

REVIEW***The Constitutional Law of Ghana* by F. A. R. BENNION.****London: Butterworths 1962.****African Law Series, No. 5. xxxvi and 527 pp. 70s.**

This addition to the Butterworths African Law Series is an important book and the author is well qualified to write it. As technical adviser to the Ghana Government on the preparation of legislation during the period 1959-1961, Mr. Bennion was obviously the right man to produce this commentary. Those who may find some unevenness in the treatment of his subject of constitutional law in Ghana are reminded in the preface that it seemed best to write fully on the matters with which he had been closely associated, leaving it to others to fill in gaps elsewhere. He might, of course, have been aware of the publication of Rubin and Murray's *The constitution and government of Ghana* (1961), and felt no need to repeat certain topics dealt with in that book. He might also have envisaged the fact that most of the students in constitutional law would have had some grounding in the general principles of constitutional law. Even with this *caveat*, the reviewer is of the opinion that Bennion's work will earn the admiration of many a lawyer and student alike.

The author starts off well with a chapter on the constitutional evolution of the country and justifies the writing of this chapter on the ground that

‘ . . . although the republican constitution contains a number of original features and represents a clean break with the past, it inevitably perpetuates by way of organic development much of the former constitutional system. It cannot therefore be understood without reference to the growth of the institutions of government which took place during the years preceding the emergence of Ghana as an independent republic’.

This is followed by a short and accurate account of the circumstances leading to the creation of the republican constitution. The next chapter, consisting of 145 pages, is devoted to a careful and well-balanced analysis of the various aspects of the Constitution. One of the cardinal features is the prominence given to the ‘powers of the people’. By Article 1 it is stated that the powers of the State derive from the people; and by Article 20 it is provided that so much of the power that is not conferred on Parliament is reserved for the people and that Parliament can only legislate on these reserved subjects after powers have been conferred by the people through a referendum. Bennion argues that even after a referendum indicating the wish of the people that Parliament ought to legislate on those reserved subjects, Parliament will not be obliged to exercise those powers if, after further consideration, it does not think fit to do so (p. 148). Surely this interpretation makes nonsense of the powers of the people?

The powers and duties of the President are well set out and a careful appraisal made of the legislative powers conferred on him by Article 55. The functions and powers of Parliament are also dealt with satisfactorily. Bennion's arrangement is a little curious. Part of Powers of Parliament is

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dealt with under the chapter ‘The Constitution’ (p. 146) and part dealt with under the chapter ‘Legislative Functionaries’. The ‘Cabinet’ is also dealt with in a similar manner (see pp. 144 and 332). The judiciary receives scant treatment. Mention is however made of the principle of *stare decisis* as laid down in Article 42 (4), which provides that the Supreme Court (the Final Court of Appeal) shall ‘in principle’ be bound to follow its own previous decisions on questions of law but

shall not be bound to follow the previous decisions of any other court on questions of law. The author's interpretation is as follows (p. 173):

‘Apart from previous decisions of the Supreme Court established by the Constitution, decisions given by the courts in Ghana before or after the coming into operation of the Constitution or by courts in other countries will not be binding.’

This view cannot be accepted without question. Although the members of the former Court of Appeal resigned and were later sworn in as judges of the Supreme Court, can it be said that the Supreme Court is really a new court? It may further be argued that Bennion's view is not in line with section 1 (1) of the Ghana (Consequential Provision) Act, 1960, which makes provision for the operation of existing law, which is defined to include a *rule of law* or a provision of an Act of Parliament.

Part II of the book relates to the State and the individual. There is a lucid description of the citizenship law. Another chapter is devoted to the liberty of the individual and State Security. The author's special field lies in legislative methods, and his chapter on the modes of legislation plus a glossary of legislative terms is highly recommended not only to students but also to practitioners and law teachers. The chart of the collected editions of the Gold Coast laws will be useful to legal historians. It must be noted that the first collection of the laws was for the period 1852-1870 and not 1859 as stated by the author.

Readers of this Journal will find the chapters on the reception and continuation of English law in Ghana and the application of customary law very instructive. The author, for example, makes a critical analysis of section 87 of the old Courts Ordinance which dealt with the function of a court in cases of conflict between English law and customary law and explains why it was necessary to pass the new Courts Act, 1960. Referring to section 87 (1), which provided *inter alia* that ‘in cases where no express rule is applicable to any matter in controversy, the court shall be governed by the principles of justice, equity and good conscience’, the author postulates the view (p. 445) that this expression ‘was not in terms a provision for coming to the rescue of the court where it was doubtful whether customary law or English law applied’. If by this statement the author is of the opinion that the court was always able to ascertain whether English law or customary law applied, then it is submitted that such a view is not supported by the case law. Adverting to this same provision BRANDFORD GRIFFITH in *Cole v. Cole* (1898), 1 N.L.R. 15 at p. 21, made the following observation:

‘These words show that the legislature was well aware that it could not lay down specific rules as to where native law and custom was to apply and where it was not to apply. It was aware that cases must arise for which it could not possibly provide, accordingly it framed the sanction [*sic*] in very general terms expressly specifying one particular class of transaction in which natives should not take advantage of native law and custom, and finally giving the court large discretionary powers.’

Bennion's book is sure to go into a second edition. The following minor points may be noted. The correct citation for West African Law Reports is W.A.L.R. The Table of Statutes is incomplete. These are minor corrections and do not in any way detract from the value of the book.

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