

BOOK REVIEW

The Constitutional Law of Ghana

by F. A. R. Bennion

(Butterworth's African Law Series, No. 5.) xxxvi, 527 pp. London : Butterworths, 1962. 70s.

Reviewed by James S. Read

Constitutional and legal developments in independent Ghana have had a significance beyond the borders of that country. They have served as a general example to some other African states, such as Tanganyika, and some enactments in Ghana have been taken as particular models for legislation elsewhere. To some, the political changes have served as a warning, and of course some commentators—mainly outside Africa—have stressed certain aspects of Ghana's constitution in order to assert the frailty of 'democracy' in Africa and the alleged dangers of African nationalism. Such criticism often ignores the details of the complex and carefully structured constitutional framework. Furthermore, little credit has been given to the massive and commendable work which has been accomplished in modernizing the basic legal system of Ghana and ridding it of unsatisfactory features which had remained from the colonial period.

A good study of the constitution and laws of Ghana is therefore particularly welcome, and this is a very good book indeed. Mr. Bennion, as technical adviser to the Government of Ghana from 1959 to 1961, took an important part in the preparation of the legislation which effected, or resulted from, the introduction of the Republic in 1960. He is therefore singularly well qualified to guide the reader through the complex mass of new or revised laws. But he has also, as befits a former law don, taken a broad view of his subject-matter, and his study is no mere technical guide but a comprehensive and authoritative interpretation of the important legal developments in Ghana.

In part i of the work he describes the process by which the republican constitution was evolved, and analyses its provisions in detail. In the second part, he deals with 'The state and the individual', with a chapter on citizenship and related matters and another on liberty and state security, including personal freedoms. Part iii discusses 'Law-making under the Republic' and part iv gives an outline of the basic legal system under the heading 'Common law and customary law'. Useful appendixes include the constitutional text in full (it has of course lately been subject to certain subsequent brief, but important, amendments) and extracts from certain important enactments.

In the circumstances of modern Africa, originality in the approach to the teaching of, or writing about, constitutional law is a vital need; Mr. Bennion has succeeded in producing a work which is not merely the best study of the Ghana constitution yet published, but which marks a new and distinctive departure in the nature of constitutional law textbooks. For his treatment is at once more realistic and more comprehensive than is traditional in such writing. Thus, his discussion of law-making is particularly clear and full, setting out step by step the details of the process by which laws are made. As one might expect of a Parliamentary Counsel, he gives full attention to the role of the draftsman. This careful treatment will be most valuable in law schools in Africa, not least in the instruction of future legal draftsmen of whom there is such a chronic shortage in present-day Africa. But this approach might well be emulated by writers of constitutional law studies in other parts of the world. No comparable English textbook, for example, gives the law student such valuable and careful information and advice as this author packs into his chapters viii and ix on 'Legislative methods', the latter dealing especially with the preparation and structure of statutory instruments. In this way Mr. Bennion makes a real contribution to the notion of the scope of constitutional law, as well as to the jurisprudence of modern Africa.

Other parts of the book are also especially useful, for example, the careful description of the personnel and procedure of Parliament, the practical account of the system of public finance, and the clear treatment of the application and development of customary law.

Blemishes are few and of very minor significance. Mr. Bennion writes of the law and eschews politics—partly because he does not feel qualified to comment on it and partly also because much of it is documented elsewhere. But even such a careful exposition of the Ghana constitution as this must seem somewhat incomplete without a full analysis of the position of the Convention People's Party (which does not even figure in the index, although not ignored in the text) and the work of organs of the Party. The author perhaps does not sufficiently clarify the difficulty noted by

Professor W. B. Harvey¹ concerning the priority between rules of equity and rules derived from English statutes of general application which have remained temporarily in force : a subtle point of drafting is involved which requires further elucidation for the average student (pp. 404-7). As befits a book by a skilled draftsman, misprints are rare : but part VII of the Chieftaincy Act has become part VII on p. 502. And it is surprising to meet the odd quirk of grammar on p. 267.

But one can have only praise and admiration for this work : it is clear, full, and honest and sets a high standard for writers on constitutional law in Africa to follow.

JAMES S. READ

¹ In 'The evolution of Ghana law since independence', in H. W. Baade and R. O. Everett (ed.), *African law: new law for new nations*, Dobbs Ferry, N.Y., 1963, 62