KENYA

REPORT BY LORD HATLEY FOLLOWING HIS INQUIRIES
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The observer whose approach to the study of systems of Native Administration has taken him first to the Colonies of West Africa or to Uganda, cannot fail to be struck by the difference presented by Kenya. It is here that he first encounters in any significant form the problems which arise from the existence of European settlement among an African population, and which constitute the major issue of native policy in the Rhodesias and the Union of South Africa. There are in Kenya about three and a quarter million Africans, 22,000 Europeans, 46,000 Indians and 15,000 Arabs. The size of the Indian population here is relatively greater than in Uganda or Tanganyika. But if the presence of the Indian community adds to the problems of racial admixture, it is due less to its numerical strength or to any clash of interests between it and the African population than to its refusal to accept the position which the European settlers have envisaged for themselves in the constitutional future of Kenya. The demand of the Europeans for a system of responsible self-government, the influence which their social connections have enabled them to exert in political quarters in Great Britain, and the controversies arising from the reservation of the highlands for their occupation, have given to Kenya a disproportionate prominence in discussions on British Colonial policy. There was indeed a time when the support given by the Indian government to the position taken up by the Indians in Kenya gave the question of the constitutional Future of the colony something of the aspect of an imperial issue. These circumstances have led to results of which evidence may be seen in two directions. The Kenya Government has in the past found it difficult to secure that detachment from political considerations which is necessary for the systematic organisation of Native Administration, and has been hampered in securing adequate provision for services necessary to the material and social advance of the native population. In the second place, the constitutional discussions in which Indians and Europeans and the local and imperial legislatures have been involved, have produced in certain sections of the Kenya natives an active interest in acquiring a place in the political structure of government. It has been brought home to them, for instance, that their representation in the legislature might have an influence on the decision of such issues as the treatment given to their economic interests, or the attitude of the state to the reservation of lands for European occupation.

Circumstances
Circumstances have not yet arisen which have conveyed this lesson with equal force to their neighbours in Uganda or Tanganyika.

2. The problems created by the settlement of Europeans in Kenya range over a wide field, and it is possible here to deal only with those matters which bear directly on Native Administration. Where a resident European population of considerable size is brought into close contact with its African neighbours, the standards generally applied in judging of native institutions or the capacity of natives for the management of their own affairs, will differ materially from those common in areas where there are relatively few European interests. Again, the Kenya administration at the commencement of its history came under influences derived from South Africa or Rhodesia rather than from the purely native territories then under British rule. At an early stage the Kenya Government stated that it had not found amongst the Kenya tribesman any such organisation of native rule as could usefully be employed as a subordinate agency of administration, and from the first it inclined to the employment of agents of its own choice rather than those which commanded authority based on tradition or custom.

3. In the second place, it is necessary to take into account the results which have been produced on some of the tribes by the reservation of lands for European occupation. In those considerable areas of the colony the extent of tribal lands has not been seriously affected by this measure. But in the immediate neighbourhood of the Highlands the effect has been either to reduce materially the areas formerly used for cultivation or grazing by the tribesmen, or to prevent their finding accommodation for their expanding needs in the manner to which they had previously been accustomed. The reserves of certain of the tribes are now greatly congested, and numbers of the tribesmen have to seek a livelihood either as labourers on European farms, or as temporary occupants of land in the less congested reserves of other tribes. These conditions have tended to intensify the change in outlook on their own tribal institutions, which must in any case have followed the close contact with the prevailing European economy. Among the many proofs of this change of outlook is the growing sentiment in favour of asserting individual rights in the holding of land among the Kikuyu and certain sections of the Kavirondo. A change of this character is not limited to the manner in which land is held, but has
an important effect on the social relations on which the tribal organisation is based. It is in these conditions, natural that the employment of agents who have little or no traditional authority, or the choice of members of administrative or judicial bodies by methods resembling those of election, should command greater acceptance than might be encountered in areas where the traditional organisation has not been subjected to the same influences.

4. The recent land legislation and the administrative practice associated with it have demarcated the lands in Kenya into areas of which one is in effect reserved for European and the other for native occupation. It has in consequence been suggested that while the European area should remain for legislative purposes under the control of the Legislative Council, the native areas should be placed under the direct control of the Governor. But this scheme is not based primarily on considerations connected with the methods to be adopted for the purpose of Native Administration. It had its origin in a desire to avoid the objections felt to conceding a system of responsible government in which a European minority would be in political control of a large African majority. Some support has, however, been found for the scheme by reference to the practice existing in British India, under which certain "Backward" areas have been withdrawn from the authority of the local legislatures and placed under the direct control of the Governor. It may be of advantage here to note the precise character of the practice followed in India. The system was designed as a means of protecting less advanced communities from the incidence of laws prescribing a form of procedure in the criminal and civil courts, or a type of land tenure, for which their social conditions have not yet prepared them. The communities which have been brought under this system constitute as a rule only a small minority of the population. At first sight it might appear that there would be no great difficulty in arranging that under a system of responsible government, the legislation regarding matters of purely native concern should take the form of regulations issued by the Governor. But in order to give the Governor adequate powers to protect or advance native interests, it is necessary to give him powers to make appropriations from the budgret for medical, educational or other services for natives, and to regulate such matters as the conditions of employment of "resident labour" on farm lands. It would again be necessary to withdraw from the control of Ministers, and to place
under the executive charge of the Governor, the administrative or judicial staff dealing with native affairs, thus creating in effect two administrative services, of which the Governor's would be the larger. To prescribe the acceptance of an arrangement of this nature as a condition of the introduction of a system of responsible government in Kenya would seem designed to create the maximum of friction and secure the minimum of political satisfaction to Europeans. Nor would it solve the numerous difficulties which must arise from the clash of European and other interests in such matters as tariff duties, transport rates or the control of marketing. Equal difficulties would be created by a further alternative which has sometimes been considered, namely the complete separation for all purposes of the two areas. Not only are European and native areas in many places interlocked, thus making territorial segregation impossible, but the economic interests of the two communities are so closely connected that they could not with advantage be controlled by two different governments. It is relevant to point out that over 100,000 natives are employed on European farms.

5. It may be of advantage at this point to note the attitude now taken by the Europeans generally in regard to questions of native development. In the past, the extreme attitude taken by certain sections of settler opinion, seems to have sprung from three sources. There were those who were convinced that the Kenya native is, in a biological sense, so inferior to the European that it is to the real interest of both communities that the European should remain in complete control of the African. There were others who made no claim to be disinterested; they frankly opposed anything which might seem likely to make native labour either more costly to obtain or more difficult to manage. There were in the third place those who, though they may not have had strong conviction on these points, nevertheless felt that any concession to Africans might be used by the Indian community for supporting its own claim to equal political rights with Europeans. The temper in which such arguments were advanced was apt to vary with the recurrence of those periods of depression which have figured so largely in the economic history of Kenya. If some of these views are still held today, there is a noticeable moderation in their expression. It is true that those who hold the theory of the inherent inferiority of the African have claimed support from certain investigations/
investigations made at Nairobi into the size and configuration of the brains of Kenya natives. But it must at the same time have become obvious not only that no value is attached by scientists to evidence of this nature, but that a type of African is emerging in Kenya which differs widely from the bush native originally encountered by the settlers. Now that responsible self-government has ceased to be the chief topic of local politics, there is less occasion to forestall the claims of the Indian community by emphasizing the innate inferiority of other races as compared with Europeans. It is true that the non-official members of the Legislative Council are still obsessed by the economic fallacy that the contribution made by natives to the revenues of the state can be separated from that made by Europeans. They tend in consequence to hold that expenditure designed to promote native welfare should be limited to the assumed amount of that contribution. Nevertheless it has of late years been possible to secure larger sums for expenditure on the improvement of the reserves. There is a growing recognition that the improvement of the health conditions of natives, and the preservation of the soil from erosion, are matters of general concern, and it can no longer be said that the technical departments devote their chief attention to activities which mainly concern Europeans.

6. Time has brought some change in the composition of settler society. There has been a natural decline in the number of the pioneers to whom the large scale exploitation of Kenya seemed to promise so alluring a profit and not infrequently brought so heavy a loss. The present generation of settlers can have few illusions as to the suitability of Kenya for supporting a considerable European population, and they have less temptation to argue that all the institutions of the Colony must be so framed as to provide for the future needs of a rapidly expanding white race. There are, moreover, a growing number of residents who have previously held office under government and whose contact with natives has been from a different angle from that of the older type of settler.

7. At the same time, it is not advisable to build too much on the signs of a changing outlook towards natives and their interests. Many settlers still maintain the old tradition; if there is no tendency to condone serious outrages against natives, there are nevertheless many employers whose...
attitude towards their labourers is one of irritability and intolerance. There are many who have never troubled to gain close acquaintance with the language spoken by the natives around them, and whose knowledge of native life does not extend beyond the generalisations about African social conditions so readily accepted in European society.

8. It is perhaps equally relevant to give here such impressions as can be formed as to the present attitude of Kenya natives generally towards the agencies of government with which they come into contact. Some detail will subsequently be given of the Associations which claim to represent the more politically minded classes, of whom the greater number are to be found among the Kikuyu or in Kavirondo. It may be said however that there is one sentiment still prevalent among natives not only of this, but of other classes. The record of the Administration is for them still tainted by its connection with the measures by which the Highlands were reserved for the occupation of Europeans. Subsequent events have not disabused them of the feelings that the Government is still largely under the influence of settlers, or convinced them that there will be no further appropriation of native land in settler interests. The recent Orders in Council have not been accepted as setting a final limit to the European demands for land. The influence of the Kikuyu extends widely outside their own area, and it is unfortunate that one of the first results of the Orders in Council has been that a certain area of land which had long been in the possession of Kikuyu rightholders has now to be treated as lying within the area reserved for European occupation. As will afterwards be shown, the proceedings both of the local Native Councils and of the native tribunals in this part of the country afford evidence of the constant efforts made by individuals to secure some kind of title to their holdings in the reserves, as a safeguard against dispossession in settler interests.

9. In the more remote reserves there are many areas which could support a much greater population than they at present maintain, but in the reserves of the Central and Nyasa Provinces there is acute congestion, and the tribunals not unnaturally turn envious eyes towards estate forests and European lands now lying idle. Of the European lands which are nominally "occupied" a large part is unused in practice. There is a
good deal of trespassing by natives on European farms, and of illegal grazing. Under the Resident Labourers Ordinance machinery has now been established for the reduction of the number of natives who are "squatting" on European lands. The farmers are to decide by local option the extent to which "squatters" are to be evicted or allowed to stay. It is possible that in the crop raising areas the farmers will wish to retain the squatters as resident labourers, but in the stock raising districts they desire to get rid of the squatters' cattle, and in these districts there will be a considerable measure of eviction. This will not merely involve the transfer of native stock to the reserves; there will be a considerable loss of stock in consequence, owing to the fact that many of the reserves are already heavily overgrazed. Natives in the reserves explain on their part of trespass by Europeans in order to remove stone and other materials. There are instances in which the friction arising from the controversy over the land question has led Europeans to adopt an attitude which is obviously unreasonable. Thus the Kipsigis tribe has been accommodated in four reserves, one of which is separated from the others by a now belt of European farms. Some of these are vacant. The local settlers had agreed to the establishment of a much needed native stock road across the European belt, but were persuaded by their party leaders in Nairobi, to withdraw this agreement, on the ground that it would constitute an encroachment on the principle of the reservation of the Highlands for European use.

10. The feelings which the land question has aroused among natives have been accentuated by the deterioration of the soil in a number of the reserves through erosion. It is unnecessary here to discuss the extent to which native custom in regard to the holding of cattle has produced this result, nor the merits of the measures taken by the Administration to secure destocking. The Government has recognised the extent of the mischief that has occurred, and has devoted attention to a programme of measures for securing soil conservation. Reference will be found in paragraph 33 to the extent to which it has been able to secure the cooperation of natives in this work through the agency of the Local Native Council. But the operation for soil conservation suffer from the lack of effective machinery for the coordination of measures affecting native welfare, a feature of native administrative policy on which it will be necessary to make some observations later. There is, for instance, evidence that the Rift Valley Province reserves, some of which
have been badly eroded, have received inadequate attention from the Central departments. The Native Welfare conference has lately proposed that a senior officer should be appointed to deal specifically with native land problems. It is just to add here, that though the questions regarding the land still constitute a source of suspicion against the Government, and a source of friction between natives and Europeans, the feeling aroused some years ago by the expropriation of native lands for mines in the Kakamega area has now disappeared. The area affected has not proved to be considerable, and satisfactory arrangements have been made for the award by arbitration of compensation for loss caused by disturbance of cultivation and the like.

11. In dealing with the system adopted in native administration, it must be premised that there is a great diversity of local conditions; the population of Kenya provides examples of almost every stage of development from primitiveness to sophistication. The Kikuyu, and the Kavirondo tribes are alert and receptive people who are rapidly making their way in modern economic life and education. The peoples of the Coast, of the North, and of the Rift Valley are relatively backward and unprogressive. The Kipsigis of the Nyanza province and the Kamba of the Central province are less backward, but as yet show few signs of modern development. The Masai have occupied a place in Kenya history which is out of all proportion to their small numbers; they represent something of an historical survival in modern conditions. The main administrative problems of Kenya centre round the Kikuyu and Kavirondo tribes, by reason both of their numerical superiority and the state of their development; it is likely that the future native policy of Kenya will follow the methods adopted in dealing with these two groups.

12. It has already been remarked that circumstances have from the first led the Administration to seek agencies of local control elsewhere than among the authorities recognised by native tradition. In Tanganyika, Nigeria or Nyasaland the system of District Administration may be described as one in which the officer in charge of the district advises, supervises, or in the last stage controls the work of the native authorities of various types who have been recognised by Government. Though the term is frequently employed in Kenya, there are no native authorities in the sense in which the term is used
in the ordinances of other territories. The District Commissioner is the administrative head of the district, having at his orders a number of executive agents, paid by the Government, who are at the same time given statutory powers to issue on their own account a certain range of orders of an executive nature. He controls a District Native Fund, the revenues of which are derived mainly from a local rate and other local resources. He has in this task the advice of a Local Native Council, of which he is President. The Council also has authority to make regulations on matters of local concern which, when approved by Government, have the force of law. The disposal of the majority of the issues arising between natives is secured through the agency of Native Tribunals.

"CHIEFS"

13. The executive agents of the District Commissioner consist of "chiefs", this term being now commonly used to describe the headmen for whose appointment provision was first made in the Ordinance of 1902. The term "chief" bears in Kenya a different connotation to that which it bears in territories where the customary authority is the main agent of local administration. In Kenya the "chief" is the executive head of a "location". In some cases the location corresponds with tribal or clan boundaries, but in many others it is merely a unit whose limits are determined by the size of the population concerned. The tendency of recent years has been to amalgamate locations, partly for reasons of expediency, but in some instances with a view to creating administrative units more closely related to the tribal organisation. As an indication of the size of these units, it may be mentioned that there are ninety locations in the Nyanza province, with an average population of nearly 15,000.

"CHIEFS"

14. The appointment of a "chief" is made by the Provincial Commissioner. The method by which the successful candidate is chosen varies from place to place. In the South and Central Kavirondo districts the candidates for a vacant chiefship are heard by the Provincial Commissioner, often for some hours. The eligible candidates are then placed in different spots, and their supporters stand behind them. Supporters of those candidates who are clearly not in the running are told to distribute themselves behind other candidates. All taxpayers may vote. A candidate with a claim based on heredity which is accepted by the people naturally stands a good chance of being chosen; but in so far as the Government exercises an influence, this is said generally to
be directed to securing the choice of a "chief" on account of merit rather than on grounds of heredity. There have been cases in South Kavirondo district where the District Commissioner has managed that his own candidate should be reported as the choice of the baraza; and other cases in which a tribal policeman or the previous chief's son has been appointed without taking the people into consultation. If the candidate who receives most support in the baraza is not acceptable to the government, the Provincial Commissioner appoints someone else; for example, there have been cases in South Kavirondo where the appointment has been given to a man who received a strong minority vote. In North Kavirondo the wishes of the people of the location regarding the appointment of a "chief" are also acknowledged in open baraza, but the method adopted does not resemble that of an election. It is said that the Administration endeavours to appoint persons with traditional clan position, though in some cases appointments have been made of government employees. On one occasion in North Kavirondo it was considered that factions were too bitter to allow the baraza to take place, with the result that the Provincial Commissioner appointed the "chief" without consulting the people.

In the Kericho district of Nyamira province there were no traditional "chiefs"; the Kipipiris tribe recognised only the authority of the Laibons (rain-makers) and of the captains of the age groups.

The tribe has, however, been divided into 17 locations, for each of which there is a "chief".

The Laibons were deported in 1936, and the "chiefs" are chosen in open baraza by popular acclamation, the person selected being invariably the captain of an age group. The officer in charge of Masailand, in appointing new "chiefs", tries to secure men who have previously been elected as captains in their age groups.

15. The Kikuyu traditionally had no "chiefs", but there were four sets of elders responsible for religion, law, land, and army and police.

In the Kikuyu district of Kiambu there are now 21 locations. There is one senior chief with a salary of £100 a year, three divisional chiefs, and seventeen headmen. The older "chiefs" are persons with a traditional position as elders, and are greatly respected. Among the younger men some of the best cannot afford to take employment as "chiefs", or account of the small remuneration attached to the post. As an illustration of this, a teacher from the Alliance High School who was persuaded/
persuaded by the Government to accept employment as a "chief", suffered by the change a drop from 100/- a month to 50/- a month. The younger men who are now being appointed as "chiefs" are freely selected by the people of the location in open baraza. Among the Kamba, the British administration refused at an early stage to recognize the traditional "chiefs", and appointed in their place interpreters and house-boys, whose recommendation seems to have been that they could talk Swahili. The "chiefs" in Ukamba are still in effect appointed by the District Commissioner, though there is now some consultation with the people. Among the primitive tribes of the Rift Valley Province the Government appoints "chiefs" from among the elders of the clans.

16. The "chiefs" are paid salaries which would in many other territories be considered as being on a very low scale. The salaries in Kikuyu land have been mentioned in paragraph 15. In central Kavirondo, the highest paid "chief" draws £136 a year. In the Rift Valley Province the salaries of the "chiefs" range from £3.12s., a year to £50. a year. "Chiefs" are not supposed to receive any perquisites apart from their salaries, except apparently in North Kavirondo where they get certain market dues. If they are members of a local native council they receive 3/- a day when attending meetings. It seems probable that some of them receive presents; and there are allegations that owing to their low salaries "chiefs" are compelled to make money irregularly.

17. The "chief" is responsible for reporting crime and apprehending offenders, and in this he is assisted by a special force of police which operates in the native reserves under the command of the District Commissioner, not under the local police officers. The "chief" is, in addition, the executive agent of the District Commissioner in regard to such matters as the construction and maintenance of district roads, or in similar cases in which the District Commissioner may operate on moneys provided by the native fund, on carrying on work on behalf of a central department of Government. When communal free labour is required for community projects, such as a swamp drainage, the "chief" orders his sub-chiefs to bring the required number of men. There seems to be some uncertainty as to what relations exist between the officers of the central Government departments and the "chiefs". Thus the head of the Education Department has taken the view that his officers should not deal with a...
"chief" except through the District Commissioner. The officers of the Agricultural Department, on the other hand, appear to deal directly with the "chiefs" when they wish to do so. The District Commissioner of Koricho has stated that departmental officers deal directly with "chiefs", and the officer in charge of Masailand states that they do not do so.

18. Until some four years ago, the Administration showed itself unwilling to entrust the "chiefs" with the collection of the Government tax. Since then, however, District Commissioners have in some districts begun to place on "chiefs" the responsibility of tax collection, though it is worthy of note that, where this has been done, no addition has been made on that account to their salaries. Tax collection is now carried out by "chiefs", for instance, in Fort Hall district of the Central province. In North and South Kavirondo the District Commissioners leave most of the tax collection to the "chiefs" and the "chiefs" clerks. The District Commissioner visits each "chief" once a month, receives his tax collection and replenishes his tax books. In Central Kavirondo however the District Commissioner considers that in the interests of full collection the work must be carried out by himself and his own clerks. In the Rift Valley province, in Masailand, and in the Machakos district of the Central province, the "chiefs" take no part in the collection of tax, except that they are sometimes used to inform the people when the tax clerk will visit their location.

"CHIEFS" ORDERS

19. In general, the authority exercised by the "chief" is accepted as being that derived from his position as agent of the District Commissioner. But "chiefs" have also received statutory authority under section 8 of the Native Authority Ordinance to issue orders relating in general to the preservation of law and order, e.g. for the prohibition of excessive drinking, the carrying of arms and the holding of subversive meetings. Under section 9 of the Ordinance orders may be issued relating in the main to economic subjects, e.g. for the suppression of noxious plants or the preservation of grazing areas. The two Sections seem, however, to have been drafted without any clear distinction between them, since section 8 covers the cutting of timber and the destruction of locusts, and section 9 includes a reference to the reporting of stolen property. Specific orders issued by "chiefs" do not rank as bye-laws, which can only be passed by the Local Native Council;
but their range is wide and might, for instance, include a prohibition to cut down trees in certain areas.

20. The practice with regard to the recording of orders made by "chiefs" is one of the many matters which in Kenya is left to the decision of the District Commissioner, and therefore is much diversity of practice. "Chiefs" orders are normally recorded in North Kavirono, but they are not recorded in Central Kavirono nor in Fort Hall. In Kericho important orders are recorded and signed by the "chief", but minor orders are oral.

21. The efficiency and initiative shown by "chiefs" vary greatly. In Kericho they are said to be good, but in South Kavirono many of them are described as old-men who can neither understand nor undertake the modern duties which they are required to perform. In North Kavirono the "chiefs" are reported to show practically no initiative, but in Central Kavirono they have taken useful action of their own motion on some occasions. In Fort Hall they frequently act on their own initiative in such matters as prohibiting excessive beer drinking and unseizable dances, ordering soil conservation measures, and prosecuting people for disobedience to orders. "Chiefs" are provided by the Government with a staff of messengers, but they often find it necessary to maintain additional messengers at their own expense.

22. To assist them the "chiefs" have sub-chiefs who are appointed by the District Commissioner, after consultation with the people in open bazaar, and in some districts after a process of "election" similar to that which is usual in the choice of "chiefs". In some districts the sub-chiefs are chosen on grounds of merit, and in others on account of their traditional claims. They are paid by Government, but they receive no more than a few shillings a year. Below the sub-chiefs are the village headmen. In Central Kavirono these are chosen by the elders of the villages, and the "chiefs" report their names to the District Commissioner. They are not paid.

23. It is recognised in native custom that "chiefs" should act in consultation with a Council of Elders. While many customary "chiefs" have elders with whom they confer, the practice of consulting a Council of Elders can hardly be said to exist where a "chief" has himself no traditional position. The Chief's Council has no recognition...
in law, and even where a customary Council of Elders exists, its influence must inevitably suffer in conditions in which people's eyes are being directed more and more towards the legally constituted Local Native Council.

24. Where the Government has substituted its own system of location "chiefs" for the indigenous tribal authorities, it is natural to ask whether those authorities still continue to exist, and exercise any of their customary authority. Here again, as in so many other respects, the situation differs greatly from district to district. While in South Kavirondo there are said to be no such unrecognised authorities, in North Kavirondo there are many clan elders with considerable prestige among the people. In Kericho the age group captains, of whom only a few become location "chiefs", possess great influence.

25. In Kericho, where the Kipsigis tribe is divided into four reserves, one of the location "chiefs" in each reserve is styled "divisional chief", and he acts as guide and elder to the others. There is a similar system in part of the Kikuyu area. In North Kavirondo there has for many years been a movement for the recognition of a Paramount, the claim being based on historical grounds. In South Kavirondo the movement has taken the form of a demand for the appointment of a President. It is possible that here, as in some other instances, the movement owes its chief attraction to a belief that a titular representative of this type might command additional influence in dealings with the District authorities or with the Government, or secure the concession of increased responsibilities to the Local Native Council.

26. It has been mentioned that the District Commissioner has the advice of the Local Native Council, and these bodies have now attained an importance which makes it necessary to deal in some detail with their composition and functions. There were at one time 23 Councils; some have since been combined, and new ones created; there are now 22. Besides the District Commissioner, who is President, and the District officers, it is exclusively native. The composition of the council is based generally on the principle that part should be nominated by the Government, and part chosen by the people. As in many other instances in Kenya, it has been left to the local administrative authorities to use their own discretion in giving effect to this principle, and there is in consequence a considerable variety of practice. In Central Kavirondo all the location "chiefs" of the district have been nominated as
members of the Local Native Council, and there are also about 24 unofficial representatives. These are "elected" in open baraza by the process of standing the candidates apart and assembling their supporters behind them. Representation is on a location basis, and the number of representatives from any location corresponds with the number of the population. It is usual for several thousand people to attend an election baraza. Elections take place every third year. In South Kavirondo the Local Native Council has over 40 members. In contrast to Central Kavirondo, the nominated predominates slightly over the "elected" element, but nominations have not been given to all the "chiefs". Some of the unominated "chiefs" have, however, become "elected" members from the 25 locations, and the practice of contesting elections and packing elections barazas is fully understood. In Kiambu the Council contains 9 nominated members (and 8 "elected" members), of whom 6 are "chiefs". Of the "elected" members, two are "chiefs", one is a University graduate, and one is an African pastor. Fort Hall provides another instance of the use of the practice of standing the candidates apart and letting their supporters line up behind them. The "elected" members of the Council include three "chiefs", but all the others are persons who owe their success to the support of the Kikuyu Central Association or the Kikuyu Provincial Association. In Wachakos the Local Native Council is said to be "very largely what the District Commissioner makes it". In Masailand, the two Councils have little importance, and there seems to be no record of the manner in which the present members secured their positions. The Suk Local Native Council is said to consist of ancients who do everything that the District Commissioner wishes, "except keep awake during Council meetings". In Samburu the Council started only two years ago; each location to choose a member, and the choice is always made unanimously without an election. In the Coast Province several Councils exist, though in primitive form. In the Northern Frontier and Turkana areas there are no Councils. It will be evident that there are great differences in the extent to which membership of the Council reflects the results of nomination, direct or indirect, by administrative officers or of popular "election". Where the system of "election" is followed, the procedure sometimes appears to resemble that of the old English hustings, rather than any regular system of voting. It is true that there is a consultation in open baraza, but it is not possible to regulate the manner in which the assemblage is composed. At the same time, the procedure is clearly not without its value, and it may well be that it often provides
a better test of the popular support behind a
candidate than a more formal process of election
could ensure.

FUNCTIONS OF
LOCAL NATIVE
COUNCILS

27. The Local Native Council has a threefold
function. As an agency for local government, it
is authorised to impose a local rate and to expend
on local purposes the revenue derived from the rate,
and from other minor sources of income. As a
deliberative body it passes byo-laws which, when
approved by Government, have the force of law. As
a consultative body it is empowered to pass
resolutions on any subject of interest in the
district, or on matters of a wider range, whose
consideration has been committed to it. As a
subsidiary function, it has the position of a local
authority under the recent Soil and Water
Conservation Ordinance, and there are also instances
in which Councils have been required to appoint
persons to assist the District Commissioner in
matters of land settlement, or in the assessment of
compensation for the disturbance of native occupiers
whose lands have to be taken up for public or
similar purposes.

28. Elsewhere in East Africa the principal
head of revenue available to Native Treasuries is
the rebate on the direct tax levied by the
Government, but there is here no such provision.
The chief source of revenue in the Kenya Councils
is a local rate, which is voted by them yearly.
The rate varies from 1s. per poll in eight of the
poorer districts to 3s. per poll in Kiambu. Eleven
districts pay 2s. and three districts pay 1s.50
cents. The rate is collected with the tax,
though in some districts there are different clerks
for tax and rate. It is brought to account by the
District Commissioner with the assistance of a
clerk who is sometimes called the Local Native
Council Treasurer. The Rates constitute about 59
per cent of the total receipts of the Councils.
Other sources of revenue which are available for
Local Native Councils vary from place to place.
They always include fees received in the Native
Tribunals in the reserves. There are usually some
receipts for specific services, such as produce
inspection fees, and from rents on house-plots and
other property which have been let to non-natives
in the reserves. The receipts from the sales of
wood and stone and similar materials in the reserves,
and from market fees, are also often brought to
account in the Local Native Fund. Practically
everywhere cart licences are paid into this fund,
though this is not the case in North Kavirondo. At
Fort Hall there is some revenue for the registration
of births, deaths and marriages. In Central
Kavirondo the District Commissioner has asked that
- 16 -
liquor/
liquor license revenue may be handed over to the Local Native Fund. In South Kavirondo the land rents from Kisii Township are available for the Fund, but in Kericho District, on the other hand, all the Township revenues go to central funds. The total revenue of the Local Native Funds amounted in 1938 to £111,236; that of individual funds varied from £362 in West Suk to £16,700 in North Kavirondo.

29. Local Native Funds have to provide the wages and expenses of the Native Tribunals. They do not provide the salaries of the "chiefs", though they sometimes pay the "chiefs" retainers and provide offices and bicycle allowances for the "chiefs". They provide subsistence allowances for members of the Local Native Council. The other expenditure relates to a variety of social and developmental services. Of these the service in which the members of the Councils appear normally to be most interested, and for which they are most willing to provide funds is that of education. So much is this the case, that the Government, in order to preserve some balance in the scale of expenditure, has refused to approve the allocation to education of amounts exceeding approximately one-quarter of the total expenditure. The education allocation is paid over in a block grant to the District Education Board, except in the Rift Valley Province, where there are no such Boards. This has the curious result that the most primitive Local Native Councils appear to be the only ones which are entitled to deal with educational expenditure in detail. The Director of Education has however agreed to publish a statement of accounts at the end of each financial year for the information of the Local Native Councils, and the Councils will be free to ask any questions arising from such statements.

30. The District Education Boards comprise representatives of the Missions, African teachers, and representatives appointed by the Local Native Councils, who are not however in a majority. It is usually presided over by the District Commissioner with the Inspector of Education as Secretary. It is claimed that in general the representatives of the Councils on the Boards are interested and useful, but there is some evidence that their value is reduced by the fact that they seldom speak English, whereas the majority of the members prefer to conduct discussions in that language. This has, for instance, been the experience in North Kavirondo. The main function of the Education Boards is to make recommendations regarding the recognition of schools and to allocate the block grant/
grant received from the Local Native Councils. The Local Councils have no schools of their own, in the sense that they manage them directly; the schools are maintained either by the Government or by the missions. There is some doubt how far District Education Boards are to be considered as bound by the minutes of the Local Councils in the use which they make of Council allocations. It is, moreover, a matter of some complaint by the Councils, that the Government has indicated that Council allocations should be used only for "elementary" education. The activity of the Councils with regard to more advanced education is limited to the grant of bursaries for higher schools.

31. For medical work the Local Native Council votes money for specific purposes, but the allocations are paid over to the Government Medical Department to be expended by it. The Medical Department works on the principle that where an out-dispensary is required in a native district, the cost of the building should be provided by the Local Native Council and the maintenance by the Government. Otherwise, it has been a rule that where Local Native Councils are willing to provide drugs or staff, the Medical Department is glad to avail itself of the offer. No general principles have been laid down for regulating the respective responsibility of the Local Native Councils and the central Government for medical work. It is of interest to note that recently the North Kavirondo Local Native Council refused a request from the Government to vote money for anti-malarial work.

32. Other purposes for which Local Native Council funds are voted include anti-tsetse work, the provision of water supplies, agricultural, veterinary and forest work. In the three latter cases, the votes take the form of allocations to the central departments concerned. The Masachokes Council finances ghee dairies, from which last year it made a small profit. Kitui Council estimates also show a small profit from ghee. Bocor shows a good profit in the accounts of the Giriana (Coast Province) Council and of the Narok (Masai) Council.

33. It will be apparent, that the activities of the Councils as local government bodies are for the most part limited to the allocation of funds to the central departments, as a contribution to the establishment and maintenance of local institutions. Though, for example, the Councils have expended a large sum on medical buildings, there are no Local Council dispensaries, properly
so-called, and, as already shown, there are no Local Council schools. The establishments directly
maintained by the Councils are for the most part
limited to clerks, cashiers, messengers and the like.
The chief activity which the Councils can be said to
undertake on their own account is that of the
maintenance of roads or of their own buildings.
For this purpose the North Kavirondo Council main-
tains a European, and Fort Hall a Seychellois supervisor,
and others have African foremen. The growing
interest in soil conservation is evidenced by the
employment by some of the Councils of European
officers for this purpose. Where Europeans are
engaged the practice is for the contract to be
signed by the District Commissioner as President
of the Council. It is he, indeed, who is the
executive of the Council, and he is able to utilize
for this purpose the services of the "chiefs" under
his administrative control. The position thus
created is obscure, for it is at times uncertain
(as for example in the engagement of a European
Soil Conservation officer) whether the District
Commissioner is acting as President of the Council
or as an officer of the Government.

LOCAL NATIVE
COUNCIL
BUDGETS

34. The budget is prepared for the Council by
the District Commissioner. In the Kikuyu and
Kavirondo districts he is assisted by sub-committees
of the Councils, who discuss the budget with acumen
and are able to make useful suggestions. Some of
the more backward districts also have sub-committees,
but in others, such as Kericho, there is no finance
committee. The District Commissioner at Fort Hall
makes a point of explaining every item of the budget
to the finance sub-committee with the aid of a
blackboard; he shows them all the vouchers; this
takes three days and happens about two months before
the full budget meeting. The budgets of the Councils
however present complications which offer unusual
difficulties to African members. There is no clear
division between the fields in which the Central
Departments and the Local Councils operate, and it
must be difficult for members to appreciate the
extent to which local services are supported by
local and central funds respectively. Thus in
Nyanza the Councils are responsible for the pay of
57 Agricultural Inspectors and 31 Veterinary Scouts
while the Government makes itself responsible for
the pay of 40 Inspectors and 29 Scouts. In North
Kavirondo the Council pays for 75 hospital dressers
and the Government for 6. The Government is of
course responsible for the superior staff in each
case. The Local Native Councils have erected
buildings for some 79 dispensaries; but some
dispensaries have been erected by the Government,
while the Councils have been allowed to make
- 19 - contributions/
contributions to the construction or the equipment of a Government hospital. Though the functions of the Councils with regard to education are limited in principle to making provision for "elementary" education, Councils have been permitted to pay, either wholly or partly, for the buildings of at least six "primary" schools. There is an equal difficulty in regard to expenditure on the minor roads and bridges for which the Local Councils are in principle responsible. In some instances the Public Works Department carries out the work on behalf of the Council and in others the District Commissioner carries it out in his capacity as executive officer of the Council, but he may operate both on the allocations of the Council and on allocations made by the Government. It is unnecessary to multiply instances of the complications of this nature. Their relevance at this point lies in the consideration that they reduce the value of the Councils as a means of educating Africans in a sense of financial responsibility, and must greatly diminish their interest in the creation of institutions ministering to the social needs of the people in their neighbourhood. It is equally a disadvantage that the members of the Councils are often left with the impression that the Government spends little or nothing on the local needs of natives and leaves them to be provided from the separate rate levied by the Councils. How far this impression is correct is shown by the following figures, giving approximately the relative expenditure during 1938 of the Government and Local Native Councils respectively on certain classes of work in the reserves.

<table>
<thead>
<tr>
<th></th>
<th>Agriculture &amp; Veterinary</th>
<th>Medical Services</th>
<th>Educational Services</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Government</td>
<td>43,524</td>
<td>151,335</td>
<td>81,531</td>
<td>236,390</td>
</tr>
<tr>
<td>Local Native Councils</td>
<td>17,940</td>
<td>6,977</td>
<td>15,788</td>
<td>40,705</td>
</tr>
</tbody>
</table>

35. The difficulties created by this situation have for some time been obvious to the Government, and in 1937 it Commissioned Mr. Fazan, Provincial Commissioner of Nyanza, to prepare a report on the subject. This report was referred by the Executive Council to the consideration of a small committee in 1938, but the latter has not yet been able to place its conclusions before the Government. There are differences of opinion on the question of principle. There is general agreement that the responsibilities of the Local Native Councils should be limited to

- 20 - provision/
provision for "minor" services, as for instance the "elementary" school or the dispensary, or minor roads, rather than the "primary" school or the local hospital or communications of importance; but views are divided on the issue whether the Councils should or should not manage such institutions themselves and employ establishments for the purpose. There is a further division as to the advisability of giving the Councils more elastic sources of revenue, or allowing them some rebate on the general tax, in order to allow them to extend their activities. It will be convenient to defer further reference to this question until some examination has been made of the deliberative and other functions of the Councils.

BYE-LAWS

36. Section 23 of the Native Authority Ordinance empowers Local Native Councils to pass bye-laws relating to a number of subjects specifically, and for the welfare of the inhabitants generally. In the circumstances of Kenya, the promotion in the Legislative Council of laws regulating matters primarily of native concern presents difficulties which would not be encountered in territories such as Nigeria or Uganda. The attention of the Legislative Council centres largely on matters of interest to Europeans. A majority of the non-official members have little intimate knowledge of native affairs. It is probably this fact which has influenced the Kenya Government in endeavouring to make a direct use of the Local Native Council as a source of subsidiary legislation in matters affecting conditions in the Reserves, and that policy has also doubtless been influenced by the knowledge that the Councils meet under the chairmanship of the District Commissioner and contain a large element of what in effect amounts to official representation. The Government has indicated to the Councils a number of standard resolutions on the subject of soil conservation, the planting of trees by village communities, the employment of communal labour on the maintenance of local roads, the voluntary registration of pagan marriages, and the like. It has also put forward in standard form bye-laws prescribing the nature of the female circumcision ceremony and the legal manner of performing the operation. Some difficulties have arisen in passing certain of these bye-laws; that regarding soil conservation, for instance, has been subjected to a number of local variations. Some of the Councils have at the same time passed on their own initiative a number of resolutions on somewhat similar subjects, such as the growing of cassava as a food reserve, forbidding the movement of cattle at night, or regulating the drying and curing of skins. Among the specific subjects mentioned in the Ordinance is the "regulation and payment of marriage dowries", 

- 21- and/
and this power has been utilised by some Councils to pass bye-laws providing for the compulsory registration of pagan marriage and prescribing the nature of dowry payments. Some doubt has been felt whether it is within the general power of the Councils to pass bye-laws modifying native custom in other respects, but this has not prevented the Government from sanctioning bye-laws such as that already referred to dealing with female circumcision, or bye-laws regulating the holding of dances. Government has shown some hesitation in sanctioning draft bye-laws put forward by the Kiambu Native Council with the view of regulating the transfer of rights in land, but its decision was taken on grounds of policy rather than on the issue whether such a provision would fall within the terms of the Ordinance.

L.N.Cs. as a means for the expression of native opinion.

37. In their more general aspect, the Councils have been of some value as an avenue for the expression of native opinion on the administrative or other activity of the Government. While there has been no regular practice of seeking their opinion on projects of legislation under consideration by the Government, there have been certain matters, as for instance schemes relating to soil conservation, in which the discussions held in certain of the Councils have been of acknowledged benefit to the Administration. It is at the same time natural that doubts should exist as to the independence of the views expressed by the members of the Councils. The fact that the District Commissioner is the President must always suggest the question, whether the resolution of the Council is to be accepted as a spontaneous expression of native opinion, or merely as reflecting a view impressed by the local officers of the administration. The suggestion has more than once been made that some of the sessions of the Councils should be held under a non-official African chairman. It has been proposed in particular that where an issue of importance is under discussion, preliminary meetings should be held under the Chairmanship of an African member, leaving the final resolution to be passed under the chairmanship of the District Commissioner. This practice has been adopted at Fort Hall and South Kavirondo, but official opinion elsewhere seems to differ as to the benefit of its more general adoption.

38. Considerable diversity of procedure has been adopted by District Commissioners in regulating the business of the Councils. This is noticeable in connection with the circulation of agenda. In some instances care is taken to circulate agendas in time for discussions to take place in the locations before the Councils meet. Thus, in North Kavirondo and/
and Kiambu, members are said to be able to call public meetings in their locations a day or two before a Council session. This practice is, however, by no means general. Again, the extent to which resolutions originating from the members are admitted to the agenda rests with the President. While there is evidence that obstacles have not as a rule been placed in the way of members desiring to discuss matters of purely local concern, District Commissioners have on some occasions prevented Councils from recording their views on matters of wider interest, such as the representation of natives in the Legislative Council or the policy followed in the demarcation of native lands.

39. In most Councils business is conducted in the vernacular, though the practice at Fort Hall seems to have been to conduct it in English with a translation into the vernacular. In the more advanced areas, many of the members of the councils have proved to be fluent speakers with ability in debate. The older members seem to have little difficulty in grasping the point of view of the younger men, and in replying to it, it is said that the older men often show more independence in dealing with official schemes than the younger, who are sometimes obsessed with the desire to show that they are "progressive" in their views. Most administrative officers speak favourably of the reasonableness and freedom of discussion in the Councils. A study of their minutes shows a number of instances in which they have rejected proposals submitted to them by the Administration, or modified the form of "standard" resolutions; there are some in which they have not hesitated to criticise the action of the District Authorities, or voice a suspicion of the intentions of Government, particularly on issues relating to native lands. It is at the same time difficult to determine how far they are accepted by natives as genuine organs of public opinion. The Kikuyu Central Association and the Kavirondo Taxpayers Welfare Association describe them as mere mouthpieces of the District Authorities. The Government-run newspaper "Baraza" has received letters from Africans complaining that the Councils are unduly subjected to official control, and some Europeans have also expressed a belief that natives have little confidence in the personnel or powers of the Councils. It is unfortunate that Europeans generally have shown little interest in their proceedings. There is no contact between them and the District Committees which deal with the local affairs of the European settled areas. It is noticeable that the editor of a leading European newspaper of Nairobi has stated that he would be glad to have information regarding the proceedings.
of the Councils, but has no means of obtaining it.

40. The Joint Parliamentary Committee which considered the Report of the Commission on Closer Union in East Africa expressed a hope that the Local Native Councils might in time form a basis for the establishment of Provincial Councils. Such a Council has recently been inaugurated on local initiative in the Nyanza Province, although without formal Government authority. In the Central Province, no Provincial Council has been established but joint meetings of Local Native Councils have been held for informal discussions. The Nyanza Council consists of six African members from each of the four Local Native Councils in the Province. The Councils have a purely deliberative capacity and at present have no statutory existence. They have attracted some interest, both from Africans and from unofficial Europeans, and it seems that public opinion is well prepared for giving them statutory sanction. It has been suggested that the Provincial Councils might with advantage include unofficial European membership, in order that a link might be established between the two communities, though it is acknowledged that there would be difficulty with regard to the language to be used. It may be observed that the Provinces do not in any way correspond with tribal boundaries; but the alternative possibility of establishing tribal councils does not appear to have received consideration.

41. Reference has been made elsewhere to the importance of the native Court as a feature of the system of native administration. That observation applies, perhaps, with greatest force to systems based on the employment of traditional native authorities as agencies of the administration, since their executive and judicial functions are normally combined in the same native authority. As has been shown, the Kenya Government, in seeking executive agencies, has not attached primary importance to their possession of traditional authority, and it has established tribunals which have little in common with the courts recognised by native custom. Nevertheless, the administration of native justice is a matter of so much concern to the Reserves as to justify a detailed notice here.

42. In Kenya, as elsewhere, the traditional native authorities were accustomed to hold courts for the decision of issues which could not be settled by the heads of families or village communities. At the inception of its rule, however, the British administration preferred to entrust the headmen appointed for executive purposes with authority to
try minor criminal offences. This provision was repealed in 1907, when a system of native courts was inaugurated substantially in the form in which they exist today. The principle underlying the system is the separation, as far as is feasible, of the agencies of executive and judicial authority.

43. The Native Tribunals Ordinance of 1930 is designed to give as wide a discretion as possible to the Provincial Commissioner in constituting native courts. He is empowered to establish such native tribunals as he thinks fit, which shall exercise over natives such jurisdiction as may be defined in a warrant given by him. The Ordinance provides that a native tribunal shall be constituted in accordance with the native law or custom of the area, but it adds that a tribunal purporting to be so constituted shall be deemed to be lawfully constituted. As has been explained, the present system differs widely from that recognized in previous custom. The area of jurisdiction seldom coincides with tribal boundaries. In setting up tribunals, Provincial Commissioners have usually followed the practice of grouping a number of locations under one tribunal. In North Kavirondo, where there is one tribunal for every three locations, the grouping has been made to meet geographical convenience, and some of the tribunals have jurisdiction over more than one tribe. In such cases the language of the tribunal is Swahili and not the local vernacular. In South Kavirondo there are six tribunals for 27 locations. Samburu presents the unusual case of one tribunal exercising jurisdiction over the whole tribe.

44. In general, an attempt is made to base the composition of the courts on some system of popular selection. In South Kavirondo each tribunal has 26 members and they are selected by popular vote in open baraza, subject to veto by the District Commissioner or (strangely) by the Chief-in-Council. In Kiambu members are also selected in open baraza and it is said that "election is real and free". In Kericho the District Commissioner asks the "chief" of each location to recommend a tribunal member, and then puts his name before the people in open baraza. In the primitive districts of the Rift Valley Province some tribunals include "chiefs" and some do not. It is uncertain to what extent a "chief" is considered to be the executive of the tribunal, and practice varies from district to district. Some tribunals carry out distrains and arrests through their own messengers, and others ask the "chiefs" to act on their behalf.

45. In those tribunals where the President is
PRESIDENTS OF TRIBUNALS

not a "chief" the general practice seems to be that the President is chosen by the members of the tribunal without any definite term being set to his tenure of office. In the North Kavirono tribunals there is an interesting variant, due to the existence of jealousies between the locations. Each tribunal has three permanent Presidents, one for each of the locations within the tribunal's jurisdiction. The Presidents take the chair by roster, one year at a time.

COMPETENCE OF TRIBUNALS

46. The terms of the Ordinance quoted above result in a noticeable variety in the competence of the tribunals. Some tribunals have civil and criminal jurisdiction, while others are limited to the former. In some townships disputes between natives go to a native tribunal, whereas in others they have to go to the magistrate's court.

LAW ADMINISTERED BY NATIVE TRIBUNALS

47. Under the terms of the Ordinance the law to be administered by native tribunals consists of:

(a) native law and custom
(b) rules or orders made by administrative officers or native authorities under the Native Authority Ordinance,
and (c) the provisions of any Ordinance which the tribunal is authorised to administer under the terms of such Ordinance or by order of the Government.

The simplicity of this legislation is not however reflected in the practice of the tribunals. Native custom in Kenya is undergoing rapid change, and there seem to be frequent disagreements between young and old as to what native law is or ought to be. Local Native Councils are constantly called on for an opinion in such matters. Instances of this may be found in the recent decisions of Local Native Councils that land cannot be attached for a fine or a debt; (Kiambu, April 1939); that the Nthenga oath may be used in land suits where evidence of events dating far back is not easy to obtain (Meru, May 1939); or that tribunals may use the Mbira oath (Central Kavirono, February 1940). The tribunals have been very sparingly used for trying offences arising out of the breach of Ordinances, but an increasing use is made of them for trying tax defaulters.

APPEALS

48. In civil cases appeal lies from the native tribunal to the native appeal tribunal, where such exists, and to the District Commissioner where there is no native appeal tribunal. From a native appeal tribunal appeal lies to the District Commissioner. Appeal may always be made from the District Commissioner to the Provincial Commissioner. The Provincial Commissioner's word is final in trivial cases/
cases, and in proceedings relating to marriage, inheritance and immovable property; but in other cases an aggrieved party may have a case stated by the Provincial Commissioner for consideration by the Supreme Court. Although proceedings with regard to land may not be carried to the Supreme Court on appeal, it would seem that it has now been admitted that they may not be opened there de novo. The position thus created is clearly anomalous. The channel of appeal in criminal cases is the same as in civil cases, except that some of the native appeal tribunals have been given jurisdiction in civil cases only.

49. Administrative officers have powers both of their own motion and on the application of a party to revise judgment of a native tribunal, civil or criminal, and to transfer any case to their own courts. The native court records are not on the whole well maintained, and most District Commissioners agree that they are too meagre to afford any useful basis for the review of decisions. Some Administrative Officers make no attempt to exercise revisionary functions on their own initiative, and take no action save on the application of a party, in which event they deal with the application as an appeal. Some safeguard is provided by the fact that all warrants of imprisonment resulting from sentences in native tribunals have to be signed by the District Commissioner, and when signing the warrants officers usually take the opportunity of scrutinising the case. It would seem that some District Commissioners make a practice of sending to native tribunals any natives who attempt to institute cases in their courts, but it appears that they have no legal power to do so.

50. A return of native tribunal proceedings is sent to the Attorney General each month, and he has power to revise their decisions. It is agreed that in view of the nature of the records submitted to him his scrutiny is necessarily confined to purely technical points, such for instance as the question whether the court has exceeded its jurisdiction. The Supreme Court does not exercise revisionary powers with regard to native tribunals.

51. In paragraph 2 it was pointed out that the working of native institutions is likely to be viewed in a more critical light in Kenya than in territories such as Nigeria and Uganda. The operations of the Kenya native tribunals have certainly elicited more pointed criticism than have the native courts in those territories. Elsewhere, it is usual to find general agreement among administrative officers that the native courts command a substantial measure of satisfaction among those who resort to them. The
majority of Kenya officials express this opinion, but there are some noteworthy exceptions. More than one officer has expressed his belief in the general prevalence of corruption, which is attributed both to the inadequacy of the fees paid to sitting members and to the tradition whereby both parties were accustomed to bring presents for the members of the court (see paragraph 50). It is at the same time proper to say that very few of the allegations of bribery have been brought to the proof. Again, a well-known authority on the social customs of Kenya has deplored the results of a system which tends to exclude from the native courts the elders who at one time constituted their chief strength, and to admit new elements who know little of the native customary law, and whose position in society does not depend on the respect earned by services rendered to their community. The native tribunals have also come under criticism from the Supreme Court. It is necessary, however, to explain the circumstance in which this criticism has been made. The Supreme Court has little contact with the native courts, and it is of course a fact that there are among the judges some who have had little experience of native administration. Some time ago, it was brought to notice that the Subordinate British Courts had no power to transfer cases to native tribunals. An Ordinance was then drafted to ensure that civil proceedings between natives relating to immovable property should be determined by the native tribunals, and to enable Subordinate Courts to transfer actions to native tribunals. The Chief Justice opposed these suggestions in a letter dated November 2nd, 1939. He suggested that the native tribunals were corrupt and often incapable of deciding issues of fact, let alone questions of law. He was not prepared to accept the assumption that native tribunals were better suited than he and his colleagues to try land cases. He did not, however, claim that his criticism of the native tribunals was based on any personal observation of their working.

52. This precise issue is liable to be confused by the desire of the Kikuyu natives to find some means by which they can secure that the Supreme Court should take cognisance of issues arising between individuals in regard to rights connected with succession to or transfer of lands. Their desire does not necessarily reflect their confidence in the knowledge of native law and custom likely to be displayed by the Supreme Court. That is a point in which others besides natives may have some legitimate doubts. But the Kikuyu natives feel that any decision of the Supreme Court on private issues regarding the holding of land might make an additional obstacle to further invasion of native lands in the interests of European settlers.
53. It is not easy to determine the view of natives generally as to the character of the justice administered by the Native as compared with the British courts. The Native associations which have attacked the Local Native Councils as being unduly subject to official control are not equally critical of the native courts. The native courts charge fees for civil actions and these often seem high in relation to the matter in dispute. In Central Kavirondo, for instance, the fee is 5/- per head of adult stock.

In African custom, it was usual for both the plaintiff and the defendant to pay equal court fees, and the present practice by which fees are paid by the plaintiff only is said to make the defendant feel that he is at a disadvantage unless he pays to the members of the court at least as much as the plaintiff is felt to have done. It is asserted that a number of payments pass in consequence between litigants and members of tribunals, though many of them would be viewed perhaps by African standards rather as a compliance with custom than as bribery. There is, perhaps, no more difficult problem in native administration than that presented by the attempt to judge of the comparative value of the methods followed in the British and native courts respectively. The determination of this issue would demand far more prolonged study than it has been possible to give to it on this occasion.

54. Nairobi with its large African population, amounting to some 34,000 in all, has presented a special problem in native administration. The Municipal Council consists of Europeans and Indians but has no African membership. It has a Native Affairs Committee, of which the District Commissioner Nairobi has been elected chairman; its membership includes three Indians, members of the Municipal Council. There is a Municipal Native Affairs Officer who is paid partly by the Government and partly by the Municipality. In December 1939 a non-statutory Native Advisory Council was inaugurated to assist the Municipal Native Affairs Officer. He has selected as members of his advisory Council some 25 persons out of the names suggested to him by the various tribal associations and missions represented in Nairobi. The Native Advisory Council passes resolutions, but these cannot become enforceable in the native location unless they are passed as bye-laws by the Municipal Council. The only resolution so far confirmed by the Municipal Council relates to the regulation of barbers. The Nairobi native location is still markedly inadequate for the numbers of natives requiring accommodation; it compares unfavourably in other respects with the other locations in Southern Rhodesia, and with the Government urban housing projects.
projects in the Gold Coast. Rents in the location are 6/- 7/- or 8/- a week for one room, a figure which is undoubtedly high in view of the fact that the majority of the natives in employment receive less than one pound a month, including the value of rations. Wages and accommodation in Nairobi are in fact both based on the assumption that men do not have wives and families. There are 25,886 males employed and living in Nairobi and these have 3,556 female dependants in the town. There is also a grave problem of native prostitution. The Municipality pays an annual contribution in support of the location, but its attitude in this respect has in the past been grudging and short-sighted. The finance of the location is kept separate from the Municipal accounts, and though it has been possible to provide some valuable amenities, such as a football stadium, recreation hall, billiard room etc., this has been effected out of the profits of a well conducted municipal beer hall. Education facilities in Nairobi are moderate. Medical facilities for women and children are good, but men have to walk 25 miles to the nearest dispensary, and then only receive attention from a sub-assistant surgeon.

55. In Nairobi there is a native tribunal which has unlimited powers to try civil cases between natives, and jurisdiction in criminal cases which may appropriately be punished by imprisonment not exceeding six months or a fine not exceeding £5. The tribunal has five members, one Swahili, one Bantu Kavirondo with Luo affinities, one Kikuyu from a European farm, one Kikuyu from the Reserve, and one Sudanoese. Members are nominated by the Municipal Native Affairs Officer from about 150 names suggested by the various tribal associations in Nairobi. The tribunal was reorganized in May 1939, and its jurisdiction was extended to the settled areas around Nairobi. Eight assessors are available for the tribunal if required, but they are rarely called. Tribunal members receive 70/- a month, and the President receives 75/-. They hear about 2000 cases a year. Since May 1939 the tribunal has had the power to hear tax cases, and to have effected a great improvement in the tax collection.

56. It is necessary to supplement this account of the institutions employed in native administration by some reference to the Government organization for dealing with native affairs. The Colony is divided into four Provinces in charge of Provincial/
Provincial Commissioners, and three extra-provincial areas, namely, the Northern Frontier, Turkana, and Masailand. The Provincial Commissioners, with the District Commissioners subordinate to them, deal with affairs of both European and native concern. The departments of Health, Education, Agriculture and the Veterinary services also deal with both native and non-native matters. The Commissioners meet twice a year in a conference, which devotes a considerable part of its time to a discussion of native questions.

57. At the headquarters of Government there is the chief native commissioner, an officer whose title somewhat belies his actual functions. He has no executive authority, and no staff; his position may best be described as that of adviser to the Chief Secretary in regard to native affairs. It has been usual to appoint the holder of the post by promotion from among the Provincial Commissioners. He is a member of the Legislative Council and the Executive Council. He is Chairman of the Native Lands Trust Board and the Native Welfare Conference and a member of the sub-committee of the Executive Council on Local Native Council Estimates, of the Central Roads and Traffic Board, of the Water Board, of the Approved School Board, of the Standing Board on Economic Development, of the Standing Finance Committee, and of the Provincial Commissioners' Meeting. He is not a member of the Advisory Council on African Education. His effective prestige is probably inferior to the Heads of the principal government departments.

58. The only institutions of the central organisation of government which can be said to be entirely devoted to native affairs are the Native Lands Trust Board, the Trust controlling the Central Native Trust Fund, and the Advisory Council on African Education. The Native Lands Trust Board has been constituted under the Order-in-Council of 1939 as part of the machinery for guaranteeing the integrity of the lands in the reserves; it consists of the Chief Native Commissioner, two non-official Europeans, and the two nominated European members of the Legislative Council representing native interests. There are also Local Native Land Boards whose function is to advise District Commissioners on matters such as the grant and transfer of trading centre leases in the native reserves and the extension of townships into reserve areas. The members, who are entirely African, are appointed by the Provincial Commissioners in some cases the Commissioners have appointed Africans who have been elected for the purpose by the Local Native Council. The Central Native Trust Fund was established some years ago with money paid by the Abyssinian Government in compensation for a raid, and before the institution of Local Native Funds it was
the general clearance house for native moneys. It now receives the fees paid into native tribunals in the towns. The trustees, who are Europeans, administer the fund under the direction of the Governor in-Council. The Advisory Council on African education is a body of considerable size of which the non-official element is largely representative of missionary interests. Two Africans have been nominated as members. The Council does not appear to exercise any active influence in the direction of educational policy.

59. The Chief Native Commissioner recently put forward a proposal that a monthly conference on native affairs should be instituted, including the heads of the technical departments, the members of the Legislative Council representing native interests, a leading missionary and other persons useful as knowing current native thought, and an African if possible. The conference was to advise on long range policy and also on specific problems. The proposal was not accepted in the form in which it was put forward. An interdepartmental Native Welfare Conference has been instituted, with an entirely official membership; it consists of the heads of the technical departments with the Chief Native Commissioner as Chairman. The conference has a junior secretariat officer as secretary, and doubts have been expressed whether he is of sufficient standing to secure adequate attention for the recommendations of the conference from the persons with whom he has to correspond.

60. There is on the Legislative Council no African. It has been customary to nominate two Europeans to represent native interests, and some of those nominated in the past have been men who were well known for their sympathy with Africans and support of their cause. The most recent appointments have been unfortunate from this point of view. One of the two members is a retired Chief Native Commissioner who is still a member of the Executive Council; the other is a retired government medical officer. Neither of the two is regarded by Africans as occupying a position independent of government or of settler influence; the latter in particular has interests in the management of his own estates which leave him no leisure for studying questions in which native interests are concerned. Both these gentlemen frankly admit the unsatisfactory character of their position.

61. It is legitimate to ask how far Africans accept the Local Native Councils or other institutions in which they are allowed to share as providing adequate avenues for the expression of their views.

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The issue is of importance in view of the strong feelings which Africans entertain on some subjects such as land settlement, and of the effect which contact with Europeans is producing on the population of the more advanced tribal areas. It is significant that some of the associations founded to voice African views have exhibited far greater activity than in most other territories of East Africa. The most prominent of these bodies has been the Kikuyu Central Association which was founded in 1929. It claims to have had 7000 members in its Kikuyu branch and a number also in branches at Kamba and Taita. It charged an entrance fee of 18s.6d. but its accounts were not audited or published. It had its own newspaper in Kikuyu, called "Muigthania". If this association can be said to have any constructive program, its chief features were the demand for African representation in the Legislative Council (for which purpose the Governor was to nominate persons from a list submitted by the Local Native Councils), for representation on the Municipal Councils, and for a revision of the land settlement. But for the most part, the association devoted itself to arousing a feeling against the government by the exploitation of grievances. Some of these were real, and justified the protests made; but in many other cases the spokesmen of the association did not scruple to distort the facts and misrepresent the motives of the administration. There are also some grounds for suspicion that the leaders of the association abused their position for their personal advantage and were guilty both of blackmail and corruption. On the outbreak of war with Italy the government suppressed the association on the ground that it was subversive and dangerous.

62. Before it was suppressed the Kikuyu Central Association was losing ground to the Kikuyu Provincial Association, which is a more moderate body under more responsible leadership. It charges an entrance fee of 10s. and thereafter contributions of 2s. or 3s. a year are invited. About 4000 people have paid the entrance fee. It publishes no newspaper but holds an annual meeting at Nairobi. On the last occasion 341 male delegates attended and 25 women. Every member must subscribe to a declaration of loyalty to the king. It is interested in securing a stronger position for the elected elements on the Local Native Councils and in the reform and improvement of the Native Tribunals.

63. The districts of North and Central Kavirondo contain a number of societies and so-called
chambers of commerce. They voice a demand for representation in the Legislative Council, for better educational facilities and for more favourable treatment of Africans in land settlement. The North Kavirondo Association has done some useful work in improving water supplies, including the building of cement wells. It has, however, more than once mis-represented the statements of policy made by the government, and some time ago the Provincial Commissioner tried to prevent it from collecting money, but discovered that he had no legal power to do so.

ATTITUDE OF ASSOCIATIONS

64. There is clearly a section of the African population which is not satisfied with the avenues for expression which are provided by the institutions existing within the system of native administration. The occasional holding of an open baraza by local officers, or the opportunities afforded for discussion in the Local Native Councils, are not accepted as adequate. The men who would at one time have attended barazas are now often away at work, and the matters in which more advanced natives are interested are not the somewhat simple matters that can be discussed in a tribal baraza. As has been shown, the Local Native Councils are largely composed of official nominees, and their proceedings are regarded as unduly subject to official influence. It is not the fact that the activities of the non-official associations are invariably directed to attacks on the government. The Kikuyu Provincial Association has, for instance, passed resolutions appreciating the issue of the guarantee conveyed in section 3 of the Kenya (Native Lands) Order-in-Council of 1939. The Kavirondo Taxpayers Welfare Association has supported the policy of government on other points. The increase in membership secured by the Kikuyu Provincial Association at the expense of the Kikuyu Central Association was largely due to the public accusation of disloyalty brought by the leader of the former against the principal figures in the latter.

SUSPICION OF EUROPEANS

65. Much of the present attitude of the more vocal section of Africans has its origin in the feelings aroused by the land question. The population is still subject in an unusual degree to rumours which show mistrust of the intentions of the Government. Thus there is evidence that in Meru and Embu it is believed that permission to grow coffee was accorded only in order that it might be ascertained whether the land is suitable for Europeans. It has been rumoured that inoculation against plague and the distribution of free tea samples have been designed to cause impotence amongst natives. The attempts to deal with the problem of destocking by culling native livestock have led to suspicion of Government's intentions. The campaign conducted in Ukamba last year was not well managed by the/
the administration, and its failure provided a valuable advertisement for the Kikuyu Central Association. It is significant that opposition to the measure took the form of a general oath to refuse any form of cooperation with the administration. There is, again, a general feeling that educational facilities are inadequate both in quality and quantity; it is suggested that it is the policy of the government to refuse education to Africans in order to ensure that they should not be able to press a claim for a share in the administration of the country. Some of the associations at one time gave prominence to complaints about the working of the "pass" system, but it is doubtful if they could now secure support on this issue, for the pass law seems to be reasonably well administered and to involve little hardship.

CASE FOR LEAVING TRADITIONAL INSTITUTIONS

66. The account which has been given of the organisation for dealing with native affairs suggests a number of considerations. Some observers have questioned whether the Government is well advised in its reliance on institutions which it has itself created, in preference to making a wider use of the traditional tribal organisation. The question is now mainly of academic interest. In some parts of the Colony the native authorities recognised by custom still command respect; but there are many areas where it would not now be possible for the administration to rely on them as agencies of local government. Some reasons have been given in paragraph 3 for doubting whether customary institutions can be expected to retain their vitality in the face of influences arising from contact with a resident European population. The same problem has arisen in the Union and in Southern Rhodesia. The outlook of many Kenya Africans is no longer on advancement in a field in which their own social organisation or their traditional manner of life is their main concern. In those parts of Kenya where this condition prevails, more is perhaps to be gained by a well-considered development of the system now in force than by any attempt to make increased use of tribal institutions.

"CHIEFS" AS EXECUTIVE OFFICERS

67. Here it seems necessary to consider separately the position of the "chiefs" as executive officers, the working of the Local Native Councils, and that of the Native Tribunals. In its use of the "chiefs" as executive officers the Kenya Government seems to halt between two systems. It has not elected to employ an indigenous agency of purely official character, which might consist (as in India) of a regular cadre of educated and trained subordinates, or alternatively (as in Buganda) of officers coming from various sources, who gain their first experience by an appointment in the lower ranks of a native bureaucracy. It has preferred a system under which it employs persons connected with the location in which they are required to work and selected in
some cases because of their traditional position, and in others because they have emerged from consultation with the people of the location. The preference for the system, adopted in Kenya is, of course, due rather to historic accident than to deliberate choice. It is capable of adjustment to a variety of different conditions. It provides a subordinate agency which has the appearance, and sometimes the reality, of possessing popular support. It is relatively cheap, but it has many disadvantages. The position of the chief is ill-defined, for at times he appears as a native authority exercising statutory powers under the Ordinance, at others as the mouthpiece of the District Commissioner, and at others as an executive agent of the local native council, of which he is often a member. So confusing a position must make it difficult for him to develop a sense of personal responsibility. If a "chief" prove himself corrupt or inefficient, it is not of course impossible to remove him; but there must always be some hesitation in demanding efficiency from men, whose appointment is due either to the fact that they can secure popular support, or to pressure exerted by officers of the administration to secure their selection. Experience elsewhere shows that there is little advantage in attempting to give the position of a "chief" to persons who have no such status in African society, and it is doubtful if the attempt will be rendered more successful by the fact that "chiefs" are selected after some form of popular consultation. The units over which they exercise control are themselves artificial.

68. The matter is one which seems to demand greater attention than it has yet received from the Kenya Government. It may well prove to be the case, that in certain parts of the Colony, the need for executive subordinates may be most suitably met by the creation of a regular indigenous service. In any case, if the present system is maintained some of its features appear to call for modification. The position of the "chiefs" needs to be more carefully defined; there seems, for instance, to be little advantage in maintaining the fiction that they are authorities entitled to issue statutory orders on their own account. The scale of pay given to them clearly needs reconsideration. The maintenance of the present scale would lay the administration open to the charge, either that it attaches no value to the work which the chiefs perform, or that it is careless of the consequences, in the shape of corruption or abuse of power, which an inadequate remuneration must inevitably invite. It is
already clear that the scale of pay offered tends to prevent those of the necessary competence and standing from becoming candidates for selection as "chiefs".

69. The local native council also reflects the combination of two different principles. If there are some difficulties in employing a subordinate executive service which is partly appointed on an "elective" basis, there is an equal difficulty in believing that bodies which contain so large an official element can develop as true organs of public opinion. So far as the councils discharge a consultative function, their success would seem to demand a progressive reduction of the purely official element in their composition, and the introduction of changes in their procedure which would gradually diminish the official control over their discussions. Some reference has been made in paragraph 37 to measures designed for this purpose.

70. The future of the councils as agencies of local government presents a more difficult problem. At present the range of their activity is limited and their educative influence small. This is due not only to the narrowness of their resources (and the Kenya Government has been far less liberal in this respect than have most other Administrations), but to the fact that they have been allowed to exercise little or no executive responsibility. It is more important that the Councils should be allowed responsibility in the creation and management of their own institutions, however restricted their range may be, than they should receive more extensive powers to allocate grants to the central departments in charge of social services. There is now little incentive to them to improve their own resources of revenue; they have no means of knowing whether their contributions actually serve to increase the number of local welfare institutions, or whether they merely operate as a relief to General Revenue. It is always difficult (as has been shown in Nigeria) to establish any logical division between the field of local and central activity in the social services. But almost any system of division may be better than one which appears to leave local bodies and central departments to operate indiscriminately in the same field.

71. As has been remarked in paragraph 35, recent discussions have shown that there exists a division of opinion whether the Councils can properly be given a position as executive bodies. It is possible to sympathise with those who feel it important that the central departments should be encouraged to press forward with their programme for the/
the provision of the social services needed by the Reserves and who fear the result of removing even the less important agencies of these services from the central control. It is unlikely that the Councils can provide an equally efficient machinery for their maintenance. But the limitations of the functions of the Councils to the sphere now assigned to them, offers an equally undesirable alternative. Their members are likely to show an ever-growing apathy in regard to promoting schemes of local welfare, and an increasing appetite for purely political discussions and for criticism of the policy of the Administration.

73. The Administration of justice in the native courts presents a problem of a different nature, but of no less importance. It has been suggested in paragraphs 51 and 53, that the system is peculiarly liable to criticism, both by Europeans and natives. The local officers have received little or no guidance in regard to such matters as the composition of the Courts or the procedure to be followed by them. Native law is undergoing a rapid change in the course of its adjustment to new conditions, and it is not perhaps generally realised that the Administrative Officers, in the course of their supervisory or appellate functions, are creating a body of case law which will greatly influence the further determination of such matters as rights of succession, testamentary disposition, and the development of land rights under the overpriorty of the Crown. The question of the practice adopted for the Courts in such matters as the limitations of suits, or points of procedure such as the maintenance of records, is of growing importance. There appears to be a need for the provision of guidance in these directions, and it might prove of advantage if the Kenya Government were to study the working of the system to which a reference will be found in the section of this report which deals with Uganda. It is again desirable that steps should now be taken to ensure that the Tribunals should sit under the presidency of qualified persons capable of giving some continuity and coherence to their proceedings. Finally it is desirable to clarify the position in regard to the Supreme Court, to which reference has been made in paragraph 51.

73. There is some real danger, that if the system of native justice is not regularized, there may ensue a general movement for expansion in the field occupied by the British Courts, with a corresponding reduction in the functions of the native courts. At the present stage this might be of doubtful advantage to the African. If he can secure substantial justice in his own courts, he has everything to gain from resort to a tribunal to the procedure of which he is well accustomed.
acquainted, and which is free from some of the technicalities and the rigidities of legal interpretation presented by the British Court system. Features of this character must constitute a serious difficulty to the African in the present stage of his development.

74. As regards the administrative organisation for dealing with native affairs, attention has been drawn in paragraph 56 to the extent to which matters mainly of concern to the European settlers occupy a considerable part of the attention of many local officers, to the prejudice of their work in the Reserves. This, however, appears to be inevitable in the circumstances, and no remedy readily suggests itself. At the same time, there would be a definite gain if steps could be taken to give a clearer recognition of the responsibility of Administrative officers for the development of the Reserves. At present there is little sign of co-ordination of work of this character; the initiative indeed frequently appears to lie with the technical departments of government, and it is not always easy to discover in whose hands the direction of operations actually lies. It is possible that some improvement might be effected by giving the Provincial Commissioner a more clearly defined authority in this respect. The problem is not a new one, and has on more than one occasion been the subject of consideration in other territories, and in particular in Nigeria and Tanganyika. There are in Kenya those who, looking forward to changes that would become necessary under a system of closer union in East Africa, have advocated the establishment of provincial units on a self-contained basis, with technical officers attached to them, and with some measure of control over their own budgets. It is not necessary for our present purpose to speculate on the feasibility of developments of this character. It is sufficient at this stage to envisage a position in which the Provincial Commissioner would preside over periodic meetings of provincial conference for dealing with native affairs, comprising representatives of the technical departments, whose duty it should be to refer to him all schemes connected with work in the Reserves. It is clear that the Commissioner must also be placed in control of a fund for expenditure on the development of the Reserves.

75. Many administrative officers appear to be ill-acquainted with the systems practised in other colonial areas as well as those in force in other parts of Kenya. An illustration of the lack of knowledge of the details of other systems was furnished in the course of recent discussions on the incidence of the direct tax. This takes in Kenya the form of a flat rate hut and poll tax, the effect of which is that the adult male pays a tax for himself and one wife, and

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that any other hut-holders, e.g. second wives or widows, must pay a separate tax. There has been considerable agitation in the Central and Nyanza Provinces against what is viewed as a tax on women, and in one district an experiment is about to be tried of changing the basis of taxation by increasing the standard poll-tax, and abolishing the tax on huts. All the necessary data on this subject exist in Tanganyika, which made the change some time ago in a number of districts, and a study of the results might have obviated the necessity for local experiment in Kenya. Some remedy might be found for the lack of knowledge displayed about developments in other parts of Kenya by the publication of a memorandum on native policy such as has been issued by some other colonial governments. It is understood that the Kenya government has been deterred from taking this step by the fact that a statement of general policy might rouse opposition among some sections of Europeans. It is of no doubt had in mind the friction caused by past controversy on the interpretation of the expressions used in the White Paper on the paramountcy of native interests. But it would be regrettable if any such apprehension prevented the government from giving more systematic study to the improvement of its system of native administration, and communicating the results to its officers. Attention has more than once been drawn to the need for such guidance and there should be no difficulty in drafting statements of administrative policy in a form which would avoid arousing controversy on general issues.

76. Among the points which might usefully be considered in connection with such a statement of policy is that of the language which should be adopted by the government for official and other purposes. There is reason to doubt whether the adoption of Swahili as a lingua franca has met with the same acceptance as in Tanganyika. Swahili is easily learnt by Bantu speakers, but less easily by those belonging to different language groups, for instance those of Nilotic Hamitic or Semitic origin. Tanganyika was more thoroughly permeated by Swahili in pre-European days than was Kenya. Again, the Zanzibar dialect of Swahili accepted by the government as a standard differs from that spoken on the Kenya coast. It is regrettable that the vulgarised form of Swahili known as "Ki-settler" seems to have the effect of lowering the standard of Swahili spoken by a number of administrative officers.

77. The foregoing observations are not intended to convey any criticism of the personnel of the services of the crown in Kenya. Their purpose is rather to point out some of the difficulties under which these services labour, partly owing to the lack of guidance in the matter of native policy and partly
owing to the atmosphere created by the extension of a dominant European interest. The prevailing attitude of the services is one of genuine sympathy with African interests and a desire to study their welfare. It is possible that individual members of the services display less confidence in the capacity of the African than may be felt by officers in some other territories; but that is a judgment of which the value cannot be fully tested until Africans have been placed in positions of greater responsibility than they now enjoy in Kenya.

78. It remains to consider a larger issue, namely, the part which the African may be expected to occupy in the political structure of the colony. It is not possible to consider here what his position might be under a system of full responsible government, or in circumstances in which Kenya formed part of a Union of East African territories. For present purposes, consideration must be limited to a future in which the constitution of Kenya is maintained substantially in its present form.

79. As has been said, the range in which the African has been associated with the work of government is restricted. The only institution at the headquarters of government to which he has been admitted is the Advisory Committee on Education. Save perhaps in the more extreme sections of European opinion, it is generally admitted that Africans should be more closely associated with the political and administrative institutions of the colony. It is agreed that their position compares unfavourably in this respect with that conceded to the Indian and Arab communities. More than one non-official European member of the Legislative Council has stated that there is, in principle, no objection to the admission of Africans to membership of the Council. They claim however that African membership should not exceed the minimum necessary for an adequate expression of African opinion, and should be arranged on terms which will not invite the Indian community to reopen the controversy regarding its voting strength in the Legislature or provoke a demand for the recognition of a common franchise.

80. It is proper to add that even those Europeans who take a liberal view on the admission of Africans to the Legislative Council are not disposed to regard it as a practical step in the present or immediate future. In their view it is not yet possible to find Africans who are competent to take a useful part in an association of this character, and their attitude is not confined to European non-Officials, but is shared by a considerable number of officers in the crown services. There appear to be two schemes, differing somewhat/
somewhat in character, which have engaged the attention of those who are prepared to see provision made for the larger association of Africans in the work of Government in the near future.

81. The first of these schemes contemplates the conversion of the existing Native Welfare Conference (Paragraph 59) into a Representative Advisory Council on Native Affairs, to which Africans should be admitted as members. The European membership of the Council should not, in the view of the advocates of the proposal be confined to missionaries or other persons who have a special interest in questions concerning Africans; they feel that the inclusion of a certain number of European elected members of the Legislative Council would give them direct contact with the problems of native administration and thus assist in securing a greater air of reality for views expressed on such matters in the Legislative Council. There is good ground for believing that the recent inclusion of some of the more prominent non-official Europeans in the Native Land Trust Board (Paragraph 58) has had a useful influence in this direction.

82. This scheme has merits of its own, apart from any question of its value as a means for the representation of African opinion. If, as is suggested, the Government made a practice of referring to such a body any project of legislation affecting natives, the Legislative Council would have the advantage of an expression of informed opinion on the subject. Such a body, again, would have an authority to which the existing interdepartmental conference cannot pretend. It would in particular afford a means, the lack of which is now obvious, for discussing those issues in which it is necessary to find some adjustment of European and African interests. It is, therefore, a proposal which might with advantage receive consideration. But its adoption would not satisfy the claim made by Africans and by those who support their cause for direct representation in the legislature.

83. It is this claim with which the second of the two schemes above referred to attempts to deal. It is suggested that steps should be taken to extend the system of Provincial Native Councils, of which a beginning has been made in the Nyassa and Central Provinces (Paragraph 40). The Provincial Councils would constitute electoral colleges for a central Native Council, which would in turn elect Representatives to the Legislative Council. It is contemplated that in the first instance these Representatives in Legislative Council might be Europeans, but that in course of time their place would
would be taken by Africans. The proposal for the 
establishment of a Central Native Council has been 
viewed with suspicion by natives, who fear that its 
existence might be used as an excuse for refusing 
African representation on the Legislative Council. 
They would prefer a system under which the Governor 
would nominate representatives for the latter, out of 
a number of names submitted by the Local Native 
Councils. That objection would, however, be removed 
if there was a statutory guarantee that a Central 
Native Council would form the basis for election to 
the Legislative Council.

84. The experience gained of the working of the 
Nyanza Provincial Council is too short to allow of 
any judgment as to the vitality which these Councils 
may be expected to develop. The Nyanza Council and 
the joint meetings of Local Native Councils in the 
Central Province are at present entirely consultative, 
and it is not easy to see how, in view of the 
constitution of the local native councils, the 
provincial councils can be given functions of an 
administrative or executive character, or involving 
any measure of control over the operation of the 
local councils. The membership of a body whose 
discussions are limited does not always provide the 
best test of the qualities which fit men for leader-
ship in their community. It is, again, likely to 
be more difficult to constitute Provincial Councils 
in the more backward tribal areas than in the Central 
and Nyanza Provinces. Nevertheless, no alternative 
readily suggests itself for securing the selection of 
African representatives to the Legislative Council. 
Even if the functions of the provincial councils 
were largely deliberative, they would provide an 
opportunity for the discussion of issues of a wider 
character than those which would normally appear on 
the agenda of a Local Council. Their membership 
would, in view of the manner in which the local 
councils are constituted, be representative of a 
considerable variety of interests. It is inadvisable 
to attach too great weight to the argument that inter-
tribal jealousies might constitute a serious obstacle 
to the selection of members of the Legislative Council 
by this method. It must be realised that at the 
moment there are only three tribal groups in Kenya 
which count politically - the Kikuyu, the Bantu 
Kavirondo and the Luo Kavirondo. Recent experience 
indicates that the Kamba and Teita found little 
difficulty in accepting the political leadership of 
the Kikuyu Central Association.

85. It is equally inadvisable to attach undue 
weight to the suggestion that Kenya will be unable to 
provide natives who are competent to take a useful 
part in the discussions of the Legislature. Judging 
by such indications as are now available, there seems 
no reason to doubt that, given a normal expansion of 
educational
Educational facilities, men will be forthcoming who are fully competent to give expression to the African point of view. There is on the other hand a danger that, if there is some delay in providing some regular channel of the type now suggested for securing the representation of African views, Kenya may have to face the growing influence of popular leaders of the adventitious class which has come into prominence through the activities of the Kikuyu Central Association and similar bodies. It would be unfruitful to attempt to indulge at this moment in speculations as to the ultimate form which the association of Africans in the work of government may assume. The adoption of the proposal now outlined would not prejudice the success of any other line of approach which subsequent developments indicate as expedient. It has the further advantage that it has nothing of the character of a political adventure; the avenue of access to the political structure will lie through institutions which, though they may not be based on custom or tradition, have now an accepted place in local African society.
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CONFIDENTIAL.

REPORT BY LORD HASTHAY to the Secretary of State for the Colonies.

NATIVE ADMINISTRATION AND AFRICAN POLITICAL DEVELOPMENT.

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Note on Abbreviations used in Footnotes.
The letters used in the footnotes refer to the particular memorandum on the various territories already submitted, as follows:

G - Gold Coast.
K - Kenya.
N - Nigeria.
NR - Northern Rhodesia.
Ny - Nyasaland.
S - Sierra Leone.
SR - Southern Rhodesia.
T - Tanganyika.
U - Uganda.

The figures following the letters refer in the case of Uganda to the pages of the memorandum and in the case of other territories to the paragraphs in the memoranda.
Native Administration and African Political Development.

Report by Lord Hailey to the Secretary of State for the Colonies, 1941.

I. THE SCOPE OF THE ENQUIRY.

The inquiry with which I was entrusted towards the end of 1939 was not defined in any precise terms of reference. It was explained to me that the Secretary of State wished to have advice which would assist him in considering any proposals which might be made for political changes in Africa during or immediately after the war, and that he wished that any such proposals should be considered against the background of long-term policy. He was anxious that the policy adopted with regard to the institutions of central governments, as for instance the method of representing African interests in colonial legislatures, should be in harmony with the policy followed in regard to local native authorities; and he therefore wished me to furnish him with an analysis of the native authority policy and with some estimate of its probable direction in the future. My investigations have consequently ranged over a variety of subjects which affect the development of government institutions, both central and local. Separate reports on Sierra Leone, the Gold Coast, Nigeria, Uganda, Kenya, Tanganyika, Nyasaland, and Northern Rhodesia have now been presented, as also a report on native administration in Southern Rhodesia, which was drawn up in connection with the inquiry which I was also requested to undertake into the bearing of native policy on the amalgamation of the Rhodesias and Nyasaland. A separate report on this subject has also been presented.

2. In this, the final section of my report, an attempt is made to draw certain general conclusions on policy affecting the African dependencies as a whole. I am conscious of the dangers of generalisation in regard to Africa. Every dependency has a distinctive political structure with problems all its own, and the method of applying any general policy must be different in each Colony. But this does not lessen the need for attempting to draw general conclusions from the experiences gained in practice of the application of different systems of native administration, or for defining the part which the native authorities may be expected to bear in the future development of political institutions. The responsibility of the Secretary of State to Parliament will inevitably lead him into the discussion and indeed the defence of policy in general terms, and the interest of public opinion at home may be expected to centre rather on general principles than on the differences in their local application.

3. My detailed reports contain many suggestions that officers in one territory should study the experience gained of a particular problem in another.
another dependency. In this general section I shall mention some of the methods which have been employed to meet various problems, which might with advantage be studied in other dependencies where similar problems arise. In medical and agricultural work the need for the exchange of ideas and experiences has been recognized and measures have been taken to meet it, both by the method of conference, and by the co-ordination of scientific research. It is not perhaps sufficiently realized that native administration has its own technique, and that those who are engaged in it have much to learn from the successes and failures of others.

4. In pursuing these inquiries, I travelled 14,300 miles by air, 6,100 miles by sea, 4,900 miles inquiry, by rail and 2,800 miles by road. I had the privilege of visiting the Governors of all the territories named above, and am greatly indebted to them all for the facilities they afforded to me. Engaged as they were by the pressing problems of the war, they nevertheless made it possible in every case for me to discuss with them those questions of long term policy which the Secretary of State had asked me to consider. Through their courtesy I was able to hold discussions with a large number of persons. In 245 cases, the minutes of the discussions with individuals and groups were recorded by my Secretary, Mr. F.J. Pedler, to whom I am deeply indebted for the assistance given to me, not only in the course of my enquiries, but in the subsequent preparation of these reports. I found that it was generally the wish of the Governors, as it was my own, that the scope of my discussions should include not only high government officers and members of legislative council, but junior officers at work in the districts, European traders and farmers living at a distance from headquarters, and Africans of all grades. Among the Africans whom I saw were included chiefs of various grades, village headmen, clerks, mineworkers, lawyers, and editors. The method adopted throughout was that of informal discussion; I did not consider that the nature of my enquiry warranted my asking for formal expressions of opinion from organized bodies, political associations and the like, though I sought every opportunity to see thir office holders or leading members. Though in two dependencies I found it convenient to remain at headquarters, in the others I travelled extensively and was able to see something of the working of native courts, native treasuries, local native councils, mining compounds, rural dispensaries, and many other features of administration.

II.

TENDENCIES AFFECTING AFRICAN COLONIAL POLICY.

5. To those who, like myself, have previously had experience mainly of the East, the outstanding impression of Africa must be one of rapid change, and of greater changes impending. The character of the change seems perhaps to be the more dramatic, because the institutions of African society present a far greater contrast to those of modern Europe

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than those of the parts of Asia with which British administrators have normally come into relation. Contact with modern civilization has consequently produced in Asia a process of gradual adjustment and assimilation, rather than the radical change of social and economic life which it has involved in Africa. Again, while Asia has shown itself readily receptive of the cultural or political ideas of Europe, it has proved to be far more resistant to change in its social habits. In Africa, on the other hand, there is a relative lack of long settled and stabilized communities, with their own history and traditions, or of organized forms of religion, the existence of which makes for resistance to social change. There are many parts of Africa in which the observer is struck by the apparent avidity with which natives adopt a Europeanized form of life; and a rise in the standard of living appears to them primarily to be typified by an increased use of the material amenities which contact with Europe makes available to them.

6. These tendencies are, no doubt, more marked at present in urban and industrialized areas than elsewhere; but they are likely to extend with a rapidity which will be limited only by the possibilities of improvement in economic conditions. This is not without significance in considering the future of the system of native administration now in force, or the development of political institutions. Sociological enquirers impress on us the the sentiment of loyalty which even more advanced Africans retain towards their customary institutions, as typified for instance in the Chiefdom, and the strength of the current conception on such matters as the "communal" holding of land, or the value attached to cattle as a store of value and medium of exchange. They can point out again that, though in non-Muslim areas Africans have been ready to embrace Christianity, yet the magical sanctions of the old faith often retain a power over the conduct of life more potent than the spiritual influences of the new. All this is true, and must certainly not be overlooked in any measures we may contemplate for the regulation of native policy in the present state of African society. But the growth of a more critical attitude towards the use of personal powers by the Chiefs, the increasing individualization of land tenure with the expansion of the production of cash crops, the substitution of money for cattle in determining "bride price", and the readiness with which apparently depopulated family custom, such as that of the matrilineal system, can yield to the requirements of altered systems of cultivation, furnish only a few of the many warnings available to us, that we must be prepared to see rapid and far reaching changes in African social ideas and habits of life. If I may again draw an illustration from the East, it is unlikely that we shall see in Africa a resistance to change so sustained as that which has preserved the caste system in India, or the mystical value ascribed
ascribed to the cow, nor need we expect to see an
attachment to forms of religious faith so pronounced
as that which has driven the Muslims and Hindus
of India into two apparently irremovable
political camps.

7. But we have not only to take account of
changes in Africa. There have been changes also
in the attitude taken in Great Britain towards
Colonial questions which must have a definite
reaction on the course of African administration.
At the outset, the task of the administrations
was directed primarily to the establishment of
law and order, and the provision of those require-
ments, such as means of communication, which would
enable the population to satisfy its more elementary
material needs. The conditions which we encountered
in Africa rendered this task far more insistent
and engrossing than that which had faced us in the
earlier administration of our older dependencies.
The Colonial policy of the United Kingdom at the
time reflected the conception which then prevailed
regarding the functions of the government in domestic
concerns. The tradition of Gladstonian economy
prescribed that the dependencies should as far as
possible be independent of financial assistance
from the British Treasury. In matters of material
development attention was directed rather to the
prevention of exploitation or the abuse of power
in private interests, than to the possibility that
the government might itself take an active part
in developing the resources of the territory. In
social matters the safeguarding of political
rights appeared to be of greater concern than the
expansion of the social services or the organisation
of measures for improving the standard of living.

8. These conceptions have now been materially
modified by the changes in domestic politics which
tend to place a far more pronounced emphasis on the
functions of government as an agency for the active
promotion of social welfare. The political issues
which now engage the widest measures of public con-
cern are the improvement of the standard of living,
the security of employment, or the expansion of the
social services. There is a general agreement
that for these purposes the government must exercise
a degree of intervention in both economic and social
life of the nation which would not have been accorded
to it by an earlier generation and which would not,
indeed, have been justified if the State had only
been required to satisfy the conception of its
functions which then prevailed. The influence
of these ideas must be increasingly felt in the
interpretation which the general public places
on its obligations towards the African dependencies.
It has indeed already been reflected in the passing
of the Colonial Development and Welfare Act of 1940.
We must look forward to improvements in communi-
cations which will permanently increase the intensity
of interest felt by the home public in colonial
affairs. The influence of the development of air
transport for persons, mails, and newspapers, is likely
to
to be very great, and it seems possible that the radiotelephone will render obsolete existing methods of communication by telegraph and wired telephony. The home interest in African development is, again, likely to be accentuated by postwar pressure from educated opinion in Africa. If so the consequences are likely to be seen in more than one direction. The Colonial Office, as Mr. Amery has said, will no longer be viewed merely as an agency for securing "peace, order and good government" in the dependencies. It will be viewed, to use his words, "as a Ministry of Colonial Transport, a Ministry of Colonial Health, a Ministry of Colonial Education, or perhaps it might be more accurate to say as a General Staff for the whole Colonial Empire in respect of all those matters". This in itself, as he subsequently explains, will involve the Colonial Office in an effort to maintain common standards of progress and development in the Colonial Empire; "there must be an immovable expansion and speeding up of the scale of the operations of the machinery of development".

New responsibilities of Colonial Governments.

9. The position of the Colonial governments will be equally affected. If they, in their turn, are to be judged largely by their performance as agencies for social betterment, they will have to exercise a measure of control and of initiative in developing the resources of their territories similar to that which is now enjoyed by the Home Government for improving the domestic standard of living. This may lead them into fields in which they have not hitherto interviewed, such as concerted measures to improve the price level of primary products, or the organization of secondary industries. It is even more pertinent to the purpose of the present enquiry that the value of the Native Authority system in force in most of the African territories will be judged by its capacity to assist in the expansion of the social services, no less than by the degree of satisfaction which it can bring to tribal or other local sentiment. Again, some of the interest now shown in purely political development is likely to be transferred to what at the moment presents a most insistent problem, the improvement of the social conditions of the population.

III.

THE FORCES IN AFRICA OF WHICH POLICY MUST TAKE ACCOUNT.

10. But important as it is to take account of the effect of changes in government policy, it is even

(*) "THE FORWARD VIEW" - pp. 236, 240

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even more important to attempt to estimate the forces in Africa itself which we are likely to encounter in giving effect to it. Can we be sure of the continuance of that degree of acquiescence in our rule which is a necessary condition of administrative progress? There have in the course of the last twenty years been a certain number of incidents which have caused local disturbances, and involved the use of police or similar measures for dealing with them. But in relation to the extent of the areas involved, many of which have only recently been brought into the regime of law and order, such incidents are comparatively few. Many of them have formed the subject of public enquiry. The result has been to call attention to the existence of local dissatisfaction with particular measures but there has been little which points to widespread discontent or organized opposition to government policy. It is not possible to enter here on a detailed survey of these incidents, though it might have its value as indicating the directions in which we should look for possible causes of recurring unsettlement or disturbance. But in the past, trouble would see to have originated in the main from three sources.

11. The first lies in the treatment of questions relating to the powers assumed by the Colonial governments for dealing with native lands. This is naturally most marked in those territories where powers have been used to secure lands for the use of European settlement or enterprise. The outstanding illustration of this is to be found in Kenya, where the reservation of the Highlands for European occupation has produced in certain of the tribes, and among them the most politically minded section of the population, a sense of antagonism to Europeans, in which the Government itself is involved. Northern Rhodesia affords another possible focus of dissatisfaction on this account, though the land ordinance to which assent has recently been given may serve to improve the situation there. Nyasaland is now affected only to a minor extent, and except perhaps in the Chagga country, the issue is not at present one of importance in Tanganyika. It has caused relatively little difficulty in Western Africa, where land is not in demand for European settlement.

12. It may at the same time be noted here, that there are problems of another character connected with the land, which, though they have not yet been a source of friction, remain as a potential cause of trouble for the future. They are those which relate to the legal definition of title in the lands occupied by natives and of the tenures under which they are held. The treatment of these questions will demand decisions of general policy affecting most of the African dependencies, if individual rights are allowed to grow up in a form which may involve the recognition of a system under which the relations of landlord and tenant are regulated only by market competition. (2) and no legal

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(1) NR 20.
(2) See further on this point paragraphs 123-106 below.

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legal restraint is placed on the use of the land as a basis of credit, the African colonies may in time have to face all the evils attendant on the existence of large bodies of rack-rented tenants and of widespread agricultural indebtedness, which now constitute so grave a menace in many of our Eastern dependencies. No one, for instance, can fail to regret that the British administration did not at an earlier date foresee the necessity for providing against the development of these conditions in rural India, where their existence has not only been inimical to agricultural progress, but has proved a potent source of social division and one of the main causes of political unrest. These provisions could have been made with relative ease at an early period of our administration, before rights, based on European conceptions of law and novel to Indian practice, had assumed the character of vested interests. But today it is estimated that no less than 25 million persons classified as agricultural workers are landless, and agricultural indebtedness is estimated to amount to £575,000,000.

13. The second source of trouble has existed in conditions of an economic nature. The imposition of a native tax, was for instance, one of the main causes of the disturbances in South East Nigeria in 1929, and the levy of direct taxation has always been actively resisted in the Gold Coast Colony. But the readiness with which it is now paid in the South East Nigerian and the Northern Territories of the Gold Coast shows that, given suitable administrative dispositions, the opposition to it is by no means insuperable. On the whole, the native tax is now collected in most of the dependencies with relatively little trouble. It is unfortunate that the African administrations have not so far been successful in their effort to find a substitute for the flat-rate tax, which bears no definite relation to the income of the taxpayer. But much has of recent years been done to introduce some elasticity in the system, by local variations of the incidence of the tax, adjusted to the circumstances prevailing in different areas. Past experience seems indeed to point to the conclusion that, whatever the theoretical objections to this form of taxation, they are of less practical importance than the actual pitch of the assessment. So long as the tax is maintained at a low figure, varied in accordance with the material resources of different localities, and due regard is paid to the difficulties of realization caused by periods of price depression, it is unlikely to present a serious cause of trouble in the future.

14. The chief source of trouble arising from economic causes has not, however, lain in the incidence of taxation, but in questions connected with the wages or the living conditions of industrial labour or the prices paid for commodities of native production. The disturbances in the copper belt of Northern Rhodesia, the cocoa "hold-up" in the Gold Coast, the unrest in Mombasa, or among native coffee producers in Kilimanjaro, are incidents of comparatively recent date which point to the readiness with which Africans are now prepared to express open and sometimes
sometimes violent dissatisfaction with what they used to be economic grievances. In some instances, they have shown a considerable capacity for combined action in order to secure redress. It is true that on many occasions this has been provoked by the action of employers rather than of the government, though the opposition to the attempt to secure destocking in the Kamba area of Kenya constitutes a recent instance to the contrary. (4) But dissatisfaction of this nature inevitably tends to involve the administrations also, either because of the suspicion that they must in some measure associate themselves with the interests of European employers or purchasers of commodities, or because an undressed grievance inevitably reduces the confidence felt in the government and prejudices the general sense of acquiescence in its rule.

15. It is indeed in causes of an economic origin that we may expect to find the major source of trouble in the immediate future. This consideration indicates the need for taking what precautions are possible before government openly associates itself with schemes likely to arouse opposition on economic grounds. This is all the more necessary if the economic structure of the future is to involve schemes for the government control of production, marketing and prices. In connection with such schemes the Tanganyika Government (to quote only one instance) has already encountered difficulties; in Bukoba, where it was alleged that it was keeping coffee prices low, (2) and at Kilosa and Morogoro, where African producers have formed an association to protect against a cotton-buying monopoly awarded by the Government to a European company. (3) It is indeed a matter for consideration whether it should not be a general rule that representation should be granted to Africans on committees associated with all schemes which impose restrictions on African producers. If it is objected that no African can understand the scheme, the rejoinder is inevitable that on political grounds means must be discovered for ensuring that all Africans understand it. (4)

16. A third source of trouble has arisen in the failure of the administrations to appreciate the strength of social usages, or the true character of indigenous native authorities. The most frequently quoted instance of this is the delay shown in recognizing the importance attached by Ashantis to the Golden Stool; but this is now an incident of a much more distant past. More recently, some of the difficulties encountered by the administration in South

(1) K.65.
(2) K.45.
(3) T.76.
(4) See paragraphs 164 below.
South Eastern Nigeria arose from the attempt to secure for place-men or "warrant" chiefs a position which native society was not prepared to accord to them. Sociological inquirers are able to quote many instances in which the administrations have been betrayed into error by lack of knowledge of the character of indigenous institutions, or by failure to give due weight to the value attracted by natives to them. Of late years, however, the governments have given increased attention to matters of this nature. Part of the greater knowledge which they now possess of native institutions is due to the studies made by sociologists; even more, perhaps, is due to the enquiries which, following the example of Nigeria, the governments have themselves instituted in order to obtain a more secure basis for the working of the Native Authority system. There is also another fact of some importance here. No one could doubt the supreme need for gaining the fullest knowledge of native custom, or for taking account of its bearing on measures which the administrations seek to put into execution. But this is required not so much because open differences have actually occurred between government and the people on this account, as because the introduction of modern methods of rule or the expansion of the social services can often be most easily approached through the adaptation to our own purposes of existing usages or social institutions.

IV.

THE DEVELOPMENT OF AFRICAN RACIAL CONSCIOUSNESS.

17. I have in the preceding paragraphs attempted to illustrate some of the sources from which differences have arisen in the past, and may recur in the future, to disturb the relations between the administration and the people in our African dependencies. They are typical of matters which can be adjusted by observance of the normal standards of good administration. But it remains to be considered whether there are not factors, lying outside the range of administrative action, which may prove in the future to be a more profound and more lasting menace to the relations between the British governments and the African population. A progressive growth of African racial feeling, antagonistic to our government, would not only prejudice our effort to improve the methods of administration or to raise the social standards of the people, but might eventually create a situation for which mere changes in an administrative procedure would provide no solution.

18. It is often assumed that where estrangement exists between a native population and the European government it is a pathological condition, induced by premature access to advanced education or by the grant of political institutions to people who have not developed the capacity to make a proper use of them. But this diagnosis is on too empirical a basis. There is no single cause for estrangement of this nature. It is true that
where racial consciousness has taken the form of standing antagonism to a government of alien composition, its leaders have usually been found in the better educated or more socially advanced elements in the native population. It is for this reason that some colonial policies hesitate to counteract the growth of institutions for the provision of higher education (as apart from the carefully regulated supply of persons required in technical or professional posts in the public services), while others, like the French, seek to confine higher education to a small "élite", whose attachment to the ruling race is to be secured by admission to its social and administrative life. But it is not the existence of an educated or advanced class that has usually supplied the dynamic force to those mass feelings which underlie a situation of general estrangement. That force has been supplied by the existence of causes of general discontent which have ultimately impelled race consciousness to express itself in a permanent state of racial antagonism.

19. There is perhaps some tendency in England to exaggerate the strength of the forces now opposed to the Government in India, and the manoeuvring of political elements no doubt occupies too large a share of our attention. But the forces are at all events strong enough to create a serious prejudice to our relations with the Indian people. The explanation is to be found in the fact that there is now a large middle class which has become conscious that the economic development of the country does not permit it to attain standards of living comparable to those enjoyed by similar classes elsewhere, that in the towns there are masses of people living on the margin of subsistence in squalid and unhealthy surroundings, and that in the rural areas there are great numbers of tenants living in serfdom to landlords, and of landlords living in serfdom to moneylenders. I am far from suggesting that the British administration is wholly responsible for these conditions or that we have done nothing to improve them. Many of them have been dictated by circumstances of which we were not masters. I refer to them, as illustrating the extent to which discontent with economic conditions can become the dynamic force behind racial antagonism. In South Africa, circumstances do not enable native antagonism to Europeans to manifest itself in open political opposition or in organized efforts to cause embarrassment to the administration. But it is probably true to say that the feelings which the majority of Africans in the Union entertain towards Europeans are based far more on a sense of the economic inferiority of their position than on the political and social disabilities from which they suffer.

20. Any attempt to estimate the extent of the development of African racial consciousness must take some account of conditions in the Union of South Africa and the foreign as well as the British dependencies. There is a considerable amount
amount of literature which deals with the growth of African "nationalism" in South Africa, but it refers mainly to the progress of the so-called "Ethiopian" movement in religion, as shown by the institution of a large number of purely African churches; or this history of organisations of African labourers, such as the well-known Industrial and Commercial Workers Union, which had a short but not unimportant career between the years 1920-1926. There is as yet little evidence of the existence of any effective sentiment of unity among the very different elements which compose the native population of the Union. It may be that the development of this sentiment awaits the emergence of leaders who can command an influence extending within their own sections, for it is a significant fact that the African population of the Union does not seem prepared to find leaders among the ministers and teachers who now form the bulk of the more advanced section of the native community.

Little evidence of racial feeling in British colonies.

21. In the British colonies at large there is even less evidence of the development of that general sense of unity, which might impel the population of different territories to make common cause in promoting their mutual interests or opposing the policy of the administration. The well-known movement started in 1914 by Marcus Garvey, with its slogan of "Africa for the Africans", had its main support among American negroes; it was strongly discontinue as the Government of Liberia, which was the chief point of contact with Africa, and had little influence in the British Colonies. I have in the course of my detailed memorandum given what information is available regarding associations formed to represent African interests, and but they are mainly local in character, and it is seldom that they represent more than a limited section of the population; or exercise an influence extending into other territories. Some of the associations referred to in the Memoranda on the Gold Coast and Sierra Leone are perhaps the only instances to the contrary.

Places where anti-European feeling may be expected.

22. It would seem that we must expect that for many years interest will centre on questions of local rather than common concern. It is likely to be most active where circumstances create standing causes of difference between Europeans and Africans. Thus in Kenya, though the reservation of the Highland affects only a limited number of the tribes, the land question will remain a standing difficulty in the relations of Africans generally to Europeans and will add force to any other cause of difference which may from time to time present itself. In Northern Rhodesia there is likely to be a standing cause of difference in the attitude of Europeans towards native employment in the Mines and Railways. (4) Again, experience has shown that in the

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(2) S 54, G 154-160, Ni 6, 24 and 31, U 16,
K 61-64, T 76, NY 43.
(3) K 3. (4) NR 25

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the Gold Coast dissatisfaction against the control of the export of cocoa by Europeans is capable of evoking strong feelings of solidarity in the native community. (1)

23. But we must at the same time expect that African opinion at large will in time come under the influence of those more general causes which have elsewhere created a general racial consciousness among peoples who were hitherto united only by a local sentiment. They should operate all the more easily in Africa because there exists only in a few instances that political and social organisation which creates a sentiment of separate nationhood. There is evidence of such a sentiment in Buganda(2) Ashanti(3) and Basutoland, and to some extent also in Barotseland, though in the last case it perhaps expresses the feelings of a ruling class rather than of the whole population. (4) Elsewhere, however the prevailing sentiment is tribal rather than national; even the interesting developments in Nigeria, which mark the growth of a Yoruba, or Ibibio or Ibo consciousness, (5) can not be said as yet to have any support in an underlying sense of nationhood, based on a previous tradition of political cohesion. The most important among the general influences to which I have referred as providing a common consciousness among peoples who have not hitherto been united, is that due to the existence of an alien rule. In a well known passage of "Representative Governments", J.S. Mill points out that when peoples who have been hitherto divided come under a government which is strange to them all

"in a few generations identity of situation often produces harmony of feeling, and the different races come towards each other as fellow countrymen."

There have been many who, impressed by the relatively recent manifestation of the "All-India" sentiment in India, have been inclined to question its reality, save perhaps in so far as it represents the feelings of advanced political elements. They overlook, however, the fact that in spite of differences in race and language, there was always an Indian culture, and modern political sentiment is largely the expression of feelings based on the difference of Indian culture from that of Europe. Among the many subjects of speculation which Africa presents, not the least difficult or the least intriguing, is the effect which the lack of any common African culture may have on the growth of a Pan-African feeling; it is equally difficult to foresee the effect of the existence not merely of one alien government - as in British India or the Dutch East Indies - but of at least four different European controlling powers, characterised by different philosophies.

philosophies of rule and systems of administration. But there can be no reason to doubt that the existence of alien rule must in time have something of the same result in unifying African sentiment as Mill held that it had possessed in other parts of the world.

Effect of European Wars.

24. A second influence making in the same direction is likely to be found in the course of international events, and more particularly in conflicts between European powers. Historians have seen in the Russo-Japanese War one of the chief causes for the change in the Asiatic peoples, and particularly those of India, towards European rule. It is difficult to assess the effect of the war of 1914-1918 on Africa, where both education and means of communication were at the time less developed than today. It seems certain, however, that the effect of the conflict between European nations, which extended to the soil of Africa itself and involved the use of native troops, must have affected the general prestige of Europeans, (1) and it is at any rate certain that the economic results of the war, and of the depression period of 1929-31 must have produced that kind of unrest which often finds its expression in the growth of racial sentiment. It has been claimed by some observers that the Italian invasion of Abyssinia evoked something like racial solidarity among Africans. (2) Though, however, the progress of the campaign was followed with interest in advanced circles in the Union and the West Coast, and among certain tribes such as the Kikuyu, it is doubtful if Africa at large saw it as a racial issue. It is, of course, too early to judge of the full reactions of the present war on the African outlook, though they cannot fail to be far-reaching. At the moment, it is perhaps the dynamic rather than the moral issues which count for most in the African mind; the fall of France and Belgium and the British reconquest of Abyssinia have gone far to establish Great Britain in a position of ascendency in Africa.

Comparison between European Colonial powers.

25. There is one other general factor which must have an influence in stimulating a general racial consciousness among Africans. There is much movement between different territories, and a growing tendency to compare the economic or administrative conditions in them. Political boundaries are in many cases entirely artificial, and there must often be an inclination for natives to look on themselves rather as members of a common African stock than as subjects of a particular colonial power. The preference shown by the French administration for the use of French, rather than the vernacular languages, as a medium of education is partly inspired by a desire to counteract tendencies of this nature. I may take this occasion to note that the political, as apart from the educational, aspect of the use of

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(1) See for instance the report of the Commission on the Fort Elizabeth disturbances, 1920.

(2) See D. Westermann "AFRICA AND CHRISTIANITY"-p.31.
of languages in African education raises issues of some complexity, but it is one which it would seem advisable to study in considering the factors likely to affect the growth of African national feeling.

V.

THE PRESENT ATTITUDE OF AFRICANS TO BRITISH RULE.

26. Many of the considerations regarding the possible growth of African racial consciousness, or the direction it may take in relation to the European governments, are necessarily very speculative. But we are on somewhat firmer ground in dealing with the present attitude of Africans towards our own colonial administration. The knowledge gained by Africans of foreign systems of rule does not lead to their forming conclusions which are unfavourable to us. There is some tendency among English writers on African subjects to emphasize features in which foreign colonial administration is held to be superior to our own - the absence of a colour bar in French colonies, the labour organization in Belgian mining centres, or the like. Our own official publications contain much that affords material to hostile critics, or to those no less active critics who are moved by a genuine desire to secure improvement in the standards of our administration. We differ widely in this respect from other colonial powers in Africa, who either refrain from making their reports on colonial matters available to the public, or studiously exclude from them anything which affords ground for criticism of the administration. The system of Royal Commissions or public inquiries into disturbances or the like, is practically confined to the British colonies. African opinion, however, is not dependent upon the published material. There are many practical proofs of the value it sets on the British connection. There are few British territories in Africa which cannot show a drift of population inwards across their borders, either seeking work or coming for permanent settlement. Many factors contribute to the maintenance of British prestige even in the non-British African territories; our colonies, poor though they may appear to us, are in several cases rich by contrast with their neighbours; British capital, British missionaries, and well-paid British West African clerks, are conspicuous in many foreign dependencies. Finally, as I have already
already noted, the war has created an impression throughout tropical Africa that Great Britain is the only colonial power which can keep and protect its territories. In tropical Africa we have now a practical monopoly of power, and of the prestige which power confers.

27. African opinion has also shown itself able to discriminate between the system of native rule in the colonies and that prevailing in the Union. Though the Union offers an attractive field to immigrants from our colonial territories, owing to the relatively high rates of wages available, the natives of Northern Rhodesia and Nyasaland have given unmistakable evidence of their apprehension lest amalgamation with southern Rhodesia should bring them within the orbit of Union Native policy. One may conclude with some confidence, that if the choice were to lie between our colonial system of rule, and that of foreign powers or of the Union, they would choose ours. The opinions expressed by Africans against the cession or internationalization of British colonial territories is not without its significance.

VI.

(1) Paragraph 24.
VI.

AIMS BY WHICH AFRICAN OPINION CAN EXPRESS ITSELF.

British rule provides constitutional means of opposition.

28. This picture has of course its other side. Our methods of rule owe much of their popularity to the tolerance shown to the expression of opinion or the ventilation of complaints, even when this may take the form of an organized movement to secure the redress of grievances. That, again, is a point in which there is a striking difference between our system and that of other powers. But we must in consequence expect to see that movements of this character will become more frequent in the future. They will doubtless be based at times on unsubstantial grounds, and may be artificially fomented by interested parties; but their recurrence will not necessarily be a proof either that our policy as a whole is at fault, or that African sentiment has become antagonistic to us. It would doubtless be preferable if we could avoid giving any cause for the existence of a sense of grievance, or prevent manifestation of feeling based on unsubstantial or unreasonable grounds. But this is not in our power, and we must direct our policy to seeing that dissatisfaction is as far as possible expressed in "constitutional" methods, and taken channels other than those which lead to permanent racial estrangement.

Recommendation that means should be provided for expression of native opinion.

29. This consideration points to the need for ensuring that the institutions which we create, whether in the field of politics or of native administration, should be so designed as to serve a dual purpose. Their primary function is to provide assistance in legislation or in the administration of justice and the expansion of local government services. But they have a second, and certainly not less important function, in providing an avenue by which native opinion can be expressed and to a certain extent "canalised". The general atmosphere of acquiescence which our rule now enjoys owes much to the opportunities provided by the Native Authority system for the expression of native opinion: it is indeed possible that this feature may ultimately prove to constitute its chief advantage over the more direct systems employed elsewhere, though the latter may at first sight seem designed to produce more rapid and non spectacular results.

Danger of native authorities stifling criticism.

30. It is in particular necessary that we should be on guard against any attempts by native authorities to stifle legitimate local opposition and criticism. When, for instance, it was found that the Chagga authorities had used their powers to prosecute persons who attended meetings of which the chiefs disapproved, (1) there was discernible in some quarters a tendency to suggest

(1) T.40.
suggest that we were supporting the native authorities throughout Tanganyika in oppressive and reactionary conduct. Nothing is so likely to discredit the native authority policy. At the time of my inquiries the question was being asked in Uganda, and not without some justification, whether the press was safe from punishment in the Ganda native courts if it engaged in critical discussion of the Ganda native government. (1)

VII.

GROWTH OF MIDDLE CLASS AND SIMILAR ELEMENTS IN AFRICAN SOCIETY.

31. Before, however, proceeding to discuss this and other aspects of our system of native administration, or the part it can play in political developments designed to give an even wider scope for native co-operation in our rule, it is necessary to make one observation. At the moment, attention appears to concentrate on two classes in native society, the chiefs or members of ruling families, and the tribemen or other common people. It is true that in Africa the majority of the people are in the lowest groups, as respects both income and education. But it seems necessary to emphasise that in many of our African territories there is a growing middle class, important economically, and capable in certain circumstances of becoming of great political significance. In the Gold Coast it is already numerous. Here, it includes cocoa brokers or traders in large numbers, of whom some are exporters; employees of the European cocoa firms, including a few Africans in managerial positions; farmers employing labour; money lenders; a large legal profession; and clergymen, school-teachers, editors, doctors, chemists, lorry and bus operators, and shopkeepers. In Eastern and Western Nigeria the middle class, though comparatively less numerous, is already of importance. In Uganda the landowning families form the nucleus of a well-to-do community which engages in cotton growing and marketing, while its younger generation enters the Church and the schoolteaching and journalistic professions, though it has not yet produced any professional lawyers. In the other dependencies of Eastern Africa there has not yet appeared any middle class of comparable size and power, though the beginnings are to be found everywhere and more especially in Kenya. Sierra Leone is perhaps the only dependency of which it is possible to say that no indigenous middle class has yet begun to appear, though here the creole population plays that role.

32. It might, however, be dangerous to assume that the rise of the middle classes in Africa will have political results similar to those which attended the development of middle class

The Middle Class and the Working Classes.

(1) U.6.
class interests in the United Kingdom. There the attainment of political power by the working masses has followed long after the political expression of middle class aspirations. There was therefore a considerable period when political life was regulated by middle class attitudes - an acquiescence in low standards of social and economic conditions for the poorer classes, a ready acceptance of property qualifications for the franchise, and a regard for order and vested interests which made political opposition stop short of measures which might cause unsettlement or social dislocation. In Africa, however, developments which in Europe occupied many generations are likely to be telescoped into decades, and while yet the middle class is beginning to be a political factor, the working classes may be acquiring a political consciousness. Urbanisation is going forward rapidly, and although as yet no working class political movement has developed, it seems probable that it will soon appear in the mines, ports and manufacturing centres.

Limitations of Native Authority policy.

33. It is admittedly one of the limitations of our present method of native administration that its institutions are best adapted to meet the needs of a society which does not yet contain a large middle class element, or come to any considerable extent under urban or industrial influences. The traditional native authorities on whom we so largely rely do not function in mining settlements or plantations, nor can they be expected to do so. There is considerable variety of practice as to the extent to which the "native" towns, that is to say, those in which there is practically no European population, are brought under their jurisdiction. In some of the large native towns of Nigeria they are at present generally successful. But this is not merely because they can command the traditional respect of the population; it is due largely to the fact that the nature of the authority which is exercised by them under traditional forms is new. The tasks undertaken by them, the sanctions upon which they rely, in many instances the personnel employed, are all new. Their value here as elsewhere lies not in the preservation of tribal organization, but in their ability to present new policies to the African in terms which are familiar to him and in a form which allows of his immediate association in the conduct of local affairs.

Traditional authorities and the Middle Class.

34. There are doubtless some who, looking at the present position in Africa, may feel that the importance of the growth of what has been described as the middle class element has been overstressed. They may hold that in very many areas the influence of tradition is so strong that the population at large will continue for many years to look for its leaders in the native authorities. If so, it would be premature to commit
commit ourselves to provisions which, though primarily intended to open a place for the middle class element in the native authority organization, will actually result in giving an artificial impulse to its influence. It would, in this view, be more to our interest to strengthen the position of the natural leaders of the people, and to assure ourselves of their full cooperation with us. The position is one on which it would be unwise to generalize. In some areas, as for example the Gold Coast Colony, the middle class has already established its influence in the native authority organizations; in Nigeria the same is true as regards the Western Province. (1) The disturbances in the Kilimanjaro district of Tanganyika illustrate the attitude which can be taken by an active and progressive tribe towards its native authorities when it believes its economic interest to be at stake. (2) In many parts of Kenya, traditional authorities have ceased to have any influence. (3) There are admittedly other areas in the dependencies where native authorities retain unimpaired their position as leaders and representatives of popular interest. But as regards future developments, experience elsewhere shows the readiness with which the general population will, when they feel their vital interests to be involved, accept the leadership of those who seem to have more ability to voice their grievances, or less hesitation in doing so, than those whom they have hitherto regarded as their natural leaders.

VIII.

THE NATIVE AUTHORITY SYSTEM.

35. In the paragraphs immediately following I shall discuss some of the conclusions which seem to emerge from the examination made in my detailed Memoranda of the working of the native authority system. But these Memoranda will also have shown that there are in all African dependencies areas in which native authorities either do not or cannot operate, and in which therefore government takes a different form than the normal use of native authorities. Any proposals for the association of Africans in the institutions of the central government must take account both of native authority areas and of areas where a different administrative system is followed.

36. Both here, and in my detailed Memoranda I have purposely avoided discussing methods of native administration in terms of "Direct" and "Indirect" rule. There is now little advantage in the use of those terms. They lack precision, since "indirect rule" is in practice applied to conditions so diverse as those of the Federated Malay

(1) Ni.13a. (2) T 41. (3) K 66
Malay States, the treaty areas of the Aden Protectorate, the State of Buganda, the Emirates of Northern Nigeria and the amorphous communities of the Eastern Provinces. "Direct rule" suggests the use of a system, such as that in force in the greater part of British India, which has no real analogy in the African dependencies. The use of these terms conveys the erroneous impression that there are two opposing systems of rule. This is not, of course, the case. All African administrations are dependent to a greater or lesser extent on the use of native authorities as agencies of local rule. The native authorities in Nigeria, Sierra Leone, the Northern Territories of the Gold Coast, Uganda, Tanganyika, Northern Rhodesia and Nyasaland, are adaptations of traditional institutions which are acceptable both to the people and to the central government as instruments for carrying out certain defined functions. In many cases, however, as for instance in the creation of Treasuries or Federal Councils or Courts, the adaptation of traditional institutions now takes a form hitherto unknown to native usage, and native authorities have functions many of which are equally foreign to former custom. In the Gold Coast Colony and Ashanti native customary institutions exercise considerable powers, but it has not so far been found possible to make full use of them on the same lines, or to the same extent as, for example, in Nigeria or Tanganyika.

Kenya.

37. In Kenya the term "native authority" is used, but "native authorities" as that term is understood elsewhere, do not exist. For the executive arm of government African headmen are employed, but while many of them are members of traditional chiefly families, their character is essentially that of appointed agents of the central government. (1) For the expression of African opinion, Kenya provides the Local Native Councils - bodies composed partly of Africans nominated by the government and partly of representatives chosen by methods which in some cases approximate to those of popular election. (2) Kenya has therefore a policy of native administration which is unique in British tropical Africa, though it has some analogy in the system adopted in Southern Rhodesia. (3) To the more zealous advocates of the cult of "Indirect Rule", every aspect of Kenya administration is suspect, and its attitude towards the use of traditional native authorities is held to be associated with the outlook of the European settlers on native policy, and to be therefore equally a subject for condemnation. But there seems to be no good ground for seeking to revive tribal institutions in Kenya. In the circumstances of the Colony, the present system of native administration has merits of its own, and it is indeed possible that certain of the methods employed could be adopted with advantage in some other parts of Africa, in which traditional institutions

(1) K.13 (2) K.26 (3) S.R.38ff. 20.
institutions are inherently weak or have proved to be inefficient. (1)

38. Even if we should desire to do so, we have not at present the means for employing a subordinate official agency, of the type of that developed in India, adequate for dealing with the executive and judicial requirements of the African population, or for the expansion of their economic and social services. We must rely on the general use, by one method or another, of the services of native authorities. In judging of the results hitherto attained by their use, or which may be expected to be attained in future, two different questions arise. It is important to know how far they have proved effective in assisting to maintain law and order, or in administering justice, or performing the functions usually assigned to local government agencies. But it is of no less importance to know how far they have acted on their own initiative and responsibility, and not merely as the mouthpiece of the district authorities; how far they furnish evidence of the growth of interest in the improvement of local conditions and capacity of Africans for managing their own affairs; and how far they represent general as apart from chiefly or other sectional interests in the native community.

IX.

THE UTILIZATION OF TRADITIONAL NATIVE AUTHORITIES.

39. The use of traditional native authorities as agencies of local rule is now, as shown in paragraph 36, so widely extended that it must necessarily occupy the chief part of our attention. Their value depends largely on the care taken in ascertaining the real seat of indigenous native authority before making the grant of those statutory powers which mark the position of a native authority as part of the machinery of our administration. There are large areas in which the seat of indigenous authority has been easily ascertainable; it has been mainly in conditions of which South Eastern Nigeria, or some of the pagan areas of its Northern Provinces present the most typical examples, that difficulty has arisen and some mistakes have occurred in the past. As remarked however in paragraph 16, the principle is everywhere now well recognized, and the investigations undertaken on the subject by the administrations have had the additional advantage of giving the local officers a greater interest and more extended knowledge of the social organization of the people. But, as Sir B. Bourdillon has pointed out, (2) adherence to tradition, valuable as it is, is only

(1) See paragraphs 45, 107 and 108. (2) N1.87.
only a means of securing acceptability of the institutions on which we place our reliance, and acceptability is the essential quality which they must possess. That is a consideration which applies not only to the initial recognition of native authorities, but to their subsequent adaptation to the more advanced requirements of modern rule. That Treasurers, Federal Councils or Group Courts are (as remarked in paragraph 36) novel to native custom, is of less practical importance than the degree to which they prove acceptable to native opinion. The changes in the constitution of native authorities which may be needed in the interests of middle class or educated opinion are not to be tested by the extent of their adherance to tradition, but by the extent to which they recognize the balance of forces which are being developed within the native authority jurisdictions. In certain villages of Eastern Uganda emphasis has been laid on the factor of acceptability in the constitution of the native authority to the point of consulting the people by a form of plebiscite. (1) The cases in which it will be possible to employ such a procedure elsewhere will be rare; but there can be no doubt of the value of making every effort to secure that the organization of a native authority should be in the form most acceptable to local opinion.

40. One of the topics most frequently discussed by those interested in the technique of native administration, is that which relates to the class of traditional authority which has been most successful in operation. In Iboland, for instance, there are rival schools advocating councils of family heads and group councils of village representatives. (2) In Tanganyika it is frequently held that federal councils of chiefs are better than single chiefs. (3) Experience in the Northern Territories of the Gold Coast is said to indicate that the best form of native authority is the confederacy of small chiefs who are the heads of family groups. (4) In Northern Nigeria there are some who go so far as to hold that the village meets or clan assemblies of the pagan areas are not only more representative, but are better adapted to the purposes of progressive administration than the more highly organized Emirates. (5) But the conclusions which emerge from such discussions cannot be of more than local application. The peoples of Africa vary widely in their political attitudes, and while some find authoritarian regimes congenial, others adhere jealously to the rights of family or clan groups. Flexibility of application is the outstanding requirement in the technique of the native authority policy.

41. Although in the early stages of administration there was a tendency to entrust power to a single chief or headman, far less

difficulty

difficulty is now felt in using councils of various kinds as native authorities. These may have no permanent presidents, as in Warri and Ibibioiland; (1) or they may meet under the presidency of a chief, as in the reorganised chiefdoms of Sierra Leone where the "tribal authorities" consist of the paramount chief with councillors "elected by the people according to native law and custom" on a basis of one councillor for every 40 houses at least. (2) In the Blantyre district of Nyasaland it has been found possible to vitalise some unsatisfactory native authorities by establishing village meetings and including representatives of these in the native authority councils. (5) As my detailed Memoranda will show, the organisation of native authorities now follows an almost infinite variety of forms, and the only standard by which their relative value can be judged, is the success with which they operate in practice.

42. It is at the same time essential that the forms in which they receive statutory recognition should reflect as closely as possible the real character of the organization, particularly in respect of the position of the council. This has in the great majority of cases an essential part in the authority exercised by a chiefdom. There is in this matter a considerable variety of official practice. In Nyasaland, for instance, the practice is to gazette single chiefs as native authorities, but to pay regard to the councils which are invariably associated with them. (4) In Northern Rhodesia on the other hand the gazetted native authorities are chiefs-in-council, but in some instances at any rate administrative officers have been accustomed to deal with the chief without taking his council into account. (6) In Tanganyika there are cases in which chiefs have been gazetted alone, without mention of elders or other assistants; in others the gazette notice confers authority on the chief "and his elders". (6) The memorandum on Nigeria calls attention to the importance which this point assumes in regard to the Yorubaland states. (7) It is of interest here to note the practice in Sierra Leone, where the legal definition of "tribal authorities" is made a reality by the practice of district commissioners in keeping lists of the council members and ensuring that they are properly summoned and consulted. (9) It is also of great importance that administrative officers should in their personal contact with native authorities have regard to the traditional position occupied by the council or elders. It is no doubt a temptation, especially in matters

(9) S. 24.
matters involving some urgency, to follow the easy course of dealing with the chief alone. But apart from the offence which this causes to native custom, it is not possible to secure a true view of native opinion on any proposed measure unless the council or the elders are brought freely into consultation, and there is moreover the risk that the native authority may seek to avoid taking its proper share of responsibility on the ground that it is "working under Government orders".

43. A further point of considerable importance arises in connection with the composition of the native authority councils. At various places in the detailed Memoranda, attention is drawn to the necessity of securing that a place should be found in the councils for the educated and other more progressive elements in the community, such as those to whom reference is made in paragraph 31 above. It has, again, been pointed out that there are areas in which it is necessary that any important elements of stranger natives should be represented on the council of any native authority to which they are subject. (1) In the majority of cases, the composition of the native authority councils is now determined by native custom and usage. But men who at an earlier stage had sufficient position in their own society to voice its views or to exercise influence over the personal actions of the chief, are not necessarily the most suitable in the conditions with which the native authorities now have to deal. It is, for instance, common for age to be the main qualification of the elders, and experience shows how serious a disqualification this imposes where advice is required on new situations. There is, again, a danger that the elder may be out of touch with the younger men, of whom increasing numbers have some education, and many of whom have experience gained in wage earning in industrial areas and in other European enterprises.

44. In some areas, as for instance in the Yorubaland states, some measure of association of new or elements in the work of the Councils is in process of being secured by the pressure applied by political associations. (2) The Nigerian Government has itself given countenance to the association of the Youth Movement in the activities of the Native Councils in such places as Ijebu-Ode, (3) and has arranged that the Sabon Garis of the North should have their own representative boards with an approach to the Emir. (4) The Uganda Government has welcomed a resolution by the Lukiko of Buganda to summon to its meetings an unofficial representative from each county. (5) The law which regulates the constitution of Tribal Authorities in Sierra Leone, to which reference is made in paragraph 42, seems designed

designed to render it possible for district authorities to influence the composition of the tribal councils. Again, in Eastern Uganda the government appears to exercise a direct initiative in the formation of representative councils. (1)

45. For the most part, however, it does not appear to be the policy of the administrations to attempt any formal intervention in the manner in which the traditional councils are composed. Intervention in the interests of the educated or similar elements may of course have its own dangers. An educated or trading section which can obtain a controlling position in a native council may in time constitute an oligarchy which will not be less harmful to the interests of the general community than the dominance of a chiefly family or of conservative elders. It would be equally unfortunate if the direct intervention of government were to result in the creation of artificial bodies which commanded no support in the social organization. But if this is an argument for the exercise of caution, it is not a reason for neglecting the matter until an insistent demand for representation expresses itself. The Kenya Government has given an example, in the institution of its system of Native Councils, of methods by which a channel can be provided for the expression of different types of African opinion. (2) It may be added here, that in certain of the dependencies there is already some movement to secure the expression of the women's point of view in the native authority councils. Thus the women in Ena, have complained that the native authorities' measures to augment local revenues take the form of levies upon activities carried out by women. (3) The Native Advisory Council at Kitwe has suggested the inclusion of a woman member, (4) and it is of interest to note that the Kikuyu Provincial Association (5) has women delegates at its conferences.

46. Official references to this matter frequently express the conviction that the existing structure of one type or another of traditional native authority is adequate to provide machinery for the expression of any popular discontent. That, however, is not sufficient. It is necessary to distinguish between the provision of machinery for the expression of discontent and the development of opportunities for the positive association of the population in the work of local government. Modern conditions make it

Recommendation regarding Councils.

Need for native cooperation of people.

it necessary to put in force many measures which, unless they have the active co-operation of the people, are liable to be represented as oppressive and thus to provoke opposition, and the progress of the type of development and welfare work which is now an increasing preoccupation of the colonial governments will be seriously hampered unless we can obtain positive co-operation of this nature. This must, if possible, be secured to the point at which it is possible for the government to entrust to local authorities the responsibility for measures which may possibly incur a certain amount of unpopularity. It would not serve the cause of African development if the Administration, from a desire to strengthen the position of the native authorities, allowed them to distribute the benefits attendant on an expansion of the social or economic services, while itself accepting any odium which may attach to the measures which this may involve.

Recommendation regarding explanation of policy.

47. It would be some advantage if steps could be taken to ensure a more correct appreciation in England of the structure and character of the traditional native authorities. The controversies provoked some years ago by zealous partisans of "Indirect Rule" have had an unfortunate legacy. They have provided arguments for those who affect to believe that our present policy entrusts an undue measure of power to reactionary or self-interested chiefs. Such an impression constitutes a grave disadvantage at a time when almost the only test which the public seems ready to apply to the merits of any measure is to question whether it is, or is not, "democratic". I have endeavoured, at various places in my memoranda, to examine the extent to which the operation of the native authority system has affected the personal powers exercised by chiefs. (1) That is nowhere an easy matter to determine, since even within a single territory there must always have been a great variety of practice in this respect, nor is it at all easy to ascertain what precise measure of authority a particular chief exercised before the advent of our rule. But there are certain general facts. The normal African conception of the chiefship is not that of an autocracy. The chief has always been, in greater or less degree, dependent on the assent of his councillors. There are instances, as in the Gold Coast, where constitutional devices existed, and are still utilized, for disposing with chiefs who attempted to act independently of their councillors. (2) The actual rulers, though in nearly every case representatives of "chieftly" families, were ordinarily chosen by a process of selection; and there are some instances in which this had some of the character of a genuine popular choice.

(1) Nt. 5, T. 14, My. 16. (2) G. 57.
The chief normally had no executive of his own; executive action, so far as it was exercised, lay with village authorities, whose appointment was regulated by custom and who were neither paid nor controlled by the chief or in some instances (as in West Africa) with clubs or societies or other customary associations, or guilds of workers. All this is not democratic in the constitutional sense, but it is not autocracy. The Muslim emirates, and the states controlled by immigrant ruling families, such as the Hima rulers of Buganda, constituted to some extent a departure from this general rule. In these cases state organization had some of the character of medieval feudalism, though even here the gradual fusion of the immigrant with the indigenous peoples tended to produce a gradual approach to the institutions common among the latter. It may in the circumstances be true to say, that in attempting to estimate the character of the traditional authorities whom we utilize as agencies of local rule, attention should now concentrate rather on the composition of the native councils, and the powers they can exercise in practice, than on the personality of the chiefs. It is this fact which gives particular relevance to the observations contained in paragraphs 42 to 45 on the constitution and functions of these councils.

Whether or not it is politic to rely so extensively on the traditional native authorities as an agency in the development of our African dependencies, can hardly be decided on a priori grounds. The decision must depend on the result of practical experience. The alternative of employing a large establishment of trained African officials is not, as I have already remarked, at present practicable, and it could only become possible after a protracted period, though I have found occasion in various places to suggest experiments on a limited scale in the use of this type of administration. A more immediate alternative is the adoption of a procedure analogous to that of Kenya. There may be certain areas in which this might prove a solution for the difficulties which now present themselves, but the experiences so far acquired of the use of traditional authorities generally do not by any means provide a reason for suggesting a widespread change of this character.

(1) See para. 145. (2) Para. 39.
50. A number of studies have been made, both by sociological enquirers and others, of the changes in the structure of native authorities which have resulted from their adoption as part of the machinery of government. It is to be hoped that these studies will be continued, since they may elicit much that must be of practical service to the Administration. Since varying opinions have been expressed as to the value which enquiries undertaken by sociologists may have as a guide to policy, it may not be out of place here to add some observations on the subject. As a leading anthropologist has observed, "the business of the anthropologist is not the solution of problems but an analysis of the situation in which the problems arise." (1) The mere analysis of changes in structure or even in social organization is not necessarily of service to us, but I have already referred in paragraph 39 to the value of the assistance rendered by sociological enquiries in areas where the actual seat of traditional native authority has been in doubt. There may again be considerable value in enquiries directed to ascertaining the manner in which native institutions, and especially those which we utilize as agencies of local rule, are adjusting themselves to the discharge of functions which our procedure of native administration has placed on them. The value of these enquiries will be enhanced, if they are conducted in close touch with those who are acquainted with the technique of administration and bear the responsibilities of it.

Separation of functions.

51. There is in particular one feature in the evolution of the organization of traditional native authorities which demands special study. In the less developed native authorities, the making of rules the adjudication of disputes and the punishment of offences are carried out by the same persons. This corresponds with the traditional system common in early societies, which makes no such marked distinction between legislative, executive and judicial functions as is usual in modern conditions. The incorporation of traditional institutions into the machinery of government, however, at once sets on foot a process of differentiation. The traditional chief, or council, is entrusted by law with certain powers when acting as a court, with powers of a different character when passing local by-laws, and with yet other powers for the maintenance of order or the carrying out of executive measures. Though the differences between the various functions have in many parts not yet been fully appreciated by the native authorities, every development tends to lay emphasis upon the differentiation of functions, and the stage has now been reached in many parts at which it is necessary to appoint different people to discharge the various functions of the native

native authority. The introduction of representative elements into the councils, of which instances have been noted above, (1) is tending to give the councils the character of local rule-making authorities, to leave executive functions in the hands of certain salaried members of the native authority, and to necessitate new arrangements for providing the personnel of the courts.

52. It is in the development of executive functions that the majority of traditional authorities have experienced the greatest difficulty in adjusting themselves to the demands made on them. In Buganda and the Nigerian emirates the exercise of executive authority was well understood before the European occupation. But in general, the customary organization of African society did not make provision for the issuing of orders or the enforcement of sanctions other than those of magic or of tribal opinion. Most of the native authorities, in the exercise of their executive functions, are therefore engaged in work of which they have had no previous experience. It is not surprising that in this field a good deal of experiment has been necessary to enable them, with the advice of administrative officers, to evolve machinery capable of exercising local police functions, or of maintaining and controlling staff for the upkeep of roads, the inspection of crops, the regulation of markets, and so forth. Buganda remains outstanding with its Council of Ministers (2) and its county and gombolola chiefs, who have the character of an official cadre rather than of tribal or clan heads. Many of the district heads in the emirates of Northern Nigeria, and Fulani heamen in charge of pagan areas have shown a noticeable executive capacity, (3) About other areas, it is unsafe to express any general opinion, all the more because it is difficult to obtain any objective view of the qualities shown by traditional native authorities. Some of the views officially expressed about them show the influence of the characteristically British desire to champion the merits of the unsophisticated against those of the sophisticated African. Again, a mistaken sentiment of loyalty to the policy of "Indirect Rule" has undoubtedly led many to show an undue regard to the reputation of traditional native authorities. It is at all events unusual to find in Nigeria or Tanganyika the same frankness in exposing the deficiencies of individual chiefs as characterizes the official reports of Nyasaland, though it is only just to recall that

(1) Para. 44. (2) U.5. (3) Ni. 52.
that Sir Donald Cameron had on more than one occasion found it necessary to warn his officers against an attitude of unnecessary complaisance towards their defects. On the other hand the attitude taken towards native authorities in dependencies where there is a considerable European settlement is inevitably more critical than that encountered elsewhere.

53. Though the list of native authorities who have given evidence of any marked executive capacity is by no means a long one, there is a general disposition to feel that much improvement has already been shown, and that we are justified in looking forward to a progressive advance following the emergence of a younger generation of chiefs and elders. In many cases also, the structure of the authorities is being adapted to meet the needs of the executive responsibilities now imposed on them. Thus among relatively undeveloped native authorities in the Northern Territories of the Gold Coast, arrangements have been made under which a number of members of councils are charged with executive duties of a departmental character, one taking roads, another schools, a third agricultural services, and so on.(1) Executive committees have been formed by a number of native authorities, as for instance by that of Usambara, (2) by many of the Ibibio authorities, (3) and in the native town of Calabar. (4) Indeed, in Nigeria there are some instances in which executive committees have been gazetted as native authorities. (5)

In Bukuoland many chiefs, although up to 15 years ago their character was that of priestly rainmakers, have shown themselves capable of administering local services with a noticeable sense of public duty. In this area it has been found possible to provide for the discharge of executive functions in chieftams where the leadership is weak by associating with the old chief a younger member of his family as a salaried "adviser". (6)

54. It may be noted that in developing the executive function of native authorities, some consideration will need to be given to the question of providing a suitable method for the recording of their executive orders. In Tanganyika the validity of a verbal order has already been challenged in court. (7)

55. In some territories, as for instance in Northern Rhodesia and Nyasaland, apprehensions were at one time expressed lest the collection of taxes by native authorities on behalf of the government should detract from the traditional respect shown to them. Practical experience, however, in Nigeria and Uganda, in Tanganyika and

Sierra

(1) G.12. (2) T.31. (3) Ni.25. (4) Ni.36.


30.
Sierra Leone, shows that this fear was not well grounded. Both in Northern Rhodesia (1) and Nyasaland, (2) the duty of collecting tax has now been handed over to certain of the native authorities, and the experiment has met with acknowledged success.

56. It will be appreciated, that the experience so far gained of the exercise of executive functions by traditional native authorities is, so far as the majority is concerned, confined to the conduct of the somewhat rudimentary functions which it has so far been possible to entrust to them. It has not been difficult to secure their co-operation in these activities, but they have with rare exceptions shown little ability to comprehend the financial background which lies behind them, such as the preparation of estimates or the maintenance of accounts. That is not a difficulty which now occurs in the more highly organized units, such as Buganda or the larger emirates or the Yoruba states of Nigeria, but in the great mass of native authorities there are only a very limited number who can prepare their own budgets, even with substantial help from the district staff, while in the great majority of cases this task falls entirely on the administrative officers. There is, however, in such cases a preliminary discussion with the native authorities concerned, and this is said to have considerable value. There is evidence that some officers have taken great pains to explain these processes to the native authorities. In Northern Rhodesia it is said that they have had recourse to using heaps of stones to represent a year's revenue, so that the chiefs and councillors may themselves divide the stones into smaller heaps representing the objects on which they propose to spend their resources. (3)

57. A device frequently employed, however, is that of the finance committee. This may consist of those councillors who are literate and money-minded, or it may be composed partly or wholly of men who, not being themselves full members of the native authority, are associated with it for this purpose. The Ngwa clan council has an estimates committee which is able to prepare the native authority budget, and the Southern Auka authorities have finance committees consisting of about seven members. (4) Several of the Kenyan Local Native Councils have finance sub-committees to assist the District Commissioner in the preparation of the estimates. (5) The Buganda finance committee contains two unofficial members.

(5) K.34.
members.

58. The embarrassment caused by the lack of financial competency among the native authorities has led in some areas to a development which seems to be of an undesirable character. In the Kigali district of Uganda, (3) in the Mwanza district of Tanganyika, (4) in the Afikpo Division of Eastern Nigeria (5) and in certain districts of other territories, it is considered that native authorities are so incapable in financial matters that a central treasury is held on their behalf by the District Commissioner. In adopting this course, the local administration has in effect abandoned the effort to make the native authority policy effective by inculcating a sense of responsibility for local services, while no satisfactory alternative policy has been substituted. In such places the alternative would appear to lie between reviving native treasuries, with the acceptance of the low standards and inefficiency which this may imply during a long educative period, and reorganizing the district on lines such as those adopted in the Coastal area of Tanganyika, noted in paragraph 109 below.

59. As shown in my detailed memoranda, the greater part of the revenues of the native authority treasuries (save in the exceptional case of Buganda and the Northern Territories of the Gold Coast, and to some extent in Sierra Leone) is supplied by the rebate on the Government tax, or judicial fees, but there are also receipts of some importance from local services, such as lorry park fees, market fees, ferry tolls and the like. In a number of instances, however, the services with which these receipts are connected are not handed over to the native authorities. It is important to impress on them the relationship between rights and duties, and it seems advisable therefore that when minor revenues are handed over to the native authorities, responsibility for the services connected with them should be at the same time entrusted to them. (6)

60. The difficulty occasioned by the lack of financial competency of native authorities is not limited to the preparation of budgets. It is necessary for district authorities to control closely the course of expenditure, and in the majority of cases their counter-signature is required on every cheque drawn. In some of the less efficient treasuries, the accounts have to be maintained in the district office. The method of auditing these accounts

(5) Ni.27. (6) G.151.
accounts has occupied much attention and is still under discussion in some territories. In Northern Nigeria and in Buganda this duty is carried out by the Colonial Audit Department. In parts of Nigeria a firm of chartered accountants is employed for the purpose. Tanganyika and Sierra Leone have entrusted the duty to the administrative officers who advise and control the native authorities. All these methods are open to objection of one kind or another. The professional auditor is liable to exact a standard or a procedure which it is not reasonable to expect of the native authorities in their present stage of development, thereby hindering the relaxation of day-to-day control of detail by the district commissioner. A private firm can scarcely be required to go beyond its primary duty of examining accounts by accepting the further task of educating the native authority accountants, though this function could be most usefully undertaken by the persons who examine the accounts. Administrative officers, on the other hand, may lack experience of audit methods and in any case are often so directly concerned with the day-to-day control of native treasury expenditure that their audit cannot be regarded as independent.

61. It would be an advantage if the Governments could constitute a small service of Native Treasury Auditors, composed of officers who have, or are in a position to acquire, a knowledge of the actual working of the native treasuries and of their needs. Experience in India has shown that the "auditor" can sometimes be of the greatest assistance to those engaged in managing the affairs of newly established local bodies. This result, however, is only to be achieved by an officer whose duties are not limited to audit, but who is able to give guidance in the preparation of accounts. It would be a further advantage if a manual were issued for the guidance of these officers, explaining the points in audit to which the administration attaches most importance and the degree to which the ordinary procedure of account can be safely relaxed.

62. I have in the detailed memoranda given wherever possible some analysis of the principal objects on which expenditure is incurred by the native authorities. It is inevitable that in the smaller organizations, a high proportion should be absorbed in personal emoluments. It is, however, only in a few instances that there are any grounds

(1) U. 9 and 19, Ny. 25, S. 35, T. 28.
grounds for suggesting that the chiefs are overpaid, and in some such cases, steps have been taken to reduce the remuneration on the grounds of existing incumbents. (1) The scale of remuneration is very unequal, and in some cases, as for instance in Nyasaland, it has proved necessary to raise the level of salaries. (2) Particular difficulties have been experienced where chiefs are paid less than the salary required to secure an efficient clerk for the native authority. See perhaps in the Gold Coast, the chiefs no longer have the benefit of the sources of revenue formerly available to them, and there is a very general agreement that they now receive little in the shape either of tribute or personal services. But custom still imposes on them many obligations, and it seems the general experience that where relatively liberal remuneration has been given to them, they have maintained their position with distinction and a corresponding enhancement of the influence they are able to exercise.

Training of Native Authorities.

63. The problem of providing some training for native authorities and for their heirs has engaged the attention of several African governments. At Bo in Sierra Leone and at Tabora in Tanganyika schools were established for the sons of chiefs; but African customs regulating the succession to chiefdoms rarely provide for the succession of a chief's son, and frequently leave the succession open as between numerous candidates until the occasion arrives for making a choice among them. Neither Bo nor Tabora are any longer regarded as schools for the sons or heirs of chiefs. Nyasaland and Northern Rhodesia have made a different approach to the problem by holding courses for native authorities at which the chiefs attend, each bringing a wife, for four months in Nyasaland (3) or six months in Northern Rhodesia. (4) The Nyasaland course is well established and has given excellent results, and there is no reason why the Northern Rhodesia course should not be equally successful.

Role of Administrative Officers.

64. It is obvious that the efficiency of the traditional native authorities as executive agencies, must depend largely on the stimulus they receive from administrative officers, or the supervision exercised by them. The ideal at which the system aims, is that the normal function of the officer should be that of adviser. (5) It is an ideal to which we may be said to have made some approach in the case of Buganda; but Buganda stands in an exceptional position. The intention of the Uganda government to withdraw the district commissioners in Buganda from their existing headquarters, and to give them a more definitely "political"

(5) See para. 118 below.

34.
"political" or advisory capacity is a welcome step, and is justified by the degree of competence to which Buganda has attained in the management of its own affairs. That the Nigerian Residents in the larger emirates or in the Western states have been able to achieve so much without the appearance of direct intervention or control is a tribute alike to them and to the good sense of the native authorities. But it is well recognized that in these cases administrative officers have the means in the last resort of making their advice effective, and the native authorities have been prepared to appreciate this fact. It is mainly because the administrative officer seems to have no comparable legal power in the Gold Coast Colony, that the introduction of the normal system of native authority administration has not become feasible, with results that are far from beneficial to the population at large. (1)

65. But an attitude towards the native authorities which is suitable to Buganda or the larger states in Nigeria is clearly not at present practicable, and at the best cannot for many years be practicable in the great majority of the other areas under the native authority system. Little is gained by affecting to believe that "advice" is in such cases distinguishable from command. That does not mean to say that there is not still a considerable scope for initiative or individual responsibility left open to native authorities, since it is clear that the administrative officer cannot interest himself in all the details of native authority activity over large areas with a scattered population. The greater the field for such initiative the higher will be the educative value of the system. It is in particular advisable that the native authorities should be given every encouragement to initiate their own proposals for the exercise of their rule making powers. I shall have occasion to recur to this point in a subsequent paragraph. (2)

X.

(1) G.138. (2) Para.118.
THE NATIVE AUTHORITY COURTS.

66. Though the majority of the traditional native authorities may have some difficulty in the discharge of executive functions, and of the financial obligations attached to them, they have had far less difficulty in regard to their judicial responsibilities. There is no African tribe which did not have tribunals of some nature for the settlement of disputes, and the task of adapting them to the duties now imposed on them has been rendered all the easier by the fact that the structure of the tribunals and their procedure for hearing and deciding issues still follows the forms dictated by tradition. The change made by the recognition of customary tribunals as Native Authority Courts is little felt on the civil side; it is somewhat more apparent on the criminal side, since we have introduced - or are endeavouring to introduce - to the African the conception of the "public" offence, and the punishment of private wrongs by fine or imprisonment, instead of by compensation or other forms of arbitral adjustment. Taking the dependencies as a whole, the Native Authority Courts now deal with the vast majority of all civil issues arising between natives, and with the majority of the minor criminal issues. In some territories they deal also with a considerable number of offences arising under statutory Ordinances, either in their original form, or as adopted by native authorities under their rule making powers. As a consequence, litigation for which they are responsible very greatly exceeds in volume that undertaken by the Government Courts. I use this term as a convenient description of the Supreme or High Courts and the magistrates judicially subordinate to them.

67. The quality of the justice administered by Native Courts must be judged rather by the degree of satisfaction which it conveys to the persons more immediately affected, than by the standards applicable to more fully developed legal systems. Though the native courts have their critics, especially among professional lawyers, (1) yet there is a very general agreement that Africans at large are well satisfied with the justice they receive in them. It cannot be pretended that they escape charges of corruption, (2) though these are less frequent than might be expected, and are often limited to allegations of "treating" by one or both parties to a case, or statements that the members of the courts are open to solicitation. There is a considerable safeguard in the publicity attending their/}

(1) K. 51, 348, Ni 18.
(2) K Ni 18, Ni 32, Ny 18, NR 43.

36.
their proceedings, and in the fact that the public present frequently takes its part in the discussions which lead up to the decisions announced by the judges. It is only in the Gold Coast Colony that the government of a dependency has found reason to characterise the native tribunals generally as corrupt. (1)

68. Part of the satisfaction felt by Africans in the native courts is doubtless due to the fact that their procedure appeals to them as at once more familiar, and better suited to their circumstances, than that of the government courts. There is a further reason for this sentiment. Though the powers of the tribunals are regulated by Ordinance and their work is supervised by administrative officers, yet the majority of Africans clearly feel that their courts represent a purely native sphere in which the African manages his own affairs. Perhaps the best proof of the general satisfaction conveyed by the working of the courts is afforded by the fact that in some areas where there is an optional resort to the government or the native courts, the statistics of litigation show a clear preference for the latter. (2)

69. The general appreciation of the native courts shown by Africans is a great source of strength to the native authority system as a whole. Anything which causes a loss of confidence in the courts would seriously impair the position of the native authorities in the public view, and the prestige of the courts is therefore of political importance to the Government. Questions relating to the composition and powers of the courts, the scope of their jurisdiction, and the provision of revisory and appellate procedure, must have an equal claim on the attention of Government with questions relating to the executive or rule making functions of the native authorities.

70. The composition of the courts presents problems of particular importance. The courts are constituted by the terms either of the relevant ordinance or of warrants granted under the ordinance, those being issued in some dependencies by the Governor and in others by the Provincial Commissioner. Whatever the method employed, it is the general practice to provide that the court shall consist of a number of persons, as for example, the chief and his councillors. This is the position even in certain places where gazettment as a native authority is accorded to a chief alone, or where chiefs have been allowed to act alone notwithstanding contrary provisions in the law. (3) If there are still cases in which a chief, in view of the terms of the instrument constituting the court, could legally exercise jurisdiction without the assistance of councillors or assessors, it is desirable that the

instrument/

(1) G 74, 56.
(2) Ni 60, NR 45: see also U 11.
(3) NR. 43.

37.
instrument should be so amended as to provide for the inclusion of elders or councillors in the Court.

71. It is common to find that ordinances or court warrants, where directing that the court shall consist of a chief and his councillors, do not either prescribe their number nor lay down any rule for determining the manner in which they shall be selected. (1) Often a phrase is used such as "councillors in accordance with native custom." It is desirable that the government should have means of ensuring that the actual personnel of the courts should be such as is fitted to maintain the efficiency and prestige of the native court system. (2) Two dangers have to be foreseen. On the one hand, educated young chiefs may tend to associate with themselves councillors similarly minded and to leave out of the courts all the old men in whom the more primitive elements have confidence as the repositories of knowledge of native law and custom. On the other hand, where the elders dominate the tribunal they may fail, unless reinforced by younger men or men of more general experience, acquired as the result of education or trading, to understand the nature of many issues which now have to be determined. It is apparent therefore that it will not be enough to lay down that the court must be constituted according to native custom; administrative officers should be in a position to influence the actual composition of the courts, in order to ensure that the most suitable local elements are represented on them. As observed in paragraph 6, native custom is far from being inflexible or unresponsive to change, and there is no reason to suppose that it will fail to accommodate itself to a requirement of this character.

72. Attempts to improve the native courts have raised in many parts the problem of amalgamating small courts, or of splitting up courts which cover too large an area and are therefore congested with business and inaccessible to the remoter villages. In Sierra Leone the abolition of section courts, and the concentration of judicial business in the "reorganized" chiefdom courts, has proved popular and successful. (3) In Eastern Nigeria the amalgamation of the courts of clan or group councils has also met with success; the process has been allowed to follow local needs in each case, with complete flexibility of application, so that every amalgamation scheme possesses a character of its own. Some are complete fusions of courts, in others the amalgamated court hears appeal cases only, while in yet other cases the amalgamated court has extended powers of first instance while the constituent courts remain in being for the trial of petty cases. It has been found in some parts of Eastern Nigeria that the amalgamation of courts is acceptable to native authorities which are not

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(1) Ny.21, T.19.
(2) T.74.
(3) S.28.
prepared to agree to amalgamation for the exercise of other functions. (1) In Sukumaland (Tanganyika), the reverse of the problem has been encountered, and the over-centralisation of legal business in the courts of big chiefs has been relieved by the devolution of business to new courts presided over by sub-chiefs, appointed for the purpose. (2)

75. In other cases the working of the courts has suffered from the fact that the number of persons entitled under native custom to attend the court (and incidentally to share in the distribution of judicial fees) has been far too great. In these cases the device of attendance by roster has been widely adopted, and with good results. (3) Equally successful has been the device of constituting native appeal courts by the attendance of members of the subordinate native courts on a roster. (4) The restriction of the number of tribunal members is among the reforms which are necessary in the Gold Coast Colony, and the employment of the roster system may afford a solution. (5)

74. In the course of my inquiries I encountered the expression of a view that the payment of native court members, apart from such salaries as they may receive as chiefs, headmen, councillors or the like, is contrary to "the principles of indirect rule." In fact, however, the payment of sitting fees or salaries to native court members is widely practised, and it seems desirable that it should be encouraged. (6) Ideally, the remuneration should be sufficient to remove any grounds for the view universally accepted in primitive society, that native court members must accept presents from litigants (if only in the form of refreshment), in order to compensate them for the time which they devote to their duties. It should be adequate also to attract to the service of the courts the better type of progressive African, (7) and to secure a court in which the clerk is not in a position in which he can exercise undue influence over the court members by reason of the prestige deriving from superior pay.

75. The questions of the composition of courts, Specialised and of the payment of members, are bound up with that of assisting the development of a specialised judiciary. The separation of judicial functions from other types of authority, such as leadership in war, was a feature of native custom in certain parts of Africa - sometimes because the strong man in his pride was the war-leader while the old man in his wisdom was the arbitrator. The Nigrarian Emirates had adopted, in the appointment of Alkalis, the institution of a professional judiciary common in Muslim state organization, and the Kingdom of Buganda had also a judiciary separate from the executive. (8) Some other native authorities have seen the need for a specialized judiciary; for instance:

instance, Abeokuta has a court presided over by an African barrister. In the majority of native authorities, however, the personnel of the court is not different from that of the authority acting in other capacities. The African practice does not differ in this respect from that of Europe at an earlier stage of our own civilization, and the fact that in the dependencies our administrative officers normally combine magisterial and executive functions must reduce in the view of Africans the force of any argument we may advance for the need of their separation in the Native Authority organization. Moreover, there must be many native authority areas in which it would be difficult to find competent and acceptable judges outside the ranks of those who are already discharging the duties of councillors. The movement towards differentiation of functions to which reference has been made in paragraph 51 above may lead in time to some greater measure of separation than is at present feasible, but the progress in this direction must inevitably be slow, and it is not prudent to attempt to hurry it.

76. The most fruitful line of development which presents itself at the moment, is to offer encouragement to the appointment of presiding officers with special qualities. It may in some instances be found that the chief is willing to relinquish the duty of presiding to a vice-president such as a "chiefdom speaker" of West Africa, retaining for himself the titular presidency with the prestige which it carries. This has occurred in some tribal authorities of Sierra Leone, where, it may be noted, the government has taken (but not so far used) powers to appoint as presidents of the courts persons who are not chiefs. There is no doubt also that much would be gained by the creation of a body of trained court clerks. It may be noted that classes for training court clerks have now been started in various places in the Gold Coast Colony.

77. I have described in paragraph 66 the general scope of the jurisdiction of Native Courts in criminal issues. Only in Nigeria does the law provide that the warrant of a Native Court may confer on it full powers in all criminal cases. Seventeen courts have been given these powers, but subject to the proviso that no sentence of death may be carried out until it has been confirmed by the Governor. In Sierra Leone the native courts are not authorized to try murder, manslaughter, rape, pretended witchcraft, slave dealing, cannibalism, robbery with violence, grievous bodily harm, offences relating to unlawful societies such as the Human Leopard Society, cases arising out of tribal and faction fights, and other offences of a similar character. In Northern Rhodesia

homicide

(1) N.18. (2) T.45. (3) S.28.
(5) S.30.
homicide, witchcraft and cases involving Government
servants are excluded from the jurisdiction of
native courts, but they can try cases of arson, rape
and perjury. (1) In Kenya the native tribunals
exercise such jurisdiction as is defined in a
warrant granted by the Provincial Commissioner, but
it is not the practice to grant them criminal
jurisdiction extending beyond petty offences. (2)
In Uganda the criminal cases withheld from the
jurisdiction of native courts, as set out in the
court warrants, vary in accordance with the class
of court concerned, but in addition the law
reserves for the British courts all cases of
homicide. (3) In Tanganyika and Nyasaland the
criminal powers of native courts are similarly
determined by the court warrants, but may not
extend to cases of homicide, or to offences which
are punishable under any law with death or imprison-
ment for life. (4) The nature of the cases which
are in practice entrusted to native courts in
Nyasaland under the terms of the court warrants may
be judged from the fact that the maximum powers of
punishment conferred have been the award of a fine
of £5, or a term of imprisonment of 6 months or a
whipping of 12 strokes. (5)

78. In the Gold Coast Colony the powers of
the tribunals are defined by an Ordinance (6) under
the terms of which they may not try cases of homicide,
arson, rape, assault causing grievous bodily harm, or
robbery; though, in contrast to those Colonies where
witchcraft cases are withheld from the native courts, they
try the offence of "putting any person in
fetish". In Ashanti (7) and the Northern Territories
of the Gold Coast the highest grade of native courts
may try only such criminal offences as may
appropriately be punished by a fine not exceeding
£50, or a sentence of imprisonment not exceeding
6 months. (8)

79. There is therefore great diversity of
practice in regard to the extent of the criminal
jurisdiction entrusted to the native courts. There
is clearly no case for uniformity, since conditions
vary very widely. Though adjustments might with
advantage be carried out in some territories, (9) it is
of greater importance that the governments should
make full use of the warrant procedure in order to
extend the powers of individual courts which show
themselves to be competent, and to reduce the powers
of those of which the working is unsatisfactory.
Where the warrant procedure is not in force, the law
might with advantage be amended in order to provide
for its adoption.

80. The

(1) K.A. 41. (2) K. 63. (3) U. 10 & Ord. No. 3 of 1940 sec. 10.
(6) Cap. 76 sec. 52. (7) Cap. 60 sec. 7. (8) 0. 13.
(9) T. 66.
Powers under Ordinances.

80. The native courts in many territories have power to punish offences against certain specified ordinances, of which those dealing with health, improved methods of cultivation or forests are most typical. The conferral of such powers on native courts requires caution. Indeed, it may legitimately be asked whether this step should be taken save where the members of the court are able to refer directly, either in original or translation, to the law which they are empowered to administer.

A partial solution to this difficulty has been found in the use of native authority bye-laws to re-enact such parts of the territory's ordinances as the native courts are to enforce. But this device again needs to be exercised with caution, since it lends itself to the automatic enactment by native authorities of bye-laws "by order of the government"—a procedure which must be damaging to the initiative of the native authority and which must tend to reduce its value as a means of expressing local opinion. Where, however, the court is trying offences created by local bye-laws which have the genuine support of the native authority, even when they are the result of a government suggestion, there can be less objection to the use of its powers for enforcing them.

Civil jurisdiction.

41. In civil issues the provisions of the law or the warrants issued under it are normally limited to prescribing the value of the subject matter of the suit up to which the court has jurisdiction. The result, as already noted, is to give the native courts jurisdiction over the great bulk of civil litigation in the dependencies. It is obviously of advantage to make the fullest use of the native courts to deal with those issues in which the decision must necessarily follow the prescriptions of native law and custom. The range of such cases is wide, since it includes not only matters relating to succession, land tenure, marriage, divorce, and tutelage, but a variety of matters which in modern procedure might fall under the criminal law, but are in African practice treated as civil issues. (1) In dealing with all these issues the local variation of law is necessarily very wide, since African society has not, as a rule, yet reached the stage when the development of larger cultural units has had its reaction in the gradual assimilation of local custom. Even in India, where the process has proceeded far, mainly under religious influences, the courts are still obliged to recognize a great variety of purely local custom. If any greater uniformity is to be attained in this direction, it must follow the natural evolution of a more uniform custom; our only interest is to see that an unduly conservative composition of the courts, or the establishment of case law by administrative officers in the exercise of appellate or revisory powers, does not place an artificial check on this process./

(1) See below, paragraph 99.

42.
process. There is, however, now emerging a class of issue in which local variation in legal treatment is not only unnecessary, but likely to be detrimental to the economic progress of native society. It is clearly necessary to make provision for the building up of some simple, but more or less uniform procedure of commercial law. I shall deal more fully with this subject in a subsequent paragraph. (1)

82. The trial by the native courts of matrimonial causes presents issues of a special character. In those parts where the native courts have retained most completely the traditional character, the disposal of matrimonial causes is commonly the heaviest part of their work. The courts may be said to have acquired special skill in the handling of such cases, and the interest of the public in the native court system is stimulated by the human interest which arises in connection with issues affecting divorce, bride-wealth, custody of children, and so forth. While matrimonial causes arising from marriages under native custom are everywhere dealt with by the native courts ordinances have been passed in Nigeria, Tanganyika, (2) the Gold Coast, (3) Uganda, (4) Nyasaland, (5) Sierra Leone, (6) and Kenya (7) which to provide for marriages by Christian rites between natives, and causes arising from such marriages are reserved for the British courts. The results appear to have been widely different in different territories. In Nigeria, Tanganyika, and the Gold Coast no evidence was offered of inconvenience caused on this account. In the Buganda state, where Christian marriages have become general, it seems that litigation on matrimonial causes has practically ceased. In Nyasaland, where also Christian marriages have become common, the experience has been different. The native courts take divorce cases from parties who have been married by Christian rites, on the assumption (not justified in law) that the validity of the marriage depends on the performance of certain customary ceremonies. (6) In the neighbouring territory of Northern Rhodesia there is no ordinance regarding native Christian marriages and the position is therefore that native Christians may find it necessary to perform customary ceremonies in order to secure recognition for the marriage by the native courts; any ceremony in church is legally no more than a blessing on the marriage. (9)

83. The/.


43.
63. The jurisdiction of the native courts normally extends to all natives. But there are wide differences in the legal definition of "native", while in some territories certain classes of Africans are placed by ordinance under the exclusive jurisdiction of the British courts. (1) It will be necessary to discuss subsequently the position which may arise in connection with the position of non-natives in relation to the native courts. (2) But so far as regards the jurisdiction of the courts over "stranger" natives, it is clearly advisable that the position should as far as possible be safeguarded. The disadvantages which some Africans may feel in the unfamiliar procedure of the British courts may equally occur when Africans have to appear in a native court which works in a strange language and follows strange customs. (3) Steps should wherever feasible be taken to ensure that, where a stranger community resides in a native court area, it has representatives on the court; (4) the question whether these are to be full members of the court, or to be co-opted only for cases in which members of the community in question are concerned, will be a matter for decision in individual cases. Northern Nigeria has its own solution for the problem - the courts of the Jabon Garis, constituted especially to exercise jurisdiction over stranger natives, and recently brought within the framework of the native court system. (5) The tribunals instituted to meet the needs of the large collections of natives of different tribes employed in the copper mines of Northern Rhodesia (6) constitute a somewhat exceptional case, but their success suggests that difficulties which may be created by similar problems elsewhere, may be solved by the adoption of this system.

64. In Uganda the Governor has the power to extend the jurisdiction of certain native courts to any non-natives who, having regard to their general mode of life, may suitably be amenable to the jurisdiction of such courts. (7) In Sierra Leone a non-native may be appointed to sit with a paramount chief or his nominee as a "combined court" for the trial of petty civil suits arising between natives and non-natives. (8) In the Gold Coast Colony paramount chiefs' tribunals and divisional chiefs' tribunals have civil jurisdiction in cases to which a non-native is a party, if the party not being a native consents in writing to his case being tried by the tribunal. (9) In general, however, it remains true, in these territories as elsewhere, that non-natives do not appear in the native courts whether as parties or as witnesses.

65. This/

(1) e.g. 3.30(1) and NR. 41. (2) Paragraph 84. (3) G. 75. (4) T. 19. (5) Ni. 45. (6) NR. 51. (7) U. 11. (8) 3. 32. (9) Cap. 76 secs. 48 & 49.
85. This question does not at present give rise to any serious inconvenience. It is possible, however, that in some territories the matter will, at some future date, become of importance. In the course of time, the magistrates and judges in the government courts will doubtless include an increasing proportion of Africans, so that the choice between their courts and the native courts will no longer be a choice between trial by an European and trial by an African. Further, it may be doubted whether, if and when a larger measure of self-government is accorded to Africans, they will be prepared to admit a kind of extra-territorial law for non-natives. When native authorities provide more extended services, such as drainage, electricity, schools, dispensaries, housing, etc., it may well be that Indian, Syrian, Arab, half-caste and even European residents may wish to exercise the right to participate in the control of these services through representatives on the native authority councils, and in such circumstances it might be held that the enjoyment of the rights should carry the assumption of corresponding obligations. It may be noted that bye-laws passed by tribal authorities in Sierra Leone already lead to all persons irrespective of race. It would be well therefore if in enacting legislation governing the native courts steps were taken to provide, in predominantly native areas, for some flexibility in defining the relationship of non-natives to the native courts, as has been done in the recent Uganda ordinance.

86. Throughout the dependencies, the native courts are the principal agencies through which native custom is being adjusted to the needs of the new conditions with which native society is now faced. In certain territories, the native authorities are given authority to deal, under their rule-making powers, with changes in native custom. But changes are in practice more often effected by the findings of the native courts; these gradually establish a body of case law which in turn is liable to be reinforced by the decisions of administrative officers in the exercise of their appellate powers. The process frequently involves entry into a field in which the customary law itself affords no precedents. Thus the native tribunals of a generation ago could have had no established custom in respect of contracts of sale, hire agreements, payment of interest, and so forth. Many native courts, however, now dispose of such matters by what is ostensibly an adaptation of native custom, but is, in effect, a somewhat crude law of equity. In Nigeria it has been noted that in many cases the native courts, unable to follow native customary law, seem anxious to adopt the principles of English law. In these areas where cultivation of cash crops has expanded, particularly those which, like coffee or cocoa, may require an outlay in money or labour extending over a considerable period, the courts are constantly at pains to evolve.

(1) 326, G.140. (2) Sec paragraph 84 above.
(3) See paragraph 81 above and paragraph 97 below.
(4) N.17.
evolve a new custom regulating the rights of the individual cultivator in the "communal" land. (1) Elsewhere, courts are endeavouring to adjust the "bride price" in terms of cash instead of cattle; and they are dealing with the results of efforts made by native authorities to introduce registration of marriages, or to regulate testament by will. The attempted adaptation of custom extends even to issues involving sanctions of a penal character. New offences are, for instance, being created by an interpretation of native custom which bears a close resemblance to the use of the English law of nuisance. Thus native courts have imposed fines for riding a bicycle at night without a light, on the ground that it is contrary to native custom to commit actions endangering public safety.

87. This capacity for adjustment is evidence of the vitality of the native court system, and adds to the importance of the function it discharges. Native customary law is in truth, as is observed in the Handbook on Native Courts (2) issued by the Uganda Government, "a living system which is constantly going through a process of development and adjustment to new circumstances and new impulses of thought, which in time becomes crystallised as parts of that law." It goes on to point out, that "African social ideals should evolve from within, and African justice should develop pari passu." The position lends some colour, indeed, to the opinion expressed to me by one observer that "Native custom has ceased to be a matter of precedent and has become just common sense." While, however, this process of conscious evolution has its own value, it causes considerable uncertainty as to the state of the law, and has provoked in a few places attempts by native authorities themselves to make a written record of native law, (3) or to crystallise native law by the enactment of bye-laws. It is clear that such tendencies need to be carefully watched, and the matter is not one from which the governments can afford to stand aloof. The cruder developments, of which the imposition of fines upon people who loll in church may be quoted as an illustration, are of course of minor importance, and can easily be checked. Even the possibilities of conflict between native courts in adjacent areas, or divergence between the native and the government courts in the interpretation of customary law, though serious in themselves, do not constitute the most potent argument for the need of government guidance in the process by which customary law is being adjusted to modern conditions. The chief argument for providing such guidance lies in the consideration that law cannot be viewed merely as a means of clarifying or defining accepted practice, past and present; in all periods of rapid evolution, it has a formative and directive influence on the development.

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(1) See paragraph 103 below. (2) Entebbe, 1941.
(3) T. 42, K. 47.
development of society. In modern Europe, the adjustment of law to meet new social needs or conceptions is increasingly supplied by legislation. We cannot leave Africa to devise, without any guidance from us, the means by which custom can, through the operation of the native courts, accommodate itself to conditions which are making something like a revolutionary change in the habits and ideas of society. The subject is a difficult one, and I reserve my suggestions as to the form which official guidance should take,(1) until I have completed my survey of the actual machinery of the native court system and of the supervision exercised by the administration over its working.

88. Reference has already been made (paragraph 68) to the fact that there are certain restricted areas in which the native courts and British courts have concurrent jurisdiction, so that African litigants may choose to which of these forms of tribunal they will have recourse. It is of interest that in the Colony districts of Nigeria (2) and in the Northern Rhodesia Copperbelt (3) African litigants have shown a strong preference for the native courts. The existence of concurrent jurisdiction must exercise an influence in making for higher standards in the native courts; but it is not possible to contemplate its wide extension since the volume of litigation is in general too great to contemplate any substantial proportion of it being heard by a professional magistracy trained in English law. The more general relationship of the official courts to the native courts is, and is likely to remain, that of appeal. There is only one territory, namely Sierra Leone, which has not provided an avenue of appeal from the native tribunals to British courts. (4)

89. There is, however, great diversity in the provision made for the exercise of appellate jurisdiction. In the areas where the native authority system is more fully developed, there has been a gradual expansion of the institution of native appellate courts. These in most cases follow lines consonant with native custom; the village courts, for instance, may be subject to a clan court, or the courts of divisional or sectional chiefs to that of a paramount. Buganda has something like a hierarchy of such courts, and the procedure is also well systematized in the larger Emirates. In other cases, it has been found necessary to create native appellate courts by grouping native authorities for the purpose on a "federal" or territorial basis. The process has, however, been well accepted by native opinion, and as remarked in paragraph 72 there are many instances in which native authorities have shown themselves more readily disposed to unite for the discharge of judicial appellate functions than for executive or similar purposes. It is usual for judicial and magisterial authorities to refuse to admit a regular appeal from a native court to their own./

(1) See paragraph 97 below. (2) 
(3) MR. 45. (4) S. 31.
own courts unless the litigant has first exhausted his rights of appeal to a native appellate court.

90. In Uganda, appeals lie from the final native appellate court to the High Court but this is confined to cases of major importance. (1) In Kenya appeal may be made to the District Commissioner's court, thence to the Provincial Commissioner's court, which is the final court in minor cases, and in proceedings relating to marriage, inheritance and immovable property; but in other cases the aggrieved party may have a case stated by the Provincial Commissioner for consideration by the Supreme Court. (2) In Tanganyika the channel of appeal leads up through the Provincial Commissioner to the Governor, avoiding any contact with the High Court. (3) and there is no rule which operates to prevent appeals in trivial cases. Northern Rhodesia provides an avenue of appeal through the District Commissioner and the Provincial Commissioner to the High Court. (4) Nyasaland provides for appeals to the Courts of District Commissioners, and thence again to the High Court, but no use seems to be made of this in practice. (5) In Nigeria the final court of appeal from native tribunals is the Supreme Court; but there is no appeal from the highest native court in matrimonial and inheritance cases. (6) In the Gold Coast a complicated system of appeals has been established which has resulted in much costly litigation, on appeal from native tribunals, in the Supreme Court and in the J ust . Africa Court of Local. (7)

Review.

91. The circumstances in which the Native Court system originated have, however, led to the adoption of an administrative procedure which has to some extent tended to take the place of a judicial appeal. It is an essential part of the system that administrative officers should exercise close supervision over the proceedings of the native courts, and in the discharge of this duty they have the right of examining the court records, and reviewing the findings of the courts, both in civil and criminal issues. This procedure has only recently been applied to the Gold Coast; and it has been abandoned in Buganda as the result of the changes in system introduced in 1940. (8) Elsewhere however, it has been in general use, though the extent to which it is utilized in practice varies greatly. The administrative officer takes action either on his own initiative, after examination of the record, or on the personal application of a party dissatisfied with the finding.

92. There/

92. There is no doubt that the practice of reviewing findings on the application of litigants has in the past proved to be of great value as a check on the proceedings of the native courts, and it must be retained in the more backward areas or in those where the native court system is not yet fully organized. But some modification should now be possible in the more advanced areas. The effect of intervention of this nature may be not only to prejudice the normal working of the appeal system, but to encourage frivolous applications for review, and to burden the administrative officer with unnecessary work. As a general principle, therefore, it is advisable that review proceedings should not be taken save on the initiative of the reviewing officers, and proceedings on the application of parties should be treated as appeals and dealt with by the courts, subject to the normal penalty of the loss of fees in the event of the appeal being unsuccessful. (1) In Nigeria an attempt has been made to meet the position by providing that if a party to an action applies for the review of a case, the avenue of appeal is automatically closed to him. (2)

93. It may appear to be inconsistent with this recommendation that I have in my separate memorandum on the Gold Coast suggested that arrangements should be made for the hope systematic exercise by administrative officers of their power of review. (3) But in the Gold Coast no serious attempt has yet been made to adopt the native-tribunals to modern needs, and the situation demands close control of a character which can only be afforded by the full exercise of revisory powers. Buganda presents an example of an opposite type. I shall subsequently have occasion to refer to the measures recently taken by the Uganda Government to regulate the position of Buganda native courts, which involve, among other changes, a reduction in the revisory powers of administrative officers. (4) In this case the measure seems fully justified.

94. In the dependencies of Eastern Africa the court records are kept either in the local vernacular, or in a local lingua franca such as Swahili; and in Northern Nigeria the records are in Hausa. In the Gold Coast Colony, Sierra Leone Protectorate, Western and Eastern Nigeria, however, court records are in English. There are certain advantages in having the records in English, and if a considerable proportion of the judges and litigants are literate in that language the advantages may perhaps outweigh the objections. But in some parts of which Eastern Nigeria is the outstanding example, English is rarely spoken, still less read, by anyone in the court except the clerk. The clerks themselves know so little of English that the records are generally poor. In such circumstances the development of local vernaculars for the purpose of keeping the court records.

Review: Recommendation.

Review: the Gold Coast and Buganda.

Court Records: recommendation.

(1) Ni.33. (2) Ni.17. (3) G.144. (4) See paragraph 97 below.
95. Professional advocates are not anywhere admitted to the native courts. The propriety of the provisions of the Nigerian law which debar advocates from audience in the Protectorate Court, and the similar practice regarding audience in the government courts in some other territories have been the subject of considerable discussion. (1) It has, however, been generally accepted that, in present circumstances, it would be undesirable to allow advocates whose training has not been in English law to appear in the native courts. But it is possible to foresee, that as the complexity of the issues coming before native courts increases, the need for professional pleading may be felt. If, as is to be hoped, there develops a specialised judiciary and a body of native court clerks with special training, (2) it may be desirable to mould these officers into a legal profession trained in native law, and the opening of careers for professional pleaders in native courts might assist in the creation of such a profession. It is for consideration whether education in African law might not form part of the courses at such centres as Makerere or Achimota. The existence of native professional pleaders, trained in native law, might assist the development on lines reconciling traditional usages with modern needs; it might have the further advantage of reducing the tendency of Africans to qualify for the English bar and so to acquire an animus against native systems of justice. It is necessary to add that none of these arguments could be held to support the admission as pleaders in native courts of persons whose training has been exclusively in English law. It would also be advisable that administrative officers should have authority to define the native courts in which native pleaders should appear, for it is obvious that there are numerous courts in which their appearance might at this stage be undesirable.

96. I have made frequent reference in the preceding paragraphs to the share taken by administrative officers in the supervision and control of the native court system. The contact with the Supreme or High Court is, as shown in paragraph 90, very slight in most of the territories, and in some is practically non-existent. I do not discuss here the merits of extending the opportunities now possessed by litigants in the native courts for approaching the Supreme or High Courts in their appellate capacity. The question raises difficult and complicated issues. But even if greater opportunities were provided for appeal to these courts, the fact remains that the efficiency of the native courts will continue to depend on the manner in which

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(2) See paragraph 97 below.
which administrative officers exercise day to day supervision and control over their proceedings. It is moreover to the administrative officers, and not to the result of an occasional appeal in a "British" appellate court, that the native courts must look for guidance in adjusting customary law to modern needs. It is relevant to ask therefore what measures are taken for ensuring that the officers concerned interest themselves in the improvement of the standards of justice administered by the native courts, or for assisting them to guide the courts in the development of native customary law, which (as shown in paragraph 85) has now become so important a part of their functions. The administrative officer occupies a difficult position. As an executive officer, he cannot himself be indifferent to the result of many of the cases with which a native court under his control deals. As a magistrate, he administers an adaptation of English law and is bound by its procedure, and he may therefore be inclined in the use of his revisory powers over native courts to follow conceptions different from one of native customary law. As seldom has the man of knowing what decisions have been arrived at elsewhere on issues relevant to the case he has in mind.

97. It is obvious that any procedure which we attempt to apply for the solution of this problem must have the same quality of flexibility as the court system itself. I have been struck by the possibilities presented by the appointment of a Judicial Adviser to Buganda (1). The appointment was made for reasons connected with the political relations between the Government and the State; but its bearing on judicial procedure which is of interest for our present purpose. The Adviser, seconded from the Government, who has a knowledge both of local conditions of native law, he is in a position to advise the authorities in regard to the improvement of technique of their courts by the issue of court dealing with such procedural matters as admission, admission of evidence, preparation of the like. The stage of development by the Buganda courts has made it possible to draw from administrative officers and from Court the powers of review formerly held by them. Administrative officers still the court records, and may direct a superior court to reconsider the findings of an court; all native court decisions are subject by the Judicial Adviser. He is also as a court of appeal for certain classes in the native courts.

Archbishop of Canterbury.

98. The Judicial Adviser, Buganda.
98. The appointment has met with success in Buganda, and it is possible that an adaptation of the system to other territories, in the form of the appointment of a Judicial Commissioner or equivalent authority, would afford the most practical method of meeting the requirements to which I have referred in paragraph 96. The orderly development of the native courts, the adjustment of native law to modern needs, the evolution of a system of commercial law suitable to African conditions, are not likely to be best achieved by legislation or by any formal attempt to codify customary law. The most suitable approach seems to be through court rules so framed as to be intelligible to, and capable of application by, the courts, combined with the appointment of a controlling revisory authority. There might be a further advantage in the fact that the presence of a specialist in charge of the native court system might mitigate some of the mistrust felt by the Supreme or High Courts regarding the working of the native court system. Expressions of such mistrust have been encountered, for instance, both in Kenya and Uganda.

XI.

DEVELOPMENT OF NATIVE LAW.

99. I do not propose to comment here on the problem created by the existence in the African dependencies of a dual system of law, administered by two forms of judiciary, in the form of the government and native courts. That this gives rise at times to anomalous and embarrassing situations, is less important than the effect which the existence of a dual system of law must have in prejudicing the development of the territories. The ideal is no doubt the evolution of a uniform system of law applicable to all issues other than those such as succession, matrimonial cases and the like, which must remain within the field of customary law, together with a judicial procedure, applicable to the trial of all cases alike, but suited to African circumstances, acceptable to Africans, and capable of use by them. But until that can be achieved, there are many intermediate problems which will press for solution. Thus even in those territories where the existence of settled European communities suggests that there will always have to be a separate system of British courts, the question must arise of transferring to the native court system those activities of the British courts which concern natives only.

100. In 1939 the African governments were informed that the Secretary of State had in contemplation the appointment of a Commission to make recommendations as to future policy in guiding the existing:

(1) Paragraph 87. (2) K.51. (3) T.65. (4) See paragraph 81.
existing systems of native law in adapting themselves to the changing needs of native society. It indicated that it must be a preliminary to the work of any such Commission that a survey should be made of the present working of the native courts. For this purpose it was proposed that two smaller Commissions should be appointed to visit West Africa and East Africa respectively, and to assemble the facts upon which the wider Commission could subsequently base its recommendations. It was suggested that the two preliminary Commissions might examine the administration of justice by native courts in the different dependencies, with the object of obtaining information in regard to such matters as the constitution and composition of native courts, their jurisdiction and competence, the practice followed in regard to such matters as the recognition of native custom as law, procedure of the courts, including the keeping of records and the disposal of fines and fees, and the nature of punishments awarded. The two Commissions would also consider the advisability of making further studies of native customary law, and the desirability of prescribing simple rules of evidence and procedure, and any general principles of criminal and civil law, bearing in mind on the one hand the importance of avoiding rigidity of procedure, and on the other hand the need for increasing the efficiency of the native courts and for promoting social and economic progress. They would also examine the nature of the agencies which exist for modifying native law, and the machinery for supervising the proceedings of native courts, and the extent to which general rules can be laid down to govern the revisory and supervisory powers of administrative officers and the channels of appeals from the decisions of native courts.

161. The replies received showed that the proposal to appoint two preliminary Commissions was acceptable to the Governors of Tanganyika, Northern Rhodesia, Nyasaland, Sierra Leone and the Gambia. The Governors of Nigeria, the Gold Coast, Uganda and Kenya, on the other hand, preferred that the preliminary inquiries should be undertaken locally. With some minor exceptions, the terms of reference were not considered to be too wide. It is to be hoped that the inquiry will go forward after the war, either in the form originally suggested or in one of the alternative forms proposed by colonial Governors. I suggest, however, one modification of the original scheme. The special circumstances of the Gold Coast Colony appear to make it desirable that that area should be excluded from the Commission's work. It presents problems of such complexity that the study of them would absorb a disproportionate amount of the time of any Commission; and the reform of the native tribunals in that Colony is of such urgency that I have recommended the appointment of a Local Commission of Inquiry. (1) It would be undesirable to have two Commissions studying the same questions in the Colony.

(1) C. 147.
Land problems.

102. I do not propose to discuss here the major questions of land policy to which I have referred in paragraph 11 above. The general policy in regard to the relations of the State and the land - the powers assumed by colonial governments for dealing with native lands - is now well determined, though its expression in legislation has taken different forms. There are still a number of subsidiary points which need consideration, such, for instance, as the exact form in which recognition should be given under the law of Nigeria and Tanganyika to native rights of occupancy, but these points are not of immediate urgency. There are, however, in the second class of the land problems of which mention is made in paragraph 12, a number of matters of immediate importance. Recent developments in regard to the system of landholding have a direct bearing on the position of the native authorities. The many serious questions which have arisen in the Gold Coast, (1) where no restraint has been placed on the action of stool authorities in alienating large areas of stool land, and where difficulties have already arisen in regard to the relation of landlords and tenants, constitute a problem peculiar to that Colony, for which a solution must be sought by local measures. Their consideration presents one of the most onerous, but at the same time one of the most pressing tasks, which lie before the government of the Colony.

Individualization of land.

103. The growing tendency to "individualize" native land rights in many parts of the dependencies creates a problem of a more general nature. The normal right over land enjoyed by a family or an individual is that of undisturbed occupation so long as the land is put to beneficial use; when it is no longer so used, the community resumes its right to dispose of the land. In African conditions, "individualization" connotes the acquisition by the individual or family of a prescriptive right to dispose of the land (or produce bearing trees planted on it) either for his or their own benefit, or on condition of the payment of part of the proceeds to the community. As remarked in paragraph 86, many native authorities are now engaged, either by the use of their rule-making powers, or through the action of their courts, in the effort to regulate this process or to define the rights which arise under it. Not only do difficult questions arise in this connection, in which native authorities have a right to some guidance, but the fact that they are exercising these powers places them in a new relationship in regard to the land. They are in effect controlling functions which were formerly the personal attribute of the chief or of clan or other group heads. It is clearly:

(1) G. 48 ff.
clearly necessary that in this matter, perhaps more than in any other, sectional interests must not be allowed to predominate either in native councils or in native courts.

104. The attitude of the governments on the subject shows no uniform policy. It would appear that the Kenya authorities have hesitated to allow their native councils to pass bye-laws dealing with land transfers, though it was assumed by the Committee on Kikuyu Land Tenure that this would be the appropriate method for regulating the movement towards individualization. (1) In Tanganyika, on the other hand, native authorities have been permitted to make bye-laws regulating the acquisition of rights in coffee trees, and the Bukoba authority has made rules for defining the special nyarubanja tenure and for registering transfers of it. In Nigeria also the native authorities have in some cases - as in Ibadan - passed rules regarding the transfer of land. In Utonga (Nyasaland), where there has been a tendency for natives to assert, and for native authorities to admit individual ownership of land, the government has taken the position that the native authorities are the guardians of the land for the community, and that though there must be security of beneficial occupation there can be no question of individual proprietorship. (2) It is presumably owing to a recognition of the political and social questions which may arise from decisions with regard to land disputes between natives that in the Sierra Leone Protectorate such questions have been withdrawn from the cognisance of the courts, whether British or native, and reserved for a special procedure of inquiry by administrative officers. (3)

105. That so little guidance has been given to native councils and courts in their efforts to resolve specific issues arising from this cause is doubtless due to the absence of any definite policy as to the attitude to be followed in regard to the tendencies towards individualization and towards the recognition of proprietary rights. It was largely with a view to considering the principles which should be adopted in this matter that the Secretary of State addressed a despatch in 1959 to all African Governors on the subject of land policy. He felt that if demands should be made for political changes in Africa, it might be of advantage to have a clear conception of native land policy, since the forms of ownership or occupation are likely to influence the type of a country's social economy, and consequently of its political structure. He was therefore considering the setting up in London of an advisory committee on native land questions. The next stage might be to carry out inquiry in specific localities, wherever the existing information is insufficient to form a basis for decision as to policy.

(1) Report 1929, p.35/47. (2) Ny. 10. (3) S.30.
as the proposed committee received the reports of local inquiries it would tender advice as to the lines of general policy which might best be adopted.

106. The replies sent by Governors indicated some conflict of views as to the form and nature of the enquiry and as to the value to be attached to the advice of the proposed advisory committee in London. The Governors of the Gold Coast, Nyasaland, and Northern Rhodesia agreed in thinking that it was inopportune to undertake extensive local enquiries on land questions at the present moment. The Governor of Nigeria, whose reply had not been received, was informed in July, 1940, that the consideration of the problem might await more normal times, and a similar message was sent to the other Governors in April 1941. I have in paragraph 12 emphasized the importance of the issues with which it was proposed that these enquiries should deal, and it is to be hoped that they will be undertaken as soon as circumstances permit. The absence of any land record or system of registration in nearly all the African territories makes it impossible to determine without detailed enquiry what are the actual facts regarding the changes which are being effected in the system of native landholding. It is clear that a disinclination on the part of an administration to give formal recognition to the movement towards "individualization" will not necessarily check its extension. Where prescriptive rights acquire a transferable value they will continue to be exchanged for some form of valuable consideration. Failure to recognize this process will only result in a growth of litigation which will be all the more difficult and uncertain in its issue, if the rights accruing by prescription or acquired on transfer are undefined. It would be unfortunate if the conditions which have arisen in the Gold Coast Colony owing to the chaotic state of the land law were reproduced in other parts of Africa. (1)

XIII.

Where traditional authorities cannot be used.

107. I have in the course of my detailed homestudy expressed my views as to the results obtained in different areas by the procedure which is based on the use of traditional native authorities as agencies of local rule. In some areas this method has achieved undoubted success; there are others in which it seems to hold out promise of successful development in the future; there is a borderland where its value seems in some doubt. The area most typical of this borderland is the Gold Coast Colony. Here the system has in the past been officially described as "a mixture of direct and indirect rule", with a steady bias towards the latter. (2) It would perhaps be more correct to say that/

that though the administration does not in the Colony at present make use of any other agency than that of the traditional authorities, it has not hitherto found it feasible to employ them in the manner that has become usual elsewhere, nor has the method in which they are now utilized yielded results as satisfactory as could be desired. It remains to be seen whether the efforts now being made to improve the system of native administration will yield better results; (1) it seems clear, in any case, that the use of the traditional authorities must here deviate in important particulars from that normally employed elsewhere. It is indeed possible that the government may, in the end, have to consider a combination of the use of traditional authorities with the institution of Local Native Councils of the type of those established in Kenya.

108. But there are of course considerable areas in which the system of native administration is not based on the use of traditional native authorities. I have indicated in paragraph 37 my opinion that in the special circumstances of Kenya nothing would be gained by an attempt to make use of the traditional authorities, and that institutions better suited to local conditions have been found in the establishment of the Local Native Councils. If an extended use is made of the measures now being taken in Northern Rhodesia to permit the alienation to individual natives of plots of Native Trust Land for specified periods, (2) it is possible that some similar system will have to be applied (as in Southern Rhodesia) to meet the needs of the areas held by them. There are in other territories particular areas both rural and urban in which the use of traditional native authorities has not proved feasible or has not been successful, and where other methods are in course of adoption or consideration. I take first the position in rural areas, and shall deal separately in paragraph 111 with the requirements of the urban or industrialized areas.

109. In my memorandum on Administration, I have described the circumstances which led the government to conclude that traditional native authorities could not suitably be used as agencies of administration in the Lupa area (3) or in the coastal districts. (4) There can be no question as to the correctness of this conclusion. The decision of the Nigerian government, that certain wage communities shall continue to be governed by Pulani headmen, represents a somewhat similar conclusion. (5) I have found reason to suggest doubts whether the continued use of traditional authorities is likely to be justified in certain limited areas of Uganda, (6) Nyasaland (7) and Northern Rhodesia, (8) and in further areas.

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areas of Tanganyika(1) and Nigeria.(2) Although the position calls for no general reconsideration of the native authority policy, respect for tradition should obviously not be allowed to encumber any area with institutions which are incapable of adjustment to modern conditions. Broadly speaking, where it is decided to abandon the native authority system in rural areas, the Government will have to choose between a system of appointed agents, as on the Tanganyika coast, and a system of Local Native Councils, as in Kenya. In areas where the main obstacle to the use of traditional forms consists in the backwardness of the persons who have to operate them, the Tanganyika model may be of greater interest.

110: One feature of the Tanganyika procedure appears, however, to call for reconsideration. The native agents recently appointed in some areas have been gazetted as "native authorities". Sir Donald Cameron has justly observed that such a system should be recognized for what it is, namely an administration in which the orders come by delegation from the central government.(3) It may be recalled that many years ago agents were appointed by the Uganda Government in certain parts of Busoga with the title of "chief", and that in the course of time government officers came to treat these persons as traditional chiefs — a position which was not justified by the eyes of the people and which has led to unsatisfactory results.(4) This experience suggests that the assimilation of the title and status of appointed agents to those of native authorities is undesirable. Furthermore, if it is accepted, as suggested in paragraph 114, that the creation of a cadre of native administrative officers should be one of the objectives of policy, the opportunity should not be neglected of giving the appointed African agents such grades and titles, training and remuneration as will enable them to constitute part of such a cadre.

XIV

(1) F.74. (2) n.55. (3) T.39, see also n.65. (4) U.20.

58.
For is the unfortunate record of Freetown(1) a case in point, since it represents the failure of a self-governing Municipal Committee either to avoid the grosser forms of corruption or to satisfy the needs of a city which is the sort of government "and has connections with a large part. But there are many mining and industrial towns now growing up which have no traditional institutions, and contain collections of people of many tribes.

112. It has been common to speak of the inhabitants of these towns as "detrivialized". Urban conditions. Indeed, at least of them have indeed completely abandoned their tribal connections and most of their ancestral practices. But in any case, the physical circumstances in many African towns are such that the native inhabitants have been condemned to live in conditions which comply neither with traditional standards, nor with modern ideas of decency. The slums of Freetown(2) are paralleled by conditions in Niambasa and Tanga,(3) as revealed by the enquiries following the disturbances of 1939. It is unfortunate that in some African towns, and notably at Nairobi,(4) the level of wages and the standard of accommodation are still based on the assumption that male wage-earners do not have wives and families. The intolerable conditions of physical and social hygiene which prevailed in many African towns, together with the inability of the governments to alleviate these conditions with the means at their disposal, tended in the past to induce many many members of the Colonial services an attitude which found expression in a desire to prevent or postpone urbanization or the stabilization of labour, and a reluctance to give to natives who insisted on living in a town the advantages of government expenditure. It is largely to this attitude that we must attribute the delay in enacting legislation to regulate urban conditions.

113. The last decade has witnessed a progressive change in that attitude. There is a growing body of legislation dealing with the conditions of industrial labour. In some dependencies the planning and building of towns has been taken in hand. Kampala and Nyanza are outstanding as examples of planned urban development. Accra, since the earthquake, has pointed the way to a new conception of African housing and of the part which governments can play in providing it. The accommodation provided for mining labour in Northern Rhodesia in recent years has markedly improved and increased attention is being given to the native urban locations both in this territory(5) and in Kenya.(6) In Nyasaland the problem of the clerical and other labour employed in Zomba is being met by the construction of a model village in the vicinity. Economic progress, perhaps even more in the Congo than in our own territories, has made it evident/

(1) 3.7. (2) 3.7. (3) T.60. (4) K.54. (5) NA.38. (6) A.64. 59.
Experiments in urban administration.

114. It is natural in these circumstances that the professional interests of many administrative officers should have now turned to the development of a technique for dealing with the needs of African towns. If in some of the Dependencies the results are not yet as apparent as one could have wished to see, yet there is evidence of increasing study of the question and of experiments undertaken. The urban native courts of Northern Rhodesia have been strikingly successful, and the possibilities which they have revealed of developing a body of civil law, capable of general application but based on the customs of different tribes, deserve careful study. (1) Nairobi a native tribunal has recently been appointed which bears some resemblance to the urban Native Courts of Northern Rhodesia, and a non-statutory advisory council of Africans has recently been constituted. (2) Western Nigeria is experimenting on lines of which Ijebu-Ode provides an example, (3) and Northern Nigeria has just brought the urban settlements of stronger natives within the sphere of the native authorities. In Northern Rhodesia (4) and in the Gold Coast there are a number of interesting non-statutory township committees organized by district authorities and some of these in the Gold Coast are remarkable for their success in raising voluntary rates. (5) In Tanganyika one of the statutory township authorities at the time of my visit contained African representation, and consideration was being given to the possibility of giving representation to Africans on other township authorities. (6)

115. The governments of our Dependencies, and in particular that of Northern Rhodesia, have shown some hesitation in accepting the necessity of permitting large African communities to grow up of which the members are wholly dependent upon wage-earning or on urban trades. Their attitude towards the "stabilization" of industrial labour differs from that of the Congo government in the Katanga and other mining areas, but it has been prompted by legitimate anxiety lest the government may not be able to meet the responsibilities which must in course of time devolve upon it in connection with unemployment, education of children, and the provision of urban water, sanitation and lighting services. (7) The Northern Rhodesia government has therefore taken the precaution of removing one of the incentives which have encouraged Africans to resort to the towns, by establishing a system of taxation under which every native is able to pay tax in his own

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own area without having to leave it in search of work, and under which in rural areas taxpayers may discharge their obligations in labour. (1) Such measures might with advantage be more generally considered, and governments should certainly remove any anomalies in the fiscal system under which the countryman has to pay more in taxes than if he moved to the town. But though our governments may see reason to avoid giving encouragement to a policy of "stabilization", this does not alter the fact that in various localities industrial labour is now in effect becoming stabilized, and that the movement is likely to be progressive. (2) Many of the results must, therefore, in any case be faced, though they may to some extent be reduced by placing a check on the progress of unadvisable urbanization.

116. The future of African towns in certain of the dependencies, and particularly of the native locations in East and Central Africa, will depend largely upon the extent to which the governments adopt a policy of excluding free permanent residence in them those who do not fulfill a useful function in urban life. In the past, the towns in the areas mentioned have attracted numbers of ne'er-do-wells, gamblers, prostitutes, poor relations (most numerous of all) who feel that custom entitles them to live on the wages of their more industrious relatives, and labourers of the lowest class who cultivate gardens for Africans engaged in industrial wage-earning. The provision of decent living conditions, and the development of forms of urban government with active African participation, will be difficult unless residence in urban areas is controlled by a system of permits. Such systems are established by law in Northern Rhodesia, (3) Kenya, (4) Tanganyika, (5) and Sierra Leone, (6) but in the two latter territories they are ineffective. In Tanganyika an interesting proposal has been put forward, that the control of immigration into the towns might be entrusted to guilds of African workers. (7) In connection with the registration and permit system in Northern Rhodesia, an experiment has been made in the district of Songu-Letauli on the lines of the procedure in force throughout the Belgian Congo, under which a card index is maintained of the whole African population. (8) It would be of advantage if the result of this experiment were communicated to other territories.

117. It is apparent that the African governments will have to give increased attention to the problem of entrusting the local government of towns to Africans, just as in the past they have been studying the development of native authorities for the purpose of entrusting to Africans the local government of rural areas. In some cases they may be fortunate enough to find that the native authority policy can bc.


61.
be successfully applied in towns, but in many instances the absence of traditional institutions and the existence of a multi-tribal population, with its leaders among the middle class and trade union elements, will make it necessary to devise other forms of local government. Since the urban populations will usually be more politically advanced than the rural, it will probably be found advisable to accord to them statutory councils with powers for local taxation, legislation and the provision of services which are not inferior to those with which the native authorities are entrusted. As in the case of the native authorities, it will no doubt be found expedient to provide for great flexibility in the forms of African township authorities. Following experiments already tried in Northern Rhodesia(1) and the Gold Coast(2) and Kenya(3), it may be possible to constitute, as one form of township authority, councils consisting of representatives of the tribes to which the main sections of the urban population belong. Again, just as in some rural areas it has been found that authoritarian systems are more successful in practice than native authorities, this may prove to be the case also in some of the towns. But few governments are likely for long to continue to demand the grant of representation on township authorities by the method of election. It seems desirable on political grounds that they should be provided, as a matter of principle, to meet this demand when circumstances seem to make it feasible to concede it, either in whole or in part. A liberal policy in conceding local autonomy to African township authorities, on terms which will provide scope for the activity of "political" elements in these bodies, appears desirable both on its own merits and on the ground that local politics are at this stage a safer and more educative field of activity than central politics. Interest will concentrate on the latter if the political elements find their ambitions blocked in the township areas by an over-cautious policy on the part of the government.

XV.

THE RELATIONS OF NATIVE AUTHORITIES AND THE OFFICERS OF THE ADMINISTRATIVE AND OTHER SERVICES.

118. I have had occasion, both here and in the detailed memorandums, to refer to the extent to which the successful working of the native authority system depends on the supervision exercised by administrative officers. The position of these officers is frequently described as that of "advisers"; but, as remarked in paragraphs 64 and 65, this expresses in legal rather than the relation which is recognized in the native authority ordinances or which exists in practice. The various powers exercised over the native courts so much

(1) NR. 51. (2) 0. 97 and 143. (3) K. 54.

62.
beyond the giving of advice, and in executive matters the ordinances normally provide that the administrative officer may direct a native authority to issue executive orders, and failing compliance, may issue them himself. (1) It is doubtless advisable on all grounds that the element of persuasion should be more in evidence than that of compulsion; (2) that in particular essential in dealing with the use by a native authority of its rule-making powers. (3) But it will be realized that there are many instances in which native authorities are so backward or so primitive that an administrative officer must take the complete control of their operations. The necessity for a close personal relationship with native authorities, and the educational character of the work, involve employment of a larger European administrative staff than would be justified in conditions in which extensive and populous areas can be administered through the agency of a trained native establishment. I have indeed found it necessary to print out that in the Gold Coast, progress in the development of the native authority system cannot be achieved without some increase in the administrative staff. (4) But the fact that so considerable a staff has to be employed, makes it all the more essential to ensure that the most economical use is made of its services.

119. There is no doubt that, in circumstances which demand the maximum of central control and local knowledge, the efficiency of the staff is reduced by frequent changes in postings, a fact which has been so often remarked on elsewhere that I have no need to emphasize it here. Its discharge of its most essential functions is also hindered in many cases by an undue burden of routine work. The present stage of development of native authorities and of African towns makes it necessary that some officers at any rate of the administrative staff should devote their whole time to the technique of native administration. This is not merely a matter of common sense, but is one which demands specialized knowledge.

120. The problem of relieving administrative officers of routine duties has occupied much attention, yet in visiting district officers one notices frequent cases in which there seems no adequate reason for the routine enforced on them. There seems, for instance, no reason why in Sierra Leone the duty of trying petty cases in which African trading-licence holders are involved should not be transferred from administrative officers to the native tribunals. (5) In the Gold Coast certain native tribunals have been allowed to remain in suspense for some years without any attempt being made.

(1) See, for example, Magrarian Laws, 43 of 1933. (2) N. 62 ff. (3) See para 65. (4) C. 152. (5) 3.30.

63.
made to relieve the administrative officer of the petty court business which falls upon him in consequence. (1) In Eastern Nigeria the abuse of the petition system is allowed to engage a great part of the time of many administrative officers, (2) and the same is true in Nyasaland of the payment of home remittances from emigrant labourers. (3) The urban native courts in Northern Rhodesia, (4) the Nyasaland proposals for the delegation of accountancy duties, (5) and the native subordinate magistrates in Tanganyika, (6) are examples of measures designed to relieve administrative officers of routine duties which might with advantage be more generally adopted. The government of Northern Rhodesia recently ruled that its administrative officers should spend not less than 180 days a year in travelling. (7) It was felt that administrative officers had allowed themselves to be unduly immobilized by the pressure of routine office work. It must be realized that much of this routine work is due to the fact that district authorities are called upon to discharge a great variety of business on behalf of the specialist departments. While, however, much could be done by a systematic examination of the position, with a view of reducing the scope of the routine duties falling on administrative officers, the major relief must come from two sources. The first is a substantial improvement in the character of the African clerical staff. The primary object of the educational system is not the production of clerks; but it has so far failed to produce clerks in up-country districts who can be said to be attuned even to the minimum of efficiency. But in the second place, much of the work is of a character which cannot be discharged by clerks, and there is clearly a need for the development of the cadre of African administrative assistants to which I shall subsequently refer. (6)

Central direction of policy.

121. Some of the African dependencies have at headquarters an officer who is in special charge of the work of native administration, such as a secretary for native affairs, a chief active commissioner, a secretary for protectorate affairs, or an administrative secretary. (9) There has been much discussion as to the necessity for such appointments, and some of the governments have changed their policy in the matter more than once. It has been suggested that there is no need for a special post of this nature, since it is the duty of all officers to safeguard native interests. But that argument misses the fact that, as just remarked, native administration has a technique of its own, and requires not only special knowledge but a close study of policy. The development of the system of native administration certainly appears to require the services of an officer so.
equipped to act as adviser to government. The title given to the post he occupies seems to be a matter of minor account. One of the duties of such an officer should be to compile and to revise from time to time a memorandum on the policy of government and the duties of administrative officers in relation to the native authorities and to African towns. (1) Excellent memoranda of this class have been published in some dependencies, but both policy and practice are still in the process of evolution, and compilations of this nature soon get out of date. There are other territories in which no manual has been provided for the guidance of administrative officers, who are left to deal with the native authorities in the light of their own knowledge and experience, with no assistance save that afforded by occasional circulars. (2) The result has in some cases been a diversity in practice which militates against the orderly development of the system as a whole.

122. In the compilation of statements of policy and manuals on practice there is scope for the activity of the interdepartmental committees which have been established in most dependencies under titles such as the Native Welfare Conference or Committee, or the Native Development Board. (3) These bodies are of very considerable value; but their main function lies in the co-ordination of the work of the various departments of government which are concerned with native development and welfare; they do not obviate the need for the appointment of a specialist officer as adviser on native administrative policy.

123. In order to afford opportunities to administrative officers for the discussion of policy and practice in regard to native authorities, it is to be hoped that conferences of provincial commissioners and provincial conferences of district officers will become more common than in the past. (4)

124. The problem of the relation between administrative officers and members of the technical departments of government has occasioned much discussion in several of the dependencies, and notably in Nigeria, Kenya and Tanganyika. Apart from the need for co-ordination of executive action, the question has an important bearing on the policy of native administration, the implications of which I have examined in some detail in the Memorandum on Nigeria. (5) It is not an issue to which it is possible to find a ready solution. It is now generally agreed that technical officers in a province should not correspond on important matters with their departmental heads without full discussion with the provincial commissioner. The

(1) K.75. (2) SR.44, K.75. (3) K.59 & 82, NR.58, Ny.6. (4) Ny.7. (5) Ni.62 ff.

65.
smooth working of the "provincial" system depends
rather on mutual goodwill than on the perfection of
the machinery. There are at the same time certain
measures which can assist to promote closer co-
operation. The headquarters committees such as
these referred to in paragraph 182 can help to
formulate a common policy; at stage lower down,
similar committees can usefully be held in the
provinces under the chairmanship of the provincial
commissioner. It is advisable that for this
purpose arrangements should be made for all the
departments concerned to have their provincial head-
quarters in the same place. (1) Further, the
"provincial" system might work more easily in some
parts if a revision of provincial areas were under-
taken so as to take account of new means of
communication, and to bring within each province,
so far as possible, an area presenting one set of
problems. (2)

Technical
departments
and native
authorities,

128. A further means of adjusting relations
between administrative officers and the technical
departments lies in provision for a definite
allocation of the work which departmental officers
are themselves to undertake in the districts, and
of that which is to be entrusted to the native
authorities. (3) As I have urged elsewhere, (4) it
is fruitless to attempt to allocate the respective
duties of the central departments and of native
authorities on any ground of principle; allocation
must be a matter of expediency and convenience.
Nor can any general allocation of functions expect
at this stage to achieve completeness. While there
may be certain duties which can be placed on one
side of the dividing line, and other duties which
may be assigned to the other, there will everywhere
be a borderline where some native authorities will
be able to operate while others will not, and where
perhaps central government departments and native
authorities will have to share responsibility during
a transitional period. (5) But it will be necessary
also to recognize that the standards set by the
central departments for services, such as sanitation,
dispensaries, elementary education, market control,
etc., cannot stand at the same level when responsi-


(1) K. 74. (2) T. 73, G. 150. (3) N. 26, S. 37.
66.
the services entrusted to them. (1) I refer subsequently in paragraph 144 to the question of the remuneration of these establishments.

126. The transfer of responsibility for one part only of a service, though sometimes inevitable, is liable to raise special difficulties. It frequently happens that funds are received from the central government and from local sources, in varying proportions, and that in consequence it is not clear to native authorities how their money is spent. There have even been cases where the resulting confusion in the minds of Africans, to whom figures are difficult, has given rise to embarrassing suspicions on their part that the government is misusing their money. (2) A partial solution of the difficulty has been found by some governments in an arrangement by which the native authorities are responsible for a definite visible part of a service, e.g. for the buildings of dispensaries or schools, while the government provides staff and equipment. Such arrangements must, however, clearly be regarded as being of a transitional character, pending the fuller development of native authority responsibility.

127. In the development of such responsibilities it may be helpful to arrange for the employment of European specialist advisers to the technical departments of native authorities. This system has been widely used elsewhere, while the appointment of the Judicial Adviser to the Buganda Government (paragraph 97) may be regarded as an African example. It appears that the Government of Uganda is prepared to hand over certain services to the native government of Buganda provided that the latter accepts European specialist advisers with certain powers of veto and control for use in extreme circumstances. (3) Few native authorities, however, will have services extensive enough to occupy the whole time of a European technical adviser, and it may be necessary to work out a system under which one European adviser divides his time between a number of native authorities. The Nigerian government contemplates an appointment of this character to advise the small native authorities in the Ibibio country on the starting of local services. (4) The position of a European adviser would of course differ from that of an officer of one of the central departments who combines the function of advising native authorities with that of exercising executive authority over his own departmental staff in the native authority areas.

128. A method widely used for securing the participation of native authorities in work for which they are unable to accept full responsibility is to entrust such work to district committees or boards on which:

(1) G.137, S.39. (2) K.34 & 70, H.68. (3) V.16. (4) H.38.
which the native authorities are represented and to which the native authorities vote funds, machinery of this character has been used in connection with land settlement questions; (1) but the activity most commonly dealt with in this manner is that of elementary education. In many cases, however, the primary function of the district education committees is not connected with the native authorities, but with the co-ordination of the work of the various missions; the co-ordination of the activities of missions and native authorities is apt to occupy a position of secondary importance. (2) Experience in one dependency suggests that it might be well to anticipate the question, whether a district board, dealing with funds allocated to it by a native authority, is bound by any conditions which that authority may see fit to attach to its grant. (3)

**XVI.**

**THE NATIVE AUTHORITIES AS PART OF THE GENERAL ADMINISTRATION OF GOVERNMENT.**

189. I have in the preceding sections of this memorandum confined myself to an examination of the manner in which the traditional Native Authorities or other agencies utilized in the procedure of native administration perform the functions assigned to them. The type of questions which it has been necessary to consider relate to the value of these authorities in assisting to maintain order or administer justice or extend the social services, the degree to which their working affords a training to Africans in the management of their own affairs, and the extent to which they have enabled us to introduce elements of trade and technique which have been difficult to secure acceptance. But it is necessary now to approach their position in another light. In the discharge of the purposes to which I have referred, their status is that of auxiliaries of the government. Their success in performing them will, it may be assumed, be followed by an extension of the authority they may exercise and of the finance at their disposal, together with a progressive reduction in the control exercised over them. But that would still leave them in the position of auxiliary or subordinate agencies. There is, however, a school of thought which sees the logical evolution of their position in another direction. In this view, the native authorities should eventually constitute the government of the country. The smaller units would be grouped to form unions of a size fitting them to take their place beside the larger native authority units, in a federation which would in time take over the legislative and executive functions of the present government. We are not at the moment concerned with the intermediate stages by which this result would be achieved, nor with the exact measure of

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(1) K. 58. (2) U. 11, P.R. 7 and 59, Ny. 44, T. 69. (3) K. 29.
constitutional responsibility to the Crown which the federation would possess. For will I discuss at this stage the value which this scheme possesses as a method of attaining to self-government otherwise than through the development of Parliamentary institutions of the normal type, though this is an aspect which has not only secured the support of many advocates of the scheme, but is in itself clearly of the greatest importance. (1) My chief purpose here is to consider the qualifications possessed by the native authorities for the position which this scheme would assign to them.

130. Discussion of this conception of the future of the native authorities has hitherto been confined mainly to the literature which has grown up round the merits of the policy of "indirect rule". It does not appear to have received the formal attention of the Colonial governments, nor has His Majesty's Government made any pronouncement on it. But it seems advisable that it should now receive some consideration by His Majesty's Government, though it would be premature to ask for a final decision. The general principle of a federation of this nature has the support of the high authority of Lord Lugard, and it is the ideal on which a certain section of the officials in Northern Nigeria base their view of the financial and administrative dispositions which should regulate the relations between the native authorities in that area and the government of Nigeria. Experience elsewhere shows the strength of the influence which such a conception can exercise on the day to day policy of our administrations; they tend almost insensibly to shape all their institutions to conform with the final development to which it points, even though it may at the moment appear to represent an ideal whose fulfilment must be left for distant future. (2)

131. I have in the memorandum on Nigeria discussed the considerations put forward by the section of local official opinion to which I have just referred. (3) They have approached the matter by questioning, in the first place, the propriety of confining the native authorities to the discharge of what are described as "merely local government functions". Our administrations generally have devoted a good deal of effort to finding a suitable definition of the functions of native authorities, partly perhaps because they have found it desirable to apply some corrective to the unrealistic descriptions put forward by the theorists of "indirect rule". The native authorities are now commonly described in Tanganyika as "agencies for local self-government", (4) through the Native Welfare Committee of Nyasaland, which also uses the term "native local self-governments" has found it necessary to draw a distinction between their functions.

(1) For this, see paragraphs 150, 151 below.
(2) See also paragraph 149. (3) H. 47-51.
(4) T. 28.
functions in this capacity, and as assistants to the administration. (1) Sir B. Bourdillon has described it as an integral part of the Nigerian system that the native authorities are responsible for carrying out not merely functions appropriate for local self-governing institutions, but also functions which would normally be discharged by the central administration. It is not, however, possible to point to any clear line of distinction either in principle or in practice between the functions of a local government body and those of the central government. Throughout the world, their respective activities have been determined by historical developments or by reasons of expediency, rather than by any accepted principle. An authority does not fall into the category of local government bodies merely because it deals with elementary rather than with secondary education; it does not pass out of that category merely because it takes some part in functions generally discharged by a Central government. An English County Borough is none the less a local government body because it maintains a police force. (2)

Native Authorities have no inherent rights.

132. For our present purpose, the crucial question is not whether a native authority now discharges, or may in future discharge, functions of any particular character, but whether it can claim to exercise inherent powers in any matter, independently of any powers delegated to it by the government. In examining the claims to the possession of an inherent authority put forward on behalf of the Emirs of Northern Nigeria by a section of official opinion in that territory, we have the advantage of the memorandum in which Sir B. Bourdillon has dealt with this, among other problems of native administration. (3) It is very clear that such a claim cannot be sustained, either on behalf of the Emirs, or of the native authorities generally in this or other dependencies. (4) The general practice of our administrations tends, moreover, to place increasing emphasis on the position of native authorities as subordinate, in a legal sense, to government. There is nothing to support the contention that they are independent authorities, to whom it is the objective of our system to restore, after a period of training, the powers to which they are entitled.

133. /

(1) NW.17. (2) For further discussion of this question see NW.68 ff.
(3) NW.50. (4) For the special case of Buganda and Barotseland see U.14 and MR.55.
The recognition of this fact would not form an argument against the progressive extension of their powers or their functions and financial resources, but these would come to them by delegation from government and would remain under its control. It would, however, constitute an argument against the conception of a form of constitution under which native authorities, fully powered within their own jurisdictions, would join together to form a federal government charged with the regulation of matters of common concern. But there are other and perhaps more substantial reasons than those based merely on a consideration of the status of native authorities as sources of inherent powers. Very many of them will not, unless their present composition is greatly modified, contain representation of some of the interests which are now of growing importance. (1)

There are many areas, mainly urban, in which there are no native authorities; there are considerable rural areas in which it may be necessary to replace them by some alternative system of administration. (2) Again, while native authorities may have a useful field of activity in regard to certain aspects of the administration of the economic and social services, neither continuity of policy nor efficiency in its execution is likely to be secured by fragmentation such as this scheme would involve. Finally, the necessities of modern political development demand administration by large units. Effective self-government could not be expected to develop in a state composed of a collection of small units, lacking any common tradition but possessing more or less independent authority. Respect for the indigenous native institutions of the past has its undeniable uses, but it also has its limits, and we must temper it with a realistic regard for the necessities of the future.

All arguments, therefore, to point to our regarding the native authorities only as local agencies of government, with delegated functions, which may be extended in proportion as they give proof of their capacity to discharge them. I shall discuss subsequently the question whether they can also be suitably utilized as the means of providing representation in the political institutions of government. (3) But if the views just put forward are accepted, it would follow that their use in this respect will be a matter of convenience, not of right, and it cannot be admitted that they afford the sole legitimate channel for representing the interests of the native population.

(1) See para 31, 32. (2) See para 109.
(3) Paragraph 155-157.
136. There are several contingent advantages which we may look to secure by an authoritative acceptance of this conception of the position of the native authorities. As shall in the first place put in clearer perspective the relative interest which attaches to the improvement of the native authority organizations as administrative units and the development of political institutions. It has been frequently claimed(1) that the proper field for the activity of politically minded Africans is in the working of the native authority organizations. If those organizations were in truth destined to take over the government of the country, there might be some substance in this claim. But the prospect which it opens to the more highly educated and politically minded African of the towns, and even to the middle class African in rural areas, is not one with which we can expect him to remain content. This dissatisfaction might take the form of an active campaign to rouse popular feeling against the native authorities which would gravely impair their value as administrative agencies, and as the means of introducing social reforms. Practical considerations demand that the African's participation in the political institutions of government and in the central responsibilities of the administration must be developed pari passu with the progress of the native authorities in the sphere of local government. Participation in such activities, otherwise than through the native authorities would not, as has sometimes been urged, prejudice the position of the latter. Given a clear recognition that their position is to be that of agencies of local government, it will be obvious that they have an expanding field of action within which their traditional authority should be unimpaired, and should indeed in some cases be enhanced.

Size of Native Authority areas. 136. There is a second point on which a clearer recognition of the position of native authorities promises a contingent advantage. The size of native authority units is a matter of great importance. Wherever the existing units are small, efforts are being made to secure amalgamation, and in a few of the larger native authorities measures of decentralization are in progress or in contemplation.(2) If the functions of native authorities are to be those of agencies of local government, then this will afford a guide to the standard of size to be aimed at in amalgamation or decentralization.

Consolidated tax and local rates. 137. There is an even more important advantage to be gained by the clarification of ideas. At present there is great diversity of practice in the methods by which native authorities obtain their revenue. Nigeria pays to the native authorities a share amounting to between 50 and 65 per cent of

(1) Nig. 84, 92 and Perham p. 361.
(2) Ny. 15, 88, T. 17, G. 138-3.

72.
the direct native tax raised by the central
government. (1) Tanganyika, (2) Northern Rhodesia, (3)
and Nyasaland, (4), whose systems were modelled on
that of Nigeria, have also adopted the rebate
system, but the shares allotted to native
authorities are much smaller than in Nigeria. In
Uganda, on the other hand, historical influences
have been responsible for the growth of a system
in which the central government and the native
authorities each raise direct taxes from the
native population. (5) When in 1937 Sierra Leone
reorganized its procedure of native administration,
the system of separate local taxation was adopted
in preference to the consolidated tax system
followed in Nigeria. (6) The Gold Coast presents
some interesting variants. In the Northern
Territories direct tax is imposed by the government,
but the whole of the proceeds go to the native
authorities. (7) In the Colony area and in Ashanti the
central government does not impose direct taxation,
but the native authorities have legal power to impose
a direct tax, in which case the whole of the proceeds
accruing to the native authorities. (8) In Koga the
local Native Councils impose local rates. (9)

138. As has been explained in the memorandum
on Nigeria, the system of consolidated tax and
rebate has given rise to considerable difficulties. (10)
The division of its proceeds as between general
revenue and the native authorities occasions
discussions which suggest a conflict of interests
between the two; any system of allocation arrived
at is, moreover, liable to be upset by a change in
the extent of the functions assigned to the native
authorities. The system of separate local
taxation would appear to possess greater flexibility,
and to encourage local initiative and a sense of
financial responsibility. (11) It enables a
progressive community to give expression to its
desire for the improvement of local conditions, and
it deprives an unprogressive community of the excuse
that the government provides it with inadequate
means to discharge the functions assigned to it.
Furthermore, it is the most satisfactory way of
providing finance for African township authorities,
since local rating is a convenient method of taxing
those incremental values which local government
activities create for the residents of the township.
In the interests of providing the rural population
with opportunities for political education and local
initiative not inferior to those enjoyed by the urban
population, the grant of rating powers to township
authorities may make it desirable to extend similar
powers to rural authorities.

Advantages of local rate system.

(1) N1.67. (2) T.70. (3) M.R.47. (4) Ky.23.
(9) A.28. (10) N1. 74-5. (11) S.52, N1.75.
XVII.

THE ASSOCIATION OF AFRICANS IN THE GOVERNMENT SERVICES.

Government employment as a political ambition.

139. It is a mistake, as Dr. James MacDonald once observed, to base our native policy on the idea that the native is a Briton in too making. (1) In our own history the first step in political advance was an attack on the exceptional position held by the privileged classes; the second was the acquisition of full political rights by the people at large. But in our Eastern dependencies, the first ambition of the politically minded elements has been the substitution of a native for the European official establishment. They saw in this the guarantee of a material measure of power, since even if the ultimate control remained with the Home Government, it was the local official organization which was mainly responsible for legislation, and had entire charge of its execution. An earlier concession of a substantial share in the official organization might well have delayed the growth of the subsequent demand for "popular institutions", though we cannot assume that it would have been entirely obviated; it was largely due to other factors, such as the emergence of an influential middle class, a growing dissatisfaction with economic conditions, and the unsettlement which followed the war of 1914-1918. But there can be no doubt that African ambition will also centre in the first instance on gaining a share in the official organization. There has already been an considerable employment of West Africans in responsible posts in the technical departments and in judicial appointments, but a difficulty still exists regarding their admission to posts of control, such as those filled by the administrative service. It is in our readiness to admit Africans to such posts that they will see the test of the sincerity of our declared policy of opening to them the road to self-government. That indeed is a view that is constantly taken by newspapers in West Africa. (2)

Africans in administrative service.

140. I have referred in paragraph 135 to expressions of the view that the field for the responsible employment of Africans in administrative work is in the native authority services. This view, officially announced by the government of Nigeria in 1938, (3) has not so far received either confirmation or correction from H.M. Government. This announcement was based on the ground that it would not be reasonable to employ Africans in the administrative service, since that service is destined to disappear as Africans become able to manage their own affairs. It envisages therefore a future when all administration would be in the hands of native authorities, or of equivalent organizations controlling areas in which native authorities do not exist. If, however, the views expressed in paragraphs 131 to 133 are not accepted:

(1) "Labour and the Empire" p.102. (2) 6.161. (3) H1.99.
accepted, it will be necessary to provide some more substantial grounds to justify the exclusion of Africans from responsible posts in the administrative service. It is not easy to find such grounds. Whatever form the institutions of self-government may eventually take, the government must have executive officers supervising not merely the working of the native authorities but the range of activities which will be outside the field of their work, and self-government would not be a reality if the cadre of these officers were confined to Europeans. It is true that the view has frequently been expressed that tribal prejudices will prevent the employment of Africans in any position of administrative authority outside the tribal areas to which they themselves belong. This feeling finds support in sources which are entitled to the fullest consideration. But at the same time, it is apparent that there are already some areas in which tribal prejudice has begun to lose its force. (1) It has not, again, been permitted to prevent the employment of Africans in posts of responsibility in the technical departments. It would be unfortunate if tribal particularism were allowed to constitute a final argument against the employment of Africans in higher administrative posts, since this would cast great doubts on the possibility of our being able to evolve any satisfactory scheme of self-government. If a territory can only attain cohesion through the presence of an alien bureaucracy, then it is clearly better that it should continue to remain under external control rather than attempt to manage its own affairs.

141. It is of interest to note that the Nigerian government has already proposed to take a step which involves some departure from the principle announced by it in 1932. (2) In 1941 it announced its intention to institute an intermediate division of the civil service for officials locally recruited. This was described as "one of the principal measures whereby it is hoped to foster the training of Africans to take an increasing share and responsibility in the Government service with the ultimate object of relieving highly paid European personnel of the accumulating volume of routine duties with which they are normally burdened." (3) Certain posts of this nature had previously been created in the Agriculture, Land and Survey, Medical and Public Works Departments, and it was now proposed that the system shall be extended to other departments and non-technical services. The salary scale for the Intermediate Division was to run from £300 to £500 p.a.; locally trained Assistant Medical Officers in the Intermediate Division were to have a special scale of £320-£560. The sessional paper explaining the grounds for the creation of this service emphasizes "the importance of ensuring that appropriately
important duties are assigned to posts of intermediate status and that these duties are in fact carried out." It is understood that the government was taking steps to appoint Africans as Local Treasurers. (1)

The position in Tanganyika.

142. The system is one which may be commended to the consideration of other dependencies. In Tanganyika in particular there appear to be special reasons for providing a satisfactory framework for the administrative agents appointed in the coastal areas, and for the native "subordinate magistrates" These officers deserve special mention. It has for many years been the practice in Tanganyika to entrust a proportion of the magisterial work carried out by the judicial department to African subordinate magistrates. These men have no English legal qualification, but are experienced in Moslem and native law, and their work appears to have been viewed with satisfaction by the High Court and by the local populations. (2) The system seems to be specially applicable to the requirements of the Gold Coast. (3)

Africans in superior appointments.

143. It cannot at the same time be expected that the Intermediate Service, though it may meet the primary need of the government for a body of responsible native assistants, will satisfy the aspirations of Africans to share in the higher government appointments. Indeed, any declaration that the creation of an Intermediate Service connotes the exclusion of Africans from these appointments would not only have unfortunate political reactions but would prejudice the success of the Intermediate Service itself. But it seems advisable to announce that approved service in the Intermediate Service will be regarded as one of the qualifications for such appointments. That will incidentally have the advantage of attracting a better class of candidate to the Intermediate Service. The question of remuneration is for separate consideration. It appears to be held in African political circles that to give to African officials a lower scale of pay than that of Europeans places a stigma of inferiority on them. But it would clearly leave the self-governing dependencies of the future with a legacy of unjustifiable charges if we acceded to the demand for equality in remuneration. Academic qualifications are clearly only one of the several factors which have to be taken into consideration in arranging scales of pay.

Employment in local authorities.

144. Meanwhile, there will remain a very considerable field of public employment under the native authorities and township councils. Here a difficult problem already arises in many parts, of adjusting the relationship between the conditions of service granted by native authorities and government departments.

(1) G.173. (2) T.53-4. (3) G.141.

76.
Departments to staff employed in similar work. Financial considerations make it certain that few native authorities will be able to pay wages as high as those which government departments can provide. It is for this reason that it has been necessary to suggest in paragraph 125 that lower standards must be accepted in native authority services. It is to be hoped that the standards required of subordinate staff both in the government departments and in the native authorities will constantly rise; but for as long as can be foreseen the native authorities are likely to lag behind in their ability to raise the scale of wages, since they must for obvious reasons concentrate rather on the extension of services to all parts of their area than on raising the standard at a few selected points. The lower-paid native authority employees will no doubt endeavour to secure transfer to government employment. It will therefore be desirable to establish the principle that governments and local authorities pay equal rates for equal qualifications, so that it may be apparent that the lower rates normally paid by native authorities correspond to inferior qualifications. There are wide implications in that principle. It would, for instance, entitle an employee of a native authority who is discharging magisterial and accountancy duties to receive a salary commensurate with that of a member of an Intermediate Division. (1) On the other hand, a dispenser who is in charge of a small and poorly equipped native authority dispensary would not be entitled to be paid on the same scale as a fully trained dispenser who has to undertake duties in a government hospital.

145. The establishment of a correct balance between conditions of employment in the staffs maintained by government and by local authorities appears to require the institution of local authority services by groups of native authorities acting in cooperation. It is for that reason that the suggestion has been made in paragraph 166 below that the regulation of the training and conditions of service for local authority employees might be entrusted to conferences of local authorities.

THE ASSOCIATION OF AFRICANS IN POLITICAL INSTITUTIONS.

146. It is implicit in the declarations made on the objective of Colonial policy that the dependencies shall be given a full opportunity to achieve self-government. The character of the interest now taken in the prospect of this development by the African population of our dependencies varies widely in the different territories. In Sierra Leone, the creole population is politically minded, and it has an attachment to British institutions.

(1) See paragraph 142.
Institutions similar to that felt in the West Indies, though it is possible that this is due less to a conviction of their value in themselves, than to a feeling that their enjoyment would remove from Africans the stigma of inferiority to Europeans. The local press and the speeches of leading oracles are insistent in their demands for the restoration of autonomous powers to the Freetown municipality, and for the grant to the legislature of that independence of action which would enable it to safeguard the civil liberties of the population. (1) But interest in political matters does not appear to extend to the large Protectorate population. There are a few Chiefs who seem interested in the adjustment of the Protectorate representation in the Legislature; but for the most part interest centres in the development of the tribal authority organization.

Political consciousness, Gold Coast and Nigeria.

It is hardly possible to speak of the existence of any political interest in the Northern Territories of the Gold Coast. In Ashanti, there is a growing middle class in Kumasi which may before long be expected to manifest interest in political developments; the traditional leaders, however, are at the moment mainly concerned in the affairs of the Confederacy, and have not as yet seriously approached the problem of the relation of Ashanti with the Gold Coast Colony legislature. (2) In the Gold Coast Colony there is, as already remarked, an influential middle class, (3) with an advanced element which includes a certain number of chiefs, and whose views are represented by political associations of some considerable influence, and by a number of local newspapers. It has shown that it can on occasion command widespread popular support, mainly on issues of an economic nature. (4) Its chief interest at the moment lies in the adjustment of the relations between the traditional native authorities and the government, but there is also some movement in favour of securing an unofficial majority in the legislature. (5) In the Northern Provinces of Nigeria there is little in the nature of expression of popular opinion; the interest of the traditional leaders centres at present on the character of their connection, financial and otherwise, with the central administration, and has not yet concerned itself actively with the question of the relations of Northern Nigeria with the Nigerian Legislature. In the Southern Provinces, two different movements are making themselves felt. There are numerous associations of a political character which are successfully exercising their influence to secure changes, largely in the interests of the educated classes, in the composition of the councils in the larger chieftums, (6) or, where chieftums do not exist, in creating tribal units as the basis of administrative and political organization. (7) The government seems to have been successful...

(1) S.2, 3, 54. (2) G.166. (3) Paragraph 31.
successful in anticipating some of the difficulties of representing these areas in the legislature by the procedure adopted in making nominations from among leading personalities in these associations. There is a further movement, most prominent among the many advanced elements of Lagos itself, which finds its most active expression in demands for the increased participation of Africans in the Government services.

148. In the Uganda Protectorate, African political interest is almost entirely confined to the aspiration of the Buganda State to improve the position secured to it under its treaty; the State authorities are more concerned with this, than with representation in the Uganda legislature. There have been some claims made by an element in Busoga (1) for representation in the legislature, but beyond this there is little in the nature of political movement in the Protectorate. In Kenya there is marked interest among some sections of Africans in securing representation in the legislature. This is most prominent in tribes such as the Kikuyu and Kavirondo, which have become politically minded owing to their close contact with Europeans, and have created associations of considerable local activity to support their own interests. There are, however, very many parts of the Colony in which no movement of this character appears to exist. In Nyasaland, there is evidence of some interest among Africans in representation in the legislature, though the most pronounced concern of the population at large is in economic issues. There is practically no concern in political issues manifested by Africans in Tanganyika or in Northern Rhodesia; in the latter such interest as is shown is confined to the question of amalgamation with Southern Rhodesia.

149. The approach to self-government presents two problems; that of the time within which we can expect to realize it, and that of the shape which its institutions may take. There are clearly many who, looking to recent political developments in our Eastern Empire, and to the experiences so far gained of the capacity of Africans to manage their own affairs, have little belief that self-government can ever be realized in our African dependencies on any terms which will benefit their populations at large, or will avoid prejudice to their connection with Great Britain. If they refrain from a more open expression of these views, it is because they believe that the conception is so idealistic, or at all events can only become realizable at so remote a date, that it does not form an issue of any immediate importance. It is not my purpose to canvass here the merits of the ideal of self government held out to the population of the dependencies, but to point out that though it may be for others to face the difficulties/

(1) U.21. 79.
difficulties it involves or to realize the end to which it looks, its acceptance has some immediate results of which we ourselves must take account. I have in paragraph 130 remarked on the strength of the influence which any such conception can exercise in the day to day policy of our administrations, which tend to adjust all their administrative institutions to meet its requirements. But there is, of course, more than this. There are forces both at home and in the dependencies which will exert increasing pressure for the extension of political institutions making for self-government, and for the fuller association of Africans in them. The strength of this pressure is likely to be largely enhanced as the result of the war. Unless we have a clear view of the constitutional form in which self-government is to be expressed, the answer to this pressure will be ill-coordinated, and may lead to the adoption of measures which we may afterwards wish to recall.

150. What then, is the form of self-governing institutions which we consider most suitable for eventual adoption in the African dependencies? We may readily accept Sir B. Bourdillon's warning of the dangers of premature "constitution-mongering" in Africa. (1) But there are certain considerations which have to be examined, even if the conclusions to which they point are sometimes negative. Our own political tradition, and the form which constitutional development has taken in the Dominions, has encouraged a tacit assumption, that self-government can only be attained through the gradual development of Parliamentary institutions of the pattern of those which we ourselves have originated, and in which we have so firm a faith. So far as politically minded Africans have envisaged the future, they have accepted without question the same creed. It is significant that Lugandia looks forward to the evolution of its own Lukiko on parliamentary lines, and there is already a demand for its reform on the lines of universal suffrage and two chambers. (2) In the Gold Coast Colony, there are those who encourage the idea that the chiefs might constitute a second chamber to the legislature. (3) Where political aspirations have manifested themselves elsewhere in Africa, they mostly take the form, as I have shown in paragraph 147, of seeking to secure African representation in the existing legislatures.

151. There is on the other hand a school of thought which regards Parliamentary institutions of the type which we have created for ourselves as entirely unsuited to the conditions of Africa. (4) That view must not be regarded as typical only of the school of thought which has been alarmed by developments in the East, or mistrusts the capacity of

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(1) Mi. 87. (2) U. 17. (3) 3.159.
(4) See references quoted in Lugard, "Representative forms of Government, and Indirect Rule in British Africa".

80.
opose the idea that Africans manage their own affairs. It is shared by many whose desire to see Africans achieve self-government is not open to question. They find difficulty in assuming that a form of institution which is peculiarly the product of one section of the Western peoples, marked by strong characteristics of their own, is that which is best suited to peoples whose social and material circumstances are so entirely different as are those of the population of our African dependences. It is largely this doubt which has encouraged a hope that an alternative course might be found in the adoption of the native authority organizations as the basis on which the governments of the future will be built up. The advocates of that course claim that it would have the advantage of utilising institutions indigenous to Africa, whose value can be tested in practice, instead of imposing a novel form of constitution, for which there is no basis in African social conditions. They urge that its failure might be all the more unfortunate in its consequences, since the development of parliamentary institutions may involve the disintegration of the native authority organizations, leaving us with no alternative system of rule on which to fall back.

152. If, however, the views expressed in paragraph 150 to 154 above are accepted, it would be a mistake in policy to assign to the native authorities any rôle beyond that of subordinate agencies of rule, performing functions which are of the character of those normally discharged by local government bodies. It becomes therefore important to subject to a closer analysis the objections felt to a policy which would seek to attain self-government through the development of parliamentary institutions. The basic objection clearly does not lie in the existence of a legislature. There must somewhere be a lawmaking authority, even if this function be entrusted to a body which is primarily executive in character, though if a country has any claim to be self-governing, then the executive must be responsible to elements within the country and not to external authority. The real difficulty will be seen to lie in the method adopted for securing representation in the legislature, and in the procedure by which the executive power is invested in the elements which can from time to time command a majority in it.

153. It is of interest to note here some of the views which are now being put forward by Africans themselves on the subject of political representation. Three different schemes have been advanced in the Gold Coast Colony. The Youth Conference supports ballot box election, the Joint Provincial Council considers that chiefs are the natural representatives of the people, while the .aborigines Rights Protection Society contends that it is best qualified/
qualified to represent the people of the colony. (1)
The Kikuyu Central Association in Kenya and the
descendants of Kinsu in Buganda seem to hold a
similar view of their position. (2) Buganda
furnishes yet another conception of representation,
namely, that the appointed agent of a native
authority should come, in person or by deputy, to
epress the views of the people of his district. (3)
But such views do not go beyond a desire to find a
method suitable to the existing local conditions;
they are not the result of any considered study of
the problems of representation.

154. It is inevitable that at the moment the
views even of those who are in a position to take a
broader outlook on the problem should be based
primarily on the conception of political represen-
tation as a means of giving expression to views held
by Africans. They feel the need, as has been said,
"to ensure that the government is told what the
people are thinking, and to satisfy the people that
the government is being told what they are thinking."
Representation is not yet envisaged by them as a
means of securing personamities which can actually
take part in the government of the country. It is
doubtless easier at the moment to find representa-
tives of the first class. It is possible that,
with the extension of education we may see the
growth of a class which can fulfill both functions,
since an educated class, even if it is not a
satisfactory exponent of the interests of all
sections of the community, can at all events voice
their grievances. It is, however, felt in some
quarters, and particularly in those to which
reference is made in paragraph 131 above, that
Africa has, in its native authority organizations, a
source of representation so peculiarly fitted to
discharge both the functions referred to, that it
should be used in preference to any other means.
The larger units could in this view form the
constituencies from which representation is to be
drawn, while the smaller could combine to form
electoral colleges for this purpose.

155. A certain use has already been made of
native authorities for this purpose in Sierra
 Leone, (4) and the Gold Coast Colony. (5) It cannot
be said that the results have been entirely satis-
factory, but the limited experience thus obtained
prompts certain suggestions. In the first place,
arrangements of this character should not limit the
native authorities concerned in the choice of their
representatives; they should naturally be free to
select a chief, but the possibility of selecting
others should be open to them. (6) In the second
place, some form of conference between native
authorities is desirable both for choosing the
representative and for discussing affairs with him
before/

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82.
before he proceeds to each session of legislative council; and such conferences should be constituted so as to take account of the fact that each's meeting without their councillors, cannot be regarded as a satisfactory conference of native authorities. (1) 

156. It may well be, that a more extended experience of this system would yield more encouraging results; it may indeed provide in some dependencies the major source from which representation can be drawn at the earlier stages of political development. But it is necessary to realize some of its limitations. It cannot form the sole source of representation in any of the dependencies once, as has more than once been pointed out, the native authority organizations do not themselves cover the whole area. (2) As political consciousness develops, there is likely to be an increasing disinclination to accept as political representatives those whose recognition as native authorities is under government control and whose activities are carried out under official supervision. Apart, moreover, from the satisfaction which native authorities may be able to give as representatives of different interests, there is, from another point of view, an obvious danger that an undue preponderance of this element in a legislature may subordinate national to purely local considerations. It is perhaps necessary to add, that the possibility of making a more extended use of native authorities as sources of political representation gives additional importance to what has been said in paragraphs 43 to 45 on the need for giving a more representative character to the composition of the native authority organizations. 

157. I have referred (3) to the claims made by various African associations to act as sources of political representation. These bodies have not, of course, the same established position or the same regularity of organization as the Chambers of Commerce and of mines which furnish representatives of European interests. But as already shown in paragraph 147 they have been utilized by the Nigerian Government, which has nominated to the legislature the candidates put forward by the Ibibio Union and by the Ibo Union. In Buganda representatives of societies of cotton-growers, teachers, etc., are allowed to address the Lukiko. (4) While it is of course impossible to treat such associations as a regular source of representation, some of them are at the present stage not without a value, since they must at times include practically the whole politically minded section of the population; their use in Nigeria has for example been fully justified by the results. 

Representation of Urban areas.

158. The representation of urban areas presents a special problem. It might of course be possible to accord to African municipal councils the same privileges in regard to representation as those granted to native authorities. Where representation in the legislature has in fact been accorded to urban populations, namely, at Freetown, Accra, Sekondi, Cape Coast, Lagos and Calabar, the method adopted has been that of election on the basis of a property qualification. (1) There appear to be no grounds for suggesting the abandonment of this system where it has already been established, more especially since no practical alternative has yet been put forward. I have suggested that in the Gold Coast Colony a liberal policy might be followed in the introduction of electoral systems in the townships for local government purposes. (2) It may at the same time be felt that the most suitable form for securing representation in African towns is not by election on a property franchise, but by some arrangement under which the different trades or occupations would select their own representatives. The quality of representation so secured is likely to be far superior to that obtained by election on a property franchise. The method suggested could not be directly applied for securing the single representative which the legislature would require from a large town or group of smaller towns, but representatives of trades or occupations could unite to form an electoral college for this purpose. If conditions should anywhere make it possible to try an experiment on these lines, the experience gained might be of great value.

Disadvantages of elections in rural areas.

159. In general, however, the objections against the use of the electoral system apply with far greater force to rural than to urban areas. As I have observed in another connection (3) "the use of election has a double disadvantage for communities which are still at the stage where their outlook on every problem of life is confined within the orbit of family or tribal associations. They are unable to appreciate the bearing of issues lying outside the field of their immediate experiences; and any attempt to constrain them to find representation of their interests otherwise than among the authorities which control their tribal or family affairs may hasten the disintegration of the customary ties on which their social behaviour depends." How far these conditions will continue to form an obstacle to the use in rural areas of electoral systems based on a property or similar qualification must be determined by experience. It is clear that at present it would be difficult to devise any franchise other than that based on payment of the direct native tax, since there is no record of land titles, nor any system of income tax payable by natives generally.

(1) S. 53, O. 163, II. 85. (2) O. 170. (3) Romanes Lecture 1941 pp. 25-6.
160. It is of interest in this connection to note the use of indigenous systems which have some approach to methods of election. In many parts of Africa the tribal authorities were, under the old customs, in close contact with the population through open public meetings - the baraza of East Africa and the palaver of the West. The open public meeting is still a means of contact between the local leaders and their people, and it has often been noted how Africans in public assembly seem to have a genius for reaching a consensus of opinion through a process of public discussion without any counting of heads. (1) But influences are at work which are rendering the palaver system ineffective. In the first place, the process of arriving at a consensus of opinion by open discussion may demand a long time. Today, a proposal put forward for consideration by the native authorities has often to be decided before a given date. Some means of closing the debate is required, such as did not exist in the old palaver or baraza, which was accustomed to continue or resume its discussion until virtual unanimity was achieved. Secondly, important sections of the public are now engaged in trade, in wage-earning employment, or in intensive forms of cultivation which make it difficult for them to attend the palavers and barazas and therefore prevent those assemblies from achieving a completely representative character. Thirdly, in former times the subjects discussed within the tribe were such as would be comprehensible to all the people; but the intricacies of modern affairs cannot be made intelligible to all the general public who may be entitled to attend an open meeting.

161. These considerations have so far weighed more heavily in Kenya than elsewhere, and in that Colony the practice employed in the choice of the unofficial members of Local Native Councils often bears some resemblance to the old English procedure of election at the hustings. (2) Here we see a practice, approximating to that of election, used in rural areas where admittedly no native authorities (in the commonly accepted meaning of that term) exist. But there are rural areas in Tanganyika where equally no native authorities are to be found - the coastal districts, Ngorongoro, and the Lupa; while, as I have suggested in paragraph 109, it may prove necessary in certain parts of other colonies to find a substitute for the use of native authorities. If and when the question arises in parts where native authorities are not established, of devising a means whereby Africans may choose representatives for a legislature, the question of using an electoral procedure should be considered.

(1) M. 11. (2) K. 26

35.
electoral procedure whether at the hustings or through the ballot-box, will require consideration.

XIX

The Planning of Future Political Development

162. The foregoing paragraphs will illustrate some of the factors that must be taken into account, and difficulties which have to be faced, in any planning of future political developments affecting the African population in our dependencies. It is legitimate to ask to what extent we can now contemplate such planning. I have quoted Sir E. Bourdillon's warning against premature "constitution-wandering" in Africa. It is indeed doubtful whether we are justified in attempting to plan the political future of those populations when we have still so much to learn about their reaction to the new environment which circumstances are creating for them, and when we have as yet made so few experiments in placing the African in situations where he must exercise initiative and final responsibility. At the best we can for the moment only indicate certain lines of advance which existing circumstances make possible to us.

163. We have rightly attempted, by our development of the native authority system and otherwise, to give to the African increasing opportunities for training himself in the administration of local affairs. Our immediate task must be to advance this process as rapidly as possible. This may perhaps in some areas appear to involve greater hazards than the canons of efficient administration may be thought to justify, but we must not be deterred on that account from a courageous policy in the delegation of powers. It has been felt by many that in India, our traditions of rule made it unduly difficult for administrative officers to realize that efficient government was not an end in itself; it is all to the good, that in Africa our system of administration has from the first been based on a tradition of devotion to local agencies, and we must be careful to see that an opposite tendency does not establish itself.

164. If then that is the first line of advance, a second - or rather collateral - line lies in the increasing association of Africans in the administrative services, to which reference has been made in paragraphs 139 - 145, and in the advisory or consultative committees attached to government departments. It is the general practice in West Africa to appoint Africans/
Africans to such committees, as contain an un-
official element, and in East Africa they are
at present represented on the Advisory Council
on African Education in Kenya, (1) the Native
Welfare Committee (2) and the Advisory Com-
mittee on Education in Nyasaland, (3) the Advisory
Council on Native Education in Tanganyika, (4)
and the Kampala Township Authority in Uganda.
Proposals have been made for the inclusion of
Africans in the Cotton and Coffee Boards and
in the Central Town-Planning and Building
Committee in Tanganyika, (5) While it may often
be impossible to secure Africans who are
able of following all the discussions on such
committees, there seem strong reasons for
including native representatives in them and, as
remarked in paragraph 15 there are special reasons
for including them in bodies which deal with the
control of prices and wages.

165. To approach now a field of advance
which lies more definitely in the
political sphere. Here we must take
account of the fact that conditions differ
materially in the dependencies which have a
considerable European settlement, as for
instance, Kenya, Northern Rhodesia and Tanganyika,
and those in which this factor is not prominent.
In the dependencies of the latter class, we may
be said to have greater freedom of action in
building up the institutions of the future.
Most of these dependencies have Legislative
Councils, but in none of them is there an
African membership on a scale which could
claim to be representative of all the
interests in the native community. In Eastern
and Western Nigeria there are twelve African
members out of seventeen unofficial members, (6)
in the Gold Coast Colony nine out of fourteen
unofficial members (7) and in Sierra Leone eight
out of ten. (8) Uganda (9) and Nyasaland (10)
have legislatures, but no African membership.
Ashanti, the Northern Territories of the Gold
Coast, and Northern Nigeria have no legislatures
of their own; their connection with the
legislatures of the Gold Coast Colony and
Nigeria respectively is explained in the
Memoranda on those territories. (11)

166. I have in dealing with these
dependencies in detail suggested that before we
proceed further in the systematic development of
the central legislatures, we should concentrate
our attention on the creation of regional
councils which would at first be largely
consultative, but which as they progress should
be...

(1) K. 56. (2) My. 6. (3) My. 44. (4) T. 77. (5) T. 77
(6) Ns. 86. (7) G. 163. (8) J. 85. (9) U. 17. (10) My. 44.
(11) G. 163, 166 Ns. 82.
be given increasing powers of subsidiary legislation. The main source of membership for such councils would be found in the native authorities, in township authorities, or in bodies of the type of Local Native Councils which (as I have suggested in paragraph 108) it may be necessary to create in areas where native authorities do not exist or show themselves incapable of functioning. There already exist in some territories institutions which may serve to form the nucleus of such councils. In the Gold Coast Colony (1) and Ashanti (2) there are conferences of local authorities which already have statutory functions. There are conferences, though of a less regular and formal character, in Northern Nigeria, (3) Western Nigeria, (4) and the Northern Territories of the Gold Coast. (5) In all these areas, the development of regional councils, as my memoranda will show, may have an important part in solving the problem created by the existence of units of a widely different character in one territory. Elsewhere, the foundations on which councils can be built up are not so easily recognisable. Conferences of the 3024 chiefs were at one time held in Tanganyika, (6) but have been discontinued. I have found reason to suggest that conditions seem favourable to the institution of Councils on a provincial basis in Nyasaland. (7) The development of such councils will in some areas be a slow process, but nowhere are they likely to have a permanent value, as part of a framework of political institutions, if their functions are purely consultative. It may be suggested, therefore, that in the first instance, they should have authority to review local authority by-laws, to provide for the training of personnel for local authority services, to lay down rates of remuneration and conditions of service of such personnel, and to maintain services which, while of local application, cannot be undertaken by individual authorities. They might, for example, undertake to provide for secondary or technical education or certain types of main roads.

167. It is not possible to foresee, and it would certainly be unwise to attempt to determine at this stage, the final form which such regional bodies may take or the scope of the responsibilities which it may eventually be possible to entrust to them. It remains to be seen, again, how far they will attract the interest of politically minded Africans and thus serve to diminish the demand, which must otherwise inevitably arise, for representation in a central legislature by recourse to a system of electorates. The drama of Africa's political evolution.

(1) G. 34-36 (2)G19 -20 (3) M1.78 (4) M1.77

68.
evolution is not of the type which can be handed ready made by the playwright to the actors. Its action will be largely developed by the actors themselves. Though ours may continue to be the leading part, there are other figures, and most notably the politically minded elements, which must in time occupy a rôle of increasing prominence on the stage. That is a consideration of which we must always take account in our outlook on the future.

168. If, however, a successful beginning can be made in the territories above referred to, by the establishment of regional bodies, we shall have already gained much. It will be all to the good that, in view of the character of the functions assigned to them, there need be no question of seeking to secure a predominance of government representation on them. (1) If they are successful, we should be able to make a devolution of powers to them of considerable, that it may become feasible to recast the existing legislatures in a form more suitable to bodies dealing only with a limited range of central subjects. The reconstituted legislatures need not have a large membership, and would be best constituted by direct representation from the regional councils, or large municipalities, with the addition of some representation of interests standing outside the range for which the regional councils are responsible, such as those of European commerce. It may again be possible that if at a later stage the advance to self-government involves the grant of full legislative and executive powers to the central legislature, we shall find in a body so constituted a far more stable executive than would be provided by the normal development of Parliamentary institutions.

169. Among the dependencies which fall into this category Uganda presents a special complication, owing to the position occupied by the Buganda State. (2) As already remarked, the Buganda authorities are at present concerned more with the development of their own Lukiko, as a centre of legislative and executive authority, than with any question of representation in the Uganda Legislature. (3) There is much to be said for countenancing this ambition, if only because it would afford a valuable experiment in the exercise by Africans of responsibility in the management of their own affairs. There is certainly no other area in the dependencies now under consideration which could make a claim as strong as that of Buganda to form the subject of such an experiment, not only on account/ (1) See para. 50 (2) U.1. (3) Paragraph 148.

89.
account of the status secured to it by treaty obligations, but on account of the capacity it has displayed in organizing its own administration. I have in the meantime on Uganda discussed the situation which might arise as a result, though I have not been able to point to any definite solution of the problems which would be created by the requirements of other areas in the Protectorate.

170. As remarked in paragraph 160 it is necessary to consider separately the position of dependencies in which there is a settled European community of any considerable size, such as those of South Africa. The European community will not readily contemplate any departure from the normal form of legislature based on a system of electorates, and in which, under a system of responsible government, full legislative and administrative authority would vest in the party which from time to time commands a majority vote. But there would still remain the necessity for determining the relative position of the European, African or Indian communities in a constitution of this type. That problem still stands substantially at the stage at which it was left by the recommendation of the Joint Select Committee of 1931. (1) It is not possible to feel that a solution of the situation could be found in any scheme which would involve the administrative and political separation of European and other communities. The governments of the Union of South Africa and of Southern Rhodesia (2) have in late years taken measures to give a more concrete and systematic expression to the principle of "segregation" or "parallel rule" which constitutes the guiding conception in their native policy. But apart from any other consideration, that policy could not be adopted in our dependencies without a reversal of the principles accepted by the Government of the United Kingdom in 1931.

171. Dependencies of this type would thus seem destined to remain under Crown Colony government until the European community shows itself prepared to share political power with the Indian and African communities on terms which will be accepted by the latter, or alternatively, until the British government considers that the social and political advance of those two communities justifies the introduction of a franchise common to all three communities alike. It will be recalled that the situation which was examined by the Joint Select Committee arose mainly from the resistance of the European community to the claims made by Indians for the introduction of a common franchise. For some time the Indian community maintained an organized opposition.

opposition to the constitution of 1927, which gave them five representatives elected on a communal roll. Since 1934, however, they have in practice accepted representation in the legislature on those terms, though maintaining their claim to the common franchise in principle, and the question does not appear at the moment to constitute an active issue. On the other hand, Africans, and especially the section to which reference has been made in paragraph 148 above, have lately given evidence of a more definite interest in the question of their representation in the legislature than was apparent during the discussions over the Indian issue. They have in this movement secured the active support of some of the Indian members on the Council. African interests are now represented by two European nominated members, but as the Memorandum on Kenya will show, there are good reasons for considering this arrangement to be unsatisfactory. (1)

172. The Joint Select Committee endorsed the view of the Hilton Young Commission that, as regards Africans, future development might possibly take the form of the creation of local councils, which might ultimately be represented jointly with the other races on a central legislative council in which the Imperial Government would hold the balance. (2) I have suggested that conditions in Kenya now justify our giving serious consideration to the institution of a Central Native Council with certain powers of subsidiary legislation. It would be mainly composed of representatives from provincial councils which would, in turn, be based on the Local Native Councils to which reference is made in paragraph 108 above. The Joint Select Committee considered that it might be necessary to make special provision for the "detribalized native." In this respect, however, the Kenya system of Native Local Councils already possesses considerable advantages over the systems of native administration which are based on the use of traditional native authorities, and the point made by the Joint Select Committee might further be met by the more systematic development of bodies charged with the administration of African urban locations (3) and their recognition as sources of representation to the Native Central Council.

173. It is not at the moment possible to foresee the exact position which this council/continued.
Council may in time come to occupy in relation to the Legislative Council, though it is to be hoped that responsibility for dealing with purely native affairs may be progressively delegated to it. Politically minded Africans in Kenya appear at present to attach chief importance to their claim that African interests should be represented in the Legislature by Africans, in however small a number; they recognize that no system of election is yet possible, and they would accept the nomination of these members by the Government, though the associations referred to in paragraph 163 prefer a claim that nomination should be from among persons indicated by them. They profess themselves as unwilling to welcome the institution of a Native Central Council if it is to be treated as the sole means of voicing native opinion, thus excluding the admission of Africans to the Legislative Council. It would be unfortunate if Africans were placed on the Legislative Council whose inability to play any useful part in it would add point to the views put forward by some sections of European opinion regarding the intelligence and capacity of the natives of the Colony. I have in the Memorandum on Kenya suggested that the Central Native Council should be recognized as the source from which African representatives should subsequently be taken, preferably from among a panel selected by the Council itself. (1) The number of such representatives must in the first stages be determined by the quality of the material which proves to be available, but it would be desirable to obtain at least one from each province.

174. Neither in Tanganyika nor in Northern Rhodesia have Africans as yet exhibited the same interest in political development as have those of Kenya. In both territories, native interests are at present represented in the Legislative Council by a European nominated member, and whatever the merits of this, it is doubtful if Northern Rhodesia at all events, could at present produce an African capable of taking a useful part in the proceedings of the legislature. Sir Donald Cameron suggested some years ago that in Tanganyika the first stage in political development must be the creation of regional councils of native authorities. (2) No measures have yet been taken in this direction, but there are some areas at least in which the institution of these councils might now be attempted with some prospect of success. The general considerations put forward in paragraph 166 above regarding the composition and the range of functions of regional councils would apply equally in this case. In Northern Rhodesia, there seems to be less possibility of the formation of regional councils in the near future.

(1) K.83 (2) T.78

92.
175. I have in previous sections of this Memorandum expressed a conviction that our immediate concern must be to develop the local institutions, and particularly those which have their root in African custom, which can best serve as a basis on which to build up the political structure of the future. It would at the same time be impolitic to overlook the necessity of finding a place for the elements in African society, such as those referred to in paragraph 31, which are, as our experience elsewhere shows, bound to exert themselves to find means for entering into the political life of the country. To do so, would hazard the possibility of attaining an orderly advance in the development of our political institutions. It may be possible to engage some of the interests of this class in the regional councils, and by affording to it openings for employment in the administrative and other services of government. (1) But there are already advanced sections in some dependencies which look for the satisfaction of African ambitions in the wide extension of native representation in the Legislative Councils and the concession of an unofficial majority in them. (2) They are, in effect, unable to read the future in any other terms than the expansion of Parliamentary institutions of the normal type.

176. If we ourselves were convinced that self-government could not be approached by any other road, it might be advisable to make such concessions in the direction now sought by this class as the local circumstances in different dependencies seem to render possible. As it is, it would be more prudent to take at this stage no step of which the logical conclusion must be the adoption of the normal Parliamentary form of government, with all its implications, or which would preclude the possibility of finding any substantial modification of it. Some concessions to politically minded Africans must be made, but they should be so regulated as to avoid making an irrevocable commitment as to the form of constitution which we, in cooperation with them, may find it expedient to evolve in the future.

(1) Paras. 139-143 (2) G. 159
177. This consideration applies in particular to the demand for the concession of an unofficial majority in the legislature. It is true that this demand has come primarily from the European community in territories such as Kenya and Northern Rhodesia, and that the majority which they have had in mind is, of course, a majority of unofficial Europeans. If they do not agree with the Joint Select Committee that an unofficial majority, even with the retention of certain overriding powers in the hands of a Governor, "does morally and in fact become responsible government," (1) they have no doubt felt that it constitutes an important step in that direction. The same demand has, however, recently been put forward also by a section of African opinion in the Gold Coast Colony. (2) In all the legislatures in the African dependencies there is now an official majority. It has been adopted as the constitutional device by which, in a Crown Colony form of government, the administration can secure legislation of the type it considers essential, and has been preferred to the alternative procedure under which the purposes of the official government are secured, in the face of opposition by an unofficial majority, by resort to the issue of Orders in Council, or by placing "reserved powers" or "powers of certification" in the hands of the Governor.

178. There is no more debated issue in colonial policy than the choice between these alternatives. It is no new problem, for it dates back to the stage in the history of the Dominions which saw these territories move from a representative to a responsible form of government. (3) It was the specific issue discussed in the Duke of Buckingham's well known despatch of 1868, in which the Imperial Government declared that it could not assume responsibility for the trust which the surrender of their powers by some of the East Indies legislatures imposed on it, unless it could, by the use of an official majority, secure means "to overcome every resistance that could be made to it." (4) India passed in 1919 from a régime of official to one of unofficial majorities and "reserved powers"; the Report of the Indian Statutory Commission of 1930 has an interesting examination of the position which the Governor occupied under the latter system. (5) Lord Halifax's Report on the East Indies (6), the reports of the Ceylon Special Commission, (7) the Commission on Closer Union in East Africa (8) and the Malta Commission (9) all contain material bearing on the same issue. (10)

179. The practice adopted in the more modern revisions of the East Indies' constitutions shows a preference for the procedure of an unofficial majority with "reserved powers" in the hands of the Governor.

Governor. Officials themselves dislike the "invidious position . . . presented by the sight of a long row of officials, who otherwise scarcely open their lips, exclaiming 'Yes' or 'No' in succession, by official order, whatever their private opinion may be." (1) legislatures. They hold that where there is an official majority, the unofficial minority will be provoked into irresponsibility and antagonism by a sense of frustration; an unofficial majority will in their view be less likely to manifest this feeling if the government takes what is described as the more honest course of securing its purposes by a procedure in which it does not pretend that the legislature has a share. It is doubtless the impression gained by the working of the system of unofficial majorities in some of the Jast Indies that moved the Rhodesia-Nyasaland Commission to express an opinion in its favour. (2) but the attitude of Jast Indian legislatures is determined by special local circumstances. The British administration has not been viewed as an alien government, nor is it certain that the unofficial members of these legislatures are sufficiently sure of their own representative character, or of the support of public opinion, to encourage them to engage in persistent opposition to the Governors. The use of "reserved powers" has certainly not been accepted in India with any equanimity; it has been especially resented on the ground that having given the legislatures a semblance of responsibility by the recognition of the principle of an unofficial majority, we have nullified it by the use of the "reserved" powers of the Governor. The acceptance given to the system seems therefore to depend largely on local circumstances. But important as it may be to secure the maximum of acceptance for the constitutional procedure we employ, there is in the case of Africa another consideration of equal importance. The concession of an unofficial majority would certainly be taken in East Africa as evidence of our intention to make a further step towards the grant of full responsibility to legislatures which now have a European majority.

180. A similar consideration would not of course apply to the existence of unofficial majorities in bodies such as those I have proposed for Ashanti or Northern Nigeria. (3) Part of the solution of the problem created by the demand for unofficial majorities may indeed be found in the division of functions between central and regional councils. It would only be in the former that it would be necessary.

(1) Bertram at p. 175. (2)Cmd. 2943 (1939) p. 196. (3) Paragraphs 165 and 168.
necessary to retain an official majority until such time as all parts of the country are able to take
an equal share in a responsible form of Government
at the centre.

Proceedings of legislatures.

181. Meanwhile, we should clearly take every
opportunity to give a greater vitality to the
proceedings of the legislatures. In Nigeria steps
have recently been taken to give greater reality
to debates by holding the main debate on the
appropriation bill before the estimates are
considered in committee; by encouraging official
members to take a more active part in debates; by
accepting unofficial amendments or allowing a free
vote on them unless an important principle is at
stake; and by the employment of unofficial
members on numerous committees. (1) It has been
suggested that in Sierra Leone the proceedings of
the legislative council might have a greater value
if it met more frequently and if the government
encouraged the discussion of resolutions put forward
by private members. (2) In all the dependencies
much will depend on the personality of those who
are selected to represent the government in the
legislature, and on their ability to present the
official case. (3) The proper presentation of
government policy, not only within the legislature
but outside it, has now become a matter of
increasing importance. It is in particular
necessary to educate public opinion through the
newspapers and by the extension of radio services,
and it is to be hoped that the departments of
information which have been built up during the
war will not be abandoned in peace-time. (4)

XII.

EXECUTIVE COUNCILS.

182. It has been felt in many quarters that
confidence in Government and in its attitude
towards Africans would be greatly increased if one
or more non-official Africans were appointed to
the Executive Councils. There can be little doubt
of the satisfaction which this would convey to
Africans, partly because it would make it possible
to argue that we could not then logically deny to
Africans access to any branch of the public
services or any grade in them, but even more
because it would allow Africans to claim that they
had attained equality with Europeans. It would
perhaps be possible in two at least of the
dependencies to find Africans whose advice on
public matters would be valuable to the Governor
and the other members of the Executive Council.
It is, however, necessary to recall that the
Executive Councils originated in the desire to make
available

(1) NI.91. (2) S.55. (3) G.151. (4) G. 151, S. 107.

96.
available to the Governor the advice of officials who were qualified for this task by the experience gained in holding the highest executive posts in the services of the territory. The appointment of Africans to the Executive Council should logically be the last stage of a process which begins with their admission to all branches of the public services and is completed when they have risen to positions qualifying them to participate in the work of the Council. The appointment of non-officials has the effect of bringing to the inner councils of Government men who are not bound by the same relations to the Crown as their colleagues, and who often owe loyalty to sectional interests. This fact has more than once - as in Kenya (1) - proved to have serious inconveniences, and difficulty might arise from the appointment to the Executive Council of a prominent native authority, or a member of any of the major African political associations. It is true that there arises in the history of every territory, a stage when such inconveniences may have to be faced; but it is a matter for consideration whether such advantages can be foreseen from admitting non-official Africans to the Executive Council as will justify us in facing difficulties of this nature at present or in the immediate future. (2)

AXII.

THE GROUPING OF COLONIAL UNITS.

133. I do not propose to examine here the many problems which must arise in regard to the relation of the dependencies to other units in the British Commonwealth of Nations if the former attain a status of responsible government. In principle at all events, the attainment of responsible government by the dependencies would place them in a position to rank in all respects as Dominions. (3) But it is clear, that whatever the prospects which some of them may have of attaining responsible government, there are many which in view of the relative unimportance of their size and economic resources would find it difficult to secure from the other Dominions a recognition that they are entitled to equality of status with them. One of the most significant features in the history of the Dominions themselves is the fact that the attainment of their present status has in most cases been preceded by a process of federation. It is difficult to believe that the individual states which now form the Commonwealth of Australia, or the Provinces now united in the Dominion of Canada, could easily have attained the position of autonomy;

(1) Cmd.3224 (1929) p.39 and Colonial 57 (1931) Item 1, paras. 128-30. (2) G. 174. (3) For a fuller treatment of this subject, see my Romanes lecture, 1941.
or made the same appeal to the sentiment of nationality, as the Australia and Canada of today.

184. The lesson which this suggests is that one of the objectives of our policy should be the grouping of the African dependencies in larger units. If this has somewhat of a far range aspect, there is another consideration, of more immediate significance, which points to the same conclusion. There is no doubt that a small unit is at a disadvantage in achieving self-government, in comparison with those which have larger economic resources, and a greater balance of social and political forces. It is, again, probable that His Majesty's Government would feel more secure in conceding to the larger unit that gradual relaxation of control which is the necessary preliminary to the attainment of self-government. In previous schemes for the amalgamation of African territories the chief consideration has been to secure certain administrative and economic advantages. The potential political advantage is, however, equally obvious.

185. On the eastern side of Africa the problem is complicated by difficult questions of race relationship, but in West Africa, though it would be over-optimistic to suggest that race relationships will present no difficulties, it is permissible to suppose that the ultimate stage of development will present the picture of predominantly African states. It is of interest to note that a memorandum recently put forward by the West African Students Union describes the objective of political development as the attainment of Dominion status by a federation of the four West African colonies. There is nothing which militates against the federation of the four colonies in the proposals which I have made for the constitution of three local bodies in the Gold Coast, (1) and for experimenting along somewhat similar lines in Nigeria. (2) These are steps primarily designed to evolve a form of government suitable to the circumstances of those two territories. The Northern Territories of the Gold Coast, Ashanti, and Northern Nigeria all have an outlook and interests which are not shared by other parts of the Gold Coast and Nigeria respectively. The recognition that these units must maintain some measure of individual political existence seems to be the only method of according to the more advanced parts of those territories the degree of responsibility to which their development entitles them, without handing over the interests of relatively less advanced populations to legislatures which can for some years to come represent only one part of the country.

(1)G. 167. (2) Ni. 94-97.
186. It will remain for the future to determine the manner in which these units would come into a West African Federation. There are two possible courses. They might enter the Federation indirectly, through a federalized government in the Gold Coast and Nigeria respectively, or they might come in directly, like the Gambia and Sierra Leone as constituent units in a union which would then include some eight or ten members. The latter scheme might prove the more attractive to the Gambia and Sierra Leone, since they might feel that to link their fortunes directly to Nigeria as a whole would subordinate them to a state which, with its great size and population, would inevitably tend to dominate them. But before the time came to decide this question, West Africa would already have learnt much about the problems of federation, from the experiences gained of the preliminary measures taken in regard to the smaller units in Nigeria and the Gold Coast.

XXIII.

THE RELATIVE IMPORTANCE OF POLITICAL ADVANCE AND ECONOMIC AND SOCIAL DEVELOPMENT.

187. This memorandum has been primarily concerned with questions relating to the administrative and political organization of the African dependencies. No one would seek to underrate the importance of the benefits which a system of sound administration or liberal political institutions can bring to the people of these territories. But developments of this nature must be viewed in perspective with the needs of Africa in other directions. Good administration and well conceived political institutions are only a means to an end, the promotion of the general well-being of the population, and the success of the part which they can play in securing that end must depend on our ability to improve the standards of physical and social life in Africa. How low are those standards in general, and how deplorably low in some areas, I need not emphasize here; the facts are well known to the British Government, and there is a growing appreciation of them among the public at large. If they are not such as can bring satisfaction to those who judge of the success of our trusteeship by the evidence we can give of improvements effected in the health or economic conditions of the mass of the people; that does not necessarily mean that the African governments have been oblivious of their obligations in this respect. Much improvement has already been effected in spite/
spite of obstacles created by lack of finance, and by the prevailing poverty of physical conditions, with all the consequences it has involved in impairing the health and vitality of a large part of the population. But the realization shown by the African governments of their obligations in this respect has been unequal, and there are some instances in which a sense of the immensity of the task, and despair of accomplishin; it with the means available, appears to have resulted in a loss both of resolution and initiative.

188. Measures for improving the physical and social conditions of the people must now have a claim on our attention which should take precedence of other considerations. It is no disparagement of those whose chief interest lies in furthering political advance, to say that the satisfaction of the ambitions of what is still a small minority of Africans can be no substitute for the expenditure of the protracted effort and the considerable financial sacrifice which may be needed to meet the more elemental needs of the great majority of the people. But the two conceptions are fortunately not mutually exclusive; the situation only demands that we should not allow our pursuit of political ideals to detract from the attention which must be given to the preeminent needs of social advance. In the political sphere, the most important of our immediate problems is to interest Africans in measures designed to further social and economic developments, and to secure their full cooperation in them. The solution suggested in this Memorandum is, on one side, a resolute development of local institutions, combined with the progressive admission of Africans to all branches of the government services, and on the other, a policy of caution in political matters which, while leaving an opening for advanced opinion to play its part, would keep the substance of power in the hands of the official government, until experience has shown us under what constitutional forms the dependencies can move most securely towards the final stage of responsible government.