituted by Order in Council of 1927.*)

XXI. (1) For the purposes of the election of the Mercantile Member of the Council, those bodies only shall be deemed to be recognized Chambers of Commerce which the Governor shall from time to time by an instrument under his hand, declare to be recognized Chambers of Commerce for the said purposes.

Election of the  
Mercantile  
Member.

(2) The Governor shall have power to vary, alter, amend, or revoke, any such instrument.

(3) The validity of the contents or provisions of any such instrument, variation, alteration, amendment, or revocation, shall not be liable to be impugned in any Court of Law or otherwise.

(4) Whenever an occasion occurs for the election of the Mercantile Member of the Council, every firm which is a member of a recognized Chamber of Commerce may, subject as in sub-clause (6) of this clause provided, nominate one of its officers (who shall be a European) to be a member of a Committee which shall be styled 'The Mercantile Electoral Committee', and which is hereinafter in this clause referred to as 'the Committee'. Provided that in the case of a firm constituted by only one person, such person shall be deemed to be nominated to be, and shall be, a member of the Committee.

(5) The Committee shall be constituted by the per-

## APPENDIX I

sons who have been nominated, or who are deemed to have been nominated, to be members of the Committee as aforesaid. Provided that the President, or officiating President, of 'The Accra and Eastern Provinces (Gold Coast) Chamber of Commerce' shall be *ex officio* a member of and President of the Committee; and that whether or not he has been nominated, or is deemed to have been nominated, as aforesaid to be a member of the Committee.

(6) No firm shall be entitled to nominate more than one representative to be a member of the Committee; and, if the President, or officiating President, of the Accra and Eastern Provinces (Gold Coast) Chamber of Commerce has not been nominated under the provisions of sub-clause (4) of this clause, then and in such case the firm of which he is an officer shall not be entitled to nominate a representative to be a member of the Committee.

(7) The duty and function of the Committee shall be to elect a representative of the recognized Chambers of Commerce of the Colony to be and serve as the Mercantile Member of the Council.

(8) For the purposes of the said election the Committee shall, subject always to the provisions of any regulations to be made under Clause XLVIII of this Order which shall for the time being be in force in that regard, regulate its proceedings in such manner as to it shall seem convenient and proper.

(9) On the election being made, the President of the Committee shall report the name of the representative elected to the Governor; and such representative shall become a member of the Council as from the date of his election.

Election of the  
Mining  
Member.

XXII. (1) Subject as hereinafter in this Clause provided, the Gold Coast Chamber of Mines shall have power to elect one of its members (being a European) to be the representative of the mining industry in the Colony to serve as the Mining Member of the Council; and for the purposes of such

election the said Chamber may regulate its proceedings in such manner as to it shall seem convenient and proper.

(2) On the election being made, the Secretary of the said Chamber shall report the name of the representative elected to the Governor; and such representative shall become a member of the Council as from the date of his election.

(3) Notwithstanding the provisions hereinabove in this Clause declared, the operation of the said provisions shall be suspended until such time as the Gold Coast Chamber of Mines shall make an application to the Governor to put the said provisions into operation. On such application being made, and on the Governor approving the same, the said provisions shall thereupon come into operation with effect from the time when the next ensuing vacancy shall occur in the office of Mining Member of the Council. And until then the Mining Member of the Council shall be nominated and appointed by the Governor by an Instrument under the Public Seal of the Colony subject to disallowance by His Majesty signified through a Secretary of State. (*Amended by Order in Council of 1939.*)

XXIII. No person shall be eligible for election as a Municipal Member of the Council, or having been elected, shall sit or vote as such in the Council, who:

Disqualification of Elected Municipal Members.

(1) is not qualified as an elector under the Town Councils Ordinance; (*amended by Order in Council of 1927*) Cap. 66.

(2) is not able competently to speak, read, and write the English language;

(3) is not possessed of property to the value of two hundred and fifty pounds sterling;

(4) has not been ordinarily resident in the town for at least five years prior to the date of election;

(5) is not of the age of at least twenty-five years;

(6) has been sentenced by any competent British Court (whether of the Colony or not) for any crime

punishable by death, or by imprisonment with hard labour for a period exceeding one year, and has not received a free pardon from His Majesty or in His Majesty's name for the crime for which he has been sentenced;

(7) has been disqualified from practising as a legal or medical practitioner by the order of any competent authority;

(8) is of unsound mind; or

(9) is in receipt of salary payable out of the public revenue of the Colony. (*Clause amended by Order in Council of 1933.*)

Disqualifica-  
tion of Euro-  
pean Elected  
Members.

XXIV. No person shall be eligible for election as the Mercantile Member or as the Mining Member of the Council, or having been elected, shall sit or vote as such in the Council, who:

(1) is not a European;

(2) is not a British subject;

(3) has not been resident in the Colony for an aggregate period of eighteen months out of the three years preceding the nomination or election;

(4) is not of the age of at least twenty-five years;

(5) has been sentenced by any competent British Court (whether of the Colony or not) for any crime punishable by death, or by imprisonment for a period exceeding one year, and has not received a free pardon from His Majesty or in His Majesty's name for the crime for which he has been sentenced;

(6) has been disqualified from practising as a legal or medical practitioner by the order of any competent authority; or

(7) is an undischarged bankrupt. (*Clause amended by Orders in Council of 1933 and 1939.*)

Questions as to  
qualification of  
Elected Mem-  
bers or vacating  
of seats to be  
determined by  
Supreme  
Court.

XXV. (1) All questions which may arise as to the right of any person to be or remain an Elected Member of the Council shall be referred to and decided by a Divisional Court of the Supreme Court on a petition presented by the Attorney General or by any

elector and in accordance with the procedure prescribed by Clause XXXIV for the trial of an election petition. The decision of the Divisional Court thereon shall be final. (*Substituted by Order in Council of 1933.*)

(2) Where the question to be decided concerns the right of any person to remain a member of the Council, the Court shall certify its decision in writing to the Governor; and where the Court has decided that any person is not entitled to remain a member of the Council, such person shall thereupon cease to be a Member.

XXVI. (1) The term of membership of an Unofficial Member of the Council shall be not exceeding four years; and every such Member shall vacate his seat at the expiration of four years from the date of his election or from the date of the Instrument by which or in pursuance of which he is appointed, or at such earlier date as may be provided by that Instrument, as the case may be, unless his seat shall previously have been vacated under the provisions of this Order. He shall, however, be eligible for any number of further terms of membership of similar duration. (*Amended by Order in Council of 1933.*)

Term of membership of the Council of Unofficial Members to be not exceeding four years.

Provided that if any Nominated Unofficial Member is provisionally appointed, as hereinbefore provided, to fill a vacant seat in the Council, and his provisional appointment is immediately followed by his definitive appointment, the aforesaid period of four years, or such less period as may be provided by Instrument as aforesaid, shall be reckoned from the date of the Instrument provisionally appointing him.

(2) and (3) (*Revoked by Order in Council of 1933.*)

XXVII. If any Unofficial Member of the Council shall at any time, by writing under his hand addressed to the Governor, resign his seat in the Council and the Governor shall accept his resignation, or shall become subject to any of the disqualifications specified in this Order as applying to him, or shall

Seat of Member; how vacated.

take any oath or make any declaration or acknowledgment of allegiance to any Foreign State or Power, or shall become a citizen or subject of any Foreign State or Power, or shall be adjudicated a bankrupt, or shall be sentenced in any part of His Majesty's Dominions for any crime punishable by death or by imprisonment for a period exceeding one year, or shall have any direct or indirect pecuniary interest in any contract with the Government of the Colony for or on account of the public service otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons, or shall accept any office of emolument under the Crown or under the Government of the Colony, his seat in the Council shall thereupon become vacant. (*Amended by Order in Council of 1939.*)

Absence of Unofficial Member.

XXVIII. An Unofficial Member of the Council may, with the permission of the Governor, be absent from the sittings of the Council or from the Colony for a period or periods not exceeding twelve calendar months at any one time, but, if any Unofficial Member shall for any reason be so absent for more than twelve consecutive calendar months, or shall be absent, except on the ground of illness, from the sittings of the Council for a period of two calendar months during any session of the Council, without the leave of the Governor, his seat in the Council shall thereupon become vacant.

Directions for election to supply vacancy.

XXIX. Whenever the seat of an Elected Member has become vacant, the Governor shall, as soon as possible, issue directions for the election of a new Member in the place of the Member whose seat has become vacant.

Penalty for disqualified persons sitting or voting as Members of Council.

XXX. Any person who shall sit or vote as a Member of the Council while under any disqualification specified in this Order as applying to him shall for every day on which he shall so sit or vote in the Council, and every person who shall sit or vote in



the Council after his seat shall have become vacant, shall for every day on which he shall sit or vote after his seat shall have become vacant, be liable to a penalty not exceeding Fifty Pounds, to be recovered at the suit of the Attorney-General in a Divisional Court of the Supreme Court. The decision of the Divisional Court shall be final and no appeal shall be therefrom to any Court. (*Amended by Orders in Council of 1933 and 1939.*)

XXXI. Every election of a Municipal Member of the Council shall be held in accordance with the procedure prescribed by the regulations to be made by the Governor or by any Ordinance or Ordinances to be enacted by the Governor with the advice and consent of the Council, as hereinafter provided. In the case of a poll at an election of a Municipal Member of the Council the votes shall be given by ballot in accordance with the procedure prescribed as aforesaid.

Procedure at election of Municipal Members.

XXXII. A petition complaining of an undue return or undue election of a Member of the Council, hereinafter called an election petition, may within one month from the date of the publication of the result of the election be presented to a Divisional Court of the Supreme Court in its civil jurisdiction by any one or more of the following persons, that is to say:

Presentation of election petition.

(1) Some person who voted or had a right to vote at the election to which the petition relates; or

(2) Some person who claims to have had a right to be returned or elected at such election; or

(3) Some person who alleges himself to have been a candidate at such election. (*Clause amended by Order in Council of 1933.*)

XXXIII. (1) Every election petition shall be tried by a Divisional Court of the Supreme Court, in open court.

Trial of election petition.

(2) At the conclusion of the trial, the Court shall

determine whether the Member of the Council whose return or election is complained of, or any other and what person, was duly returned or elected, or whether the election was void, and shall certify such determination to the Governor; and upon such certificate being given, such determination shall be final and no appeal shall lie therefrom to any Court of the Colony; and the election shall be confirmed, or a new election shall be held, as the case may require, in accordance with such certificate.

Procedure at trial of election petition.

XXXIV. Subject to the provisions of this Order, the Chief Justice of the Supreme Court may from time to time make, amend or revoke rules for regulating the practice and procedure to be observed on election petitions, and subject to such rules the procedure at the trials of an election petition shall, as near as circumstances will admit, be the same, and the Court shall have the same powers, jurisdiction, and authority, as if it were trying a civil action; and witnesses shall be subpoenaed and sworn in the same manner, as near as circumstances will admit, as in the trial of a civil action in a Divisional Court of the Supreme Court, and shall be subject to the same penalties for perjury.

Corrupt practice.

XXXV. (1) No election shall be valid if any corrupt practice is committed in connection therewith by the candidate elected.

(2) The expression 'corrupt practice' as used in this Order means any of the following offences, namely, treating, undue influence, bribery, and personation, as hereinafter set forth.

(3) A corrupt practice shall be deemed to be committed by a candidate if it is committed with his knowledge and consent, or by a person who is acting under the general or special authority of such candidate with reference to the election.

Non-compliance with rules.

XXXVI. No election shall be invalid by reason of a non-compliance with the regulations to be made by the Governor or by any Ordinance or Ordinances

to be enacted by the Governor with the advice and consent of the Council, as hereinafter provided, if it appears that the election was conducted in accordance with the principles laid down in such regulations or that such non-compliance did not affect the result of the election.

XXXVII. (1) Every person who:

(a) forges or fraudulently defaces or fraudulently destroys any nomination paper, or delivers to the returning officer any nomination paper knowing the same to be forged; or

(b) forges or counterfeits or fraudulently defaces or fraudulently destroys any ballot paper or the official mark on any ballot paper; or

(c) without due authority supplies any ballot paper to any person; or

(d) fraudulently puts into any ballot box any paper other than the ballot paper which he is authorized by law to put in; or

(e) fraudulently takes out of the polling station any ballot paper; or

(f) without due authority destroys, takes, opens, or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the election;

shall be guilty of an offence, and be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment with or without hard labour for any term not exceeding six months.

(2) Any attempt to commit an offence specified in this clause shall be punishable in the manner in which the offence itself is punishable.

(3) In any prosecution for an offence in relation to the nomination papers, ballot boxes, ballot papers, marking instruments and other things in use at an election, the property in such papers, boxes, instruments and things may be stated to be in the returning officer at such election, as well as the counterfoils.

Offences in  
respect of  
nomination  
papers, etc.

## APPENDIX 1

XXXVIII. (1) Every officer, clerk, and agent in attendance at a polling station shall maintain, and aid in maintaining, the secrecy of the voting in such station and shall not communicate, except for some purpose authorized by law, before the poll is closed, to any person any information as to the name or number on the register of voters of any elector who has or has not applied for a ballot paper or voted at that station, or as to the official mark.

(2) No such officer, clerk, or agent, and no person whosoever shall interfere with or attempt to interfere with a voter when marking his vote, or otherwise attempt to obtain in the polling station information as to the candidate for whom any voter in such station is about to vote or has voted, or communicate at any time to any person any information obtained in a polling station as to the candidate for whom any voter in such station is about to vote or has voted, or as to the number on the back of the ballot paper given to any voter at such station.

(3) Every officer, clerk and agent in attendance at the counting of the votes shall maintain and aid in maintaining the secrecy of the voting, and shall not attempt to ascertain at such counting the number on the back of any ballot paper, or communicate any information obtained at such counting as to the candidate for whom any vote is given in any particular ballot paper.

(4) No person shall directly, or indirectly, induce any voter to display his ballot paper after he has marked it, so as to make known to any person the name of the candidate for whom or against whose name he has so marked his vote.

(5) Every person who acts in contravention of the provisions of this clause shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment with or without hard labour, for any term not exceeding six months.

Provided always that the provisions of this clause

shall not extend or be construed to extend to any procedure for recording the vote of any voter who is incapacitated by blindness or other physical cause or who is unable to read, which may be prescribed by the regulations to be made by the Governor or by any Ordinance or Ordinances to be enacted by the Governor with the advice and consent of the Council as hereinafter provided.

XXXIX. Every person who is guilty of bribery, treating, or undue influence, shall be liable on summary conviction to a fine not exceeding one hundred pounds or to imprisonment, with or without hard labour, for any term not exceeding one year.

Punishment of bribery, treating, and undue influence.

XL. Every person who is guilty of personation, or of aiding, abetting, counselling or procuring, the commission of the offence of personation, shall be liable on conviction to a fine not exceeding fifty pounds or to imprisonment, with or without hard labour, for any term not exceeding six months.

Punishment of personation.

XLI. Every person who is convicted of bribery, treating, undue influence, or personation, or of aiding, abetting, counselling, or procuring, the commission of the offence of personation, shall (in addition to any other punishment) be incapable, during a period of seven years from the date of his conviction:

Incapacity entailed by conviction for bribery, etc.

(1) of voting at any election of a Member of the Council; and

(2) of being elected as a Member of the Council, or, if elected before his conviction, of retaining his seat as such Member.

XLII. The following persons shall be deemed guilty of bribery within the meaning of this Order:

Persons to be deemed guilty of bribery.

(1) every person who directly or indirectly, by himself or by any other person on his behalf gives, lends, or agrees to give or lend, or offers, promises, or promises to procure or to endeavour to procure, any money or valuable consideration to or for any elector, or to or for any person on behalf of

## APPENDIX I

any elector, or to or for any other person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such elector having voted or refrained from voting, at any election;

(2) Every person who directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place, or employment to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid on account of any elector having voted or refrained from voting, at any election;

(3) every person who directly or indirectly, by himself or by any other person on his behalf, makes any such gift, loan, offer, promise, procurement, or agreement, as aforesaid to or for any person, in order to induce such person to procure, or to endeavour to procure, the return of any person as an elected Member of the Council or the vote of any elector at any election;

(4) every person who, upon or in consequence of any such gift, loan, offer, promise, procurement, or agreement, procures, or engages, promises, or endeavours to procure, the return of any person as an elected Member of the Council or the vote of any elector at any election;

(5) every person who advances or pays, or causes to be paid, any money to or for the use of any other person, with the intent that such money, or any part thereof, shall be expended in bribery at any election, or who knowingly pays, or causes to be paid, any money to any person, in discharge or repayment of any money wholly or in part expended in bribery at any election;

(6) every elector, who before or during any

election, directly or indirectly, by himself or by any other person on his behalf, receives, agrees, or contracts for any money, gift, loan, or valuable consideration, office, place, or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at any election;

(7) every person who, after any election, directly or indirectly, by himself or by any other person on his behalf, receives any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or refrain from voting, at any election.

Provided always that the provisions of this Clause shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any legal expenses bona fide incurred at or concerning any election.

XLIII. The following persons shall be deemed Persons to be deemed guilty of treating. guilty of treating within the meaning of this Order:

(1) every person who corruptly, by himself or by any other person, either before, during, or after an election, directly or indirectly gives, or provides, or pays, wholly or in part, the expense of giving or providing any food, drink, entertainment, or provision, to or for any person for the purpose of corruptly influencing that person, or any other person, to vote or refrain from voting at such election, or on account of such person or any other person having voted or refrained from voting at such election; and

(2) every elector who corruptly accepts or takes any such food, drink, entertainment, or provision.

XLIV. Every person who directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of any force, violence, or restraint, or inflicts, or threatens to inflict by himself or by any other person, any temporal or spiritual Persons to be deemed guilty of undue influence.

injury, damage, harm, or loss, upon or against any person, in order to induce or compel such person to vote or refrain from voting, or on account of such person having voted or refrained from voting, at any election, or who, by abduction, duress, or any fraudulent contrivance, impedes or prevents the free use of the vote by any elector, or thereby compels, induces or prevails upon any elector either to give or refrain from giving his vote at any election, shall be guilty of undue influence within the meaning of this Order.

Persons to be deemed guilty of personation.

XLV. Every person who at any election applies for a voting paper in the name of another person or tenders a vote in the name of another person, whether that name is the name of a person living or dead or of a fictitious person, or who, having voted once at any election, applies for a voting paper or tenders a vote at the same election, in his own name, shall be guilty of personation within the meaning of this Order.

Punishment of persons guilty of certain illegal practices.

XLVI. Every person who:

(a) votes, or induces or procures any other person to vote, at any election, knowing that he or such other person is prohibited by this Order, or by any law, from voting at such election, or

(b) before or during an election, knowingly publishes any false statement of the withdrawal of a candidate at such election for the purpose of promoting or procuring the election of another candidate,

shall be guilty of an illegal practice, and on summary conviction thereof, shall be liable to a fine not exceeding fifty pounds, and shall be incapable, during a period of five years from the date of his conviction, of voting at any election of a Member of the Council.

Application of penal provisions.

XLVII. The penal provisions contained in the preceding clauses XXXVII-XLVI shall, so far as applicable, apply in the case of any election held under the provisions of this Order.



XLVIII. The Governor shall make such regulations, not inconsistent with this Order, as he may think necessary with respect to the election of Members of the Council, and for the further, better, or more convenient effectuation of the provisions and purposes of this Order; and such regulations shall take effect and have the force of law in the Colony immediately on the publication thereof in the *Gold Coast Gazette*. But any regulations so made may be revoked, altered, or added to, by any Ordinance or Ordinances hereafter to be enacted by the Governor, with the advice and consent of the Council.

Governor to make regulations for further effectuation of provisions and purposes of Order.

XLIX. (1) It shall be lawful for the Governor, with the advice and consent of the Council, to make laws for the peace, order, and good government of the Colony.

Power to make laws.

(2) All such laws shall be styled 'Ordinances' and the enacting words shall be 'enacted by the Governor of the Gold Coast Colony, with the advice and consent of the Legislative Council thereof'.

Style of laws.

L. The Governor, if present, or in the absence of the Governor, such Member of the Council as the Governor shall from time to time appoint, or in default thereof or in the absence of such Member, the Member present who stands first in order of precedence, shall preside at the meetings of the Council.

Governor or Member to be appointed by Governor to preside.

LI. Every Member of the Council may, upon due notice being given, propose any Ordinance or resolution which does not impose any tax or dispose of or charge any part of the public revenue.

Initiation of Ordinances, etc., other than money votes.

LII. No Member of the Council may propose any Ordinance, vote, or resolution, the object or effect of which is to impose any tax or to dispose of or charge any part of the public revenue, unless such Ordinance, vote, or resolution, shall have been proposed by the direction or with the express sanction of the Governor.

Initiation of money votes.

Council may transact business notwithstanding vacancies.

LIII. The Council shall not be disqualified from the transaction of business by reason of any vacancy or vacancies among the Members; but no business, except that of adjournment, shall be transacted unless there shall be present at least ten Members besides the Governor or other presiding Member.

Quorum.

Governor and Council to conform to Royal Instructions.

LIV. Subject to the provisions of this Order, the Governor and the Council shall, in the transaction of the business of the Council, and in the passing of, assenting to, and enrolment of Bills or Ordinances, conform as nearly as may be to the directions contained in any Instructions under His Majesty's Sign Manual and Signet which may herewith or hereafter be addressed to the Governor in that behalf; but no Ordinance enacted by the Governor, with the advice and consent of the Council, shall be invalid by reason that in the enactment thereof any such Instructions were not duly observed.

Sessions of Council.

LV. The Sessions of the Council shall be held at such times and places as the Governor shall from time to time by proclamation appoint. There shall be at least one Session of the Council in every year, and there shall not be an interval of more than twelve months between the last sitting of one Session and the first sitting of the next following Session. The first Session shall be held within six months from the coming into operation of this Order.

Prorogation of Sessions of Council.

LVI. The Governor may at any time prorogue a Session of the Council.

Questions to be decided by a majority.

LVII. All questions proposed for debate in the Council shall be decided by the majority of votes; and the President shall have an original vote in common with the other Members of the Council, and also a casting vote, if upon any question the votes shall be equal.

President to have an original and casting vote.

Orders and Rules to be made for ensuring punctuality of attendance, etc.

LVIII. (1) The Governor may, with the advice of the Council, from time to time make, alter, revoke, or renew, such Standing Orders and Rules as may be necessary to ensure punctuality of attendance of

the Members of the said Council, and to prevent meetings of the said Council from being holden without convenient notice to the several Members thereof, and to maintain order and method in the despatch of business and in the conduct of debates in the said Council, and to secure due deliberation in the passing of Ordinances, and to provide that before the passing of any Ordinance intended to affect the interests of private persons due notice of the provisions thereof is given to all persons concerned therein.

(2) All such Orders and Rules, not being repugnant to any Letters Patent for the time being in force in the Colony, or to any Order of His Majesty in Council, or to any Instructions which the Governor may receive from His Majesty, shall at all times be followed and observed, and shall be binding upon the said Council, unless the same or any of them shall be disallowed by His Majesty.

(3) And until any such Orders and Rules shall be made, and subject to any Orders and Rules to be so made, the Standing Orders and Rules of the Legislative Council of the Colony which were in force immediately prior to the commencement of this Order shall remain in force and apply, so far as the same are applicable thereto, to the Council constituted in accordance with this Order.

LIX. It shall be competent to any Member of the Council to propose any question relating to the Debates. affairs of the Colony, for debate therein, and, if seconded by any other Member, such question shall be debated and disposed of in accordance with the Standing Orders and Rules. Provided always that every Ordinance, vote, resolution, or question, the object or effect of which may be to dispose of or charge any part of the public revenue, shall be proposed by the Governor, unless the proposal of the same shall have been directed or expressly sanctioned by him. (*Amended by Order in Council of 1933.*)

Records.

LX. Minutes shall be kept of all the proceedings of the Council in accordance with the Standing Orders of the Council. The Governor shall transmit to His Majesty through a Secretary of State, as soon as possible after every session, a full and exact copy of the Minutes of all the Sittings thereof. (*Substituted by Order in Council of 1933.*)

Commence-  
ment of Order  
in Council.

LXI. This Order shall be published in the *Gold Coast Gazette*; and shall come into operation on a date to be fixed by the Governor by Proclamation in the said Gazette, and the Governor shall give directions for the publication of this Order at such places and in such manner as he thinks proper for giving due publicity thereto within the Colony.

Power to  
revoke, etc.

LXII. His Majesty may from time revoke, alter, add to, or amend, this Order.

And the Right Honourable Leopold Stennett Amery, one of His Majesty's Principal Secretaries of State, is to give the necessary directions herein accordingly.

M. P. A. HANKEY

## APPENDIX 2

### GOLD COAST COLONY AND ASHANTI (LEGISLATIVE COUNCIL) ORDER IN COUNCIL, 1946

*As amended by the Gold Coast Colony and Ashanti (Legislative Council)  
(Removal of Difficulty) Order, 1946*

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AT THE COURT AT BUCKINGHAM PALACE

The 19th day of February, 1946

Present:

THE KING'S MOST EXCELLENT MAJESTY  
IN COUNCIL

WHEREAS by the Gold Coast Colony (Legislative Council) Orders in Council, 1925 to 1939, provision is made for the constitution and powers of a Legislative Council for the Gold Coast Colony.

AND WHEREAS by the Ashanti Order in Council, 1934, provision is made for the administration of Ashanti and for the making of laws therefor:

AND WHEREAS it is expedient to make provision for the constitution and powers of a Legislative Council for the Gold Coast Colony and for Ashanti:

NOW, THEREFORE, His Majesty, by virtue and in exercise of the powers vested in Him by the British Settlements Acts, 1887 and 1945, and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered, as follows:

## PART I

## PRELIMINARY

## Interpretation.

1. (1) In this Order, unless the context otherwise requires:

'the appointed day' means the day appointed under Section 2 of this Order;

'Ashanti' means the territories from time to time defined as such by Order of His Majesty in Council;

'the Colony' means the Gold Coast Colony as from time to time defined by Order of His Majesty in Council; and for the purposes of this Order references to the Colony shall include that part of Togoland under British Mandate, known as the Southern Section, which is for the time being administered as if it formed part of the Colony;

'the Council' means the Legislative Council constituted under this Order;

'The Eastern Province' means the Eastern Province of the Colony as from time to time defined by or under any law in force in the Gold Coast;

'the Executive Council' means the Executive Council of the Gold Coast;

'the existing Orders' means the Orders in Council mentioned in the Schedule to this Order;

'the Gazette' means the official Gazette of the Gold Coast;

'the Gold Coast' means the Colony, Ashanti and the Northern Territories of the Gold Coast; and for the purposes of this Order references to the Northern Territories shall include that part of Togoland under British Mandate, known as the Northern Section, which is for the time being administered as if it formed part of the Northern Territories;

'the Governor' means the Governor and Commander-in-Chief of the Gold Coast and includes the Officer for the time being administering the Government and, to the extent to which a Deputy for the Governor is authorized to act, that Deputy;

'the Governor in Council' means the Governor acting with the advice of the Executive Council, but not necessarily in accordance with that advice nor necessarily in such Council assembled;

'Meeting' means any sitting or sittings of the Legislative Council commencing when the Council first meets after being summoned at any time and terminating when the Council is adjourned *sine die*, or at the conclusion of a session;

'Native Authority' means a Native Authority constituted under any law for the time being in force in the Gold Coast who or which is not subordinate to any other Native Authority (or, in the case of Ashanti, not subordinate to any Native Authority other than the Ashanti Confederacy Council) and has been appointed and is for the time being recognized by the Governor as a Native Authority;

'Native Court' means a native court constituted under any law for the time being in force in the Gold Coast;

'Nominated Official Member' means a Nominated Member of the Council who at the time of his appointment as such holds an office of emolument under the Crown in the Gold Coast;

'Nominated Unofficial Member' means a Nominated Member of the Council who at the time of his appointment as such does not hold an office of emolument under the Crown in the Gold Coast;

'Prescribed' means prescribed by law or by regulations made under this Order;

'the Public Seal' means the Public Seal of the Gold Coast;

'the Supreme Court' means the Supreme Court of the Gold Coast;

'Session' means the meetings of the Legislative Council commencing when the Council first meets after being constituted under this Order, or after its prorogation or dissolution at any time, and terminating when the Council is prorogued or

is dissolved without having been prorogued;  
 'the Western Province' means the Western Province of the Colony as from time to time defined by or under any law in force in the Gold Coast.

(2) For the purposes of this Order, where reference is made to any public officer by the term designating his office, such reference means the officer for the time being lawfully discharging the functions of that office.

(3) For the purposes of this Order a person shall not be deemed to hold an office of emolument under the Crown in the Gold Coast by reason only that he:

- (a) is a Chief, a Native Authority, or a Member of Native Authority, or of a native court; or
- (b) is in receipt of a pension or other like allowance in respect of service under the Crown;

and if it shall be declared by any law for the time being in force in the Gold Coast that an office shall not be an office of emolument under the Crown in the Gold Coast for all or any of the purposes of this Order, this Order shall have effect accordingly as if such law were enacted therein.

(4) The Interpretation Act, 1889, shall apply to the interpretation of this Order as it applies to the interpretation of an Act of Parliament.

52 and 53  
 Vict. c. 63.

Short title and  
 commencement

2. This Order may be cited as the Gold Coast Colony and Ashanti (Legislative Council) Order in Council, 1946, and shall come into operation on a date to be appointed by the Governor by Proclamation in the Gazette:

Provided that the Governor may, from time to time, by notice in the Gazette, bring into operation any of the provisions of this Order specified in such notice before the date so appointed by Proclamation.

Revocation.

3. (1) The existing Orders and Sections 5 to 17 inclusive of the Ashanti Order in Council, 1934, are hereby revoked.

(2) The continued operation of any law in force



in the Gold Coast immediately before the appointed day shall not be affected by reason only of the revocation of the said Orders.

## PART II

## THE LEGISLATIVE COUNCIL

4. The Legislative Council of the Colony as constituted under the existing Orders immediately before the appointed day shall cease to exist; and there shall be constituted a Legislative Council for the Colony and Ashanti, in accordance with the provisions of this Order. Establishment  
of Legislative  
Council.

5. The Legislative Council shall consist of the President, six *Ex officio* Members, eighteen Elected Members and six Nominated Members. Constitution of  
Legislative  
Council.

6. (1) The Governor, with the approval of a Secretary of State, may, by Instrument under the Public Seal, appoint a person (either by name, or by reference to the office held by him or to the office the functions of which he performs) to be the President of the Legislative Council; and unless and until a President is so appointed, or if at any time there is no subsisting appointment, the Governor shall be the President. President.

(2) Any person so appointed shall hold office during His Majesty's pleasure, and, subject thereto, for the period specified in the Instrument by which he is appointed:

Provided that a person so appointed by name may at any time, by writing under his hand addressed to the Governor, resign the office of President; and any appointment under this section may, with the approval of a Secretary of State, be revoked by the Governor by Instrument under the Public Seal.

7. The *Ex officio* Members shall be:

(a) The Colonial Secretary;

(b) The Chief Commissioner of the Colony;

*Ex officio*  
Members.

- (c) The Chief Commissioner of Ashanti;
- (d) The Chief Commissioner of the Northern Territories;
- (e) The Attorney-General;
- (f) The Financial Secretary.
- Elected Members.** 8. The Elected Members shall be:
- (a) Nine Provincial Members elected for the Eastern and Western Provinces in accordance with Part III of this Order;
- (b) four Ashanti Members elected in accordance with Part IV of this Order;
- (c) five Municipal Members elected in accordance with Part V of this Order.
- Nominated Members.** 9. (1) The Nominated Members shall be appointed by the Governor by Instrument under the Public Seal.
- (2) The Governor shall without delay report to His Majesty, through a Secretary of State, every appointment of any person as a Nominated Member and every person so appointed shall hold his seat on the Council during His Majesty's pleasure, and subject thereto for the period provided for by this Order.
- Extraordinary Members.** 10. Whenever upon any occasion the Governor is of opinion that the Council shall have the assistance of any person touching any matter, he may by instrument under the Public Seal appoint such person to be, for such occasion, an Extraordinary Member of the Council, but no such Extraordinary Member shall have the right to vote in the Council.
- Tenure of Elected Members.** 11. Subject to the provisions of this Order, a person elected as an Elected Member shall vacate his seat at the expiration of four years from the date of his election but, if qualified, shall be eligible for re-election.
- Tenure of Nominated Members.** 12. (1) Subject to the provisions of this Order, a person appointed as a Nominated Member shall vacate his seat at the expiration of four years from the date of his appointment but, if qualified, shall be eligible for reappointment.

(2) If any person is appointed a temporary Member of the Council in accordance with the provisions of Section 17 of this Order and such appointment is immediately followed by his definitive appointment as a Nominated Member, the said period of four years shall be reckoned from the date of his appointment as a temporary Member.

(3) The Governor may, by Instrument under the Public Seal, suspend any Nominated Member from the exercise of his functions as such. Every such suspension shall forthwith be reported by the Governor to His Majesty through a Secretary of State, and shall remain in force, unless and until it shall be removed by the Governor by Instrument under the Public Seal or by His Majesty through a Secretary of State or the person suspended ceases to be a Member of the Council.

13. Subject to the provisions of Section 14 and Parts III, IV and V of this Order, any person who is a British subject or a British protected person or a person treated as if he were a British protected person, who is of the age of twenty-one years or upwards shall be qualified to be an Elected or Nominated Member of the Council, and no other person shall be qualified to be elected or appointed thereto or, having been so elected or appointed, shall sit or vote in the Council.

Qualifications  
for Elected and  
Nominated  
Membership.

14. No person shall be capable of being an Elected or Nominated Member of the Council or, having been elected or appointed thereto shall sit or vote in the Council, who at the time of election or appointment:

Disqualifica-  
tions for  
Elected and  
Nominated  
Membership.

(1) is, by virtue of his own act, under any acknowledgement of allegiance, obedience, or adherence to a foreign power; or

(2) is an undischarged bankrupt, having been declared a bankrupt under any law in force in any part of His Majesty's dominions or in any territory under His Majesty's protection; or

(3) is serving, or has within the immediately preceding ten years completed the serving of a sentence of imprisonment (by whatever name called) of or exceeding six months imposed in any part of His Majesty's dominions or any territory under His Majesty's protection and has not received a free pardon; or

(4) is disqualified from practising as a legal or medical practitioner in any part of His Majesty's dominions or any territory under His Majesty's protection by the order of any competent authority; or

(5) is a party to any subsisting contract with the Government of the Gold Coast in relation to the public service and

(a) in the case of a Provincial, Ashanti or Nominated Member, has not disclosed to the Governor the nature of such contract and his interest therein; or

(b) in the case of a Municipal Member has not published, within one month before the day of election, in the Gazette or in some newspaper circulating in the area for which he is a candidate, a notice setting out the nature of such contract and his interest therein; or

(6) is a lunatic so found under any law for the time being in force in the Gold Coast; or

(7) is disqualified for membership of the Council under any law or regulation for the time being in force in the Gold Coast relating to offences connected with the election of Members, or

(8) in the case of an Elected Member:

(a) holds an office of emolument under the Crown; or

(b) has within five years before the day of election received any relief from public funds, except such special relief as may be declared by any law for the time being in

force in the Gold Coast not to be relief for the purposes of this paragraph.

15. (1) The seat of an Elected Member or of a Nominated Member of the Council shall become vacant: <sup>Vacation of seats.</sup>

- (a) upon his death; or
- (b) if he shall, without the leave of the Governor previously obtained, be absent from the sessions of the Council or from the Gold Coast for a continuous period of more than twelve months or be absent from the sittings of the Council for a period of one calendar month during a session of the Council; or
- (c) if he shall take any oath, or make any declaration or acknowledgement, of allegiance, obedience or adherence to any foreign power or State; or shall do, concur in or adopt any act done with the intention that he shall become a subject or citizen of any foreign power or State; or
- (d) if he shall be declared a bankrupt under any law in force in any part of His Majesty's dominions or in any territory under His Majesty's protection; or
- (e) if in any part of His Majesty's dominions or in any territory under His Majesty's protection he shall be sentenced to death or to imprisonment (by whatever name called) for a term of or exceeding six months; or
- (f) if he shall become disqualified from practising as a legal or medical practitioner in any part of His Majesty's dominions or in any territory under His Majesty's protection by the order of any competent authority; or
- (g) if, without the prior consent of the Governor in Council, he shall become a party to any contract with the Government of the Gold Coast in relation to the public service; or
- (h) if he shall be found a lunatic under any law

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for the time being in force in the Gold Coast;  
or

- (i) if he shall be disqualified for membership of the Council under any law or regulation for the time being in force in the Gold Coast relating to offences connected with the election of Members; or
  - (j) if he shall by writing under his hand directed to the Governor resign his seat in the Council; or
  - (k) if, being an Elected Member, he shall be appointed to any office of emolument under the Crown; or
  - (l) if, being a Nominated Official Member, he shall cease to hold office of emolument under the Crown, or
  - (m) if, being a Nominated Unofficial Member, he shall be appointed permanently to any office of emolument under the Crown; or
  - (n) if he shall otherwise cease to possess qualification for election or appointment, as the case may be, under the provisions of this Order.
- (2) If any Nominated Unofficial Member shall be appointed temporarily to, or to act in, any office of emolument under the Crown, he shall not sit or vote in the Council by virtue of his appointment as a Nominated Unofficial Member so long as he continues to hold, or to act in, that office.

(3) The Governor may, by Instrument under the Public Seal, declare any Nominated Member to be incapable of discharging his functions as a Member of the Legislative Council, and thereupon such Member shall not sit or vote in the Council until he is declared, in manner aforesaid, again to be capable of discharging his said functions.

(4) Whenever the seat of an Unofficial Member becomes vacant under subsection (1) of this Section, the vacancy shall forthwith be reported to the Governor in writing by the Clerk of the Legislative Council.

16. (1) Subject to the provisions of this Order, all questions which may arise as to the right of any person to be or remain an Elected Member shall be determined in the prescribed manner.

Decisions of questions as to Membership.

(2) All questions which may arise as to the right of any person to be or remain a Nominated Member shall be referred to and decided by the Governor in Council.

17. (1) Whenever there shall be a vacancy in the number of persons sitting as *Ex officio* or Nominated Members of the Council, by reason of the fact that:

Temporary Appointments.

- (a) one person is lawfully discharging the functions of more than one of the offices referred to in Section 7 of this Order; or
- (b) no person is lawfully discharging the functions of any such office; or
- (c) a Nominated Official Member is lawfully discharging the functions of any such office; or
- (d) any such office has ceased to exist; or
- (e) a Nominated Member is unable to sit or vote in the Council in consequence of a declaration by the Governor, as provided in this Order, that he is incapable of discharging his functions as a Member; or
- (f) a Member is absent from the Gold Coast; or
- (g) a Nominated Unofficial Member is temporarily appointed to, or to act in, an office of emolument under the Crown in the Gold Coast,

a person qualified to be a Nominated Member may be appointed by the Governor by Instrument under the Public Seal as a temporary Member for the period of such vacancy.

(2) The period of any such vacancy shall terminate when the circumstances giving rise to the vacancy shall cease to exist.

(3) Every person so temporarily appointed shall, as long as his appointment shall subsist, be to all intents and purposes a Nominated Member and the

provisions of subsection (1) of Section 12, of Section 15 and of subsection (2) of Section 16 of this Order shall apply accordingly:

Provided that, in the case of a vacancy in the number of persons sitting as *Ex officio* members of the Council, the person so appointed shall be deemed for the purposes of Section 5 of this Order to be an *Ex officio* Member.

Presiding in  
Legislative  
Council.

18. The President, if present, or in the absence of the President such Member of the Council as the Governor may from time to time appoint, or in default of such appointment, or in the absence of the Member so appointed, the Member present who stands first in the order of precedence, shall preside at the meetings of the Legislative Council.

Precedence of  
Members.

19. After the President, the Members of the Council shall take precedence among themselves as His Majesty may specially assign, and in default thereof as follows:

(1) First, the *Ex officio* Members in the order in which their offices are referred to in Section 7 of this Order:

Provided that the respective precedence, as between themselves, of the three Chief Commissioners shall be determined by the dates of their appointment to the rank of Chief Commissioner, except that a person holding the substantive office of Chief Commissioner shall take precedence before any person acting in that office;

(2) Secondly, the Elected and Nominated Members according to the length of time during which they have been continuously Members of the Council, Members elected or appointed at the same time taking precedence amongst themselves according to the alphabetical order of their names.

(3) For the purposes of this Section:

(a) when the Legislative Council is dissolved, Members elected at the ensuing elections shall be deemed to have been elected, by



- virtue of those elections, and Nominated Members appointed to fill vacancies caused thereby shall be deemed to have been appointed, on the date on which the report of the first successful candidate for election is made to the Governor; and
- (b) Subparagraph (a) of this subsection shall apply to the Members elected or appointed to the Council as first constituted under this Order as if such elections or appointments were consequent upon a dissolution of the Legislative Council; and
  - (c) in ascertaining the period during which a person has continuously been an Elected Member or a Nominated Member of the Council,
    - (i) no account shall be taken of any interval between the vacation by that person of his seat in the Council in consequence of the expiration of his tenure of office or a dissolution of the Council and the date of his re-election or re-appointment to fill a vacancy in the Council caused by that expiration of tenure or that dissolution; and
    - (ii) if any person, having been for any period immediately before the appointed day, a Member of the Legislative Council constituted under the existing Orders, becomes a Member of the Council as first constituted under this Order, he shall be deemed to have been a Member of the Council so constituted for that period; and no account shall be taken of any interval between the day preceding the appointed day and the date upon which he is first elected or appointed to the Council or of any interval in his membership of the Legislative Council

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constituted under the existing Orders between the expiration of his tenure of office and his election or appointment to fill the vacancy thereby caused.

Filling of  
Vacancies.

20. (1) Whenever the seat of an Elected Member becomes vacant a fresh election shall be held to fill the vacancy in accordance with the provisions of this Order.

First  
Elections  
Appointments  
and Session.

(2) Whenever the seat of a Nominated Member becomes vacant the vacancy shall be filled by appointment by the Governor.

21. The first elections and appointments of Members to the Legislative Council constituted under this Order shall be held and made not later than three months after the appointed day, and the first session of the Council shall commence not later than four months after that day.

## PART III

## PROVINCIAL MEMBERS

Provincial  
Members.

22. (1) Of the nine Provincial Members of the Legislative Council, five shall be elected to represent the Eastern Province and four to represent the Western Province.

(2) Subject to the provisions of this Order, the Provincial Members shall be elected by the Joint Provincial Council (constituted as provided in Section 23 of this Order) in accordance with provision made under Section 45 of this Order.

Joint  
Provincial  
Council.

23. (1) For the purposes of this part of this Order, the Joint Provincial Council shall consist of:

(a) The Paramount Chiefs of the Colony (or their duly accredited representatives as provided for in this Section) but excluding any Paramount Chief who has not been, or who has ceased to be, recognized by the Governor as a Native Authority or as a Member of a Native Auth-

ority, or as a Paramount Chief in accordance with Section 26 of this Order:

- (b) One member of the Native Authority for every area within the Colony which does not include a State or part of a State, such Member having been chosen by such Native Authority as their representative on the Joint Provincial Council:

Provided that a Paramount Chief who is a Member of the Joint Provincial Council may be represented at all or any of the meetings thereof by a person duly accredited for that purpose to the satisfaction of the President of the Joint Provincial Council.

(2) If any person chosen to be a Member of the Joint Provincial Council under paragraph (b) of subsection (1) of this Section ceases to be a Member of the Native Authority by which he was chosen, or if such Native Authority ceases to be recognized by the Governor, such person shall cease forthwith to be a Member of the Joint Provincial Council.

(3) The President of the Joint Provincial Council shall forthwith furnish the Chief Commissioner of the Colony with the name of every person accredited in accordance with the provisions of subsection (1) of this Section as the representative of a Paramount Chief, or chosen by a Native Authority as a Member of the Joint Provincial Council.

(4) In this Section, 'State' means a territorial area of the Colony under the Administration of a Paramount Chief who is recognized by the Governor as a Native Authority or as a Member of a Native Authority. (*Subsection added by Gold Coast Colony and Ashanti (Legislative Council) (Removal of Difficulty) Order, 1946.*)

24. (1) No person shall be eligible for election to serve as a Provincial Member or, having been elected, shall sit or vote as such in the Council unless:

- (a) he is a native of the Colony; and  
 (b) the Provincial Commissioner shall have cer-

Election of  
 Provincial  
 Members.

## APPENDIX 2

tified in writing that his ability to speak and (unless incapacitated by blindness or other physical cause) to read the English language is sufficient to enable him to take an active part in the proceedings of the Council; and

- (c) in the case of the Eastern Province he:
  - (i) is a Paramount Chief of the Province; or
  - (ii) owes allegiance to the Stool of a Paramount Chief of the Province; or
  - (iii) is a member of, or is subject to, the Native Authority for any area of the Province where there is no Paramount Chief; and
- (d) in the case of the Western Province he:
  - (i) is a Paramount Chief of the Province; or
  - (ii) owes allegiance to the Stool of a Paramount Chief of the Province; or
  - (iii) is a member of, or is subject to, the Native Authority for any area of the Province where there is no Paramount Chief; and
- (e) he is otherwise qualified as required by Part II of this Order.

(2) Immediately after the election of a Provincial Member, the President of the Joint Provincial Council shall report to the Chief Commissioner of the Colony the name of the Member who has been elected.

(3) Should the Joint Provincial Council fail to elect a Provincial Member to fill a vacancy within six months after the vacancy occurs or within such longer period as the Governor may in writing allow, the Governor may fill the vacancy by nominating a suitable person, duly qualified for election, to serve as a Provincial Member.

(4) Where the result of an election is that there is an equality of votes between any candidates and the addition of a vote would entitle any of those candidates to be elected, one re-vote shall be taken in respect of the vacancy or vacancies. If the re-vote has a like result, the Governor may fill the vacancy by

nominating from the candidates receiving an equal number of votes on the re-vote a person, duly qualified for election, to serve as a Provincial Member, and such person shall be deemed for the purpose of this Order to have been elected as a Provincial Member.

In this paragraph, the expression 'vacancy' does not include any vacancy filled by a candidate receiving more votes than the candidates receiving an equal number of votes.

(5) In this Section:

'Allegiance' means the duty which according to native customary law a person owes to the Stool to which he is subject;

'native of the Colony' means a person both of whose parents were born in the Colony and are or were members of a tribe or tribes indigenous to Africa;

'State' means a territorial area of the Colony under the administration of a Paramount Chief who is recognized by the Governor as a Native Authority or as a Member of a Native Authority.

25. A Provincial Member of the Council who:

- (a) having at the time of his election been a Paramount Chief or a Chief ceases so to be; or
- (b) having at the time of his election been a member of the Joint Provincial Council, ceases so to be,

shall thereupon cease to be a Member of the Legislative Council.

26. (1) For the purposes of this Part of this Order:

'Paramount Chief' means a Chief (not being in the opinion of the Governor subordinate in his ordinary jurisdiction to any other Chief) whom the Governor, either before or after the commencement of this Order, shall by instrument under his hand, have recognized as a Paramount Chief, such Instrument not having been revoked.

(2) The Governor shall have power to amend or revoke any such Instrument.

Vacation of  
Seats by  
Provincial  
Members.

Recognition of  
Paramount  
Chiefs.

(3) The validity of any such Instrument, amendment, or revocation shall not be liable to be impugned in any Court of Law or otherwise.

(4) After the commencement of this Order every Instrument recognizing a Paramount Chief in accordance with the provisions of this Section, and every amendment or revocation of any such Instrument, shall be published in the Gazette.

## PART IV

### ASHANTI MEMBERS

Ashanti  
Members.

27. (1) The four Ashanti Members of the Legislative Council shall represent the peoples of Ashanti.

(2) Subject to the provisions of this Order, the Ashanti Members shall be elected by the Ashanti Confederacy Council (constituted as provided in Section 28 of this Order) in accordance with provision made under Section 45 of this order.

Ashanti  
Confederacy  
Council.

28. For the purposes of this Part of this Order, the Ashanti Confederacy Council shall consist of the Asantehene and Head Chiefs of such of the Divisions of Ashanti, and of such of the Kumasi clans, as may from time to time be specified by the Governor in any Order made by him under the Native Authority (Ashanti) Ordinance, together with such other persons as the Asantehene, with the approval of the Governor, may from time to time appoint as Members of the Council.

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Election of  
Ashanti  
Members.

29. (1) No person shall be eligible for election to serve as an Ashanti Member or, having been elected, shall sit or vote as such in the Council unless:

- (a) he is a native of Ashanti; and
- (b) the Chief Commissioner of Ashanti shall have certified in writing that his ability to speak and (unless incapacitated by blindness or other physical cause) to read the English language is sufficient to enable him to take an

active part in the proceedings of the Council;  
and

- (c) he owes allegiance directly or indirectly to the Asantehene; and
- (d) he is otherwise qualified as required by Part II of this Order.

(2) Immediately after the election of an Ashanti Member, the President of the Ashanti Confederacy Council shall report to the Chief Commissioner of Ashanti the name of the Member who has been elected.

(3) Should the Ashanti Confederacy Council fail to elect an Ashanti Member to fill a vacancy within six months after the vacancy occurs or within such longer period as the Governor may in writing allow, the Governor may fill the vacancy by nominating a suitable person, duly qualified for election, to serve as an Ashanti Member.

(4) Where the result of an election is that there is an equality of votes between any candidates and the addition of a vote would entitle any of those candidates to be elected, one re-vote shall be taken in respect of the vacancy or vacancies. If the re-vote has a like result, the Governor may fill the vacancy by nominating from the Candidates receiving an equal number of votes on the re-vote a person, duly qualified for election, to serve as an Ashanti Member, and such person shall be deemed for the purpose of this Order to have been elected as an Ashanti Member.

In this paragraph, the expression 'vacancy' does not include any vacancy filled by a candidate receiving more votes than the candidates receiving an equal number of votes.

(5) In this Section:

'allegiance' means the duty which according to native customary law a person owes to the Asantehene;

'native of Ashanti' means a person both of whose

## APPENDIX 2

parents were born in Ashanti and are or were members of a tribe or tribes indigenous to Africa.

Vacation of  
Seats by  
Ashanti  
Members.

30. An Ashanti Member of the Legislative Council who:

- (a) having at the time of his election been a Head Chief or Chief, ceases so to be; or
- (b) having at the time of his election been a Member of the Ashanti Confederacy Council ceases so to be;

shall thereupon cease to be a Member of the Legislative Council.

## PART V

## MUNICIPAL MEMBERS

Municipal  
Members.

31. (1) Subject to the provisions of this Order, the five Municipal Members shall be elected in accordance with provision made under Section 45 of this Order.

(2) Of the Municipal Members:

- (a) two shall be elected for the town of Accra;
- (b) one shall be elected for the town of Cape Coast;
- (c) one shall be elected for the town of Sekondi;
- (d) one shall be elected for the town of Kumasi;

Provided that if a single Municipal area comprising the towns of Sekondi and Takoradi is established by law, then, on a date to be determined by the Governor by Proclamation, the person then sitting as Member for the town of Sekondi shall cease to be a Member of the Legislative Council; and thereafter one member shall be elected for the said single Municipal area instead of for the town of Sekondi.

Disqualifica-  
tion of  
Municipal  
Members.

32. No person shall be eligible for election as a Municipal Member of the Council, or having been elected shall sit or vote as such in the Council, unless:

- (1) he is qualified to be registered as a voter for the election of a Municipal Member for the town or municipal area concerned; and



(2) The District Commissioner shall have certified in writing that his ability to speak and (unless incapacitated by blindness or other physical cause) to read the English language is sufficient to enable him to take an active part in the proceedings of the Council; and

(3) he is, in the town or municipal area concerned,

(a) the beneficial owner of real or personal property to the value of two hundred pounds; or

(b) the occupier of premises and pays rates thereon computed on a valuation of not less than twenty pounds per annum; and

(4) he has been ordinarily resident in the town or municipal area concerned for at least six months immediately preceding the date of his nomination for election; and

(5) he is otherwise qualified as required by Part II of this Order.

## PART VI

### LEGISLATION AND PROCEDURE OF LEGISLATURE

33. Subject to the provisions of this Order, it shall be lawful for the Governor, with the advice and consent of the Legislative Council, to make laws for the peace, order and good government of the Colony and of Ashanti. Power to make laws.

34. Subject to the provisions of this Order and of the Standing Rules and Orders of the Legislative Council, any member may introduce any Bill or propose any motion for debate in, or may present any petition to, the Council, and the same shall be debated and disposed of according to the Standing Rules and Orders: Introduction of Bills, etc.

Provided that, except by the direction or with the sanction or recommendation of the Governor sig-

nified thereto, the Council shall not proceed upon any Bill, amendment, motion or petition which, in the opinion of the President or Presiding Member, would dispose of or charge any public revenue or public funds of the Gold Coast or revoke or alter any disposition thereof or charge thereon, or impose, alter or repeat any rate, tax or duty.

Voting.

35. (1) Save as otherwise provided in this Order, all questions proposed for decision in the Council shall be determined by a majority of the votes of the Members present.

(2) The President shall have neither an original nor a casting vote, and in the absence of the President, the Presiding Member shall retain his original vote as a Member, but shall not have a casting vote:

Provided that, if any Member is President by virtue of his having been appointed Deputy for the Governor, he shall retain his original vote as a Member but shall not have a casting vote.

(3) If, upon any question before the Council, the votes are equally divided, the motion shall be declared to be lost.

Vacancies and Quorum.

36. The Council shall not be disqualified for the transaction of business by reason of any vacancy among the Members; but no business except that of adjournment shall be transacted if objection is taken by any Member present that there are less than ten Members present besides the President or Presiding Member.

Royal Instructions.

37. Subject to the provisions of this Order, the Governor and the Legislative Council shall, in the transaction of business and the making of laws, conform as nearly as may be to the directions contained in any Instructions under His Majesty's Sign Manual and Signet which may from time to time be addressed to the Governor in that behalf.

Governor's reserved powers.

38. (1) If the Governor shall consider that it is expedient in the interests of public order, public faith or good government (which expressions shall,

without prejudice to their generality, include the responsibility of the Gold Coast as a component part of the British Empire, and all matters pertaining to the creation or abolition of any public office or to the appointment, salary or other conditions of service of any public officer or officers) that any Bill introduced, or any motion proposed in the Council should have effect, then if the Council fail to pass such a Bill or motion within such time and in such form as the Governor may think reasonable and expedient, the Governor, at any time in his discretion, may, notwithstanding any provisions of this Order or of any Standing Rules and Orders of the Legislative Council, declare that such Bill or motion shall have effect as if it had been passed by the Council, either in the form in which it was so introduced or proposed or with such amendments as the Governor shall think fit which have been moved or proposed in the Council or in any Committee thereof; and thereupon the said Bill or motion shall have effect as if it had been so passed, and, in the case of any such Bill, the provisions of this Order relating to assent to Bills and disallowance of laws shall apply accordingly.

(2) The Governor shall forthwith report to a Secretary of State every case in which he shall make any such declaration and the reasons therefor.

(3) If any Member of the Legislative Council objects to any declaration made under this Section, he may, within seven days of the making thereof, submit to the Governor a statement in writing of his reasons for so objecting, and a copy of such statement shall, if furnished by such a Member, be forwarded by the Governor as soon as practicable to a Secretary of State.

(4) Any such declaration, other than a declaration relating to a Bill, may be revoked by a Secretary of State, and the Governor shall notify such revocation in the Gazette; and from the date of such notification, any motion which shall have had effect by

52 and 53  
Vict. c. 63.

Assent to  
Bills.

virtue of the declaration revoked shall cease to have effect; and the provisions of subsection (2) of Section 38 of the Interpretation Act, 1889, shall apply to such revocation as they apply to the repeal of an Act of Parliament.

39. (1) No Bill shall become a law until either the Governor shall have assented thereto in His Majesty's name and on His Majesty's behalf and shall have signed the same in token of such assent, or His Majesty shall have given his assent thereto through a Secretary of State.

(2) When a Bill is presented to the Governor for his assent, he shall, according to his discretion, but, subject to the provisions of this Order and of any Instructions addressed to him under His Majesty's Sign Manual and Signet or through a Secretary of State, declare that he assents, or refuses his assent, thereto, or that he reserves the Bill for the signification of His Majesty's pleasure:

Provided that the Governor shall reserve for the signification of His Majesty's pleasure any Bill by which any provision of this Order is revoked or amended or which is in any way repugnant to or inconsistent with the provisions of this Order, unless he shall have been authorized by a Secretary of State to assent thereto.

(3) A law assented to by the Governor shall be published in the Gazette and shall come into operation on the date of such publication, or, if it shall be enacted, either in the law or in some other enactment (including any enactment in force on the appointed day), that it shall come into operation on some other date, on that date.

(4) A Bill reserved for the signification of His Majesty's pleasure shall become a law so soon as His Majesty shall have given His assent thereto, through a Secretary of State, and the Governor shall have signified such assent by Proclamation in the Gazette. Every such law shall come into operation on the date

of such Proclamation or, if it shall be enacted, either in the law or in some other enactment (including any enactment in force on the appointed day), that it shall come into operation on some other date, on that date.

40. (1) Any law to which the Governor shall have given his assent may be disallowed by His Majesty through a Secretary of State.

Disallowance  
of Laws.

(2) Whenever any law has been disallowed by His Majesty, the Governor shall cause notice of such disallowance to be published in the Gazette.

(3) Every law so disallowed shall cease to have effect as soon as notice of such disallowance shall be published as aforesaid; and therefore any enactment repealed or amended by or in pursuance of the law disallowed shall have effect as if such law had not been made. Subject as aforesaid, the provisions of subsection (2) of Section 38 of the Interpretation Act, 1889, shall apply to such disallowance as they apply to the repeal of an Act of Parliament.

52 and 53  
Vict. c. 63.

41. (1) The Sessions of the Legislative Council shall be held at such times and places as the Governor shall from time to time by Proclamation or notice appoint.

Sessions of  
the Legislative  
Council.

(2) There shall be a Session of the Council once at least in every year, so that a period of twelve months shall not intervene between the last sitting in one Session and the first sitting in the next Session.

42. (1) Subject to the provisions of this Order and of any Instructions under His Majesty's Sign Manual and Signet, the Council may from time to time, make, amend and revoke Standing Rules and Orders for the regulation and orderly conduct of their proceedings and the despatch of business, to provide for the giving of notice of the provisions of Bills and for the presentation thereof to the Governor for assent, but no such Rules or Orders shall have effect unless and until they shall have been approved by the Governor.

Standing  
Rules and  
Orders.

(2) Until other provision is made under this Section, the Standing Rules and Orders of the Legislative Council constituted under the existing Orders, as in force immediately before the appointed day, shall, with the necessary modifications and adaptations, be the Standing Rules and Orders of the Legislative Council established under this Order; and the said Standing Rules and Orders may be amended or revoked by Standing Rules and Orders made under the preceding subsection.

Prorogation  
and dissolution

43. (1) The Governor may at any time, by Proclamation, prorogue or dissolve the Legislative Council.

(2) On dissolution, all Members shall vacate their seats, and the Council shall be reconstituted by election and appointment in accordance with the provisions of this Order at such time, within three months of every dissolution, as the Governor shall by Proclamation appoint.

Oath of  
Allegiance.

44. No Member of the Council shall sit or vote therein unless or until he shall have taken and subscribed the oath of allegiance in accordance with the provisions of the Oaths Ordinance or shall have made the appropriate affirmation in lieu thereof as provided in the said Ordinance.

Cap. 206.

## PART VII

### MISCELLANEOUS

Provisions  
necessary to  
give effect  
to the Order.

45. (1) Provision may be made as hereinafter provided regarding the election of Elected Members including (without prejudice to the generality of the foregoing power) the following matters, that is to say:

- (a) the qualifications of voters for election of such members;
- (b) the registration of voters;
- (c) the ascertainment of the qualification of voters and candidates;

- (d) the holding of elections of such members;
- (e) offences in relation to such elections including the trial and punishment thereof;
- (f) the disposal of election petitions and the determination of questions otherwise arising regarding membership of the Council; and
- (g) the number of votes which may be cast in proportion to population by the Members of the Joint Provincial Council and of the Ashanti Confederacy Council respectively at the election of Provincial and Ashanti Members.

(2) Such provision may be made by or in pursuance of any law enacted under this Order, and, until provision has been made as aforesaid, by regulations made by the Governor.

(3) Such regulations shall be published in the Gazette; and thereafter every such regulation shall take effect on the appointed day or on such other date as may be therein specified and shall have the force of law, subject to any revocation or amendment thereof by subsequent regulation or law.

46. (1) Any person who:

- (a) having been elected or nominated a member of the Legislative Council, but not having been at the time of such election or nomination, qualified to be so elected or nominated, shall sit or vote in the Legislative Council; or
- (b) shall sit or vote in the Legislative Council after his seat thereon has become vacant or he has become disqualified from sitting or voting therein;

Penalty for unqualified person sitting or voting.

knowing, or having reasonable grounds for knowing, that he was so disqualified, or that his seat has become vacant, as the case may be, shall be liable to a penalty not exceeding twenty pounds for every day upon which he so sits or votes.

(2) The said penalty shall be recoverable by action in the Supreme Court at the suit of the Attorney-General.

Removal of  
difficulties.

47. (1) If any difficulty shall arise in bringing in operation any of the provisions of this Order or giving effect to the purposes thereof, a Secretary of State may, by Order, amend or add to any provision of this Order and make such provision as seems to him necessary or expedient:

- (a) generally, for the purpose of removing or alleviating such difficulty; and
- (b) in particular, and without prejudice to the generality of the foregoing, for the purpose of modifying the provisions of Sections 23 and 28 of this Order so as to secure for any part of the population of the Colony or Ashanti a representation in the Joint Provincial Council or in the Ashanti Confederacy Council:

Provided that no Order under this Section shall be made later than the first day of January, 1946.

(2) Any Order made under this Section may be amended, added to or revoked by a further Order and may be given retrospective effect to a day earlier than the date of this Order.

Powers  
reserved to  
the Governor.

48. Nothing in this Order shall affect the power to make Ordinances conferred upon the Governor by the Togoland Under British Mandate Order in Council, 1923, and the Gold Coast Ordinances Order in Council, 1946.

Powers  
reserved to  
His Majesty.

49. (1) His Majesty hereby reserves to Himself, His Heirs and Successors, power, with the advice and consent of His or Their Privy Council, to revoke, add to or amend this Order, as to Him or Them shall seem fit.

(2) Nothing in this Order shall affect the power of His Majesty in Council to make laws from time to time for the peace, order and good government of the Gold Coast.

E. C. E. LEADBITTER



## SCHEDULE

## EXISTING ORDERS IN COUNCIL

1. The Gold Coast Colony (Legislative Council) Section I.  
Order in Council, 1925.
2. The Gold Coast Colony (Legislative Council)  
Order in Council, 1927.
3. The Gold Coast Colony (Legislative Council)  
Amendment Order in Council, 1933.
4. The Gold Coast Colony (Legislative Council)  
Amendment Order in Council, 1934.
5. The Gold Coast Colony (Legislative Council)  
Amendment Order in Council, 1939.

## APPENDIX 3

### CONSTITUTION OF 1925: TABLE OF LEGISLATIVE COUNCIL MEMBERS

#### THE OFFICIAL MAJORITY: 16

President: Governor, with original and casting vote

#### 5 *Ex Officio* Members of Executive Council:<sup>1</sup>

Colonial Secretary  
Attorney-General  
Financial Secretary  
Director of Medical Services  
Secretary for Native Affairs

#### 8 *Ex Officio* Members, not of Executive Council:

Comptroller of Customs  
Director of Public Works  
General Manager of the Railway  
Commissioner of the Western Province  
Commissioner of the Central Province  
Commissioner of the Eastern Province  
Director of Agriculture  
Director of Education

#### 2 Nominated Official Members:

Postmaster-General  
Commandant, Gold Coast Regiment

#### THE UNOFFICIAL MEMBERS: 14

#### 6 Provincial Members:

Member for the Ga-Adangme Section of the Eastern Province  
Member for the Ewe Section of the Eastern Province  
Member for the Akan Section of the Eastern Province  
Two Members for the Central Province  
Member for the Western Province

<sup>1</sup> Excluding the Chief Commissioners of Ashanti and the Northern Territories.

- 3 Municipal Members:
    - Member for Accra
    - Member for Cape Coast
    - Member for Sekondi
  - 5 European Unofficial Members:
    - Mercantile Member (U.A.C.)
    - Mining Member
  - 3 Nominated Unofficial Members:
    - Mercantile Member (non-U.A.C.)
    - Shipping Member
    - Banking Member
- Extraordinary Members.

## APPENDIX 4

### CONSTITUTION OF 1946: TABLE OF LEGISLATIVE COUNCIL MEMBERS

**PRESIDENT:** Governor, without a vote

**6 OFFICIAL MEMBERS:**

Colonial Secretary  
Chief Commissioner of the Colony  
Chief Commissioner of Ashanti  
Chief Commissioner of the Northern Territories  
Attorney-General  
Financial Secretary

**18 ELECTED AFRICAN MEMBERS:**

9 Provincial Members for the Colony:  
5 Members for the Eastern Province  
4 Members for the Western Province  
4 Ashanti Members  
5 Municipal Members:  
2 Members for Accra  
Member for Cape Coast  
Member for Sekondi-Takoradi  
Member for Kumasi

**6 NOMINATED MEMBERS**

Extraordinary Members, without a vote.

## APPENDIX 5

### COMPARATIVE ANALYSIS OF LEGISLATIVE COUNCIL UNDER THE OLD AND NEW CONSTITUTIONS

	Constitution of 1925	Constitution of 1946
1. TOTAL	30	31 <sup>1</sup>
2. STATUS OF MEMBERS:		
Official Members:	16 <sup>1</sup>	6 <sup>2</sup>
<i>Ex officio</i>	14	6
Nominated official	2	—
Unofficial Members:	14	24
Provincial	6	9
Ashanti	—	4
Municipal	3	5
Mercantile and mining	2	—
Nominated unofficial	3	6
* 3. METHOD OF APPOINTMENT:		
<i>Ex officio</i> Members:	14	6
Nominated Members:	5	6
Official	2	—
Unofficial	3	6
Elected Members:	11	18
Directly Elected	3	5
Indirectly Elected:	8	13
African	6	13
European	2	—
4. RACE: <sup>3</sup>		
European Members:	21	6
Official	16	6
Unofficial	5	—
African	9	18

<sup>1</sup> Including the Governor.

<sup>2</sup> Excluding the Governor.

<sup>3</sup> Excluding from consideration the six nominated members under the constitution of 1946, who may be either African or European.

## APPENDIX 6

### TABLE OF AFRICAN UNOFFICIAL MEMBERS

1926-45

**PROVINCIAL MEMBERS:**

<b>Ga-Adangme Section of the Eastern Province:</b>	
Nene Sir Emmanuel Mate Kole (Konor of Manya Krobo)	1926-1930
Nene Marty Abordi Awah II (Mantse of Shai)	1930-1934
Nene Nuer Ologo V. (Konor of Yilo Krobo)	1934-
<b>Ewe Section of the Eastern Province:</b>	
Togbri Sri II (Awame Fia of Awuna)	1926-1942
Nana Nyarko VII (Nifahene of Peki State)	1942-
<b>Akan Section of the Eastern Province:</b>	
Nana Kwesi Akuffo (Omanhene of Akwapim)	1926-1927
Nana Sir Ofori Atta (Omanhene of Akim Abuakwa)	1928-1943
Nana Kwadade II (Omanhene of Akwapim)	1944
Nana Kwame Fori II (Omanhene of Akwapim)	1945-
<b>Central Province, 1:</b>	
Nana Otu Ababio II (Omanhene of Abura)	1926-1927
Nana Aduku III (Omanhene of Mankesim)	1928-1931
Nana Tsibu Darku IX (Omanhene of Asin Atandasu)	1932-
<b>Central Province, 2:</b>	
Nana Ayirebi Acquah III (Omanhene of Winneba)	1926-1938
Nana Amanfi III (Omanhene of Asebu)	1938-
<b>Western Province:</b>	
(None)	1926-1928
Nana Annor Adjaye (Omanhene of Western Nzima)	1928-1931.

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Nana Hima Dekyi XII (Omanhene of Upper Dixcove)	1932-1940
Nana Blay VI (Omanhene of Eastern Nzima)	1940-1944
Nana Annor Adjaye II (Omanhene of Western Nzima)	1944-

## MUNICIPAL MEMBERS:

## Accra:

(None)	1926-1927
Mr. J. Glover-Addo	1927-1931
Dr. F. V. Nanka-Bruce	1931-1935
Mr. A. W. Kojo Thompson	1936-1944
Mr. Akilagpa Sawyer	1944-

## Cape Coast:

(None)	1926-1928
Mr. K. A. Korsah	1928-1940
Mr. G. E. Moore	1941-

## Sekondi:

(None)	1926-1927
Mr. J. E. Casely Hayford	1927-1930
Mr. G. J. Christian	1930-1940
Mr. R. S. Blay	1940-1944
Mr. C. W. Tachie-Menson	1944-

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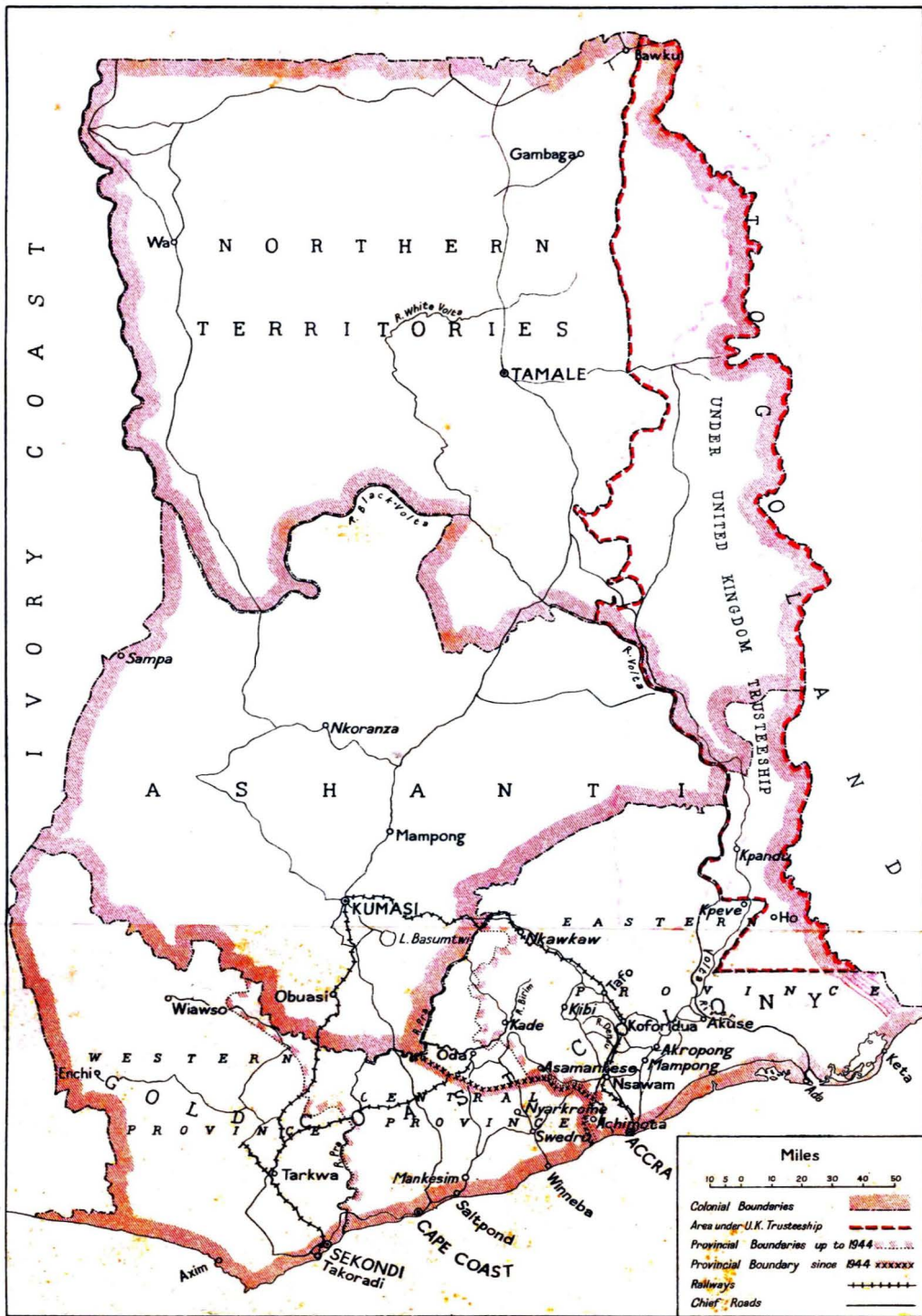
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