

AFRICA'S CHALLENGE



**USING LAW
FOR GOOD
GOVERNANCE
& DEVELOPMENT**

**EDITED BY
ANN SEIDMAN,
ROBERT B. SEIDMAN,
PUMZO MBANA AND HANSON HU LI**



Africa World Press, Inc.

P.O. Box 1892
Trenton, NJ 08607



P.O. Box 48
Asmara, ERITREA

Copyright © 2007 Ann Seidman, Robert B. Seidman, Pumzo Mbana, and
Hanson H. Li
First Printing 2007

All rights reserved. No part of this publication may be reproduced, stored in a
retrieval system or transmitted in any form or by any means electronic, mechani-
cal, photocopying, recording or otherwise without the prior written permission
of the publisher.

Book design: Saverance Publishing Services

Cover design: Dapo Ojo-Ade

Cover Maps courtesy of Outreach Program, Boston University African Studies
Center

Library of Congress Cataloging-in-Publication Data

Africa's challenge : using law for good governance and development / editors,
Ann Seidman ... [et al.].

p. cm.

Includes bibliographical references and index.

ISBN 1-59221-470-3 -- ISBN 1-59221-471-1 (pbk.)

1. Public administration--Africa. 2. Democratization--Africa. 3. Law and
economic development. 4. Africa--Politics and government--1960- 5. Africa--
Economic conditions--1960- I. Seidman, Ann Willcox, 1926-

JQ1875.A745 2006

320.6096--dc22

2006003190

Table of Contents

Acknowledgements	vii
PART I: THE CHALLENGE	
Chapter 1: Introduction <i>The Editors</i>	3
Chapter 2: Law, Social Change, and Development: The Fatal Race <i>Ann Seidman and Robert B. Seidman</i>	19
PART II: AFRICA'S INHERITED DYSFUNCTIONAL INSTITUTIONS: SOME CASE STUDIES	
Chapter 3: Ghana: Changing Our Inherited Police Institutions <i>Raymond Atuguba</i>	53
Chapter 4: Implementing Environmental Policies Through Legislation in Mozambique <i>Teodosio Uate</i>	79
Chapter 5: Making Policy for Development in South Africa <i>Neva Seidman Makgetla</i>	107
PART III: ONE POSSIBLE APPROACH	
Chapter 6: A Zambian Commission on Law and Integrated National Development: A Legislative proposal <i>Lucian Ng'andwe</i>	137
Chapter 7: Legislating 'Liverpool': The Mweru-Luapula Fishery <i>Christopher M. Annear</i>	177
PART IV: CONCLUSIONS	
Chapter 8: Law-Making: An On-going Process <i>The Editors</i>	215
Contributors	223
Index	225

Chapter 3

Ghana: Changing Our Inherited Police Institutions

Raymond Atuguba

At 8:00 AM, Tuesday, 8th February, 2005, radio Joy FM announced that the Accra Metropolitan Assembly (AMA) had voted for a city 'decongestion exercise,' backed by 350 police, to oust over 10,000 hawkers from the Accra city streets. The next day, the Daily Graphic described the scene as the exercise continued 'under heavy police protection':

"People, including children under 12 years, who slept on street corners and pavements, were seen quietly watching as the exercise went on.

"Others folded their sleeping mats in their armpits, perhaps waiting to bolt in case of any eventuality.

"An elderly man who was sleeping on a pavement near the Rawlings park cursed and hurled insults... .

"Some of the market women, who sat moodily in groups, did not believe that the AMA could sustain the exercise. Consequently, they said, 'time will tell.'"¹

An Accra metropolitan Assembly official reportedly declared, "AMA has no obligation to look for markets for these women."² During the Parliamentary debate on the President's Sessional Address, the Honourable Mahama Ayariga, MP for Bawku Central, sought to raise issues related to AMA's 'exercise' on the floor of the House, but it seems that the House leaders prevailed on him to withdraw his questions.³

A week later, apparently emboldened by the 'decongestion' exercise's enforced success, another Assembly meeting requested 500 policemen to help relocate the Kasoa Market "under heavy security". The Assembly unanimously agreed that there would "be no time to allocate all traders from the existing market places before the relocation exercise...."⁴

On the same day, a Daily Guide headline reported, "AMA Boss Escapes Death By the Skin Of His Teeth." Nevertheless, the following week Kaneshie Market 'decongestion' would start and extend to Kwame Nkrumah Circle. The police arrested and prosecuted any who tried to stay. Two days later, the Daily Graphic reported that 29 petty traders, caught still hawking in the streets, had been sentenced to a fine of ₵1,000,000 or 2 months in prison.⁵ The Kumasi Metropolitan Assembly (KMA)

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

also called on hawkers in the metropolis voluntarily to vacate unauthorized places by March 7, 2005, or face forcible ejection.

Although Ghana had won independence almost half a century earlier, these police actions seemed reminiscent of the colonial era—nor did they appear as isolated incidents. Five years earlier, in May, 2001, a funeral took place at the Awudome Cemetery for some of the 126 people who died in a stampede at the Accra stadium, 33 came from Nima, Mamobi and New Town.⁶ The police had been publicly blamed for throwing teargas into the crowds at the stadium, causing the stampede. After the funeral, many young people headed home on motorbikes. Near the Nima Police Station, the police stopped them and detained one. More youths, arriving on foot, joined in the riders' verbal exchanges with the police. The youths became increasingly rowdy. The police fired a warning shot. Gathering in larger numbers around the police station, the youths attempted to vandalise the Nima Police Station. The police called in the military who succeeded in tactfully moving the youths away from the station. Later, however, some youths returned and did vandalise both state and private property in and around the police station. These events strained the relationships between the police and the communities. Community members feared to seek police assistance, and, fearing for their lives, the police no longer came into the community to prevent crime, apprehend offenders and perform other police duties. In Nima those days, people asked, "Abotchie' where is my Police?"

A last story suggests the possible causes that spurred these growing tensions. About 20 years ago, the Government of Ghana initiated proceedings to compulsorily acquire a large tract of land in one of the best residential areas in a major Ghanaian town. It never completed the process, but occupied the land for several years before apparently leaving it to the original community owners. Nevertheless, a number of persons, highly placed in the town, parcelled the land out to and built expensive houses on it for themselves as private owners. Although the community members complained, the police never attempted to prevent this encroachment on their property rights. On the contrary, any time the members of the community attempted to exercise even incidental rights over parts of the land, like fetching clay for building purposes, the big new houses' owners reported them to police who harassed and even arrested them. The lawyers whom the community asked to take their case experienced pressures to withdraw. What can a poor struggling lawyer do who receives a call from a minister of state to back off? Finally, in January 2005, the community asked the Legal Resources Centre (LRC), a human rights organisation made up primarily of lawyers and community organizers, to take their case. Perhaps, they had heard that that the LRC takes on 'unpopular causes'....

THE ROOT CAUSES OF CIVIL-POLICE UNEASE

As the new millennium opened, these stories, appearing almost every day on a smaller or larger scale in Ghana, looked like a replay of the days of the "Riots of 1948" that presaged the Gold Coast's mounting struggle for indepen-

Ghana: Changing Our Inherited Police Institutions

BOX 1: "Ghana: A Fragile Success in Africa"

– A New York Times editorial, Apr. 25, 2005

"Ghana has taken up the mantle of what passes for a success story in Africa. It is the new darling in the halls where donors like the World Bank, the International Monetary Fund, the United States and Britain talk about making sure foreign aid does not end up in the hands of corrupt regimes....

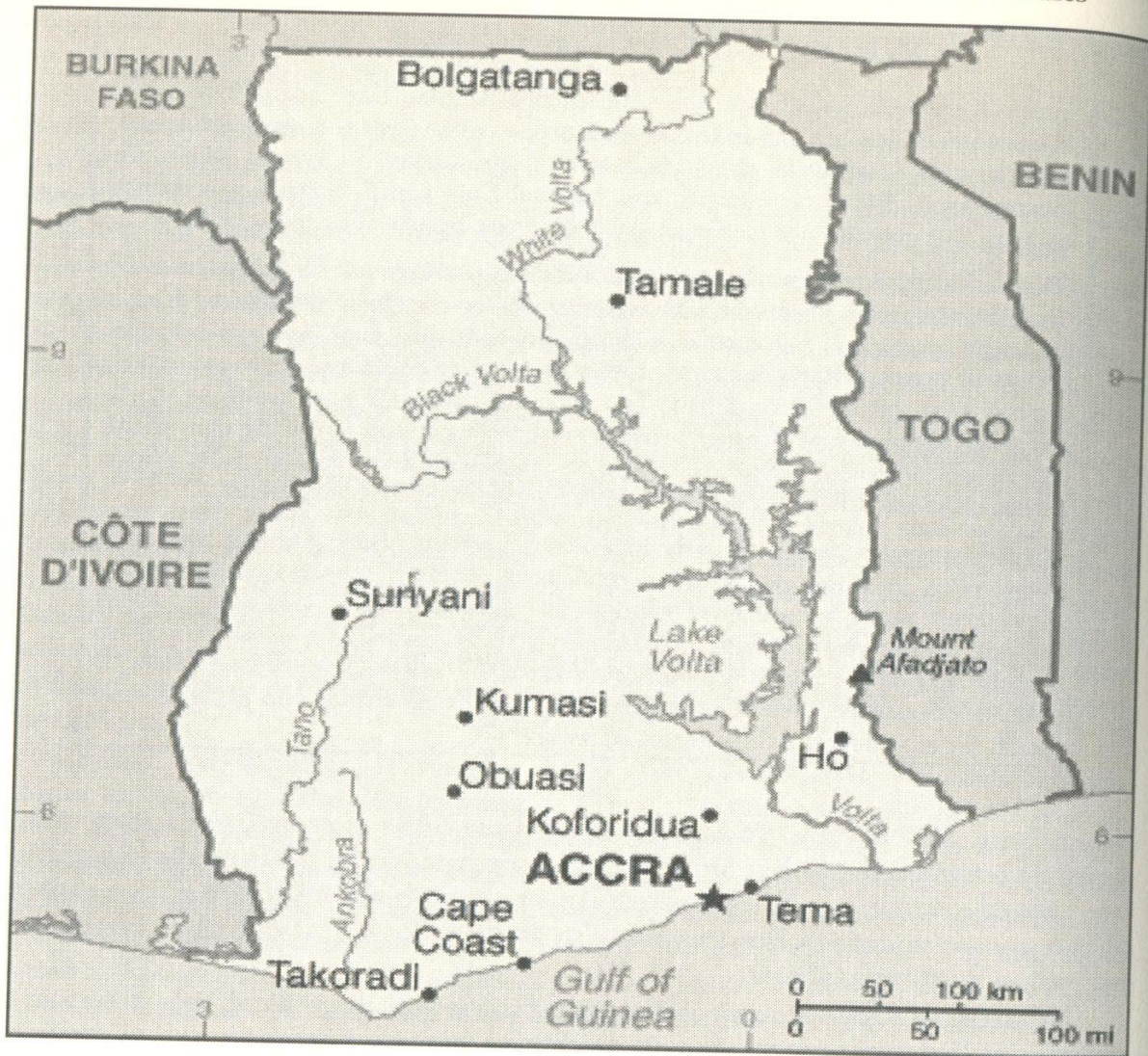
"But for all the talk of what a model African country Ghana is, it is still, literally, dirt poor, a fact of life that demonstrates just how removed Africa is from the proverbial rising tide of the global economy that is supposed to be lifting all boats. Ghana has a per capita income of \$421 a year; most people survive here on \$300 to \$400. Ten-year-old girls still run barefoot up to stopped cars in the sweltering midday heat trying to sell anything they think will bring in money – from oranges to cell phone batteries to toilet paper. Street children still sleep on the median separating highway lanes....

"Child mortality rates, already high, increased in 2004; nobody seems to know why. A huge gender gap remains in primary-school education: far more boys make it to school than girls. Almost half of Ghana's national budget comes from foreign aid; Britain is its largest single-country donor. But the size of the country's budget, a scant \$3 billion, supporting some 20 million people, is testament to just how far Ghana still has to go, and how much more it needs to climb out of poverty."

dence from British rule. Today, the symptoms of an increasingly uneasy relationship between the police and the citizenry reflect deep fissures between the two sets of institutions. This chapter aims to expose the underlying root causes of the unease in civil-police relations, to analyse the history of their birth and nurturing in today's Ghana.

Traditionally, people everywhere tend to view as the police's role the 'maintenance of law and order'—but those words remain empty categories, leaving the authorities to fill them with their own preferred substance. Not too long ago in countries as different as the United States of America and South Africa, the 'law' simply ignored black persons' rights and well-being. In erstwhile apartheid South Africa, the maintenance of 'order' served as an excuse for opening fire on unarmed school children engaged in peaceful demonstrations. Over time, leaving the definition of 'Law' and 'Order' as open, loosely monitored categories has proven fundamentally dangerous.

This chapter briefly reviews how, over the last 176 years, the changing faces of those exercising state power in Ghana have filled the seemingly-empty categories of "law" and "order" with particular forms of political-economy that have worked for their particular ends. They have assigned to the police the task of maintaining law and order that operated along the Atlantic corridor of West Africa as they have defined it. Analysis of this history helps to understand the underlying institutional relationships between the police and the political



Ghana

economy. The concluding section suggests that those seeking to reform the Ghanaian police should consider using institutionalist legislative theory as a guide to design the details of legislation to ensure new police behaviors more likely to serve the needs of all Ghanaians.

THE POLICE AND THE POLITICAL ECONOMY OF GHANA: 1829-2005

History “matters not just because we can learn from the past, but because the present and the future are connected to the past by the continuity of a society’s institutions. Today’s and tomorrow’s choices are shaped by the past. And the past can only be made intelligible as a story of institutional evolution.”⁷ To fully understand the relations between the “police and the political economy

Ghana: Changing Our Inherited Police Institutions

of Ghana” requires analysing their growth and development beginning back in the colonial rule of the then-Gold Coast.

As David Bayley⁸ has argued, the police generally have not served as independent actors, but rather as instruments of those wielding political power: “[P]olice forces are the creatures of politics.” As elsewhere, the colonial regime planted the roots of the police force to ensure the effective implementation of its colonial policies.⁹

A brief review of the last 176 years¹⁰ suggests that the basic characteristics of Ghana’s police force as an institution have changed little despite seven seemingly-different phases of government:

1. The period of conquest and ‘legitimate trade’ from about 1830 to 1900;
2. The period of political domination and intensive exploitation of natural resources from about 1900 to the mid 1940s;
3. The tumultuous period of transition to independence, beginning in the mid-1940s, through the attainment of independence in 1957;
4. The Nkrumah period, from 1957 to 1966;
5. The period of economic downturn and political uncertainty that, between 1966 and 1981, witnessed the rise and fall of five military regimes and two democratically elected constitutional governments;
6. The Rawlings era and the period of the Economic Recovery Program (ERP) and the Structural Adjustment Program (SAP), 1982-2000; and
7. The current period, 2001 to date.

As background, this chapter’s next part first describes the pre-colonial community policing system; summarizes the changes introduced by the British colonialists to protect their commercial investments; and, finally, reviews the post-independence governments’ failure to exercise state power through law to restructure the police force to meet the needs of the Ghanaian people.

THE PRE-COLONIAL PERIOD, UP TO THE FORMAL END OF THE SLAVE TRADE IN ABOUT 1830

In the territory now called Ghana, pre-colonial societies had long maintained their own policing systems. They did not establish a centralized and formal body of trained officers with specific policing duties. Instead, in the traditional system, when necessary, some people undertook police duties. The community as a whole acted in concert in response to an alarm, for example, to catch a fleeing offender or search for one in hiding. Bands of adult men would also lie in wait to apprehend thieves¹¹ or patrol the village. The Paramount Chief sometimes gave specified Messengers of the Chiefs oral warrants to arrest offenders or patrol the village.¹²

In short, pre-colonial Ghana had well-developed institutions for maintaining social order and bringing under control behaviors that threatened the stabil-

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

ity of an ordered society. Tribal elders, chiefs, and their ruling councils derived this power of social control from religious norms and beliefs, which permeated the fabric of pre-colonial society in Ghana.¹³ Norm violation brought shame not only to the offender but also to his or her extended family and kin group. The extended family brought collective pressure to ensure the compliance and conformity of its family members.¹⁴ These interrelated policing systems served many functions, from crime control to the maintenance of order, to the reaffirmation of secular and religious authority.¹⁵

The advent of colonialism wiped away most of these pre-existing systems. The British explicitly sought to incorporate elements of the village or native policing institutions as part of their broader design of indirect rule. In reality, however, the so-called 'native authority' police had lost their independence; they operated as little more than junior appendages of the Gold Coast Police Force. Even in respect of these forces, the colonial government set out to introduce a completely new form and purpose of policing in the Gold Coast. In the grinding words of a British colonial official,

The customs of the savage and barbarous native states have left no mark on modern organisation or methods, for the Native Authority Forces of today are copies of the Government Police rather than survivals of indigenous methods of Peace preservation.¹⁶

As the next sections suggest, the British apparently considered the pre-existing indigenous systems of policing inappropriate for their unfolding exploitative agenda.

THE PERIOD OF COLONIALISM 1830 TO 1957

The British introduced rules to establish their political and legal authority over the Gold Coast. Treaties, however tenuous; laws on treason, sedition and other crimes against the state;¹⁷ arms and ammunition regulations;¹⁸ laws on public order¹⁹—all aimed to secure British political authority. In subtle but critical and effective ways, laws on property, tax, and liquor licensing also influenced the distribution of economic and social power. The entire gamut of these laws constructed the social reality by regulating the interactions of the colonized in a capacity subordinate to the colonizers—and even, in some cases, to their fellow colonized. The colonizers called on the police to enforce these laws to maintain a political economy and social organization conducive to the colonial enterprise:

The baseline is that policing the empires developed largely in response to several imperial demands, the most important of which was the global expansion of capitalism, particularly in the nineteenth century, and the need to control international markets in raw materials as well as outlets for Europe's industrial goods....[T]he police forces that eventually emerged in the colonies were essentially 'hybrids', with many having characteristics that did not mirror police models in the 'mother-country' but were shaped by colonial events and needs....

Ghana: Changing Our Inherited Police Institutions

...

[T]he use of the colonial police forces generally to maintain unfavourable colonial tax and labour policies earned them the reputation of being nothing but instruments of state coercion, representing an unquestionable political authority and existing only to serve the political and economic interests of the colonialists. Incidents of police brutality, corruption, violence, murder and abuse of power punctuated almost every decade of colonial police history. The political image of the colonial police was most visible during the period of decolonization when development in colonial policing shifted rapidly towards political policing against the 'enemies' of the colonial states.²⁰

As its primary task, the professional Gold Coast police force served to protect representatives of trade companies, supervise convict labor on plantations, maintain the peace and security necessary for the extraction and export of agricultural and mineral products, and maintain the colony as a market for European goods by protecting trade routes.²¹

Thus, the British created the police, not primarily to preserve law, order, peace and security for all in the colony, but rather to protect the persons, territory and the economic interests of the British companies—the United Trading Company (UTC), the Imperial British East African Company, and the Royal Niger Company—then operating along the Atlantic corridor of West Africa.²² The British viewed the professional police as directly linked to the commercial interests of their capitalist expansion in search of new markets and resources. As they pacified the interior and expanded trade, “some kind of armed constabulary was required for the protection of British traders, missionaries, and officials and for the support of friendly tribes.”²³ The colonist police force, driven by the economic imperative of safeguarding and enhancing exploitation through trade and control of a low-cost, compliant labor force, remained inextricably linked to the new era of Victorian capitalism and imperial legitimation.²⁴

The British success in this enterprise reflected, in part, the police force's effective brutalization of the citizenry. Consequently, although the police included a significant number of Ghanaians, the population generally conceived of it as an intrusive alien force.²⁵ Civilians repeatedly complained about the brutal character, not only of the Hausa Constabulary, but also the Gold Coast Regiment.²⁶ In 1886 in Accra, “a large part of the population stoned the civil police.”²⁷ They viewed them as traitors to the native African community.²⁸ In 1885, the Police Commissioner had written: “The Force is unpopular with the natives and the great majority of the natives would rather do anything than become a constable.”²⁹

A South African observer described the rank and file of the Native Police as

[T]he most worthless body of men on the coast ... recruited from among the worst classes of West African native-Sierra Leone Niggers and the lazy, good-for-nothing ignorant slum blackguards who

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

imagine the duties of a Policeman to consist in wearing a uniform and getting drunk—the Policeman on the coast is a disgrace to his cloth.³⁰

He added that West Africans attached more disgrace to the calling of a Policeman than to that of a convict or ex-convict: “[T]he latter receives sympathy for having been unfortunate enough to have been found out, but everyman’s hand is against a Policeman who is looked upon as a traitor to his race.”³¹

In the rural areas, too, the people feared and disliked the Native Authority Police. Poorly trained and irregularly paid, the police often acted on their own in carrying out assignments and making arrests. Another commentator noted:

Very often, the Native Authority Policemen whose province has not been determined, used any amount of force within their power to bring offenders to Court even on a very minor charge.

It was a common thing to see people being beaten and dragged along by these officers. Many were disgusted with the overbearing manner by which these officers went about their duties....³²

In 1882, the Gold Coast Times declared the Ada police as “useless; they are generally seen sitting outside grog-shops and strive to escape work.”³³

In the events leading up to the fall of empire, more than any other government agency, the police had to deal directly with the forces of nationalist politics and anti-colonial protest. After the wars of conquest and the consolidation of their rule in the Gold Coast, and before the 1940s, the British had usually limited police work to local issues, tribal clashes, boycotts, de-stoolment disputes, and opposition to taxation. For these tasks, a small number of policemen had almost always appeared sufficient.

After a century of colonial rule, however, organized opposition to the colonial government finally emerged in the context of the liberation struggle. Popular opposition to the police force became an inextricable by-product of opposition to the entire British imperialist architecture. The 28th February 1948 social movement targeted the Governor as representative of the British Crown. A police attempt to prevent a march on the Governor’s office led to a show-down. The resulting chaos, widespread rioting and looting, closely related to nationalist activities, caught the colony and its police force unprepared.³⁴ The years 1948-1951 saw mounting unrest, lawlessness, rapid changes of policy, and turbulence. Nationalist militants heralded challenges to the colonial government and its laws as patriotic.

Under the pressure of these crucial years, the colonialists attempted a rapid expansion and reform of the police. The government imported troop-carrying vehicles, signals equipment, riot equipment, as well as twenty former gazetted Palestine Police officers experienced in police mobile force work—and, as a final dressing, added an armored car unit. In the following months, the military held exercises in crowd control and anti-guerrilla techniques. In 1949, with warnings of Positive Actions already in the air, the government decided to form a third battalion and expand the armed forces as a back-up to the police. To deal with

Ghana: Changing Our Inherited Police Institutions

serious disorders beyond the resources of the regular police, it established a Voluntary Police Reserve which quickly could call out over 2,000 Africans, Asians, and Europeans.³⁵ Thus, faced with renewed violence, the government dramatically expanded the police force, made it more paramilitary in character, developed more centralized command systems, and established special branches.

In effect, the 1948 riots proved a catalyst for police reform, forcing the Gold Coast Government to create an increasingly militaristic police force, better organized and equipped, and, on command, ready to descend upon the citizenry. Unfortunately, the political protests of the time provided fodder for police brutality.

To summarize: The British originally set out to establish the Gold Coast Police Force for obvious reasons: The conquered peoples, whose chiefs had unwillingly or strategically signed peace treaties and treaties of protection with the British, remained restless. To govern, the political class—the Governors and their officials—established the Gold Coast Police Force to ensure needed security. They sought to preserve peace and security for ‘legitimate trade’³⁶ in imported European goods and increased exports of agricultural and mineral production to feed the people and industries of Europe. The police maintained the essential law, order, peace and security by enforcing the ‘rule of law’. In performing these tasks, the police implemented other laws, including eviction and property laws, to facilitate imperial economic expansion.

To conquer and pacify backward peoples; to protect and keep the wheels of capital moving; and to discipline the nascent working-class to ensure the stability of the social relations of production: Policing lay very much at the centre of the ideology as well as the practice of an imperial rule that fostered political domination as well as economic and social construction. When private policing increased the trade companies’ costs, the government nationalized their policing institutions and transferred the cost from the private to the public sector financed by colonial tax revenues.

In short, policing in the Gold Coast changed drastically from the pre-colonial to the colonial era, from the enforcement of moral and religious order to the protection of political and commercial interests. Unfortunately, however, as demonstrated in this chapter’s next parts, Ghana’s victorious post-independence governors failed to exercise state power through law significantly to alter the police force as an institution.

THE NKRUMAH ERA: 1957-1966

After independence, as during the colonial era, the police remained central to the maintenance of the political economy of neo-colonialism—and continue to do so in the era of ‘post-modern colonialism’ today.³⁷ The nationalist leaders still employ the police as instruments for national integration and protection of their so-called ‘modern, developmentalist’ state. As one observer notes:

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

[T]he colonial policing legacy did not disappear in the developing world after independence, even in those post-colonial states that adopted anti-colonial revolutionary governments. Many post-colonial states continued in the colonial tradition of political policing, using the police as the most visible symbol of political power and control, to legitimize and entrench largely authoritarian governments. Thus, in many respects, the post-colonial police forces, like their colonial predecessors, are still misused and abused....Various accounts of the police in Africa continuing in the colonial tradition as agents of the state against trade unionists, students and political opponents, persist....In a nutshell, the strategic position that the police occupied in the colonization process together with their operation as an arm of authoritarian governments ever since have enabled them to consolidate their position as an instrument of the central state which functions to perpetuate existing power relations in the interest of the different factions of the post-colonial political classes.³⁸

Two main challenges faced President Nkrumah's immediate post-independence political administration: First, consolidation of the new nation's hard-won political and economic freedom while building the necessary infrastructure for economic and political development; and, second, creation of the new social institutions necessary to foster the integration of diverse ethnic and clan groups into the process of nation-building and development.

To achieve these two objectives, Dr. Nkrumah called on the strongest institution of coercion and governance the colonial regime had constructed: the police. He sought to use the police to shore up his fragile regime and to keep political opponents at bay. At the same time, because he mistrusted independent sources of power, he tried to maintain strict political control over the police; when he sensed police disloyalty, he divested them of several powers.

In the political sphere, for instance, the first years of independence witnessed a series of constitutional and legislative measures aimed at reducing potential ethnic conflict and, simultaneously, stifling political opposition to the Convention People's Party (CPP). The Avoidance of Discrimination Act in late 1957³⁹ forbade the existence of parties on a regional, tribal, or religious basis. These obviously affected both the Ashanti-based parties and the Northern Peoples Party (NPP). To get around the law, several opposition forces, originally formed on ethnic lines, came together to form the United Party (UP). The Preventive Detention Act of 1958⁴⁰ gave the government the right to detain persons without trial for up to five years.⁴¹ The 1960 Constitution, the first republican constitution that replaced the independence constitution of 1957, created the position of Executive President, a position Nkrumah filled. The new Constitution, which gave the president many powers, did not contain an actionable and enforceable bill of rights.⁴² Then in 1964, Ghana became a one party-state. These measures aimed to introduce a new era, based on a consistent, centralized government.

Ghana: Changing Our Inherited Police Institutions

Nevertheless, agitation against the Nkrumah government persisted. The Ga people in Accra, the national capital, felt frustrated and overwhelmed by others who, as part of continent-wide urbanization trends, moved into their midst. Many complained that the C.P.P. and Nkrumah failed to repay them for their pre-independence support. As early as July 1957, some organized the Ga Shifimo Kpee (the Ga Standfast Organisation). On his return to Accra from a Prime Ministers' Conference in London, former supporters, now waving protest banners, hurled epithets at the President. Marches and demonstrations turned bloody as the police intervened. By late August police began to make arrests, though not exclusively of opposition figures. The Ga Shifimo Kpee complained the police closed their eyes to C.P.P. 'terrorism', unfairly arresting opposition supporters, offering false testimony in court, and refusing them permits for public meetings or rallies.⁴³

Ashanti had had a long history of opposition to rule from Accra, whether colonial or indigenous. In the immediate post-independence era, the National Liberation Movement waned everywhere, but even at its peak, few government supporters had appeared in Ashanti. While the authorities dared not act against the Asantehene, they had no such trepidation in regard to other leaders, like those in Kumasi's Muslim community. In the summer of 1957, the government ordered the police to serve deportation orders against two of these leaders, although both held Ghanaian citizenship. This fueled public disorders in both Kumasi and Accra—and the police bore the brunt of the people's anger. In Ashanti as in Accra, people protested that the police hindered the newly-formed United Party's efforts to hold rallies. Then, in the fall of 1958, the police carried out four more deportations despite a court order delaying their action to ensure clear determination of the men's nationality. These actions generated even more large-scale hostility toward the police.⁴⁴

In the Volta Region, political and economic issues aggravated friction with the Nkrumah regime. Some 'Voltarians' wished to merge the region with what soon would become an independent Togo. Others urged all Ewes in Eastern Ghana to join their brothers in the new nation-state across the border. Yet others wished to keep and strengthen ties to Accra.⁴⁵ On the economic front, a long-standing, lucrative smuggling operation between Ghana and Togo appeared endangered for the first time.⁴⁶ Nkrumah's government again sought to use the police to integrate these varying peoples and corresponding interests.

In sum, the evidence suggests that, in a bid to establish centralized control over the new nation-state, Nkrumah's government employed the police to shore up his fragile regime and to keep political opponents at bay. Many voices expressed obvious displeasure. Some charged the police with being impolite, using harsh methods, telling plaintiffs or witnesses to 'go and come' no matter how many miles they had to travel, spontaneously altering complaints against those accused, behaving in authoritarian ways that brooked no opposition, locking people in cells and trying to force confessions, jailing people who complained for making false accusations, and generally beating, detaining, and bul-

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

lying individuals. Many Ghanaians considered it unwise to help the police track down criminals, or to go to court, or to get mixed up in any way with police officers.

Rural communities tended to view the regular police with even greater suspicion. A member of the Legislative Assembly declared:

The Policemen are a terror in the rural areas....The Policemen do not in fact respect the views of the common people, and in my own constituency, a Policeman...will never respect whatever views are put before him.⁴⁷

The Nkrumah government apparently never really tried to use law to transform the institutions of policing to ensure they worked more closely to help those living in the poorer communities resolve their own concerns.

In 1966, after a military coup⁴⁸ ousted President Nkrumah, Ghana experienced a decade and a half of economic downturn and political uncertainty that witnessed the rise and fall of five military regimes and two democratically elected constitutional governments. None of these governments made any serious attempt to reconstruct the police force as an institution. Essentially, as before, the police served, not the majority of the urban or rural poor, but the ruling elites of the day. Then, in 1981, yet another military regime, headed for a second time by a military man, Flight Lieutenant John Jerry Rawlings took over, and some people voiced renewed hope for real change. Instead, for the next quarter of century in the midst of emerging new social problems, the dominant police 'behaviors' remained essentially unchanged.

FROM THE RAWLINGS ERA TO THE CURRENT PERIOD: 1981-2005

In the mid-1980s, under the tutelage of the World Bank and the International Monetary Fund (IMF), a second Rawlings government initiated the Economic Recovery Programme (ERP) and Structural Adjustment Programme (SAP). To date, under different names and with minor substantive changes, first the Rawlings and then the Kufuor administrations continued to implement these same programs. In terms of understanding Ghana's political economic context, this seems to justify treating the Rawlings and Kufuor eras together.

The second Rawlings military regime took over the reins of government on 31st December 1981. The government inherited a weak, debt-ridden economy, largely thanks to global market forces that prolonged low world prices for Ghana's main export: cocoa. At first, Rawlings called for moving the country ideologically to the left, but not for long. Dry national coffers, the depletion of the nation's foreign reserves, a mounting debt service burden, shortages of essential commodities, drugs and equipment, and on top of all this, severe drought, caused the Rawlings regime to rethink its strategy. In less than two years, the government requested food aid to deal with the threat of famine. Immediately, the World Bank and the IMF offered tempting assistance—if the regime would

Ghana: Changing Our Inherited Police Institutions

divest itself of its leftist ideological trappings. Internecine conflict within the leadership of the regime led to a purging of the regime's ultra left-wing guard, and the assumption of full control by the moderates joined by new centre and right-wing recruits. Thus dawned a new era of liberalism—what some call 'post-modern colonialism.' The government adopted the usual fine-sounding code names for their new programs—'Economic Recovery,' and 'Structural Adjustment.' From time to time, over the Rawlings era and in the present, these program's titles changed, but, essentially, guided by the same tutors (the World Bank and the IMF), they retained the same characteristics.

What then characterizes the political economy of post-modern colonialism,⁴⁹ which others term the 'Washington Consensus'? In general, it reflects strong globalizing pressures that, at once, demand strengthening state power, in the form of enforcement of the 'rule of law' and the fight against crime; and weakening state power in areas involving economic regulation and welfare policies. The post-modern colonialism project incorporates four seemingly contradictory dimensions: a neo-liberal economic consensus; a weak state consensus; a liberal-democratic consensus; and a consensus on the rule of law and the role of courts.

In this context, the Rawlings regime attempted two seemingly contradictory reforms of the inherited institutions that comprised the police force. First, it introduced a leftist approach of decentralizing policing functions and involving non-police officers in the policing system. Second, it purchased more hi-tech equipment to strengthen the police force's capacity to protect the new elements of the neo-liberal post-modern colonial era. The first set of reforms, involving the use of community-based 'Revolutionary Defence Committees' to perform various police duties,⁵⁰ crumbled with the marriage of the regime to the International Financial Institutions (IFIs), and altogether ceased by 1988. The second set of reforms endured, and has continued to date. In effect, over the last two and a half decades the reigning governments thus preserved the police force, basically in its inherited form, while strengthening its human, institutional, and material resources. This reflected the underlying reality of the coincidence of the tenets of the colonial and post-modern colonial agendas, which both required a similar type of police officer. Today, under the tutelage of the World Bank, the IMF and the World Trade Organization (WTO), the police serve primarily to implement and police Ghana's neo-liberal-integration into the world economy.

During the period of military rule, and—despite constitutional guarantees—in the period afterwards, the Rawlings regime used the military and the police to suppress dissent, initially expressed in the form of severe, if muffled, opposition to the regimes' sudden marriage to the IFIs. They arrested and imprisoned the few who voiced their opposition openly; many claimed the police tortured them.⁵¹

In 1996, just three years into the new democratic dispensation, the Rawlings government⁵² set up a high level commission of inquiry into the police service. The commission presented its report in March, 1997. The terms of reference of the commission, its methodology, and its conclusions, proved consistent with the post-modern project that required a hi-tech police force to protect the political

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

class, ensure peace and security for economic exploitation, and enforce a rule of law whose interstices were populated with the agenda of post-modern colonialism.

Thus, two centuries after the beginning of colonial rule, and half a century after that rule had formally ended, the Gold Coast Police Force—now called the Ghana Police Service—retained the same basic objectives. As created during colonial rule, the institution has endured, still patterned after the British imposed police system and enforcing laws inherited from British colonialism.⁵³

Still used mainly for the protection of the political class, the police's stated aim became that of providing peace and security to attract foreign investors. The police still enforce a whole range of laws, including those evicting poor and powerless people, to create space and wealth for the powerful and the rich.⁵⁴ That the police behave in repetitive patterns shaped by almost two hundred years of history comprises yet another illustration of the theory of institutional continuity.⁵⁵ Unless a nation's new governors learn how to exercise state power through law to transform the institutions inherited from the colonial past, those institutions—like the Ghanaian police—will likely perpetuate the socio-economic circumstances that coerce the majority of Africans to struggle for bare survival.

Bankole Cole's observations clearly fit the Ghanaian case:

Although many post-colonial countries have, since independence, experimented with different types of governments, most of them have preserved in their new political structures several features of the colonial state, some practically in their original forms. This is particularly true of policing.⁵⁶

In Ghana, as illustrated by the case of the *New Patriotic Party v. Inspector General of Police* [1993-94] 2 GLR 459, the role of the police as an arm of the regulatory state soon came into conflict with the 1992 Constitution's new human rights guarantees. In this case, the presidential candidate of Ghana's future governing party, the New Patriotic Party (NPP), serving as plaintiff, complained that the government's requirement of a police permit to hold rallies or demonstrations thwarted democratic participation.

In a succinct, very short two-paragraph opinion, Edward Wiredu, Justice of the Supreme Court (as he then was), declared in part:

The police permit has outlived its usefulness. Statutes requiring such permits for peaceful demonstrations, processions and rallies are things of the past. The police permit is the brainchild of the colonial era and ought not to remain in our statute books.⁵⁷

While striking down some of the provisions of the law as unconstitutional, the Chief Justice went further by calling on the legislature to act beyond the court orders:

I would urge that the whole of [the Public Order Decree] should be reviewed and modernised in its entirety to enable the Police Service

Ghana: Changing Our Inherited Police Institutions

to carry out its duties effectively without contravening any provision in our current Constitution, 1992.⁵⁸

On 7th January 2001, the majority of Ghanaian voters elected John Agyekum Kufuor to replace Rawlings as President, ushering the New Patriotic Party into the seat of Ghanaian government. In his inaugural speech, Kufuor promised an era of 'positive change' in everything throughout the country. Would that 'positive change' include the police?

The NPP governors did pay more attention to the police. They ordered new vehicles and other equipment for the police force, recruited thousands of new policemen, appointed two new Deputy Inspectors General of Police, and generally talked of making the force more capable of maintaining effective law and order. Various NGOs (non-government organizations) piggy-backed on this initiative, focusing on monitoring police performance and police reform.⁵⁹ These efforts by the government and the NGOs to reform the police continue today. Unfortunately, however, the government merely seemed bent on fully implementing the recommendations of the Presidential Commission on the police, appointed by the Rawlings government in 1996. In his state of the nation address to Parliament, 3 February, 2005, the new President once again promised still more high tech equipment for the police.

The roles of the Gold Coast police in 1830 and the Ghanaian police today have hardly changed. Perhaps, as the main difference, instead of providing physical protection to the colonial Governor and other officials of the Colonial Office, the police now protect a President and Ministers, mostly trained in London, Europe and the United States, who have returned home (perhaps temporarily) to 'lead' the country for a political term; instead of the British Trading Companies the police preserve law and order for foreign investors and Ghana Club 100;⁶⁰ and, instead of importing the Rule of Law from the Colonial Office in London, Ghana now imports the Rule of Law from the World Bank, IMF and WTO offices in Washington, DC and Geneva.

Many Ghanaians have expressed deep mistrust of the nation's police force. Surveys taken as far apart as 1974⁶¹ and 2001/2003⁶² showed that many still considered it the most corrupt institution in Ghana. Serious confrontations between members of the public and the police have led to riots, street battles, loss of property and even lives. In 2002, a commentator noted that "the burning and seizing of Police Stations and equipment, and killing of police personnel...is gaining currency in the country nowadays."⁶³

The police remain under strict political control. The Police Council, a body mostly appointed by the President, supervises the Inspector General of Police (the chief executive and administrator of the Service), appointed by the government of the day. Ministers of State and their deputies, the Speaker of Parliament, judges and other political appointees today may have one or two policemen (sometimes a whole platoon) at their service, paid for out of tax revenues. Meanwhile, wealthy individual citizens buy private security from private

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

security companies, while the poor must try, as best they can, to establish their own systems of private security in the form of land guards or vigilante groups.

Box 2: A Note on "Illegal Security Operatives"

Only the so-called 'illegal security operatives' appear capable of creating new institutional forms to deal with the globalizing forces of post-modern colonialism. Falling outside the purview of formal state statutory regulation, these shadowy institutions may involve chiefs, headmen, earth priests, and other holders of traditional authority, or modern 'opinion leaders,' grassroots-level political operatives, and bands of rich and poor, educated and uneducated, young men—all of whom engage in critical but non-public aspects of the security sector. They have survived the constricting forces of colonialism and post-colonial states' modernization programs, not only because of their adaptability, but also because of their strategic, but often hidden, alliances with emerging power centers.

Part of their success appears to lie in their capacity to mobilize and reinvent themselves in multiple ways as necessary to deal with the new and constantly changing technologies of power mobilized by globalizing forces. The processes by which these operatives align themselves with public and private institutions, shifting micro level political and economic relations to maneuver around the law and state power, illustrates their capacity to open up new and fluid opportunities to advance themselves. Typically, they remain quite invisible, undocumented, under-documented, and un- or under-researched. When they finally seem documented and coalesced into observable patterns of alternative institutional ordering, the globalizing forces of postmodern colonialism too often capture and transform them.⁶⁴

The police still appear most brutal when engaged in their traditional functions of protecting the dominant political elite, preserving the regime in power and the resources of the economically-powerful. As they implement that form of the 'rule of law,' they most clearly reveal the historically-shaped institutional continuities.

What has all this to do with police reform?

POLICE REFORM IN GHANA: SOME PRELIMINARY THOUGHTS

There exists today a growing pressure to reform the Ghana Police Service, rather like the rush to reform the Ghana Police Force that began in 1948 and ended up high-teching and militarizing an already brutal force. Today, many call for extending the tentacles of the National Governance Programme (NGP) to the police.

Overwhelmed by the symptoms of the problem, most reform agents call only for changing the individual—often brutal, unfriendly and corrupt—police officer. Virtually no one talks about reforming the institutions—the repetitive patterns of behavior that shape the police's role in today's neo-liberal, post-modern colonial world.

Ghana: Changing Our Inherited Police Institutions

Beginning in the 1980s, the neo-liberal agenda in Africa started with economic reform:⁶⁵

1. Tighten the national budget to service the national debt;
2. Devalue the national currency to sell more exports and attract more foreign tourists;
3. Retrench (assumed excess of) government workers and charge fees for government services;
4. Abolish agricultural subsidies, which the government cannot afford;
5. Sell state owned enterprises to multi-national companies to ensure greater efficiency.

Emboldened by the alleged 'successes' of economic reforms, again prompted by the World Bank, Ghana's government began flirting with institutional reform. But, although to introduce economic liberalism seems easy, its after-effects indeed proved enduring. Governments need to regulate the new economic regimes. The architects of neo-liberalism assumed that they could use the same toolkit to reform governance institutions that they had employed for economic reform.

But reforming institutions of governance seems a different ball-game altogether, perhaps more so in Africa because of its complex history. From the colonial era to date, the police in Africa have combined aspects of the roles of Politician (District Commissioner), Prosecutor, Magistrate, and Policeman. As their chief complaints against the police today, people say they remain too politicized, too powerful, too brutal, and too corrupt. These persist as direct features of the historically shaped role of the police. All stakeholders seem to agree on the need to reform the police, but few agree on how to tackle that reform.

Neo-liberalism seeks to resolve problems like those involved in police reform at very high levels of abstraction, aided by abstract, fluid, and manipulable concepts: 'Human rights', 'public sector reform', 'national institutional renewal', 'public order', 'rule of law' 'governance' and the like. Too often, however, the interpreters of those fluid and manipulable categories ultimately interpret them to exclude innovative institutional reform alternatives.

Box 3: Human Rights vs. Institutional Change

Instead of designing detailed laws to restructure dysfunctional institutions, human rights activists too often call for implementation of 'global human rights standards' and the 'Rule of Law'—leaving those vague concepts' precise interpretation to those responsible for implementing them. Too often, the interpreters—implementing agencies, the police, the courts—assign meanings that, instead of fostering radical change, perpetuate the **status quo**.

Historically, the demand for 'human rights' arose as a cry of the oppressed. In contrast, when law-makers seek to protect those rights, they have the option of exercising state power to require officials to provide effective protection. To do that, however, they must enact and implement laws that prescribe the officials' required behaviors—institutions—in detail. To ensure police officers respect human rights, law-makers must adopt laws that specify what a **police officer must, may, or may not** do; that is, they must impose specified limits on police officers' behaviors. For example:

*'A police officer may not torture arrested or detained persons;'

*'Without authorization of a court, pursuant to procedures specified in Article X, a police officer may not take action to require street traders to leave areas for which city authorities have previously granted them a licence to trade;' or

*'Without authorization of a court, pursuant to procedures specified in Article Y, a police officer may not force a person to desist from using communally owned property.'

Given a law that prescribes precisely what a police officer must, may, or may not do, a person who claims an officer has violated those prescriptions may bring an action to a court for damages, or for an injunction to prevent future violations. The law's detailed prescription leaves the court no discretion: If, based on the facts, a judge decides that the police office violated a detailed prescription specified in the law, that judge shall award damages or impose an injunction.

*** CONCLUSION: THE NEED FOR LEGISLATION**

In sum, this chapter underscores several points:

First, many problems—like those plaguing the Ghanaian police force—seem merely simple issues of institutional dysfunction that need reform. In reality, an in-depth, historical review demonstrates that those institutional problems prove linked to trajectories rooted in intense contestations between the forces of colonialism (past and present) and those of the colonized, and their respective agents, allies and sympathizers.

Second, available evidence reveals that problematic institutions structured in long years of colonial rule, like those of the police, have survived the turbulent half century since Ghanaians won their independence. Those institutional continuities persist, not merely because of inertia, or the series of new gover-

Ghana: Changing Our Inherited Police Institutions

nors' seeming lack of capacity to govern. New structures, interests and patterns of resource control have emerged that, coinciding with those of the colonial era, foster the institutions' perpetuation. Thus, this institutional inertia—half-hearted reforms; closure of the imagination to different normative forms of institutional ordering; discouraging and preventing the proliferation of alternatives for institutional design—all serve a purpose: neo-liberal engineering for the maintenance of the status quo.

Not comprehending the fundamental logic of institutional continuity, all across the African continent frustrated persons and groups have attempted to institute institutional reform. Authoritarianism, heady revolutions, assassination of ruling elites—all have occurred in a desperate search for solutions to the persistent complex issue of institutional malaise, but to no avail. Condemnations of neo-colonialism and of the unfair world political and economic order, accompanied by exhortations to make a clean break from them, have proven unsuccessful. Today, high-sounding human rights refrains, human rights and public interest litigation, and templates for magical institutional reform, marketed by consultants of international financial institutions and their local governmental and non-governmental associates, have fared no better.

On a personal note, in search of a more productive solution, I chose to research the police. Established as an essential aspect of the colonial enterprise, the government has perpetuated and expanded the police to protect those presiding over the national political economy in the post-independence era. Effective police reform, it seems to me, must comprise an integral feature of the reform of the full range of inherited political economic institutions—some more dysfunctional than others—which successive Ghanaian governments have repeatedly called on the police to protect.

In reality, the bulk of this chapter's evidence, a summarized version of the findings of many years of doctoral research,⁶⁶ broadly describes **the problematic behaviors that comprise the existing Ghanaian police force as an institution**. To alter those behaviors, the many social elements of Ghana's society today have to learn **to work through their government to use its primary tool for effectively making reforms of any kind: the law**.

As a first step, I propose the establishment of a Commission, broadly representative of all the affected societal groups, to conduct the necessary further research and design the detailed legislation required to transform Ghana's police force so that it contributes effectively to national development to fulfil the basic needs of all Ghanaians. Using institutionalist legislative theory as a guide, the Commission should accompany the proposed law with a research report that provides the relevant available country-specific facts, organized logically, to demonstrate that the bill's detailed provisions will likely alter or eliminate the problematic behaviors that comprise the Ghanaian police force today. Structured by legislative theory's problem-solving outline,⁶⁷ Box 4 provides an outline of the kinds of evidence, logically organized, which that kind of report should provide. Since a law can only try to resolve problems by changing behaviors,

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

the draft report should focus on formulating possible hypotheses to identify and explain the problematic behaviors which, as this chapter has shown, still characterize the Ghanaian police force as an institution. That would help to ensure that, as its primary task, the proposed law would aim to change those behaviors, laying sound foundations for a police force more likely to serve the basic needs of all Ghanaians.

Box 4: Draft Outline of a Research Report to Justify the Details of Legislation to Transform the Ghanaian Police Force

[Note: To prepare a research report grounded on logic and facts, a drafter must first formulate relevant hypotheses ('educated guesses' based on the drafter's knowledge of the existing situation) about the social problem and the problematic behaviors that comprise it. Then, at each step required by problem-solving's logic, the drafter must gather the relevant evidence to demonstrate that those hypotheses prove consistent with all the available data. (Of course, if an hypothesis appears inconsistent with the available facts, the drafter must reject it, or revise it until it does appear consistent; that constitutes the essential premise for a drafter to claim the bill's detailed provisions—designed to alter or eliminate the causes of the problematic behaviors—rest on facts logic.)]⁶⁸

Introduction: A few sentences summarize the social problem posed by the behaviours of the existing police force, and the proposed solution: the creation of community-based police. The rest of the Introduction informs the reader that the proposed bill, as part of a larger, on-going legislative program to transform other inherited dysfunctional Ghanaian institutions, aims to transform only one: the police force. A final paragraph outlines the report's table of contents, showing the reader how these conform with institutionalist theory's problem-solving logic.

Step I: Provides hypotheses, accompanied by the relevant evidence, that describe the surface appearance of the social problem posed by Ghana's police force today, and the problematic behaviors that comprise it:

i. *[This chapter provides ample evidence as to that social problem's surface appearance; the research report should summarize enough of that evidence to show the necessity of changing the behaviors that comprise it];*

ii. Analyses the evidence as to the existing Ghanaian police force as an institution, and the relevant societal actors and their problematic behaviors. Depending on further analysis of the available evidence, these might include:

(1) police officers—whose behaviors this chapter has described above;

(2) local police chiefs—who instruct police officers as to their duties. Since the chapter does not describe these chiefs' role, this section may require further analysis of available evidence.

Ghana: Changing Our Inherited Police Institutions

(3) the national Inspector General of Police - responsible for supervising national police behaviors; again, an adequate description may require gathering further evidence as to the Inspector General's role in the police force's decision-making process.

(4) elected legislatures - responsible for overseeing how the police implement the existing law; this too may require reviewing further facts.

Step II: Using the ROCCIPI agenda,⁶⁹ this step involves formulating hypotheses and providing the available evidence as to the interacting, country-specific non-legal, as well as legal factors which, in the face of existing law, seem to cause each set of problematic behaviours.

i. Consider *separately* each set of actors' problematic behaviors (identified in Step I), since the circumstances in which they live and work likely may influence their behaviors in very different ways.

[Note: Analysis of the criteria and procedures in the existing law (including departmental regulations) that govern the relevant actors' decision-making, especially those, like the officials, who act as members of the police force as an implementing agency, proves very useful in understanding how the non-legal causal factors may influence their behaviours in the face of the existing law].

ii. Once formulated, these explanatory hypotheses serve to guide identification of the relevant available facts required to prove those hypotheses consistent with the available evidence.

Step III: Formulate hypotheses as to 'solutions'—the bill's detailed prescriptions

i. Demonstrate that the proposed detailed prescriptions logically seem likely to alter or eliminate the legal and non-legal causes of the existing problematic behaviors, and therefore to induce behaviors to help resolve the social problem.

ii. Consider available evidence as to alternative possible solutions;

a. Decide on the 'best' detailed provisions in terms of their do-ability, given existing physical and human constraints and resources;

b. Demonstrate that those provisions' social and economic benefits outweigh their social and economic costs.

Step IV: Formulate hypotheses as to the kind of feedback mechanism which, incorporated into the proposed bill, will likely ensure that the law-makers learn whether, after they enact a law, that law's detailed provisions do prove effectively implemented and really help to resolve the social problem—that is, make the police as an institution function more effectively to ensure good governance, and contribute to development directed to fulfilling the basic needs of all Ghanaians.

i. Specify criteria and procedures for ensuring that those affected—especially the poor and vulnerable, based on their own experience—can and do provide inputs (facts and ideas) into the evaluation of the law's implementation and its effect in altering police behaviors.

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

ii. Provide detailed provisions to ensure law-makers take this feedback into account in designing new legislation in the on-going process of improving the behaviors of the police force as an institution.

Notes

1. DAILY GRAPHIC (Accra, Ghana), Feb. 9, 2005, at 1 and 3.
2. *Id.* at 3 (*emphasis added*).
3. Interview with the Honorable Mahama Ayariga, Member of Parliament for Bawku Central, at the Faculty of Law, University of Ghana (Feb. 9, 2005). *See also* 49 PARLIAMENTARY DEBATES, OFFICIAL REPORT (THE HANSARD) (Feb. 9, 2005), at 458-461.
4. THE INDEPENDENT NEWSPAPER (Accra, Ghana), Feb. 15, 2005, at 1.
5. DAILY GRAPHIC, Feb. 17, 2005, at 29.
6. Thirty-three of the 126 came from nearby Nima, Mamobi and New Town. For a description of the May 9 Stadium Disaster, *see* ALEX AKURGO & CAMILLUS ABONGO, MAY 9 AT ACCRA STADIUM: A GRIPPING STORY OF A DISASTER THAT TURNED ORDINARY PEOPLE INTO HEROES (Blue Volta Associates, 2001).
7. DOUGLASS C. NORTH, INSTITUTIONS, INSTITUTIONAL CHANGE AND ECONOMIC PERFORMANCE vii (1990).
8. Quoted in Richard B. Krantzdorf, *The Military and Police in the Gold Coast/Ghana Through February 1966: A Study of Limited Institutionalization* 20 (1973) (Ph. D. dissertation, University of California at Los Angeles)(on file with the Department Of Political Science, UCLA).
9. *Id.* at 63.
10. For details, *see* Raymond A. Atuguba, *Institutional Continuities: The Police in the Regulation of Public Order and Alcohol in Ghana* (Jun. 2004) (Doctor of Juridical Science dissertation, Harvard Law School).
11. S. K. ANKAMA, POLICE HISTORY: SOME ASPECTS IN ENGLAND AND GHANA 22 (1983). Ankama does not discuss the role of the police during the era of slave raiding and trading. This is probably because slave raiding was a military and not a police function in pre-colonial Ghana.
12. *Id.* at 20-26.
13. John A. Arthur & Otwin Marenin, *British Colonization and the Political Development of the Police in Ghana, West Africa*, in COMPARATIVE CRIMINAL JUSTICE: TRADITIONAL AND NONTRADITIONAL SYSTEMS OF LAW AND CONTROL 165 (Charles B. Fields & Richter H. Moore, Jr, eds. 1996).
14. *Id.* at 166.
15. *See* M. FORTES AND E. E. EVANS -PRITCHARD, AFRICAN POLITICAL SYSTEMS (1958).
16. *See* W.H. GILLESPIE, THE GOLD COAST POLICE: 1844-1938 1 (1955).
17. Criminal code of Gold Coast, 1832 (CAP 32).
18. Arms and Ammunition Ordinance of Gold Coast, 1922 (CAP 253).
19. Public Meetings and Processions Regulations of Gold Coast, 1926 (No. 10 of 1926).

Ghana: Changing Our Inherited Police Institutions

20. BANKOLE A. COLE, *POLICING ACROSS THE WORLD: ISSUES FOR THE TWENTY-FIRST CENTURY* 100-02 (R. I. Mawby, ed., 1999).
21. *Id.*
22. John A. Arthur & Otwin Marenin, *British Colonization and the Political Development of the Police in Ghana, West Africa*, in *COMPARATIVE CRIMINAL JUSTICE: TRADITIONAL AND NONTRADITIONAL SYSTEMS OF LAW AND CONTROL* 163, 167-8 (Charles B. Fields & Richter H. Moore, Jr., eds., 1st ed., Waveland Press, 1996).
23. Mike Brogden, *An Act to Colonise the Internal Lands of the Island: Empire and the Origins of the Professional Police*, 15 *INT'L J. THE SOCIOLOGY OF L.* 179, 205-06 (1987).
24. *Id.* at 202-05.
25. David M. Anderson & David Killingray, *Consent, Coercion and Colonial Control: Policing the Empire, 1830-1940*, in *POLICING THE EMPIRE: GOVERNMENT, AUTHORITY AND CONTROL, 1830-1940* 1, 6 (David M. Anderson & David Killingray, eds., Manchester Univ. Press, 1991).
26. David Killingray, *Guarding the Extending Frontier: Policing the Gold Coast, 1865-1913*, in *id.*, at 119-20.
27. *Id.*
28. See Mathieu Deflem, *Law Enforcement in British Colonial Africa: A Comparative Analysis of Imperial Policing in Nyasaland, the Gold Coast, and Kenya*, 17 *POLICE STUDIES* 45 (1994). Also on the World Wide Web at: <http://www.cla.sc.edu/socy/faculty/deflem/zcolpol.html> (last visited on Oct. 26, 2003).
29. GILLESPIE, *supra* note 16, at 34.
30. *Id.* at 12.
31. *Id.* at 38.
32. S. K. Ankama, *The Police and Maintenance of Law and Order in Ghana* 163-164 (1967)(Ph D. Dissertation, University of London), quoted in Richard B. Kranzendorf, *The Military and Police in the Gold Coast/Ghana Through February 1966: A Study of Limited Institutionalization* 20 (1973) (Ph.D. dissertation, University of California, Los Angeles)(on file with the Department Of Political Science, UCLA).
33. EMMANUEL K. AKYEAMPONG, *DRINK, POWER, AND CULTURAL CHANGE: A SOCIAL HISTORY OF ALCOHOL IN GHANA, C. 1800 TO RECENT TIMES* 52 (Heinemann, 1996).
34. See F. M. BOURET, *GHANA-THE ROAD TO INDEPENDENCE 1919-57* 157ff. (1960), for political context of the riots.
35. Kranzendorf, *supra* note 32, at 173.
36. The legitimacy of this trade has been highly controversial.
37. Susan S. Silbey, *Let Them Eat Cake: Globalization, Postmodern Colonialism, and the Possibilities Of Justice*, 31 *L. & SOC'Y REV.* 207 (1997).
38. See COLE, *supra* note 20.
39. Avoidance of Discrimination Act, 1957 (No. 38 of 1957).
40. Preventive Detention Act, 1958 (No. 17 of 1958).
41. *Id.* at § 4.

Part II: Africa's Inherited Dysfunctional Institutions: Some Case Studies

42. As interpreted by the Supreme Court in the case of RE AKOTO [1961] 2 Ghana Law Reports (GLR) 525.
43. Kranzdorf, *supra* note 32, at 253-55.
44. *Id.* at 255-56.
45. *Id.*
46. FRANCIS AGBODEKA, *AFRICAN POLITICS AND BRITISH POLICY IN THE GOLD COAST 1868-1900: A STUDY IN FORMS AND FORCE OF PROTEST* 62-76 (1971).
47. *Id.* at 196.
48. Reports suggest that in that process, still shrouded in mystery, the military cum police regime that overthrew Nkrumah (and its immediate successor in office, the government of the Progress Party) utilized money from the US Office of Public Safety (OPS) Program for internal security purposes that barely met the OPS program's formal requirements. See the following documents for hints at this: UNITED STATES DEPARTMENT OF STATE, *TERMINATION PHASE-OUT STUDY: PUBLIC SAFETY PROJECT GHANA* (United States Agency for International Development, Washington D.C., March 1974); UNITED STATES DEPARTMENT OF STATE, *GHANA POLICE ASSESSMENT: SUMMARY OF FINDINGS, CONCLUSIONS, RECOMMENDATIONS AND EQUIPMENT SPECIFICATIONS*, SEPT. 12-OCT. 23, 1968, reviewed and declassified by John Weiss, OPS, Feb. 24, 1975. In reality, it appears that, under cover of anti-communist rhetoric, US Government assistance strengthened Ghana's ruling class' efforts to bolster their fragile positions and silence dissent.
49. The term 'post-modern colonialism,' which I have borrowed from Susan Silbey, *Let Them Eat Cake: Globalization, Postmodern Colonialism, and the Possibilities of Justice*, 31 L. & SOC'Y REV. 207 (1997), is apt here because it captures the theory of historical continuity which I have endeavored to establish in this chapter, by drawing the linguistic relationship between colonialism and post-modern colonialism.
50. John A. Arthur & Otwin Marenin, *British Colonization and the Political Development of the Police in Ghana, West Africa*, in *COMPARATIVE CRIMINAL JUSTICE: TRADITIONAL AND NONTRADITIONAL SYSTEMS OF LAW AND CONTROL* 163 (Charles B. Fields and Richter H. Moore, Jr., eds., Waveland Press, 1996).
51. See Raymond A. Atuguba, *Institutional Continuities: The Police in the Regulation of Public Order and Alcohol in Ghana*, ch. 3 (Jun. 2004) (Doctor of Juridical Science dissertation, Harvard Law School) (on file with Harvard Law School).
52. "Rawlings regime" refers to the military rule of Jerry John Rawlings as Head of State between Dec. 31, 1981 and Jan. 6, 1993; "Rawlings government" refers to the democratic constitutional rule of Jerry John Rawlings as President between Jan. 7, 1993 and Jan. 6, 2001.
53. Mathieu Deflem, *Law Enforcement in British Colonial Africa: A Comparative Analysis of Imperial Policing in Nyasaland, the Gold Coast, and Kenya*, 17 POLICE STUDIES 45 (1994). Also available at: <http://www.cla.sc.edu/socy/faculty/deflem/zcolpol.html> (last visited on Oct. 26, 2003).
54. See, e.g., *Issah Iddi Abbas and 10 Others v. ACCRA Metropolitan Assembly and the Attorney-General*, Suit No. Misc. 1203/2002, where the Center for Public

Ghana: Changing Our Inherited Police Institutions

Interest Law (CEPIL) contested one such eviction in court. *See also* CEPIL's website <http://www.cepil.org> for information on the case.

55. Others have called this the theory of institutional reproduction. *See* ROBERT B. SEIDMAN, *STATE, LAW AND DEVELOPMENT*, *passim* (St. Martin, 1978).
56. *See* COLE, *supra* note 20, at 96.
57. *Id.* at 477-78.
58. *Id.* at 466.
59. *E.g.*, these NGOs include Africa Security Dialogue and Research, Center for Democratic Development, and the Legal Resources Centre.
60. Ghana Club 100 is the Ghanaian equivalent of the Fortune 500—the 500 leading global corporations.
61. FINAL REPORT OF THE COMMISSION OF INQUIRY INTO BRIBERY AND CORRUPTION, 1974, popularly called the 'Anin Report on Corruption.'
62. Ghana: Police-Community Relations in an Emerging Democracy (CDD-Ghana Research Paper 2003-12)(Aug. 2003).
63. J.B. POKOO-AIKINS, *THE POLICE IN GHANA 1939-1999* 10 (2002).
64. *See* Atuguba, *supra* note 51.
65. *DYING FOR GROWTH, GLOBAL INEQUITY AND THE HEALTH OF THE POOR*, *passim*, esp. ch. 5 (Jim Yong Kim, et al., eds., Common Courage Press, 2000).
66. *See* Atuguba, *supra* note 51.
67. *See* ch. 2 of this volume, esp. pp. 31-41.
68. *See* ch. 2 in this volume for an explanation of institutionalist legislative theory's underlying premises. For more detailed analysis, *see* DRAFTERS' MANUAL, at ch. 4 (esp. 118-122) & ch. 5.
69. *See* ch. 2 of this volume; *see also* DRAFTERS' MANUAL, chs. 4 & 5.

AFRICA'S CHALLENGE: USING LAW FOR GOOD GOVERNANCE AND DEVELOPMENT

The African continent exceeds in size and natural resources the combined territories of Europe, the United States and China. Yet most Africans must struggle for bare survival. The authors of this book's chapters describe different African countries' experiences, underscoring the need to use law to transform Africa's inherited institutions. Chapter 2 outlines institutionalist legislative theory and methodology as a guide for designing laws to achieve good governance and people-oriented development.

Raymond Atuguba describes how, for almost half a century after independence, Ghana's police force still mainly buttressed elite state power. Atuguba and his colleagues, working through the Legal Resources Centre, eventually hope to propose legislation to promote all Ghanaians' welfare.

Teodosio Uate's chapter demonstrates how, despite a 1997 law calling for citizen engagement in environmental protection, the inherited drafting system had thwarted the drafters' attempts to prescribe clearly and precisely what officials must do to realize popular participation.

Neva Makgetla describes South Africa's post-*apartheid* governmental efforts to restructure the massive inequalities imposed by the preceding regime. Inherited administrative institutions too often excluded from decision-making the new government's core constituencies – the working people, the unemployed, and the poor in general.

Lucian Ng'andwe justifies his proposed law to establish a Zambian Commission on Law and National Integrated Development. That Commission would conduct research and design and submit bills, accompanied by reports of the facts logically-organized, to demonstrate that those bills' detailed provisions would facilitate transformation of the inherited institutions that today perpetuate Zambia's poverty, vulnerability and poor governance.

Christopher Annear's study of the Luapula fishing industry, adjacent to Zambia's Copper Belt, illustrates the detailed evidence available to draft transformatory law.

The Editors:

Beginning in 1962, in African universities (and for another year in China's Peking University) **Ann Seidman** and **Robert B. Seidman** conducted research and taught courses relating to law and development. Now at Boston University's School of Law, they have served as consultants in projects to strengthen legislative drafting capacity and law-making institutions in some 20 countries, from China to Guyana. Their *Drafting for Democratic Social Change: A Manual for Drafters (2001)* has been translated into Russian, Indonesian, Chinese, Arabic, and other languages. They are Co-Presidents of the International Consortium on Law and Development (ICLAD; www.ICLAD-law.org), which conducts residential and distance courses in drafting for democratic social change.

Pumzo Mbana, a South African lawyer, co-edited this book with the Seidmans as part of his second year project as a Fulbright Scholar in the Brandeis University M.A. Program on Sustainable International Development. Formerly, he had served as a research assistant at the University of the Western Cape and at the Institute for Democracy in South Africa.

Hanson Hu Li graduated from Peking University and the Massachusetts Institute of Technology before attending law school at Boston University, where he was a Note Editor of the Public Interest Law Journal. He has also worked briefly as a consultant to the United Nations Children's Fund (UNICEF) and the World Bank Institute (WBI).



Africa World Press, Inc.

P.O. Box 1892
Trenton, NJ 08607



P.O. Box 48
Asmara, ERITREA