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The Republican Constitution of Ghana

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In March, 1960, the Government of Ghana presented for the consideration of the people of Ghana and the National Assembly, sitting as a Constituent Assembly, its proposals for a Republican Constitution In a plebiscite held last April, the principles of the new Constitution were approved by a great majority. In May, the Conference of Commonwealth Prime Ministers met in London; it agreed to the continued • membership of the Republic of Ghana in the Commonwealth. On June 29, 1960, the Constituent Assembly enacted the new Constitution which came into effect on July 1, 1960.

Ghana, within a very few years, has undergone the transformation from the status of a British dependency—the Gold Coast—and a United Nations Trust Territory—Togoland under British administration— respectively, to that of a sovereign, independent State. This transformation was achieved in accordance with the "constitutional processes" designed for such changes-. Ghana first attained independence as a Member of the Commonwealth by achieving what until quite recently used to be called "Dominion status." English law and British constitutional conventions and traditions were the foundations upon which the structure of the new State was erected. Now it has given itself a new Constitution which, in the words of the White Paper by which it was laid before Parliament and the people, "is not copied from the Constitution of any other country. It has been designed to meet the particular needs of Ghana and to express the realities of Ghana's constitutional position."

Before we describe the procedure by which the new Constitution was brought into being and proceed to the examination of its important features, a few remarks on the wider framework of the (British) Commonwealth of Nations and on the predecessor of the new Constitution, the Constitution of 1957, will be in order.

The Commonwealth

To quote one of the leading constitutional lawyers of the Commonwealth[1], the 'British Empire' has, in the course of the last few decades, "glided quietly and decorously into the 'British Commonwealth of Nations'," and the 'British Commonwealth of Nations' has "slipped unobtrusively into the 'Commonwealth of Nations' without anybody

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[1] Sir Ivor Jennings, Constitutional Laws of the Commonwealth (Oxford, 1957) 1.

precisely saying so or depriving anybody else of the pleasure of belonging to the Empire, or the British Commonwealth, or the Commonwealth, or even the Commonwealth and Empire." In a parallel development, some "colonies" became "Dominions under the Crown of the United Kingdom," then "independent Dominions," and finally "Members of the British Commonwealth" and "Members of the Commonwealth."

At the time of the 1960 Prime Ministers' Conference, the Commonwealth consisted of seven monarchies with the Queen of England as Queen (the United Kingdom of Great Britain and Northern Ireland, Canada, the Commonwealth of Australia, New Zealand, the Union of South Africa,[2] Ceylon, and Ghana), of two Republics (India and Pakistan) and one kingdom with an elective monarch of its own, the Federation of Malaya. The Supreme Head of the Federation of Malaya, the Yang di-Pertuan Agong, is elected by the Conference of Rulers of the constituent States for a term of five years.[3] The Common-wealth Prime Ministers' Conference of May, 1960, noted that the Federation of Nigeria would attain independence on October 1, 1960, and looked forward to welcoming an independent Nigeria as a member of the Commonwealth on the completion of the necessary constitutional processes.[4] The independence of the Federation of Nigeria came into effect, as planned. Its application for membership in the Commonwealth will be considered at a Commonwealth Prime Ministers Conference in March, 1961.[5] All Commonwealth Members are fully sovereign States, having a status in international law no different from that of other sovereign States. They all accept the Queen either as their own Queen[6] or "as the symbol of the free association of its [i.e.

[2] On October 5, 1960, a referendum was held in the Union of South Africa as a result °f which the Union will become a Republic. The effect of this change on South Africa's Membership in the Commonwealth is not known when this article goes to press.

[3] The elective Kingship is a feature which the Federation of Malaya shares with the Holy Roman Empire. The Supreme Head of the Federation is, however, a constitutional monarch: in the exercise of his functions under the Constitution, he acts in accordance with the advice of the Cabinet or a Cabinet Minister. The Cabinet is collectively response to Parliament (Constitution of Federation of Malaya, First Schedule to the Federation of Malaya Independence Order in Council, Statutory Instruments (United Kingdom) 1957 No. 1533). See also the (United Kingdom) Federation of Malaya Independence Act, 1957, 5 and 6 Eliz. 2. c. 60 and the Federation of Malaya Agreement, 1957(Annex to S.I. 1957, No. 1533).

[4] Communique of Commonwealth Conference of May 13, 1960, Times (London) and New York Times, May 14, 1960.

[5] Statement by the United Kingdom Prime Minister in the House of Commons, November 29, 1960. The Federation was admitted, as the 99th Member, to the United Nations on 7 October 1960 (General Assembly resolution 1492 (XV)). On the same occasion, the Prime Minister of Nigeria expressed his country's pride to have been accepted as a member of the British Commonwealth (UN doc. A/PV. 893). The relationship of the Union of South Africa {supra note 2) to the Commonwealth will also considered at the 1961 Conference.

[6] From the definition of the position and mutual relation of the Members of the British Commonwealth of Nations contained in the so-called Balfour report of 1926 (Cmd. 2768).

the Commonwealth's] independent member nations, and, as such the head of the Commonwealth." [7]

The original constitutions of the individual Members of the Commonwealth, while worked out by, and with, the representatives of the territories concerned, were enacted in the form either of Statutes of the United Kingdom Parliament, or of Orders-in-Council of the British monarch, according to the constitutional status of the territory before achieving "Dominion status" or independence. The Constitution which was to govern Ghana during the first- years of its life as a sovereign State was the Ghana (Constitution) Order in Council, 1957, of February, 1957.[8]

The Monarchical Constitution of Ghana (1957)

The basic law of Ghana of 1957 was that of a constitutional monarchy and parliamentary democracy on the British model. The executive power was, nominally, vested in the Queen and the Governor General as her representative. It was the Cabinet, however, consisting of members of Parliament, that was charged with the general direction and control of the government of Ghana. It was expressly provided that the Cabinet should be collectively responsible to Parliament. Members of Parliament were elected by secret ballot on the basis of adult suffrage. Every citizen of Ghana, without distinction of religion, race, and sex, not suffering from any incapacity was given the right to vote. The Constitution of 1957 also provided for Regional Assemblies. It guaranteed the office of Chief as existing by customary law and usage. It enjoined Parliament to establish a "House of Chiefs" for each Region, and a State Council for the determination of all matters of a constitutional nature arising within the area of its authority involving a Chief. The Constitution contained a number of what in the terminology of the constitutional law of some Commonwealth countries is called "entrenched clauses" which could be amended or repealed only by a special procedure more difficult than that of ordinary legislation. These included the prohibition of the enactment of laws which would "make persons of any racial community liable to disabilities to which persons of other such communities are not made liable." The Constitution also prohibited the enactment of laws "depriving any person of

[7] From the declaration of the commonwealth conference, 1949, made when India was about to adopt her Republican Constitution, but desired "to continue her full membership of the Commonwealth of Nations.".

[8] Statutory Instruments, 1957, No. 277. See also Ghana Independence Act, 1957, enacted by the United Kingdom Parliament to make provision for, and in connection with, the attainment by the Gold Coast of fully responsible status within the British Commonwealth of Nations.

his freedom of conscience or the right freely to profess, practise and propagate any religion." The Constitution contained safeguards against expropriation, required payment of adequate compensation, and provided for access to the Supreme Court. Any laws in contravention of these prohibitions would have been void to the extent of such contravention. The Supreme Court had original jurisdiction in all proceedings in which the validity of any law was called in question. Thus, the Constitution of 1957 imposed limits upon the legislative power of the Parliament of Ghana.

In the constitutional law of some countries of the Commonwealth "entrenched provisions" of this kind have raised problems of considerable complexity. By achieving "Dominion status" or independence a previously dependent territory was freed of the restriction applicable to British colonies, viz. that colonial laws which are repugnant to ;United Kingdom Statutes or Orders extending to the colony shall, to the extent of such repugnancy, be void and inoperative.[9] If the "Dominion" can repeal any United Kingdom Act, it can, it was argued, also repeal that United Kingdom Act which contained its constitution, including the "entrenched clauses" of that constitution. In Canada, Australia, and New Zealand this consequence was avoided by inserting appropriate saving clauses in the Statute of Westminster, 1931. In the Union of South Africa, with regard to which no provisions protecting the "entrenched clauses" of the South-African Constitution had been made, these led to constitutional controversies of the first magnitude and to significant litigation.[10] In Ghana this problem was settled by an amendment to the Constitution of 1957, the Constitution (Repeal of Restrictions) Act, 1958. This Act, which was itself adopted in compliance with the procedure for constitutional amendments, repealed those of the provisions of the Constitution of 1957 which provided for these special amending procedures (e.g. a two-thirds majority). A later

[9] 'Colonial Laws Validity Act, 1865, s.2; cf. Statute of Westminster, 1931, s.2.

[10] Among the "entrenched clauses" of the Constitution of the Union of South Africa (South Africa Act, 1909) have been the prohibition to disqualify a voter entitled to vote under the pre-1909 law of the Cape Province by reason of his race or color only and the provision setting forth the equality of the English and Dutch languages. Departing from a precedent (*Ndlwana v. Hofmeyer*, N.O. [1937] A.D. 229, pp. 352/3) the Supreme Court of South Africa (Appellate Division) considered that the "enlivened clauses" had not been affected by the Statute of Westminster, 1931. That Statute had given the Parliament of the Union full power of legislation, but it did not repeal the provision which required that entrenched provisions could be amended only by a joint sitting of both Houses by a majority of two-thirds. An Act of 1951 adopted by simple majority of the two Houses sitting separately, providing for separate representation of the "European" and "Non-European" voters was therefore unconstitutional and invalid (*Harris v. Minister of the Interior* [1952 (2)] S.A. 418). The Court also held unconstitutional the High Court of Parliament Act, 1952, which attempted to circumvent this decision by making Parliament itself a "Court of Law" to which an appeal would lie from the decision of the Appellate Division of the Supreme Court (*Minister of the Interior v. Harris* [1952 (4)] S.A. 769.)

amendment to the Constitution of 1957, the Constitution (Amendment) Act, 1959, dissolved all the Regional Assemblies and provided that no further elections to such assemblies shall be held.

The Preparation, Approval, and Enactment of the Republican Constitution

When the Government of Ghana started the proceedings to replace the monarchical Constitution of the country by a republican Constitution, the legislature of Ghana was equipped with authority to effect this change through an ordinary law to be adopted by the Assembly by simple majority. The limitations on the legislative power of Member States of the Commonwealth which made enactments repugnant to imperial statutes inoperative, or which purported to prevent Dominion legislatures from making laws having extraterritorial operation, had been swept away a long time before. It had been doubted in 1926 whether a Dominion legislature could take away a right forming part of the "royal prerogative,"[11] but after the enactment of the Statute of Westminster, 1931, it was held that there was no longer any doubt in this regard.[12]

Nevertheless, the Government of Ghana set in motion elaborate machinery for the consultation of the people before Parliament enacted the new Constitution. In February, 1960, the Government submitted to the National Assembly, and the National Assembly approved, a Bill making provision for the holding of a plebiscite on the future form of the Constitution of Ghana. In March, the Government published a White Paper[13] explaining the Government Proposals for a Republican Constitution and containing the draft of the Constitution itself. After the Assembly had endorsed the draft, the people were asked in-a plebiscite "whether they approve the main provisions of the draft Constitution. If this approval is given the Constitutional Assembly will clearly be in duty bound to enact a Constitution along the lines of that

[11] *Nadan v. The King* [1926] A.C. 482. The decision of the Judicial Committee of the Privy Council declared invalid a Canadian Statute purporting to abolish the right to grant special leave to appeal to the Privy Council in criminal cases.

[12] British Coal Corporation v. The King [1935] A.C. 500. The Judicial Committee interpreted the *Nadan* case, cited in the preceding footnote, as not having rested upon the argument that a Dominion legislature could not touch upon a right vested in the . Crown. It explained that the reasons for the decision of the *Nadan* case had been the repugnancy of the Canadian Statute to the Privy Council Acts of the United Kingdom of 1833 and 1844 and its purported extraterritorial operation, limitations which had. been abolished by the Statute of Westminster enacted in 1931, i.e. after the rendering of the decision in *Nadan* (1926) and before the decision in British Coal Corporation (1935). As a consequence, a section of the Canadian Statute couched in identical terms with those voided in 1926, was upheld in 1935. See also Attorney-General for Ontario v, A/G. for Canada [1947] A.C. 127.

[13] White Paper No. 1/60, March 7, 1960. The quotations which follow in the text are taken from this White Paper unless another source is indicated.

approved by the people." The White Paper also stated that the Government would not "consider itself bound to introduce into the Constituent Assembly a Constitution Bill which follows word for word the attached draft. Indeed the time table for the enactment of the Constitution has been specially designed in order to give ample opportunity for the examination of the details of the Constitution, and it may well be that changes of detail, arrangement, and emphasis will be found desirable. It will be the duty of the Constituent Assembly, after the people have given their verdict upon the Constitution, to consider each Article and see whether it adequately fulfils the purpose for which it is intended." Thus, in accordance with British tradition, Parliament retained the last word. It had the responsibility for the implementation in detail of the principles approved in the plebiscite.

The plebiscite was held between the 19th and 27th April, 1960. It is reported that 54% of the total of registered voters cast their votes. "Of 2,098,651 registered people, 1,140,165 voters went to the polls.[14] Out of this, 1,008,740 voted yes and 131,425 no to the Constitution."

The Constitution as eventually enacted by the Constituent Assembly differs in several, by no means unimportant, respects from the original draft.

Ghana as a Sovereign, Unitary Republic

Under the new Constitution Ghana is a sovereign unitary Republic. The power to provide a form of government for Ghana other than that of a Republic or for the form of the Republic to be other than unitary is reserved to the people (Art. 4).,It will be seen later in this article that in the new basic law Ghana has reverted to the system of 'entrenched clauses" of the Constitution, which it had abolished in 1958. Power to enact an alteration of an "entrenched clause" of the Constitution can be conferred on Parliament only by a decision of a majority of the electors voting in a referendum ordered by the President. (Art. 20 (2)). In the White Paper the Government asked the people

by voting for the draft Constitution, to show that they believe in the Unity of Ghana and reject any form of federalism. The Government will consider a vote in favor of the draft Constitution as a mandate to Maintain the unity of Ghana."

Ghana's Membership in the Commonwealth

No provision is included in the Constitution in regard to the membership of Ghana in the Commonwealth. However, the White Paper had indicated the Prime Minister's intention to attend the Conference of Commonwealth Prime Ministers and, in the event of a popular vote

[14] Press Release on "Final Results of Constitutional Plebiscite and Presidential Election Information Section, Embassy of Ghana, Washington, D. C, May 3, 1960.

in favor of the draft Constitution, to inform the Conference that Ghana would become a Republic, but would wish to remain within the Commonwealth. This the Prime Minister did on May 10, 1960. The relevant passages of the Commonwealth Conference Communiqué of May 13, 1960, are modelled on the analogous declaration made in April, 1949, relating to the adoption of a Republican Constitution by India, and read as follows:

> "The meeting was informed that, in pursuance of the recent plebiscite, the Constituent Assembly in Ghana had resolved that the necessary constitutional steps should be taken to introduce republican form of Constitution in Ghana by July 1,1960. In notifying this forthcoming constitutional change, the Prime Minister of Ghana assured the meeting of his country's desire to continue her membership of the Commonwealth and her acceptance of the Queen as the symbol of the free association of its independent member nations and as such the Head of the Commonwealth.

"The heads of delegations of the other member countries of the Commonwealth assured the Prime Minister of Ghana that the present relations between their countries and Ghana would remain unaffected by this constitutional change and they declared that their Governments would accept and recognize Ghana's continued membership of the Commonwealth."[4]

Authority to Surrender the Sovereignty of Ghana to a Union of African States and Territories

The idea of African unity has found strong expression in the new Constitution. The White Paper says, "The Government realises that the present frontiers of Ghana, like so many other frontiers on the African ; continent, were drawn merely to suit the convenience of the Colonial Powers who divided Africa between them during the last century." In the Preamble to the Constitution, the people of Ghana express the hope that they may by their actions "help to further the development of a Union of African States." In the declaration which the President of Ghana shall make immediately after his assumption of office, he is to declare his adherence to certain fundamental principles. These include the principles "That the union of Africa should be striven for by every lawful means and, when attained, should be faithfully preserved"; and "That the Independence of Ghana should not be surrendered or diminished on any grounds other than the furtherance, of African unity." (Art. 13). This is not all. "In the confident expectation of an early surrender of sovereignty to a union of African states and territories, the people now confer on Parliament the power to provide for the surrender of the whole or any part of the sovereignty of Ghana." (Art. 2). Without the necessity of formally amending the

Constitution, the Parliament of Ghana can give up the sovereignty of Ghana in favor of a larger African State.[15] In proposing this constitutional provision, the drafters apparently considered also less ambitious solutions than a pan-African Union. Apart from facilitating the entry of Ghana into a Union of African states and territories, the draft Constitution is also designed to enable peoples who are at present outside Ghana but who are linked by racial, family and historical connections with Ghanaian peoples to join them in one integrated state."

The Constitution of Guinea of 1958 contains similar provisions. In its Preamble, the State of Guinea "affirms its resolve to strive to the utmost to achieve and consolidate the Unity in Independence of the African Fatherland." It also "unreservedly supports any policy designed to establish the United States of Africa." Article 34 of the Constitution of Guinea states: "The Republic may conclude with any African State agreements providing for association for the establishment of a community and involving partial or total relinquishment of Sovereignty with a view to the achievement of African Unity."

The Constitution of the Republic of Cameroun of 21 February 1960 contains in its Preamble a similar, though less emphatic statement: "The people of Cameroun hereby affirm their belief in the value of close co-operation between African States in order to form an independent and free African Union."[16] Also some of the Constitutions of fit Republics of the French Community have references to African Unity in the Preambles of their Constitutions. The Constitution of the Central African Republic of 16 February 1959 says that that Republic "Resolves to make every effort to realize African unity." The Constitution-of Senegal of 24 January 1959 contains similar wording and aims at the realization of African unity "within the framework of a demo-

[15] In 1959 Guinea and Ghana announced that they have agreed on the establishment of a union, to become the nucleus of a union of West-African States. No details about the constitutional arrangements concerning this union have become known, however, in November 1960, it was announced after a visit of President Nkruma of Ghana in Bamako, the capital of Mali, that he and President Keita of Mali had agreed upon the plan for the establishment of a joint legislature of the two States (*New York Times*, November 28, 1960). On December 24, 1960, after a meeting of the Presidents of Ghana, Guinea and Mali in Conakry, the capital of Guinea, it was announced that they had decided on a union, on the promotion of a common economic and monetary policy, on common diplomatic representation, and on meetings of the three heads of States to be held several times a year (*New York Times*, December 25, 1960).

[16] While this article was being printed, new Constitutions of Senegal and Mali became available to the writer. The Constitution of Senegal of 26 August 1960 declares that the Republic will spare no effort to accomplish African unity. In the Preamble to the Constitution of Mali of 22 September 1960, that Republic, no longer a Member of the French Community, affirms its desire to accomplish the political, economic and social unity is indispensable to the assertion of the African personality as well as its determination to pursue its efforts to realize African unity. The Constitution of the Central African Republic of 1959, referred to in the text, has been repealed. The new Constitution, replacing it, is not yet at the writer's disposal.

cratic federation." The Preamble to the Constitution of the Sudan Republic (now Mali) of 23 January 1959 reaffirms the aim of the people of Mali to continue their effort for African unity.[17]

Provisions of the type just referred to also exist in other parts f the world. The Constitution of the Hashemite Kingdom of Jordan of January 1, 1952 provides in Art. 1 that "the people of Jordan form part of the Arab nation." Similarly, the Constitution of the Republic of Syria of June 21, 1953, stated that "the Syrian people form a part of the Arab nation" and went on to provide that, "the State shall, within, the frame of sovereignty and republican regime, endeavor to realize the unity of this nation." (Art. 1/3). In the Constitution of the Republic of Egypt, 1956, the people of Egypt declared "that we form an organic part of a greater Arab entity, and are aware of our responsibilities and obligations towards the common Arab struggle for the glory and prestige of the Arab Nation" and emphasized "that the Egyptian people are an integral part of the Arab Nation." In the proclamation of February 1, 1958, by which Syria and Egypt were merged into the United Arab Republic, "the participants declared that their unity aims at the unification of all Arab peoples and affirm that the door is open for the participation of any Arab state desirous of joining them in a union or federation." Shortly afterwards the "Union named the United Arab States" was established, composed of the United Arab Republic, the Kingdom of Yemen "and those Arab States which will agree to join this Union." (Art. 1 of the Charter of the United Arab States of March 8, 1958). The Iraq-Jordan Agreement proclaiming the short-lived "Arab Federal State" of February 14, 1958, provided that the Federal State will be open to all other Arab States who wish to join. The Constitution of the Republic of Iraq of July 27, 1958 states that the State of Iraq is an integral part of the Arab nation. (Art. 2). The Constitution of the Tunisian Republic of July 25, 1957 proclaims the determination "to remain true to the ideal of a Union of the Great Maghreb, to their membership of the Arab Family" and provides that "the Tunisian republic is. a part of the Great Maghreb and is working for its unity, within the framework of common interests." (Art. 2). When, in May, 1960, the King of Morocco announced the establishment of a "Presidential system within a monarchy" and stated that he would promulgate a Constitution for Morocco before the end of 1962, he also declared that he would work for the unification of the Maghreb.[18]

[17] African opinion is, however, by no means unanimous on this question. The Prime Minister of Nigeria stated in the General Assembly of the United Nations on October l, 1960, that he did not think that ideas of political union were practicable in the immediate future. He did not rule out the possibility of eventual union, but for the present it was unrealistic to expect countries to give up the sovereignty which they have so recently acquired. (UN doc. A/PV. 893.).

[18] *New York Times,* May 24, 1960.

Provisions of a related though different type also appear in recent European Constitutions which provide for the transfer of sovereignty to international organizations. The Preamble to the French Constitution of 1946 contained the declaration that "on condition of reciprocity France accepts the limitations of sovereignty necessary to the organization and defense of peace." This principle was reaffirmed in the Preamble to the French Constitution of 1958. Art. 24 of the Basic Law of the Federal Republic of Germany of 1949 provides that by statute, without formal amendment of the Constitution, sovereign rights can be conferred on international institutions and that limitations of the sovereign rights of the Federal Republic can be agreed to within the framework of a collective security system. Art. 67 of the Constitution of the Netherlands, as revised in 1953, is to the effect that "by or in virtue of an agreement certain powers with respect to legislation, administration and the courts may be conferred on organisations based on international law." The Danish Constitution, as amended in 1953, contains similar, though more rigid, provisions.

The similarity between these provisions of Constitutions of European, African, and Arab countries is limited, however, to their legal aspect: all three types of provisions are intended to facilitate, or at least to propagate, the surrender of sovereignty in favor of a larger community. Politically, there are fundamental differences between them. The Arab constitutions contemplate the creation of larger national communities, those of Ghana and Guinea aim at African unity, the European texts intend to favor the international community and supranational regional groupings.

The Executive Power

The executive power of the State of Ghana is conferred upon the President, the Head of the State. In the exercise of his functions the President acts in his own discretion and is not obliged to follow advice (tendered by any other person (Art. 8). The effect of this provision is that the President is not bound by the advice of his Ministers, but, subject to the provisions of the Constitution, is master of his own decisions. This distinguishes him from a constitutional monarch in the British system, and also from the President of France during the Third and Fourth Republics under the Constitutions of 1875 and of 1946, from the President of Italy under the Constitution of 1947, the President of India under the Constitution of 1949, and the President of the Federal Republic of Germany under the Basic Law of 1949. The President of Ghana combines the functions of the Queen and of the Prime Minister, as they exist in the British Constitution and as they existed in the Constitution of Ghana of 1957. He is Head of State and Prime Minister. This distinguishes him from the President of the Fifth French

Republic, under whom, and subject to whose "arbitrage," there functions a government which is responsible to Parliament and is president over by a *Premier Ministre*, whom the President appoints and whose tenure of office the President terminates.

The combination of the functions of Head of State and Prime Minister makes the position of the President of Ghana similar to that of the President of the United States of America. Like his American counterpart, he is not responsible to Parliament. He "is responsible to the people." His position is, however, different from that of the President of the United States in several important respects, owing to the fact that the Constitution of Ghana has not adopted the American system of checks and balances and of the strict separation of the executive and legislative branches of government. Unlike the American President, the President of Ghana can dissolve the National Assembly unlike the Prime Minister of the United Kingdom, the President of Ghana cannot be unseated by the Legislature. If the President of Ghana dissolves the National Assembly, he automatically ends his own term of office: he must either retire from office or submit himself for re-election. In other respects, too, there is a far stronger organic interdependence between the President and the Legislature of Ghana than between the President of the United States and the Congress. As far as this can be brought about by constitutional law, the President of Ghana is the Leader of the majority party in the Assembly. The National Assembly of Ghana, or its members, play a decisive role in the election of the President.

The Cabinet consists of the President himself and of Ministers whom he appoints from among the members of Parliament. The fact that they are members of the legislative body distinguishes the Ministers of Ghana from the members of the United States Cabinet. Otherwise their position is similar. The Ministers of Ghana assist the President in his exercise of the executive power, take charge under his direction of such Departments of State as he may assign to them, and their appointment may at any time be revoked by the President. Subject to the powers of the President, the Cabinet is charged with the general direction and control of the Government of Ghana. The Constitution of 1960 does not retain the express provision of that of 1957 that the Cabinet shall be collectively responsible to Parliament.

The Election of the President

The election of the first President of Ghana is not regulated in the Constitution; it preceded the Constitution. He was chosen in April 1960 simultaneously with the holding of the plebiscite on the Republican Constitution. The then Prime Minister, Dr. Kwame Nkru¬

mah, received one million votes against 125,000 votes for the Opposition candidate, Dr. J. B. Danquah.[19]

:-. As far as the election of subsequent Presidents is concerned the following provisions apply: An election of a President is held whenever (a) the National Assembly is dissolved, (b) the President dies, or (c) the President resigns his office. The procedure followed in case (a) is different from that followed in cases (b) and (c). ; If the election of the National Assembly coincides with the election of the President (case (a)) an ingenious and original system is applied to the election of the Head of State. The election of the President is decided by preferences given before the General Election by persons subsequently returned as Members of Parliament. (Art. 11). Every parliamentary candidate can give notice that he supports a particular 'candidate for the Presidency, for which declaration he needs the permission of the Presidential candidate whom he seeks to support. The object of this is to avoid a situation where two or more candidates in any parliamentary constituency claim support for the same Presidential candidate "thus confusing the electors." On the other hand, no Presidential candidate can be nominated unless his nominators are prepared to make a declaration- to the effect that they believe Parliamentary candidates in at least one-half of the constituencies in the country will pledge their vote to him if elected. "The reason for this is to make it certain that the only persons who can stand for President are those who have a chance of commanding a majority in the National Assembly." "0nce a Parliamentary candidate has publicly declared his support for a Presidential candidate, and has obtained that Presidential candidate's permission to do so, his decision is irrevocable, and if he is elected as a Member of Parliament his vote is automatically cast in favor of the Presidential candidate for whom he declared his support. This enables the people to have a direct say in the election of the President and prevents a parliamentary candidate who has been elected on the strength of his pledge to support a particular Presidential candidate switching to another candidate without any mandate from those who have elected him." All this, of course, aims at assuring a Parliamentary Majority for the President and his policy. It also makes for at least one powerful political party and for strict party discipline. In Ghana, Parliamentary candidates and members of Parliament combine the potions of members of the United States Congress with those of the lectors under the American Constitution (Art. II, sec. 1 and the Twelfth Amendment). In the United States no Senator or Representative can be appointed an Elector. In the election procedure which we have discussed so far (case (a) above, Presidential election because of -dissolution of the National Assembly) the members of the Na-

[19] Press release, note 14 *supra*.

tional Assembly of Ghana are free agents to about the same ext the members of the Electoral College in the United States, which institution, in the words of Mr. Justice Jackson, "has suffered atrophy almost indistinguishable from *rigor mortis*.[20] However, if no one Presidential candidate obtains a clear majority of preferences, the President is elected by secret ballot by the members of the new Parliament. This is a parallel to the task which, under the Twelfth Amendment to the American Constitution, in similar circumstances devolves upon the House of Representatives. The White Paper explains that "in this case, the members are released from their previous declaration of preference for a particular Presidential candidate and their duty is to choose a President who can command a majority in the Assembly."

If the President of Ghana dies, or resigns his office (cases (b) and (c) above) the successor is elected by secret ballot of the Members of Parliament. All these provisions apply only if the election is "contested," i.e. if there are at least two candidates. The Constitution thus seems to contemplate situations where there is only one candidate for President. That such is the case, cannot, it is submitted, become apparent before the preferences of Parliamentary candidates and the results of the Parliamentary elections are known or until the result of a secret ballot is announced. It has already been indicated above that the Presidential election of April, 1960, was contested, though one of the two candidates won an overwhelming majority (eight to one).

The Legislative Power

Ghana has a unicameral legislature. In its election every citizen of Ghana who has attained the age of twenty-one years, without distinction of sex, race, religion or political belief, is entitled to one vote to be cast in freedom and secrecy. Absence, infirmity of mind or criminality are recognized as grounds for disqualification (Arts. 21 and 1). These principles also apply in the case of referenda (Art. 20) and have also governed the plebiscite of April, 1960, by which the Republican Constitution was approved and the first President of the Republic named. The Constitution provides that "so much of the legislative power of the State as is not reserved by the Constitution to the people is conferred on Parliament" (Art. 20(2)). It also states that "apart from the limitations referred to in the preceding provisions of this Article, the power of Parliament to make laws shall be under no limitation whatsoever" (Art. 20(6)). The provisions, the repeal or alteration of which is reserved to the people can, as already stated, be repealed or altered by Parliament only if the power to do so is conferred on Parliament by a referendum. The referendum must be ordered

[20] *Ray v. Blair*, 343 (1952) 233.

by the President and conducted in accordance with the principle that every citizen without distinction of sex, race, religion or political belief casts one vote. For this reason, the Parliament of Ghana, unlike the Parliament of the United Kingdom, but like the Congress of the United States, is a "non-sovereign law-making body," to apply the distinction propounded by Dicey seventy-five years ago.[21] It will be noted that the President of Ghana is a necessary party to the amending procedure. It is he who "orders" the referendum, while the President of the United States plays no role in the process of amending the American Constitution (Art. V, Const, of the U.S.A.). The provisions of the Constitution !of Ghana which require the authority of a referendum for their amendment include those setting forth universal and equal franchise, the status of Ghana as a unitary Republic, the office and powers of the President, the Cabinet, and the Ministers, the legislative powers of Parliament and the requirement of a plebiscite for the amendment of entrenched clauses, the power of the President to "dissolve Parliament, the provision that no Parliament shall last more than five years, the [judicial power of the Supreme Court, the tenure of office of judges, Parliament's power to levy taxes and its exclusive power to raise armed forces. The authority to repeal the "special powers" of the first President of Ghana, to be discussed later in this article, is also "reserved to the people."

Parliament cannot divest itself of any of its legislative powers (Art. 20(3)). From this rule there is, however, one exception: Parliament has, as already described, the power to provide for the surrender of the | whole or any part of the sovereignty of Ghana to a union of African states and territories (Art. 2).

No person or body other than Parliament shall have power to make 'provisions having the force of law except under authority conferred by Act of Parliament (Art. 20(5)). This provision appears to confer upon parliament the monopoly of law-making, while not preventing it from lowing delegated legislation. Later in this article reference will be made to the provision, expressly setting forth the principle of *stare decisis* (Art. 42(2)) which might be considered by some to give the sanction of the Constitution to the power of judges to shape the law.[22] Whatever the merits of such a contention, there is no doubt that another provision of the Constitution (Art. 55(2)) represents an important inroad into the law-making monopoly of Parliament. This provision which was not contained in the original Government proposals and draft Constitution invests the first President of Ghana during his initial period of office with legislative powers. "The First President may, whenever he considers it to be in the national interest

[21] Dicey, The Law of the Constitution (First Edition, London, 1885) Lecture III.
[22] See below at p. 648.

to do so, give directions by legislative instrument." (Art. 55(2)\ A "legislative instrument" may alter (whether expressly or by implication) any enactment other than the Constitution. Like an Act of Parliament, it is subject to judicial review as to its constitutionality. It is of interest that "for the purposes of this article, the first President's *initial* period of office shall be taken to continue until some *other* person assumes office as President" (*ibid*., par. 5) (italics added). The provision setting forth the legislative power of the First President is one of the clauses the repeal or alteration of which is reserved to the people ie requires a referendum ordered by the President himself.

Judicial Review of Legislation

Having decided to make the Parliament of Ghana a non-sovereign body, a legislature which cannot, on its own authority, legislate on those subjects which are regulated by the entrenched provisions of the Constitution, the authors of the Constitution had also to provide an answer to the question of whether, and by whom, decisions on the: constitutionality of Acts of Parliament (and also of Presidential legislative instruments) could be rendered. In this regard, the Constitution provides that "the Supreme Court shall have original jurisdiction in all matters where a question arises whether an enactment was made in excess of the powers conferred on Parliament by or under the Constitution." (Art. 42(2)). If any such question arises in a lower Court, the hearing shall be adjourned and the question referred to the Supreme Court for decision.

Fundamental Principles

Art. 13 of the Constitution provides that after his assumption of office the President shall declare his adherence to a series of "fundamental principles." The principles relating to the striving for the realisation of African unity have already been mentioned. The President has also to declare that no person shall suffer discrimination on grounds of sex, race, tribe, religion or political belief; that Chieftaincy in Ghana shall be guaranteed and preserved; that every citizen of Ghana shall receive his fair share of the produce yielded by the development of the country; that subject to such restrictions as may be necessary for preserving public order, morality or health, no person shall be deprived of freedom of religion or speech, of the right to move and assemble without hindrance or of the right to access to courts of law; and that no person shall be deprived of his property save where the public interest so requires and the law so provides. Under the draft Constitution the President would have had to declare that nobody shall be deprived of his property without adequate compensation; the reference

to adequate compensation does not appear in the final text of the Constitution.

It will be seen that these "fundamental principles" relate to very different subjects. Some of them relate to the general policy of the State in foreign affairs, such as those which have to do with African unity. Others proclaim fundamental human rights, such as the protection against discrimination, freedom of religion or speech, freedom of assembly, right of access to courts of law and the right to property. Others aim at the preservation of traditional institutions in Ghana (the Chieftaincy). Finally the principle that every citizen should receive his fair share of the produce yielded by the development of the country relates to the economic and social policy to be followed. What is the legal and constitutional effect of this declaration which the President is under a duty to make? Are these "fundamental principles" legally binding or do they only set forth a programme? In case they should be legally binding, do they bind the executive only or also the legislature? If the latter were the case they would amount to limitations of the law-making power of Parliament in addition to those which flow from the entrenched clauses of the Constitution dealt with in the preceding section of this paper. Perhaps a review of similar formulae in Constitutions of other countries which have come into being since the first World War may throw some light on this question.

The Republican Constitution of Germany of 1919, the Constitution of Weimar, in its Chapter II (Articles 109 to 165) set forth the "Fundamental Rights and Duties of Germans" and, in five separate sections, dealt with "the individual," "community life," "religion and religious - associations," "education and schools" and "economic life." It covered the traditional civil and political rights and liberties, and was to this extent comparable to the Bill of Rights contained in the first ten Amendments to the Constitution of the United States. It also proclaimed a series of policies of the State which, a generation later, under the aegis of the United Nations, became known as "economic, social cultural rights" as distinguished from "civil and political rights." The Republican Constitution of Spain of 1931 took over many of the ideas of the Constitution of Weimar in a part devoted to the "Rights and duties of Spaniards." It clearly separated these rights in two chapters, one dealing with "Individual and Political Guarantees" (Articles 25-42), the second entitled "family, economic conditions and culture." This dichotomy of the Spanish basic law was taken over by the Constitution of Ireland of 1937, where we find a division into "fundamental rights (Articles 40-44) and "directive principles of social policy" (Article 45). On the latter it is expressly stated that their application in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognizable by any court. . . ." The Constitution of

India of 1949 juxtaposes "fundamental rights" (Articles 12-35) a j "directive principles of State policy" (Articles 36-51). It provides the latter that they are not enforceable by any court but adds that they are "nevertheless fundamental in the governance of the country" and that "it shall be the duty of the State to apply these principles making laws." In the Constitution of Pakistan of 1956 the role of "directive principles of State policy" (Articles 23-31) as distinct from the "fundamental rights" (Articles 3-22) was similarly defined: "The State shall be governed in the formulation of its policies by the provisions of this part but such provisions shall not be enforceable in an' court." The Constitution of Pakistan of 1956 was abrogated in 1958 but it was provided that notwithstanding this abrogation Pakistan "shall be governed as nearly as may be in accordance with the late Constitution." [23]

The position of the "fundamental principles" in the Constitution of Ghana seems to differ from that in the States just mentioned in several respects. In the Constitutions of Ireland, India, and Pakistan just quoted the "directive principles" form part of their operative text albeit enforcement in the courts is expressly withheld from them. In Ghana they are introduced into the body of the Constitution in the form of a declaration by one office-holder, the President. In the Constitutions of Republican Germany and Spain, of India, Ireland, and Pakistan, the principles are set forth side by side with, and are additional to, a bill of rights. In these Constitutions, some of the principles to be declared by the President of Ghana are part of the bill of rights and therefore of the legally enforceable provisions of the Constitution. In the Republican Constitution of Ghana, on the other hand, traditional civil and political rights are found among the fundamental principles to be declared by the President along with declarations of policy on foreign affairs and of economic and social policy. In the Constitution of Ghana of 1957 some of the fundamental rights of man, such as protection against discrimination, freedom of religion, speech and assembly, were not only part of the legally enforceable provisions of the Constitution but had in addition in the original Constitution before the amendment of 1958, the increased protection of "entrenched clauses." There is no reason to assume that it was the intention of the authors of the Republican Constitution of Ghana to withhold enforceability and protection by the Constitution from such fundamental rights as those just mentioned. Nevertheless it remains to be seen whether owing to the peculiar place these rights have in the Constitution, the Supreme Court of Ghana will assume authority to declare a law which was duly enacted void merely on the ground that it is repugnant to the "fundamental principles" to which the President has promised to adhere. The

[23] Laws (Continuance in Force) Order, 1958, at Pakistan.

Constitution reserves to the people the power to repeal the article relating to the solemn declaration by the President (Art. 13) and also to alter its provisions otherwise than by the addition of further paragraphs to the declaration. This does not conclusively solve our problem, however, because while it "entrenches" the text of the declaration, it does not say what the legal effect of the declaration is. Whatever the reply may be, it would appear that the President has the duty to veto a law which is repugnant to his declaration when it is presented to him for his assent. It might also be assumed that the first President of Ghana is not expected to give directions by legislative instrument under his "special powers" which would be repugnant to the solemn declaration he was obliged to make, and did make, on his assumption of office.

The Power of Veto

This is not the place to go into the history of the right of the Crown, or of its representative, the Governor or Governor-General, to withhold the Royal assent from a Bill duly passed by a Colonial or Dominion legislature and to reserve it "for the signification of His Majesty's pleasure," and the eventual nullification of the power to disallow Dominion legislation on the advice of the United Kingdom Government. This is part and parcel of the history of the development of "Dominion status" in the twenties and thirties of this century. When Ghana became independent in 1957, the Constitution reserved to the Queen as the Head of State, the power to "disallow" legislation. When Ghana was a monarchy the power of disallowance or veto would have been exercised by the Queen or the Governor General on the advice of the Government of Ghana, and not, of course on the advice of the United Kingdom Government. The White Paper recalls: "Under the existing (i.e. the 1957) Constitution a power is reserved to the Governor-General on behalf of the Queen to veto a Bill passed by the National Assembly. Under present conditions, if it were necessary to exercise this power, it would of course be exercised in the Governor-General's name by the Government." In the Republican Constitution a similar power of veto is given to the President. His veto is absolute; unlike the veto of the President of the United States under Art. I (7) (2) of the Constitution of the United States, the veto of the President of Ghana cannot be overridden by the legislature. It is of interest to note—and in this regard, too, the position of the President of Ghana differs from that of the President of the United States—that the President of Ghana is entitled to veto a part of a Bill without vetoing the whole of it. He has, *inter alia*, the right to "signify his assent to a part only of the Bill and his refusal to assent to the remainder" (Art. 24).

The Laws of Ghana

The article of the Constitution which deals with the "Laws of Ghana (Art. 40) appears to set forth a "hierarchy of norms" by which Republican Ghana is governed. On the top of the ladder is, of course the Constitution itself (a), followed by enactments "made by or under the authority of" the Republican Parliament (b), enactments (other than the Constitution) made by or under the authority of the Constitutional Assembly (c), and enactments of the pre-Republican era, which were in force immediately before the coming into operation of the Constitution of 1960 (d).

Legislative instruments issued by the First President have, it seems the same force as enactments of the Parliament established by the Constitution (item (b) above).

The Constitution goes on to list:

(e) the common law, and

(f) customary law.

"The common law" means, it is submitted, English common law. The draft Constitution had in the corresponding article (39) listed "the doctrines of common law and equity, in so far as their application is not inconsistent with [certain] indigenous laws and customs or with any enactment for the time being in force." The final text of the Constitution does not mention the doctrines of equity among the sources of the law of Ghana.

As far as the term "customary law" (f) is concerned, it apparently includes what the draft Constitution had called "indigenous laws and customs" and to which it had purported to attribute stronger force than to the doctrines of common law and equity, provided the indigenous laws and customs were not "repugnant to natural justice, equity and good conscience." The rule that native laws and customs are to be applied only if not "repugnant to natural justice, equity and good conscience" has for a long time been the law of the Gold Coast and of pre-Republican Ghana.[24]

The Judiciary

The Republican Constitution provides for a Supreme Court and a High Court, which are the Superior Courts of Ghana. The judicial power is conferred on these "Superior Courts" and on such inferior courts as may be provided for by law (Art. 41). The Supreme Court is

[24] The Gold Coast (later Ghana) Courts Ordinance, cap. 4, section 87(1). See Allott, Essays in African Law with special reference to the law of Ghana (London, 1960) 157. The phrase "justice, equity and good conscience" has had an interesting history. In India, it "was used as a cloak for the introduction of English law by the English judges, since they assumed with incredible insularity that the principles of justice, etc. could best be found in the rules of English law" (Allott, *op. cit*., p. 11).

the final court of appeal. Reference has already been made to the fact that it has original jurisdiction as a constitutional court. The Judges of the superior courts are appointed by the President (Art. 45(1)). They must not be removed from office "except by the President in pursuance of a resolution of the National Assembly supported by the votes of not less than two-thirds of the Members of Parliament and passed on the grounds of stated misbehaviour or infirmity of body or mind." (Art. 45(3)). The salary of a judge of a superior court is determined by the National Assembly and must not be diminished while he remains in office (Art. 46(1)). These fundamental attributes of a Rule of Law State have their origin in the English Act of Settlement of 1701; they have also been laid down in Art. 111(1) of the Constitution of the United States.

The President appoints one of the Judges of the Supreme Court to be Chief Justice of Ghana, who is President of the Supreme Court and Head of the Judicial Service. The Chief Justice is entitled to an allowance additional to his salary (Arts. 44(1) and (2), Art. 46(2)). The Constitution provides that "the appointment of a Judge as Chief Justice may at any time be revoked by the President by instrument under the Presidential Seal." (Art. 44(3)). The Chief Justice is irremovable as a Judge of the Supreme Court. He can, however, be removed from the post of Chief Justice. His salary as a judge cannot be diminished while he remains in office as a judge. It appears, however, that he can lose the allowance of the Chief Justice, if he is removed from that position.

Reference has been made earlier in this article to the fact that authority to make laws is vested in Parliament and also in the First President of Ghana. Ghana being a common law country, the question arises as to the role of "judicial legislation" in the new Republic. Judicial legislation, conceived as a process of changing the existing law, is not a legal term of art; it is a term in legal philosophy and political science. It has been said that "a system of law expressly sanctioning judicial legislation would be a contradiction in terms."[25] Judicial law-making is, however, a permanent feature of the administration of justice in every society. The reconciliation between fact and theory is brought about by means of the fiction that the enunciation of the new rule is no more than an application of an existing legal principle or an interpretation of an existing legal provision. The Constitution of Ghana (Art. 42(4)) regulates expressly the authority of judicial decisions. It provides that the Supreme Court of Appeal shall "in principle" be bound to follow its own previous decisions and the High Court, i.e. the Court of first instance, shall be bound to follow previous decisions of the Supreme Court on such questions. The Constitution goes on to

[25] Sir H. Lauterpacht, The Development of International Law by the International Court (London, 1958) 155.

provide that "neither court shall be otherwise bound to follow the previous decisions of any court on questions of law." (Art. 42(4)). This provision raises complex problems which cannot be examined here. It apparently means that decisions of non-Ghanaian courts including English courts and the Judicial Committee of the Privy Council, lose such binding force upon the courts of Ghana as they may have had before. They may, it is submitted, retain their "persuasive authority"; the judges of Ghana may follow them if they agree with their reasoning and effects.

Different from the question of the authority of decisions of non Ghanaian courts is the question whether under the Constitution appeals from decisions of the Supreme Court of Ghana to the "Queen in Council" i.e. to the Judicial Committee of the Privy Council are possible. The Judicial Committee has been a court of appeal from courts of British Dominions and colonies. Since 1931, the "Dominions" have had the power to abolish the appeal to the Privy Council by simple legislation and have, as stated earlier, availed themselves of this power in many cases. The White Paper states that on the establishment of the Republic of Ghana "all appeals from the courts to the Judicial Committee of the Privy Council in the United Kingdom will be discontinued." This intention appears to have been given effect in Art. 42(1) which states that the Supreme Court shall be the final court of appeal.

The Powers of the National Assembly to Tax and to Raise Armed Forces

The National Assembly has the power of the purse. No taxation: shall be imposed otherwise than under the authority of an Act of Parliament (Art. 26). The origin of this provision is the English Bill of Rights of 1688. The corresponding provision of the American Constitution is Art. I (8). It would seem that a "legislative instrument" issued by the First President under his "special powers" is not an "Act of Parliament" within the meaning of the taxation provision of the Constitution and that Parliament's powers in the field of public revenue are not affected by the First President's "special powers."

"Annual estimates" shall be laid before the National Assembly of Ghana; each head of the annual estimates shall be submitted to the vote; the Executive's hand is strengthened by the proviso that no amendment of the estimates shall be moved (Art. 31(2)). This contrasts with the position in the United States where all Bills for raising revenue must originate in the House of Representatives and where the Senate may propose or concur with amendments as on other Bills (Art. I (7)).

With respect to the raising of armed forces, the restrictions imposed by the Constitution of Ghana are also based on the English Bill of Rights of 1688. They bear a close resemblance to those obtaining in the United States (Art. I (8) U.S. Constitution). The raising of armed forces is the exclusive prerogative of Parliament, and neither the President of Ghana nor any other person can raise an armed force except under the authority of an Act of Parliament (Art. 53, Ghana Constitution). As in the case of taxation, the correct interpretation of the Constitution appears to be that a "legislative instrument" issued by the President cannot replace an Act of Parliament in authorizing the raising of an armed force.

The Relationship Between the Executive and the Legislative Powers

The statement of the White Paper that the Republican Constitution is not copied from the Constitution of any other country appears to have been borne out by the summary analysis of its provisions which has been attempted in this article. Nevertheless, the new basic law is clearly a descendant of the great family of British Commonwealth constitutions. It has the advantages, and also the disadvantages, that may be inherent in the British Constitution, where no system of checks and balances operates, where there are no legal limits to what a majority of the Legislature or of the voters can do and where the protection of political and other minorities against majority rule consists in the sense of fairness of the majority rather than in constitutional and legal safeguards.

Basically, the President of the Republic of Ghana is the Prime Minister of the British system, who has also been invested with some of the functions of the British monarch. In several important respects, however, the President of Ghana has greater powers than the British Prime Minister:

The merger of the functions of monarch and Prime Minister gives to the incumbent of the office increased stature and prestige as well as greater influence. It makes the President in substance and in form the highest authority also with regard to those few matters for which the Prime Minister of the United Kingdom requires the co-operation of the Sovereign. Whatever the powers of the Queen or the Governor-General on the one hand, and the Prime Minister on the other, may be in other Commonwealth countries—a major constitutional crisis centering around this question arose in Canada a generation ago—there can be no doubt that the President of Ghana can dissolve Parliament at will, while Parliament cannot unseat him.

Secondly, in the relationship between the President and the Legislature the power of the former is strengthened by the fact that in the

normal case of Presidential elections the members of the National Assembly are not free agents, but bound by the preferences they have given before their own election.

The effect of the entrenched clauses of the Constitution is to strengthen, rather than to weaken, the executive power. Where a constitution requires an increased *Parliamentary* majority for constitutional amendments such requirement acts as a check upon the Executive as well as upon the Parliamentary majority and offers protection to political, regional, racial or religious minorities. The requirement of a referendum does not give such protection because in the referendum a simple majority of those participating in the vote is sufficient.

A fourth source of additional strength of the Executive vis-a-vis Parliament consists in the unlimited power of Parliament to authorize delegated legislation.

The President's unlimited right to veto legislation further contributes to his dominant position in the constitutional scheme of things.

The most striking difference between the system now prevailing in Ghana and the traditional British system is due, of course, to the special powers in the field of legislation given to the First President of Ghana. These are, however, limited to his period of office and will not be available to his successor.

The differences from the typical British system are of sufficient consequence to warrant the proposition that the system adopted by the Republic of Ghana is a Presidential regime *sui generis* clearly distinguishable from all other forms of government both within and outside the British Commonwealth. The "special powers" of the First President give to the Constitution—for his period of office—a strongly authoritarian character.