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GRASSROOTS GOVERNANCE? CHIEFS IN AFRICA AND THE AFRO-CARIBBEAN

Edited by Donald I. Ray and P.S. Reddy

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GHANA: TRADITIONAL LEADERSHIP AND RURAL LOCAL GOVERNANCE

CHAPTER 4

DONALD I. RAY

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To understand rural local government and the place and potential of traditional leadership within it in Ghana, first one must understand the transformation of state forms from the pre-colonial period to the colonial period, and thence to the post-colonial period. The presence of what is now called traditional leadership or chieftaincy has important consequences for the concepts of the state, sovereignty, and legitimacy. In turn, these have important consequences for the involvement of traditional leaders in rural local governance in the colonial and post-colonial states.

Having addressed this set of questions, there is a need to examine certain aspects of the attempts by the post-colonial state, and the colonial state before that, to incorporate traditional leaders into certain aspects of rural (and even at times, urban) local government and governance. The most notable aspect has been the creation of the House of Chiefs system. The potential of traditional leadership for enhancing rural local government and governance can be more fully appreciated only after carrying out this analysis.

The term *traditional leader* is used to include those who are classified by their subjects as being kings and other aristocrats holding offices in polities as well as in extended families, and those in decentralized polities holding politico-religious offices. The key point here for their classification as *traditional leaders* in today's parlance, is that their office in Ghana has to date back to the pre-colonial period, so that their claims to legitimacy, and sovereignty where appropriate, pre-date the existence of the colonial state and its successor, the post-colonial state, whose claims to legitimacy and sovereignty post-date those of the pre-colonial political entities. In Ghana today, traditional leaders are termed in English as being chiefs, kings, queenmothers, paramount chiefs, divisional chiefs, etc. There are appropriate terms for traditional leaders in all of Ghana's indigenous languages. Virtually all of rural and urban inhabited Ghana falls under the jurisdiction of one traditional leader or another. The degree of authority, power, influence, or legitimacy that any one traditional leader exercises, varies according to a number of factors. Every Ghanaian is a citizen of the Republic of Ghana. Many, if not the vast majority of Ghanaians, would see themselves as being subjects of their particular chief within the context of that and associated political structures rooted in the pre-colonial polities, but they would usually feel little loyalty to chiefs belonging to another pre-colonial-rooted political entity. Support for the institutions of chieftaincy, if not always for a particular office-holder, remains strongest in Ghana's rural areas. The institution of traditional leadership is thus placed to play a unique role in rural local government and governance in Ghana.

THE EFFECTS OF TRADITIONAL LEADERSHIP ON THE CONCEPTS OF THE STATE, SOVEREIGNTY, AND LEGITIMACY

The Ghanaian case suggests that the continuing presence of traditional authority or leadership during the colonial and post-colonial eras has arguably introduced new aspects for the operation of the concepts of the state, legitimacy, and sovereignty in Ghana and possibly other states of Africa. This has implications for rural (and even urban) local government in Ghana.

A canon is a set of expectations that a certain concept or theory is accepted by most people as being *true*, that it is part of the dominant world view and, therefore, is not to be challenged.¹ There is a canon that has come to be accepted, implicitly and/or explicitly, on what a *state* is amongst many researchers and policy practitioners. This canon of the *state* is commonly used to denote a set of political structures and processes directed ultimately by one political authority (be that an individual such as a king/sovereign or a body such as Parliament) that exercises control over all the people within its territorial boundaries. For example, Watkins defines the state in one of the voices of the canon, the *International Encyclopedia of the Social Sciences* (1968, 150), as being “a geographically delimited segment of human society united by common obedience to a sovereign.” A key point for the argument of this paper is that Watkins highlights the Western notion that an undivided supreme political authority or sovereign is key to the whole understanding of the *state* or *government* (in its broadest sense). He notes: “The state is a territory in which a single authority exercises sovereign powers both *de jure* (in law) and *de facto* (in life).” Watkins’ view of the state in this regard is not an isolated one. Indeed, it could be argued that virtually all the authors and approaches to the study of the state who are included in Chilcote’s outstanding encyclopedic 1994 survey of comparative politics, share this assumption about the state, even if they disagree on other aspects of state analysis.² However, as this chapter argues, this assumption needs to be revised with regard to the state in Ghana because of the continued presence of traditional authority there. In turn, this suggests that local government management and development in Ghana, and especially rural areas,³ needs to consist not only of state structures but also somehow include traditional leaders or chiefs. However, in order to better understand these aspects of the argument, it is useful to first consider the three main historic periods of the state in Ghana, i.e., pre-colonial, colonial and post-colonial, as well as briefly outline the main governments or regimes of the post-colonial state.



Now President John Kufuor of Ghana (right) at his family house in Kumasi with Prof. Don Ray. President Kufuor is a member of one of the royal families that run the court of the Asante king (2000, photo by D. Ray).

For the present purpose, the state in what is now Ghana can be seen being manifested in three different forms that accord with three different historical periods during the nineteenth, twentieth, and twenty-first centuries. While the Ghanaian state forms share many of the same characteristics as those of the canonical conceptualization of the state, they differ in several respects; most notably in terms of the effects of the imposition of colonialism on the factors of legitimacy and sovereignty. In turn, these effects have ramifications for the operation of both the colonial state and the post-colonial state. Of especial concern to this paper are the ramifications for local government.

At the beginning of the nineteenth century, a constellation of African states and other more decentralized political entities had long existed, and in some cases they could trace their existence and/or roots back several more centuries.⁴ Until the 1830s or 1840s, these African states and other political entities in what is now Ghana existed virtually free from European colonial control. European states had little control beyond the cannonballs shot from their castles, forts, and trading posts on the coast. These pre-colonial states experienced growth, ascendancy, hegemony, decline, and incorporation into other states in rather similar ways to that experienced by the European states. These pre-colonial states had their own structures and processes for exercising authority and carrying out various functions, including that of local government.

Britain had begun the process of imposing its claim to control, administer, and exercise sovereignty by the early mid-1800s. This process was carried out tentatively at first as in the Bond of 1844 which extended limited British judicial jurisdiction to some of the coastal states. After Britain's defeat of the Asante state in 1874, Britain moved decisively by means of conquest or treaty to impose its colonial state over the political authorities who, in large measure, had run the pre-colonial states in what is now Ghana. In the main the British colonial state did not extinguish these political authorities, but rather transformed them from kings into *chiefs*, otherwise called traditional authorities or traditional leaders. The leaders of the former pre-colonial states and other political entities lost certain trappings of their states – such as their own armies and foreign policies – much of their control over their legislative, administrative, executive, and judicial powers, but they retained a significant if variable amount of their authority, legitimacy, influence, power, and even elements of sovereignty into the colonial and post-colonial periods.⁵ These chiefs or traditional leaders may have lost power at the *national* or state-level, but in many cases they have remained influential at the local and regional levels, especially in the rural areas. Hence, one of the major questions of local government policy that the colonial state and its successor post-colonial state have faced has been how, if at all, chiefs or

traditional leaders should be incorporated into the new structures and processes of local government.

The British colonial state in Ghana was fundamentally transformed after 1951 when nationalist forces led by Kwame Nkrumah's Convention Peoples' Party (CPP) shared power within the colonial state after the Nkrumah 1951 electoral victory. This sharing ended in 1957 when the British state handed over total colonial state control to Ghanaians who transformed this after independence into the Ghanaian post-colonial state. Despite the opposition of certain key traditional leaders to Nkrumah, he and subsequent regimes did not abolish chieftaincy.⁶ Rather, the governments of the post-colonial state, following the predecessors of the colonial state, have sought to find the optimum relationship with traditional authority, often by adjusting formally the governmental powers and authority that the post-colonial state believed it was granting to the traditional leaders. These adjustments were formally manifested through a variety of legislative and constitutional instruments ranging from ordinances and laws to constitutions. Also, the post-colonial state in Ghana has attempted in part to incorporate traditional leaders by creating the Houses of Chiefs system which operates from the national or state level through to the regions and localities.

In order to understand the legislative and constitutional context of the various post-colonial governments, it is necessary to list these governments. These governments generated the legislative and constitutional instruments that the state used in its attempts to control traditional leaders, including their participation in rural and urban local government. Prime minister and later President Kwame Nkrumah's CPP rule included the dyarchy⁷ of the colonial period (1951–57) as well as his post-colonial governments (including the First Republic, 1960–66). He was overthrown in 1966 by the military-based National Liberation Council (NLC) which handed over power in 1969 to the Second Republic, which in turn lasted until it was overthrown by the military in 1972. A series of military-led governments, including the National Redemption Council (NRC, 1972–75), the Supreme Military Council (SMC, 1975–79), and the Armed Forces Revolutionary Council (AFRC, June–September, 1979) then ruled Ghana before handing over to the Third Republic (1979–81). It was overthrown by the Provisional National Defence Council (PNDC, 1982–93) which in turn handed over to the Fourth Republic (1993–present).⁸

Political legitimacy deals with the reasons that people are expected to obey political authority, especially that of government. As Foucault (1980), Connolly (1987), Baynes (1993), and others have noted, political legitimacy is an important mechanism of the state to obtain the compliance of its citizens (or subjects) with the laws (or other

wishes) of the state. Force can be used by a state (or government) to compel obedience or compliance from its people, be they citizens or subjects, but in the long run this is often an expensive and even ineffective strategy for the state. Drawing upon the European experience, Foucault (1980) argued that the modern state relies much more on hegemonic legitimacy strategies to convince its people that they should willingly obey its laws. Thus, certain lines of argument or knowledge are encouraged by the state and others may not only be discouraged but even be suppressed, so that a certain legitimacy of the state is created by the agreement of people to rule and be ruled in certain ways under certain conditions. One might go further and argue that when the state's canon of political legitimacy breaks down, riots, revolts, and revolutions begin. Thus, it would seem, at least in utilitarian terms, that the best interests of democratic government and people would be served if the political legitimacy of governments, including local government, could be expanded so as to create the conditions for democratic development. Such a political culture must be concerned with creating and enhancing the structures, processes, and values that promote both people and the various communities to which they see themselves belonging. Moreover, given the existence of political legitimacy roots going back to the pre-colonial, colonial, and post-colonial periods, people today may see themselves belonging simultaneously to a community rooted in the newly independent state as well as belonging to another type of community, one rooted in traditional authority.

A key point in the discussion of democratic political legitimacy should be that people have the ability to give or withdraw their consent to be governed, and that governments and other governing and decision-making structures honour the decisions of the people.⁹ Agreement with this does not necessarily bind us to one universal application of democratic political legitimacy, to one particular set of structures or even processes. For example, while there is now broad agreement that multi-party elections at the level of national, central, or federal government are usually one of the expressions of democratic political legitimacy, these views are not shared by all democratic countries when it comes to local government. Some countries such as Canada and Ghana have opted for non-party elections for local government on either an informal basis (e.g., Canada) or on a formal basis (e.g., Ghana). Others such as the U.K. and South Africa have accepted multi-party local government elections. Such differences in political culture and the expression of political legitimacy are, in large measure then, differences of the history and cultural context for each of these countries, rather than any corruption of some mythical *one true* expression of democracy. Hence, while there can be a broad agreement on a core set of criteria by which the presence

or absence of democracy can be determined (e.g., government legitimately elected, etc.), historical and cultural variations are possible in how that democracy (including political legitimacy) is expressed and experienced.

Democracy incorporates and accepts (indeed perhaps depends upon) diversity, difference, and plurality. This is a key point to recognize in this present analysis of traditional leadership and local government, because traditional leadership/traditional authority and the contemporary state now have different bases of legitimacy. These differences could be, and have been, interpreted as proof that traditional leadership/authority is totally incompatible with contemporary democratic government. If such an argument were extended to local government, then the participation of traditional leadership in democratic local government could be seen as being undesirable. Such an argument, in my view, does not take into account the complexity and specific cultural context of a number of democratic post-colonial states in Africa and elsewhere. Any discussion of the desirability and possibility of the participation of traditional leadership/authority in democratic local government and governance, has first to examine these different bases of legitimacy.

Legitimacy can be based on different arguments (or logics), and these can vary over time¹⁰ between and within cultural and historical contexts. So for example, the legitimacy of the contemporary (or post-colonial) state in Africa derives primarily from three sources, all of which are secular: the nationalist struggle for independence; democracy; and constitutional legality.¹¹ Constitutional legality can derive from the post-colonial or colonial period in degrees that vary from state to state. In one sense, the contemporary African states are the successors to the colonial states created by the European imperialist powers of the nineteenth and twentieth centuries, just as the United States and Canada can be seen as post-colonial states to Great Britain's colonies in North America. The post-colonial state inherited and has to deal in one way or another with a considerable amount of constitutional and legislative instruments from the colonial state period.¹² In this sense, at least in the initial period of independence, the post-colonial state is usually the successor to the colonial state. Much of the colonial state's legislative and constitutional framework continues to influence that of the post-colonial state in either positive or negative ways. Thus, the post-colonial state demands obedience to those aspects of the colonial laws and constitutional framework that it deems acceptable because these are seen to be acceptable or legitimate in legal and/or constitutional terms.¹³ In short, whatever evaluation of the colonial state the post-colonial state might have, it may continue to accept a particular law or constitutional measure or principle on its own legal merit. Legality, thus, may be the

legitimacy basis of the continued usage of a colonial measure, even if the colonial state period as a whole has reduced or no legitimacy in the eyes of the post-colonial state and its citizens because of the lack of democracy that imperial or colonial rule means.¹⁴ The post-colonial state also uses the legal system to legitimate its behaviour. Appeals by government are made to the citizenry to be “law-abiding.”

The post-colonial state could also appeal to democracy and the nationalist struggle for independence as two more primary-level bases of its legitimation. Of course, this assumes that the post-colonial state represents itself as the democratic result of the nationalist struggle for independence. This could be seen as a mechanism by which the post-colonial state distances itself from the essentially undemocratic past of the colonial state. Sometimes military coups and governments have shrunk the *democratic* legitimacy of the post-colonial state to only that of the achievement of independence and legality. However, where the democratic content of the post-colonial state has been preserved or re-invented, the post-colonial state is able to base its claims to legitimacy on having its government *duly* elected by their people.

All of these democratic claims by the post-colonial states are ultimately rooted in the concept and practice that the citizens really do have the ability to select and to change their governmental leaders through elections held at specified intervals. To expand on a point made earlier, while this particular conception is now widely held throughout much of the world as being the core meaning of democracy, there is considerable debate on how to put democracy into practice. Should the times between elections be fixed (e.g., every four years?) or flexible (e.g., no more than five years apart)? Which governmental leaders should be elected and which should be appointed: executive? legislative? judicial? administrative? or military? There are considerable differences amongst the democracies on these basic questions of democratic legitimation. Should traditional leaders be added to this list of categories of government leaders¹⁵ who might be elected in order to ensure their legitimacy in the contemporary democratic state including local government, or is there a legitimate case for chiefs not to be elected by every citizen?

A significant part of the answer to this question lies within the nature of the legitimacy of traditional authority. Two key points need to be made about the bases of the claims to political legitimacy by traditional leadership in the era of the post-colonial democratic state. First, such legitimacy claims by traditional leaders are in very large measure (if not entirely) different from those of the state itself. Second, the traditional leaders’ legitimacy potentially could be added to the legitimacy *pool* of the contemporary state, especially for matters of local governance and development.

This is a point that was and/or has not been lost on a number of colonial and post-colonial states.

Traditional leaders have three distinct claims to legitimacy in the contemporary era. First, traditional leaders can claim to be the carriers of political authority and legitimacy that is derived from the pre-colonial period. Traditional leaders occupy structures supported by constitutions and laws¹⁶ that, while they may have changed in varying degrees by the colonial and post-colonial states, still retain a core of customary legitimacy that predates the imposition of colonialism. In other words, traditional leaders have a special historical claim to pre-colonial roots; i.e., the first period of African independence before it was lost to colonialism (primarily during the 1800s). Traditional leaders can point to the antiquity of their particular office and make the argument that since it was founded (either directly or indirectly through an office that was pre-colonial) in the pre-colonial period, their particular *traditional* authority represents those indigenous, truly African values and authority that existed before the changes imposed by the colonial system began to take effect.¹⁷

Such customary constitutions of traditional leadership may be seen as the constitutions of the grassroots, i.e., of the local-level rural and often urban people. These customary constitutions form part of rural and often urban local governance that people encounter as they grow up, perhaps even before they engage with the rural local government of the post-colonial state. Traditional leadership and its customary constitutions is the form of rural local governance in which the vast majority of rural Ghanaians are first politically socialised, and thus imbibe their first political values.

The second distinct claim to legitimacy by traditional leaders in the post-colonial democratic state is that based on religion. To be a traditional leader is to have one's authority, one's power legitimated by links to the divine, whether the sacred be a god, a spirit, or the ancestors. For a traditional leader to function, that office must maintain and demonstrate its link to the divine. In Africa, the divine basis of traditional legitimacy pre-dates the imposition of colonialism. This timing thereby reinforces the other distinct basis of legitimacy for traditional leaders. In much of Africa, these religious beliefs were established before the introduction of Islam and Christianity, but in some cases these later religions have been added to, or superseded, the earlier religious beliefs. If one distinguishes between states in which a religion is present as a system of belief and one in which the state has formally adopted the religion as part of its legitimacy, then there are few states in Africa that have state religions and, thus, the differences in the bases of legitimacy which were argued above hold. It should be

added, that the absence or presence of any religion does not detract from the ability of a state to be democratic.

The third distinct claim to legitimacy by traditional leaders is that of pre-colonial-rooted culture. The historical and religious legitimacy claims¹⁸ can be interpreted as contributing to the view that traditional authority and leadership has deep roots in indigenous culture. Traditional leaders thus may be seen as the *fathers* and *mothers* of the people. Traditional leaders use regalia, dance, ceremony, music, cloth, etc., to display physically their cultural legitimacy. Traditional leaders may be recognized, as they are in Ghana, as very significant transmitters of culture by their peoples, themselves, and by the state.

There are thus, it is argued, two different sets of roots of legitimacy present within a contemporary post-colonial state such as Ghana. The legitimacy roots of the traditional authorities pre-date those of the colonial and post-colonial states and were not incorporated to any significant degree into the sovereignty claims of the colonial and post-colonial states. As will be seen in the next section, at best these states have been ambiguous as to what degree this differently-rooted legitimacy (and hence also sovereignty¹⁹) could or should be mobilized or co-opted in aid of the goals of the colonial and post-colonial states. It would appear that legitimacy, sovereignty, power, authority, and influence may be divided in post-colonial states containing traditional authorities. While the overwhelming share of sovereignty, power, and authority is held by the Ghanaian post-colonial state, traditional leaders hold (figuratively), significant amounts and types of legitimacy, authority, and influence. There has been perhaps some recognition in these states by their leaders that they are dealing with states having not just one ultimate source of sovereignty, but rather states which have two different-rooted, asymmetrical sources of sovereignty. If the two different sets of roots (i.e., sources of legitimacy) are seen as being capable of producing different genes or characteristics, then it is possible to conceive of the different roots producing a stronger, more productive tree. If rural local development is imagined to be a tree, then it needs a combination of rural local government and traditional leadership for a stronger rural local governance.

If legitimacy is not seen as a zero-sum, winner-take-all situation, then the different bases of legitimacy that the state and traditional leaders have need not be an obstacle to the achievement of development and democratization by rural local and central/national governments of African post-colonial states. Where there is little co-operation, little co-ordination, and little recognition of the differing bases of legitimacy between the local government of the state and traditional leaders, rural

local government itself will carry out its policies and projects as best it can, often without all of the desired or even necessary resources. However, if there is a strategy of adding the legitimacy resources that traditional leaders have to those of the state's rural local government, then it should be possible to mobilize more quickly the compliance, co-operation, and other resources of those people who are both citizens of the state and subjects of the traditional leader with local government. Of course, this strategy will only apply to people who believe in the legitimacy of the traditional leader. From a rural local government policy management perspective, the issue here is not whether people accept the legitimacy of local government, but rather how the addition of legitimacy resources from traditional leaders may increase the compliance and enthusiasm of people for legitimate development projects and policies, thereby increasing the capacity of rural local government in promoting development as well as increasing the cultural fit of democratic local government structures amongst the peoples of African states.

RURAL LOCAL GOVERNANCE AND TRADITIONAL LEADERSHIP UNDER THE COLONIAL STATE AND POST-COLONIAL STATE IN GHANA

In Ghana, the relationship between both the colonial and post-colonial states and traditional leadership with regard to rural local and other government has been uneasy and ambiguous, but it is one in which the state has expressed a constant political and policy interest since the imposition of colonialism, and again since independence. Four ways of measuring this rural local governance relationship will be used in this chapter. First, there is the recognition that traditional leadership formed a layer of government that the colonial state found in place and with which the post-colonial state then had to manage its relations. Thus the first issue, and a continuing issue at that, has been how first the colonial state and then the post-colonial state has attempted to regulate the exercise of authority and power by traditional leaders. The second and third measures concern local government administration and finance. Fourthly, the Houses of Chiefs system is the latest significant policy initiative of the Ghanaian post-colonial state to manage its relations with traditional leaders at the levels of rural and urban local government.

The underlying political canon of the state is revealed by legislative and constitutional instruments (ranging from ordinances to laws to constitutions): these represent formal manifestations of political power shifts. Thus, the analysis of legislative and constitutional instruments can, therefore, illuminate the dynamics of political relationships between both the colonial state and the post-colonial state and traditional leaders with regard to rural local governance.

The creation of the British colonial state in what is now Ghana was uneven and complex. Although there had been a European presence in southern Ghana from the late fifteenth century (an area known then as the Gold Coast), the process of British colonization did not seriously start until 1874. At that time a British Order in Council created the Gold Coast Colony.²⁰ In 1901, following a war with the Asante, the British formally extended northwards their colonial control of Ghana to what became known as the Ashanti Protectorate and the Northern Territories.²¹ In 1922, British administration of the area known as British Togoland was formally recognized by the League of Nations.²² Complete British colonial rule was maintained over these territories until a system of dyarchy (or joint rule) between the British colonial state and Kwame Nkrumah's nationalist Convention People's Party (CPP) was started in 1951. Britain formally withdrew in 1957, handing over its former colonial state to the Ghanaians who made it into a post-colonial state.

RURAL LOCAL GOVERNANCE AND TRADITIONAL LEADERSHIP: DETERMINING THE AUTHORITY TO GOVERN

A central problem that the colonial and post-colonial states had with regard to traditional leaders, has been how to handle the issue of determining what authority to recognize for them in local governance. The pre-colonial states had their own structures and processes for determining who was recruited to political office and how that authority was to be exercised. Such structures and processes also included explicit customs outlining in what circumstances an office-holder (or "chief"²³) could lose his recognized leadership status; subjects did not hesitate to initiate "destoolment proceedings against a chief to impeach and remove him or her if their actions were not acceptable under customary law (Arhin 1985; Hailey 1938; Ward 1948). However, the question of recognition of traditional leadership in rural local and other government has long proved difficult and attention-demanding upon those who have controlled the colonial and post-colonial states. It is an important one because it involves the state

in attempting to articulate its legitimacy claims to govern with those of the traditional leaders whose legitimacy claims exist outside the control of the state.

Prior to 1874, Britain had been not very concerned with rural local government in those small territories on the coast that it controlled. For example, in one case the British empire did allow one of its officials to act as a judicial assessor in the territories of the Fante and other pre-colonial states that signed the Bond of 1844 with Britain. However, this was restricted to judicial practice, applying British legal practice in those territories for serious cases. While this marked to some degree the extension of the British colonial state into the rural local government of these pre-colonial states, Britain did not see this as an extension of British sovereignty over these pre-colonial states (Ward 1948, 186–87). Thus, the issue of the colonizing state extending its authority to determine the political status of the leaders of these pre-colonial states, did not arise as a central policy question until the 1870s.

From the 1870s onwards to the end of the First World War, Britain set about establishing the British colonial state in what is now Ghana, spurred on by imperial competition for colonies and the attacks against the Asante kingdom in 1873–74, 1896 and 1900. In 1874, Britain incorporated much of southern Ghana (i.e., along the coast and somewhat into the interior) into the British colonial state as the Gold Coast Colony. Britain then sought to exert its overall control over the area, but allowed considerable autonomy to the now-traditional leaders in the exercise of rural local government. The 1878 Native Jurisdiction Ordinance (Gold Coast Colony)²⁴ and the 1883 Gold Coast Native Jurisdiction Ordinance were examples of the colonial state's legislative attempts to control the jurisdiction of traditional leaders in the Gold Coast Colony and to influence, but not necessarily to determine, in the first instance, the selection and removal of traditional leaders. According to section 29 of the 1883 Gold Coast Native Jurisdiction Ordinance, the Governor-in-Council could suspend or dismiss a chief if he proved incompetent or unsatisfactory to the colonial state. However, traditional leaders were not compelled to seek recognition from the governor before they could exercise their jurisdiction, which was mainly in rural areas. Lord Hailey argued that this distinction seems “to recognize that the right of jurisdiction was inherent in the chief, though the extent of its exercise might be subject to regulation” (Hailey 1938, 468). The colonial state thus recognized that traditional leaders had their own source of authority and were not mere creations of the colonial state. These ordinances were evidence that the colonial state recognized that in the Gold Coast Colony if the British colonial state was to govern most effectively in its own terms of minimizing expenditures and maximizing colonial state control,²⁵ then it must recognize the

autonomous legitimacy and authority of traditional leaders, especially in rural local government where traditional leaders already had their institutions covering the ground.²⁶ While the British colonial state had made bold claims for the extension of its sovereignty in its 1874 Order in Council, when it came to the Native Jurisdiction Ordinances of 1878 and 1883 the British colonial state was more circumspect in implementing its claims to sovereignty in the case of recognizing or withdrawing its recognition of traditional leaders; under the 1883 Ordinance, the colonial state limited itself to the power of removing traditional leaders. How people become a traditional leader or chief was something conceded to the realm of traditional leadership. This does seem to suggest that the British colonial state implicitly recognized that some elements of legitimacy, authority, and even sovereignty still accrued to the traditional leaders.

The 1904 Chiefs' Ordinance was designed to enhance the authority of traditional leaders in the Gold Coast by having the governor officially recognize them as chiefs. This measure was optional and was not necessary for a traditional leader to act as a chief. It was designed to enable traditional leaders to enforce the laws of the colonial state (Hailey 1938, 470). When the 1927 Native Administration Ordinance (Gold Coast Colony) replaced the 1883 ordinance, the colonial state once more did not make recognition by itself a mandatory pre-condition to the exercise of authority and power by a traditional leader in the Gold Coast Colony.

While many of the traditional leaders of what became the Gold Coast Colony (i.e., the areas to the south of the core of the Asante kingdom) had been allies of the British in a series of wars against the Asante from the 1820s to 1901, the Asante kingdom had repeatedly fought the British Empire and its colonial state. In fact the British governor, Sir Charles MacCarthy, literally lost his head in defeat to the Asante army at the Battle of Asamankow on 21 January 1824. The British colonial state perceived the Asante kingdom to be a threat even as the British Empire defeated the Asante kingdom in 1874, 1896, and 1900–01. Even as late as the early 1920s, the British Imperial General Staff sent enquiries to the Northern Territories as to whether there were any Asantes who were likely to rise in rebellion. This perception of threat to the British colonial state by the Asante kingdom may well explain, *inter alia*, the harsher control exercised by the British colonial state over Asante traditional leaders compared to those exercised over the traditional leaders in the coast who had been allies of the British. After defeating the Asante in 1896, the British Empire exiled the Asante king and his court, eventually to the Seychelles Islands which are right across Africa and well across the Indian Ocean. In 1901, the British colonial state annexed the Asante

kingdom. Finally in 1924, the British Empire allowed the Asante king, Prempeh I, to return to his former capital Kumasi, not as king but only nominally as the paramount chief of Kumasi. Only in 1935 did the British colonial state formally allow the restoration of the office of the Asante king – the Asantehene – and the creation of a form of the Asante kingdom.

Before this restoration and its reflection of confidence by the British colonial state in its overall ability to control Asante traditional leaders, the British colonial state closely regulated the ability of Asante traditional leaders to govern. The 1902 Ashanti Administration Ordinance stated that a traditional leader could not act as a chief until the governor had granted formal recognition to him. Contrary to the legislative instruments used in the Gold Coast Colony, in the Ashanti Protectorate security concerns seem to have made jurisdiction inherent not in the traditional leaders but in the colonial state. The colonial state went further and selected pro-British candidates as traditional leaders, even though these people were not customarily eligible for these offices (Busia 1951, 105). The Asante responded in 1905 with a campaign to destool or remove traditional leaders not considered to be legitimately selected according to custom, or who did not follow legitimate, customary law in their rule. The colonial state forced people to support those uncustomary traditional leaders, even to the extent of fining some and deporting others (Busia 1951, 105–6). This policy continued with the colonial state's 1924 Native Jurisdiction Ordinance (Ashanti). While section 2 stated that a traditional leader was to be "a person elected and installed in accordance with native customary law," the newly installed traditional leader still had to be recognized by the colonial state before he could exercise his powers and authority. Furthermore, the colonial state still refused to recognize Prempeh I as being king.

The colonial state's policy of exercising direct control over traditional leaders and hence much of rural local governance in colonial Ghana, spread from the Ashanti Protectorate to all parts of colonial Ghana during the 1920s through to the last stages of colonialism. Indeed, this policy continued into the post-colonial period until the inauguration of Ghana's Third Republic in 1979. The 1932 Native Authority Ordinance for the Northern Territories and the Northern Section of Togoland as well as the 1932 Native Administration Ordinance for the Southern Section of Togoland, again specified that traditional leaders were to be selected according to custom, but that they were not to act as chiefs until they had been recognized by the governor (Hailey 1938, 476–79). Likewise, the 1935 Native Authority (Ashanti) Ordinance stated that the Asante king and all other traditional leaders were to be selected and enstooled according to custom, but had to wait for the governor's confirmation before

they could exercise their jurisdiction. While this ordinance marked the restoration of the office of the Asante king, the Asantehene, and the limited restoration of the Asante kingdom, the ordinance also noted that the governor could withdraw recognition at any time (Busia 1951). The 1944 Native Authority Ordinance (Gold Coast Colony) also required that the traditional leaders in the Gold Coast Colony on the coast had to be selected and inaugurated according to custom, but that they could not exercise their *Native Authority* jurisdiction until they had been recognized by the governor, and only if the traditional leader acted in conformity with the policies of the colonial state. Like the 1935 Ashanti ordinance, the 1944 Gold Coast Colony ordinance also allowed the colonial state – in the form of the governor – to withdraw recognition of a traditional leader acting as a Native Authority at any time (Hailey 1938, 341).

During this time at the height of indirect rule, to be a recognized traditional leader acting within the framework of the Native Authorities of the colonial state meant that such a traditional leader controlled and administered a significant amount of rural local government: courts, police, jails, treasuries, local market regulation, administrative fees, local roads, cemeteries, and all manner of other local matters. All of this rural local government by traditional leaders was supervised by the colonial state. This pattern of control over traditional leaders acting as agents of rural local government continued in the last period of British-only colonial rule²⁷ and into the dyarchy period of the colonial state when the British were increasingly sharing colonial state power with Kwame Nkrumah, his Convention Peoples' Party, and the other nationalists. During this latter period, Nkrumah as prime minister kept this policy of control over traditional leaders acting within the colonial state while he reduced their formal powers in local government,²⁸ but he did not eliminate the offices of traditional leaders nor did he remove them from other aspects of rural local governance and, in fact, he helped create new institutions such as the Regional Houses of Chiefs²⁹ for traditional leaders at independence which have been continued and expanded throughout the post-colonial period.

After independence in 1957, Nkrumah's government continued the colonial state's policy of implicitly conceding that traditional leaders had independent claims to legitimacy, but that the state needed to control them. For example, the First Republic's 1961 Chieftaincy Act provided that a traditional leader was not legally a chief until he was so recognized by the local government minister by having the chief's name entered on the chiefs list of the minister. The minister could revoke such recognition at any time if the minister deemed it to be "in the public interest." The 1963 Chieftaincy (Amendment) Act further strengthened the hand of the post-colonial state in dealing

with traditional leaders. The minister had absolute discretion in referring any chieftaincy question to the judicial commissioner, even if it meant withdrawing it from an ongoing consideration by a rural or urban Traditional Council.³⁰ The Nkrumah governments realized the importance of controlling traditional leaders, who they were and what they could be allowed to do by the post-colonial state because they had seen how some key Asante and some other traditional leaders had supported another electoral party that challenged the Nkrumahists for control of the post-colonial state, and also because the Nkrumah governments realized the support that the traditional leaders had, especially in the rural areas (Andoh 1987; Rathbone 2000).

The military government which overthrew the First Republic in 1966, the National Liberation Council, withdrew recognition from a number of chiefs that had been recognized by the government of the First Republic, alleging that they had been created in non-customary ways (Ray 1996). The civilian government of the Second Republic (1969–72) that followed in 1969 continued to intervene in the determination of traditional authority status. Although Art. 153 of the constitution of the Second Republic of Ghana (1969) indicated that “the institution of chieftaincy together with its Traditional Councils as established by customary law and usage is hereby guaranteed,” section 48 of the subsequent 1971 Chieftaincy Act added two qualifications. First, a person was not recognized as a chief until his name appeared on the newly created National Register of Chiefs that was to be maintained by the National House of Chiefs. The second condition was that a person could not carry out any functions of a chief until he was recognized by the Minister. Moreover, section 52 of the Act allowed the Minister “in the interests of public order” to prohibit by executive instrument any person exercising the functions of a chief if he was not considered a chief in the eyes of the state, direct such person to move out of the area, and even prohibit other persons from treating him as a chief. In 1972, the next military government issued the National Redemption Council (Establishment) Proclamation, 1972, which suspended the 1969 constitution but kept in force and effect the 1971 Chieftaincy Act (Article 23).

The post-colonial state’s attempts to claim final sovereignty and inherent jurisdiction are not surprising. First, as has been earlier stated in this chapter, the post-colonial state inherited the constitutional framework of the later colonial state, a framework that was intrinsically western in scope and which recognized a supreme political authority – that of the state. Moreover, having inherited a framework that gave the newly independent state “ultimate” control, there seems little reason to expect that the state would voluntarily “share” its new sovereignty. Finally, and especially in the

case of Nkrumah's nationalist government, the institution of chieftaincy was not only considered undemocratic, but many traditional leaders were as well viewed as the willing partners of the previous colonial state.

The Third Republic (1979–81), however, produced a marked policy shift in the area of the determination of traditional authority status. ARTICLE 177 of the constitution not only guaranteed the institution of chieftaincy but also stipulated that Parliament did not have the power to confirm or withdraw recognition from a traditional leader. The power was instead conferred on the Houses of Chiefs system which was to act in accordance with customary law and usage, and the Supreme Court which could with leave hear matters under appeal from the National House of Chiefs.

This policy shift was maintained during the Third Republic and the first few years of the Provisional National Defence Council rule (1981–93) but was changed in 1985 in response to the increasing number of violent chieftaincy disputes (Ray 1996, 62). The Chieftaincy (Amendment) law, 1985 (P.N.D.C.L. 107), stipulated that state recognition by way of a notice published in the Local Government Bulletin was necessary for a person to be deemed a chief. This was followed by the 1987 Chieftaincy (Membership of Regional Houses of Chiefs) (Amendment) Instrument (L.I. 1348) which authorized and recognized the establishment of new paramount chiefs in the Brong-Ahafo Region and their inclusion into the Regional House of Chiefs, and the 1989 Chieftaincy (Specified Areas) (Prohibition and Abatement of Chieftaincy Proceedings) Law (P.N.D.C.L. 212) which “in the interest of peace and public order” prohibited any type of proceedings in the matter of nomination, election, enstoolment or recognition relating to specified chiefs in specified areas.

The constitution of the Fourth Republic (1992), written by the Consultative Assembly which contained many chiefs and persons eligible to become chiefs, resembled the constitution of the Third Republic in the area of determination of traditional authority status, (Ray 1996, 63). Like the 1979 constitution, ART. 270 of the 1992 constitution stipulates that Parliament cannot interfere in the recognition process of chiefs; this power is conferred on the House of Chiefs system and the Supreme Court which can hear matters under appeal from the National House of Chiefs. The same article indicates that the “institution of chieftaincy, together with its traditional councils as established by customary law and usage is hereby guaranteed.” Persons convicted of high treason, high crime, offences against the security of the state, fraud, dishonesty or moral turpitude are disqualified from becoming chiefs (ART. 275), but in all other aspects the eligibility requirements of a chief are rooted in tradition. ARTICLE 277 defines a chief as “a person, who, hailing from the appropriate family and lineage, has

been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queenmother in accordance with the relevant customary law and usage.”

As has been argued elsewhere (Ray 1996, 64) the wording of the guarantee of the institution of chieftaincy in the constitutions of the Third and Fourth Republics, reveals the state’s realization that chiefly legitimation is rooted outside the former colonial state and the contemporary post-colonial state. “Customary law and usage,” not the state’s directives, legitimates the system of chiefly offices. Moreover, the number of constitutional and legislative instruments produced by the state over the colonial and post-colonial periods in an effort to control (or at least influence) the determination of traditional authority status is an indicator that state leaders knew that they lacked unchallenged authority and legitimacy with regard to rural local government and other aspects of the state.

RURAL LOCAL GOVERNANCE AND TRADITIONAL LEADERSHIP: LOCAL GOVERNMENT ADMINISTRATION

Traditional leaders have been involved in rural and urban local government right from the start of the colonial state through to the present in the post-colonial state. The degree and nature of that involvement of traditional leaders in rural and urban local government has varied considerably, but it has continued.

The 1883 Native Jurisdiction Ordinance (Gold Coast Colony) of the colonial state allowed paramount chiefs, or headchiefs as they were then termed, and their councils to have the option of making bylaws dealing with such local government functions as the building and maintenance of roads, forest conservation, the prevention and abatement of nuisances, the provision of burial grounds, and the regulation of burials. The governor had the ability to disallow bylaws not in keeping with the colonial state’s laws and policies. Traditional leaders were given the right to fine or imprison those of their subjects who broke the allowed bylaws.

The bylaw powers of the paramount chiefs were expanded by the 1927 Native Administration Ordinance for the Gold Coast Colony. This time no limits were put on the local government subject matter of the bylaws to be made by the chiefs as long as they were consistent with the laws and policies of the colonial state. The ability of the paramount chiefs to enforce these bylaws was reinforced as they now were able to operate their own Native State prisons.³¹ The utilization of traditional leadership in rural local government during this early colonial period reflected not only a recognition

of the legitimacy of traditional leaders, but also the financial benefits to be gained by minimizing the number of colonial administrators by substituting the already existing governing institutions of traditional leadership and the expectation that traditional leaders could use bylaws, etc., to force their subjects to engage in compulsory, unpaid labour to construct and maintain roads needed by the colonial state.³²

Partially elected urban government with limited chiefly participation on the Town Council was proposed by the colonial state for the coastal Gold Coast Colony in the 1924 Municipal Corporations Ordinance. The colonial state dropped this ordinance "... as it was felt by many that an elected mayor would be a dangerous rival to the head chief, and that relationships between the Town Council and the tribal authorities would be very complicated and difficult" (Ward 1948, 323).

The British colonial state's initial suspicion of the Asante after the 1900–01 Yaa Asantewaa uprising was also reflected in the more limited nature of what was accorded to traditional leaders in the Ashanti Protectorate compared to the Gold Coast Colony. The colonial state under the provisions of the 1902 Ashanti Administration Ordinance did not allow traditional leaders to pass bylaws, rather it compelled traditional leaders to perform such local government functions as road construction and maintenance and enforcing sanitary rules in villages. Traditional leaders could fine and otherwise compel their subjects to follow these rules and regulations. The 1909 Ashanti Cemeteries Ordinance compelled traditional leaders, under penalty of fines, to create and maintain cemeteries. By 1924, the colonial state's suspicions of Asante chiefs was ebbing. Under the 1924 Native Jurisdiction Ordinance (Ashanti), headchiefs, later known as paramount chiefs, with their councils were given the jurisdiction to make bylaws and maintain prisons, subject to colonial supervision and approval. The 1925 Kumasi Public Health Board Ordinance was established to regulate public health matters in what was and is the *de facto* capital of the Asante kingdom. The Kumasi Council of Chiefs nominated two of the ten board members. The other members were five from the colonial administration, two members of British colonial interests and a non-Asante African.

The 1930s and 1940s saw the colonial state continue to grant more local government powers to traditional leaders through the 1932 Native Authority Ordinance (Northern Territories and the Northern Section of Togoland), the 1932 Native Administration Ordinance (Southern Section of Togoland), the 1935 Native Authority (Ashanti) Ordinance, and the 1944 Native Authority Ordinance for the coastal Gold Coast Colony. In the case of the Southern Section of Togoland, the colonial state attempted to end the geographic fragmentation of the sixty-nine traditional leadership divisions

by offering those divisions which amalgamated more local government powers and, consequently, less control by the District Commissioner, as well as the right to have their own tribunals/courts. These would increase the chief's status and generate revenue for the chief through the court's fines (Hailey 1938, 479–80). The 1935 Ashanti Ordinance allowed traditional leaders to make local government bylaws and regulations on such subjects as the movement of cattle, building construction, and the control of liquor (Busia 1951). In the Gold Coast Colony, the colonial state used the 1944 ordinance to both expand the local government jurisdiction of the traditional authorities, and to also allow the colonial authorities to force the chiefs to make and enforce bylaws that the colonial authorities thought to be necessary, but which the traditional leaders had not implemented or enforced. For example, while traditional leaders had passed bylaws on eliminating cocoa pests, traditional leaders did not enforce these laws which would have cut into the short-term wealth generated by cocoa. Instead, the colonial state itself had to take the necessary, but unpopular action on cocoa pests (Hailey 1938, 468–69; Ward 1948, 340–41).

While the colonial state had come to see traditional leaders as subordinate allies in the operation of local government, just before and during the colonial dyarchy Nkrumah and his CPP saw this and came to regard traditional leaders as potential obstacles to the nationalist struggle for an independent Ghana achieved by democratic means. Moreover, since traditional leaders were not elected by universal adult suffrage, the question arose that if the post-colonial state was to have democratically legislative and executive institutions from Parliament down to rural local government, how did traditional leaders (who by the nature of their institution were not elected by all of their subjects on a regular basis) fit into this type of democracy at the national level and at the level of local government?³³ With regard to local government, during the colonial dyarchy, as Nkrumah gathered more electoral support and power, he implemented a number of ordinances that dismantled direct control by traditional leaders of rural and urban local government, but which allowed chiefs to have one-third of the seats in the new Local Government Councils compared to two-thirds of the council members who were elected. These local government councils administered in their areas of jurisdiction matters as diverse as public order, building, education, forestry, animals, and agriculture. The 1953 Municipal Council Ordinance, dealing with the major urban centres, reduced traditional leadership membership of the municipal council down to one-sixth. The paramount chief of the area was the non-voting president of the municipal council. In 1957, the participation of traditional leaders in the municipal councils was again reduced.³⁴

The post-colonial state has continued to centralize local government under its control with varying degrees of traditional leadership participation in local government structures. After independence, Nkrumah, on the one hand, used the Local Government Act to remove traditional leaders from their seats on the local government councils. On the other hand, he used the 1958 House of Chiefs Act and the 1961 Chieftaincy Act to reassure traditional leaders that the institution of chieftaincy and their powers to deal with customary matters was guaranteed, as well as to establish the regional houses of chiefs³⁵ in which they could debate and deal with customary matters in both rural and urban local governance.

After Nkrumah's overthrow in 1966 by the military, the National Liberation Council (NLC: 1966–69) replaced Nkrumah's local government councils, but not the regional Houses of Chiefs, with nominated management committees. The NLC's 1969 Local Government Amendment Decree changed the membership of the management committees to include three traditional leaders out of a total membership of thirteen. When the NLC handed over power to the elected Second Republic (1969–72), the 1969 constitution specified that all three levels of local government have chiefs as participating members. Up to half of the Local Council members could be traditional leaders. At the next level up, one-third of the District Council members could be traditional leaders. The Regional House of Chiefs was entitled to appoint two of its members to the Regional Council.

The Second Republic was overthrown by a military coup in 1972. A series of military regimes governed Ghana from 1972 to 1979. While various changes in local government took place during this time, on the whole the military governments continued the Second Republic's practice of including traditional leaders as members of the various local government structures.³⁶ So, too, the constitution of the Third Republic (1979–81) assigned a minority of seats to traditional leaders in the Third Republic's local government structures: Local Councils, District Councils, and Regional Councils.

On 31 December 1981, the Third Republic was overthrown by the Provisional National Defence Council (PNDC) (1982 – 7 June 1993) led by Flt. Lt. J. J. Rawlings.³⁷ Initially the PNDC abolished the various councils and instituted a system of management committees augmented by People's Defence Committees and Worker's Defence Committees at various levels.³⁸ However, in 1988, under major internal and external pressures, the PNDC instituted what may yet prove to be a major shift in the post-colonial state's strategy for local government in Ghana. The new District Assemblies were to be the first level of local government in both rural and urban Ghana.

Control of local government was to be decentralized from the capital, Accra, to the District Assembly (D.A.). Various powers and revenues were to be transferred from the headquarters of the various ministries in Accra to the District Assemblies. While two-thirds of the District Assembly members were elected, one third were appointed by the PNDC after consultations with various interest groups, including traditional leaders. The 1992 constitution of the Fourth Republic (1993–present) incorporated the District and Metropolitan Assemblies into its system of local government. Seventy per cent of their members are elected. Thirty per cent are appointed by the president after consultations with recognized interest groups including traditional leaders (Art, 242 of the constitution, Aye [1994], 113–14). Contrary to some expectations there is not a set quota for chiefs in the District Assemblies, but all or nearly all have some representation of traditional leaders. Traditional leaders are also represented on other local government bodies. Each of the Regional Houses of Chiefs selects one of their members to serve on the Regional Police Committee. The same is true for the Regional Prisons Service Committee. Two seats on each Regional Co-ordinating Council are reserved for members of the Regional House of Chiefs.

Traditional leaders have been incorporated directly into local government administration by both the colonial and post-colonial states. While Nkrumah did remove traditional leaders from participating in elected local government councils, all the other post-colonial governments have directly incorporated traditional leaders as members of state-run local government. Even Nkrumah had to accept the continuing existence of traditional councils and the creation of Regional Houses of Chiefs in order to have local governance structures that had the legitimacy to deal with customary or traditional aspects of Ghanaian society.

RURAL LOCAL GOVERNANCE AND TRADITIONAL LEADERSHIP: LOCAL GOVERNMENT FINANCE

The ability of traditional leaders to control local government finance has followed a similar pattern to their control over local government administration: reductions in their power, a refocusing of their powers into the Houses of Chiefs system, but not their total elimination. Both the colonial and post-colonial states have adopted that strategy. Both the colonial and post-colonial state seem to have recognized that the legitimacy of traditional leaders that exists for many of their subjects precluded such possibilities into the present.

In the Gold Coast Colony, the 1883 Native Jurisdiction Ordinance marked one of the formal shifts in the financing of local government from chiefs. While in the pre-colonial periods the political leaders of the pre-colonial states, etc., could raise their own finances by tribute and fees, subject to their own constitutions and power, the 1883 Ordinance limited the now traditional leaders to fees for their designated services as set by the governor. The 1927 Native Administration Ordinance (Gold Coast Colony) reinforced the principle of local government fees for traditional leaders being set by the colonial state. Paramount chiefs were allowed to establish stool land treasuries, but these were subject to control and audit by the colonial state. The 1924 Native Jurisdiction Act also allowed Asante paramount chiefs to establish stool treasuries, subject to colonial control and audit. The revenues generated by this system of court fees and stool revenues proved inadequate to support the traditional leaders and to carry out development (Hailey 1938, 471–72). In response the British colonial state tried to correct this situation by creating new sources of revenue for the traditional leaders and by revamping the system of treasuries for the traditional leaders that the colonial state would more closely monitor and/or partially administer.³⁹

Nkrumah's 1951 Local Government Ordinance and his other legislation dismantling the State Councils and Treasuries of the chiefs during the last period of colonial rule, the dyarchy, removed the ability of traditional leaders to raise finances through their own local government structures as well as their participation as members (as a minority at most) in the new elected or appointed local government bodies which had their own sources of finance. In short, they moved from playing an executive role in local government finance to being council or committee members. Furthermore section 74 of this 1951 ordinance also started the principle of dividing stool land revenues between the chieftaincy and the local and central governments. Over time, more and more of the revenue derived from the lands of the chieftaincies and control over such revenues has shifted from the traditional leaders to the post-colonial state.⁴⁰ ARTICLE 267 of the Fourth Republic's 1992 Constitution states that all revenues derived from chieftaincy land will be paid to the post-colonial state's Office of the Administrator of Stool Lands. Nearly half of these royalties from chieftaincy lands is allocated to the District Assemblies, with smaller amounts going to the Traditional Councils, the traditional leaders, and also to the Office of the Administrator of Stool Lands.

The post-colonial state provides all of the funding for the Houses of Chiefs system.⁴¹



Family house of President Kufuor in Kumasi, Ghana. This house is less than five hundred metres from the Asante king's Manhyia Palace (photo by D. Ray).

RURAL LOCAL GOVERNANCE AND TRADITIONAL LEADERSHIP: HOUSES OF CHIEFS

The *Houses of Chiefs* system consists of three levels: the National House of Chiefs, the ten Regional Houses of Chiefs, and the more than one hundred and sixty Traditional Councils at the district and sub-district level. Together they form a blanket of rural and urban local government that covers Ghana from east to west and from north to south.

Each Traditional Council is composed of the president, who is the paramount chief or equivalent,⁴² and such other lower-level chiefs as divisional chiefs, paramount queenmother, and other chiefs according to custom. The president of the Traditional Council has a seat in the Regional House of Chiefs. Each of the ten Regional Houses elects five members to the fifty-member National House of Chiefs. Each House of Chiefs elects its president and other executive members who form the Standing Committee (i.e., executive committee) to each house. Besides the Standing Committee, each house has a number of other committees. The Stool and Skin Lands⁴³ Committee deals with disputes and other questions over chief-held land: the allocation of land in an agricultural society is an important governing function. The Research Committee investigates the background to a variety of chief-recognition and other issues. The Judicial Committees determine and give judgement on issues of recognizing who is and who is not a chief, or what type of chief a claimant may be. Each house meets twice a year or more as needed. The committees meet as needed, usually twice a year.

The National House of Chiefs was created in 1971 by an Act of Parliament (The Chieftaincy Act, 1971, Act 370) and has most recently been entrenched in the 1992 constitution of the Fourth Republic (Chapter 22, ARTS. 270–73) as part of the state's official policy of recognizing and guaranteeing the institution of chieftaincy (ART. 270). This constitution gives seven major functions to the National House of Chiefs.

First, the National House of Chiefs is to act as an advisory body to the state, including all government bodies under the constitution, that deal with “any matter relating to or affecting chieftaincy” (ART. 272(a)). This is a very broad and consolidated mandate that covers all manner of traditional authority matters in the social, political, and economic realms of chieftaincy governance and customs and their interaction with the entire range of post-colonial state activities. Since there are chiefs or other forms of

traditional leadership in virtually every homestead, hamlet, village, town, and city in Ghana, the scope of the National House of Chiefs' authority can be better understood.

Second, the National House of Chiefs was to develop and codify a unified system of customary law and also to codify the rules of succession for every chieftaincy in Ghana (ART. 272(b), 1992 constitution). The creation of a codified, unified system of customary law, would involve extensive efforts by many researchers over many years with the co-operation of many chiefs with various, sometimes differing, interests and interpretations of their own several systems of customary law.⁴⁴ Were this to be done, it would have been possible to establish a uniform code of customary law. This could have been administered in rural local court by traditional leaders, assisted by legal assessors, under state supervision and whose sentences could have been appealable to a state-run appeal court, as has been the case in Botswana. In the case of Botswana, something like 70 per cent of all cases are brought before the chief's courts, which use the codified customary law and operate in the main indigenous language. These courts are thought to be so popular because they are more accessible, more understandable, and less expensive to use than the regular state courts.⁴⁵ However, the National House of Chiefs has lacked the resources, etc., to implement this part of its mandate.

Similarly, the National House of Chiefs has lacked the resources, etc., to undertake the codification of customary laws on the succession and impeachment processes for each of the thousands of chiefs in Ghana. The state's Chieftaincy Division in conjunction with one of the Regional Houses of Chiefs did compile such a document, but the report was not released, reportedly because of disputes over the processes from those traditional authorities who had not been interviewed or who disagreed with the report. However, in the late 1990s, a new attempt at such codification of political succession was started. The National House of Chiefs received funding from the Konrad Adenauer Foundation⁴⁶ to start a pilot study in 2000 on questions of customary political succession procedures in several regions. As of the end of 2002, the draft results were still being studied by chiefs who were the subjects of the report.

Thirdly, the National House of Chiefs was empowered by the constitution to evaluate traditional social practice. The House was not only to determine which customary practices were *outmoded and socially harmful*, but was also to develop and implement strategies to eliminate such harmful traditions (section 272 (c)). The politicians of the post-colonial state appeared to be moving responsibility for the changing of social customs that dated to the pre-colonial period from their sphere of action to that of the traditional leaders in the National House of Chiefs. The state was shifting this responsibility to the chiefs because the state expected that since chiefs dealt with

customary rule and law (i.e., political and legal custom), the Houses of Chiefs system would also be the appropriate structure to deal with social customs.

The Houses of Chiefs have discussed a number of important social custom issues such as the cost of funerals, widowhood, and the treatment of certain girls and women under the rules of certain aspects of the traditional religions, such as the trokosi and witch camp practices. In the case of funerals, the Houses of Chiefs did condemn what has become the high cost of funerals in Ghana and recommended that Ghanaians adopt less elaborate and expensive funeral practices.⁴⁷

The National House of Chiefs does not have the legal power to prohibit what it deems to be undesirable customary social practices or the legal power to punish those who continue to carry out such undesirable traditional customs. In these senses, the Houses of Chiefs are not legislative or judicial bodies, but rather they are forums for public debate of issues that might not otherwise receive much public attention. Furthermore, when the members of the National House of Chiefs or one or more of the Regional Houses of Chiefs agree on the need to modify or eliminate a social custom, the traditional leaders lend their legitimacy and political and social authority to the issue's resolution. As traditional leaders in the Houses of Chiefs are convinced to change their opinions on social and other issues, in turn they carry out important public education with their subjects on social issues, and indeed on other issues. The National and Regional House of Chiefs can thus play an important role in helping to change public opinion. Without this change, the government would have trouble getting its own members of Parliament, let alone those of the opposition parties, to outlaw or legally modify an undesirable practice. Indeed, if such a law were to be passed without the necessary shift in the opinions of the citizens, it might even be very difficult to get the police to enforce the law, as may well have been the case with the anti-trokosi law.⁴⁸

Fourthly, the National House of Chiefs is in charge of giving official recognition to those that the House determines to be chiefs. In order to do this, the House maintains an official list of chiefs, the National Register of Chiefs (ART. 270 (3b), 1992 constitution) that was established in 1971 (Chieftaincy Act, 1971, act 370, section 50). This national registry keeps track of the status of those traditional leaders who are recognized by the National House of Chiefs as chiefs by recording when they are installed as chiefs, when they are impeached and deposed, when they abdicate, or when they die. The National House of Chiefs uses the government of Ghana *Gazette* to communicate these changes to the state, citizenry, and others. This political communication of who is and who is not a chief has been the exclusive responsibility

of the National House of Chiefs since the start of the Fourth Republic's Constitution on 7 January 1992.

Related to this is the fifth function of the National House of Chiefs: making the next-to-final determination on chieftaincy questions (ARTS. 270 (3a) and 273, 1992 constitution). For example, the question may arise as to who is the legitimate chief in a particular chieftaincy. Disputes may arise at a number of points in the processes for the selection and deselection of traditional leaders, i.e., nomination, election, selection, installation, or impeachment. The legitimacy or validity by which a traditional leader obtained or lost his/her office may be challenged on the basis of custom, which may not be widely known and which requires specialized knowledge. The particular issue may first be examined at the Traditional Council, then taken to a judicial committee of the Regional House of Chiefs, then taken to a judicial committee of the National House of Chiefs, and finally appealed to the Supreme Court of Ghana.

The sixth function of the National House of Chiefs is to undertake various tasks that Parliament refers to the House (ART. 272 (d)). Thus the House has a mandate to not only advise Parliament, but also to carry out actions as Parliament requests.

The seventh function that the 1992 constitution assigns to the National and Regional Houses of Chiefs is to choose members as representatives to a variety of national and local state bodies. For example, the president of the National House of Chiefs is one of the twenty-five members of the Council of State (ART. 89 (2b)). One indication of the importance that the designers of the state constitution accorded to chieftaincy, is that the president of the National House of Chiefs is the only membership category that is automatically and necessarily a member of the Council of State. This Council advises the president on important issues ranging from parliamentary bills to key appointments in the state, such as the Electoral Commission, which controls the political succession process of the post-colonial state, or the Public Services Commission, which controls most of the major staffing decisions for the administration of the post-colonial state (ARTS. 70, 90–92). The Regional Houses of Chiefs are each entitled to appoint, for example, one representative to such local government bodies as their Regional Police Committees or Regional Prisons Committees, and to appoint two representatives to the Regional Co-ordinating Council which is chaired by the regional minister (ARTS. 204, 209, 255).

CONCLUSIONS AND POLICY IMPLICATIONS FOR RURAL LOCAL GOVERNMENT IN GHANA

The overall pattern that is suggested by this analysis is that the control exerted by the state over traditional leaders in local government has varied, but that the state continues to find traditional leaders to be part of Ghana's political reality. At different times both the colonial and post-colonial states have not only appeared to recognize the legitimacy of traditional leaders, but have also employed different strategies to mobilize or co-opt this legitimacy to aid in the achievement of their development goals. At other times, however, they have viewed the legitimacy of traditional leaders as a threat (to either their own sovereignty or public order) and have attempted to minimize (but never completely eliminate) the sovereignty and legitimacy of the pre-colonial rooted political entities.

What then are the policy implications? While the on-going relationship of the post-colonial state at the level of local government is one in which the state wishes to control traditional leadership, the state does not seem to wish to eliminate traditional leadership at the local level. This policy tension seems to reflect the need of the post-colonial state to accumulate more legitimacy resources, so that it can more effectively manage and develop at the local government level, by co-opting the different legitimacy resources of the traditional leadership. Indeed, these differently rooted legitimacy resources of the traditional leaders would seem to exist only as long as these are part of the traditional authority structures, and do not seem to be transferable to the post-colonial state. Without the presence of traditional leaders, their legitimacy resources cannot be present.

What are some practical strategies for mobilizing this legitimacy (or credibility) of traditional leadership in aid of the development and democratization efforts of local government? First, it is useful to distinguish between government and governance. Government can be considered to be composed of those formal constitutionally and legislatively designated structures, processes, and political culture (including legitimacy) of the state. Governance could be considered to be comprised of government plus those political activities and culture (including legitimacy) which may be technically outside the formal legislative and constitutional activities of the state, but which have effects on the activities of formal government. Such effects might be felt in the realms of development projects or the political culture of democracy. Governance, thus, could be said to include both the formal activities of the state as well as those unofficial activities and attitudes of the people living within

the state. In short, we could talk of governance as the governing style of a country. These distinctions apply to all levels of governing in the state, including that of local government. We could see this distinction as actually expanding the field in which traditional leadership could play a role with regard to local government.

The first set of options focuses on those that involve traditional leaders with local government. Traditional leaders might be involved in the legislative or executive functions of local government. Reserved seats for traditional leaders in which executive or legislature might be apportioned on the basis of several mechanisms. Local, regional, provincial, or national government might appoint the traditional leaders to these local government bodies. Such positions could be filled by elections in traditional leadership forums such as the local equivalent of traditional councils, regional houses of chiefs, provincial houses of traditional leaders, national house of chiefs or national council of traditional leaders. Another selection method could be to have the traditional leaders elected to the reserved seats during the regular local government elections. Variations and combinations of the above selection techniques are, of course, also possible. A second general possibility with regard to traditional leadership participation in the legislative and executive bodies of local government, might be for individual traditional leaders to run as ordinary individual candidates in the regular local government elections. A third option in this regard would be to have traditional leaders take over these executive and legislative bodies of local government for their areas. The first two options of this set (i.e., reserved seats and traditional leader as individual candidate) represent two different versions of traditional leaders contributing their legitimacy to local government. The third option is likely to be strongly opposed on practical administrative grounds, but especially on the basis of arguments for democracy, given the emergence of the democratic state which demands that all levels of its government conform on the whole to the core value of universally-elected governments. This question needs to be debated more extensively, but it may be undesirable for the interests of traditional leaders since such an option might well create a backlash against traditional leaders, including calls for the abolishment of traditional leadership.

Traditional leaders could be allocated seats for administrative or supervisory functions of local government. This is the case in Ghana for a number of regional bodies such as the regional commissions, committees and councils for lands, prisons, police, and regional co-ordination.

Traditional leaders could also serve on advisory bodies of local government such as joint committees of local government; traditional leaders that focus on specific

policies. Such policy areas could include (or have included) the environment (e.g., sacred groves, forests, rivers, etc.), health (e.g., anti-HIV/AIDS campaigns, child vaccination campaigns), social practice (e.g., funerals, etc.), gender (e.g., the role of queenmothers and other female chiefs, or even male chiefs, in dealing with gender questions, women and development, or gender roles), fund-raising for education, health, and other development projects, etc. Local government could establish new citizen participation bodies that focus on traditional leaders, or else expand existing ones to include traditional leaders.

There are of course quite a range of possibilities in terms of the second option, the involvement of traditional leaders in local governance. Traditional leaders could be involved informally in individual development programs, policies, and projects organized by local government, communities, and non-governmental organizations.

Where appropriate, this participation could be more formalized. Customary values could be mobilized by traditional leaders in support of development, as in Zimbabwean reforestation (Daneel 1996). Traditional leaders themselves could organize development projects. Traditional leaders could mobilize customary values to endorse and participate in civic education programs in support of democratic values and citizen participation in elections for local and other levels of government. Traditional leaders could organize meetings of their subjects, as with the *kgotlas* in Botswana, to discuss local government and other development projects and policies.

There needs to be active (and where necessary pre-emptive) measures by traditional leaders to resolve customary disputes in their own individual customary jurisdictions so as to maintain social, economic, political, and customary justice as well as local community peace, order, and good government; all of the above being necessary for development activities to take place in their localities. However, where and when customary disputes in one traditional leadership jurisdiction cannot or have not been solved to the satisfaction of all involved, or involve more than one traditional leadership jurisdiction, then traditional leadership conflict resolution mechanisms of the state such as Traditional Councils at the sub-district/district level, or Regional Houses of Chiefs and Provincial Houses of Traditional Leaders at the regional/provincial level, or even the National House of Chiefs or National Council of Traditional Leaders at the national level need to be in place and have the operational capability (e.g., judicial committees of the houses of chiefs), the constitutional and legal authority to operate, the political will to act, the legal and administrative support of the local, regional, and national governments to enforce legitimate decisions, as well as the necessary resources of staff, transportation, communication, and other funding necessary to

carry out their responsibilities. Thus, the relationship between traditional leaders and local, regional, and national government is interactive: traditional leaders can legitimate the state by acting on behalf of the state objectives of development and democratization, while the state sets the terms of traditional leaders' legitimacy in the contemporary era and also provides new frameworks and resources within which traditional leadership can operate.

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NOTES

1. I am grateful to Professor Valerie Haines for sharing with me her work on the sociology of canons during our time as annual fellows at the Calgary Institute for the Humanities in 2000–2001.
2. For further discussion of this point, see Ray 1998.
3. Chiefs in Ghana are based in villages, towns and cities, each with its attached rural area. Chiefs are organized into hierarchies (most of them based on the pre-colonial situation) which incorporate sub-sets of urban and rural areas.
4. The history, structure, and nature of these pre-colonial states are increasingly well documented. See, for example, the following: Amenumey 1986; Asamoah 1986; Boahen 1987; Boahen, Ajayi and Tidy 1986; Fynn 1971; Kwamena-Poh 1972; McCaskie 1995; Shinnie and Shinnie 1995; Ward 1948; Wilks 1989. For a useful overview using maps, see Catchpole and Akinjogbin 1983.
5. For a summary of this process, see Ray 1998, 49–50.
6. See Andoh 1987; Arhin 1991; Rathbone 2000.
7. The dyarchy was a transitional period from the colonial state to the post-colonial state.
8. For a variety of analyses of these governments, see Apter 1968; Austin 1964; Austin and Luckham 1975; Chazan 1983; Ninsin 1985; Ninsin and Drah 1981; Nugent 1995; Oquaye 1980; and Ray 1986.
9. These democratic values should be examined within national and local government as well as a variety of other structures, including traditional authorities and such civil society organizations as religious organizations and community associations.
10. See, for example, Baynes 1993 or Connolly 1987.
11. Arguably, there are religious and monarchical/estate exceptions, but overall this pattern would seem to be present.
12. See Ray 1996 for an elaboration of this argument. The degree to which the post-colonial state accepts this inheritance over time is another question.
13. For example, the written constitution of Canada was initially derived, in large measure, from the British North America Act of 1867 that was passed by the British Parliament.
14. By definition, since colonial rule means government by an external force, the wishes of the people are not necessarily (or even usually) followed by the imposed government.
15. The question of whether chiefs belong to the state or civil society needs to be addressed with respect to what is meant by *government leaders*.
16. The fact that these laws and constitutions may or may not have been written does not detract from their legal, historical, cultural, or intellectual validity. It is worthwhile noting that countries like Britain and Canada have had custom and convention as a considerable part of their constitutions.
17. The historic cultural and religious claims to legitimacy by traditional leaders in the era of democratic, post-colonial states are subject to the overriding principle of consent of the people to these claims. If people do not agree to be bound by these claims, there seems little that traditional leaders (or the state) can or should do to demand that they be honoured in special ways.
18. In turn, these claims may provide the basis for traditional leaders to make legalistic claims to legitimacy within the post-colonial state, as also sometimes happened during the colonial period.
19. See Ray 1996 for an elaboration of this argument, especially the linkage between legitimacy and sovereignty.

20. United Kingdom, 6 August 1874. "Order in Council for determining the mode of exercising the power and jurisdiction acquired by Her Majesty within divers countries on the West Coast of Africa near or adjacent to Her Majesty's Gold Coast Colony" in Metcalfe 1964, 368–69.
21. United Kingdom, 26 September 1901. "Ashanti Order of His Majesty the King in Council" Gold Coast Government Gazette, 1 January 1902 in Metcalfe 1964, 521–23; United Kingdom, 26 September 1901. "Northern Territories Order of His Majesty the King in Council" Gold Coast Government Gazette, 1 January 1902 in Metcalfe 1964, 523–24.
22. League of Nations, Mandates Section, 20 July 1922. British Mandates for the Cameroon, Togoland and East Africa" London in Metcalfe 1964, 590–92.
23. The difficulties of identity terminology need to be recognized here, especially in the transition from the African pre-colonial period with its various types of leaders, including kings, to the colonial state which downplayed their titles and transformed *kings* into *chiefs*. Indeed, this is the English-language term now commonly used by Ghanaians of all social ranks and by the Ghanaian state's constitution when referring to one or more traditional leaders. For a further discussion of the political uses of terminology, see, for example, Arhin 1985; Ray and LaBranche 1998.
24. Metcalfe notes that this ordinance was not implemented (1964, 390).
25. See, for example, the Earl of Kimberley's letter to Governor Ussher, 19 November 1880 in Metcalfe 1964, 402.
26. Ibid.
27. See, for example, the Gold Coast Colony and Ashanti (Legislative Council) which was in Order in Council, 1946 and the Gold Coast (Constitution) Order in Council, 1950. Both measures were colonial constructions.
28. 1951 Local Government (Gold Coast) Ordinance; Gold Coast, 27 March 1952, "The State Councils (Ashanti) Ordinance, No. 4 of 1952"; Gold Coast, 1952, "The State Councils (Colony and Southern Togoland) Ordinance, No. 3 of 1952"; Gold Coast, 14 December 1955, "The State Councils (Ashanti) (Amendment) Ordinance, No. 38 of 1955"; Gold Coast, 7 February 1957, "The State Councils (Ashanti) (Amendment) Ordinance, No. 3 of 1957"; Gold Coast, 1 March 1957, "The State Councils (Colony and Southern Togoland) (Amendment) Ordinance, No. 8 of 1957."
29. The Houses of Chiefs are discussed below in their own section.
30. The Judicial Commissioner was eventually replaced by the judicial committees of the National House of Chiefs and the Regional Houses of Chiefs. The Traditional Council is the grassroots level of the Houses of Chiefs system. See the Houses of Chiefs system section below.
31. Native States were the government units of traditional leadership in the colonial period that later became the Traditional Councils whose presidents were usually paramount chiefs. See below section on the Houses of Chiefs.
32. See Governor Freulings letter to the Earl of Carnarvon, 10 February 1877 in Metcalfe 1964, 387.
33. See Nkrumah 1957 (esp. p. 120); Rathbone 2000, 22–23.
34. 1951 Local Government (Gold Coast) Ordinance, Gold Coast, 27 March 1952; "The State Councils (Ashanti) Ordinance, No. 4 of 1952"; Gold Coast, 1952, "The State Councils (Colony and Southern Togoland) Ordinance, No. 3 of 1952"; Gold Coast, 14 December 1955, "The State Councils (Ashanti) (Amendment) Ordinance, No. 38 of 1955"; Gold Coast, 7 February 1957, "The State Councils (Ashanti) (Amendment) Ordinance, No. 3 of 1957"; Gold Coast, 1 March 1957, "The State Councils (Colony and Southern Togoland) (Amendment) Ordinance, No. 8 of 1957"; Municipal Councils (Amendment) Ordinance (No. 2) of 1957; Nsarkoh 1964: 5–6.
35. See the Houses of Chiefs section below.

36. Local Administration (Amendment) Decree (NRCD 138) (1972), cited by Ayee, 22, 54, 91; Local Administration (Amendment) Decree (NRCD 258) (1974), cited by Ayee, 22, 54, 92; Local Government (Amendment) Decree (SMDC 194 of 1978), cited by Ayee, 54.
37. Rawlings was also elected President of the Fourth Republic in 1992 and 1996. He had also been Chairman of the Armed Forces Revolutionary Council from 4 June to 24 September 1979. He was thus head of the post-colonial state of Ghana from June–September 1979, and 31 December 1981 to 7 January 2001.
38. Ray, 1986; Ayee, 113–14 and PNDC Law 14 (June 1982), cited by Ayee, 109.
39. See, for example, the following ordinances: 1931 Native Administration Amendment Ordinance (Gold Coast Colony), 1939 Native Administration Treasuries Ordinance (Gold Coast Colony); 1932 Native Treasuries Ordinance (Northern Territories and Northern Section of Togoland). Similar measures were applied in the Ashanti Protectorate, Hailey 1938, 346, 472–75.
40. See also, for example, the 1958 Ashanti Stool Lands Act, 1961 Local Government Act, the 1971 Chieftaincy Act, the regulations, etc., transforming such stool land revenues to the District Assemblies in 1988 as well as the Fourth Republic's 1992 constitution.
41. This is analyzed in the next section.
42. In a few Traditional Councils, the presidency rotates amongst the paramount chiefs (if there are several) or amongst the divisional chiefs.
43. In southern Ghana (which was formerly heavily forested), special wooden seats called stools are part of the regalia. This forms the physical manifestation of a chieftaincy's legitimacy. Similarly, in northern Ghana, which is a cattle-raising area, each new chief sits on a cattle hide or skin. Hence, since land is seen as being attached to a full-fledged chieftaincy, the terms *skin land* or *stool land* mean land attached to a chieftaincy.
44. Woodman (1988) has a very perceptive analysis of what happens to customary law when it is codified and brought under state law.
45. Interview Commissioner Patricia D. Matenge, Customary Courts Commissioner, Tribal Administration Department, Ministry of Local Government, Lands and Housing, Gaborone, Botswana, 26 September 1997. See also Sharma 1999.
46. This is the outreach arm of the German Christian Democratic Party, which has had a longstanding interest in traditional authority in Africa.
47. In much of Ghana, funerals are complex, expensive ceremonies that take place over considerable periods of time and involve large gatherings of family, friends, and dignitaries. Funerals are seen as important statements of the achievements and worth of the deceased and their families. Much prestige is at stake.
48. Interview with Justice Emile Short, Commissioner for Human Rights and Administrative Justice, Kumasi, 28 June 2000.

