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KENYA:
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Part I

INTRODUCTION

THE PLURAL SOCIETY AND PARLIAMENTARY GOVERNMENT

The Plural Society

Most plural societies¹ are found in underdeveloped and technologically backward countries of the tropics. Often they are dependent areas, or formerly dependent areas, with artificially created boundaries drawn by colonial powers. The plural society is fragmented by racial, linguistic and cultural groups, typically representing the indigenous inhabitants and European as well as non-European immigrants. Examples of such societies are: Malaya with its racial mixture of Europeans, Eurasians, Malays, Chinese and Indians; Burma with Burmese, Karens, Shans, Mon, Indians, Chinese and Europeans; Kenya with Europeans, Indians, Arabs and several major tribal groups; and the Union of South Africa, which includes various Bantu tribes such as Hottentots and Zulus, a European population split between English South Africans and the more numerous Afrikaners, a mixture of native and European known as Cape Coloured, as well as Indians. The racial groups represent linguistic differences such as Afrikaner, English, Bantu dialects and Indian dialects in the Union of South Africa and various religious groups such as the European Christians, Hindu Indians Muslim Arabs and numerous pagan African rituals. In this

1. The plural society should not be confused with the pluralistic state as discussed by such political scientists as H. J. Laski or G. D. H. Cole. Members of a pluralistic state are politically fragmented into functional or occupational groups, but they live in politically advanced and stable societies, share and communicate their values and compete politically within the context of a relatively high political consensus. J. S. Furnivall differentiates between the two types by pointing out that in the pluralistic states: "there are mixed populations with particularistic tendencies ... they have at least a common tradition of western society ... despite different racial origins they meet on equal terms." J. S. Furnivall.

Colonial Policy and Practice. Cambridge: Cambridge University Press. 1944.

highly heterogenous situation, each group tends to identify itself with its own local community rather than with the larger community in which all the groups reside. Not only do they share few values, but they may be hostile toward one another.

Many anthropologists and political scientists acknowledge J. S. Furnivall as the originator of the descriptive phrase "plural society"¹; his classic definition best explains the relationship of the groups in such a community²:

It is in the strictest sense a medley, for they mix but do not combine. Each group holds by its own religion, its own culture and language, its own ideas and ways. As individuals they meet, but only in the market-place, in buying and selling. There is a plural society, with different sections of the community living side by side, but separately, within the same political unit. Even in the economic sphere there is a division of labour along racial lines.

In a sense, each group forms a community of its own through common cultural, linguistic and racial characteristics which bind it together. All of the groups are forced upon one another, for they live in a larger community which they find difficult to comprehend. They are held together politically by external power, not so much against their will, as by the absence of any will of their own.

1. Cf. S. D. Bailey. Problems of Parliamentary Government in the Colonies. London: The Hansard Society. 1953. p. 55, where he also points out that some European scholars refer to this condition as "segmentation."

2: Furnivall. op. cit., p. 304.

In most plural societies the natives still live in primitive¹ conditions. If the native population is divided into several tribal groups, it may represent a plural society in its own right, for each tribe is usually bound by its own customs and culture.² The sense of community in such groups is rudimentary and often limited to associative behavior such as food gathering or mutual defense against outsiders. Organized either in primitive territorial units or according to lineage patterns³, members of the tribe have a strong allegiance to their small unit and a limited awareness of the world beyond their borders. Consequently they have little concern for the larger community in which they live, not because of indifference but because it has no meaning to them. Such tribal groups have little self-conscious need or desire for communication with

1. The word primitive, as used here, requires explanation. Evaluations of "primitive" or "civilized" are used to distinguish between the attributes of societies. Both terms should be considered descriptive, e.g., "the grass is green" or "the sky is blue." Attempts to avoid using the word "primitive" by substituting such words as "nonliterate" or "simple culture" eventually make the descriptive function more difficult. "Non-literate" may simply mean people have not yet learned to write, yet they still communicate effectively with one another. Many "simple" cultures, e.g., aboriginal Australian, are based on exceedingly complex social structures. There is no escape from the use of the word "primitive"; used here, it should be taken to mean a society: which has few of the technological techniques of modern western society, which is not urbanized and has little or no scientific tradition. Cf. Melville F. Herskovits, Cultural Anthropology. New York: Alfred A. Knopf. 1955. pp. 358-363; and Felix M. Keesing. Cultural Anthropology. New York: Rinehart and Co. 1958. pp. 44-46, for helpful commentary on this matter.

2. Cf. M. A. Fortes and E. Evans-Pritchard. (eds.) African Political Systems. London: Oxford University Press. 1946. p. 17 for the comment: "Members of an African tribe feel their unity and perceive their common interests in symbols, and it is their attachment to these symbols which more than anything else gives their society cohesion and persistence."

3. Ibid., pp. 5-6.

other groups.

The European and non-European immigrants represent diverse ethnic backgrounds, whose cultural and socio-economic traditions vary greatly. Usually enjoying greater technological skill than the natives, these groups, though numerically a fraction of the population, exercise extensive political or economic control over the country. For the most part they consider themselves superior to the natives, though the Europeans tend to assume this attitude even toward the non-Europeans. In spite of the fact that all the native, European and non-European groups live within the same geographic territory, and seek basically the same things, i.e., material and spiritual advancement, they follow different methods of meeting their needs and have a minimum of contact.

None of the three groups enjoys what may be termed internal "community consensus" in the early stages of their plural relationship. The natives, already in a plural society, soon find that their own environment becomes strange and perplexing under the impact of western influences. They have no choice but to yield to the power of the colonizing power.¹ The Europeans, separated but not divorced from their cultural environment, attempt to re-create the western culture in their new home, and perhaps even try to impose it on the natives. The non-Europeans, who usually have preceded the Europeans to the area, are not strangers to the natives and look upon the Europeans as intruders and competitors. The native groups are organized by a primitive political system which is strong enough for them², but not flexible enough to incorporate outsiders.³ The Europeans

1. Ibid., p. 15.

2. Ibid., pp. 11-14.

3. I. Schapera. Government and Politics in Tribal Societies. London: Watts, 1956. p. 203.

and the non-Europeans, who are not always completely settled in the area, have an incomplete social and political life; both groups are "aggregates of individuals" rather than organic units representing coherent communities.¹ In time, each group retrenches for purposes of survival and some measure of internal unity. By so doing each group creates a unique social pattern, compounded of their former cultural characteristics and their reactions to the new conditions of the plural society. The original cultural and racial lines which separated native, European and non-European eventually become institutionalized by practice and law, and the colonial government of the area embraces three or more distinct communities.

This theory can best be illustrated by specific reference to Kenya. The native population consists of a number of tribes, most of whom were distinct and sometimes hostile primitive cultural groups before the arrival of the Europeans. The non-Europeans, mostly Indian and Arab groups of Hindu and Muslim socio-religious backgrounds, settled in small numbers along the coastal area several centuries before the European nations struggled to partition Africa. They made their livelihood by trading with the natives but had little contact with them otherwise. When the Europeans came on the scene in East Africa, they looked upon the native and the non-European alike as something little short of barbarians. Unwilling to be acculturated into the local community, the Europeans set about creating their own world. In the course of time, European economic activities brought prosperity for themselves and the other groups as well.

Racial attitudes of exclusiveness and antagonism developed since each group in Kenya remained to itself except to provide goods and services for

1. Cf. Furnivall. op. cit., p. 306.

one another. The natives recoiled from the strangeness of the white man's ways. The Indian trader worked harder to compete with the European. Few members of either group were willing or able to yield their way of life to conform with European standards of living and working; consequently relatively few Africans or Indians were admitted to European social and political activities.

In turn, the Europeans insisted on a form of segregation and eventually acquired residential areas, schools and hospitals of their own, excluding all other groups under sanction of law and solidifying the line between themselves and the other inhabitants of Kenya. The result was a plural society, in which each community enjoyed a measure of internal stability, but rarely had contact with the others beyond associative behavior. Consensus in a limited social sense existed within the communities, but not among them. In other words, Kenya lacked effective means to integrate or harmonize the groups living within it.

The major political handicap of a plural society such as Kenya lies in the absence of a common loyalty to which all groups can subscribe. The native is usually unaware, sometimes unwilling, to admit of the requirements of the world in which he lives. For the native, national welfare consists of his own tribal well-being, not the national or international problems of the country at large. The non-European immigrant is too often concerned only with economic matters, especially as these problems relate to him. And the European is inclined to think that western political institutions are the best means of achieving stability and progress, but is unwilling to carry the logic of democratic representation and responsibility to its ultimate end, i.e., to extend such privileges to all persons in the country.

Political Problems of a Plural Society

Any colonial government faces serious problems in governing a plural society. Its difficulties stem from the lack of political integration and the different levels of cultural or technological achievements each community enjoys. Several conditions prevail during the early period of government in a plural society that affect its future political activity. The Europeans, by virtue of their advanced economic and political positions, are not satisfied to be governed under the same terms as the natives. The non-European immigrants do not want to be in the same political category as the natives, yet the colonial government is not always willing to give them a political position equal to that of the Europeans. As for the natives, most of them are ill-prepared for anything other than a passive role in government. Consequently, the colonial government creates an administrative system designed to cover the multiple needs of the larger political community and to differentiate among the individual groups.

Such a system would probably not be difficult to maintain if society were static. The minimal contact among the several communities, however, leads to political discontent, particularly among the natives. At the turn of the century it was quite conceivable to govern the natives differently from the Europeans, since the colonial power could justifiably say that the natives were not prepared for equal political treatment, that is, to have the franchise or to act as advisers to the Governor. The cultural impact of the West on native societies initially caused social disequilibrium which seemed to verify the inability of the natives to participate in their own government. In the transitional period which followed, however, many natives adapted themselves to the new cultural habits introduced by the European. Today there are a number of native leaders who are

prepared to live according to modified Western standards, and are vocal in demanding political participation in their own affairs.

This transition is occurring in Kenya, as we shall see later. The result is that the colonial government must find means of according political status to the native. At the same time, both the European and non-European immigrant groups represent second and third generations in Kenya, and they feel that they have permanent political and economic interests to protect which may suffer if the natives are given political status. The colonial government has difficulty finding bases for a common loyalty to which all communities can turn, and as long as the Europeans hold a preferred position in the colony they can hinder the advancement of the other communities.

The problem is exacerbated by the fact that the colonial government cannot remain the dominant power in the area indefinitely. In the case of Kenya, the British government announced after World War II that all colonies would be prepared for self-government. All racial groups in Kenya are committed to a parliamentary system of government. But is this kind of Western democratic structure feasible in a divided society?

This is not a theoretical problem which can be considered as just an interesting problem, nor can the solution be posed in terms of what would be ideal or what ought to be. Rather, the solution must be couched in terms of what is possible. Each community is obviously there to stay, and each community relies on the others for their economic livelihood. Education, mutual understanding, economic stability, public welfare, are all problems which need to be resolved. Yet, unlimited funds are not available to educate the natives for democratic government; the economy cannot support public welfare works without outside aid. There is not enough time

to allow for extensive political experiments, since the price of failure includes the possibility of dangerous nationalistic uprisings and riots. There are many time-honored and bitter disputes between the white man and the African that make negotiation and friendly exchange of views almost impossible. The only choice left to the British Government is to create a constitution to meet the conflicting demands of all communities as best it can, and trust that the political differences can be resolved. The Colonial Office cannot guarantee that a constitution will work, but neither can it wait for the various political communities to voluntarily arrive at a peaceful solution. If the British Government does rely on a constitution to resolve political differences in Kenya, what kind of constitution would stimulate the desired results?

Parliamentary government functions on a number of assumptions. First and foremost, each citizen is considered an integral part of the system with equal political rights to share in government, either as a public servant or, at the least, of having a voice as to whom their representatives shall be. The laws are formulated by an executive group, accountable to a free electorate through their representatives. Members of the political community may publicly disagree with their government and are protected against government retaliation. Colonial societies are interested in securing such a system, and any effort to give them less "would probably be regarded as an attempt to fob them off with an inferior article."¹

A democratic nation in the West can realize these assumptions more easily than a plural society of non-Western origin. At least, these are the facts of twentieth century parliamentary government. Electorates in the West consist of free men, who are relatively equal, and the executive

1. Bailey. op. cit. p. 5.

and legislative groups are accustomed to responsibility and accountability by virtue of years of tradition and practice. In spite of conflicting ethnic, religious, class or economic interests, Western societies have a broad substratum of unity and homogeneity based on a common Western cultural tradition. Parliamentary institutions, produced by evolutionary political processes, operate effectively within the contextual unity of Western society. It is yet to be proved that these same Western institutions can be successfully transplanted to a different environment, particularly one typical of plural societies.

The core of the problem of self-government for a plural society is the distribution of political power among all communities, so that the rights of citizens whose immediate capacities for citizenship vary sharply can be respected. This issue is resolved, perhaps, by fulfilling the basic assumptions of parliamentary government, granting a universal franchise, giving political representation to all racial groups and opening public office to all members of the community. But how can this be achieved in Kenya without inflicting hardship or injustice on any one group?

A cursory glance at the literature on the subject of plural societies suggests that numerous solutions are available. Unfortunately, the solutions are followed by equally numerous reasons why they may not be operational.¹ Not one of the basic assumptions of parliamentary government can be granted without creating injustice for one or more communities in Kenya, and none of the racial groups is willing to risk the possibility

1. Cf. the following works: Marjorie Nicholson. Self-Government and the Communal Problem. Research Series No. 126. London: Fabian Publications Ltd. 1948; Ivor Jennings. The Approach to Self-Government. Cambridge: Cambridge University Press. 1956; Bailey. op. cit.

that its own members may suffer hardships in the political community. Granting universal franchise in Kenya means placing the vote at the disposal of approximately six million Africans, as against some 200,000 Europeans and non-Europeans. If the majority rules, as it must in a democratic society, the Europeans and Indians who constitute the politically and economically advanced elements in Kenya, would soon find themselves outvoted and possibly without representation. If the electorates are divided by community, as they now are, the racial lines become solidified and the common loyalty needed in a democratic society cannot be obtained. The idea of federation or partition is another possibility, but this is soon rejected in the face of the immutable fact that the communities are economically interdependent and physical separation would lead to economic chaos. Moreover, this would only be another means of making racial lines permanent fixtures in the political community of Kenya.

Giving political representation to each racial group in Kenya provides means of expression for each political community. It opens up the way to racial representation in the executive field, and policy-making theoretically becomes available to all communities. Even this is fraught with difficulties. Representative government is not responsible government. Under the present colonial system in Kenya the Governor has the ultimate political power, and no real "opposition" can exist in the true parliamentary sense. Racial representatives who affiliate themselves with the government must sever their connection with their own community. Consequently, they cannot enter the area of policy-making without risking the possibility of offending or operating against the expressed wishes of their own constituents who may disagree with the government. Few of the racial leaders can visualize a common loyalty which rises above any single political group. As long as the racial groups are separated by economic and

cultural differences, the possibility of compromise is remote.

If agreement cannot be reached internally, can external forces provide the reconciling ingredient? It is conceivable that a carefully constructed constitutional system may aid in bridging the gap between the political communities. If the racial groups had confidence in the soundness of the governmental arrangement, it is possible that they could reconcile their differences and build a stable political community.

Modern government performs two vital functions: it regulates the relationships among citizens and systematically distributes political power. The extent to which the constituents participate in and influence these functions is the measure of the democratic nature of a political community; the extent to which they are willing to cooperate with and tolerate one another is a measure of their political consensus.¹ The structural requisites which determine the regulatory function of the government and the rights of the participants can promote or thwart the essential purpose of government, that is, to maintain the state in peace and encourage progress.

A constitutional system for a plural society should be based on the major principle that each political community has a significant and meaningful share in the Government. Since this study is primarily an examination of the constitutional development of Kenya, we can establish criteria against which to measure the constitutional progress of Kenya. These standards are not new or novel, but are used here to apply specifically to Kenya.¹

1. Cf. David Apter. "A Comparative Method for the Study of Politics." American Journal of Sociology. Vol. 64, No. 3. November 1958. pp. 221-237, for an excellent analysis of the "structural requisites" of government.

Decision-making is the most important and significant activity of government since it determines the allocation of power and goods and rights in a society. All racial groups in a political community must have meaningful opportunities to participate in determination of policy. Decision-making takes place on legislative and executive levels, and representatives of racial groups must have access to the legislative level with the real possibility of moving to the executive level. If each group trusts the soundness of the constitutional methods by which political roles are assigned to it, and if each group is optimistic about the part it does or may perform in policy-making, it will offer the cooperation necessary to continue the governmental system. If a racial group has no confidence that the constitution affords it protection or offers participation, it will obstruct and thwart government activity at every turn.

Those persons responsible for decision-making must be accountable to the collective representatives of all political communities. The representatives should reflect the values of each political community which are considered worth preserving, since their consent to decisions is essential and is also influenced by the social and economic goals they seek. The means of obtaining "representatives" from each political community can be established by empirical methods, flexible enough to meet the peculiar needs of each group and give to each community a significant share in the government.

The chapters which follow describe the plural society of Kenya, examine the constitutional development of the country and evaluate Kenya's political progress toward self-government. The purpose of this effort is to determine the extent to which meaningful political roles for all racial groups can promote loyalty to the state in order to make parliamentary government effective in a plural society.

It should be noted that this study concentrates on the institutional development of the central government of Kenya and not on local, indigenous political practices. Although the British Government has promoted local native administration on district levels and used native tribunals for judicial purposes, these political institutions related only to African affairs rather than to all the racial groups within the country. The primary concern of this study is the political relationships within a plural society which is developing a national government based on Western political traditions.

Part II

THE PLURAL SOCIETY IN KENYA

Chapter II

THE NON-NATIVE POPULATION

Introduction

There are four distinct racial elements in Kenya: Europeans, Indians, Arabs and indigenous Africans. These groups are usually referred to as native and non-native, as a means of distinguishing between those who are descendants of the aboriginal tribes of Africa and those who are not. Thus, the European, Indian and Arab are classified as non-native, while the African is considered as native.

The first census in Kenya was taken in 1911 and four more were made after World War I. The results, however, account only for the non-native population; estimates were made of the Africans on the basis of samples, hut-tax computations and kipandi records.¹ A comparison of these figures as an indication of the growth of the non-native population would be of dubious value, since the standards, techniques and definitions regarding census procedures varied widely in each case, and the boundaries of the

1. Cf. Lord Hailey (William Malcom). An African Survey: Revised 1956. London: Oxford University Press. 1957. pp. 120ff; R. R. Kuczynski. Demographic Survey of the British Colonial Empire. New York: Oxford University Press. 1948. Vol. II, pp. 126-143 for commentary on these censuses. "Kipandi" was a system of registration certificates for native laborers. It was abolished in December 1947 and replaced by a system of universal registration. Cf. Great Britain, 5 Parliamentary Debates, House of Commons. Vol. 461, February 10, 1949, col. 101. (Parliamentary Debates in the House of Commons hereafter cited as: H.C. Deb., with appropriate volume number, date and column number.)

area differed from time to time.¹

The British Government did not take a complete census of both the native and non-native population until 1948. At that time the non-native population numbered 154,846² as compared with the native population of 5,251,120. Estimates made since then indicate that as of mid-1956, there were 247,900 non-natives and 5,902,000 Africans. The natural increase per annum was calculated as one percent for the Europeans, two and one-half percent for the Asians and one and one-half percent for the Africans.³

The European segment of the non-native population is predominantly British, although a number of them represent the Dutch settlers who left the Union of South Africa at the turn of the century. The Indian group

1. For the record, however, the following population statistics are cited; compiled from: Lord Hailey. Native Administration in the British African Territories. London: His Majesty's Stationary Office. 1950-1953. Part 1., p. 87 and Great Britain, Colonial Office. Report on the Colony and Protectorate of Kenya, 1956. Nairobi: The Government Printer. 1957. pp. 6-7. (Hereafter cited as Colonial Office Annual Report, with appropriate date.)

Year	African	European	Asian
1920	2,604,106	5,570	17,427
1926	2,560,983	12,529	41,140
1938	3,186,976	18,269	51,180
1948	5,251,120	29,666	97,687*

*Does not include Arabs and "others."

2. The non-native population breakdown in 1948:

European	29,660
Indians	90,528
Goan	7,159
Arabs	24,174
Others	3,325
Total	154,846

Taken from: Great Britain, Colonial Office. Colonial Office List, 1950. London: H.M.S.O. 1951. p. 193.

3. Statistics taken from Colonial Office Annual Report, 1956. pp. 6-7, passim.

includes a small Goan element and they are usually classified together since they come from the same geographical area and engage in much the same activity. The Arab element is relatively small and is derived primarily from the Arabian peninsula; there are very few Syrian or Lebanese in Kenya. A category usually listed as "others" is a miscellany of Seychellois, Chinese, Malays, Comorans, etc., who represent a floating population and make up a fraction of the Kenya community.¹

1. Cf. Kenya Colony and Protectorate of Kenya. Report on the Census of the Non-Native Population of Kenya Colony and Protectorate Taken on the Night of the 25th February 1948. Nairobi: The Government Printer. 1953. In 1948, 1.5 percent, or 2,361 persons, of the total population were listed in this category. A group of Polish refugees, in transit elsewhere, were in Kenya at the time of the census, but they are not included in the 1948 figures cited here. Cf. p. 9.

The Europeans

Although a few European adventurers began settlement in British East Africa as early as 1897, the population in 1902 consisted primarily of government officials, missionaries and traders.¹ The new settlers were greatly influenced by the circumstances they found, and these impressions conditioned their activities as colonizers. The Europeans found the Africans a deeply superstitious people and living by an extremely primitive cultural code; this backwardness was reflected in African political and economic life to such an extent that the natives seemed to be living in the least advanced phase of the stone age. Elspeth Huxley, a long time resident of Kenya and an authority on its affairs, describes the East Africans of that period:²

They knew nothing of the arts of writing, architecture or mechanics, they were clad in skins and feathers, they were ignorant of such simple devices as the plough, the coin, the pump, the loom or the wheel.

The white settlers found no carefully preserved African culture or time-hallowed traditions that seemed worthwhile. The history of the area was written in the rocks and eroded strata of the valleys, the fossil and relic remains of animals and tools of prehistoric days.³ As a result the white man assumed an attitude of superiority over the natives, and this feeling set the white and the native apart from the very beginning of their relationship.

1. There were approximately 550 Europeans in Kenya in 1902. Cf. Kuczynski, op. cit., p. 100.

2. Elspeth Huxley, White Man's Country: Lord Delamere and the Making of Kenya. 2d. ed. London: Chatto and Windus. 1955. Vol. I, preface, p. vi.

3. Cf. J. F. Lipscomb, We Built A Country. London: Faber and Faber. 1955. p. 9ff.; for settler reactions to the Africans during that period; also L.S.B. Leakey, Mau Mau and the Kykuyu. New York: John Day Co. 1952. p. 2, for descriptions of archeological excavations regarding prehistoric modes of living.

When the settlers arrived they entered a country whose modern history was just beginning, and they self-consciously imagined themselves as a major instrument in the making of that history. A prominent European settler today comments:¹

.... Kenya has been a country where the pattern of development was shaped in its early years by accident rather than by any conscious design, the channels of our social and economic development existing today were not consciously planned but evolved from the circumstances of that particular time.

The circumstances of that "particular time" were induced by influential internal and external factors. The internal influences, which are described later, were: fertile, unoccupied land, favorable climate, and an expensive railway which was not being used to best advantage. Furthermore, the most desirable land had been depopulated by tribal warfare, famine and epidemics.² The natives were culturally susceptible to domination and the settlers were psychologically prepared to dominate the Africans.³

Influences external to Kenya were also at work. As far as the settlers were concerned, these external forces were not the usual factors which the power politicians cite as basic to colonization, e.g., moral, military and economic. The idea of proselytizing among the natives, or acquiring strategic positions of strength or expecting a ready made market for goods was as alien to the settlers as it was im-

1. E.A. Vasey. "Economic and Political Trends in Kenya." African Affairs. Vol. 55. April 1956: p. 101.

2. Cf. Leakey, Mau Mau and the Kykuyu, op. cit., pp. 8-9, for causes and description of population movements at the turn of the century.

3. Cf. D.O. Mannoni. Prospero and Caliban; the Psychology of Colonization. London: Methuen, 1956. p. 97, who points out: "...the real colonizer is almost of necessity a man of strong character, a creator rather than an acceptor of relationships...."

possible to attain at the time. The basic external influences stemmed from the settlers' previous environment.

The early colonists in British East Africa left a Victorian England, or a South African world, where government and civilization were crowding in on them. Memoirs and biographies of these early settlers, and numerous periodical accounts that come from those who followed in the next generation, suggest that they were seeking elbow room--and this meant a multitude of things. It included the hope to own land in Africa and to till the soil as English country gentlemen.¹ It meant living unhampered by governmental regulations and escaping the repressions of the staid conventions of the Victorian period or the encroachments of undesirable government policies in South Africa. It was the realization of a desire to see and live in a new and relatively untouched world. The unabashedly honest personal accounts of the Huxleys, Lipscombs, Leakeys and Altrinchams, representing settler and government official alike, suggest that the natural beauty of the Highlands was irresistibly attractive and that life was a worthwhile challenge there. Kenya was clearly a place for a man of unconventional habits to enjoy conventional things.

No description of the colonial settler in British East Africa can include evidence of the intangible drives that move men to pioneer.² At

1. Some element of this attitude still prevails. Cf. Laurens Van der Post, Venture Into the Interior. New York: Morrow, 1953. p. 65, who comments: "... there is something about the texture of life in Kenya which appears unrelated to fact. It may be that the Europeans of Kenya are trying to live a fantasy. Perhaps they pursue, in the un-English setting of Africa, a dream of English country life which has long ceased to exist even in Britain. One feels that an important part of their lives is dominated by nostalgia."

2. Mannoni, op. cit., p. 105, has written the reasons Europeans were willing to leave home, familiar places and customs, to colonize are ultimately explicable "in terms of the most infantile subjectivity." This is a rather harsh judgment to apply to the early settlers in Kenya.

best it can be said that they were British and Dutch from England and South Africa, of hardy stock and relatively substantial means.¹ They were of the middle or upper classes and were not the usual colonial who emigrated to other British colonies. They arrived, not knowing where they should settle, what crops could best be grown, what breeds of cattle and sheep could be raised, or whether the bare necessities of life would be available to them in the area. Their isolation from the outside world and the smallness of their number resulted in a physically scattered but socially close-knit community.

The European brought with him political habits which neither the native Africans nor the immigrant Indians had experienced or acquired at the time. Their political background gave them notions of inherent superiority. Accustomed to governing and being governed through a democratic process, the white men hoped to continue that process in their new home. Regardless of their origins they considered themselves as Englishmen united by the political and cultural traditions of a Christian, western civilization. Individualistic and strongminded they nevertheless held common concepts regarding the nature of government, their obligations and rights under it. They considered themselves to be politically mature and were convinced they were in a land of politically immature people. Their ideal was to establish a government which would give them their rights as Englishmen, though they apparently had no intention for the immediate future to make these rights available to other racial elements in the country.

1. Cf. Lord Cranworth. A Colony in the Making. London: Macmillan and Co., Ltd. 1912. p. 182. A pioneer in the area, Lord Cranworth described the kind of settler wanted in Kenya: "What is wanted is industry, honesty, and the more capital the better." Cf. also Norman D. Harris. Intervention and Colonization in Africa. New York: Houghton Mifflin Co. 1914. p. 101. He commented: "Yet it is not a poor man's land. Only colonists with a fair capital--estimated by British authorities at not less than \$1200--and an enterprising spirit should venture into the country."

It should be pointed out, however, that those settlers who were politically active did not necessarily represent the entire European population. There were, and still are, many Europeans who were not particularly concerned about civic or political matters in Kenya. Nevertheless, if and when the British settlers thought or acted in political matters, their thinking reflected traditional British political experience.

The number of white settlers in Kenya has always been relatively small. In 1897, two years after the establishment of the Protectorate, the settler population was estimated at 391; ten years later it reached 1,425. The European population grew gradually, until World War I when it reached 5,438 persons; it scarcely increased during the war period. In the period following the war, the Europeans were fearful that the African population had grown too restive because of war-time conditions, and they urged the British government to encourage white immigration to Kenya. As a result Whitehall promoted a Soldier Settlers Scheme and this brought the European population up to 9,651 by April, 1921. The total advance from 1921 to 1931 marked a seventy-five percent increase in the European settlement.¹

The population rise of the 1920's, however, reflected the economic fluctuations in Kenya; the population growth during this period was not a gradual one as in previous years. The settlers of this period arrived in large groups and at a time when the economic situation was not normal. Consequently, they did not make the same psychological adjustment that the settlers of the pre-World War I period had already made. Life did not move at the same leisurely pace, and the Africans the Europeans encountered in the cities were not of the same docile habits that the early

1. Statistics taken from Kuczyński, op. cit., pp. 146-149, passim.

settlers knew. Neither did the more recent European immigrants represent the same, essentially aristocratic, element as the first wave of settlers who came when the territory was first opened up. As a result, two different generations of Europeans found it necessary to seek political status in Kenya. The first generation struggled with the British government primarily to win their rights as Englishmen. The second generation renewed the struggle as a counter move to increasing political and economic pressures from the other racial groups. This pattern of immigration into Kenya vitally affected the political developments of that country, since each effort of the Europeans to obtain and hold political power caused repercussions among the other elements.

The 1948 census reported 29,660 Europeans, and by mid-1956 the estimates indicated that the white population had increased almost one hundred percent, i.e., there were approximately 57,700 Europeans in Kenya.¹ Although this is a small number when compared to approximately six million Africans in Kenya, the Europeans have economic and political influence far out of proportion to their numbers. They have always owned choice land for agricultural and pastoral purposes. Since 1938 the British government has reserved the Highlands area, 16,196 square miles, exclusively for European use. This arrangement is maintained in the face of severe African and Indian criticism and pressure to open the Highlands for integrated settlement. The Europeans have dominated the political scene in Kenya since their arrival and for many years they outnumbered the Indians, Africans and Arabs on the Legislative and Executive Councils.

1. Colonial Office Annual Report, 1956. p. 7.

Although the Europeans prefer to remain apart from the other racial groups, the present generation is inclined to consider itself as Kenyans rather than as an immigrant group.¹ They tend to consider their role in the country as essential to its economic and political advancement, and there is little question that European investment has been crucial to the development of Kenya for the past sixty years. The sense of superiority and noblesse oblige on the part of the settlers is frequently taken amiss by the African and Indian leaders. This attitude serves to keep all these elements apart and to maximize the plural nature of Kenyan society.

1. J. F. Lipscomb. White Africans. London: Faber and Faber. 1955.
p. 23.

The Indians

The largest non-native population in Kenya is the Indian element, who are primarily Gujerāti-speaking peoples from Kathiawa and Cutch on the northwestern coast of India.¹ There is no record of their first entry into East Africa, although there is evidence that Indian seafarers and traders arrived at coastal cities as early as 80 A.D.² They did not move inland until the Arab slave and ivory traders opened up the territory, and even then the Indian went only for commercial and artisan purposes. It was not until British communities began to take shape in the early part of this century that the Indians were inclined to settle inland. For the most part they were content to establish thriving trading centers along the coast. In so doing they soon created for themselves a place of influence and prestige in the economy of the country.

The Indian population in East Africa did not reach significant proportions until the turn of the century when large numbers of Punjabi coolies were brought in to work on the construction of the Uganda-Kenya Railway. Approximately twenty thousand coolies were employed to do the manual labor that the African natives were unable or unwilling to do on the railroad. Many Europeans believe that the rapid rise in the Indian

1. Cf. Richard Thurnwald. Black and White in East Africa. London: G. Routledge and Sons. 1935. p. 283.

2. Hailey. African Survey. op. cit. p. 385.

3. These coolies represented indentured labor on three year contracts; secondary sources vary as to the number of coolies actually transported for the construction job. Early observers such as Sir Charles Eliot. The East Africa Protectorate. London: Edward Arnold. 1905. p. 178 and W. McGregor Ross. Kenya From Within. London: G. Allen and Unwin. 1927. p. 299, seem to agree on a rough figure of 20,000. Marjorie R. Dilley. British Policy in Kenya. New York: Thomas Nelson and Sons. 1937. p. 11, suggests that there were as many as 35,000 indentured laborers in Kenya at the peak of the construction period.

population was due to the refusal of many of these indentured laborers to be repatriated to India. In fact, the most popular and frequently recurring explanation regarding the presence of large numbers of Indians throughout East Africa is the myth that many coolie laborers remained there after the expiration of their contracts and settled in little cities and on the coast.

Two salient facts militate against such a conclusion. First, demographic records indicate that there were approximately 7,000 Indians in East Africa in 1897; by 1901 when the construction activity on the railroad was at its height, the figure rose to 27,000. A few years later, when the railway was almost finished, the Indian population returned to its approximate number of 1897.¹ This reveals no substantial permanent increase in the Indian population from coolie labor. Although there may be some reason to doubt the accuracy of census figures at that time, the immigration authorities recorded the number of entering and departing Indians and there was apparently little disparity in the two figures.

The second consideration, which may be more significant, is the provincial origin of the Indians involved. The Indian residents in Kenya are primarily Gujerati-speaking peoples; the Indian laborers were Punjabi-speaking natives. The two are no more the same than the Scots and the English, though both groups are British.

The increase in the Indian population can be attributed to the construction of the Uganda-Kenya Railroad in an oblique manner, i.e., the railroad opened the way to the interior and the Gujerati merchants who were already established on the coast moved inland to expand their businesses. At the turn of the century the Indian element represented neither

1. Cf. Kuczynski. op. cit., p. 101.

the very rich nor the very poor; they were petty traders and artisans, with business experience and a minimal but secure financial status. It is hardly feasible to say that this entire group sprang from the indentured Punjabi coolies whose major asset was ability to perform manual labor. The increase in Indian residents and their movement inland added to the kaleidoscopic nature of the racial representation in the area, since the Indian community itself consisted of three religious groups: Hindu, Muslim and Roman Catholic Goans.

At the outset, the European white settler community did not object to the Indian settlement. Early observers believed it would be possible to settle the Indians in circumscribed areas such as the shore of Lake Victoria for agricultural purposes¹ and to allow a few to become petty traders in the small villages.² This view was coupled with European objections to Indian settlement in areas "suitable for Europeans"³ where intermingling of the two races would be likely. The widespread belief that the Indians constituted the coolie laboring class, made it relatively easy to group all Indians in one category, i.e., as "undesirable." European prejudice was not long in developing. Some years later Elspeth Huxley bitterly maintained it was an error to let the coolies remain:⁴

.... not because it is wrong to allow Indians into Africa, but because it was wrong to encourage the lowest caste, uneducated, indigent coolies, who had come over at government expense as manual labourers, to remain without supervision as petty traders among a native population

1. Eliot. op. cit., pp. 178-179.

2. E. Huxley. White Man's Country. op. cit., Vol. I. p. 64.

3. Eliot. op. cit., p. 179.

4. E. Huxley. White Man's Country. op. cit., Vol. I. p. 65.

The mistaken notion of the coolie background of the Indian became the focus of early settler objection to the Indians; highly class-conscious themselves, the settlers used the concept of status as a basis for criticizing the admission of the Indian immigrant. Some Europeans stoutly maintained that the Indian question was "no question of colour or race," but that "the original stock was bad."¹ The class concept gave the Europeans two outlets for arguing against allowing Indians to intermix in Kenya's population. The first is illustrated by a comment from an early resident:²

If the original band of British settlers had been composed of, say, ticket-of-leave men, hooligans, and militant suffragettes, it would hardly have been an incentive to respectable colonists to follow.

Implying that the settlers would accept a "respectable class" from any race, the writer insinuated that the coolie was not respectable and that the English ought not be expected to associate with them.³

The second argument stemmed from the first. Since the Indians were of a lower "class" the English felt free to accuse them of moral depravity, filth, personal uncleanness, and thus as thoroughly undesirable neighbors. There is little doubt that these accusations could be sustained in many cases, but the charges would never have been so blatant⁴

1. Cranworth. op. cit., p. 62.

2. Ibid. Cf. also E. Huxley. White Man's Country. op. cit., Vol. I. p. 65, who commented that colonization should not be entrusted to "the remittance men and the indentured coolies.... it is feasible to eliminate the illiterate and the beggar."

3. M. Ross. op. cit., p. 299, commented that if Indian coolie labor had not been brought in for building the railroad, then Italian or Chinese labor would have been imported; he believes this would have produced an "Oriental" or "poor white" problem. The class issue would have been present, regardless of the source of the labor.

4. Cf. Raymond Leslie Buell. The Native Problem in Africa. New York: Macmillan Co. 1928. Vol. I, p. 291, for records of such views as: "physically the Indian is not a wholesome influence because of his incurable repugnance to sanitation and hygiene...."

had the English been dealing with persons they considered to be on their own level.

Although the "class" issue underlay British preference for separation from the Indians, there were cultural, business, and political objections to the presence of the Indians in Kenya. The Europeans believed in their own civilization so thoroughly as to discount any other culture as little less than barbaric. Although they regarded the Africans as wild, untutored savages, they took a rather benevolent attitude toward them;¹ at the same time they looked upon the Indians as unwelcome interlopers. The Europeans ostracized the Indians socially on the basis of class, and re-enforced this view by saying that the Indians were historically linked with the slave trade and thus their activities were considered as "not-always so credit-able."²

The English had a series of complaints against the Indians on the business level. The Indians were not agriculturalists, and consequently their interest in the Highlands where the largest number of white settlers lived was criticized as undue ambition for a business enterprise in real estate. The English settlers did not want land prices to be pushed up by persons who had no intention to improve the area by settling and developing the land. The business ability of the Indian was enviable, but it also annoyed the European because the early Indian immigrant frequently sent his profits back to India rather than re-investing the money in Kenya as the

1. Cf. E. Huxley, White Man's Country. op. cit., Vol. I, re: Delamere's attitude toward his African laborers.

2. Cf. a book by a medical missionary from Scotland, Horace R. A. Philip, A New Day In Kenya. London: World Dominion Press. 1936. p. 104. It is interesting to note that this charge was not made against the small Arab population; however, this group never represented a threat to the status of the European settler.

settlers were doing. In later years much the same resentment was voiced by the Africans who felt that the money earned in Kenya ought to remain in the country.¹

Moreover, some settlers who felt a benevolent responsibility for the natives, were indignant that the Indians were able to outdo the African in any business enterprise. The Indians' long experience in trading and buying enabled them "to undercut any African who may venture to compete."² The African learned to depend on the Indian trader for many of his necessities, such as trinkets, blankets and a few foodstuffs; the Europeans did not consider this an entirely healthy economic condition and objected to any situation which allowed the Indian to take economic advantage of the native.

The remarkable capacity of the Indian for work is undeniable. His willingness to apply himself through long and persistent effort to his business was part and parcel of his economic success in Kenya. The Africans, by and large, were unwilling to devote themselves to hard labor or exert the necessary self-discipline to learn a trade; they saw no value in accumulating material goods beyond their short-run economic needs. The white settlers, for reasons of health as well as their devotion to the pursuit of an English way of life, were never able to match the business enterprise and energy of the Indian. Although the early settler-farmer often

1. Cf. R.H. Kakembo. An African Soldier Speaks. London: Edinburgh House Press. 1946. p. 29 for an African view: "The Asian sends all the wealth he gets across the sea to India, and the African is left to satisfy himself with licking his own sweat." Note also Thurwald, op. cit., p. 284: "The Indians do not mix or associate much with Africans, and they are not regarded as representatives of great achievements as are the Europeans. To the indigenous African, the Indian comes, gets money, and disappears with it, taking with him all the little urhins he begot in the meantime."

2. "Race Relations in East Africa: Perplexities of a Plural Society." Round Table. Vol. 40, March 1950. p. 142.

gave more than full measure to his agricultural interest, the European business man in the cities found the long hours of the Indian incompatible with his own cultural background. The European, who followed the same work schedule he followed in England, could not compete with the Indian who worked long hours, regardless of the discomfort of tropical heat and heedless of holidays or time-off.

The Indians felt that they belonged in Kenya and had as much right there as the white man. As British protected subjects, the Indians believed that they were free to move about and settle in any part of the British Empire that they should choose. Sikh soldiers had aided the British in the conquest of East Africa¹ when it had been necessary to use police action to settle issues between hostile native tribes.² During World War I, Punjabis and Kapurthalas fought with the East African Mounted Rifles against the Germans in British and German East Africa,³ and it was partially on this basis that the Indian Government at a later date demanded better treatment of the Indians in Kenya.⁴ One of the most controversial aspects of the Indian presence in Kenya was their demand, in the early 1920's, for equal political rights with the Europeans. Since this issue is of special importance in the constitutional development of

1. Buell. op. cit., p. 288.

2. Cf. Vera Anstey. The Economic Development of India. London: Longmans, Green and Co. 4th ed. 1952. p. 312.

3. E. Huxley. White Man's Country. op. cit., Vol. II, p. 12. Huxley tends to minimize the value of the Indian troops during this period, saying they did not know the language or the terrain of the area and therefore were not as effective as the local members of the E.A.M.R.

4. William K. Hancock. Survey of British Commonwealth Affairs. Vol. I: Problems of Nationality 1918-1936. London: Oxford University Press. 1937. p. 211.

Kenya, it will be discussed in a separate section of this study. Meantime, it should be pointed out that the problems of Indian representation, an Indian electorate and a communal role eventually caused serious differences between the Indians and Europeans.

Today the Indians are found mainly in the towns and they own a considerable portion of urban property.¹ Elspeth Huxley maintains that Nairobi is "mainly an Indian city Indians own most of the property and handle most of the trade."² According to one author:³

The Indians own 66 percent of all plots in the townships, excluding Mombassa, and 90 percent of the plots in the trading centers of the native areas, as well as in the shopping districts of the exclusive European Highlands.

There is much resentment among Europeans regarding Indian property holdings; at one time the settlers attempted to prevent widespread land ownership but were unsuccessful in the urban areas. Nevertheless, Indian leaseholds on property are usually limited to 49 or 99 year leases and consequently they cannot become a permanent landlord class in the same way as the Europeans.

The reasons for Indians congregating in the towns are relatively simple. Non-Africans cannot live or trade outside a gazetted township; since Indians are not farmers they do not tend to purchase land elsewhere for agricultural purposes. Consequently, they gather together in trading settlements and these circumstances increase their alienation from the Europeans and the Africans. Indian children are educated in separate

1. Margery Perham. "British Problems in Africa." Foreign Affairs. Vol. 29, July 1951. p. 645.

2. E. Huxley. The Sorcerer's Apprentice. London: Chatto and Windus. 1949. p. 3.

3. Negley Farson. Last Chance in Africa. New York: Harcourt, Brace and Co. 1950. p. 37.

schools, and they have compatible culture contacts only within their own groups.

In the course of time, some Indians turned from trading to other occupations. In 1947, when there were approximately ninety thousand Indians resident in Kenya, it was found that 32,734 of them were engaged as skilled laborers in the principal occupations such as mining, construction, public services, etc.¹ Since their families tend to run to large numbers, it is safe to assume that the majority of the adult Indians are involved in profit-making enterprises. This does not mean, however, that one-third of the Indian population have independent businesses, or enterprises, for they frequently work with their relatives or with friends in the same shop.

Some comparisons of Indian and African occupations would be illuminating. In 1947 among skilled workers in public services (such as railroads) there were about ten thousand Asians, in the field of commerce there were approximately another ten thousand, and 6,513 Asians were working in mines, quarries and factories. Africans, numbering some five million at that time, in comparable jobs were listed as 130,340 in public service (unskilled), 21,055 in commerce, 40,988 in mines, quarries and factories.² On a percentage basis, the Indians outnumbered the Africans in these pursuits. At the same time, there were some thirty thousand Africans in domestic service, as opposed to 25 Indians; 220,807 Africans were involved in agriculture, forestry and fishing and only 626 Indians

1. Statistics taken from Great Britain, Colonial Office. Colonial Office List, 1947. London: H.M.S.O. 1948. p. 119.

2. Ibid.

were so engaged. These figures suggest that the Indians predominate in modern and/or technical professions and that they rarely mix on occupational levels with the Africans. The industry and ability of the Indians account for their predominant role over the African in business, and although there is good reason for their dominance, it creates friction among the Indians, Africans and white settlers.¹

It must be remembered that the Indian social structure is itself divided by internal religious and cultural differences. In spite of the fact that the Indians in Kenya are primarily a Gujarati speaking people, they come from widespread districts, representing different religions, cultures and castes. The differences are so great that the Indians cannot reasonably be classified as one homogeneous community. The two major religious groups within the Indian community are Hindu and Muslim. According to the census of 1948 there were 45,304 Hindus,² and 27,583 Muslims.³ Of the remaining 90,528 Indians accounted for in that census, the other religious groups were: Jain, 6,149; Sikh, 10,663; and Parsee, 334. These figures illustrate the divided nature of the Indian community.

1. The Indians still harbor resentment against the Europeans. N. S. Mangat, past president of the Kenya Indian Congress, bitterly noted: "If the Europeans could do without the Indians they would not keep them for a single minute in their employment." Cf. his Presidential Address. The 23rd. Session, Nairobi, of the Kenya Indian Congress. Nairobi: Regal Press. 1954. p. 7.

2. Among the Hindus, less than half reported their caste; this may be indicative of a declining importance of caste to overseas Indians.

3. Report of the Census...1948. op. cit., p. 61. This number accounts only for the Indian Muslim element; the Arab Muslim population brings the Muslim total to 52,957, or 34.2 percent of the non-native population.

The elements within the so-called Indian community include Hindu and Muslim, Brahmins and Untouchables, India-oriented natives and Ismailia Muslims who follow the Aga Kahn's precepts that they should participate in the affairs of the country in which they reside.¹ Such a combination hardly suggests unity within the Indian community, since their dislocated status does not tend to bring them together. The Ismailia Muslims, who are willing and anxious to engage in Kenyan life, are often prevented from doing so simply because they are Indians. The Hindu, who are apt to be strongly India-oriented, have little desire to be assimilated or acculturated into Kenyan life. Unfortunately, they are prevented by the nature of their caste system from having a full social structure of their own, since they do not represent a complete cross-section of Indian society. The component elements, i.e., castes, of the hierarchical Hindu society vary from province to province in India, and when segments are transferred to East Africa they are not only incomplete as a social unit, but cannot be fitted together because of their differences in caste structures. Thus it is difficult for the Hindu to reproduce a complete class structure in Kenya; this frustration is exacerbated by the social ostracism of the European settler.

The difference in size of the two major religious groups, Hindu and Muslim, is enough to reduce the political effectiveness of the Indian community if the two groups become involved in a quarrel. Europeans are quick to point out that events such as the separation of India and Pakistan create dissension between these two groups.² There is little

1. Prime Minister Nehru has consistently urged all Indians to "become citizens of the country of their residence" and not to seek special rights in Africa. Cf. American Assembly. The United States and Africa. New York: Columbia University. 1958. pp. 50 and 69.

2. Cf. Lipscomb. White Africans. op. cit., p. 124; also Perham. "British Problems in Africa." op. cit., p. 645.

question that religious differences occasionally weaken the political position of the Indians whose allegiance to the Kenya government is affected by events outside the country. The problem is reflected in the governmental structure today, where political representation of the Indians is specifically designated for persons of both religious affiliations.

The lot of the Indians in Kenya is a mixed one. They are generally successful in business and secure in their material holdings; on the other hand, they feel they have been placed in an inferior political status by the British government, and resent the social exclusiveness of the white settlers. From time to time they are inclined to join forces with the Africans in political and social matters, if for no reason other than a hope that they can out-manuever the white man. They tend to be pragmatic in their political activities, taking whatever position appears to suit their needs best.¹ On the whole their assimilation into the Kenya community is very limited. They tend to support members of their own specific community, i.e., Hindu, or Muslim, against all outsiders and remain apart from the rest of the population in all matters except business affairs. The Indians in Kenya, with few exceptions, rarely mix or intermingle with the Europeans or Africans socially.

1. Cf. American Assembly. op. cit., p. 50.

The Arabs

The Arab population in Kenya may be the original non-native settlers in that region. There is evidence to show that the Arab traders probably arrived just before the Indians. Hailey points out¹ that the Sabaeen kings of South Arabia had established some form of rule on the East African coast as early as the first century A.D. No permanent settlement was made until the seventh century, when the Arabs began to establish the coastal cities of Kilwa (now in Tanganyika), Mombassa and Lamu, and the island settlements of Zanzibar and Pemba.² By the tenth century a federation of Arab states controlled the whole East African coast; known as the Zenj (or Zinj) empire, it was an overlordship rather than a full rulership. The Arabs reached their zenith there during the 12th century, and gradually fell into a decline which was culminated by defeat at the hands of the Portuguese after 1498. A series of reprisals by the Arabs upon the Portuguese settlements followed for the next few centuries; by 1698 the Arabs were successful in weakening the Portuguese position on that part of the coast. Although the Portuguese attempted to regain their status, the Arabs were able to put them out of East Africa permanently. Since the Portuguese never penetrated into the African interior, the Arabs retained their ascendancy in that area, in spite of the weakened conditions of their old Zinj Empire.

Arab influence has remained in the East African area, in spite of the British success in stamping out slave trade and the loss this represented for the Arab economy in the territory. The slave trade dwindled slowly enough for the Arab to shift to other occupations, consequently he suffered no major economic dislocation when the trade came to an end. Centuries of

1. Hailey. African Survey. op. cit., p. 380.

2. Ibid., pp. 380-381; cf. also Buell, op. cit., p. 259.

the Arab presence in East Africa however, have brought about a racial intermingling of the Arab with the African native who lives near the coast. These persons are commonly known as Swahili, and Sir Charles Eliot, the first Commissioner of British East Africa, commented: "This must be pronounced a most successful crossbreed, combining the physical strength and endurance of the African with much of the intelligence of the Semite."¹

The Swahili language, a mixture of Arabic and African dialects (as well as a limited amount of Hindustani, Persian, Portuguese and English) is the lingua franca between African and white primarily because it is a simple language as compared to the native dialects. The description "Swahili" is attached to many natives who speak the language, but the true Swahili is a racial mixture of African Bantu and Arabian. The term itself means "coastman",² and this is an apt characterization, since they live along the littoral area of Kenya and rarely, if ever, go inland for purposes of settling.

The Arab cultural contribution to East Africa can be seen in the remnants of their art in architecture and mosques. They also introduced a few agricultural products in the area, but caused no significant change in the African's way of life. Arab political activity in Kenya was negligible, until the last decade when all racial groups seemed to experience an awakening of political interest. In contrast with the Indians, they have never had or solicited the support of their former country for political purposes in Kenya. Their relations with other racial groups in the country have

1. Eliot. op. cit., p. 42.

2. Cf. Walter Fitzgerald. Africa: A Social, Economic and Political Geography of its Major Regions. New York: E. P. Dutton and Co., Inc. 7th ed. 1949. p. 122.

been amicable and friendly, and there is no evidence to show that the Arabs have acted in any manner to incur the ill-will or enmity of other groups in the country.

According to a variety of sources¹ the Arab has never been as clever as the Indian at trading and money matters. Nor has he entered into sharp, economic conflict with the Indians. Described as: "intellectual, nervous, scheming, fanatical"², the Arabs have been objects of disdain as well as admiration. Their slave trading exploits placed them in an ignoble light, yet their tenacious efforts to penetrate the African interior long before it was attempted by a white man, won them a reputation for intelligence and courage.

In 1948 there were 24,174 Arabs resident in Kenya and by mid-1956 they were estimated to have a population of 33,000.³ More than half of them live in Mombassa; very few Arabs live outside the area of the Protectorate section of Kenya. Their principal occupation is commerce and trade, and they represent no threat to the economic or social status of any of the other racial elements in the area. They have neither the political nor the economic ambitions of the Indians, have never agitated for political and economic rights to the degree that the Indians have, and are a fairly innocuous element in Kenyan society. They hold elective and appointive office, and seats are reserved for them in the Legislative Council. Although they form a distinct community in Kenya they do not exhibit feelings of hostility or antagonism toward either the Africans or the Europeans.

1. Cf. Eliot. op. cit.; E. Huxley. The Sorcerer's Apprentice. op. cit.; Charles W. Hobley. Kenya From Chartered Company to Crown Colony. London: H.F. and G. Witherby. 1929; and Buell. op. cit.

2. Eliot. op. cit., p. 41.

3. Colonial Office Annual Report, 1956, p. 7.

Chapter III .

THE NATIVE POPULATION

Introduction

It is difficult to trace the origins of early man in East Africa. Excavations by archeologists such as Dr. and Mrs. L. S. B. Leakey in Kenya have led to interesting but scattered information which needs supplementing. Few histories have been written regarding the prehistoric and early period in East Africa, primarily because there is not adequate evidence to substantiate theories regarding that part of the African continent. Sonia Cole, in her short but excellent historical survey of East Africa, points out that Black Africa, south of the Sahara, fell into cultural stagnation after the stone age, and that no civilization as such existed there between the time of the early civilizations in Abyssinia and the Anglo-Egyptian Sudan, and comparatively recent times.¹ There is evidence of "partially filled-in pits of very late Stone Age and Early Iron age underground pit dwellings"² but there is little else to show of the efforts of Africans of that period.

Modern East Africans are considered to be descendants of Caucasoid or proto-Hamitic stock, crossed with later Negroid stock. Although there is no certainty as to the time when the Negroid stock made its appearance in East Africa, that group has intermingled with the basic African races to such an extent that there is now no true Negro in the territory.³

1. Sonia Cole. The Prehistory of East Africa. Baltimore: Pelican Books, #A316. 1954. p. 271.

2. Leakey. Mau Mau and the Kikuyu. op. cit., p. 2.

3. Julian Huxley. "Travel and Politics in East Africa." Journal of the African Society. Vol. 30, July 1931. p. 250.

Other than information of this nature, little is really known about the origin of the present East African tribes. As J. F. Lipscomb, an Early Kenya settler, writes, it is something at which to marvel, that "there is no record either written or verbal to tell what has occurred during the centuries and millennia of the past."¹ Sonia Cole adds:²

We are almost entirely dependent on oral tradition for the interpretation of their past history; much has been collected, but unfortunately much has been irretrievably lost, since it was not collected early enough. Traditions are easily forgotten under the impact of sudden contact with European civilization.

Some clues referring to the origins of modern East Africans can be gleaned from land tenure records. Buell reports that the Kikuyu, the largest tribe in Kenya, moved from the Mount Kenya area some hundred or more years ago, into what is now the Highlands area, and there they encountered "a race of hunters, called the Wandorobo" and eventually bought the land from them.³ At best, however, historical information on the populous Kikuyu is incomplete. L. S. B. Leakey suggests that the Kikuyu tribe moved into Africa some seven or eight hundred years ago in search of "living room."⁴

Early observers, who had none of the anthropological evidence available today,⁵ speculated that the "population, as in most other countries,

1. Lipscomb. White Africans. op. cit., p. 16.

2. Cole. op. cit., p. 272.

3. Buell. op. cit., p. 308.

4. Leakey. Mau Mau and the Kikuyu. op. cit., p. 2.

5. It is interesting to note that anthropological studies of East African tribes are of recent origin. Studies such as G. St. J. Orde-Browne. The Vanishing Tribes of Kenya. Philadelphia: J. B. Lippincott Co. 1925 are now out-dated and considered somewhat inaccurate. The dearth of published information was realized when the premature publication of extracts of larger works on the Kikuyu were hurriedly sent to press in order to "explain" the background of the Mau Mau crisis. Cf. for example: L. S. B. Leakey. Defeating Mau Mau. London: Methuen. 1954; H. E. Lambert, Kikuyu Social and Political Institutions. London: Oxford University Press. 1956; J. C. Carothers. The Psychology of the Mau Mau. Nairobi: the Government Printer. 1954.

is the result of a series of invasions, whose general direction has been "... from north to south."¹ For purposes here, it is enough to point out that the early background of the East Africans is obscure. The absence of any organized or widespread culture suggests a lack of preparation for the political problems the East Africans were to meet in the modern period.

The native population in Kenya today is approximately six million²; this is double the number estimated by Sir Arthur Hardings sixty years ago in the first attempt to ascertain the native population of the Protectorate.³ There are thirteen major tribal groupings and a number of minor ones; Table I lists these divisions as they were counted in the census of 1948. The population growth, as traced by Kuczynski, shows wide variations up to 1925 because the borders were changed from time to time, excluding or including whole tribes.⁴ After 1925 the population estimates indicate a gradual and steady increase; the introduction of civil order and health measures by the British accounts for this. The elimination of tribal warfare and reduction of infant mortality rates eventually resulted in a "demographic explosion". Although the population records are based on estimates which are not entirely reliable, the population statistics provide an adequate guide to increases in the number of Africans. No detailed analysis of population growth, however, should be deduced from them.

1. Eliot. op. cit., pp. 108-110, passim.
2. Colonial Office Annual Report, 1956. Estimates as of mid-1956, p. 7.
3. In 1897 Hardinge, then British Consul at Zanzibar, was also in charge of the Protectorate; this first survey was a rough estimate.
4. Kuczynski. op. cit., pp. 144-145, passim.

TABLE I
Native Population

Main Tribes of Kenya Colony

Tribe	Total	Percentage of Grand Total
Baluhya	653,774	12.5
Luo	697,551	13.2
Kamba	611,725	11.6
Kikuyu	1,026,341	19.5
Meru	324,894	6.2
Kisii	255,108	4.9
Embu	203,690	3.9
Kipsigis	159,692	3.0
Nyika	240,661	4.6
Turkana (estimated)	76,930	1.5
Masai	67,201	1.3
Kamasia	66,850	1.3
Teita	56,912	1.1
All others	693,110	13.2
	<u>5,251,120</u>	

Statistics are based on the 1948 census and extracted from:

African Population of Kenya Colony and Protectorate.
Geographical and Tribal Studies.
Nairobi: East African Statistical Department. 1950. p. 5.

African Ethnic Divisions in Kenya

The ethnic divisions in Kenya represent a variety of contrasts in terms of races, languages, customs and manner of living. The differences occasionally stem from the contrasting geographic locations in which they live. East Africans can be classified into four groups, Bantu¹, Nilotic, Hamitic and Nilo-Hamitic.²

The Bantu group, which is the largest single ethnic grouping in Kenya, includes the Kikuyu, Embu, Meru, Kamba, Kissi, Abalyuha, Teita and coastal Nyika tribes. They live primarily in the so-called uplands-area, i.e., the south and south-west part of Kenya where the land is fertile and most of the natives tend to be agriculturalists. The Nilotic peoples are the Lui who live near the shores of Lake Victoria.

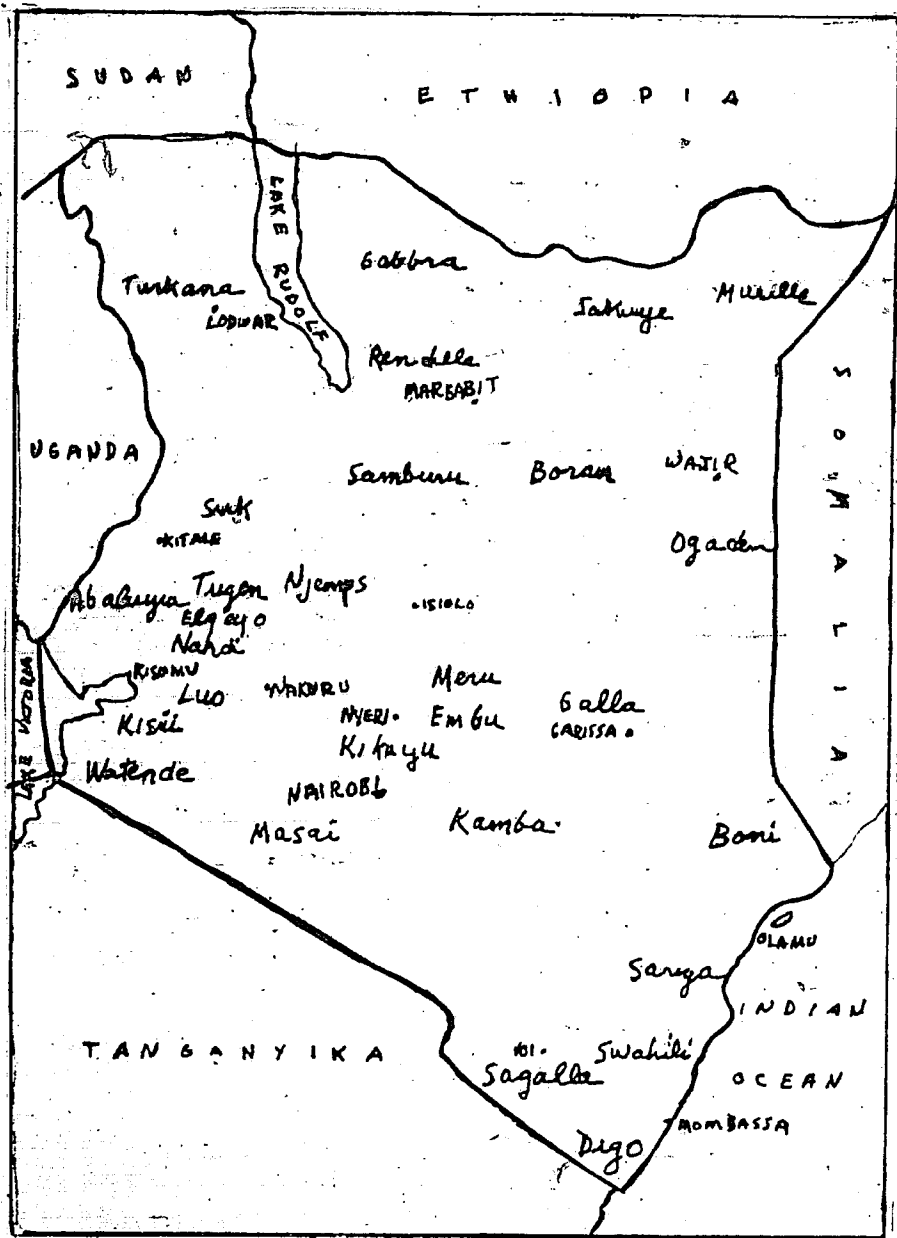
The Hamitic group is nomadic, wandering over the arid wastelands of the northern section of Kenya and representing the Somali speaking tribes. The Hamitics include: the Boran and the Rendille, cattle-owning tribes, whose territorial wanderings embrace the north central area; the Turkana and Gabbra groups, who live close to the Sudanese and Ethiopian borders. Few travellers go through the northern area, since the land is arid, wind-swept and offers little attraction for settlement or touring. The Hamites extend toward the south and are represented in that area by the Galla, (now known as Orma, they are considered "camel people") who are migratory, cattle people.

1. Cf. Fitzgerald, *op. cit.*, p. 119, who explains that: "The name 'Bantu' or 'Aba-ntu' is the plural of a word meaning 'human being' and is used in reference to the largest group of related negroid communities in Africa."

2. A mixture of Hamitic stock and Nilotes from the Upper Nile Basin. Cf. Hailey, *African Survey. op. cit.*, p. 9; also Buell, *op. cit.*, p. 361, who simply refers to the Nilotic peoples in East Africa, rather than to Nilo-Hamites.

Map I

TRIBAL MAP OF KENYA



The Nilo-Hamitic peoples are found primarily in southern Kenya and include the Masai who were once a warring tribe and have only in the last four or five decades turned to animal husbandry as a means of making a living. Toward the south central section are the Samburu, to the west are the Suk. The most prosperous and settled of the Nilo-Hamitic are the Nandi, Kipsigis, Elyeyo and Kamasia who have become agriculturalists and live in relatively fertile areas of the west and south-central sections of Kenya.

Two unclassified groups bear mentioning. The Wanderobo, considered to be the original inhabitants of the East African area, are Bushmanoid in background and are scattered throughout the central and south-central uplands. A small enclave of "mystery" people, the El Molo, are sequestered in the treeless area around Lake Rudolf. Little is known about the origins of either group; they are numerically insignificant and their population is dwindling.

The indigenous peoples of Kenya vary in sophistication from the settled agriculturalists of the Kikuyu near Nairobi to the mud-adorned Suk of the west-central region and the primitive migratory Turkana in the extreme northern areas. The technological and cultural advancement of each tribe varies from location to location. The majority of Africans are agriculturalists, and approximately seventy percent live in the areas reserved for them by the British Government. A small, but significantly influential percentage of Africans live in the urban areas. Representing many different tribal backgrounds, these Africans are educated in the ways of the West and are emerging as political leaders in Kenya.

The uneven technological and cultural development of these African tribes present problems for the political evolution of the natives. This is apparent, for example, in the problem of native enfranchisement, which

will be discussed later. Each tribe has its own system of beliefs and consequently there are a variety of tribal customary laws in Kenya. These value systems provide a cohesive social and political philosophy for their members to live by and gives them a contextual unity which excludes all other persons who are not related by kinship or other tribal association. The tribal structure thus creates for its members a world of their own and a secure status in society.

East African tribal life is deeply influenced by primitive and superstitious ritual.¹ The vast majority of the native population still cling to customs and mores which, judged by Western standards, are barbaric and uncivilized. In the past, these customs led to hostility among many of the tribes. Since the social customs of the several East African tribes are sometimes similar, mutual hostility seems to suggest an internal contradiction in Kenya's native society. It should be recalled, however, that Kenya is an artificially created political unit and prior to the arrival of the British each tribe was an entity. Thus, shared symbols only made it easier for tribal groups to comprehend the nature of their mutual hostility rather than tend to bring them together.

When the British first arrived in East Africa they found various tribes

1. Cf. Eliot, op. cit. and Hopley, op. cit. for early accounts, and G. W. B. Huntingford. The Nandi of Kenya, Tribal Control in a Pastoral Society. London: Routledge and Kegan Paul. 1953 and John Middleton. The Kikuyu and the Kamba of Kenya. Vol. 2, Part 5 Ethnographic Survey of Africa. 1953, for recent evaluations of tribal life.

such as the Kikuyu and Kamba¹ or Kikuyu and Masai² in open conflict and competition with one another. The task of governing the area was not easy in the face of tribal autonomy and non-cooperation, and for many years the British had difficulty establishing civil order. In the light of the strongly atomistic character of tribal relationships in East Africa, the problem of creating a national society and unity is a major task.

1. A good example of this is illustrated by Lambert's description of coming of age rituals, e.g., Kikuyu age-set groups preparing for circumcision must perform ceremonial rape on a woman of another tribe as proof of their manhood; they frequently seek out a married woman in the Kamba tribe. Cf. Lambert, op. cit., pp. 53-54.

2. The conflict between the Masai and the Kikuyu is of long standing. Prior to the arrival of the European, no Masai youth could be considered as a mature adult until he "dipped his spear" in the blood of an enemy; often the "enemy" was a member of a Kikuyu group. During the Mau Mau crisis, Masai warriors were used to patrol the Kenya border in the Loliondo area to prevent the terrorists from receiving supplies. The Labor Party criticized this practice as unwise in view of the traditional enmity between Masai and Kikuyu. Cf. H.C. Deb. v. 526. 14 April 1956. col. 1134.

Political Systems within the African Tribes

The absence of any evidence of cultural development or historical continuity in East Africa suggests that there were no strongly organized governmental structures by which records of political practices could have been preserved. Modern anthropologists, however, have attempted to reconstruct the terms of political organization under which some of the natives lived. These systems can be termed "political" systems only in the broadest sense of the phrase, since the regulatory practices were derivative of social and religious customs. They served a political function but were not political in practice.¹

Few tribes in the Kenya territory today experienced centralized political institutional practices prior to the arrival of the British. They have relied mainly on social and religious customs as a means of government, and still tend to live in relatively small groups where personal contact and influence is used to regulate all the affairs of the village. The Nandi-speaking tribes, i.e., Suk, Elgon, Tuken and Kipsikis in the Kavirondo Gulf area are a good example of this. They are held together by a "relationship system" which is the basis of a code of behavior and regulates the social life of the community. The Nandi peoples live in an uncentralized, gerontocratic and acephalous state, and the political structure is derived from the family relationships, clan systems, and a code of conduct designed primarily to placate the dead members of the tribe.² Failure to act within that code of conduct brings the curses of the ancestors upon the individual as well as the family, and the fear of these curses serves to promote cooperation and obedience within the community. These factors also determine

1. G. W. B. Huntingford. Nandi Work and Culture. Colonial Research Studies No. 4. London: H.M.S.O. 1950. p. 14.

2. M. A. Fortes and E. E. Evans Pritchard (eds.) African Political Systems. London: Oxford University Press. 1946. p. xxiii.

the social position and political rights of each individual in the tribe. The customs bear the weight of tradition rather than carry the sanction of deliberately constructed positive law.

Kinship or lineage systems provide two major types of political organization in East Africa. Both are derived from familial structures; the first represents a limited and transient method of holding the community together, and the second operates on a more permanent basis. In either case, the social structure and the obligations placed upon individuals are substitutes for formal political organizations. The mores of each community, however, are as binding upon native society as any formal constitution or statute found in an advanced and sophisticated political community. Native law is so closely interrelated with religious respect and fear of the spirits of the dead, that African political organization may sometimes be considered as theocratic in nature. Customs and mores derived from such a context tend, in Kenya, to minimize dissent and to value the communal group above the individual. New modes of conduct are looked upon with suspicion and new values are considered the work of demonic spirits.

Such practices, however, were imperative for the survival of the native community. Mores regulating marriage customs, for example, were designed to determine legitimate heirs and preserve the social structure of the tribe. Land use or ownership was legalized by religious ritual, intended to provide token of legal claim to the land and to induce the unknown deities to make the soil fruitful. The infusion of religious content into the law obligated the natives to observe the dictates of the law; those persons who faithfully followed the religious precepts were guaranteed

a safe and secure status in their community.¹ Any challenge of the law was an invitation for the visitation of evil spirits and thus jeopardized the welfare of the community. As a result, the law not only kept order but preserved the status quo in the tribe.

The kinship structure, which created interrelated responsibilities of one relative for another, made it possible for families to control the actions of its members to a large extent and thereby to influence patterns of community behavior.² The problem of social behavior, thus, was the special responsibility of every individual in the community, and the obligation to obey the law was personalized and almost inescapable. Social organization of such a closely interrelated structure constituted the basic controls on society and such matters as tax collection, defense measures, property ownership, were regulated without the formal political institutions familiar to western society. The primitive social structure and lack of

1. Dr. Carothers in Psychology of the Mau Mau. op. cit., p. 2 points out: ".... the individual did achieve some inner sense of personal security by adherence, and only by adherence, to the traditional rules...."

2. The complexity of the relationships among the Africans is summarized in: Report of the East Africa Royal Commission 1953-1955. (Sir Hugh Dow, Chairman) Cmd. 9475. 1955. London: H.M.S.O. 1955. p. 23.

"These relationships were established by institutions such as the so-called bride price which, in the particular form which it took, safeguarded and ensured the continuance of the marital relationship; the system of age grades which provided for the systematic protection and administration of the tribe; a communal allocation of duties which ensured that a sufficient labour force was available for the task in hand, such as the building of a house; the system of education which instilled the principles of courtesy and hospitality which are essential if any community is to live peaceably together; and the pagan forms of religion which were an important part of his pattern of behaviour."

technological development in East Africa resulted in a relatively simple society. A complex political system was unnecessary and beyond the imagination of the native. Thus, attempts to unify the country politically were handicapped at the outset by the absence of a natural unity among the ethnically different tribes, their mutual hostility, and a series of unique and complex social structures.

The Impact of the European on the African

Contact with the European caused a disruption of tribal life and forcibly brought upon the native a culture he found difficult to comprehend. The experience has been of a traumatic nature for the African since he was unprepared for contact with a technologically and culturally advanced civilization. According to the English psychologist, Carothers: "... it is the essence of all pre-literate cultures that their survival (as pre-literate cultures) depended on gradualness of change."¹ When one African tribe came into contact with another African tribe, the influences mutually exerted were of a gradual nature. But the impact of European influence in East Africa was swift and deeply disturbing for the indigenous peoples. The problem, as the reporter for the Royal Commission of East Africa sees it:²

To change from the primitive requirements of a subsistence society, organized with the primary object of survival, to the requirements of the modern world with its dependence on individual judgments and decisions taken within the framework of a cash economy, is indeed a formidable undertaking; and there can be little wonder that the indigenous peoples of East Africa have experienced difficulty in spanning, in a matter of a few decades, the gap which it has taken the inhabitants of European countries centuries to bridge.

The coming of the white man shattered the tribal system of the Africans.³ Under the tribal system the African felt a strong sense of personal security within his highly disciplined social structure. The African

1. Carothers. op. cit., p. 6.

2. Cmd. 9475. 1955. op. cit., p. 23.

3. Elspeth Huxley takes a tough-minded view of this: "It is as catalysts, as stimulants, as innovators that Europeans have come to East Africa; they are the spearheads of the forces of change; and, if their behaviour has not always been admirable, if some of the changes are regrettable, if a lot of good has vanished (as it has) along with the outworn and retrograde, this is one of the consequences that cannot be avoided it is no remedy to say that we must go back and remove the sources of change." Cf. her introduction to Lipscomb's White Africans. op. cit., p. 13.

culture could not withstand the changes introduced by the Europeans, and in the de-tribalization process which followed the African social structure began to collapse. Religion, education, agricultural methods, land ownership, marital customs--all these facets of African life were shaken and the old traditional manner of living has not yet been fully replaced.

In matters of religion, Christian missionaries set out with great zeal to save the "heathen" and obtained dubious, sometimes disastrous results. Julian Huxley comments:¹

Even the good ones [missionaries] have sometimes tried to make too sudden an alteration in the whole texture of native life; but have effected only a superficial change, so that their converts fall between two stools.

The missionary activity not only created doubts and confusion in the native mind about matters of faith, it frequently caused disequilibrium in families whose sons were "converted" and subsequently disowned by the clan for breaking faith with their ancestors. The missionaries could not cope with the magical and animistic elements in African traditional religions, and consequently the natives' concept of God and religious observances were more often than not a strange mixture of Christianity and paganism. Only a small number of more sophisticated Africans have been able to absorb Christian teachings without, as Huxley puts it, falling between "two stools."

Traditionally, the process of education for the African is a familial responsibility. The native child learns his religious duties, social obligations and place in society from his parents and the village elders. As parental authority degenerates and the word of the elder is superseded by British governmental officials, the youth loses faith in the values of his family. Such an educational background does not prepare the native

1. J. Huxley. "Travel and Politics in East Africa." op. cit., p. 256.

for meeting the new problems of his changing environment. The religion he once learned at home taught him the efficacy of paying homage to a variety of gods; the social customs he knows in the village permit him to take liberties with the property of members of his clan. In neither case do these practices prepare the native for a so-called civilized society which is being forced upon him.

In the village the African learns few of the skills necessary to earn a living in the new world which is being built around him by the Europeans. For the African who is educated in British or missionary schools, new problems arise. Formal education for the African creates cultural gaps between the older and younger generations¹ and this causes breakdowns in native families. When the child learns values which the parent cannot fully comprehend or appreciate social tension and discord follow.² Frequently the young, educated Africans leave their homes and villages to seek a new life in the cities. Not only is the village deprived of the improvement that the educated African can take to his area, but the young native unwittingly thrusts himself into a social void by leaving his cultural nexus. This problem is gradually being solved, but for the present it creates a class of restive and disturbed Africans who move back and forth from the village to the city and leave dissatisfaction and distress in their wake.

The formal education of an African, which takes place in segregated schools, prepares Africans for positions in a technological society while there are as yet not enough technical jobs open to them. Worse, the segregated schools are a source of resentment for many Africans since they consider such treatment as insulting and degrading.

1. Great Britain. Colonial Office. Mass Education in African Society. Colonial No. 186. London: H.M.S.O. 1944. p. 7.

2. Great Britain. Colonial Office. Education for Citizenship in Africa. Colonial No. 216. London: H.M.S.O. 1948. p. 10.

The technology of the white man has drastically affected the agricultural methods and habits of the Africans on two distinct levels. The first is the actual agricultural procedure itself and relates to the use of equipment and techniques of farming which were totally alien to the native. Accustomed to primitive tools and shifting land use, the native had great difficulty comprehending and adjusting to the use of plows and harvesters, and the proper use of land by rotation of crops and use of fertilizers. Native pastoralists were shocked by the dipping processes and other hygienic treatment the settlers gave their animals, and utterly dismayed that their nomadic wanderings were circumscribed when the white settlers fenced in the land reserved for the Europeans. It is difficult to introduce new agricultural methods into the villages because of the lack of community leadership, consequently widespread support for mechanization and modernization of farming is lacking.¹

Another factor which disturbed native agricultural habits was the consistent and regular work habits of the white farmer who expected the same of his native employees. The native's traditional attitude toward work was to farm enough to meet his immediate needs, and not to be concerned with accumulating or storing surplus goods. Consequently, if he did not want to work or felt that evil omens were attached to the efforts of any particular period of time, he simply would not work. The situation required adjustment on the part of both the native and the white settler, and the labor problems which followed caused difficulty for African,

1. Great Britain. Colonial Office. Report of a Survey of Problems in the Mechanization of Native Agriculture in Tropical African Colonies. Colonial Advisory Council of Agriculture, Animal Health and Forestry. Publication No. 1. London: H.M.S.O. 1950. p. 37.

settler, and government official alike. Failure to think of the future or consider farming in terms of an economy based on the cash incentive not only affects the native's willingness to work, but influences his attitude toward his farming methods. As long as the native has no concern for the future he will not recognize the necessity for such things as soil conservation, re-forestation and care of water supplies.

The issue of land ownership is probably more fundamental than any of the problems in East Africa. It is sufficient to point out here that the land problem is deeply influenced by a sociological concept of the Africans which is either not fully appreciated or misunderstood. Native law relating to land ownership is deeply rooted in ancient tradition which ascribes a sacred character to the soil. Most primitive societies look upon land as a trust, not as personal property; the land belongs to their ancestors, and the living are bonded to it. To separate natives from their land is to break their connection with the past and with their forefathers. Although they cannot own the land, they cannot leave it. The native may be willing to part with the use of his land, but not with the land itself.²

Ownership is a vague and meaningless concept to the native. The African loses his rights to the land on customs which are complex and perplexing to the white man who arrives with his own fixed ideas regarding property. In Kenya, "The natives conceive only of a temporary occupation of land, and have no conception of a title to permanent perpetual occupation."³ When the Europeans originally settled on the land the native

1. Ibid. Cf. p. 41 for detailed discussion of this problem.

2. T. R. Batten. Problems of African Development. Part I. Land and Labour. London: Oxford University Press, 1947. p. 25.

3. Rene Maumier. The Sociology of Colonies. trans. E. O. Lorimer. London: Routledge and Kegan Paul, Ltd. 1949. Vol. II. pp. 648-649.

believed the possession was a temporary condition based on a rental status. This, of course, was not the view of the white settler. It was a rude shock to the native to discover that the Europeans could and did claim land, settle on it and regard it as a permanent possession. The fact that the land possessed by the white man was forever closed to the native disturbed the African's notions regarding his religion, his pattern of wandering and his sense of security which was tied to the land.

Last but not least of African practices disrupted by influences of the white settlers was the whole marital-custom structure. The practices of many native tribes allowing sexual license before and after marriage was frowned upon by the missionaries and was a source of criticism from the white settlers. Efforts of the settlers and missionaries to change these practices left the natives bewildered about customs that had previously been acceptable and widespread. The age-set rituals regarding circumcision for both sexes caused a vigorous campaign against it by the missionaries and health officers. The Africans met this with dismay and resistance.

The marital structure was further shaken when the economy was transformed from a subsistence barter system to a cash basis. Family ties in the "relationship system" were weakened since the young men could earn incomes independently of their families and therefore obtain the "bride price" (or "marriage insurance" as Leakey prefers to call it¹) without reference to their parents. The "bride price" eventually has come to be measured in money rather than sheep or cattle, and the use of this kind of dowry does not tend to hold the couple together as a dowry paid to the wife's family once did. Although it is true that money is not as easy to

1. Leakey. Mau Mau and the Kykuyu. op. cit. p. 15. Cf. also Thurnwald, op. cit., who comments: "The bride-price being an equivalent for securing descendants, also compensates the productive activity of the woman in the field and garden. The family is losing the bride's working power, the husband and his relatives are acquiring it." p. 155.

accumulate as sheep or cattle, money can be disposed of more easily than animals since there are no tribal or religious traditions to place limitations on its use.¹ Once the money is spent, the woman has lost her claim to the property exchanged in the marriage contract.

The Africans found it was necessary to change their mode of living as the impress of European influence increased. It is extremely difficult, however, to create a culture for themselves. Changes are taking place in African society, but in the midst of confusing circumstances. Having no substantial social and political system of their own to resist European influences, the Africans have had to make tremendous cultural adjustments for which they are ill-prepared.

One means by which the African is adjusting to the unsettling influences of the European is to leave the land and the village and seek a new life in the cities. For the relatively small number of Africans who did this, prior to World War II the experience was often an unfortunate one, since they were not trained for any vocation other than those requiring unskilled, manual labor. Consequently, the native did not always improve his status by accepting such positions.

Prior to World War II, and to some extent even today, the natives who left their tribal area were faced with new problems. Isolated from their own tribal unit where the customs and mores regulated their lives, they found themselves in a new and strange environment, where the old values were impossible to live by or assumed meaningless or comic proportions to them. There was little to hold them together since they came from scattered and often competing tribal groups, and the social pressure for observance of tribal law was missing. They were thrust upon an atomistic world

1. Tribes with no central authority soon find that their traditional bridewealth practices are weakened by the external factors which disrupt their social structure.

and subjected to the discontent and loneliness of an anchorless existence.

A native East African, educated by English missionaries, records some of the initial effects of modern life on the people of his country:¹

Natives have to leave their families in their homes and travel long distances in search of work in order to earn money. Some of these natives never return to their homes again. Some live so long away from their homes that their wives become demoralized and they become degenerate. When they return home they carry with them all sorts of venereal diseases and spread them in their country. The long absence of such natives from their homes is most detrimental to their family life and most destructive to their physique, family health and welfare.

The weakening of the old social structure still causes social disequilibrium among the natives to an alarming extent. Many natives who go into the towns and remain, lose their status in the tribe and acquire a veneer of western civilization. Yet for many it is just a veneer and only covers the fundamental nature of the African "whose primitive ideas and native philosophy exist alongside outwards forms and usages which imitate the European."² The conflicts this raises within the individual personality tend to carry a disruptive influence further into African society and dissatisfaction spreads from the single tribe to larger socio-metric circles. The new way of life clashes with the declining old values and the psychic impact produces confused and revolutionary personalities.

Quoting again from a displaced East African, attempting to understand his dilemma, the Africans:³

carry with them their new ideas quite strange to their people which not only change their mode of living but also changes their views as regards tribal life. It creates in them the need for more wants which unfortunately they are unable to procure in their own country. It raises their standard of living above that of their own people and probably even that of their chiefs. It creates in their mind

1. H. M. T. Kayamba. "The Modern Life of the East African Native." Africa. Vol. 5, 1932. p. 56.

2. Fitzgerald, op. cit., p. 136.

3. Kayamba, op. cit., p. 56.

some feeling of dissatisfaction with the general conditions of their country. They always wish to migrate back to their sphere of work.

Unfortunately the "wish to migrate back" is futile; the old secure way of life is gone and a new one has not yet taken shape.

Meantime the detribalized native in the towns becomes a marginal man, who is divorced from his own culture, unable to make an adjustment in another one and "finds himself on the margin of each but a member of neither."¹ For whatever the old tribal culture may have been worth, it was once a means of holding a native community together. By introducing his own civilization the white man has disrupted the life of the native, but has not opened the ways as yet, to reestablishing equilibrium in native society. "How replace the beliefs which hitherto have formed the moral code of the African and the basis of tribal discipline but now are shattered by contact with civilization?" asked Lord Lugard in 1933.² It is a question that is a matter of concern for African and settler alike, and though observers may conclude that it is necessary "to replace the dying discipline of the tribe with some new system of belief and order"³ no solution to the problem has been found.

It should be noted, however, that social disequilibrium among the Africans is affected by the passing of time. Since the end of World War II Africans have moved into the cities in increasing numbers. In 1947, the native population in Nairobi was 77,000; by the end of 1955, an estimated 120,000 Africans had crowded into the city. The usual problems of

1. Cf. Everett V. Stonequist. The Marginal Man. New York: Charles Scribner's Sons. 1937. p. 3. The author suggests that the marginal man has "a subtle, perhaps indefinable, sense of estrangement and malaise, an inner isolation." p. 159.

2. Lord Lugard. "Education and Race Relations." Journal of the African Society. Vol. 32, January 1933. p. 8.

3. E. Huxley. "British Aims in Africa." Foreign Affairs. Vol. 28, October 1949. p. 51.

housing shortages, unemployment, social disorder have developed with this urban movement.¹ At the same time, a hopeful movement is taking place-- Africans are finding means of assimilation and integration in their new communities and the disruptive effects of social displacement are offset with new activities in the cities.

A positive effect is forming within the African's community life in the cities. Thomas Hodgkin, an expert observer of the colonial scene in Africa, points out that African cities "contain the germs of a new, more interesting and diversified, civilization, with possibilities of greater liberties."² Forming new associations, such as trade unions, sports clubs, social groups for young people, women's clubs and even political organizations, the Africans, despite their varied tribal backgrounds, find grounds for mutual interests and cooperative activities.³ Although these nascent groups are not strongly organized, they reveal a vitality and creative spirit which in the fullness of time may produce a united African community.

These changes, however, are limited to the urban centers. The social structure in the villages has not changed greatly. There is, however, a middle class development among a small group of Africans in the cities. Although the term "middle class" is difficult to define, its external signs are described by Hodgkin as:⁴

1. Cf. Hailey. African Survey, op. cit., p. 578.

2. Thomas Hodgkin. Nationalism in Colonial Africa. London: F. Muller Ltd. 1956. p. 63.

3. Ibid. pp. 84-89.

4. T. Hodgkin. "The African Middle Class." Corona. Vol. 8, March 1956. p. 87.

.... living in a solid European-style house, equipped with solid European furniture; wearing European clothes eating European food; listening to the wireless; reading the newspapers; membership of social and sports clubs....

Not all Africans in the cities can afford to live in this manner; for those who can, their condition of life is marked, in many instances, by feelings of social superiority and separateness from their own people.

The attitude of the white settlers toward the Africans leaves much to be desired. Although many Europeans admit that many changes have taken place among the natives, some settlers never tire of pointing out the barbaric practices they found among the natives, the sickness, the filth, the poor use of the land.¹ Twenty-eight years ago Julian Huxley could easily say:²

One of the great interests of East Africa is that you can still see human beings in a state of real barbarism, comparatively untouched. It is fascinating to see black people living the life they have lived from time immemorial.

The sting of such condescension remains. Although times have changed since Huxley spoke so freely, a recent traveller in Kenya remarked:³

It is still sufficiently rare in Kenya to spend an evening in a European home on terms of social equality with Africans to record the fact.

To be rejected because he is backward and primitive is a blow from which the African can recover. To continue to be rejected after adopting the external guise of the European is an insult to the African which causes greater resentment than wider and less personal issues.

1. Cf. Lipscomb. White Africans, op. cit., Chapter II on the evolution of the African, pp. 31-46.

2. J. Huxley. "Travel and Politics in East Africa." op. cit., p. 250.

3. John Hatch. New From Africa. London: Dennis Dobson. 1956. p. 31.

African tribal society is in a crucial transitional stage. A small percentage of the Africans is emerging from their earlier primitive stage, while most of them remain divided by racial customs and socially disorganized by a political rule they still do not fully comprehend. Arbitrarily brought together by British colonizing policy and groping for status in a world made strange by western influences, the Kenya Africans are, as yet, unassimilated in a country euphemistically called their own.

Part III

THE CONSTITUTIONAL DEVELOPMENT OF KENYA

Chapter IV

HISTORICAL BACKGROUND OF KENYA COLONY AND PROTECTORATE

Introduction

Kenya is often called a land of contrasts, and for good reason. Its geography and population represent variations and contrasts which present a multitude of problems in governing the area.

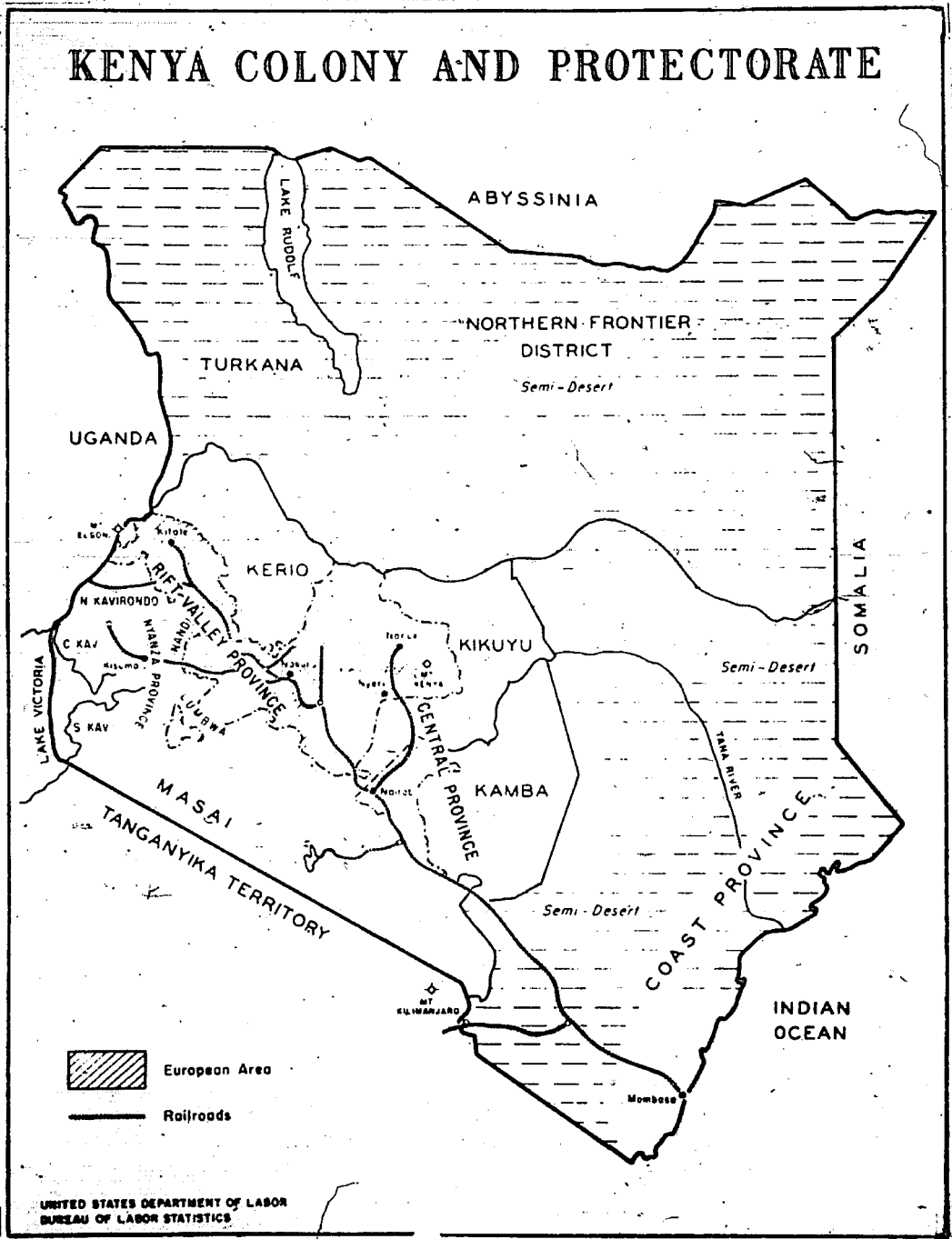
Kenya Colony and Protectorate occupies part of the heartland and coastal section of East Africa. Map II shows the political boundaries as well as the regional variations of Kenya. Ethiopia and the Sudan lie to the north, Uganda is to the west, Tanganyika to the south, Somailia to the north and east-central, and the Indian Ocean washes the south-eastern shores. A coastal strip ten miles in width reaching from the Tanganyika border to Kipini is technically known as the Kenya Protectorate and is leased from the Sultan of Zanzibar for £16,000 annually. The Protectorate, however, is distinct from the Colony in name only since both come under the same administration and to all intents and purposes are treated as one political unit. Two of the major lakes in Africa are included in the territory; Kenya shares Lake Victoria with Uganda and Tanganyika, and almost all of the finger-like Lake Rudolf lies within the north-western area.

The country can be roughly divided into four geographic areas. The first is the narrow coastal area with few coastal indentations and scattered islands such as Lamu, Manda and Patta, lying off the mainland. Parallel with the coast are low plains and a series of steppes, rising in altitude from 300 to 2,000 feet and reaching from the Tanganyika border northward along the coastal area, and into Ethiopia and the Sudan. The third area consists of the Highlands,¹ which also runs parallel with the coast and

1. The Highlands are frequently called the "white" Highlands, referring to the fact that only white settlers live there.

Map 11

KENYA COLONY AND PROTECTORATE



do not extend beyond the central section of Kenya; this upland area is topographically divided from the north section by the Rift Valley which cuts a wide gash through the countryside. The altitude in the Highlands varies from 3,000 to 10,000 feet; although the equator cuts through the central part of this region, the altitude produces a moderate climate where Europeans may live in relative comfort and raise a variety of agricultural products. The fourth division can be described as the Lake region, where the north-eastern shores of Lake Victoria press into the south-western part of Kenya and the entire length of Lake Rudolf cuts from north to south in the north-eastern section. Eighty-five percent of the population live in the southern half of the two middle sections, which embrace the Highlands and adjacent areas, and a part of the Lake region. The north-central section is dry, arid and thinly populated, and the coastal area is too warm and damp for healthy living conditions.

Early History of East Africa

The early history of East Africa is primarily that of a land occupied by slave-traders and merchants. Arab and Indian traders established themselves along the coastal areas while the Arab traders penetrated inland to procure slaves and ivory. While Arab, and later Portuguese, empires rose and fell, artisans remained at their trade and entrenched themselves in the economy of the country. The life of the Africans in the area was the insignificant existence of a plural society, where each tribe was sociologically secure in its own nexus and intermittently at war with its neighbor.

Building no lasting civilization of their own, and lacking the capacity to put the Arab slave trader out of their land, the Africans remained at the mercy of outsiders for centuries. Until European intervention in the mid-19th century, East Africa was not a territorial entity. It was a geographical territory embracing a series of African tribes and controlled economically by the tenuous business ties of the Arabs and Indians on the coast. Other than its value as a land claim in the field of international politics, East Africa seemed to offer no inherent value to the Europeans.

Indian and Arab interest in East Africa historically focused on trade and commercial enterprises. Neither group traditionally sent immigrants to the area for purposes of permanent settlement, although during this century the Indians tended to settle in Kenya in larger numbers than in any previous period. The migration of the Indian and the Arab to Kenya does not need much explanation; the Indian Ocean currents carried their dhows to the East African coasts in a search for trading centers near Indian and Arabian shores. On the other hand, the opening of East Africa for white settlement came about for more complex reasons.

British interest in East Africa developed during the latter part of the 19th century when the "scramble" for Africa was a significant aspect of European international relations. Prior to that period the British Foreign Office was concerned with the area only as it affected their policy regarding African slave trade and protection of their position in India. In 1877 the Sultan Barghash of Zanzibar persuaded Sir William MacKinnon, then chairman of the British India Steam Navigation Company, to form a trading company in the Sultanate territory on the African mainland. The concession was designed to include jurisdiction over customs and administration of the area for a seventy year period. The British Foreign Office, however, would not agree to the proposal, consequently the trading company was not formed and British influence in East Africa continued to be negligible. In 1862 the British and French agreed to respect the sovereignty of the island territories of the Sultan of Zanzibar. During the next fifteen years the Sultan cooperated with British efforts to suppress the slave trade in exchange for recognition of his holdings on the African mainland. These agreements and policies provided Great Britain with as much influence in East Africa as the British Foreign Office thought desirable or necessary.

Other European powers, however, were interested in obtaining a position in the area, and during the early 1880's professional travellers began to push into parts of Africa which had never been explored by white men. German interest and activity was especially strong. In 1885 the German government chartered a Society for German Colonization and during the next few years its leading agent, Karl Peters, travelled through East Africa making numerous treaties with tribal chiefs. These agreements were used to establish the German East Africa Company in 1886, and by this time the British and French were alarmed at the German influence and competition

in East Africa. As a result Great Britain negotiated an agreement in 1886 with Germany on spheres of influence in East Africa, and obtained the area which now embraces Kenya and Tanganyika. Thus Britain acquired territory in East Africa, not for purposes of white settlement, but as a power move to counter and, if possible, halt German influence in Africa. Efforts to create a trading company were then revived.

In 1887 Sir William Mackinnon formed the Imperial British East Africa Association, and the following year Queen Victoria officially granted trading rights and privileges to the company in the British sphere.¹ The venture proved to be costly. The company directors soon found that making treaties with local chieftains, protecting company agents against native violence and ransoming slaves from Arab traders, were expensive undertakings.² Consequently, Ibea was never a financial success and unsettled conditions in Uganda and British free trade policies of the period gave the trading company little opportunity for profit making. By 1894 the share-holders wearied of paying tremendous costs for administration and receiving no returns on their investment. After extended negotiations with the British government they sold out their interest to the Crown at a great loss to themselves.³ The British government refused to subsidize the company and was rather harsh in its dealings with the owners. Some

1. The name of the company was soon abbreviated, and called Ibea; it is referred to hereafter as Ibea.

2. Cf. Vernon Bartlett. Struggle for Africa. London: F. Muller Ltd. 1953. p. 168.

3. The original subscription was £240,000; the owners expended an additional £193,000 for administrative purpose during the company's six years of operation. The British Government bought out the shareholders for £250,000. Cf. C. E. Carrington. The British Overseas. Cambridge: Cambridge University Press. 1950. p. 814.

observers felt that the compensation was hardly just reward for the costs and risks Ibea endured while pioneering in East Africa.¹ In 1895 the area was declared a British Protectorate and became known as British East Africa.

The 1886 Anglo-German agreement did not end German competition with the British in Africa. Karl Peters and German explorers continued to push into the Uganda and Lake regions behind the coastline of British East Africa. In effect this move challenged the British "hinterland" concept of occupation, increased the security problems of Ibea and created tensions between London and Berlin. In 1890 another Anglo-German agreement designated Uganda as a British sphere of influence and established definite borders for both British and German spheres of influence.

1. For more details on this situation cf. Ross, op. cit., p. 39 and Buell, op. cit., p. 280.

The Uganda-Kenya Railroad

The extension of British influence into Uganda created two problems for the British Government. The first was that of meeting the obligation incurred by the Brussels Conference of 1890, i.e., to abolish traffic in slaves and liquor in their African-held territories, and the second was to solve the problem of the high cost of transporting goods to the Ibea company outposts in Uganda.¹ In 1890 Ibea managers suggested to the British government that a railroad from Mombassa on the coast, through the interior of East Africa to Kisumu on Lake Victoria, would be highly desirable. Such a line would provide means for effective suppression of the slave trade and aid in reducing the transportation costs of supplies sent to the interior.² It was 1895 before Parliament agreed to appropriate funds for the railroad, and although it was too late to save Ibea from financial ruin, the railway opened the way for the future development of Kenya.

The difficulties of constructing the Uganda-Kenya railroad were manifold. The line begins at Mombassa and passes through desert, bush and forest, the Rift Valley and over the Kikuyu escarpments which reach above 8,500 feet, on to Lake Victoria. Fighting disease and the man-eating lions of Tsavo, and performing engineering miracles to overcome the obstacles of the varied geological formations of Kenya, the builders expended over

1. Delivery of goods by the head-portage caravan system of the time cost an estimated minimum of \$ 250 per ton. Cf. Ross, op. cit., p. 35.

2. E. Huxley records an interesting, though erroneous, consideration as strategic:

"..... whoever rules Uganda controls the Nile; whoever controls the Nile dominates Egypt; whoever dominates Egypt holds the Suez; and whoever holds the Suez Canal has his hand upon the throat of India trade." Cf. White Man's Country. op. cit., Vol. I, p. 33.

£5,250,000 in building the railroad. The cost seemed to require that the railway be put to more extensive use than its original purpose of stopping slave trade and reducing costs of living in Uganda.

Few white men had penetrated into the interior of British Africa prior to the building of the Uganda-Kenya Railroad¹, but during the 1896-1902 period while the railroad was under construction, British officials realized that the Highland area was climatically suitable for white settlement and that the land was arable and fertile. At that time the Highlands were practically unoccupied by the natives, and although the reasons for this were not known for many years, it seemed that the settlement of Europeans there would not deprive any African of his land. Consequently, the British government embarked on a program which was an exception to its traditional colonial policy, i.e., to encourage the settlement of white Europeans in British East Africa.

In 1902 the Crown Lands Ordinance provided for land distribution, and in the following year the first government sanctioned European settlers arrived. Thus, through the devious and winding processes of European international relations, British foreign policy regarding slave trade, and an expensive railway line, the artificial political entity of British East Africa was created.

1. It was originally known as the Uganda Railway. It should be noted, however, that the railroad lies primarily in Kenya and at the time of its construction was considered more important as a line of transportation and communication into Uganda than as a segment of transportation in Kenya.

Resumé of Constitutional Development in Kenya

The preceding sketch of background events serves as a point of departure for the constitutional history of Kenya. It is essential to note that political activity in Kenya, particularly at the beginning of the Protectorate, was deeply influenced by the geographic and historic factors which led to settlement. The geography of the country attracted European settlement, and the presence of these Europeans greatly influenced British policy toward both the native and non-native population. The entire history of Kenya bears the mark of these two influences. A brief glance at the constitutional development of Kenya should serve as an introduction to the detailed analysis which follows in later chapters.

Every phase of Kenya's constitutional development is marked by a struggle for power among the various racial elements in the Colony. Except for the last decade the development of political institutions has been a slow, sometimes hesitating, process. The plural nature of the society is the root cause of that struggle, and as a result political unity or effective political compromises within the community have been all but impossible. For the most part, the British Government has had to provide authoritative force to implement important political decisions, and this has not aided in the development of internal political cohesion in Kenya.

The major influence in the constitutional development of Kenya has been the European settlement. It was because of the Europeans that parliamentary institutions were introduced into Kenya long before the other racial groups were prepared for them. As has been pointed out earlier, the settlers represented a substantial social class of Englishmen who probably imagined themselves as colonizers living in the heroic age of colonization. It was their aim to create an English form of government to be enjoyed by Englishmen and to establish a benevolent wardship over the natives. They

considered the Indians as undesirable interlopers in Kenya and sought to exclude them from participation in the government. The political ambitions of the settlers and the means whereby they accomplished these aims shaped the course of constitutional development in Kenya more than any other single issue.

The development of constitutional institutions in Kenya Colony and Protectorate can be divided into five periods, and summarized as follows:

The period of the Protectorate, 1895-1920. This period began with the proclamation of East Africa as a Protectorate; it includes the building of the Uganda-Kenya Railroad and the beginning of white settlement in the Highlands. In 1905 the Protectorate was placed under the jurisdiction of the Colonial Office, and in 1907 the early outlines of colonial government took shape. The Executive and Legislative Councils were organized, and the highpoint of the period was reached when the Crown authorized the enfranchisement of the white settlers in 1919.

The second period (1920-34) represents the struggle of the settlers to obtain and hold a position of dominance in Kenya. The Protectorate was annexed and became a Crown Colony in 1920. A turbulent period of political activity followed, as the European and Indian political interests came into conflict, and as the Europeans maneuvered for special and permanent land rights in the Highlands area. The Indians were enfranchised during this phase, and their struggle for the vote illustrates one of the most difficult problems in a multi-racial society, i.e., representation in the legislative body.

The European community reached the zenith of its dominance during the third phase, 1934 through World War II. The most outstanding feature of this period is the support of the British government for settler claims. At the same time, constitutional institutions show marked maturity and the characteristics of a parliamentary system of government make an appearance as new

political arrangements were added.

From 1944 to 1952 the British Government gradually responded to growing African demands for a significant role in the political community. This was a period of political experimentation, during which time the British Government made hesitant, but meaningful, changes in the governmental structure. The Europeans were faced with the prospect of direct African participation in the Government and began a reluctant retreat from their dominant position.

In 1952 the Mau Mau movement precipitated major political changes in Kenya, and this initiated the fifth phase of constitutional development. The British Government began to shift its support of the Europeans to a neutral position, and the Africans became more militant in their political demands. In 1954 multi-racial government was introduced, and since that time the constitutional development of Kenya has moved at a rapid, though sometimes confusing, pace. This current period is outstanding for the consistent and significant political gains for the Africans.

With this brief and sketchy view of Kenya's political history, we can now turn to a more thorough examination of constitutional development of Kenya Colony and Protectorate.

Chapter V

THE PERIOD OF THE PROTECTORATE 1895-1920

~~Early Settlement in Kenya - The First Constituent Authority~~

When the Imperial British East Africa company relinquished its concessionary and administrative rights in 1895, the area was declared the British East Africa Protectorate and came under the jurisdiction of the British Foreign Office. The policy of encouraging a white settlement in the area was an afterthought, dictated by the necessity to justify the expense of the Uganda-Kenya railway and aided by the happy discovery that the Highland area was climatically suitable for white settlers. Only this unique set of circumstances influenced the British Government to sponsor immigration to a colonial territory; in the light of past British colonizing experiences such a policy was exceptional. Three years after the first government-sanctioned settlers arrived the Protectorate was appropriately transferred to the jurisdiction of the British Colonial Office.

The Protectorate was governed by a Royal Commissioner who ruled in accordance with the British Order in Council of August 11, 1902.¹ This first constituent authority is notable for the absence of formal governmental institutions through which any of the groups in the country could be represented. The power of the Commissioner over administrative, legislative and judicial matters was complete. All appointments to public office, dismissals and suspensions, were made or authorized by the Commissioner. In legislative affairs the Commissioner was empowered to

1. Great Britain. British and Foreign State Papers. Vol. 95. "British Order in Council. August 11, 1902." London: H.M.S.O. 1903. pp. 625-635.

make ordinances for the administration of justice, raising revenue, and generally for the peace, order, and good government of all persons in East Africa.¹ Regulations and procedures in the High Court were subject to the Commissioner's approval² and such matters as death sentences and deportations were reviewed by him. In effect, the Commissioner's power to govern was virtually unlimited and unrestricted by any local official. The only limitations placed upon the Commissioner came from London, since all his actions were subject to disallowance by the Foreign Office (later by the Colonial Office) and he served "at the pleasure of His Majesty."

The Europeans, however, enjoyed informal contacts with the Commissioner and had ample opportunity to influence the administration of government. At the same time, they had no influence over the policy directives which came from London and the settlers were much chagrined by this since the real power over the Protectorate was centered in the home office. It should be noted that the Asians and Africans did not share in the informal relationship which existed between the Protectorate officials and the European settlers. This situation was due to the absence of any coherent or articulate political community in either the Asian or African groups. Consequently, the Europeans established a position of influence and leadership in the political affairs of Kenya in advance of the other racial groups.

The administration of the Protectorate from the years 1895 through 1905 is mixed with successes and failures of home office policy. The Colonial Office took a firm hand in governing the Protectorate but was not always cognizant of local conditions or heedful of advice from its

1. Ibid. Art. 12, p. 629.

2. Ibid. Art. 22, p. 633.

officials located in the area.¹ The failure of the Colonial Office to keep itself fully informed of local political attitudes and economic conditions aroused settler dissatisfaction and resulted in political agitation on their part for a voice in the governing of the Protectorate.

1. Accounts of the arrival of settlers during this period paint a picture of confusion, chaos and inefficiency on the part of the government officials in Kenya. Apparently preparations made in advance of the settlers' coming were almost entirely inadequate. Living conditions, even in Nairobi, were primitive and unsatisfactory; roads were practically non-existent, making travel difficult if not impossible; land surveys were either unfinished or improperly made and resulted in conflicting claims. The home office had not adequately planned or staffed the land settlement operation and the first impression of governmental inefficiency did not aid in creating good rapport between colonists and government administrators. Delays in settling land claims resulted in expenditure of funds to live in Nairobi; this placed a strain on the settlers' finances and served to annoy and irritate them because the money was not being used to develop the land. Moreover, the tension of living in the dry season of the high altitude generated short tempers which were already aggravated by the absence of roads, the lack of medical facilities and public sanitation, and the bureaucratic red tape of government regulations. Officials in London were either oblivious or indifferent to the problems of the Europeans, since other colonial or foreign problems were more pressing than those of East Africa. Cf., E. Huxley, White Man's Country, Vol. I; Buell, op. cit.; and Ross, op. cit.

The Beginning of Constitutional Government Under the Colonial Office
1906-1919

In 1906, a year after the Protectorate was placed under the supervision of the Colonial Office, an outline of constitutional government began to take shape. An Order in Council of October 22, 1906¹ provided for a new governmental structure which included an Executive Council as well as a Legislative Council and lasted until the Protectorate became a Colony in 1920. The office of Governor and Commander-in-Chief was created to replace that of Royal Commissioner. The Governor enjoyed complete legislative power and was authorized to do "all things that belong to his office" through Orders in Council, His Majesty's Instructions and orders issued from the Secretary of State (Art. 3).

Under the 1906 Order in Council the Governor could make grants of land (Art. 11), appoint all judges for the courts of law (Art. 12), suspend any person holding office under his jurisdiction (Art. 13), and grant pardons to persons convicted of crimes within the Protectorate (Art. 14). The Governor appointed the members of the Executive Council (Art. 6) and the Legislative Council (Art. 7) according to Instructions under His Majesty's Sign Manual and Signet, and was chairman of both groups. Membership in either Council was subject to the pleasure of the Crown. The Executive Council served in an advisory and consultative capacity; it formulated policy suggested by the Governor and submitted recommendations to the Legislative Council for implementation under the Governor's guidance. The authority of the Legislative Council was "subject always to any conditions, provisos, (sic), and limitations prescribed by any Instruction" to establish ordinances and laws for governing the Protectorate (Art. 8).

1. Great Britain. British and Foreign State Papers. op. cit. Vol. 99. "British Order in Council. 22 October 1906." London: H.M.S.O. 1916. pp. 504-509.

The first legislative Council consisted of six official members, i.e., persons holding government posts, some of whom were also members of the Governor's Executive Council, and two nominated unofficials (later increased to four), i.e., Europeans holding no government post and appointed to the Legislative Council by the Governor under Instructions from the Crown. The power of this organization was limited by several factors. The Governor could veto any legislative measure and the Council had no official method to counter such a move. The Colonial Office could disallow any ordinance and could pass legislation when necessary for the peace, order and good government of the area (Art. 9).¹ In addition to these reserved powers of the Crown, which were built into the 1906 Orders in Council, the Imperial Parliament could legislate for the Protectorate by "advising" the Crown to issue Instructions or Orders in Council; these two factors served to create effective external controls upon the Protectorate. This arrangement, which went into effect in 1907, preserved the Governor's autocratic position and at the same time provided the settlers with a minimal voice in the governing of the area.

1. Under the Foreign Jurisdiction Act of 1890 (Amended 1913) the Crown has authority to legislate for protectorates through Orders in Council.

Settler Agitation for Elected Representation

Settler demands for participation in governmental affairs began as early as 1902 when the Colonists' Association was formed in an effort to preserve the Highland area for white settlement. The next year the Association was reorganized to meet economic problems, and Lord Delamere¹ with a small group of settlers re-named it the Farmers' and Planters' Association. The colonists soon found that they could not influence economic conditions which affected the sale of their produce, or the terms of loans and land purchases, unless they possessed political power. With this in mind they broadened the aims of the organization to include political as well as economic matters and took the original name again. Until 1907 the Colonists' Association was the only organized means of expressing settler views which were based primarily on white supremacy concepts.² That same year the Governor created a Legislative Council and yielded to settler demands to appoint two Europeans to the new institution as unofficial members.

1. Lord Delamere (Hugh Cholomondeley) 1870-1931, first went to British East Africa in 1897. He was one of the earliest settlers and undoubtedly the most flamboyant and influential personality of his time. He is frequently referred to as "the Cecil Rhodes of East Africa." Elspeth Huxley has written a definitive biography of Delamere, White Man's Country, op. cit.

2. The extent to which they felt this principle is illustrated by the Major Grogan incident. A native boy was severely horsewhipped by a Major Grogan for allegedly insulting two European ladies. Grogan, an influential and highly respected member of the community was arrested and sentenced to a month's imprisonment for this act. The settlers held mass meetings to protest the Governor's action. They felt that no white man should be publicly humiliated before the natives. The Government felt Grogan's action was contrary to law and order. Grogan was quoted as saying: "As it has always been the first principle with me to flog a nigger on sight who insults a white woman, I felt it my bounden duty to take the step I did." Correspondence Relating to the Flogging of Natives by Certain Europeans at Nairobi. Cd.3562. 1907. London: H.M.S.O. 1908.

The settlers were not satisfied with their appointed political status in Kenya and soon demanded their own elected representatives for the Legislative Council. They felt the franchise was a basic instrument in colonial government and claimed it as their right as Englishmen. They hoped to enjoy self-government eventually although they intended to limit participation in governmental affairs to themselves. In the course of a few years the Colonists' Association split on functional lines, that is, agricultural or pastoral interests; the members, however, were of one mind on the issue of enfranchisement. In 1910 they drew together in a Convention of Associations for greater strength to press their cause. The Convention consisted of delegates from each affiliated Association and was ably led by Lord Delamere whose long and forceful leadership of the settlers made him a legendary figure in Kenya.

The political ambitions of the settlers took various forms. There was much letter writing to local and home officials, decrying the denial of their rights as Englishmen and blaming their economic distress upon Government controlled land grant agreements and banking arrangements. They believed the Government officials in Kenya were inefficient as well as indifferent to their needs, and also hoped to obtain control of the political situation to the exclusion of the Indian and the African. The

settlers felt that the Government was indeed hostile to them¹, and well they might. Their aim was to wrest control from the Government to suit their needs, and the Government intention was to place native interests first. The two aims were irreconcilable, although the settlers were partially blind to this fact. They believed that what was good for them would ultimately be good for the natives; the Government could not share this view. Frequent meetings of settler associations resulted in innumerable resolutions demanding redress of their grievances and eventually the annual meetings of the Convention of Associations were popularly referred to as the "Settlers' Parliament."²

Governors of that period tended to give serious consideration to the resolutions passed at these "Settlers' Parliaments", and to the pleas, remonstrances and threats that poured from the colonists. In fact, several

1. Excellent examples of settler and official attitudes can be found in: Correspondence Relating to Affairs in the East Africa Protectorate. Cd. 4122. 1908. London: H.M.S.O. 1909. which consists of letters and telegrams exchanged between the Governor, J. Hayes Sadler, members of the European settlement, and His Majesty's Government.

For example, on March 24, 1906, a group of settlers appeared at Government House demanding a statement from the Governor regarding a current labor problem. The Governor refused an immediate answer, saying he would reply on the following day, and said he commented at the same time on the extraordinary nature of their proceedings. Lord Delamere and his followers were not satisfied with this, and as they went away greeted me [the Governor] with shouts of "resign", "resign". The whole proceedings showed unseemly ill-will towards the Government of the Protectorate and I consider that the two unofficial members of the Legislative Council acted most improperly in taking part. (No. 1 of Cd. 4122.) Governor Sadler decided to suspend Delamere and the second member of the Legislative Council, Mr. Arthur Baillie, for their "gross insult to this Government"; the Secretary of State upheld Governor Sadler. The settlers submitted, through the Governor, resolutions and explanations regarding their behavior, criticizing Government policy on the labor issue, while Delamere added "on the question of the etiquette of our proceeding to Government House, for which I take the fullest responsibility, if we have acted in an unconstitutional manner, or if there is the slightest suspicion that any insult to the Crown was intended, I beg to tender Your Excellency, as the representative, my fullest apology." Cd. 4122, p. 35. Both men were subsequently re-instated.

2. Dilley. op. cit., p. 41.

Governors who were sympathetic with the political and economic aspirations of the colonist occasionally tended toward the European view. As a result, the history of that first decade is marked by settler quarrels with the Colonial Office or resignations¹ from indignant Governors who felt they could no longer tolerate what they considered "uninformed" instructions from Whitehall. The Governors, however, were too often placed in a powerless position between the colonists and the Colonial Office. If a Governor agreed with the colonists, he was, by definition, in opposition to Whitehall; if he held firm to the Colonial Office instruction, he faced colonist hostility and non-cooperation. As autocratic as the power of the Governor was, it could not be used to prevail against the "reserved" powers of the Crown. On the other hand, the settlers were not prepared to accept autocracy as a form of government for themselves. They wanted to share in the governing of Kenya as elected representatives, not as nominated unofficials.

The year 1913 marked a peak of settler dissatisfaction and a turning point in the constitutional development of Kenya. By this time the area was divided into seven provinces and one unorganized territory; each division was headed by a Provincial Commissioner and subdivided into districts, each with a District Commissioner. The colonists frequently complained about the inefficiency of these subordinate officials regarding such matters as land claims, administration of the railway and regulation of sanitation facilities. Observers commented that these officials were underpaid²

1. Probably one of the most interesting instances of this sort is illustrated by the resignation of Sir Charles Eliot in 1904. Eliot objected to the sale of a large tract of land to a London syndicate on the grounds that absentee landowners made no real contribution to the development of British East Africa. His recommendation to refuse the sale was overruled and he resigned in protest. Cf. Eliot. op. cit., Introduction.

2. Shamefully so, according to Harris, op. cit., p. 102.

and that they had tremendous burdens of responsibility. No matter how conscientious the officials were, there was always cause for complaint on the part of the colonists. The white population was increasing rapidly and the Government seemed incapable of meeting their needs or keeping pace with the growth of economic activity. These combined circumstances increased the antagonism that existed between the settler and the Government.

Worse, in 1913 the Protectorate became self-supporting when the Imperial grant-in-aid was stopped; this was followed by direct taxation of the Europeans who were not consulted about the issue. The indignation of the settlers toward the government was unbounded; their unofficials in the Legislative Council were given no voice in the decision regarding the taxing measure, and they regarded this as "taxation without representation." In September of that year three of the unofficial representatives refused to attend the new session of the Legislative Council, in protest against the tax. European unofficials who dared to defy settler opinion and attend meetings of the Council were subjected to severe criticism from their fellow European settlers.

The tax dispute deepened a month later at a meeting of the Convention of Associations when European leaders expressed their resentment against the Imperial Government. At the August 1913 meeting of the Convention of Associations, Lord Delamere spoke out against the Government in a long and fiery speech. He called the governmental structure makeshift, and pointed out that it could only result in failure. He summarized the grievances and problems of the Protectorate: the absence of adequate land legislation to protect the settlers against land speculation; the

vacillating policy of the Government with regard to "Asiatics"¹, the failure of the Government to see that the railway was kept in repair and that shipping rates were regulated. He inveighed against the failure of the Government to enact a labor policy which would keep the natives at work and protested against the tax policy which lay so heavily upon the English and so lightly on the natives. As he saw it the relationship between official and unofficial was impossible, intolerable and unfair.²

That same year, 1913, the British Government increased the number of European unofficials on the Legislative Council from two to four. The effect of this move was nullified by the boycott of three of the un-officials, and by an increase in the number of officials from six to eight. The rift between the settlers and the Government reached its depths at this point. In 1914 the British Government announced that it was prepared to make radical changes in the Legislative Council and to extend the franchise to the settlers. World War I intervened and the matter was held in abeyance. The Europeans dropped the matter temporarily and turned their attention to wartime problems.

In 1916 the colonists renewed their pressure for the franchise, and the British Government again promised elected representation for the settlers on the Legislative Council. Immediate action, however, was delayed by the wartime situation and it was 1919 before the Secretary of State for the Colonies instructed the Kenya Legislative Council to arrange for elective representation for the Europeans.

1. Indians think of the term "Asiatic" as derogatory and resent being referred to as such. It is interesting to note that the word ceased to appear in the House of Commons Debates (where many of the political issues in Kenya were debated) in the last decade, and the term "Asian" is used instead.

2. E. Huxley. White Man's Country. op. cit., Vol. I, pp. 277-279. Extracted from the speech as reprinted.

The Franchise Ordinance of 1919

The Kenya Legislative Council worked out provisions for the franchise and election of Europeans to the Legislative Council.¹ These provisions reflected the settler attitude of preserving elective government office exclusively for the Europeans and the Government supported that attitude. Only British subjects of European origin or descent were eligible to vote, thus making possible for settlers from Great Britain as well as South Africa to participate in governmental affairs, but nearly excluding Indians who were also British subjects. Franchise requirements included the usual strictures on age and residence; ineligibility stemmed from such conditions as insanity, pauperism, bankruptcy, or a recent criminal record.

Eligibility for membership on the Legislative Council required status as a registered voter and two years of residence in any electoral area; persons who were in the employ of the government or any municipal corporation, or were recently convicted of criminal offences, or recipients of public relief funds within twelve months of nomination, or were not literate in the English language were disqualified. In addition, those persons seeking office were required to make public any contract they had with a Government department which exceed 750 rupees in value.² Thus, eligibility for the franchise as well as the Legislative Council was limited to European settlers, whose financial situation was stable and who did not

1. Great Britain. Foreign Office. The Constitutions of All Countries. Vol. I. The British Empire. "Ordinance of the Local Legislature to provide for the Election and Nomination of Members to the Legislative Council of the East Africa Protectorate. 22 July 1919." London: H.M.S.O. 1938. pp. 485-486.

2. This requirement was met by publication of the facts in a local newspaper, two weeks prior to the election day. In the event that such a contract were made after a candidate was elected to the Legislative Council, the facts were published within fourteen days of the event in the Official Gazette.

have any direct administrative connection with the Government, and whose economic commitments for public funds were known.

As the first phase of constitutional development drew to a close, the Europeans' political position was improving. Representative government for the settler seemed in the offing, although little or no attention was given to the Indians, Africans or Arabs. It was a time of political ascendancy for the white man, although this situation did not go unchallenged for very long.

New Constitutional Developments

Annexation - Kenya Colony and Protectorate 1920

Two major consequences followed the enfranchisement of the Europeans: annexation of the Protectorate and demands from the Indians for the franchise. Both events had significant effects on the course of constitutional development in Kenya; annexation changed the political structure of the country and the Indian raised serious problems discussed in the next section.

The first consequence was caused, in part, by the European settler group who led the movement for annexation. Pointing out that many of their economic problems could be resolved only through the financial benefits and arrangements available to a colony, the colonists convinced the Colonial Office of its obligations to them. After all, they argued, the British Government encouraged the European settlement and for this reason if no other the settlers deserved special attention.

By this time, the British Government was also more conscious of its stake in Kenya. World War I caused changes in international relations giving increased value to the East African area; hence, not much persuasion was needed to show the necessity for a firmer position than Protectorate status afforded in Kenya. In 1920, by an Order in Council, the British East Africa Protectorate was annexed and became the Kenya Colony

and Protectorate.¹

Changes in the Governmental Structure - 1920

The constituent authority for the new status of Kenya Colony and Protectorate was issued in the Letters Patent of September 11, 1920.² This document represented two major changes in the governmental structure of Kenya: it introduced the policy of elected representation for the European settlers and provided for the admission of Indian and Arab nominated members to the Legislative Council. Both developments were departures from the previous constituent authority of 1906, which provided no franchise for the white settlers and gave no formal political recognition to other racial groups.

The office of Governor and Commander-in-Chief was filled by appointment under the Royal Sign Manual and Signet, and the Governor was em-

1. Cf. Lord Lugard. The Dual Mandate in British Tropical Africa. 4th ed. Edinburgh: William Blackwood and Sons, Ltd. 1929.

Lord Lugard, who worked with Ibea in 1890, later commented that the transformation was "premature" and was only an effort of the Europeans to obtain control of the colony and regulate such issues as Indian immigration, economic development and policies regarding the native population. He objected to the move on the grounds that it would confer "on wild border tribes not fully brought under administrative control the status of British subjects." Lugard suggested a middle road, which was based on the unacknowledged notion of the period, i.e., that the British Government had encouraged its citizens to settle in the area and therefore owed them special consideration. The solution of the dilemma, as Lugard saw it, was to define the area in which the British could settle in Kenya and to grant "to the settlers within that area representative government." This recommendation came too late and in any case would have been intolerable to the settlers who were bent on achieving political dominance over all of Kenya.

Interestingly enough, Lugard's idea was revived recently by the Federal Independence Party, a group of white extremists who would like to have an all-white government in Kenya, separate from the Africans.

2. Letters Patent of September 11, 1920. Reprinted in: Martin Wight. British Colonial Constitutions. Oxford: Clarendon Press. 1952. pp. 272-279. The last revised version of this constituent authority appears in: Great Britain. The Statutory Rules and Orders and Statutory Instruments Revised to December 31, 1948. 3rd. ed. London: H.M.S.O. 1949. Vol. XI, pp. 674-680. References to this source hereafter cited as: S.R. & O.

powered "to do and execute all things that belong to said office" (Art. III) according to instructions given to him by the Crown and the Colonial Office.

The Governor appointed members to the Executive Council at the direction of the Crown and could suspend them on his own initiative, although his action could be disallowed by the Secretary of State. (Art. VII). He could also suspend any member of the Legislative Council, except ex officio personnel, subject to the disallowance of the Secretary of State (Art. IX).

The Crown reserved for itself the usual power to legislate for the "peace, order and good government" (Art. XII) of the Colony and to disallow any ordinance passed by the Legislative Council (Art. XI). In essence the Crown still retained full legislative power since the only other source of law, the Governor, acted on instructions from the Crown (Art. XV). The Governor approved and therefore validated legislation (Art. XIII) or could veto ordinances (Art. X). He could reserve a bill (Art. XIV) for purposes of obtaining the signification of the Crown and would resort to this device when he wanted to seek assurance of support from the home office. In addition to the Governor's control over legislation he continued to make grants of land (Art. XVI), appoint all judges and law officers (Art. XVIII), grant pardons and remit fines (Art. XIX). The political power of the Governor was extensive; although he was subject to instructions from the Crown or Colonial Office, he was left free, in practice, to make many decisions at his own discretion.

Neither the Executive nor the Legislative Councils enjoyed such prerogatives. The function of the Executive Council was to assist the Governor, and the members were appointed and held office at the pleasure of the Crown. The membership included three categories of personnel; (1) ex officio members, i.e., those persons holding such offices as Chief Secretary to the Government, Attorney General, Treasurer, Chief Native Commis-

sioner and the Principal Medical Officer; (2) official members, i.e., office holders in the public service; and (3) unofficial members, nominated by the Governor. Acting as an advisory board to the Governor, their advice could be heeded or disregarded as the Governor saw fit. More often than not the Executive Council was the Governor's sounding board, and the channel through which he sent bills to the Legislative Council. It was a cabinet without power to control its leader or initiate political action.

The Legislative Council was composed of ten ex officio members (usually those persons on the Executive Council); seven officials nominated by the Governor on Instructions from the Crown; two nominated Indian unofficials (increased to four in 1922); one nominated unofficial to represent Arab interests (this person could be drawn from the nominated officials); and eleven elected European members representing eleven electoral areas. Thus, there were seventeen members representing the Government who did not have a free vote but were bound by Instructions. The unofficial membership consisted of two (later four) nominated Indian unofficials and one representing Arab interests, who usually stood with the Government, and eleven elected Europeans who were responsible to their electorate. The Legislative Council was empowered to pass ordinances "not being repugnant to the law of England" (Art. X) and in accordance with any Instructions from the Crown. Its authority also included power to provide for the administration of justice, by creating such courts and officers necessary to "peace, order and good government." The legislative power was limited, since the Council had no means to overcome a veto of the Governor and was still subject to both the Crown and Parliamentary legislation.

Nevertheless the Europeans gained prestige and influence through their elected status on the Legislative Council. The electorate could exert pressure on their elected officials, and the Europeans felt they could now

speaking with greater independence, even though the Governor had authority to suspend their membership in the Legislative Council. In spite of the limited powers of the Legislative Council, the institution was an important political gain for the settlers. It also provided the Indians and Arabs with recognition and gave all the immigrant elements in Kenya an opportunity to know and understand one another better if they should so choose.

The Europeans, Indians and Arabs however, were not meeting one another on an equal footing. Their respective roles in the Legislative Council were unbalanced by the franchise for the Europeans and the nominated status for the Indians and Arabs. By and large, the Arabs were not too concerned about this situation; the same could not be said for the Indians who deeply resented their unfranchised position. The Europeans had arrived in Kenya with a ready-made community of political interests; their experience under parliamentary institutions and their ability to organize and articulate their demands won for them an active share in the Government of the Colony. The Indians were not so fortunate, either in their past governmental experience or what the Kenya Government was willing to grant to them by way of political rights. And, it might be added, the Africans, whose interests were protected by the Government, had no real voice at all in the political structure through which they were governed.

None of the groups involved, settler, Indian, Arab or African, had begun to think of themselves as belonging to one political community. Far from it, for the governmental institutions were not designed with this in mind. Furthermore, the twin factors of the predominant role of the Government and the limited franchise provided neither the opportunity nor the incentive for the plural elements in the society to seek the means of achieving agreement. A political community was virtually impossible as

long as Europeans insisted on reserving the franchise, and ultimately governmental participation, for themselves, and on excluding the remainder of the population from similar political rights. Disagreements and disputes were inevitable in the course of time.

THE STRUGGLE FOR WHITE DOMINANCE

Introduction

The presence of the European settlers is notable for their pressure to obtain a dominant position in the Colony. It is true that European influence is largely responsible for the economic development of Kenya. But, economic progress, with its concomitant improvements in transportation, communication and general welfare, is essentially a by-product of the settlers' energetic pursuit of a power position over the other racial elements of Kenya's plural society.

The reasons for the European power motives are explicable in terms of cultural characteristics such as initiative, individuality and the desire for progress. The settlers wanted to live in Kenya. They wanted to farm and sell their produce profitably. They wanted to improve living conditions for themselves. Any improvement of native welfare or agricultural production served to advance the economic position of the settler. In spite of the inherently interdependent nature of Kenya's plural society, the Europeans, who felt they were primarily responsible for the economic development of the area, wanted to attain a position of control.

In addition to the urge for progress, the Europeans were accustomed to self-government and political responsibility. The desire to participate in their government was not only part of their cultural heritage, but an economic necessity. European economic problems were varied, though related. They needed government cooperation to keep native laborers, who were culturally indifferent or opposed to consistent work habits, working at such crucial times as planting or harvesting. Opening up a new country was an expensive proposition, and the Europeans wanted to secure favorable

tax and monetary arrangements which would not drain away their financial reserves. Land requirements varied as agricultural activity expanded; the Europeans felt that the need for proper land use and water resource development required larger land holdings. In addition, the Europeans were culturally disinclined to live in desegregated areas because they wanted to preserve their own social customs and educational practices. In order to carve out the economic and social position they desired, the Europeans wished to participate in the governmental affairs of Kenya.

At times, the Kenya Government was sympathetic with European aims. The problem of the labor supply is one example.¹ Beginning in 1907 the Government adopted a policy of encouraging native laborers to work for the settlers. Various methods were used to induce Africans to seek employment; taxes were remitted to natives who worked a month or more for the Europeans and district officers used their positions to influence impressionable young Africans to leave their homes and work on European farms.² After World War I the settler population began to rise and their economic activities outran the labor supply. Reacting to settler pressures, the Government resorted to stronger inducements. One practice was to exempt natives from compulsory labor for public purposes (which included repairing roads or giving aid during fires, for five or six days a year) if they worked three or more months for Europeans. Missionaries and other welfare agents protested, saying such a policy amounted to slavery. In 1926 Whitehall, under attack from the House of Commons, instructed the Kenya Government to ease the pressure on the natives. The whole problem of

1. Excellent accounts of this problem can be found in Buell, op. cit., Chapters 21 and 22, pp. 329-359; and Dilley, op. cit., Chapter I, pp. 213-238.

2. Cf. Dilley, op. cit., pp. 216ff.

securing native workers resolved itself as labor-saving devices were introduced, and the depression of the late 1920's lessened the need for native employees. At the same time, the problem of the labor supply was an object lesson to the settlers for the need to influence Government policy.

The Europeans also exerted influence on land distribution in Kenya. The land issue revolved around two major issues: security of land tenure for the natives during the 1920's and sufficiency of land for the Africans during the early 1930's.¹ Extensive land alienations to the Europeans ended when the Crown Lands Ordinance of 1915 empowered the Kenya Government to set aside land reserves for the use of the natives. The Government, however, did not "gazette" native land reserves, that is, officially record the areas in the Official Gazette. This meant that the Europeans could pressure officials into giving them land grants in areas theoretically reserved for the natives. The Africans were restive and bitter since they could never be sure of tenure in the land areas alienated to them by the 1915 Ordinance. Their problem was compounded by the fact that they were not allowed to live outside the reserves unless they worked for Europeans. It was not until the East Africa Commission of 1924-1925² strongly urged the gazetting of all native reserves that the Kenya Government took action to protect land tenure for the Africans.

Eventually, native population pressure in the reserves created a land hunger and this resulted in great hardships for the Africans. The Europeans were unwilling to yield land reserved to them even though they did not cultivate all their holdings. Moreover, they exerted pressures on the Government through a Native Lands Trust Board (which they dominated) to prevent

1. Cf. Buell, op. cit. and Dilley, op. cit., for extensive analyses of the land problem in Kenya. Hailey, African Survey - 1956, op. cit. reviews the entire situation and brings it up to date.

2. Report of the East Africa Commission. Cmd. 2387. 1925. London: H.M.S.O. 1925 cf. p. 33ff.

extensive alienation of Crown lands to the natives. The Europeans felt the Africans had enough land and that the natives would only spoil any new areas which might be opened up to them. Again, outside influence was required to alleviate the situation. In 1933 Sir Cunliffe-Lister, Secretary of State for the Colonies, created the Kenya Land Commission to consider "the desirability and practicability" of setting aside additional land for the natives.¹ The Commission strongly recommended providing more land for the Africans, but settler opposition prevented the British Government from taking action until 1938.

These problems, which are indicative of the relationship of the Europeans with either the Government or the Africans are touched on elsewhere in this study. It is worthwhile to illustrate, in detail, an instance in which the Europeans sought to dominate the plural society in Kenya, as a means of observing their attitudes and techniques. We turn now to the "Indian question."

1. Report of the Kenya Land Commission. (Sir Morris Carter, Chairman.)
Cmd. 4556. 1933. London: H.M.S.O. 1934. p. 1.

The Indian Question

Background

Although the Europeans did not find the constitution of 1920¹ entirely satisfactory at least it gave them an elective status in Kenya's government. The failure to provide a similar position for the Indians almost caused the first constitution of Kenya to founder on the rocks of a multi-racial dispute.

The so-called "Indian question" came to a climax during the years 1920-1923, but the background extends to the beginning of British settlement in Kenya. The European, determined to make Kenya a white man's country², was unwilling to share political control with the Indian, and to some extent feared the potential power the Indian held in terms of sheer numbers and economic activity. Thus, the prejudice of the European against the Indian was based not only on the settler's notion of cultural superiority, but on a fear that the Indian represented a latent threat to white settlement. Indian political agitation in South Africa as early as 1906 was reflected in a restlessness among Kenya's Indian population. In turn this added to the European's anxiety about his own future in Kenya.

The first line of defense of the settler against the Indian was the matter of land ownership. The Europeans were settled in the Kenya Highlands, where the soil is fertile and the altitude high enough for healthful living conditions. They did not want Indians making land purchases in this area and were successful in getting Government backing of their view.

1. Supra. Chapter V.

2. Cf. Hancock, op. cit., p. 214, who points out: "They the settlers came to East Africa with the faith and the will to subdue its soil and to rule its people. They came with the conviction that they were bringing civilization to East Africa."

Land purchases and transfers were made only with the approval of the Governor, and although the settlers objected to this arrangement on the grounds that it did not give them complete freedom in economic negotiations, they were willing to tolerate the restriction because it served as a barrier to land purchases by Indians.

Many Governors shared European views regarding the exclusion of Indians from the Highlands, and some even publicly stated that it was wiser not to allow Indian settlement in the Highlands.¹ In 1908 the Secretary of State for the Colonies, Lord Elgin, commented:²

It is not consonant with the views of His Majesty's Government to impose legal restrictions on any particular section of the community, but as a matter of administrative convenience grants of land in the uplands should not be made to Asiatics.

The settlers interpreted this as meaning that even transfers of land in the Highlands were not to be made to Indians. Since the Government allowed no land to be sold or transferred to the Asians.

The Indians could do nothing about this discrimination except to suffer what they felt to be the indignity of discrimination against them. Lord Elgin said that white settlers needed to live in the Highlands for reasons of health. To this the Indians replied, that if it were a matter of climate, then let climate decide who could live in the Highlands. The Indians claimed they were not accustomed to the low altitude and dampness of the lowlands where they were allowed to settle, and if it were a matter of health, they too needed a suitable climate. Aside from the fact that the settlers were determined to keep the Asians out of the Highlands, the Indians managed to survive in the coastal dampness of Kenya for centuries,

1. Cf. Eliot, op. cit., p. 171; also Buell, op. cit., pp. 300-302.

2. Correspondence Relating to the Tenure of Land in the East Africa Protectorate. Cd. 4117. 1908. London: H.M.S.O. 1909. p. 25.

and the Government had little reason to think their health had suddenly been impaired by European exclusion.

It is extremely doubtful that most Indians of that period even cared to mix with the white population or were willing to expose themselves to social ostracism just for the sake of residing in the upland territory. The basic point at issue was that the Indian felt this exclusion was a stigma of inferiority, an affront to his dignity. As an observer of the situation pointed out: "It is impossible to overrate the extreme sensitiveness of the Indian in all matters of dignity. He will contest a point of honor to a degree which the more practical European mind considers irrational."¹ The effrontery of the European in staking out a large and highly desirable tract of land as open to whites only, was a bitter insult to the Indians who bore it all with resigned patience for many years.

The discriminatory practices against the Indians extended to other aspects of their life in Kenya. For many years they were excluded from participation in the Government, although in 1909 an Indian was nominated to serve on the Legislative Council as an experiment.² This did not satisfy the European settlers and irritated the Indians; the appointment was not renewed. For many years, the Europeans attempted to segregate the Indian in the commercial and residential areas of the towns. In 1913 a sanitation expert from London made critical remarks about the conditions under which the Indians lived and strongly recommended segregation in matters of housing.³

1. S. Rice. "The Indian Question in Kenya." Foreign Affairs. Vol. 2, December 1923. p. 262.

2. Indians in Kenya. Cmd. 1922. 1923. London: H.M.S.O. 1924. p. 4.

3. Cf. Ibid. Sir William Simpson was a sanitation expert.

Beginning of Indian Agitation For the Franchise - 1919

Two significant events served to incite the Indians to political agitation. The first was the enfranchisement and elective representation of the European on the Legislative Council. Limiting the vote to persons of British or European origin or descent was a bitter blow to the Indians who considered themselves British subjects and felt that as such they should also be allowed the franchise on an equal footing with the settlers. The second event was the publication of a local economic commission which quoted extensively from the 1913 report of Sir William Simpson. The Commission included two officials and six settlers, and therefore did not represent disinterested parties, as it could have been assumed in the case of Sir William Simpson.

The report described the Indians:¹

1. The report of the Economic Commission is quoted frequently in such works as Buell, op. cit., p. 291; Hancock, op. cit., p. 215; Dilley, op. cit., p. 145; and N. Gangulee. Indians in the Empire Overseas. London: The New India Publishing House, Ltd. 1947. p. 97. The report is not available in this country and it is necessary to take the quote from secondary sources.

C. F. Andrews, a friend and advocate of the Indians, quoted extensively from the report in a book he wrote defending Kenyan Indians and objecting to white settler attitudes; Cf. Charles Freer Andrews. The Indian Question in East Africa. Nairobi: The Swift Press. 1921. The nature of the comments made in the report warrants further quoting from it as reprinted in Andrews' book, pp. 2-5.

In every direction, the sphere of the Indian in this country is not complementary but competitive with those of the European and African Plague, though said to be "endemic" in the country, has certainly been imported, if not originally, then on later occasions, from Bombay, and Indian quarters are almost invariably the foci of each successive outbreak. The same may be said of all dirt born diseases....

The Indian is the inciter to crime as well as vice, since it is the opportunity afforded by the ever-ready Indian receiver which makes thieving easy....

Further, Asiatics who are allowed to remain in this country should be obliged to conform to the same sanitary standards as Europeans as a condition of their residence here. It will probably be found that this will result in a great reduction of their numbers.

Physically the Indian is not a wholesome influence because of his incurable repugnance to sanitation and hygiene. In this respect the African is more civilized than the Indian being naturally cleanly in his ways The moral depravity of the Indian is equally damaging to the African, who in his natural state has been innocent of the worst vices of the East. The presence of the Indian in this country is quite inimical to the moral and physical welfare and the economic advancement of the native. The error ought gradually to be rectified as far as possible by restricting fresh immigration and by partial repatriation.

At this point the controversy between European and Indian took on ugly aspects, and the Indians appealed to their own government for help. In terms of British diplomatic relations with India it was an unfortunate time to arouse the Indian Government. Delicate negotiations were in progress between the two governments regarding India's prospective status as a Dominion and discriminatory action against the Indians in a British colony jeopardized the success of the proceedings. The Indians felt, that in the light of their contribution to the development of Kenya¹, and their efforts in East Africa and elsewhere on behalf of Great Britain during World War I, they deserved better treatment than they were getting.²

The time had arrived for India to make a test case regarding her position in relation to the rest of the British Dominions, and the issue of the Indian Question in Kenya was to be a supreme test. Consequently settlement of the problem did not rest with the Government of Kenya alone. The settlers and the Indians failed to find a basis for agreement and the European position in Kenya stood in the worst possible light. Unfortunately,

1. *Supra.* p.31. Summarized: establishing trading centers, providing labor for the building of the railroad, sending Sikh troops to aid in settling tribal warfare, and contributing to the economic development of the area.

2. "The Indian Question." Round Table. No. 63., 1926. p. 644.

but expectedly, both sides took an intransigent stand which made any local, multi-racial solution impossible.

Whitehall's Response - The Milner Proposal - 1920

The Secretary of State for the Colonies, Lord Milner, repudiated the 1919 report of the Economic Commission in Kenya and attempted to disassociate himself and his Office from it. But it was too late for the British Government to divorce itself from the views of the European settlers. The Indian Government made claims to the British Government for rights of Indians in Kenya regarding such issues as the franchise, immigration and segregation. In May of 1920 Milner responded by ordering that Kenya Government: arrange for the election of two Indians to the Legislative Council on a special franchise; provide for elected Indian representatives on Municipal Councils; allow Indians to immigrate on the same basis as any other immigrant. In addition, the Kenya Government was advised to: preserve the Highlands for European settlement, but to give Indians opportunities to settle in suitable agricultural areas; and adhere to segregation in residential areas, and only where feasible in commercial districts.

These instructions were received with mixed reactions. Since the order upheld Lord Elgin's policy that the Highlands be reserved for the settlers, the European community was willing to accept the special franchise for the Indians. The Indians, however, registered vigorous objections and on August 22, 1920, held a mass meeting in Nairobi to protest the inferior status assigned to them by the British Government.

Matters might have remained as they were if the Government of India had not taken strong exception to Milner's solution of the Indian Question, and re-opened the whole dispute in October 1920 by submitting a

list of grievances to the Secretary of State for India.¹ It was a blistering attack on British policy in the Colony of Kenya. In regard to the franchise the Indian Government commented:²

It is not clear to us why the European community should require 11 members to voice its views, while two members are considered to be sufficient for the Indian community.

The Indian Government felt "that the only reliable safeguard for Indian interests is adequate representation on the Legislative Council", since the Governor, on occasion, failed to protect their interests.³ Recognizing that the Indian population was "not ripe for adult suffrage" the Government of India suggested that a common electoral roll be established with property and educational qualifications for the franchise;⁴ in this manner relatively few Indians would be eligible to vote, but all British subjects would then be subject to the same franchise regulations. Although the Government of India finally conceded the possibility that the Indian voting population might some day outnumber the settlers, it maintained this could happen only in the towns and that the settlers would still dominate in the Highlands and agricultural areas. Finally, the Indians pointed out, the "interests of the native population" required an official majority in the Legislative Council. Under these circumstances they reasoned that "the fear of Indian domination is, we submit, unfounded."⁵

1. Cf. Status of Indians in Kenya. (Despatch of 21 October 1920.) Cmd. 1311. 1920. London: H.M.S.O. 1921. This is a review of the position and treatment of Indians in Kenya.

2. Ibid., para. 4.

3. Cmd. 1311, 1920. op. cit., para. 6. The report included an account regarding the passing of an amendment to the Income Tax Bill of 1919, which worked to the detriment of small Indian traders; the amendment was passed, with the Governor voting in the minority. The Governor did not use his veto power to override the bill, and the Indians construed this as failure to protect Indian interests.

4. Ibid., para. 7.

5. Ibid., para. 8.

The Settlers' Response - The "Irreducible Minimum" - 1921

In December 1920 the India Office strongly recommended that a conference of Indians and settlers in Kenya be held to study the whole problem. The following January 1921, Winston Churchill, Milner's successor as Secretary of State for the Colonies, inherited the Indian Question with the Office. A few months later land sales in the Kenya Highlands were frozen and the Europeans feared that Whitehall might possibly consider opening the area to the Indians.¹ Consequently the settlers agreed to the conference, suggested by the Indians, which by then also had the support of the Government of Kenya. It was hoped that a local agreement was possible.

The following May, 1921, a Round Table Conference was held, but the representatives of neither community could find a basis for agreement. Kenya Government officials attempted in vain to work out compromises on the issue of representation in the Legislative Council. The Europeans viewed communal representation in terms of corporate interests, rather than on a racial basis and insisted that agricultural interests should outweigh all others; the Indians replied that commercial interests should be given equal representation. When the Europeans sought to use their agricultural dominance as a means of securing a majority of representatives on the Legislative Council, the Indians demanded equal representation on the basis of their numerical strength. Both sides were adamant in their views and no compromise was possible; local settlement of the issue was out of the question.

1. Actually, Churchill claimed that he had not had time to study the East African problems carefully and would do nothing about them until he saw the Governor of Kenya in August 1921. He added: "I would like to postpone any statement upon this subject [race relations] until I have had the opportunity of threshing the matter out with the responsible officers." H.C. Deb. v. 144. 14 July 1921. col. 1625.

When the Conference broke up the settlers met in their Convention of Associations to plot a course of action. They formulated what they referred to as an "irreducible minimum", viz: limited immigration of Indians "with a view to ultimate prohibition"; admission of two Indians to the Legislative Council by nomination, not by election; continued segregation; no alienation of land to the Indians in any upland territory; recognition and protection of all existing "Asiatic" holdings in property.¹ These demands were even greater than the changes recommended in the Milner proposals. The Europeans decided to take a firm stand, and not to yield in any of the demands. By this time the Government in London placed the problem in the hands of the House of Commons Joint Standing Committee on Indian Affairs.

The report of the Committee tended to support the Indian position and reflected the dilemma of the British Government in its attempt to resolve the interests of both the Indian and the settler. Although the Committee upheld exclusion of the Indians from the Highlands, its view of the franchise was somewhat sympathetic to the Indians.²

They admitted that the bulk of the Indians were not ripe for the adult suffrage which the Europeans at present enjoy, but they proposed that there should be a Common Franchise on a reasonable property basis, plus an educational test without racial discrimination, for all British subjects.

Nevertheless the Committee was also cognizant of the plight of the European; it commented:³

1. Cf. E. Huxley. White Man's Country, op. cit., Vol. II, pp. 122-123 for a full account of the meeting.

2. Third Report of the Standing Joint Committee on Indian Affairs. H.C. Paper No. 177. London: H.M.S.O. 1921. p. 2.

3. Ibid., p. 3.

.... the Indians outnumber the Europeans by more than three to one [about 30,000 to almost 9,000], a Common Roll even with a restricted Franchise, would if not immediately, before long, give a majority to the Indians and create a situation which the Europeans could not accept.

As a result the Committee took an ambiguous stand. Their function was to find a solution to the Indian Question and it was clear that they could not do so. Their only concrete suggestion was that a Royal Commission should be appointed to inquire into local conditions and offer a "precise manner" by which to frame the franchise. Kenya had already been "commissioned" to death with countless inquiries regarding land tenure, economic conditions, and the governmental structure. The commission was never formed, the inquiry never made.¹

With whom did the Committee really sympathize? It did not appear to be a matter of sympathies, but a recognition of the fact that the multi-racial problem in Kenya required greater consideration than the honorable gentlemen of the Houses of Lords and Commons were prepared to give. The members of the Committee were not unwilling to settle the issue, but were caught in a helplessness of simply not knowing how to cope with the conflicting interests of the plural society in Kenya. There were other pressing political problems with which the Committee had to deal, and Kenya was only one of many facets of British policy relating to India. The Government could not afford to take an official position against the Indians since larger issues were at stake; at the same time, the Government was not likely to turn its back on the interests of the European settlers.

1. Churchill commented: "I think that the Royal Commission is the last remedy which should be employed. I quite agree that if everything else fails there should be a Royal Commission." H.C. Deb. v. 114. 14 July 1921. col. 1625.

One significant factor began to attract attention. In the midst of the discussion the Committee commented:¹

.... it must not be forgotten that it is the Native population which forms the predominant factor in the country.... The continuance in Kenya of the Crown Colony system of administration implies the recognition of our duty to the Native African Races.

The Europeans discussed the interests of the African races many times, but always in terms of settler control. They hoped to bring the native to a state of enlightenment under European tutelage; their aim however, was not to give recognition to the native as "the predominant factor" in the country. The Committee suggested, knowingly or unknowingly, a solution to the problem which was not likely to appeal to either the Indian or the settler--that no single immigrant group in British colonies impair the best interests of the local native population.

Whitehall's Compromise - The Wood-Winterton Agreement - 1922

The Committee report was followed by a resolution from the Imperial Conference of the summer of 1921. With the exception of the Union of South Africa, the Dominions agreed "... in the interests of the solidarity of the British Commonwealth, it is desirable that the rights of Indians to citizenship be recognized."² As a result of this, the settlers felt that their position was in grave danger, and they set about in feverish activity to prevent Government action which would place the Indians in a favored position. They sought aid and support from General Smuts in

1. H.C. 177, op. cit., p. 4.

2. Cmd. 1922, 1923. op. cit., p. 6.

South Africa, believing he would be sympathetic to their cause.¹ The settlers also sent a deputation to England to represent their cause before the home Government and the English people. Missionaries, medical people, and ladies' leagues joined in a mass appeal to save them and their children from the influence of the "Asiatics."

The settlers hoped at least to preserve the Milner plan, and at best to obtain their "irreducible minimum." They knew the issue would be settled in London, --- hence their efforts to convince the home public of their cause. It seems a strange crusade, indeed, to have Englishmen seeking a preferred position in a country that was not their homeland; but these Englishmen did consider Kenya their homeland and were prepared to take up arms to maintain their position.

Their efforts, however, did not greatly influence the British-Government, which still felt it was necessary to settle the issue in a manner designed to preserve Indian prestige and satisfy Indian nationalism. Speaking at an East African banquet in London in January 1922, Winston Churchill did little to calm the fears of the Europeans. He said:²

We wish to apply broadly and comprehensively Rhodes's principle of equal rights for all civilised men. That means that natives and Indians alike who reach and conform to well marked European standards shall not be denied the fullest exercise and enjoyment of civic and political rights.

The remarks were equivocal, however. Rhodes's concept of "equal rights for all civilised men" meant more than meeting educational and property

1. He was, but offered no overt help to the settlers, and would not receive them officially. He urged them not to take rash action, and to stay within the realm of constitutionalism. Cf. E. Huxley, White Man's Country, op. cit., Vol. II, pp. 125-126 and Dilley, op. cit., p. 155, for accounts of the settler delegations to South Africa.

2. "Kenya." Round Table. Vol. 13, No. 51. June 1923. p. 513.

tests for the franchise. The Indians realized this and were bitterly disappointed.

Churchill continued to hedge on the issue, and would not take an open stand on the resolution of the Imperial Conference of 1921. When asked whether the policy of "equal rights for all British subjects" would be adopted in Kenya, he parried: "No exact interpretation of the Resolution has been attempted." He went on to explain:¹

Both the control of the composition of the population and the rights of citizenship to be accorded to Indians now lawfully domiciled in Kenya must be considered in the light of the interests of the four communities now in existence and the determining factor must be the welfare of the Colony as a whole.

It was a matter of serving the best interests of all the racial groups in Kenya, but the community was so divided that any policy which aided one group would only irritate and hinder the other group.

Throughout the summer of 1922 an Interdepartmental Committee in the Colonial Office headed by the Under-secretaries of State for the Colonies and for India, studied means of resolving the problem. The Wood-Winterton agreement² was drawn up and that autumn Churchill submitted it to the Government officials in India and Kenya for confidential study. The terms of the agreement relating to the franchise provided a common electoral roll for all British subjects and British protected persons, with property or educational qualifications attached. All persons who were currently registered voters would retain their franchise, whether or not they met the new requirements.

1. H.C. Deb. v. 151. 16 March 1922. col. 2363.

2. Named for the two Under-Secretaries responsible for the plan, Edward Wood and Lord Winterton. The agreement was never published in full, although it is summarized in Cmd. 1922, 1923. op. cit., p. 7.

The new franchise requirements were to be drawn up in time for the Indian electorate to vote in the next election of March 1923. The official majority was to be maintained, and constituencies were to be arranged by the Governor who could choose from alternative plans provided in the agreement. Constituencies were to be so organized as to guarantee a specific number of seats for each racial group.¹

In short, it appeared that the Indians had won their fight for the franchise. They also won their stand on abolition of segregation in commercial and residential areas in towns and unlimited immigration. The only significant aspect of the European's "irreducible minimum" which had not been reduced was the matter of preserving the Highlands for the settlers. The Europeans knew that they would be making their last stand on the Wood-Winterton agreement and prepared to fight the proposal to the last man and their last shilling. There followed what Hancock called "the most embarrassing and dangerous kind of sedition which calls itself loyalty."²

The Wood-Winterton agreement was not publicly announced until January 1923. A furious storm of protest broke from the settlers. They planned sedition, though they called it "the right to resistance." The outline of their plan was relatively simple, to do whatever was necessary in Kenya to prevent its implementation. "Whatever was necessary" included the creation of a Vigilance Committee which would take over the Government in Kenya, if Whitehall insisted on executing the plan. Retired army officers in Kenya were willing to risk their pensions and European farmers were prepared to

1. For example, one of the alternative proposals provided: Eleven elected members representing seven constituencies, three of which to return one member and four two members. Constituencies with one member would send a European, and constituencies with two members would send one European and one Indian. Cf. Cmd. 1922, 1923. op. cit., p. 7.

2. Hancock. op. cit., p. 221.

exhaust their means in defense of what they considered to be their rights and their homes.¹

The Governor, then Sir Robert Coryndon, and a delegation of Europeans and Indians were summoned to London in March to confer with the Colonial Office.² The settlers gave the Governor their word they would take no drastic action in Kenya as long as negotiations were in progress. Sir Robert Coryndon knew full well a rebel army raised by the settlers was prepared to resist the order if enforcement were attempted. It was not long before the British Government realized that the settlers' attitude made the Wood-Winterton agreement unenforceable by peaceful means. Any attempt to implement the proposal would have meant the use of force in Kenya Colony.

1. Settler plans included kidnapping the Governor and taking over the Government. Cf. Huxley, White Man's Country, op. cit., Vol. II, Chapters XVIII and IX, for the most sympathetic and interesting account; Röss, op. cit., Chap. XXI, for a less sympathetic, but no less informative description. Settler resistance was not unanticipated. As early as July 1921 an "anti-Indian society" was started in Kenya, and the Opposition did not fail to mention it in the House of Commons. Cf. H.C. Deb. Vol. 146. 10 August 1921. col. 446.

2. The European delegation consisted of: Lord Delamere, who was their leader and who financed settler activity while in London; C. K. Archer, chairman of the Convention of Associations; T. A. Wood, representing the commercial community; Rev. J. W. Arthur, head of the Church of Scotland Mission, and P. C. Green, representing the European's Workers' Association; and Major W. M. Crowley who joined the delegation in London.

The Indian delegation included: M. A. Desai, editor of the Indian paper in Nairobi; A. M. Jeevanjee; B. S. Varma; and Husseinbhai S. Virjee. They were joined by C. F. Andrews, and two members of the Viceroy's Council from India, V. S. Sastri, and Sir Benjamin Robertson.

Cf. E. Huxley. White Man's Country, op. cit., Vol. II, p. 140.

Final Settlement - The Memorandum - "Indians in Kenya"

During the last round of negotiations both sides pressed hard to convince the British Government of the validity of their claims. The Europeans were anxious to build a strong British community in East Africa, while the Indians wanted to use the issue as a test case of their status as British subjects. The British Government knew it could not enforce the full weight of the Wood-Winterton agreement unless it were willing to resort to force, and this was an unpleasant prospect. Several Kenya Governors, particularly Lord Northey and Sir Robert Coryndon, earlier advised that protection of native interests and the development of English traditions of government in Kenya would best be served by allowing the Europeans the role they sought--it was not a time for the Colonial Office to argue with the considered views of a series of Governors. Moreover, the position of the Government of India looked less formidable when viewed from the height of the settlers' wrath and determination to protect their interests.

In July 1923 the Colonial Office issued its famous decision regarding Kenya--a memorandum of modest and mild language and broad proportions--called Indians in Kenya.¹ After years of haggling and reversing positions, after months of negotiations dealing with representation, immigration, and segregation, the problem was settled on the often mentioned and still neglected issue of "native interests." This was the key point to which all the trials of argument returned. The Europeans maintained that only they could properly care for the natives; the Indians declared that the presence of an official majority on the Legislative Council provided adequate protection

1. Cmd. 1922, 1923. op. cit. This paper was later known under other titles, such as the Devonshire Paper, after the Secretary of State for the Colonies at the time, or as the White Paper of 1923.

for native interests. The Colonial Office could not resist the European position, for in spite of the fact that India had an ancient and honorable civilization, it was an Asian culture, not British. Whitehall was not prepared to allow East Africa to become Indian in character if it were possible to do otherwise.

The British Government declared for native interests, and their comment should be quoted in full:¹

Primarily, Kenya is an African territory, and His Majesty's Government think it necessary definitely to record their considered opinion that the interests of the African natives must be paramount, and that if, and when, those interests and the interests of the immigrant races should conflict, the former shall prevail. Obviously the interests of the other communities, European, Indian or Arab, must severally be safeguarded. Whatever the circumstances in which members of these communities have entered Kenya, there will be no drastic action or reversal of measures already introduced, such as may have been contemplated in some quarters, the result of which might be to destroy or impair the existing interests of those who have already settled in Kenya. But in the administration of Kenya His Majesty's Government regard themselves as exercising a trust on behalf of the African population and they are unable to delegate or share this trust, the object of which may be defined as the protection and advancement of the native races.

Having carefully established its concern for the natives as primary, and relegated immigrant groups to second position, the British Government then lay down the terms by which the immigrant groups would be governed in Kenya. Constitutional development in the country was to proceed toward self-government only along the lines "which passage of time and the growth of experience may dictate as being best for the country."² There was no question that Indians should have elective representation on the Legislative Council; the problem was: how was this to be arranged without arousing the Europeans to rebellion?

1. Cmd. 1922. 1923. op. cit., p. 10.

2. Ibid.; p. 11.

The British Government decided a communal franchise was "well adapted to the needs of a country such as Kenya" since it would give every elector an opportunity to be represented by persons of his own race. A common roll was considered unfeasible in the multi-racial community since "no candidate, European or Indian, could stand as an advocate of the interests of the other race without sacrificing the support of his own."¹ The British insisted there was no intention to attach derogation to communal voting. The communal vote was to be used in order to provide a vote for the Indian and the Arabs immediately, and to extend such a franchise to the Africans eventually. Since the British decided to take no drastic action which might "destroy or impair the existing interests", a communal vote was less shocking to the sensibilities of the Europeans and less apt to create a rebellion than a common electoral roll.

Voting qualifications within each community were broad enough to provide the franchise for the largest possible number of persons. Eligibility requirements and constituencies were determined by the Governor in consultation with the Indian community. As to the extent of representation on the Legislative Council, the Colonial Office balanced the compromise made on the communal franchise with an increase in the Indian representation proposed in the Milner Plan. Five seats were awarded to the Indians on the Legislative Council rather than the original two. One newly created seat was assigned to the Arabs, and the Europeans retained their earlier representation of eleven members.

The Colonial Office did not fail to consider the African interests, since this was the basis of settling European-Indian differences. An unofficial person, designated as preferably a white missionary, was appointed

1. Ibid. p. 13.

to the Executive Council to give advice on matters pertaining to the natives. It did not seem practical to extend elected representation to the Africans, but the Colonial Office ordered the appointment of an unofficial, who would be drawn from the missionary group in Kenya, to represent native interests on the Legislative Council. The Governor and his advisers were put on notice that the presence of a representative for the Africans did not absolve them of any responsibility for native interests.

Indian gains on other issues were less than what they wanted; in fact, the settlement differed little from the Milner plan to which the Indians had strenuously objected. Although segregation in commercial quarters was declared impractical and therefore ordered discontinued, segregation in residential areas of the towns was maintained. The pledges of Lord Elgin and Lord Milner regarding preservation of the Highlands were upheld, although an area in the lowlands was set aside for those Indians who wished to pursue agricultural interests. Immigration regulations were not changed, though they were to be re-examined in the future for purposes of protecting native interests against an influx of Indian immigrants.

His Majesty's Government ended the report with a plea to all groups to accept the order and to cooperate with Government officials in its execution. Pointing out that the decisions were made only after "an exhaustive review of the several complicating factors which have led to the present unhappy controversy"¹ the Colonial Office reminded all parties concerned that the new arrangement was based on native interests which must, by the nature of British presence in Kenya, come first.

The memorandum played havoc with the "irreducible minimum" of the Europeans. Yet that community displayed a remarkable degree of political maturity by accepting it: better half a loaf than none. It was a choice between

1. Ibid., pp. 18.

continued constitutional development or an autocratic rule which the British Government would have imposed had the settlers resisted. Elected Indian representatives to the Legislative Council, unlimited immigration and abolition of segregation in commercial districts of the towns were offset by the communal franchise and continued exclusion of the Indians from the Highlands. On the other hand, the Indians were outraged, especially by the communal franchise which they insisted did attach an inferior status to their political condition in Kenya. Although they did not resort to violence, they responded to the memorandum by boycotting the elections on the ground that the communal franchise was a rejection of the "one man one vote" principle.

Implications of the Indian Question

The conflict between European and Indian over the franchise and representation suggests the nature of political conflict in a plural society. Reference should be made here to aspects of the common electoral roll as suggested by the Wood-Winterton agreement. The proposed common electoral roll was not implemented in an unrestricted manner. Constituencies were organized in such a way as to guarantee, by reservation, a specific number of seats for persons in each racial group. There were two proposed organizational plans for each constituency and in either case only a fixed number of candidates from either race were allowed to qualify for election. The Europeans had a majority among the unofficials on the Legislative Council in any event. The net political effect of a common roll would have been the same as that of a communal franchise with a fixed number of seats to be elected. Given the nature of the plural society in Kenya, elections would be determined along racial lines, regardless of

the franchise arrangement, as long as race had any political significance.

Three questions arise. Why would Europeans object to the common electoral roll if constituencies were so organized as to limit the possible number of Indians to be elected and to preserve the elected majority for the Europeans? Why would the Indians invite settler hostility by insisting on a common roll, with reservation of seats, if they made no greater political gain than that which could be obtained under a communal franchise? For what reasons, other than those stated in the memorandum on Indians in Kenya, did the British Government discard the common electoral roll advocated by the Indians and adopt the communal franchise, which was acceptable to the Europeans?

The following answers are suggested. A multi-racial society with such extremes of culture as represented in Kenya reveals varying degrees of superior and inferior positions within the social structure. These concepts of superiority and inferiority rest on value judgments each group holds of the other, and not necessarily on fact. The Europeans, who were extremely class conscious, saw the common electoral roll, even with its built-in safeguards, as a breaking down of the barriers between themselves and the Indians. Admitting the Indian to a political function on an equal basis with the settler would be a precedent for future demands of equality on other levels. It might lead to Indian infiltration into the Highlands, or break down segregation, or ruin European plans for the future to stop Indian immigration altogether.

As for the Indian, whose political gains under either system would have been essentially the same, implementation of a common roll would give him political status and equality with the settler, which he had not yet experienced and so ardently desired. In fact, the final arrangement for the communal franchise gave the Indians an additional seat in the Legisla-

tive Council which they would not have received under the common electoral roll as recommended by the Wood-Winterton plan. At this point, the major concern of the Indian was not the extent of representation that he would receive in the Legislative Council but the means by which that representation was selected. The communal franchise set him apart from the European and put him on a par with the Arabs and the Africans who were to receive the vote on the same basis. A common electoral roll would lessen the political separateness the Indian felt in the Kenya community.

The position of the British Government was unenviable. It was obliged to protect native interests in Kenya, and at the same time cope with the Europeans who were fully prepared to break out into open rebellion, and with the Indians who were backed by the Government of India. The communal franchise was a convenient compromise to meet an immediate crisis, but the British Government must have known then what the facts later indicated, that a communal franchise was not a permanent or logical remedy for the Kenyan crisis.¹ A communal franchise provided wider voting opportunities for all groups and at the same time served to keep them apart.

In some ways the communal franchise hindered development of constitutional government in Kenya by alienating the Indians to such an extent that they would not give full cooperation to the Government for almost a decade. It was 1925 before one Indian candidate would run for election², and until 1927 the full complement of Indians on the Legislative Council was filled only by the Governor's nomination. In 1927 they accepted seats in the

1. Ormsby-Gore, Secretary of State for the Colonies, later admitted: "I say, frankly, that I regret the introduction of communal representation...." H.C. Deb. v. 324. 2 June 1937. col. 1085.

2. Report of the Commission on Closer Union for the Dependencies in East and Central Africa. (Sir E. Hilton Young, Chairman.) Cmd. 3234. 1929. London: H.M.S.O. 1929. p. 206.

Legislative Council through election only after declaring that their use of the communal franchise did not represent an abandonment of their claims to a common electoral roll. When the Hilton Young Commission (1929) advocated including Indians on the common electoral roll, and the Kenya Government refused to comply, the Indians withdrew from the Legislative Council in protest. In 1933 they returned to the Legislative Council again to defend their interests against an income tax measure. It was 1934 before the Indians cooperated fully at elections and in the Legislative Council as elected members. Thus, for almost a decade Indian protests against the electoral system prevented them from taking an active share in the governing of Kenya. It must be pointed out, however, that they conducted their protests within the constitutional framework, and although their absence from the Legislative Council prevented the fullest use of that body as a parliamentary institution, they did not seek to destroy it.

On the other hand, the Indian boycott and non-cooperative activities brought attention to political institutions in Kenya. In 1929 Sir Hilton Young reviewed the whole matter in his commission's report on closer union of dependencies in East and Central Africa¹; his treatment of the problem clearly indicates that the British Government was divided on the whole issue of a communal franchise. The view of the majority was²:

.... inasmuch as the progress of the territory must depend on co-operation between the races, the ideal to be aimed at is a common roll on an equal franchise with no discrimination between the races.

Sir Hilton, however, filed a dissenting view that the advantages of the

1. Cmd. 3234. 1929. op. cit. Cf. Chapter IX, "The Indian Claim to a Common Franchise." pp. 204-211.

2. Ibid., p. 210.

communal system were too great to forego in the immediate future.¹ The Passfield Paper of 1930 announced the Colonial Office's considered view that:²

a common electoral roll cannot fail to commend itself generally for adoption in Kenya, as in any other Colony where there is a mixed population, they [the Colonial Office] regard it as an object to be aimed at and attained.

It was proposed, however, that the means to accomplish this be studied more fully and reported on later. Since the recommendation turned on the possibility that a closer union of East African territories would materialize, it died when the closer union efforts were abandoned.

The gains of the Indians from non-cooperation were mixed. None of the proposals recommending a common electoral roll were implemented and the Indians' non-cooperative attitude simply created more ill-will between the settlers and themselves. Nevertheless, non-cooperation drew attention to the fact that a small, articulate group of European immigrants had acquired a preferred position in Kenya, that the British Government could not control the condition to any large extent, and that constitutional development in Kenya was going to be a slow, laborious and quarrelsome process.

Achievement of White Dominance - The Royal Instructions of March 29, 1934.

This period of constitutional development in Kenya closed with the Royal Instructions of March 29, 1934.³ Although the Europeans were gaining

1. Ibid., p. 249A.

2. Memorandum on Native Policy in East Africa. Cmd. 3573. 1930. London: H.M.S.O. 1930. p. 18.

3. Royal Instructions of March 29, 1934. British and Foreign State Papers. Vol. 139. London: H.M.S.O. 1955.

control over the political situation in Kenya through extra-legal pressures, the new constitution afforded them greater formal status in the Kenya Government than they had enjoyed previously. The constitution of 1954 reflected a steady refinement of political institutions. The outline of the colonial government remained much the same, but for the first time all racial groups were represented in the Legislative Council. Although the Government now had a slim majority in the legislative body the Governor was still ensconced in an autocratic position.

The Executive Council remained a consultative or advisory body. In addition to four ex officio members¹ it included four official members to serve on a "special occasions" for purposes of giving expert advice when needed (Art. IV). In its advisory capacity, this group roughly resembled a cabinet, since policy was discussed and formulated at Executive Council meetings and Government members who also sat in the Legislative Council were expected to support the Government's position. In practice, the Executive Council was a politically influential body, and the presence of the Europeans in this group enhanced their position in the Colony.

The Governor controlled the Executive Council, submitting policy suggestions to it (Art. XIII) and overriding its decisions at his discretion (Art. XIV). He was required to report to the Crown when he acted against the advice of the Executive Council, and any member of that group could request that the matter be recorded in the official minutes of their meetings (Art. XIV). The minutes were not considered to be public record, although they were transmitted to the Crown twice annually (Art. XI). Thus any disagreement between the Governor and members of the Executive Council were officially known to the Crown though not necessarily to any group in Kenya.

1. Chief Secretary to the Governor, Attorney General, Treasurer, and Chief Native Commissioner.

The changes in powers and membership of the Legislative Council pointed in the direction of representative government. Twenty of the thirty-nine members of the Legislative Council represented the Government--eleven ex officio and nine nominated official members, all of whom were bound by the policy of the Government and held their office at the pleasure of the Crown. The unofficials consisted of eleven Europeans, five Indians, and one Arab, all of whom were elected by communal rolls, and one nominated European who represented the interests of the African community. With the exception of the Africans, each racial group enjoyed a measure of direct representation on the Legislative Council. The Europeans, Indians and Arabs held different views on the election process for their representatives to the Legislative Council. As we have noted earlier, the Indians sharply objected to the communal franchise on the grounds of discrimination. The Arabs were indifferent about the matter since most of the Arab population lived in the Protectorate area of the Colony and election from a common roll would have produced an Arab representative in any case. The Europeans, of course, wanted the franchise on no other basis since they feared that a common roll would affect their political and social status. In the event that any racial community failed to elect the required number of candidates, the Governor was empowered to fill the quota by appointment (Art. XIX). Thus, if any group was indifferent or recalcitrant about its membership in the Legislative Council (as the Indians were until 1939) the Governor was free to nominate a person of his own choice to represent the uncooperative community.

Although European membership on the formal institutions of Government was greater than that of any other racial community, the Governor held adequate power to offset their influence if he so desired. All decisions

in the Legislative Council were made by majority vote and the Governor held a casting ballot in case of a tie. In addition to the Governor's power of a direct veto over ordinances, he was specifically empowered to introduce bills of revenue and to move the suspension of the standing orders of the Council (Art. XXVII). The Governor could delegate these powers, but in the final analysis his power over finance or rules of procedure in the Legislative Council placed him in a controlling position over legislative activity.

Although the Governor was required to transmit all bills which he approved to the Crown for validation, he could authorize the operation of a bill if he felt there were an "urgent necessity" to do so (Art. XXXIV).¹ His power over the Legislative Council also extended to its duration. Although the Governor was required to give due notice of the time and place of each session (Art. XXIV) and to hold at least one session every twelve months (Art. XXIX), he could prorogue or dissolve the Council at any time (Art. XXX). The Council was dissolved every four years (Art. XXXI) and a new election followed within three months (Art. XXXII).

Members of the Legislative Council were assigned an order of precedence for purposes of presiding over the Council in the event of an

1. There were, however, specific categories of bills to which he could not give his assent, for example, bills for divorce, gratuities intended for the Governor, bills which were inconsistent with treaty obligations, matters of discipline of British armed forces and bills which the Crown had previously disallowed or refused to certify.

unavoidable absence of the Governor. The order of precedence¹ reflects the value placed upon the groups represented in the Council; ex officio members were listed first, followed by nominated officials, European elected members, Indian elected members, Arab elected members and finally the representative for the African community (Art. XX).

Two basic features characterized the 1934 constitution of Kenya. The first was the dominant role of the Governor; since Kenya was (and is) a Colony this was neither a surprise nor was it unusual. The second characteristic was the preferred position of the Europeans in Kenya's political affairs. With three Europeans on the Executive Council and a majority among the unofficial membership on the Legislative Council, they enjoyed greater opportunity to influence Government action than any other racial group in Kenya. European political influence in Kenya was institutionalized.

1. An order of precedence was also established for the Executive Council (Art. VI) but since Government members preceded the few unofficials on the Council, it reveals nothing more than the fact that the Chief Secretary to the Governor was considered more competent to handle the entire political situation than the Attorney General, Treasurer and so on.

THE ZENITH OF WHITE DOMINANCE

British Government Support of European Aims

The development of governmental institutions in Kenya reflects the political dominance of the white settlers and their attempts to exclude the natives and Indians from direct participation in politics. Such efforts required Government support, and as Marjorie Dilley commented in 1937: "If there is one conclusion to be drawn from a study of British policy in Kenya, it is that all policy has been guided and directed by the one aim of establishing a white colony."¹ To accomplish this, it was not enough to give the Europeans an opportunity to participate in the Kenya Government for the sake of participation alone. It was also necessary to give the colonists status through which they could influence, possibly even control, matters of political importance in Kenya.

There is adequate evidence to show that the British Government supported the position of the white settlers, although the two groups often seemed to be at odds. The nature of the debates in the House of Commons provides numerous instances in which the British Government gave full support to the aims of the Europeans over such issues as land distribution, boundaries of the White Highlands, and income tax measures. These debates are all the more interesting in that they reveal the kind of problems which existed in Kenya during the 1930's. In every case the final measure of Government action in Kenya was the well-being of the white settlers.

1. Dilley. op. cit., p. 275.

The Land Issue

Land distribution--the amount and location of land available for use by natives and non-natives--was a frequent subject of debate in the House of Commons during the 1930's. Again and again Parliament resolved the issue in favor of the Europeans. The criteria were the ability and willingness of both Africans and Europeans to develop the land and its water resources, and as a result a dual policy was devised. Ormsby-Gore, Secretary of State for the Colonies, speaking to the House of Commons, pointed out:¹

These problems with which we are dealing are fundamentally human problems Let us be perfectly clear that in Kenya the dual policy stands--the policy of developing the native in his own area and the European in that area where successive British Governments have invited him to try to make good in very difficult circumstances.

The Government defended the settlers' ownership of land saying that the settlers put the land to proper use rather than letting it lie fallow or despoil it as native agricultural habits tended to do. The Opposition could not insist that the land be taken away from the settlers for fear of charges that the Labor Party would neglect or abuse British subjects abroad.² The net result was that the colonists were able to retain their land-holding position, while the Government talked of protecting native interests.

1. H.C. Deb. v. 314. 9 July 1936. col. 1531.

2. Note the comments of Sir Francis Ackland, a member of the Opposition:

"It has been suggested by hon. Members who have commented on what has been said from these benches that we are inclined to ignore the interests of the white settlers.... That is not so...." H.C. Deb. v. 314, 9 July 1936. col. 1527.

Boundaries of the White Highlands

Setting the boundaries of the White Highlands was not a new problem in the 1930's. The Europeans sought assurance from the time of their arrival that the Highland area would remain secure in their hands. In 1933, the Kenya Land Commission (known as the Carter Commission)¹ was appointed to examine the land needs of the natives and fix boundaries for the area of European settlement. The report, issued in 1934, suggested inter alia, that the Highlands be designated specifically for European use. The Government was left with the decision to issue the Order in Council giving effect to the recommendation. Sir Philip Cunliffe-Lister, Secretary of State for the Colonies, spoke in favor of the proposal, referring to settlement of the boundaries as a "wise" move and saying: "... the Government accept wholeheartedly the recommendation made by the Commission."² He pointed out that the area which was to be limited to the Europeans had been cut down in size³ and that the Government could not disregard pledges given in the past.⁴

The Opposition, in the person of Morgan Jones, suggested:⁵

Government has the right to withdraw from white settlers land which is occupied by them

To this Cunliffe-Lister replied indignantly:⁶

His Majesty's Government could not countenance the idea for a moment; they would regard it as much a breach of faith as taking of a tract away from the reserves

1. Cf. Report of the Kenya Land Commission. (Sir Morris Carter, Chairman) Cmd. 4556. 1933. London: H.M.S.O. 1934.

2. H.C. Deb. v. 292. 12 July 1934. col. 563.

3. Ibid., col. 589.

4. Ibid., col. 652.

5. Ibid., col. 641.

6. Ibid., col. 653.

The strong protests to the Carter Commission report delayed implementation of its proposals until 1939. When the report was discussed in early 1936, Secretary of State for the Colonies J. H. Thomas hedged on the matter¹ and when pressed for a decision, Thomas could only verify the Government's intention to issue Orders in Council setting limits to the White Highlands and reserving the area for Europeans only.² In spite of the Labor Party's disapproval of the policy³ and sharp questions during the debates on the Colonial Office budget⁴, the Government issued an Order in Council in 1939 giving the settlers exclusive land rights in the Highlands. A Highlands Board was created, consisting of officials as well as Europeans, to "protect the interests of the inhabitants of the Highlands in the land situate in the Highlands" and to "make representations" to the Governor when the best interests of the settlers in that area were endangered.⁵

The Income Tax and Reorganization of the Executive Council

The income tax issue in Kenya had been a bone of contention between the settlers and the Government since the end of the Protectorate in 1920. Both sides were weary of deficit financing in the Colony, but there was

1. Cf. comments, H.C. Deb. v. 309. 26 February 1936. col. 433.
2. H.C. Deb. v. 309. 4 March 1936. col. 1366-67.
3. Cf. A. Creech Jones' statement that the Labor Party would not be bound by any Government action arising out of the Carter Report." H.C. Deb. v. 314. 9 July 1936. col. 1433. "...future Governments must hold themselves free to take what line they think appropriate" he exclaimed.
4. Cf. Debate on Budget for the Colonial Office, H.C. Deb. v. 324, 2 June 1937, col. 1107-1110, in which the Opposition pressed the question as to whether the white man even ought to be in Kenya.
5. Kenya (Highlands) Order in Council, 1939. S.R. & O. 1939, No. 517. v. XI. p. 690.

not always agreement on the means to balance the Government budget or meet the economic crises of the early 1930's. The economics of the situation are much too involved to explain in detail here.¹ Suffice it to say that the settlers were unalterably opposed to an income tax and had successfully resisted the worst aspects of such taxation. Through their membership on the Executive Council, and on the Finance Committee within the Legislative Council, the settlers proposed tax measures favorable to themselves which the British Government usually approved on the grounds that the Kenya budget should be balanced in a manner acceptable to those who had to carry the tax burden. "Surely," argued Sir Philip Cunliffe-Lister, "it is only common sense that there should be the greatest possible measure of local consultation and consent."² Moreover, the Government pointed out in a budget debate for the Colonial Office:³

If it is the policy of the Government to encourage settlement, the policy should be to put the burden of taxation as lightly as possible on the shoulders of the settlers. The burden of taxation on their shoulders is far too high.

Realizing an income tax was inevitable, the Elected Members of the Finance Committee on the Legislative Council suggested a quid pro quo settlement. They would recommend an income tax if the Secretary of State would reconsider the composition of the Executive Council.⁴ In January 1937, the Governor announced that he would "examine the reconstitution of the Executive Council for purposes of associating non-official members

1. For background on this issue, cf. Dilley, op. cit., who has covered the whole subject in extenso in Chap. IV, "The European Struggle for Financial Control," pp. 86-129.

2. H.C. Deb. v. 280. 14 July 1933. col. 1435.

3. H.C. Deb. v. 314. 9 July 1936. col. 1452.

4. Colonial Office Annual Report, 1946. p. 84.

more closely with responsibilities of government¹ after the income tax measure was passed. Despite the fact that six of the Europeans and both of the European representatives for the Arabs held out against the bill,² it was passed in April and the British Government held to its political bargain with the settlers. In August, Governor Sir Robert Brooke-Popham announced the reconstitution of the Executive Council "which was promised by the Secretary of State at the time of the income-tax settlement."³

The reorganization of the Executive Council became effective in 1938. The number of officials on the Council were decreased from eight to four, while the unofficial membership remained at the four designated by the Royal Instructions of 1934 (i.e., two Europeans from the Legislative Council, one European to represent African interests and one Asian member.) The composition of the Executive Council remained this way until 1945.

The Opposition questioned the proportion of representation on the Executive Council, implying that the Europeans held undue influence on the Council. Ormsby-Gore, speaking for the Government, insisted that the main object was to create a small council⁴ so that the members could perform their duties efficiently. Questioned again at the time of the budget debate, Ormsby-Gore defended the number of Europeans on the Council:⁵

..... it is absolutely essential in countries like Kenya to get the unofficial members of the community who play such a large part in the Legislative Council inside the Executive Council

1. London Times. January 7, 1937. 11b.
2. London Times. April 22, 1937. 15b.
3. London Times. August 14, 1937. The report quotes Brooke-Popham.
4. H.C. Deb. v. 323. 5 May 1937. col. 1144.
5. H.C. Deb. v. 324. 2 June 1937. col. 1085.

The political significance of the European membership on the Executive Council lay in the growing influence of that body. In his budget speech of 1937, Kenya's Governor, Sir Robert Brooke-Popham, made it clear that the Executive Council was not merely an "advisory body." He remarked that the Executive Council had the duty of framing a plan for the constructive development of Kenya and he visualized it as a planning and policy-making institution.¹

In fact, the Executive Council was becoming a ministerial cabinet; although it had neither the power nor ultimate responsibility of a cabinet, its influence over Government policy was extraordinary. This is especially important when it is recalled that the European members on the Executive Council were also elected members in the Legislative Council. The Europeans could join in the secret and confidential discussions of the Executive Council and oppose or support the Government in the Legislative Council. Under these circumstances the Europeans enjoyed a position of influence and prestige which was not shared by the other communities in Kenya.²

The political power of the Europeans was further enhanced by their role in the Legislative Council. In 1938 the Legislative Council was enlarged by the addition of two members--one nominated European to represent African interests and one Government official to maintain the Government's official majority. The composition of the Legislative Council

1. Reported in the London Times. November 1, 1937. 13b.

2. A measure of the influence of the European members of the Executive Council is illustrated in the following incident. In 1936 the two European members, Lord Francis Scott and Captain Schwarze, resigned from the Executive Council protesting that Governor Bryne had not taken them into his confidence and had formulated policy without consulting them. In May 1937, the newly appointed Governor Brooke-Popham reappointed them, with assurances that this would not happen again. London Times. May 1, 1937. 15a.

was then twenty officials and nineteen unofficials. In spite of their numerical minority in the Colony, the Europeans enjoyed a majority in the unofficial group (eleven Europeans, five Asians, one Arab, and two nominated European members to represent African interests.) The Europeans not only possessed considerable strength in the Legislative and Executive Councils, but also received the support of Whitehall. At this point the Europeans reached the zenith of their political power in Kenya.

Special attention should be given to one item in the 1938 reorganization of the Legislative Council. The instructions provided for the nomination of two unofficial African members to represent the interests of the Africans. The Governor, however, could appoint persons other than Africans, if no suitable candidates were available. This is precisely what he did. Hailey points out that the absence of African members from the Legislative Council:¹

was due not to the deliberate exclusion of Africans from the Legislature but to the difficulties experienced in finding Africans qualified to take their place on a body occupying the position attained by the Kenya Legislative Council.

Although the Europeans who represented the Africans were known for their sympathies toward the natives, they nevertheless were acting as guardians for the Africans. The white settlers believed that they could best determine what was most beneficial for the Africans. Such benevolence was no substitute for direct native representation. This practice in no way prepared the natives to speak for themselves and only served to create dissatisfaction among the Africans.

1. Hailey. Native Administration. Part. I, op. cit., p. 208.

Effects of British Support of the Europeans

Government support of the white settlers was manifested in other ways, some of which were clearly discriminatory. In February 1936, while the Carter Commission report was under heated discussion in the House of Commons, Whitehall discouraged the practice of sending tribal representations to London to give African views on land distribution. The Secretary of State for the Colonies, J. H. Thomas, insisted that such deputations should not be sent to London, and that the natives should be encouraged to use the proper channels and discuss their grievances with the Governor.¹ Yet in May of that same year, the Secretary welcomed Lord Francis Scott, a member of the Kenya Legislative Council, who had come to speak for the settlers on the land issues. Asked to account for his seemingly inconsistent action, Thomas replied that Lord Scott, as a member of the Legislative Council, could speak as an informed and authorized delegate of the European settlers and:²

if he wishes to discuss matters informally I think it would be a mistake for me not to take advantage of his presence in England to do so.

Fortunately for Secretary Thomas, no one in the ranks of the Opposition had the presence of mind to point out that the Africans had no representatives of their own on the Legislative Council in Kenya who might follow Lord Scott to London.

The problem of African representation on the Legislative Council was never completely unnoticed in the House of Commons and later became the central argument between Europeans and Africans. In 1938 when the Kenya Legislative Council was reconstituted, the Opposition asked if those persons who represented the Africans had native approval. The Secretary,

1. H.C. Deb. v. 309. 26 February 1936. col. 434.

2. H.C. Deb. v. 312. 20 May 1936. col. 1183-84.

Ormsby-Gore, replied that it was not possible to obtain African views on those persons speaking for them in the Legislative Council and that there was no thought of giving direct representation to the natives.¹ In fact, no changes in the political structure or policy of Kenya were planned. Moreover, the Government pointed out that there was no intention to change the status of Indians in the Legislative Council.²

There were, however, vague hopes about minimizing the effects of pluralism on Government action. In 1937, Ormsby-Gore commented:³

We want to get away from the sectional interests which have been prevalent in Kenya. We want to get more of the spirit in which all communities work together in the interests of the Colony.

The Government in Westminster was cognizant of the problems caused by the plural nature of Kenya's population, and Ormsby-Gore's comment was not insincere. The facts, however, indicate that the statement was an empty gesture.

Westminster's support of European ambitions had significant bearing on the development of political institutions in Kenya. First and foremost, it gave added status to the Europeans' participation in governmental affairs and enhanced the political position of the settlers in the community at large. British policy gave an aura of importance to the Europeans which was not shared by the Indians, Arabs or Africans. Consequently, it gave both the native and non-native elements mistaken notions about the separate roles each could, or conceivably would, play in the political future of Kenya. Development of political institutions in this pre-World War II period had significance only for the Europeans, since participation in the political processes was limited to their own uses.

1. H.C. Deb. v. 335. 29 May 1938. col. 692-93.

2. H.C. Deb. v. 338. 23 July 1938. col. 2712-13.

3. H.C. Deb. v. 324. 2 June 1937. col. 1087.

Most of the decision making on vital issues such as land distribution or government reorganization took place in London, not in Nairobi. Such a practice is neither unusual nor necessarily reproachable in a colonial territory. It is a serious matter, however, when the decisions thus made are formulated in terms of the ambitions of a non-native minority group. As a result, the natives could have little respect for the local British officials, little hope for what they could do even if they were allowed to participate, and even less regard for the colonial power which failed to live up to its own ideals of government. Worse, the European came to believe that if he failed to obtain a desired policy from the Governor in Kenya, he could appeal directly to London and receive a sympathetic hearing.

As a consequence of the monopoly the white settlers held over Kenyan political affairs, few, if any, Africans, were invited to participate in the administrative services.¹ That all groups in Kenya should eventually have an opportunity to take part in governmental affairs was rarely suggested. The Government could not deny that Whitehall dominated Kenya's domestic politics. It made no protest to a statement by the Opposition in 1936, that: "The Governor is only the mouthpiece of the Colonial Office in Whitehall."² No one in the House of Commons was audacious enough to

1. It was 1927 before the Arab and African Clerical Service was created, although a few natives had worked for the Government as clerks since 1923. Although Africans have shown great interest in recent years in political activity, it is interesting to note that as late as 1947-1948, the Report of the Commission on the Civil Services of Kenya, Tanganyika, Uganda and Zanzibar (Col. No. 225) London: H.M.S.O. 1948, found that:

"... there is no great keenness on the part of African youth to enter civil service "

and that

"the training facilities at present provided in the Colony Kenya are inadequate to produce candidates with the necessary qualification."

pp. 41-2. passim.

2. H.C. Deb. v. 324. 9 July 1937. col. 1453

say, that regardless of who ran Kenya, it was being run for the benefit of the white settlers.

As long as Westminster was primarily interested in the welfare of the white settlers it would of necessity have to retain control over the Government in Kenya to preserve their interests. Failure to broaden the basis of racial participation in governmental affairs appeared to be a deliberate effort to prevent a snow-ball effect in the field of representation. In the event that the Africans were granted extensive representation, the Europeans were prepared to demand even greater representation to balance their political and economic interests with the numerical majority of the natives. To grant the Europeans additional representation, however, would have been detrimental to the welfare of the natives. In no case did Whitehall or Westminster advocate extending political rights to Africans or Asians in Kenya, although the Opposition frequently pointed out that these groups ought to be given political rights.

It was a distinct advantage for the European that the British Government supported their views and at the same time kept Kenya as a Crown Colony. From the beginning of white settlement in Kenya there had been talk of eventual independence. Only an unperceptive or over-ambitious settler, however, could insist that Kenya be given its freedom during the 1930's. Should this have occurred under the political impetus and control of the Europeans, "freedom" would have meant the continuation of white dominance and an invitation to eventual violent rebellion by the Africans. Under the political circumstances of 1938, i.e., the Europeans' positions of strength in the Executive and Legislative Councils, and their effective control over financial matters in the Colony, they were as close to self-government as they could get. In reality, it was as close as they wanted to get at the time. As Captain F. E. Guest so aptly and perhaps, unwittingly,

put it during a debate on the Colonial Office:¹

I am certain that, although it is the legitimate ambition of any Britisher to manage his own affairs, I am certain that the time has not arrived when that colony should ask for it. The problems are too big and the white men too few.

It may be asked: What had happened to the paramountcy doctrine announced so boldly in the "interests of the natives" in 1923? Less than ten years later the doctrine was re-interpreted as protecting the social and economic development of the native against any harmful Indian or European influence.² At the same time, the political growth of the Africans was looked upon as an event which would take place in the future. Even the Opposition's occasional suggestions that the African be given some responsibility for the governing of his country were framed in terms of trusteeship and retention of control. The Labor Party, as His Majesty's Loyal Opposition, frequently took issue with the philosophy of the Colonial Office, and loudly decried the deprivation of political rights to the Africans.³ Much of what they said may be interpreted today as token opposition, since once the Labor Party took office in 1945, its leaders realized

1. H.C. Deb. v. 280. 14 July 1933. col. 1474. Captain Guest classified himself as a "settler", having spent much time in Kenya over a period of years as a farmer. His support of the colonists was consistent and persistent.

2. Supra. pp. Cmd. 1922. 1923. op. cit. Cf. Report of the Joint Select Committee on Closer Union in East Africa. H.C. Paper No. 156. London: H.M.S.O. 1951. Vol. I, paras 67, 75, 101. The doctrine of paramountcy was defined as:

".... no more than that the interests of the overwhelming majority of the indigenous population should not be subordinated to those of a minority belonging to another race, however important in itself."

3. The Colonial Bureau of the Fabian Society has been quite articulate on colonial matters. For a resume of the origin and activities of the Colonial Bureau of the Fabian Society of. Rita Hinden. Socialists and the Empire. London: Fabian Publications. 1946.

that it is easier to criticize than to govern.¹ The paramountcy doctrine was submerged in the interests of the European settlers, and no Government in London has successfully coped with the Europeans.

At no time were the settlers' interests minimized or considered to be anything less than vital to the Colony. As often as not the needs of the settlers were equated with the needs of the Colony. In any case, for the decade following the Royal Instructions of 1934², debate and decision in the House of Commons centered not on the advancement of multi-racial political institutions, but on the well-being of the settlers. Political development was a prerogative of the Europeans and political rights for the natives were almost inconceivable.

The dominance of the white man could not last, however, since it depended on Government support and the passivity of the Africans. Eventually the British Government realized what James Griffiths, Secretary of State for the Colonies in 1953, verbalized in the House of Commons:³

We have reached the stage where we cannot rule by decree.

1. The socialists have not been consistent in their attitude toward native problems in Kenya. During the 1930's they advocated letting Africans have land in the Highlands area. In 1954, after sending a delegation of three members to Kenya, the socialists reported to the Colonial Bureau, suggesting that taking the Highlands from the Europeans would be a serious error, that giving land to the Africans would result only in erosion and ruin of the land. Cf. East Africa and Rhodesia, March 18, 1954, p. 809 for the report of the socialist delegation of 1954. (East Africa and Rhodesia is a reputable, highly conservative, periodical in East Africa; frequent use is made of this source, and it will be cited hereafter as E.A.&R.)

2. Supra, pp. 124 ff.

3. H.C. Deb. 503. 17 July 1952. col. 2346.

Developments In African Society Between the Wars

Meanwhile, throughout all these phases of political development, changes were taking place in African society which were not always discernible to the Europeans. As noted in the chapter on the native population, the Europeans in Kenya treated the Africans with paternalistic solicitude, reminiscent of the master-slave relationship on Southern plantations in the ante-bellum period of the United States. They gave little thought to the political status or other advancement of the African. The Government in Kenya, however, did not neglect the welfare of the Africans and made a gradual response to their needs.

For example, the annual report of 1920 records that there were "some half-dozen Government schools, including three schools for Europeans, one for East Indians, and one for Arabs."¹ Eleven years later there were sixteen Government schools for European children, with an enrollment of 1,077 while the number of schools for Africans had increased to thirty-four units with 2,936 students.² Although this increase in schools was small in relation to the number of Africans,³ it represented a phenomenal increase in the number of natives receiving an education annually. In 1930 the British Government adopted a policy of educating adults as well

1. Kenya, Uganda and Zanzibar. Handbooks prepared under the direction of Historical Section of the Foreign Office. No. 96. London: H.M.S.O. 1920. p. 57.

2. Annual Report on the Social and Economic Progress of the People of the Kenya Colony and Protectorate, 1931. Colonial Report No. 1606. London: H.M.S.O. 1933. p. 34.

3. About 2,801,489 in 1920, cited in Kenya, Uganda and Zanzibar, op. cit., p. 12; about 2,966,993 in 1931, cited in Colonial Report No. 1606, op. cit., p. 13.

as children,¹ and by 1935 a plan for "social education"² was proposed as a means of preparing Africans for semi-professional jobs and integrating African education with their changing community life. Eventually the Government accepted a program of mass education with a view to reducing illiteracy and improving cultural and employment conditions of the Africans.³ Eventually, the settlers would not be able to claim that there were no educated Africans who could assume responsibilities in the governing of their country.

There were also changes in the class of settlers in Kenya. In 1915-1916, there were approximately 5,632 Europeans settled in Kenya.⁴ As was pointed out in the chapter on the non-native population, these persons represented the original type of settler, i.e., an aristocratic, upper-class Englishman, with substantial wealth and exaggerated notions of creating a little England in Kenya. In 1931 there was an estimated total of 16,957 Europeans.⁵ This increase resulted primarily from the influx of settlers who came after World War I under the Soldiers' Settlement Scheme which provided land for war veterans and their families at a nominal price. These persons, by comparison with the earlier settlers, were financially and psychologically ill-prepared for the hardships they met there, i.e., the initial period of adjustment to the climate and agricultural conditions peculiar to Kenya, and the world-wide economic slump of the late 1920's and early 1930's. Since the newcomers among the

1. Cf. Cmd. 3573. 1930. op. cit.
2. Memorandum on the Education of African Communities. Col. No. 103. 1935. London: H.M.S.O. 1935.
3. Cf. Col. No. 186. 1943. op. cit., p. 6.
4. Kenya, Uganda and Zanzibar. op. cit., p. 12.
5. Colonial Report No. 1606. op. cit., p. 12.

settler group met with economic frustration and deprivation, and knew little or nothing of African customs or laws, their relationship with the native population did not follow the paternalistic patterns initiated by their predecessors.

The Africans, in their turn, were experiencing the difficulties of de-tribalization. Uprooted from their old way of life and on the threshold of a new era, they were also living in a period of frustration. The disruption of their cultural context had adverse and cumulative effects. They could not farm as they had in days of old, nor follow their nomadic tendencies as before. Although the native population increased as the health and sanitation measures improved, the amount of farm land made available by the Government did not increase sufficiently to meet more than their subsistence needs. Moreover, the Africans had no political status by which they could express their discontent or respectfully petition for redress.

The economic crises of the depression and the social discontent were intensified by the absence of any positive or imaginative colonial policy which could pull Kenya Colony out of its unhappy state. The failure of the Government in London to examine the nature of the discontent and to take bold steps to remedy its causes, eventually led to some suspicion and ill-feelings of both the natives and non-natives toward Whitehall.

Stop-gap measures relating to land and economy problems¹, although decidedly favoring the settlers, satisfied neither group. The Opposition in the House of Commons continued to hammer away at the Government's policy, asking such questions as:²

..... what steps have been taken to secure on the [Executive] council someone with knowledge of native matters and acquainted with the life and sympathetic with the majority of the inhabitants of the country

The Government continued to respond to these questions as it always had, i.e., there were no plans to change the status of the Africans (or the Indians for that matter) in Kenya. The British policy of empiricism was clearly short-sighted and dangerous for the long run, although this was not evident at the time.

The war clouds gathering in Europe in the 1930's however, turned Westminster's attention away from the political development of its colonies. With the exception of the Colonial Welfare and Development Act of 1940, no Government aid was offered to the colonies for purposes of economic development. Even this Act, although a turning point in Britain's attitude toward the colonies, was designed to give aid to British enterprises overseas, rather than to promote direct advancement for colonial

1. Cf. Cmd. 4556, 1934. op. cit. Although land was added to the native reserves as a result of Carter's recommendations, Major Milner of the Opposition charged that the natives were only getting desert land. Cf. H.C. Deb. v. 314. 9 July 1936. col. 1494. Cf. Report of the Commission Appointed to Enquire into and Report on the Financial Position and System of Taxation in Kenya. (Commissioner, Sir Alan Pim.) Col. No. 116. London: H.M.S.O. 1936.

The natives were particularly unhappy and concerned about the land problem, and feared they could not trust the British Government. Cf. Dilley, op. cit., Chapter III, "Native Land Policy," pp. 248-274.

2. H.C. Deb. v. 329. 17 November 1937. col. 318. Arthur Creech Jones questioning Secretary of State for the Colonies, Ormsby-Gore.

peoples. The political condition of Kenya was fated to change slowly, in spite of the changing population. At best, the British Government, under the attack of the Labor Party, was beginning to realize that colonial policy required something more than the absence of violence and an empirical settlement of economic and political crises. On the other hand, the Europeans were so deeply entrenched in positions of political influence in the late 1930's, that any radical changes would have raised fierce resistance in Kenya.

With the coming of World War II, the cumulative effects of years of white dominance and African frustrations were delayed by the efforts of all races to survive the war. During this period the native population had opportunities to participate in the life of the Colony in ways not previously open to them. Africans served with the King's African Rifles battalions in Italian East Africa and Madagascar, the African Auxiliary Pioneer Corps in the Middle East and the East African Expeditionary Force in Ceylon. Locally, they participated in production of foodstuffs, construction of buildings, and agricultural and pastoral enterprises. The increased number of Africans employed in these various pursuits, coupled with the rise in wages, resulted in greater individual wealth for the natives.

The combined influences of contact with European culture, wider participation in Kenyan domestic affairs, experience overseas in the armed forces, and relative financial affluence, gave some natives a feeling of accomplishment. Eventually the number of Africans who were politically alert and articulate increased and many of them felt a desire to assert their position in the Colony. They were clearly unwilling to return to their pre-World War II status. An African soldier, returned from the war,

put it most vividly:¹

.... The African soldier has learnt to read and write; he is used to reading newspapers, to listening to wireless broadcasts, to seeing films, to playing games, both outdoor and indoor ones. The question is, will this man, this widely travelled and educated soldier, go back and be satisfied to go home to his village and live in the same old dull conditions that he lived in before the war?

Limited though they were in their political abilities, many Africans determined to claim their rights as free men. If their country was to be dominated by men professing democratic values, the Africans were prepared to ask for their share in the democratic process.

1. Kakembo. op. cit., p. 22.

Chapter VIII

POST WAR CHANGES IN KENYA'S CONSTITUTION 1944 - 1952

Introduction

The pattern of constitutional development in Kenya since World War II has focused on African representation in the Legislative and Executive Councils. Political progress in Kenya can have no significance for the Africans until they have an elective and responsible status in the governmental process. The development of this problem falls into two periods. During the first period, 1944 - 1952, the British Government eventually recognized that direct participation of the Africans in their own governing was essential to political stability in Kenya Colony. The second phase began in 1952, when the Africans began to press the Europeans to yield meaningful political power to them. The pace at which both the British Government and the Europeans are willing to extend African representation has been the major source of difficulty in Kenya's politics since the end of World War II. Extension of African representation soon became the measure of genuine development of political institutions in the Colony. This chapter is concerned with the first period.

During the late 1930's and early 1940's, the absence of a strong and united African leadership on the matter of representation was compensated for by the Labor Party's constant harassment of the British Government in the House of Commons. Typical of the questions directed at the Secretary of State for the Colonies was "whether further consideration has been given to the question of African representation in the legislative bodies of Kenya?"¹ The usual answer was that the subject was "under

1. H.C. Deb. v. 388. 21 April 1943. col. 1679. Question put by Creech Jones.

consideration¹ or that safeguards were necessary to protect the best interests of the natives.²

The war years were clearly not the time to take up the issue of African representation in Kenya when there were so many pressing matters to cope with on the international scene. It was necessary, however, to keep the problem before the Parliament; in this manner, the Labor Party hoped to pressure the Government into action. Thus the Opposition persisted in asking: "How was the African community represented in the legislative councils?"³ and by mid-year 1944, the British Government asked for a report on the status of African representation in Kenya's Government.⁴ The Government soon announced it had decided to "nominate one African member to the Legislative Council" who would be chosen in consultation with the local African Councils⁵, and to bring Africans into the administration of their own affairs as rapidly as possible.⁶

In 1944, the British Government began to tinker with the constitutional machinery of Kenya--first with the Legislative Council and then with the Executive Council. In a somewhat dilatory fashion, Whitehall began to issue orders for changes, and it was not until the outbreak of the Mau Mau terrorism that the pace of the reform seemed to be running far behind the aspirations and capacities of the Africans.

1. H.C.Deb. v. 393. 11 November 1943. col. 1317.
2. H.C.Deb. v. 395. 8 December 1943, col. 951-1952.
3. H.C.Deb. v. 396. 19 January 1944. col. 178.
4. H.C.Deb. v. 399. 10 May 1944. col. 1893.
5. H.C.Deb. v. 400. 15 June 1944. col. 2155.
6. H.C.Deb. v. 401. 21 June 1944. col. 809.

The Legislative Council

Changes on the Legislative Council followed a pattern of broadening the basis of representation to include persons of all racial groups. The first move came in June 1944 when Governor Sir Philip Mitchell appointed Eliud Mathu, the first African to represent his own people, to the Legislative Council. Mathu replaced the two Europeans who had previously served as representatives for the Africans. The Labor Government, new in office, made a second, temporary appointment of an African to the Legislative Council in 1946. In 1947, both appointments were made permanent and the Labor Government announced plans to reorganize the Legislative Council.¹

After the 1948 spring elections for the European and Asian members, the British Government changed the representation of the Legislative Council. The unofficial members were given a majority of twenty-two as against sixteen officials. The change was well timed, since circumstances permitted the British Government to reduce official membership without giving the appearance of a retreat. In 1947, Whitehall had created the East Africa High Commission for purposes of inter-territorial cooperation between Kenya, Tanganyika and Uganda in such matters as transportation, customs, posts and telegraphs. When the Central Legislative Assembly for the Commission was established, four Government officials from the Legislative Council were transferred to the Assembly which had absorbed their

1. This time the Conservative Party, as the Opposition, queried Creech Jones, then the new Secretary of State for the Colonies: "Whether African representation on the Kenya Legislative Council will now be increased?" Jones replied it was under consideration. H.C. Deb. v. 433. 26 February 1947. col. 281.

duties. Their vacated positions were never filled.¹ In that manner the official membership was reduced in an orderly fashion and yet the importance of Government participation in the Legislative Council was in no way decreased.

At the same time, two more Africans were appointed to the Legislative Council, bringing their representation to a total of four. Thus, in 1948, there were eleven Europeans and five Asians (two of whom were Muslim); four nominated Africans, and two Arabs (one of whom was nominated and one elected). The Europeans held parity, or what is called "balanced" representation.² In addition, the Europeans obtained what they had always wanted, a Legislative Council with an unofficial majority. Meantime they lost the absolute numerical majority they previously enjoyed over the combined representation of non-European representatives.

During this same period the British Government reasserted its authority over the Colony by granting additional power to the Governor. Whitehall issued Letters Patent³ amending the 1920 and 1934 constituent instruments, empowering the Governor to declare a bill law if the Legislative Council delayed its passage unduly. It is not clear why the Colonial Office did this, since in any case, the Governor enjoyed extensive legislative authority. Whatever the reasons for this action, it

1. Creech Jones, Secretary of State for the Colonies, commented: "With the creation of the East African Central Assembly, it will no longer be necessary for four official members of the Kenya Legislature to sit in the Kenya Council...." H.C. Deb. v. 446. 4 February 1948. col. 1780.

2. Cf. Halley. African Survey. op. cit., p. 195. He defines balanced representation, "assigning to one community which is considered to have predominant claims a measure of representation equal to that accorded to all other communities taken together."

3. British State and Foreign Papers. Vol. 150, Part I. "Letters Patent. April 27, 1948." London: H.M.S.O. 1948. p. 267.

served as a reminder to all racial groups in the Legislative Council that the Governor was still final arbiter in legislative matters.

The Executive Council

Changes in the Executive Council during the post-war period followed a slightly different pattern. After 1938, the Europeans were secure on the Executive Council where most policy decisions were made. During the war, committees and boards were created to meet wartime problems, and the Europeans were appointed to these groups also. In effect, policy making gradually shifted from the Legislative Council to these executive bodies. A realistic appraisal of the apportionment of political power among the racial groups requires consideration of membership in the Executive Council where political decisions were made.

The Executive Council was re-organized under the new Labor Government in 1945. The official membership was increased from four to seven, upsetting the 1938 balance of four officials to four unofficials. The Europeans, who had moved into positions of influence on committees and statutory boards during the war, thus felt no great loss of power and raised no immediate objections to the re-organization. The other racial groups, particularly the Indians, objected to the change, on the grounds that it involved constitutional revision¹ and gave them no additional representation.

In 1945 re-organization plan created the "member" system, i.e., departments of government were placed under members of the Executive Council, thus channeling decisions and responsibility through individual members rather than through the Chief Secretary which was the practice before 1945. This arrangement not only decentralized authority, but placed

1. Secretary of State for the Colonies, George Hall, under questioning from the Opposition, maintained in the House of Commons, that the change was not: "...a constitutional change, but is designed to modernize and increase the efficiency of the Government machine...." H.C. Deb. v. 413. 12 August 1945. col. 636.

greater decision making power in the hands of the Executive Council. Furthermore, the members or ministers of the Government could be taken from either the official or unofficial groups, although "unofficials" who joined the Government were required to break their ties with their former political associates.

It was with good cause that the Asian and African groups complained about the 1945 re-organization of the Executive Council. The Asians had one representative and the natives were represented by one European; there was no direct representation of the Africans on the Executive Council.

Although the Colonial Office looked upon the change as "an important administrative re-organization"¹ it was equally significant as a further development of the Executive Council in the direction of cabinet status. The "member" system gave each official of the Council semi-responsibility for the conduct of a department. Under the circumstances the position of the Europeans was unique, since as unofficials on the Council they shared in the confidential proceedings, obtained full reports on each department and could return to the Legislative Councils, as members of that body, with a free hand to vote as they pleased. Although the Europeans who accepted portfolios with the Government were expected to support the Government in the Legislative Council they did so only in situations in which they agreed with the Government. Indeed, such agreement on public policy was usually arranged on an ad hoc basis and proved to be unsatisfactory.²

1. Colonial Office Annual Reports, 1946. p. 85.

2. Cf. Gwendolyn W. Carter and William O. Brown. [eds.] Transition in Africa: Studies in Political Adaptation. Boston University: African Research and Studies Program. 1958. Carl G. Rosberg, Jr. "Political Conflict and Change in Kenya." p. 96.

The Interim Constitution - 1952

The Africans and Asians continued their efforts to obtain increased representation on the Legislative Council, and during 1950 the British Government began talks with the Europeans regarding an equal representation of all races as opposed to the parity arrangement which gave the Europeans the advantage in legislative activities. Throughout 1951 the legislative council continued to discuss constitutional change. Each community expressed widely different opinions regarding membership on the Council although the non-Europeans were united in their demands for increased membership.

The Africans wanted additional members on an elective basis to represent them in the Legislative Council¹, and maintained that they ought to have direct representation on the Executive Council. In fact, at this point they expressed a desire for representation on the official side of the Legislative Council, although they were to reject this opportunity when it was later offered to them.

The Asian community split along Hindu and Muslim lines. The Hindu representatives wanted major changes, i.e., immediate introduction of equal unofficial representation for all main races, eventual introduction of a common roll and no division of the Asian representation on the basis of religion.³ The Muslim group hoped to retain its two seats in the leg-

1. Colony and Protectorate of Kenya. Legislative Council Debates. Official Report. Nairobi: The Government Printer. Vol. 40. December 19, 1951. col. 1229-30. (Hereafter cited as: Leg. Co. Deb.) The Central Committee of the Kenya Africa Union also expressed this view December 21, 1951.

2. Despatch of the Foreign Service of the United States. "Constitutional Changes Discussed in Kenya." Nairobi Despatch 253. March 19, 1951. Angus Ward, American Consul General in Nairobi reporting. p. 2.

3. Statement by the East African Indian National Congress, published in the East Africa Standard. March 9, 1951.

islative Council and supported separate electoral rolls.

In opposition to the claims of the Africans and Asians, the Europeans claimed that no changes in representation were necessary, and they expressed a hope that constitutional revision would be postponed until after the 1952 Kenya elections. They believed that a delay in extending African representation would give them greater opportunity to develop the Legislative Council along the lines of the "Western liberal tradition" and preserve European control over politics in Kenya.¹

Clearly, it was unfair to expect four Africans to represent five and a half million natives as compared to eleven Europeans representing approximately 40,000 persons. In 1951, officials from Whitehall and Kenya discussed constitutional changes, but no agreement could be reached. Three main issues were at stake: increasing African representation, maintaining "balanced" representation for the Europeans, and adjusting the ratio between official and unofficial membership of the Legislative Council.² As the situation grew tense with conflicting claims and demands, it was apparent that Whitehall would be compelled to make and enforce decisions with a minimum of support from the communities in Kenya.

Britain's domestic political situation did not help the negotiations between London and Nairobi. The Labor Government was still in office at this time, and the relationship between the socialists and the settlers had never been one of complete mutual trust. Most of the post-World II changes in Kenya's constitution had taken place under the auspices of the Labor Government, and the Europeans were inclined to view

1. Summarized in a statement issued by the European Elected Members' Organization, published by the East Africa Standard, March 2, 1951.

2. London Times. May 17, 1951. 5b.

Whitehall with some suspicion. The general elections in England were pending, and the settlers hoped to stave off any changes in their government until they knew which political party they would have to deal with in the future.

Nevertheless the Labor Government was intent on settling the issue of African representation, in spite of the Europeans' insistence on delay and parity. James Griffiths, Secretary of State for the Colonies, met with leaders of all the racial groups in May in one last effort to find an agreeable solution. In character with past negotiations between Whitehall and the Colony's European settlers, the agreement was a compromise in which the Europeans won the better part of the bargain. The compromise consisted of an interim government which was to be in effect while a representative and consultative inter-racial group made studies and recommendations for constitutional changes.¹

The "interim" adjustments, which were to last not later than 1956, provided for enlarging the Legislative Council without upsetting "balanced" representation for the Europeans. African membership was increased from four to six, Indian representation was increased from five to six (two of whom were to be Muslim, although no separate electoral arrangement was designed to enforce this stipulation) and the European side was raised to fourteen to keep their representation at parity.² The Arab representation

1. Cf. Philip Mitchel. African Afterthoughts. London: Hutchinson Co. 1954. pp. 229-230. Mitchel was Governor of Kenya at the time and recounts this meeting from the record of his diary for May 26, 1951.

The Kenya Africa Union supported the inter-racial commission, saying that "a group of impartial experts should be sent from the United Kingdom to examine the situation." Cf. H.C. Deb. v. 496. 20 February 1952. col. 28-29.

2. The Europeans had previously indicated they would not cooperate with the Government if parity were not maintained. Cf. London Times. May 17, 1951. 5b.

was not changed, i.e., it remained at two. Thus, the unofficial side now numbered twenty-eight. The official membership was increased to twenty-six, because Griffiths felt the "disparity in numbers between Official and Unofficial Members is excessive."¹

It was June 1952 before these changes became effective. By that time a new Legislative Council had been elected, and it was hoped that the new group would last a full term, i.e., until the 1956 elections. The Africans who took their place on the Legislative Council were nominated, and the British Government successfully evaded making any public commitments about elections for African members in the near future.² In spite of Whitehall's desire to deal firmly with the Europeans, it could not force them to accept either equal representation with the other races or elective status for the Africans.

One major change took place on the Executive Council, when Eliud Mathu was appointed to replace the Europeans who represented the Africans. By then the Executive Council numbered twelve persons, as originally constituted in the 1934 Royal Instructions, i.e., eight persons for the government, and four persons for the unofficials.

The 1952 interim constitution was the last constituent instrument which favored the Europeans to the near-exclusion of native participation. The Europeans, at this point, were still politically dominant in Kenya; although Africans were now appointed to the Legislative Council, the Europeans held parity there, and enjoyed a strong position in the Executive Council. Moreover, the Europeans had a franchise and the Africans seemed to be a long way from it.

1. H.C. Deb. v. 488. 31 May 1951. col. 410.

2. Cf. H.C. Deb. v. 501. 28 May 1952. col. 133-4.

The constitutional changes which came from 1944 to 1952 were merely a series of revisions and adjustments--essentially delaying tactics to put off full participation of Africans in the Government of Kenya Colony. For every increase in African representation, the Europeans demanded and received an equal advance. Up to this point, constitutional development in Kenya had little political significance for the Africans since they received relatively little political power. The British Government felt they were not ready for full participation in government, the Europeans simply preferred to exclude them.

After the 1952 general elections in Great Britain, it seemed as if the Conservative Government would come to the aid of the Europeans in Kenya. The new Secretary of State for the Colonies, Oliver Lyttleton, announced the Government's considered view of the Europeans in Kenya:¹

Her Majesty's Government fully recognise the value of European settlement to Kenya, and the important part that the European community has taken and will continue to take in developing the resources of the country and in helping to raise the standard of living of the African population. In short, European settlement is regarded as an essential and permanent part of Kenya's development.

Although the new Government in Westminster appeared to be on the side of the Europeans, time was not. Three months after Lyttleton's statement to the House of Commons the Mau Mau terrorist movement started, and the original plan for an inter-racial consultative commission and constitutional reform for 1956 had to be abandoned. The dominance of the European had passed its zenith, Whitehall was prepared to accept greater African participation in Kenya's political processes and the political adjustments would now have to take place among the communities in Kenya. Sooner or later all groups would have to take responsibility for Government action;

1. H.C. Deb. v. 504. 29 July 1952. col. 129-30.

the alternative was complete control by Whitehall. Whether this result could be obtained merely through structural re-organization of the Government remained to be seen.

Part IV

THE ERA OF MULTI-RACIAL GOVERNMENT

Chapter IX

THE FIRST MULTI-RACIAL GOVERNMENT: The Lyttleton Constitution - 1954

Introduction

The "interim" measures created by the Labor Government in 1952 did not last until 1956 as originally planned. The Secretary of State gauged the 1952 revisions on the basis of a peaceful, evolutionary process of constitutional development in Kenya, in the hope that the Europeans would eventually agree to greater African participation in the political processes. Officials in Whitehall realized not long after the Mau Mau movement reached serious proportions that a slow tinkering process of constitutional development was inadequate to the political needs of Kenya. Since the British Government had already begun the expansion of African participation in Kenya's politics the next step was to convince the Europeans that increased representation was inevitable.

The task of creating a multi-racial government which would have genuine meaning to the Africans was complicated by the intensity of the terrorism of the Mau Mau movement. The nature of the movement, in which no one knew which of the Africans could be trusted, pressed the Government to rely more than ever on the white population to keep law and order.¹ No natural maturing process of constitutional development could be expected under the circumstances, since the Europeans still held a dominant position in politics and were unwilling to allow themselves to be blackmailed by African violence into yielding that dominance. At the same time, Whitehall felt a sense of urgency to find a means of ending the violent disturbances which shook the Colony.

1. Interview with the Honorable E. A. Vasey, Minister of Finance for the Kenya Government. November 6, 1958. Boston University.

To trace the causes of the Mau Mau outbreak would require extended sociological and anthropological explanations.¹ Suffice it here to point out that the twin factors of detribalization and land hunger among the Kikuyu culminated in a primitive outbreak of savagery and blood-letting. At the same time, African political movements, which had been developing since the 1920's, were also gaining momentum. African political activity, originally related to problems of land tenure and ownership², was designed to peacefully seek redress of land grievances and obtain political control for Africans. The objects of both movements were similar--to minimize the white man's role in Kenya and to assert a status position for the natives. The methods, of course, were quite different.

The British Government could restrict or ban political movements, but the violence of Mau Mau had to be met with more than government force and edicts. In accordance with the promise for constitutional reform pledged in the 1952 interim authority, Governor Evelyn Baring began consultations with the leaders of all the racial groups. Neither the Europeans nor the Africans were cooperative, -- Kenya's racial and political difficulties were still Whitehall's problem. Local settlement was

1. Cf. Leakey, Mau Mau and the Kikuyu, op. cit. and Carothers, op. cit. For an excellent discussion of the origins of the Mau Mau movement. For an unusual and enlightening treatment of causes of unrest among African tribes, cf. Laurens Van der Post. The Dark Eye in Africa. New York: Morrow Co. 1955.

2. Cf. Martin Kilson. "Land and the Kikuyu: A study in the relationship Between Land and Kikuyu Political Movements." Journal of Negro History. Vol. 60, No. 2. April 1955, pp. 103-153 for a comprehensive account of the role of land in Kenya's African political movements. For other commentaries on the land problem as a source of the Mau Mau movement, cf. also: Annette Rosenthal. "An Anthropological Approach to the Mau Mau Problem." Political Science Quarterly. September 1953. pp. 419-432; Derwent Whittlesey. "Kenya, the Land and Mau Mau." Foreign Affairs. October 1953. pp. 80-90; "Reconstruction in Kenya: The Prospect Beyond Mau Mau." Round Table. Vol. 44. 1954. pp. 251-258.

impossible as long as the Africans had no significant role to perform in their own government, and the Europeans insisted on retaining their political dominance. A multi-racial government, imposed by the home office in London, now appeared inevitable.

The All-Party Delegation from the House of Commons

In March 1953, James Griffiths, former Secretary of State for the colonies under the Labor Government, suggested that an all-party delegation from the House of Commons be sent to Kenya to survey the problems of racial groups.¹ Since the suggestion came at a time when the Mau Mau movement had reached a bloody peak there was no dispute that such a delegation should go to Kenya.

The all-party delegation was appointed in December and in early January, 1954, the members spent three weeks touring Kenya, talking to natives, Europeans, Government officials and military personnel.² The political significance of the all-party group was not overlooked in Kenya. F. S. Joelson, editor of a conservative and reputable East African periodical, commented:³

A document signed by three conservatives and three socialist members of the House of Commons must have exceptional value, for it will influence both political parties, and Secretary of State and the Cabinet, and, if they are wise, official and non-official leaders in Kenya.

Nor was the significance of the report of the delegation marred by dissenting or separate opinions for a solution to the situation in Kenya.

The final report of the parliamentary group ranged over a wide field of political, economic and social problems. Their basic view was that political advancement for the Africans and Asians could not be delayed until the Mau Mau movement was under control. Although the members of the delegation hastened to point out that the Mau Mau was a separate issue

1. H.C. Deb. v. 513. 31 March 1953. col. 1130. This was in keeping with the "interim" constitution of 1952, for which Griffiths was responsible.

2. Membership of the delegation:

Conservatives: Walter E. Elliot; C.J.M. Alport; Edward Wakefield.

Socialists: Arthur G. Bottomley; James Johnson; R.W. Williams.

3. E.A.&R. March 4, 1954. p. 819.

from "the normal, legitimate functions of constitutional bodies."¹ they nevertheless recognized that there was a direct relationship between Mau Mau and the political progress and development of the Colony. They reported that the Mau Mau situation had caused serious deterioration of race relations and that the Government of Kenya had failed to cope with the problem. The delegation felt a primary solution to the Kenya situation was to give Africans opportunities to participate in their government. In their report they commented that the difficulties and violence could not be ended unless "all races can be brought into the service of the community as a whole."² They were firmly convinced that the Government of Kenya ought to be re-organized, and they recommended, inter-alia, that this should³

involve by the appointment by the Governor, as members of his Executive Council, representatives of all the main races, who would thereby assume responsibility for appropriate portfolios.

The delegation strongly favored a multi-racial approach to Kenya's political problems, and this set the pattern for all the proposals and revisions which followed.

The report caused mixed reactions in Kenya. The Africans were heartened by the prospect that seem to lay before them, and the Indians were pleased that new political arrangements were pending. The Europeans, however, were split on the issue, primarily because they were deeply involved in putting down the Mau Mau rebellion and indignant that political rights for Africans should be considered at such a time. A leader of the

1. Report to the Secretary of State for the Colonies by the Parliamentary Delegation to Kenya. Cmd. 9081. 1954. London: H.M.S.O. 1954. p. 4, para. 11.

2. Ibid., p. 9, para. 45.

3. Ibid., p. 10, para. 50.

moderate group of Europeans, Michael Blundell, went on record as ready for "constitutional discussion with other racial leaders."¹ A small group of extremists, the White Highlanders, steadfastly opposed any change or concessions for the Africans.

When Lyttleton visited Kenya late in February to discuss constitutional revision he found the settlers in an intransigent and difficult mood, and since it appeared that they were unwilling to cooperate he continued his African tour elsewhere. On his return to Kenya he took a firmer position with the settlers, pointing out, as he later said: "... this official type of Government does not meet the political realities of today."² His task, however, was not an easy one since it was imperative to give meaningful political power to the natives as well as pacify the Europeans. Moreover, the move toward multi-racial government could not appear as blackmail on the part of the Africans, since this would produce ill-effects in the other British colonies as well as in Kenya. Lyttleton held conferences for several days with all unofficial and official representatives in the Legislative Council, and with other Asian, Arab and European leaders in an effort to obtain their opinions and cooperation on a multi-racial policy. Although there were many objections to his plan, it is doubtful that any group could have prevented him from taking action. The matter of constitutional development was not in the hands of the local politicians, native or non-native. Whitehall was grimly determined to find a solution to the Kenya situation and the Mau Mau problem, whether the Europeans cooperated or not.

1. "Quarterly Notes." African Affairs. Vol. 53. January 1954. p. 19.

2. H.C. Deb. v. 525. 22 March 1954. col. 881. This was Lyttleton's third visit to Kenya within an eighteen month period and is indicative of seriousness of the situation.

The Lyttleton Constitution

The Lyttleton constitution, announced in March 1954, reorganized the Kenya Government which had evolved under the Instructions of 1934 and the amendments added thereto for two decades. It was not a complete reconstitution of the Colony's Government. The adjustments represented a skillful blend of compromise and innovation designed as an experiment in multi-racial government. Two distinctive features marked the document: retention of balanced representation in the Legislative Council and the introduction of a semi-responsible ministerial group known as the Council of Ministers. The major difference between the Lyttleton constitution and all those which preceded it was the joint responsibility placed on the officials and unofficials who accepted the Government whip. Although this change involved a transfer of power from the Colonial Office to the racial communities in Kenya, it still preserved considerable political power for the Europeans. At the same time the Africans were promised elective status in the Legislative Council and this served to make the settlement acceptable to them.

The new Council of Ministers was described as:¹

the principal instrument of Government in the Colony which will exercise a collective responsibility for decisions on Government policy.

It was originally composed of the Governor and Deputy Governor, six official members, six unofficial members and two nominated members. Later provisions for increased membership were never fully implemented.² The six unofficials included three European elected members, two Asians and one African, all of whom were appointed by the Governor. In effect,

1. Kenya: Proposals for a Reconstruction of the Government. Cmd. 9103. 1954. London: H.M.S.O. 1954. p. 2, para. 1.

2. Cf. E.A.&R. November 1, 1956. A fourth European and a second African were scheduled for appointment, but the Lyttleton constitution failed before the African appointment was accepted.

balanced representation still existed. Portfolios were distributed in the following manner: Minister without portfolio, Minister for Local Government, Health and Housing and Minister with Agriculture, were designated as European. Minister of works, and a second Minister without portfolio, were awarded to the Asians, to be divided between the Hindu and Muslim communities. The position of Minister for Community Development was given to the Africans.

The new Council of Ministers involved collective responsibility, and all members were required to work as a team, not as representatives of communal or racial interests. Each member was compelled to go on record, publicly, for the policy of the Council. Such a multi-racial arrangement was an attempt to reflect and reconcile Kenya's plural society. Nevertheless, it placed a political strain on all groups concerned. This was particularly true for the African member who, in order to retain his seat on the Council was obliged to accept policies established by a majority of persons not of his own race. It was difficult for the African representative to retain the confidence of his own people and at the same time contribute effectively to the work of the Council. At the same time, the Africans felt compelled to participate in the Government, since the failure of any member to cooperate gave the Governor power to appoint someone who would.¹

Lyttleton directed the members of the Council of Ministers to formulate a joint-statement of policy to which they would subscribe.² Such a statement was suggested in an annexure to the Secretary's proposal, and

1. Cf. Gmd. 9103. 1954. op. cit. p. 3, para. 8.

2. Ibid., p. 3, para. 7.

the essence of the suggestion was adopted.¹ This included a pledge that "the Government will initiate a study of the best method for choosing African Members of the Legislative Council." In other words, the British Government now pledged itself to provide the Africans with elective status in the Legislative Council.

The creation of the Council of Ministers relegated the Executive Council to a position of secondary importance. Since policy making was now invested in the newer institution, the Executive Council had effective control over the more routine matters of government, such as review of death sentences and approval of draft legislation.² The multi-racial policy extended to this group also, since its membership included not only that of the Council of Ministers, but one Arab and two additional Africans. Membership on the Executive Council could be increased by the Council of Ministers. Even in its reduced status the Executive Council of 1954 was a far cry from the institution established in 1938 when officials and unofficials had equal representation and the Africans were represented by one European.

The organization and composition of the Legislative Council as reconstituted in 1952 remained unaltered. Lyttleton preferred to attack the problem of reconstructing Kenya's Government piecemeal rather than attempt a full scale revision. His objective, however, was clear. In his own words to the House of Commons after returning from Nairobi:³

It is, in any case, desirable that those who live in Kenya should now begin to take a greater share in executive Government. This carries with it the necessity for a multi-racial foundation to that Government.

1. Cf. E.A.&R. July 3, 1954. p. 14. The statement is printed in full in Corona, Vol. 6, October 1954. pp. 366-368.

2. Cmd. 9103. 1954. op. cit. p. 3. para. 5.

3. H.C. Deb. v. 525. 22 March 1954. col. 881.

The major problem was how to achieve a "multi-racial foundation." The Colonial Office historically supported the white settlers, and in effect created a government based on white dominance. How to reverse this trend, to obtain confidence of the Africans in the Colonial Office and to secure cooperation of all racial groups? If the basis of representation were broadened need this be done directly through the Legislative Council? Placing Africans in the Council of Ministers was considered essential to multi-racial government, since it was here that decision-making took place. How long could the development of the multi-racial concept be delayed?

There is no public record of what Lyttleton must have said to the European, Asian and African conferees in March 1954, but it is reasonable to suppose the compromise he effected turned on multi-racialism. The net effect of the Lyttleton constitution was to leave the Legislative Council intact as a political institution. With the status quo preserved on that score, it was possible to create another governmental body in which the three major racial groups could participate in policy making. Participation in political affairs gave the Africans added prestige and at the same time provided the Europeans with the means to dominate in the Legislative Council.

Negotiating such a scheme required skillful diplomacy. Something of importance had to be granted to each group concerned, while, at the same time, the constitutional integrity of Kenya had to be maintained. Forced to operate within the limitations set by the plural society of Kenya, Lyttleton was cognizant of the compromise nature of the new arrangement. Quoting him again:¹

1. H.C. Deb. v. 525. 22 March 1954. col. 882.

Let me put it this way: that to have tried to get wider constitutional changes would have undermined those moderate elements upon whose support any scheme must rest. I suggest that our object must first of all be to sustain and stimulate these moderate elements. To have asked them to go further--now--might well have been to destroy them.

The revision carried the multi-racial representation in governmental affairs even further. The Council of Ministers also included three to five Under-Secretaries, one of whom would be an Arab (initially the Arab serving on the Executive Council) and two Africans. Although the appointments were expected to be political in nature at the outset, these persons were not necessarily to be selected in the future from either the Legislative Council or the Executive Council. The promise of the franchise for the Africans was intended to bolster the position of the Africans in the Legislative Council. Moreover, a multi-racial government was insured against the unwillingness of any group to participate. In the event that any member of the Council of Ministers "resigns or vacates his office" the constitution empowered the Governor to appoint a person of the same race to fill the vacancy.¹

Lyttleton recognized that the revised constitution did not "meet in full the desires of any of the main racial groups in the Colony" but he felt it was consonant with the political realities of Kenya.² At a press conference he commented that it was necessary to create unity in Kenya in order to fight Mau Mau and "to bring to an end an era of government only by officials and to associate the inhabitants of Kenya with the responsibilities of government...."³

1. Cmd. 9103. 1954. op. cit. p. 8. para. 8.

2. Ibid., p. 3. para. 12.

3. E.A.&R. May 18, 1954. p. 887.

He pointed out that this new arrangement was not to be the final settlement, but was to be experimental. Elections were to be held either six months after the State of Emergency was declared ended or June 30, 1955, whichever date should be later. If the electorate returned persons to the Government who were willing to serve under the new arrangement, no changes were to take place, either in the Government structure or in the proportion of racial representation until 1960. Moreover, the communal basis of franchise was to remain in use through the 1960 elections. No change in any institution or procedure were to be made unless all races agreed. In exchange for these guarantees from Whitehall, all the racial groups were required to accept responsibility for the operation of Kenya's Government and participate in the work of the Council of Ministers. In the event that the new constitutional arrangement proved to be unworkable the Secretary of State for the Colonies would declare the constituent authority of the pre-Emergency period as operative, and the British Government would "be free to take such action as they think fit."¹

The arrangement came into force by Order in Council in April 1954. Its value lay in its multi-racial character; its failure came three and a half years later because it made no significant re-adjustment in the political relationship of the racial communities.

1. Cmd. 9103. 1954. op. cit. p. 3. paras. 9, 10, 11.

Initial Reactions to the Lyttleton Constitution

By 1954 many so-called European "moderates" in Kenya recognized that a multi-racial government was inevitable as a means of resisting pressures of African nationalism.¹ These persons followed a policy of cooperation in hopes of salvaging the best possible arrangement for the white settlement. Other European political leaders who opposed the Lyttleton constitution, hesitated to take sharp issue with it, since a War Council designed to meet the emergency was tied to the proposal.² In any case, no group, at the time, was willing to take responsibility for the failure of a multi-racial government, since this would fly in the face of law and order and handicap efforts to end the terrorist movement. The reluctant European cooperation was short-lived, however.³

An indignant reaction came from the Africans.⁴ The indignation was twofold. First, the Africans were not sure they wanted a multi-racial government, since this would perpetuate communal electoral rolls and the notion that Kenya was a plural society. Second, they did not want an arrangement under which the Africans, though the most numerous race, would get the least representation in the seats of government.⁵ The Africans expected any move toward self-government to mean the end of separate political communities and the beginning of rule by the majority. What, they asked, was multi-racial about placing one African on a Council of Ministers composed of

1. Cf. the London Times. June 3, 1954. p. 7; and the New York Times. July 10, 1954. 4:8.

2. E.A.&R. March 18, 1954. p. 887ff.

3. New York Times. June 1, 1954. 8:4.

4. Cf. Peter D. Whitney. "New Flare-Up in Kenya Imperils British Plan." New York Times. April 18, 1954. IV. 7:5.

5. New York Times. March 11, 1954. 10:3; also E.A.&R. March 18, 1954. p. 887ff.

sixteen persons? Was it reasonable to ask one African to represent some five and a half million Africans, while two Asians could speak for approximately 154,000 persons and the remaining thirteen Ministers would be taken from 42,000 whites? Furthermore, which African would be willing to risk his political future by serving with the Government, and whom would he represent?¹ During the negotiations with Lyttleton they had asked for three ministers with portfolios, and even reduced the request to one minister with portfolio and one without, suggesting that the Europeans be given an additional seat in order to keep the balanced representation.² Eventually they increased their demands to four portfolios and twelve under-secretaries. All this was in vain. Finally, the Africans felt that the one portfolio they held in the Council of Ministers, i.e., Community Development³, was insignificant and belittled their position in the Council as well as the country. In a statement to the press, an unidentified African leader was quoted as saying:⁴

We do not consider the aim and objects of a multi-racial society can be achieved by providing only one seat for Africans in the proposed Council of Ministers, with a total of sixteen seats. The endeavours of one person, however strong, have no chance of influencing public policy.

The Africans feared that their position on the Council of Ministers would be too weak to be meaningful. They attempted to negotiate changes with Lyttleton while he was in Kenya. He would not increase African

1. Clement Attlee criticized Lyttleton's plan, saying that the Africans themselves had not accepted the concession and wondering whom the African eventually appointed would represent. Cf. New York Times. March 23, 1954. 4:6.

2. New York Times. March 14, 1954. 10:1.

3. It pertained to African affairs only.

4. E.A.&R. March 18, 1954, p. 887.

membership on the Council because he could not get agreement on such a change from all the racial groups.¹ As he later reported to the House of Commons: "That was not practicable in the present state of Kenya."²

In spite of their disappointment and objections, the Africans realized that their bargaining position was weak. They had no country-wide political party to support their claims that they were not allowed to hold public political meetings. The British Government was not prepared to risk non-cooperation from the Europeans by meeting African demands. Moreover, the African political leaders of that period felt a responsibility to keep the Government intact, and although they did not retreat from their demands they yielded to the force of circumstances. Late in March 1954 the African Members' Organization agreed that it would neither support nor oppose the Lyttleton plan. The members, however, were left free to join the Government or not, as they would, if their constituents approved. Mr. B. A. Changa³ accepted the single Government appointment to the Council of Ministers and was later to pay for this act by defeat at the polls in 1957.

The Indian reactions showed strong splits in that community, not only as between Hindu and Muslim⁴, but within each religious group. There was dissension between personalities, as well as issues.

1. New York Times. March 17, 1954. p. 11:5

2. H.C. Deb. v. 525. 22 March 1954. col. 884.

3. Changa is a Luo, and was a teacher before he became an African political leader.

4. British recognition of this split in the Indian community was exhibited in the stipulation which divided Asian representation between Hindu and Muslim, and illustrated by Lyttleton's remark in the House of Commons: "There are really two Asian groups...." H.C. Deb. v. 525, 22 March 1954. col. 885.

Among the Hindus, A. B. Patel, was opposed by N. S. Mangat, president of the Kenya India Congress. Patel wanted a common roll with ten persons elected on a non-racial basis¹ while Mangat favored a multi-racial government.² Both Patel and Mangat, however, are members of the Indian Congress Party, and that group finally went on record supporting the settlement. The Hindus, however, objected to the revision on two grounds. They felt the arrangement amounted to a political standstill which would freeze electoral reform until 1960; if the new constitution were launched in such a state of paralysis, hopes of eliminating communal rolls would be dashed.³ They also felt that the Africans should have greater representation in the Government. Meanwhile, Patel accepted the position of Minister without portfolio on the Council of Ministers.

As for the Muslims, they were split between the moderates in the Ismailia sect⁴ and those who were less adaptable to the Kenya situation. Both groups admitted however, that the Secretary of State tried to be fair to all groups involved, but pointed out that he was handicapped by the Europeans in making the settlement.⁵ The Muslims also agreed that the Africans ought to have more representatives on the Council of Ministers.

The total effect of Indian reaction to the settlement is interesting. While supporting the Colonial Office and the Africans, the Indians harassed

1. "Quarterly Notes." African Affairs. Vol. 53. No. 213. October 1954. p. 18.

2. E.A.&R. September 9, 1954. p. 18.

3. Peter Whitney. op. cit.

4. The Ismailia sect are Muslim followers of the Aga Khan who is their spiritual leader. The Aga Khan is quoted as saying: "Mr. Lyttleton has sown the seeds of a multi-racial democratic state in Kenya and all such countries in Africa as have the multi-racial problem will sooner or later reap the full benefits of this great act of constructive statesmanship." E.A.&R. April 1, 1954. p. 961.

5. E.A.&R. March 18, 1954. p. 887.

the Europeans by obliquely accusing them of exerting undue influence on the Government. They also followed a policy of courting the Africans by objecting to the Government that the Africans were deprived of their rightful place in Kenya's politics. Although internal dissension existed within the Indian community, it did not prevent them from reaching a meeting of the minds on political strategy. Since the Indians do not aspire to political dominance in Kenya, they were rather well off with two seats in the Council of Ministers.¹

The Arabs, who were not consulted by the Governor during the preliminary negotiations prior to Lyttleton's consultations, and did not receive membership on the Council of Ministers, were highly critical and dissatisfied.² They consulted with the Governor and were somewhat appeased when he assured them that they would not be left out of future negotiations and that as Muslims, they could be considered for holding the ministership allotted to the Asian Muslims.

Among the Europeans, the white extremists were first to react adversely, and by doing so caused a sharp split within the European ranks. In April 1954, Humphrey Slade, a European member of the Legislative Council, resigned from the Elected Members' organization³ because he disagreed with the moderate views of Michael Blundell, the leader of the Europeans. Slade's views were adamant.⁴

1. Cf. London Times. June 3, 1954. p. 7.

2. E.A.&R. March 18, 1954. p. 887.

3. The European Elected Members' Organization, disbanded in June 1954, was an informal caucus group, made up of the elected Europeans in the Legislative Council.

4. E.A.&R. April 29, 1954. p. 1094.

A liberal outlook towards the security and advancement of other races, and our continuing ambition to move towards self-government must in the interests of all races, be combined with determination to maintain the influence and control exercised by Europeans domiciled in Kenya.

He objected to the constitutional changes because he felt they went too far to meet the existing emergency and made too many concessions during a time of rebellion. Moreover, he felt the collective responsibility arrangement stifled political opposition and gave the Africans a position in the Government for which they were not qualified. The white settlers who opposed the multi-racial government were, in effect, resisting any move which might deprive Europeans of their preferred position in Kenya's politics. The moderate Europeans in the Legislative Council took a realistic account of African nationalism and submitted that whites were in a minority, that Africans were capable of participating in their government, and that a multi-racial society required a multi-racial government. Michael Blundell, a European member of the Legislative Council and a leader of the moderates said: "We must recognize that in the old legislature of Kenya, willy-nilly, the racial groups were in a sense competing."¹ What is needed in Kenya, now, he believed, is cooperation among the races. If harmony were not achieved, surely the Africans would eventually put the Europeans out of Kenya by force.

The disunity among the elected European members of the Legislative Council led to the break-up of their legislative caucus, the European Elected Members' Organization. Within the same month, June 1954, they re-organized under the name of European Elected Members' Association in hopes of re-establishing European political unity in the Legislative Council. They agreed on several general policies: preserving the White Highlands for

1. Michael Blundell. "The Present Situation in Kenya." African Affairs. Vol. 54, No. 214. January 1955. p. 105. This was an address before a joint meeting of the Royal African Society and the Royal Empire Society.

the Europeans; continuing the communal electoral rolls and segregation in education. They hoped to use the organization as a clearing house between Europeans in the Legislative Council and any European political party in Kenya.

Under the leadership of Michael Blundell, the United Country Party was organized in July 1954. Sympathetic with the multi-racial idea, the new party supported the Lyttleton plan and appealed to all racial groups for membership. They believed that the alternatives before Kenya were domination by one race or a cooperative government which represented all races.¹ Sponsoring a moderate program which supported European views, the members aimed at eliminating extreme racialism as a divisive factor in Kenya politics.

During the same period, the European Electors' Union, a conservative and white-supremacy organization, strongly criticized the new Government's multi-racial policy. The members of that group felt that their interests in the Highlands and their very existence in Kenya were jeopardized. They adopted an apartheid outlook, and urged that the Government restore the European's confidence in British colonial policy by following the apartheid view.² Basically they feared that their interests would be submerged by the Africans.

Thus, two strongly divergent political philosophies were emerging and threatening to split the white settlers into sharp competitors for political position. The increasing dissension over the multi-racial government among the Europeans threatened to break up the political unity of the whites

1. New York Times. July 10, 1954. 4:8. Cf. Rita Hinden. "Freedom and the Fall of Colonialism." The New Leader. May 7, 1956. Sec. 2 pp. S16-S20, for an examination of alternatives.

2. Many Europeans were reported as favoring Malan's racial policy. New York Times. September 13, 1954. 6:1.

altogether. Lord Portsmouth, of the European Electors' Union, speaking to a political meeting of delegates from European associations, suggested that a political truce be called for several months, during which time no public controversy over constitutional issues would take place.¹ He felt that private conferences between members of the United Country Party, the Federal Independence Party, and other independent groups might be fruitful. As Lord Portsmouth pointed out:²

When people are deeply and sincerely worried and frustrated, bitter, wordy warfare is the last way of producing clear thinking or courageous leadership. So it seemed to us that the time was ripe to lay aside the superficial differences and find out the genuine grounds for agreement among all parties and individuals and study the deeper cleavages dispassionately.

The differences, however, were not "superficial". The white extremists still adhered to the early attitude of the colonial settlers, i.e., complete segregation of whites and blacks in such matters as residence and education, exclusion of all non-white racial groups from the White Highlands, and the old Lugard idea of federating Kenya into governmental units exclusively European or African. The moderates favored a middle way, less blatant in its segregationist attitude and were more anxious to find a basis for political cooperation with the Africans.

Consequently, Michael Blundell, leader of the United Country Party, objected to the truce suggested by Lord Portsmouth, saying this would merge the political parties and stifle healthy political movements. Blundell believed that the truce was aimed at forcing all the Europeans to accept what he felt was a narrow, provincial view of the white supremacists. The basic problem, according to Blundell, was to win African support for a multi-racial government, before the natives were in a position to overwhelm the white man.

1. E.A.&R. October 7, 1954. p. 148.

2. Quoted in E.A.&R. October 14, 1953. p. 173.

The search for harmony was an admirable one, but there was fear that it would be a mere formula designed to conceal differences and create the illusion of concord.¹ Nevertheless, United Country Party and the Federal Independence Party accepted and observed the truce. When it ended the parties agreed on several political proposals which reflected a compromise among the parties, but gave no indication they would not come into conflict again in the future.²

Eventually, eight of the fourteen European members of the Legislative Council accepted the revision unconditionally, three accepted subject to approval by their constituents and three firmly rejected the proposal.³ Interestingly enough, however, the three members who rejected the proposal did not withdraw from the Legislative Council, although they temporarily dissociated themselves from their colleagues by withdrawing from the Europeans' legislative caucus.⁴ All elected European members who were not appointed to the Council of Ministers, formed an "Opposition committee" in the Legislative Council. This action tended to mitigate fears that the European community would lose its political effectiveness if some of its members accepted Government posts.

1. E.A.&R. October 7, 1954. p. 148.
2. The proposals suggested the following political solutions:
 - a. Allow nominated members of the Legislative Council a free vote except on votes of confidence in the Government.
 - b. Abolish the Executive Council; reduce Asian representation to one Muslim and one non-Muslim; match any future increase of Arab or African ministers with an equal number of Europeans.
 - c. Federate East and Central Africa, re-arranging the political borders to satisfy the various racial groups involved.
3. Cf. New York Times. June 1, 1954. 8:5. The three who rejected the proposal were: Colonel Grogan (the same Major Grogan involved in the 1906 incident regarding the public whipping of an African; Grogan retired from politics just before the 1956 elections.), Humphrey Slade and S. V. Cooke, all of whom had strong white supremacist beliefs. As so-called "White Highlanders" they felt Lyttleton had betrayed them.

4. New York Times. June 1, 1954. 8:5.

Other European reactions varied. For example, the Reverend Leonard J. Beecher, Bishop of Mombassa, took a liberal, idealistic approach.¹ He said that the means must be found to create a viable plural society in Kenya and he regretted that Lyttleton did not create parity on the Council of Ministers. Another observer over-simplified the situation with the matter-of-fact comment:²

All knew that sooner or later the Government must contain European, African and Asian Ministers chosen from among the non-official communities, and that the practical issue was to agree on the numbers.

The net effect of the Lyttleton settlement was to create a multi-racial government for which all participating members were responsible. It put all representatives of the various races "on notice" that they were collectively responsible for Government policy and forced them, as a writer for the Economist put it, to "be thick as thieves."³ If the new Government could not govern successfully, the Governor stood ready to take over the administration.

The reactions of the leaders of all the communities were cautious for they were fully aware of the problems ahead of them. Under the old system, the racial groups were in direct competition with one another. The new system could bring about a realignment of opposing forces, i.e., not race against race, but Government against Opposition, Council of Ministers against Legislative Council. Whether this could be done remained to be seen.

A basic question is whether or not Kenya was prepared to assume the burdens of responsible government in 1954. It may be said that multi-racial

1. Cf. E.A.&R. April 8, 1954. p. 994. Beecher served for many years as the European representative for the Africans on the Executive Council.

2. E.A.&R. Editorial. March 18, 1954. p. 883.

3. Economist. April 10, 1954. p. 184.

government was perhaps premature and placed undue strain on the none-too-stable political communities. On the other hand, the alternative was continued white domination, continued violence from the African community and a possible forcible overwhelming of the Europeans. The solution was a compromise, to make future political changes easier. No further changes could have been made at the time. The Europeans were still entrenched in the Government, with parity in the Council of Ministers and the Legislative Council; the Asians were seriously divided but cooperative with the Europeans; and the Africans were anxious but inadequately prepared for greater responsibility in government.

Chapter X

TESTING MULTI-RACIAL GOVERNMENT 1954 - 1957

Introduction

Writing in early 1955, an observer of the East African scene commented on the Lyttleton plan:¹

The present constitution, even though the individual ministers of all three races are showing great ability and energy, is a rickety structure that has tided over the emergency but can hardly survive its termination.

The remark was perceptive. All racial leaders originally supported the Lyttleton Constitution because the emergency required effective and governmental action to end the Mau Mau terror.² In exchange for multi-racial support of the new arrangement the Government pledged itself to initiate no changes in either the proportion of racial membership of the Legislative Council and the Council of Ministers or in the communal basis of franchise through the 1960 elections, unless all groups concerned agreed.³ The multi-racial government was reluctantly accepted on the basis of necessity and political bargaining. The "rickety structure" was a political experiment and assured for a period of time in which to function. If it proved unworkable, the Secretary of State was empowered to discard the experiment and take such action as he thought necessary.⁴

The sense of urgency which initially motivated the racial leaders eventually dissipated as the Mau Mau emergency subsided. Concomitant with this feeling, was a growing dissatisfaction as the multi-racial government materialized. The European elections revealed a serious split in their ranks

1. E. Huxley and Margery Perham. Race and Politics in Kenya. 2nd ed. London: Faber and Faber. 1955. Statement by Perham. p. 277.

2. Cf. Cmd. 9103. 1954. op. cit., p. 2, para 3.

3. Ibid., p. 3, para. 10.

4. Ibid., p. 3, para. 1.

which was patched up by compromise measures. As for the Africans, enfranchisement and elections became a rallying force for unity and passive resistance to a government which they felt was imposed on them. These circumstances were a severe test for multi-racial government.

Developments Under the Lyttleton Constitution

As we have seen, the original Lyttleton settlement of April 1954 established a Council of Ministers with a membership of fourteen persons, eight of whom were officials and six of whom were unofficials. Of the eight officials, six were Kenya Government officers such as the Chief Secretary and the Deputy Chief Secretary, and two were Europeans nominated by the Governor from local communities. The six unofficial members consisted of three elected Europeans and two Asians, and one nominated African. All members of the Council were required to support Government policy under the new concept of "collective responsibility." The requirement to accept the Government whip was unsatisfactory to all the racial leaders, and "collective responsibility" had been a controversial issue since 1954. Eventually the Europeans and Asians grudgingly accepted it, but the Africans rejected the responsibility outright.

The Legislative Council remained as it was established in 1952, with twenty-eight officials, twenty nominated and eight representative members. The official membership included the eight officials on the Council of Ministers and eighteen persons nominated by the Government and drawn from all races in Kenya.¹ Although the Governor appointed Africans, Asians and Arabs as nominated officials to the Legislative Council, the Europeans have always outnumbered representatives of the other races. In this respect the Europeans enjoy parity in the Legislative Council; in spite of the fraction of Kenya's population they represent they have extensive influence in both the official and unofficial groups. It was unlikely that

1. The Governor was free to determine the ratio of race representation among the officials, and the number varied from time to time. The only means of determining the proportion of race representation in this group is to consult the membership lists in the official record of the Legislative Council. The description of the Legislative Council above is based on Cmd. 309, 1957. op. cit. p. 3. Table I on the page following illustrates how the Governor interpreted his instructions.

TABLE I
 THE LEGISLATIVE COUNCIL
 UNDER THE LYTTLETON CONSTITUTION
 (March 1957)

	<u>Elected Members</u>	<u>Corporate Members</u>	<u>Nominated Members</u>	<u>Ex officio Members</u>	<u>Total</u>
European	14	2*	15	7**	38
Hindu	3		1		4
Muslim	3		1		4
Arab	1		1	1	3
African	8		2		10
Total	29	2	20	8	59

* Nominated by the Governor to represent commerce and agriculture; open to all races, presently held by Europeans. Term expires 1960.

** Including the Speaker, who does not have an original vote.

this ratio would change, since no re-distribution of racial representation could be made unless all groups agreed.

There were several attempts to change the ratio of racial representation on the Legislative Council. In April 1956 the Europeans, hoping to re-enforce their position in the Colony, proposed an increase in the unofficial group by adding seven Europeans, four Africans, two Asians and one Arab to the Legislative Council. Such an increase would have added five Europeans and five non-Europeans to the Legislative Council, leaving four persons free to move into the Council of Ministers and accept Government policy.¹ The Europeans suggested this change as a means of making up for the loss of independent members who were in the Legislative Council but were required to vote with the Government because they also sat on the Council of Ministers. After lengthy discussion, the racial leaders could not reach an agreement on the change.

Eventually the Governor and the racial leaders agreed to enlarge the Council of Ministers by adding one elected European and one elected African, making the proportion four Europeans and two Africans.² The new Council was sworn in October 19, 1956, after the European elections and before the African elections, consequently the newly created seat for the Africans remained unfilled pending their elections. Moreover, the Legislative Council was increased with two new African representatives³ and two "corporate" members to represent agricultural and commercial community interests.⁴ The "corporate" membership was theoretically open to all

1. Cf. Economist. April 21, 1956. pp. 252 and 255.

2. Cf. E.A.&R. November 1, 1956. p. 286.

3. These were François Kiprotich Chuma and James Nazu. Cf. E.A.&R. November 22, 1956. p. 397 for biographic information.

4. Statement of Constitutional Changes in Kenya. Nairobi: Press Office Handout No. 959. October 19, 1956.

ances, but, the first appointments went to Europeans. This form of membership in the Legislative Council will be abolished after 1960.

The changes in the membership of the two councils, though adding to the total representation, were in keeping with the Lyttleton agreement since they did not change the power balance between the Europeans and Africans. The Africans agreed to these changes, presumably because they were promised additional seats in the Legislative Council after their 1957 elections. Retention of the parity arrangement was not satisfactory to the Africans.

The meaning of "collective responsibility" was never fully settled either. In December 1956 elected members of the Legislative Council called for a clarification of the term, and in reply the Chief Secretary (acting as Speaker of the House) commented that persons accepting ministerial posts:¹

.... must adhere to the principle of collective responsibility for Government policy must undertake to support the Government both in public and private and must agree to refrain from proposing or supporting any legislation concerning the special land rights of the various communities.

In other words, collective responsibility insured freezing the status quo. He added, however, that outside the common ground of Government policy "lies an undefined country which, until 1960, will remain a kind of Tom Tiddler's ground"² in order to give a marginal area of political activity to the elected members for political and electoral activities in their constituencies. When asked the extent to which elected and nominated members were free to move outside the common ground, the Chief

1. Leg. Co. Deb. v. 71. December 13, 1956. col. 762.

2. Leg. Co. Deb. v. 71. December 13, 1956. col. 763. According to E. A. Vasey, Tom Tiddler's ground is like a pond, in which a wide assortment of fish swim about in an atomistic way, giving heed to no one in particular and pursuing their own aims.

Secretary could only add:¹

.... no Minister in representing the long-term views of his community may say anything which would deny the validity of the joint approach, nor may he suggest that the multi-racial concept is a temporary expedient only.

Thus, "collective responsibility" also embraced a commitment to multi-racial government.

The reactions of the European members indicated that they were torn between the desire for a clear cut rule and a hope they would be left to make the decision for themselves as to "When is a Minister not a Minister?"²

In essence, however, collective responsibility means that each Minister, in public and private, must support Government policy and multi-racial goals. The African elected members consider membership on the Council impossible since they insist they cannot accept Government policy. They maintain that the aims of the Government and the views of their constituents are in conflict, and therefore refuse to join the Government.

In spite of arguments inside the Parliamentary Building and the heated elections which followed implementation of the Lyttleton arrangement, Government functioned and carried on its business in an orderly fashion. Whether the Government could continue to remain stable depended not on the formal structure under which it operated, but how long it could function without cooperation of the African members.

1. Leg. Co. Deb. v. 71. December 13, 1956. col. 764.

2. Ibid., col. 761. Question put by Humphrey Slade, Member for Aberdare.

The European Elections - 1956

The September, 1956 elections for the European, Asian and Arab members of the Legislative Council were the first political test of Kenya's multi-racial government under the terms of the Lyttleton settlement. The political truce which followed the European acceptance of the Lyttleton plan had never fully reconciled the April 1954 split between the extremists and moderates. The political unity of the European community was subjected to greater stress as the different elements struggled between acceptance or rejection of multi-racial government.

The Political Alignments

Although there are no real political parties in Kenya¹ there are nascent political groups which represent various opinions of the Europeans. As the editor of the East Africa and Rhodesia periodical pointed out:² "... the personal factor will count more than anything else." The strength of the European political organizations depended on a combination of strong personalities and the political views they held. More than anything else, the 1956 election revealed that most political programs focus on personal philosophies regarding race relations, and that in the future, elections will continue to turn on this as a major issue. Four groups competed for office: the African Capricorn Society, the United Country Party, the Federal Independence Party and a group of individuals who referred to themselves as the Independent Party.

1. This comment is based on a conversation with the Honorable E. A. Vasey; Minister of Finance for the Kenya Government. November 6, 1958. Cf. also Economist, September 22, 1956. p. 950.

2. E.A.&R. September 29, 1956. p. 75. Editorial comment.

The African Capricorn Society is an inter-racial organization found in many African countries south of the Sahara and includes European as well as African members. The organization is an exception to the rule of personal politics in Kenya. It embodies a philosophy of rejecting the supremacy of any race, disavowing extreme African nationalism and creating "an inter-racial, integrated society in which the different races cooperate without regard to colour, for the common material and spiritual enrichment of all."¹ The organization, however, is not indigenous to Kenya and does not have a wide following there. Two candidates ran on the Capricorn ticket, and both were defeated. Although the Society is not extremist in its views, notions of complete integration of the races may be considered as such within the range of racial attitudes that exist in Kenya. Idealistic in its approach to African politics, its position is unacceptable, though its members are respected.

The United Country Party, organized and led by Michael Blundell who was also seeking re-election, consisted of a group of moderates who supported the multi-racial government. Probably no party was as equivocal in its views as the U.C.P. Claiming party status and at the same time, rejecting a party approach to politics, the United Country Party candidates eventually stood for election as Independents. They minimized their party activity, saying, the U.C.P. "has no wish to add to the confusion or to the disunity of the Europeans."²

1. J. H. Oldham. New Hope in Africa. London: Longmans, Green & Co. 1955. p. 17. This book presents an excellent statement of the Society's aims and aspirations, and has the endorsement of David Stirling, president of the African Capricorn Society. Cf. E.A.&R. March 14, 1957 for Stirling's beliefs regarding inter-racial relations.

2. E.A.&R. September 20, 1956. p. 82.

Recognizing that no candidate could win office if he supported a multi-racial government to its logical extreme, persons associated with the U.C.P. accepted multi-racialism with qualifications. Blundell, for example, indicated his support for the Council of Ministers only if "elected Europeans in it were increased and the number of officials correspondingly reduced"¹ He agreed to parity for the Africans with the Indians, but advocated retaining the racial proportions which existed in the Legislative Council.² Europeans, he maintained, should be willing to take responsibility for the Government and thus influence public policy as a member of Government rather than as Opposition. Another U.C.P. spokesman, W. B. Havelock, pointed out the alternative to the multi-racial system:³

If the European electorates returned Members opposing the present type of coalition Government, the Governor could appoint Ministers to represent the European community outside the ranks of the Elected Members. These would probably be civil servants, so we should have a Cabinet of civil servants and non-Europeans.

In short, as the U.C.P. saw it, the elections presented an opportunity to accept a modified position of power in Kenya's Government, or none at all.

The Federal Independence Party, representing the extremist apartheid element in the European community, was adamantly opposed to the admission of Africans into the Government. For them the election was a simple choice, tersely put by one of its candidates:⁴ "The issue before you is the acceptance or rejection of the Lyttleton Plan. There is no middle course."

1. Economist. May 19, 1956. p. 678.
2. E.A.&R. September 27, 1956. p. 117.
3. E.A.&R. September 20, 1956. p. 81.
4. E.A.&R. September 27, 1956. p. 126.

Disregarding the European acceptance of the political bargain with Lyttleton and the possible consequences of non-cooperation, Major B. P. Roberts, the F.I.P. leader, emphasized the fears of the extremists:¹

If other races are allowed to participate in the highest councils of the Government how can one honestly deny them the right to acquire land in the Highlands and deny them common schools and a common franchise?

Members of the F.I.P. preferred to abandon the Lyttleton constitution, and divide the country into racial political units, rather than admit Africans into the Government. The extremism of this group discredited it to such an extent that they were repudiated at the polls, failing to win one seat in the Legislative Council. Although they presented a strong united front and were politically courageous in their approach, they lacked the political acumen to survive.²

The Independent Group was no more a political party than the U.C.P. It was composed of moderates who hoped to salvage political stability in Kenya under a qualified Lyttleton plan and to stave off the extremism of the F.I.P. Advocating racial harmony and British influence in Kenya, they supported a non-racial policy as opposed to a multi-racial policy. Their manifesto read:³

The non-racial approach demands equal opportunity and recognition for people of every race, related exclusively to individual character and ability. We maintain that no man be denied position or responsibility by reason only of his race and that, per contra, no man should be given position or responsibility merely because of his race.

1. London Times. September 26, 1956. p. 7.

2. Cf. E.A.&R. September 20, 1956. p. 75. Furthermore, they were most indiscreet in their comments. They claimed, in an election pamphlet; "In fact the Government of the United Kingdom has broken so many promises that it can only be compared to a bankrupt whose pledged word is of no value whatsoever." B. P. Roberts later withdrew the statement. Cf. E.A.&R. September 13, 1956. p. 45.

3. Cf. E.A.&R. September 20, 1956. p. 80, for full statement.

In effect, the Independents were maneuvering away from the racial issue as best they could, and it was this group which provided cohesion for the 1956 elections. R. S. Alexander, an Independent candidate, pointed out that harmony and stability could be achieved by "Europeans who are trusted and respected by the best elements in the other races and by other Europeans."¹ This statement gives the clue to the entire campaign. European electors were to choose their representatives from those persons whom they "trusted and respected" to work out a modification of the Lyttleton plan within the constitutional framework already established by the British Government.

The Election Results

The election results were encouraging for the moderates. None of the extremists won seats in the Legislative Council and the moderates took all the offices. It is difficult to assess the nature of the moderates' success. The U.C.P., which advocated a modified multi-racial approach, won six seats, whereas the Independent Party, running on a non-racial basis, took the other eight. Clearly, neither group fully supported a multi-racial government; both were seeking a qualified multi-racial system which would preserve British influence, but the differences between them seemed purely semantic. The political spectrum focused to the center as the white settlers put aside strong racial sentiments and voted for conserving what reasonable remnants they could from the earlier days of their dominance.

After the elections were over members of the two groups tended to drop their party labels and draw together for purposes of unity and "with

1. E.A.&R. September 6, 1956. p. 16.

the object of achieving moderate and constructive policies."¹ Members of neither group had ever suggested they would not cooperate with the Kenya Government. To the contrary. Blundell, for example, stated:²

I support the principle of elected ministers. There is no other way to responsible government. If elected I will accept appointment if asked to do so and provided the policy of the Government is in the interests of my country and my electorate.

Thus, the willingness of the Europeans to forget election affiliations and assume positions of responsibility in the Government was considered a "good augury"³ for the constitutional development of Kenya. A realistic appraisal requires a consideration of the alternative which faced the Europeans. Failure to cooperate with the British Government meant the end of the self-governing constitutional arrangement, which was at least satisfactory to the Europeans. Any new constitution would be written in Whitehall, and the Europeans were now aware they no longer held influence in London as they once did.

Asian support was never in serious doubt. Though some of the Asian candidates advocated additional representation for the Africans, the majority campaigned for cooperation with the Europeans.⁴ The Arab elections were without incident and the sitting member, Sheikh Mafud Mackwai, was re-elected.

1. Manchester Guardian. October 12, 1956. p. 8.

2. E.A.&R. September 27, 1956. p. 117.

3. Cf. E.A.&R. October 18, 1956. pp. 213-14.

4. Cf. Manchester Guardian. October 4, 1956. 6. Also, statement of N. S. Mangat, President of Kenya India Congress, E.A.&R. September 15, 1954, p. 18, on support of multi-racial government and fears regarding reactionary views of the F.I.P.

The British Government interpreted the elections as a vote of confidence for the multi-racial policy, in spite of the qualifications and reservations of the moderates. In time, the Africans were to interpret the elections quite differently.

The African Elections - 1957

The "fancy franchise"

Although African leaders today agitate for a common electoral roll, and a universal franchise, they do so under the impetus of extremism rather than with an objective realization of the problems involved. These difficulties were examined in accordance with Lyttleton's directions of 1954,¹ and as a result of the study made by the Kenya Government the so-called "fancy franchise"² was created.

In February 1955 Governor Baring commissioned W. F. Coutts:³

To investigate and advise on the best system or systems to be adopted in choosing African Representatives for the Legislative Council in Kenya, bearing in mind the differences that may exist between the various areas, and also to draw up any draft rules that may be necessary to authorize the suggested procedure.

Coutts assumed that "there are three races in Kenya which together will have to work out their modus vivendi."⁴ His job was to find the basis on which an African electorate could be selected. In effect he was looking for an articulate African political community which could function effectively in conjunction with the other races in Kenya.

1. Cmd. 9103. 1954. op. cit., p. 4.

2. Cf. H.C. Deb. v. 553. 6 June 1956. col. 1089, for Creech Jones' attack on the franchise arrangements.

3. Colony and Protectorate of Kenya. Report of the Commissioner appointed to Enquire into Methods for the Selection of African Representatives to the Legislative Council. Nairobi: The Government Printer, 1955. p. 1.

W. F. Coutts served in the Colonial Administrative Service in Kenya from 1936 until 1949; went to the Windward Islands in 1949 and returned to Kenya in 1955 to act as Commissioner on the method of selecting African members to the Legislative Council. In March 1958 he was named as Chief Secretary of the Colony and Protectorate. Cf. E.A.&R. March 13, 1958. p. 883 for biographic information.

4. Ibid., p. 2.

Coutts believed that government in Kenya should be based on the concept of partnership,¹ and he systematically followed this philosophy in the course of his investigation. All interested persons and organizations in Kenya were invited to submit memoranda to the Commission with their views and suggestions regarding the African franchise. From February 26 until August 2, 1955, approximately ninety hearings were held in various sections of the country for purposes of taking oral evidence. As a result of these efforts 120 memoranda were received and 1,540 witnesses were heard. There were at least two prominent Africans and the African member to the Legislative Council for the constituency sitting with the Commissioner at every hearing.²

Representatives of religious groups, tribal organizations, labor unions and a variety of other organizations private and public spoke before the commission. Individual Africans, Europeans, and Indians also testified. The personalities who appeared were varied in their background: Dr. L. S. B. Leakey, Curator of the Coryndon Memorial Museum; Michael Blundell, European member of the Legislative Council; A. B. Patel, Hindu leader in the Indian community; Tom Mboya, then General Secretary of the Kenya Federation of Trade Unions; chiefs from African District Councils; native tribunal elders; advisory council representatives from Kisumu, North Nyanza, Nayangori; representatives from the Catholic Action of Kisumu Diocese, the African Muslim Union, the Kenya Muslim League, and the Church of Scotland Mission; delegates of the Embu Women; chiefs for the Meru tribe; African government workers from the Civil Servants Association. In short, almost all persons who had something to say regarding the African franchise

1. Ibid., p. 2.

2. Cf. H.C. Deb. v. 545. 26 October 1955. col. 186 for Leonnox-Boyd's explanation of the procedure Coutts followed.

were given an opportunity to be heard. Although there are no printed records of oral testimony, witnesses and organizations were invited to submit written statements. Every effort was made to obtain opinion regarding the African franchise. No doubt the accumulated evidence was a revelation to all those interested in Kenyan politics. There is, for the first time, an extraordinary exhibit of an articulate and coherent African political community, and the Commissioner draws from the record his considered view regarding the best means of selecting persons to represent that political community.

The evidence received by the Commissioner indicated "... practically every African asked for direct voting by secret ballot"¹ and Coutts strongly recommended that this method be adopted. The Kenya Guild advocated an indirect method, based on an Electoral College System, but an overwhelming number of Africans, as well as the African Unofficial Members Organization, objected on the grounds that "it is subject to corruption and the voter has no direct say in his destiny."² The absence of any political tradition of indirect voting in the African political and social structure indicated that use of indirect elections would be unwise, since problems of education in the political process would be difficult enough without introducing a method which was not only strange but unacceptable.

During the course of the hearings the right to vote was vigorously discussed. The issue revolved around two related notions: the "one man, one vote" concept and a fear of discriminatory exclusion from the franchise. Consequently, a large number of Africans pressed for universal suffrage. This was primarily out of an idealism regarding the right to

1. Report of the Commissioner appointed to Enquire into Methods ... op. cit., p. 2.

2. Ibid., p. 3, quoting from a memorandum.

vote, but was also with a great deal of thought and resentment against the non-native groups who enjoyed a universal franchise. At the same time, the Africans hoped that ideal results would follow from an extensive vote and "stressed over and over again that the candidate must be of good character, of standing and must have done something which connotes service in the community."¹ Coutts suggested that these two views were incompatible; if the vote were based on a quantitative standard then the choice of candidates would be subject to the lowest common denominator of African intelligence. The Africans themselves were aware of this problem; as one memorandum to the Commission commented:²

.... the majority of the African people are not only illiterate, but ignorant of this new kind of undertaking. The danger would be great for the electors would be at the risk of being misled by irresponsible agitators who by their fallacious promises would be out to deceive the ignorant for the ends of their own pecuniary advantages....

The "one man, one vote" ideal was inapplicable to the African population because the implication that all Africans were equally prepared to vote was not true.³ Witnesses expressed fear that large segments of the population which are still uneducated, unsophisticated, superstitious and primitive would be subject to the demagoguery of unscrupulous candidates.⁴ To give each and all the same vote, whether mud-caked Suk tribesman in the

1. Ibid., p. 10.

2. Ibid., pp. 9-10.

3. Ibid.

4. Ibid. Some Europeans share this fear; cf. E. Huxley. "Two Revolutions That Are Changing Africa." New York Times, Magazine Section, May 19, 1957, p. 69, who writes: "... people only one generation removed from tribalism, still fearful of magic and ancestral spirits, still (in the main) illiterate and ignorant of the larger world, may find themselves unable to resist the blandishment of demagogues, and the temptations to barter their votes for impossible promises, or sell them to the highest bidder."

Northern Province or Makerere College graduate practicing a profession in Nairobi, seemed grossly unwise. The newness of the franchise, the paucity of African leaders, the limited political experience of the Africans, were considered an invitation to corruption and abuse in the electoral system. Moreover, in response to claims that Great Britain and other countries enjoyed a universal franchise, which Kenya could adopt, Coutts pointed out:

It should be remembered that universal adult franchise only came fully to Britain in the year 1928 and, therefore in the development of the political institutions of a people, this form has only been tried for some 27 years, or, approximately, six elections.

As he saw it, it was necessary that the franchise be extended with due regard for Kenya's own peculiar racial structure rather than with an eye to other political systems which had evolved over a long period of time. It was these factors which underlay Coutts' recommendation that the initial suffrage in Kenya be a limited and qualitative one.²

The nature of the limitation suggested for the franchise was influenced primarily by the social context of the African community and only secondarily by systems in other countries. The outstanding franchise limitation in African society is the exclusion of women from voting in African local elections. One memorandum said:³

Women should not vote; history of African organization tells us they were not allowed to enter into politics. They should learn slowly till they will be allowed in the near future.

1. Report of the Commissioner appointed to Enquire into Methods . . .
op. cit., p. 7.

2. Cf. J. A. Eaponce. "The Protection of Minorities by the Electoral System." Western Political Quarterly. Vol. 10, No. 2. June 1957. pp. 320-321, who would be inclined to view this as "a pathological aspect of democracy which, based on fraternity, tends to exclude those who cannot be thought of as brothers."

3. Report of the Commissioner appointed to Enquire into Methods . . .
p. 12.

Add to this the limitations which Europeans have valued in the past, i.e., literacy and property, and it can be seen that the franchise would be restricted to a small segment of the population. Taking these factors into account, Coutts felt that qualifications "based largely on the endeavour of the human individual rather than abstract evaluation"¹ ought to be the foundation of the African voting system. Thus, he recommended a multiple voting system, as a means of giving a qualitative content to the franchise. As he pointed out: "complex circumstances may need novel and imaginative methods to surmount them."²

Coutts' multiple voting scheme provided means for Africans of varying abilities to participate in government according to their capacities. The number of votes each person received varied with the qualifications he possessed, i.e., property, literacy, activity in civic affairs, etc. The franchise included all members of the African community, men and women alike, and was notable for its adaptability. In 1956 the Kenya Government accepted the basic premises of the Coutts' recommendations, and with some alternation, implemented his qualitative voting scheme.

Africans who are twenty-one years of age, born in Kenya or to an African tribe indigenous to East Africa, or resident of ten years or more, and British subjects or British protected persons, are eligible to vote in Kenya elections.³ Qualifications include literacy, property holding, public and military service, badges in civic organizations, and so on. A person is disqualified by the usual conditions used elsewhere:

1. Ibid., p. 13.

2. Ibid., p. 15.

3. Special conditions were attached to the franchise for members of the Kikuyu, Embu and Meru tribes, because of their participation in the Mau Mau movement. They are required to obtain loyalty certificates from their District Officer, take an oath of allegiance to the Queen, and cannot vote or stand for election outside the Central Province or Nairobi.

insanity, bankruptcy, imprisonment, infraction of any election law. The only disqualification peculiar to Kenya applies to those persons under detention or deportation for involvement in the Mau Mau movement.¹

A person having one qualification receives one vote. For each additional qualification an individual receives an additional vote, up to a maximum of three votes. The limitation of three votes for each elector should act as a levelling agent within the ranks of the more advanced Africans. At the same time, the multiple vote gives educated Africans an opportunity to offset the quantitative aspects of the more numerous but politically less sophisticated tribesmen. This arrangement attempts to meet the fears of the Africans, who, speaking at the Coutts' hearings, were afraid that demagogic African politicians would sway illiterate and susceptible natives. As one African commented:²

It is therefore a matter of great importance--indeed imperative--that whatever method of election which is recommended should be one that takes into account the present stage of African development and the possible misuses of the new powers.

Initial objections to the enfranchisement plan came from the Labor Party in the House of Commons. In the words of Aneurin Bevan: "We do not like this weighted franchise. We do not like votes handed out as prizes for the establishment."³ The multiple voting system was attacked as "too fancy" or "too complicated" and critics pointed out that other countries had rejected such systems in the past. Such criticism, however, was un mindful of the complexity of African political requirements and the fact that

1. Colony and Protectorate of Kenya. Sessional Paper No. 39 of 1955/1956. Report of the Commissioner Appointed to Enquire into Methods for the Selection of African Representatives to the Legislative Council. Nairobi: The Government Printer. 1956. p. 12.

2. Report of the Commissioner appointed to Enquire into Methods op. cit., p. 9.

3. H.C. Deb. v. 553. 6 June 1956. col. 1200.

limited franchises had been put aside in other countries only after the need for them had passed.

It is quite true, as one observer commented:¹ "Qualifications exclude, and no one likes to be excluded...." but, at the same time the fact that all Africans could not be expected to use the franchise intelligently cannot be disregarded.² It is not denied here, that such a concept is dangerous and anti-democratic, but the criterion, "one man, one vote" is a standard evolved in democratic societies long after experimentation and political experience taught the electorate lessons of caution and discrimination in the choice of their representatives.

Attacking the franchise as "too fancy" was a shallow approach to a problem that included far more subtle implications. The significance of the new franchise lay not in its admitted and temporary exclusiveness, but in the assumption that an articulate African political community existed. There is no common background in Kenya which justifies relying on "one man, one vote" as a measuring rod for the franchise. The problem was to provide "equal treatment for equal things" in a society where wide social and cultural diversities exist. Any effort to transfer the values of a relatively homogeneous political community to a plural society is misguided and dangerously misleading. The search for an articulate political community among the Africans began on a realistic plane, providing votes for individuals who, by their personal abilities, could identify themselves with the expressed values of their community.³

1. Thomas Franck. "Popular Participation in Multi-Racial Government." Parliamentary Affairs. Vol. 9, No. 3. Summer 1956. p. 330.

2. Cf. Perham. "British Problems in Africa." op. cit., p. 643.

3. Cf. Franck op. cit., p. 329, on this point.

The moderation with which the Africans and the Europeans responded to the Commission is also a significant aspect of this period. The Africans welcomed the opportunity to elect their own representatives. The Europeans were undoubtedly relieved that the franchise was not extended to a common electoral roll. An observer for the Economist criticized the Coutts franchise for failing to provide for an eventual common roll:¹

So long as Africans are only to vote communally they are bound to demand a franchise similar to that of the Europeans or Asians. The moderation they showed in evidence to Mr. Coutts, is remarkable. But, will it last?

Unhappily for Kenya, the moderation did not last. In fact, the African elections soon produced extremism on the part of the newly elected Africans who felt that as the duly authorized representatives of their people they could make just claims upon the British Government.

Problems and Results of the African Elections

The 1957 elections in Kenya were significant for the political problems they revealed rather than for the actual campaign. The significance of African participation in politics had never been fully realized until the event took place. The elections are best analyzed by examining the difficulties of the campaign and the results of the elections.

The African electoral campaign was handicapped by two governmental strictures: the banning of political parties and regulations regarding public meetings. Prohibiting African political organizations in Kenya was not a new development.² As early as 1940 the Labor Party drew attention to this restriction by objecting to Government dissolution of African

1. Economist. January 14, 1956. p. 108.

2. Cf. George Bennett. "The Development of Political Organizations in Kenya." Vol. 5, No. 2. June 1957. pp. 113-130 for an excellent analysis of African political movements.

societies.¹ In 1952 a Societies Bill, banning national African political organizations and requiring registration for local groups was hotly contested in the Kenya Legislative Council. The Africans felt aggrieved² while the Europeans felt that the ban was a necessary procedure for protection against the Mau Mau and similar African terrorist activities.³ The Africans insisted the measure was unduly drastic, since it deprived them of free speech and assembly and hindered their political advancement.⁴

Lyttleton also very often defended the strict regulations regarding public meetings, pointing out that such activities on the part of organizations like the Kenya Africa Union "would lead to a breach of the peace."⁵ After the Mau Mau movement started, regulations regarding registration and public meetings of Africans were sternly enforced. The endorsement virtually put the Africans in the Government off from their constituencies. The Africans appealed in vain to the British Government⁶ against these regulations and eventually sought relief in Kenya's Legislative Council. Asking that the Council support a motion "that African Members

1. Cf. H.C. Deb. v. 364. 14 August 1940. col. 760, for discussion regarding the ban on the Kikuyu Central Association, the Ukamba Members Association and the Teita Hills Association.

2. Leg. Co. Deb. v. 50. 30 December 1952. col. 185.

3. Ibid., col. 197.

4. Ibid., col. 200-202.

5. Cf. H.C. Deb. v. 493. 14 November 1951. col. 40.

6. The Government, defending its position in the House of Commons, insisted that Elihud Mathu, leader of the African unofficials, was given adequate opportunity to make political contact with his people and that the dangers of large African gatherings during the emergency required a close watch on all African political activities. H.C. Deb. v. 508. 3 December 1952. col. 1542-44.

should be free to hold meetings with their people"¹ the Africans argued: how else were they to know what their people were thinking, how else were they to educate their people?² Or, why should the non-Africans have exclusive right to public gatherings? "How" the Africans asked, "are we to know their problems if we are kept locked in a refrigerator?"³

The Government expressed their sympathy for the Africans' feelings but pointed out that security matters were more important than public meetings. Some Europeans commented that failure to allow the Africans greater opportunities for public contact would have a bad psychological effect on the country⁴ and others suggested that the Africans be given a chance to keep in contact with their communities, rather than weaken their political position by denying them opportunities for a public hearing.⁵ In effect, the Africans were making what they considered a reasonable plea for their constitutional rights, and the Government effectively shut them off from the people they were supposed to represent.

Throughout the Mau Mau emergency almost all public political activity for the Africans was suspended. It was not until 1955 that the Government once again permitted local district political associations to be active,

1. Leg. Co. Deb. v. 54. February 20, 1953. col. 250.

2. Ibid., col. 251.

3. Ibid., col. 253.

4. Ibid., col. 258.

5. Ibid., col. 261.

although no national organizational structure was allowed.¹ In early 1956 the Kenya National African Congress was denied registration and all further public political meetings for the organization were banned.²

Even the small, and supposedly innocuous, African Goan National Association was refused registration under the 1952 Societies Order in Kenya.³

As long as the African leaders had no widespread public contact with their people, no one should have been surprised that the majority of the nominated Africans in the Legislative Council were defeated at the polls in 1957.

In January 1957, just before the elections; the restrictions on public meetings were eased again.⁴ No outdoor meetings could be held if a suitable building were available. No large crowds were permitted in order to avoid the possibility of public disorder. Eventually, tape recordings were required of all open meetings, as a measure to tone down the arguments of the Africans.

No wonder then, that the major issue of the campaign was rejection of the Lyttleton constitution. As far as the Africans were concerned multi-racial government was a façade, freezing the division of Kenya into racial

1. Cf. New York Times. June 22, 1955. 10:4. Cf. also H.C. Deb. v. 537, 15 February 1955, col. 38, when the Government explained its position: "The Kenya Government encourages the formation of African political associations in the provinces and districts and would raise no objection at the appropriate time to such associations forming a federation to represent African opinion throughout Kenya. The Government cannot, however, in present circumstances contemplate another central association on the lines of the K.A.U. which is liable to fall under the control of a small subversive minority which may be harmful to everyone and not the least to the Africans themselves."

2. Cf. H.C. Deb. v. 548. 8 February 1956. col. 102.

3. Cf. H.C. Deb. v. 551 24 April 1956. col. 135-136.

4. E.A. & R. January 10, 1957. p. 642. In the fall of 1958 a new secret society, the Kiama Kia Muingi, emerged and shortly after the Government began to place restrictions on political movements and activities again. Cf. New York Times. December 5, 1958.

groups and preserving the dominance of 57,000 Europeans over $5\frac{1}{2}$ million Africans. Under the mixed blessings of the Lyttleton constitution, Africans were brought into the Government, although their political activity had been curtailed¹; the Mau Mau movement had been brought under control, but only after drastic measures such as Operation Anvil²; the franchise had been extended to Africans, but on a qualitative approach which emphasized economic and social mobility rather than the principle "one man, one vote."

In spite of these problems, a strong leader did emerge to begin the process of pulling the amorphous mass of African voters together: Tom Mboya, General Secretary of the Kenya Federation of Labor. Young, ambitious and hardworking, Mboya is well educated, well travelled, and highly articulate. As early as 1955 he was recognized as an outstanding political figure among the Africans.³ Speaking at the African Bureau in London Mboya commented that white supremacy in East Africa was doomed, that the British settlers would yield their power only under coercion, and that the British Colonial Office should exercise the necessary coercion by legal

1. As late as November 6, 1958, E. A. Vasey commented, in an off-the-record interview, it was unlikely that the Government would lift the ban on national African organizations in the future; subversive activity of secret societies still flourishes and is a serious concern for British officials in Kenya as well as Whitehall. Cf. E.A.&R. February 19, 1959. p. 738.

2. Operation Anvil was a one day round-up of approximately 23,000 Kikuyu, "suspected" of Mau Mau activity. Most of them were sent to detention camps. Many Africans and African sympathizers claim the round-up was indiscriminate and arbitrary. Cf. Tom Mboya. The Kenya Question: An African Answer. London: Faber and Faber (for the Colonial Bureau of the Fabian Society.) 1957. pp. 19-20, for an account from the African point of view; also, John Hatch. New From Africa. London: Dennis Dobson Co. 1956. p. 44, for an interesting, though biased account. Hatch wrote his book on the basis of a brief trip through ten African countries; he has been a Commonwealth Officer of the Labour Party.

3. New York Times. October 25, 1955. 8.

methods before African nationalism grew too strong to control. At another time he said:¹

The African community is not asking that the European community be physically removed from the country But they must be told that there will be a democracy based on individuals, with a vote for each man, and not a representation based on race groups.

Objecting to the Lyttleton constitution, he pointed out that the new system perpetuated the racial division of the country and allowed no scope "for the emergence of democracy".²

The Africans fought the campaign on the only ground on which it could be fought: rejection of multi-racialism. Spearheading the attack, Mboya pointed out that the Lyttleton constitution only exacerbated the problems of a plural society, that it encouraged and "emphasized racialism and should be smashed."³ Relying on the numerical strength of his labor organization for his own election, he aimed at the elimination of tribalism, saying it was a dangerously divisive factor among the Africans.⁴

At the outset, the candidates were moderate in their approach to the issues of land, education and multi-racial government. But competition for votes and a growing tide of dissatisfaction among articulate Africans forced the candidates into radical positions. Any attempt to hedge on rejection of the Lyttleton settlement was badly received, and since the candidates were neither aided nor influenced by any strong national political party, they felt compelled to press the issues harder than their competitors.⁵ No moderate views were tolerated, and only extreme, some-

1. New York Times. May 13, 1956. p. 1.

2. Mboya. op. cit., p. 31.

3. Manchester Guardian. February 19, 1957. p. 7.

4. E.A.&R. February 7, 1957. p. 772.

5. Cf. G.F. Engholm. "Kenya's First Direct Elections for Autumn 1957." p. 428.

times unrealistic, demands were acceptable as vote-getters.

When the African elections opened in March, there were thirty-seven candidates standing for eight seats in the Legislative Council. After the count was finished only two of the Africans who had served as Government nominated members retained their seats. The Africans registered a strongly nationalistic vote, rejecting all those who had worked with the Government as a "white man's stooge."¹ The two who retained their offices had been associated with the Government for only a few months under the enlarged Legislative Council, and were looked upon with greater tolerance.² In the end, Mr. Ohanga, the first African minister under the Lyttleton settlement and Mr. Mathu, the first African to enter the Government, and all the Capricorn Society candidates were defeated. It was a complete rejection of the Lyttleton settlement, which might also suggest that the African nominated members were not always representative of their peoples' views. Experienced African representatives were put out, and new nationalistic ones were voted into office with the defeat of the nominated, and presumably conservative African members of the Legislature. The tone of African politics was due for a change.

1. Economist. March 16, 1957. p. 898.
2. Cf. E.A.&R. March 21, 1957. p. 969.

For the most part, elections followed tribal lines¹ and the weaker candidates in the rural areas were aided by their tribal connections.² Only Tom Mboya, running in the Nairobi constituency, received widespread support, although at the end the race was relatively close.³ Nairobi,

1. Economist. March 16, 1957. p. 898. Cf. also Gikonyo Kiano. "Elections in Kenya." Africa Today. May-June 1957. p. 6. Kiano accounts for the defeat of Eliud Mathu, whom the Africans respected most among the nominated Africans on the Legislative Council, on the grounds of tribalism and loyalty certificates. Mathu is a Kikuyu, and many of his tribesmen could not qualify to vote because they could not obtain loyalty certificates. His major opponent in the Central constituency was B. Mate, a Meru. According to Kiano, many Meru were able to qualify to vote, and they cast their ballots for Mate. The following election statistics are of interest in this case: *

	No. of Ballots per Elector			No. of Electors	Total votes
	1	2	3		
B. Mate	16,052	3,165	792	20,009	24,758
E. Mathu	3,907	3,134	1,533	8,574	14,774

*Statistics extracted from H.C. Deb. v. 568. April 2, 1957. col. 41-44. Assuming that those Africans with one vote were semi-skilled laborers and those with three votes represent an African middle class, we can speculate on the sources of strength of both candidates.

2. Engholm. op. cit., p. 432.

3. Election returns in the Nairobi constituency, for Mboya and the candidate who ran second:

	No. of Ballots per Elector			No. of Electors	Total votes
	1	2	3		
T. Mboya	280	485	296	1,061	2,138
C. Kodhek	187	391	258	836	1,743

In the Nairobi and Nyanza North constituencies, electors with two and three votes cast the crucial ballots for the winning candidates. Both constituencies are urban in character, although Nyanza North has approximately four times as many voters as Nairobi. Cf. H.C. Deb. v. 568. April 2, 1957. col. 41-44, for election statistics.

however, is highly urbanized and the Africans living there tend to direct their loyalties toward labor unions or other organizations to which they belong, rather than to their tribal affiliation.¹

The number of Africans who registered and voted was much lower than anticipated, and any assessment of the election must take this into consideration. Although an estimated 400,000 persons were eligible to vote², only 126,508 actually registered³ and out of these approximately eighty percent went to the polls.⁴ The reasons for the low registration are relatively simple. Most of the Kikuyu, which represents the largest single tribe, were disqualified for their Mau Mau activities, or refused to take the required oath of allegiance to the Queen. Others were reluctant to give the necessary information regarding income or property for fear that this move was a preliminary to taxation. Some suspected that registration was merely prelude to a military draft. The banning of political organizations also discouraged many Africans from registering and handicapped the registration drive.⁵

The African elections began the deterioration of the Lyttleton constitution. Under the original terms of the multi-racial government and later changes agreed to by all groups, two Africans were to receive portfolios in the Council of Ministers. On March 18 the eight newly elected

1. Hodgkin. Nationalism in Colonial Africa. op. cit., pp. 87-88.

2. New York Times. March 10, 1957. 3:5. Estimates as to those eligible were based on such factors as the number of Africans in the army or involved in various government jobs. Cf. H.C. Deb. v. 550. 13 March 1956. col. 24.

3. Cf. E.A.&R. March 21, 1957. p. 968. Of those registered 72,438 had one vote; 39,924 had two votes and 14,146 had three votes.

4. New York Times. March 16, 1957. 8:8.

5. Cf. Engholm. op. cit., p. 421; also New York Times. March 10, 1957. 3:5.

African members of the Legislative Council announced that they regarded the Lyttleton constitution as null and void and that none of them would accept a ministerial post with the Government.¹ They indicated, however, that they would remain in the Legislative Council and fight for increased representation. Taking this contradictory position, i.e., rejecting the constitution but accepting the elective office which the same constitution provided them, the Africans set out to destroy the multi-racial government of Kenya. Two days before the Africans issued their statement, Governor Evelyn Baring, who anticipated the African move, prepared a countermove. He decided not to offer portfolios to the Africans "for a considerable time" until he had a chance "to study the new members."²

1. This move was rumored in advance, but many Europeans doubted that the African would negate their own self-governing powers or could afford to refuse the salary of \$8,400 annually, which went with the Minister's office. E. A. Vasey expressed this view in the November 6, 1958 interview. Cf. also New York Times, March 10, 1957, 3:5. Cf. also the Africans' statement, E.A.&R. March 21, 1957, p. 969.

2. New York Times, March 17, 1957, 29:4.

Deterioration of the Lyttleton Constitution

The refusal of the Africans to accept a position of responsibility in the Council of Ministers was followed by the Governor's appointment of a senior civil servant to take the African portfolio.¹ Thus, the Government continued to function and the Africans were free to criticize the constitution and the Government's policy.

In March 1957 the Africans submitted a request to the Kenya Government asking that their representation be increased by fifteen. The proposal was refused on the grounds that no changes could be made without approval of all races, and until the Africans were willing to enter into the Government, such agreement could not be reached. Again, late in April, they asked for fifteen additional members, and this time they received support from the Asian members of the Legislative Council. The Europeans made no comment on the request until July 5, and the Africans took offense at this delay, saying the Legislative Council would adjourn in one week and that this was insufficient time to give the matter full time for debate.²

The Europeans indicated their willingness to increase the number of Africans on the Legislative Council without a corresponding increase for other racial groups if the Africans would accept their positions of responsibility on the Council of Ministers. At the same time, the Europeans insisted that no racial group should be in a position to dominate any other racial group, and that any such increase should involve an agreement on the part of all groups concerned. The European offer was a clever one, since it was clear the Africans would not meet the European terms of accepting the Government whip. Rejection of the European proposal placed

1. The Governor acted under power given to him by Cmd. 9103. 1954. op. cit., p. 3, para 8.

2. Cf. Leg. Co. Deb. v. 72, Part II. July 7, 1957. col. 1475ff.

the burden of non-cooperation on the Africans and left the European members free to influence government policy in both the legislative and executive groups.

The Africans took a leaf from the Europeans' book and sent a delegation to London to plead their cause. Referring to the Europeans as "recalcitrant and blimpish"¹ the Africans took their grievances over the head of the Government in Kenya in much the same way that the early settlers successfully circumvented local authorities during the 1930's.

Tom Mboya led the African delegation to London. Acting as spokesman for the group, he said they rejected the Lyttleton constitution because it was imposed during the emergency with no reference to the African people, that it had never been formally accepted by the Africans who originally served under it, and that the newly elected Africans had had no part in its formation. In addition, African political activities were handicapped by regulations restricting national organizations and public meetings, and thus the issue could not be taken to the people.² Seeking parity with all non-native elements in the Legislative Council, they wanted a full discussion of the Lyttleton arrangement. The Europeans, for their part, were unwilling to make any specific concession beyond their July statement, and insisted that with Mboya and his followers in London there was little point in discussing any issues in their absence.

During the summer Lennox-Boyd, then Secretary of State for the Colonies, was called upon in the House of Commons to explain the political unrest in Kenya. Queried by Fenner Brockway about the constitutional crisis arising out of the demands of African members of the Legislative Council,

1. Economist. July 13, 1957. p. 116.

2. Cf. E.A.&R. July 25, 1957. p. 1598. for the full statement.

Lennox-Boyd insisted that he would hold to the position of the Lyttleton plan, i.e., requiring that all the main races be represented in the Councils of the Government and making no structural changes before 1960 without the agreement of all races.¹ Asked if he intended re-opening discussion for the revision of Kenya's constitution, Lennox-Boyd replied that any changes would be inconsistent with the pledges of the Lyttleton plan, unless all groups concerned would so do "without insisting on prior conditions." The Secretary also pointed out that it was the Africans, not the Europeans or Asians, who were making the situation difficult. It was suggested that the Colonial Secretary should intervene and "do something about the racial groups" which refused to cooperate. Lennox-Boyd's answer to this was:²

I see no reason for outside intervention in this matter. I am fully aware of our responsibilities and am also aware that last year, under the leadership of the Governor, who assisted in the discussion, there were agreed changes without any intervention on my part. If the people of Kenya are to be led forward in increasing measure to running their own affairs in the multi-racial society that is, and will remain, Kenya, it is much better that they should be left to work this out themselves.

The Colonial Office was prepared to let the different racial groups reach an agreement on a serious internal dispute, rather than impose a decision on them from the outside. In essence, Lennox-Boyd was holding to the Lyttleton pledge, to make no changes until 1960 unless all races agreed, and in a sense was attempting to force the various groups in Kenya to come together and iron out their own problems. The alternative was complete control on the part of Whitehall.

Meantime, Mboya's demands for a re-consideration of the Lyttleton plan became more insistent. Moreover, he re-opened the question of the

1. H.C. Deb. v. 569. 1 May 1957. col. 182-184.

2. H.C. Deb. v. 569. 8 May 1957. col. 953.

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multiple franchise, saying it was probably necessary to use it for the 1960 elections, but that after that "we shall demand a universal franchise."¹

Near the end of August the Europeans were prepared to yield ground on the political impasse, but soon split over the possibility of a common-roll constituency.² By October the Asians began to waver in their cooperation with the Europeans, since the settlers seemed to be losing their political strength under the combined pressure of African demands and internal dissent.³

It soon became apparent to all the racial groups that no settlement was in sight. The Africans and the Europeans could not reconcile their differences and the Colonial Office would not call a constitutional conference unless the Africans were willing to accept responsibility within the Government. On November 7, 1957, the five unofficials on the Council of Ministers resigned their positions as a means of ending the deadlock over the multi-racial government and forcing the Colonial Office to act.

With the resignation of the European and Asian members of the Council of Ministers, Lennox-Boyd was left free to take the initiative in Kenya's Government. In a statement to the elected and corporate members of the Legislative Council on November 8, he said: "As a result of these resignations I am satisfied that the constitutional arrangements introduced by my predecessor have now become unworkable the position has reverted to what it was before the Emergency and Her Majesty's Government are free to

1. E.A.&R. August 15, 1957.

2. Economist. August 24, 1957. p. 605.

3. Economist. October 19, 1957. p. 204. Cf. also H.C. Deb. v. 572. 12 June 1957, col. 395, re: Asian support of African demands for increased representation.

take such action as they think fit."¹ The Africans had successfully thwarted the multi-racial government.

1. Kenya: Proposals for New Constitutional Arrangements. Cmd. 309. 1957. London: H.M.S.O. 1957.

THE CONSTITUTION OF KENYA - 1958

The Lennox-Boyd Constitution

The first phase of the multi-racial political development in Kenya ended with the resignation of the European and Asian Members from the Council of Ministers in November 1957. A second phase began with the promulgation of a new constitution in April 1958. It should be noted, however, that the end of the Lyttleton Constitution did not result in a collapse of the Kenya Government. Administrative activities did not cease, African and European representatives continued to participate in the Legislative Council, and, at the request of the Secretary of State¹, the participating elected members of the Council of Ministers remained at their posts. During the six months interval, while the new constitution was being written, the Lyttleton arrangement remained as the legal basis of the Kenya Government.

The April 1958 political changes in the Colony's government, however, came as no surprise to the racial leaders. When the Secretary of State for the Colonies, Alan Lennox-Boyd, announced the abandonment of the Lyttleton settlement in November 1957, he also proposed new constitutional arrangements for Kenya. These proposals, known as the Lennox-Boyd Constitution, represent another step in the development of a multi-racial government, and should be briefly mentioned before analyzing the current formal political structure of Kenya.

Lennox-Boyd based his proposals on several premises. Foremost he recognized that "on merits the African population is under-represented

1. Cmnd. 309. 1957. op. cit., p. 2.

.... in relation to the other groups."¹ The issue of racial representation in executive and legislative positions was the core of the dispute between the Africans and the Europeans. To meet this problem, Lennox-Boyd proposed the addition of six new African seats in the Legislative Council. By so doing, he brought the African membership to an even basis with the European representation. He did not, however, propose to increase the representation of any group on the Council of Ministers; in fact, he specifically ruled against any increases in that Council. Moreover, the non-Government membership on the Council of Ministers would continue to come from the ranks of the elected members of the Legislative Council.

Further, Lennox-Boyd felt there was need to place non-Government representatives in the Legislative Council who were not chosen by a strictly communal or racial electorate. Consequently, he announced that no additional seats in the Legislative Council would "be based on election by purely communal electorates."² In order to increase the non-Government membership in the Legislative Council and circumvent the communal electorate or the use of a common roll, Lennox-Boyd proposed the creation of twelve "specially elected seats" to represent the political community of Kenya as a whole.³ At the same time, he authorized an increase in Government membership to preserve the Government majority. Finally, recognizing that discriminatory legislation was a possibility, regardless of which race could control Kenya in the future, Lennox-Boyd announced a plan to create a new governmental institution--a Council of State--"to protect any one community against discriminatory legislation."⁴ Such a Council is unique

1. Ibid., p. 3.

2. Ibid.

3. Ibid.

4. Ibid.

among parliamentary governments, and its existence acknowledges not only the possibilities for conflict in a plural society, but the hope that a formal political institution can promote racial harmony by acting as a deterrent to racial conflict.

The Constitution of Kenya - 1958

Introduction

When compared with the first Letters Patent of 1920, the April 1958 Constitution marks broad advances in the constitutional development of Kenya.¹ The new document is a thorough revision of Kenya's constituent authority, revoking outdated instruments, abolishing the Executive Council² and describing in detail institutions and governmental functions which were neither known nor anticipated in 1920.

The most outstanding feature of the new constitution is its multi-racial character. This is not to say that all races participate equally in the affairs of government. Each race, however, may enter into government affairs in varying degrees, and this is a far cry from the original constitutional framework established in 1920. In the long view, this change is impressive and significant. Whether a multi-racial government is adequate to meet the changing political needs of the several communities in Kenya, is a question which bears examination.

The Governor

The present role of the Governor of Kenya is quite different from that created by the Letters Patent of 1920.³ The traditional autocratic position of the Governor has altered during thirty years of evolutionary constitutional changes and a sense of partnership with the racial groups

1. Cf. E.A.&R., comment: "... it no longer meets any useful purpose." May 1, 1958. p. 1102.

2. Statutory Instruments. 1958. No. 600. East Africa. "The Kenya (Constitution) Order in Council, 1958." London: H.M.S.O. 1958. Hereafter referred to as: S.I. 1958. No. 600.

3. Supra. Chapter V, pp. 91-95.

has emerged. Although the Governor still retains ultimate power as chief executive for Her Majesty's Government in Kenya, the use of that power has changed significantly.

The traditional administrative power of the Governor remains much the same as in any British Colony. Appointed by Her Majesty's Government, under the appropriate Sign Manual and Signet, the Governor holds office at Her Majesty's pleasure. His powers and duties stem from the Crown, and final policy decisions rest with the British Government in Whitehall and Westminster. In effect, the Governor still exercises the executive functions traditionally assigned to that office. For example, the Governor holds the rights to all Crown lands "in trust for Her Majesty" and enforces land laws in Her name. He constitutes all Government offices, appoints officers, exercises discipline over all Government personnel and appoints a Deputy Governor to act in his absence or incapacity. The Governor may also grant pardons or respite for sentences passed in court and may lessen judicial punishment. All these functions are performed at the Governor's discretion and in Her Majesty's name.

The significant changes in the role of the Governor lie in his power relationship with the racial groups in Kenya Colony. These differences reflect changes in Whitehall's colonial policy, i.e., from Whitehall's complete control of a colony's administration to preparation for political independence within the Commonwealth. Such a policy is expressed in a partnership concept, i.e., that those persons who are ruled by the British Government should take part in policy making within the government's formal structure. In Kenya this means that all racial groups are admitted into the councils of government. Thus, the policy making function of the Governor, previously a power exercised only by his office, is now shared by those for whom he makes policy. Since the British parliamentary tra-

dition does not distinguish sharply between executive and legislative functions, the new role of the Governor is more appropriately described in the discussion of other government institutions in Kenya.

The Council of Ministers

The Council of Ministers, as created by Lyttleton in 1954 and retained by Lennox-Boyd in 1957¹, is composed of sixteen persons, divided equally between Government and non-Government members. The Governor appoints all members of the Council, and he may discipline, suspend or dismiss them for cause. At least six and not more than eight members may be drawn from public office, i.e., are Senior Civil Servants. At present, six members are from the Senior Civil Service ranks, and two are nominated members from the European community. The other eight are non-Government persons who are elected members of the Legislative Council. This group consists of four Europeans, two Asians and two Africans.²

The major function of the Council of Ministers is to advise the Governor on policy matters. Each Minister, whether he holds a portfolio or not, is assigned specific duties relating to economic, political or welfare activities in the Colony. Six Assistant Members, drawn from the several races, are designated to aid the Ministers in their duties.³ The Governor is not required to consult the Council on matters which he considers unimportant, or those of such urgency that delay would result in damage to the Government, or for matters in which "Her Majesty's ser-

1. Cf. Cmnd. 309. 1957. op. cit. p. 3.

2. At least there is provision for two African posts, but since they refuse to accept a position with the Government, none have been appointed. They were offered portfolios for Housing and Adult Education and Community Development. Cf. Cmnd. 309, 1957. op. cit. p. 3.

3. As of June 1958, two Assistant Ministers, one African and one Arab, were appointed.

vice would sustain material prejudice."¹ Nor is the Governor required to call the Council together at regular or stated intervals. Further, only the Governor can summon the Council, and he normally acts as chairman. In the event of his absence, the senior member presides.

Although the raison d'être of the Council is to aid the Governor in the formulation of policy, he may act in opposition to the advice of the Council. In the event that he exercises this power, he is required to inform the Secretary of State of his action, and to give his reasons for so doing. Several factors militate against the Governor using this power. The membership is equally divided between the Government and non-Government members. The Africans have consistently refused to participate in the Council thus decreasing the size of the non-Government group. Unless the non-Government side could persuade several Government members to join them, they could not obtain sufficient votes for effective opposition. Should the Africans decide to join the Council and accept responsibility for the Government, it is unlikely that they would cooperate with the Europeans, if for no other reason than non-cooperation on principle or fear of what their constituents might think. As a result, the Governor, even in this partnership, with the racial representatives, still holds the ultimate legal power.

European members of the Council of Ministers occasionally refer to it as a "quasi-cabinet"² but this is a misleading description. The Council does not have the political unity found in British parliamentary cabinets constituted by one party. Nor can it be dismissed by an adverse vote in the Legislative Council. When Lyttleton created the Council in 1954 he

1. S.I. 1958. No. 600. Part III Section 12.

2. Interview with E. A. Vasey. November 6, 1958.

called it "the principal instrument of Government in the Colony" and conferred on it "collective responsibility for decisions on Government policy."¹ Lennox-Boyd retained this concept but in re-writing the constitution he did not clarify the meaning of "collective responsibility." The speaker of the Legislative Council earlier defined it as requiring all members to support Government policy.² The only alternative open to a member who does not agree with the Council's policy is resignation. At present such a move would be a meaningless political gesture, since the Governor is empowered to appoint a new member and he is not required to consult with any public officer or the Legislative Council on the choice of members. Collective responsibility, then, does not mean that the entire Council will stand or fall on an issue of confidence before the legislative body. It is a means of enforcing unanimity in the Council in exchange for the privilege of entering into the policy making function of the Government.³

If one wished to deprecate the Council of Ministers, one might call it merely a tool of the Government. But it should not be dismissed so lightly. A description of the formal structure of an institution is not the only basis on which to judge it. Although Kenya is still a Colony and the final political decisions and responsibilities concerning it are still vested in Whitehall, the British Government is interested in preparing Kenya for self-government. Hence Whitehall, acting through the Governor, encourages racial leaders to participate in the Government and

1. Cmd. 9103. 1954. op. cit. p. 2.

2. Cf. Supra. Chapter X, p. 190.

3. A politically impressive resignation could occur, if an elected member, who was highly respected by all races, resigned over an issue on which all races strongly agreed. Under the circumstances, such an event is highly unlikely.

to take an active part in the formulation of policy. It is hoped that such activity will promote racial harmony and prepare the Colony for independence. To achieve these aims, a sympathetic and genuine cooperation between the Government and the racial representatives is necessary. With the exception of the Africans, the elected members in the Council have acted with optimism and energy, and the Government has accepted their participation with enthusiasm. At the present, the Council is an effective instrument in the making of Government policy. The presence of racial leaders on the Council, and the Government's acceptance of their work, make a vast change from the previously autocratic position of the Governor in the 1920's. Where once the Europeans were the only non-Government voice heard in policy making, there is now an opportunity for all racial groups to be heard and heeded.

The Legislative Council

The Legislative Council consists of Government (or Official) and non-Government (or Unofficial) members. The Government members include: (1) the Speaker, who has a casting vote, (2) the six public officials who had portfolios on the Council of Ministers, (3) eight civil servants of the Kenya Government and (4) a varying number of nominated persons drawn from all races in the community. There are at present thirty-six persons representing the Government in the Legislative Council¹ and it should be noted that there are only nine European nominated members as opposed to previous Lyttleton constitution when fifteen Europeans were appointed. (See Table II on the following page.) The Constitution authorizes the

1. Actually, the Government has only thirty-five members, since the Speaker does not have an original vote. Two of the Government members are the Corporate Members, whose terms expire 1960.

TABLE II

THE LEGISLATIVE COUNCIL

UNDER THE 1958 CONSTITUTION

	<u>Unofficial</u>		<u>Official</u>		Total
	Elected	Specially Elected	Nominated	Ex officio Members	
European	14	4	9*	15**	42
African	14	4	6		24
Asian	6	3	4		13
Arab	2	1	2		5
Total	36	12	21	15	84

* Two of whom are Corporate Members, whose terms expire 1960; one of whom is a special representative for the Arabs.

** Including the Speaker, who does not have an original vote.

Government to hold a majority of the membership in the Council¹; the Governor may add nominated members at his discretion.

The non-Government members are divided into two classifications: "constituency elected" members, and "specially elected" members. There are thirty-six constituency elected members; they consist of fourteen Europeans, fourteen Africans, six Asians (two Muslim and four non-Muslim) and two Arabs, all of whom are elected by communal electorates. There are twelve specially elected members consisting of twelve members, four of whom are European, four Africans, three Asians (one Muslim and two non-Muslim) and one Arab; this group is elected by the Legislative Council sitting as an electoral college.

Special attention should be given to the elected members of the Legislative Council since it is here that the multi-racial character of the Government is most apparent. The constituency elected members, elected by persons of their own race, provide direct representation for their electorates. Up until the time of the 1958 revisions, the Europeans not only out-numbered the Africans but also held a parity, or an even balance over all the other racial representatives in the Legislative Council. The new constitution has changed that, providing the Africans with as many representatives as the Europeans, although it should be noted that there is still great disparity between the number of persons the African and European members represent.² Thus, the Europeans are still over-

1. The Constitution sets no specific limit to the number of specially elected members; it does require, however, that one-third shall be European, one-third African and one-third Asian. (Since most of the Arabs in Kenya are Muslim they are classified with the Asians and take one of the Muslim seats.) S.I. 1958. No. 600. Part IV. Section 25.

2. Fourteen Europeans represent approximately 57,000 constituents; fourteen Africans represent approximately 5 $\frac{1}{2}$ million Africans.

represented.

Lennox-Boyd announced in November 1957 that "future expansion of the Legislative Council" would not be based on communal elections.¹ This fact should have pleased the Africans, but the method of accomplishing this goal has been a source of agitation instead. The end of communal elections as a method of expanding the Legislative Council did not mean the beginning of a common roll. The Europeans have consistently held out against a common electoral roll, and unless Whitehall arbitrarily imposes one it is unlikely that the Legislative Council, with a preponderance of European and Government votes, will create one. Any seats added to the Legislative Council come under the designation of "specially elected members." Although there is no limit to the increase in the Legislative Council membership which can be made under such regulations, the seats must be equally distributed among the Europeans, Africans and Asians. Thus, future increases in the size of the Legislative Council will not reduce the disproportionate distribution of representation as between the Africans and Europeans, and will continue to increase the ratio of the European and Asian representation. In this respect, the multi-racial character of the Kenya constitution is revealed as merely multi-racial and not as an arrangement in which all races benefit according to their number.

The specially elected members are elected by the Legislative Council sitting as an electoral college.² Candidates must be British subjects or British protected persons, twenty-one years of age and under no civil or

1. Cf. Cmnd. 309. 1957. op. cit. p. 3.

2. Cf. Kenya: Despatch on the New Constitutional Arrangements, Cmnd. 369. 1958. London: H.M.S.O. 1958. for requirements regarding nomination and election for specially elected members of the Legislative Council.

political disqualification such as bankruptcy or judicial sentence. The candidate needs five persons in the Legislative Council to support him, two as "proposer and seconder" and three to endorse his nomination. Public officers in the Legislative Council may not nominate, second or support a nomination, and they cannot stand for the office; they may, however, vote for the candidates. All other members of the Legislative Council, including nominated Government persons, may be candidates, and if they are successful the seat they vacate is filled by the Governor or a by-election in the constituency. The election is conducted by a direct and secret ballot cast in the Legislative Council. Nomination is equivalent to election if nominations do not exceed the number of seats available. If there are not enough nominations, the Governor is empowered to appoint persons to fill the specially elected seats. Any alteration of these arrangements, either in terms of the number of specially elected members or the means of selecting them, must be approved by the Council of State.

The implications of the method for selecting the specially elected members are a variation on a single theme. Since the European and Government members of the Legislative Council outnumber the non-European members, they can influence the election to a large extent. For the Government and the Europeans this means greater control over the activities of the Legislative Council. For the Africans and Asians this means a part of their delegation to the Legislative Council may be committed to views which are less extreme than those of the nationalist-minded constituency elected members. The advantage of such a situation lies with the status quo element in the Government, i.e., the Europeans. Moreover, the system of election cannot be altered by the Legislative Council. The Council of State, appointed by the Governor, is empowered to arrange for any changes, either in number or method of election for specially elected members. As a result,

the Africans are highly critical of the specially elected seats.

The non-Government seats in the Legislative Council need never be vacant. The Governor may appoint persons to replace vacancies caused by resignations, illness or death, removal, and failure of a constituency to elect a representative. In this way the elected members can always have a full representation in the Legislative Council. All members serve at the pleasure of Her Majesty's Government, though the usual term for elected members is four years.

The major function of the Legislative Council is to implement proposals concerning legislation put forward by the Governor and the Council of Ministers. Members may initiate bills which do not relate to finance matters, and only the Governor presents the budget. Those elected members who sit on the Council of Ministers, where policy is formulated, are in a position to influence the bills proposed by the Government. Under the terms of "collective responsibility", however, elected members who have "crossed the floor" and joined the Government in the capacity of Ministers, are expected to support Government measures. The Europeans and Asians who have joined the Council of Ministers have met this obligation. The Africans object to this requirement on the grounds that they should be free to vote in the Legislative Council as they see fit, and they regard elected members who join the Government as "stooges."

If the Legislative Council does not enact legislation requested by the Government, the Governor has the power to declare the bill as law. Likewise, he may use his reserved powers to veto a bill by refusing to assent to it. The Secretary of State may disallow any law passed by the Legislative Council and signed by the Governor. The frequency and location of Legislative Council meetings is determined by the Governor, and he may also prorogue or dissolve the Legislative Council. The Governor,

however, is required to call the Legislative Council together at least once a year in spite of the extensive power he holds. The Governor has not yet hampered the operation of the Legislative Council.

The Council of State

The Council of State is designed "to protect any one community against discriminatory legislation harmful to its interests"¹ and this is a unique contribution to Kenya's constitutional system. Its unique character derives from an implicit acknowledgment that race discrimination does exist in Kenya, and that a formal institution of government is considered necessary to cope with it. This frank admission that unfair legislation may occur is a candid recognition that a plural society, such as Kenya, carries in it the seeds of racial conflict. The basic premise seems to be: if the several races are unable to achieve harmony, if one or two of the communities can create an advantageous position for themselves to the disadvantage of a third community, one means of lessening the impact of conflict is to establish a governmental institution which can intervene in matters of discrimination. It remains to be seen whether unfair practices against minority or economically weak majority groups can be eliminated by this means. It may, at least, put a brake on politically initiated discriminatory activity by placing hindrances on decision making bodies.

When Lennox-Boyd announced the details regarding the new Council, he emphasized the fact that "the establishment of the Council of State does not introduce a bi-cameral system of legislation in Kenya."² The Council

1. Cmd. 309. 1957. op. cit. p. 4.

2. Cmd. 369. 1958. op. cit. p. 4.

has the power of revision and delay relating to "discriminatory" legislation and no other. Furthermore, it should be noted that this term has been narrowly defined. The Governor declared at the Council's inauguration ceremony, that it would "not intervene merely because a provision was discriminatory it would do so only if it was unfairly discriminatory."¹ Yet, the power of "revision and delay" is no small power in the dynamic context of African politics.

The decision as to whether legislation is discriminatory or not lies with the Council. The Legislative Council may ask the Council of State for advice, and likewise, the Council of State may initiate proceedings leading to the presentation of a statement to the Legislative Council regarding so-called "differentiating"² bills or laws. In the event that the Council reviews a bill which is currently before the Legislative Council, the legislative group must consider the Council's appeal though there is no requirement that the objections or recommendations be met. On the other hand, such legislation may be held up for varying periods of time (four months to a year) thus forcing the Legislative Council to reconsider a bill if it is anxious to obtain action. Moreover, the Council of State may appeal to the Governor to withhold approval of a bill and to refer it to Her Majesty for signification. If a law considered to be differentiating is already in effect, the Council may recommend its annulment. The Governor is free to act in opposition to any claims made by the Council, but Whitehall must be informed as to his actions and his reasons for so doing.

1. Alan Gray. "Quarterly Chronicle: Kenya State Council." African Affairs. Vol. 57, No. 229. October 1958. p. 258.

2. Cf. Cmnd 369. 1958. op. cit., p. 4, for definition: "any Bill or instrument likely in their practical application to be disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities."

In effect, the power of the Council of State extends to both bills and laws, and the Council may appeal to all sources of political authority within Kenya and to Whitehall for revocation of discriminatory legislation. Its political power can easily and readily be used. Once the administrative machinery of the Council is put into motion and a statement is laid before the Legislative Council or the Governor, the recommendation must be considered before further official action can be taken. In addition, the Council itself can be called into session at the request of one member, and the chairman is obliged to see to it that the protest of even one member can be heard in Council.

The membership of the Council of State is drawn from all races on the basis of individual merit, "though not upon any principle of sectional representation."¹ The Council, appointed by the Governor in June 1958, consists of ten persons, five Europeans and five non-Europeans, exclusive of the chairman. The chairman, who is a European, has a casting vote in the event of an even division over an issue. In his acceptance speech, the new chairman, Sir Donald MacGillarray,² pointed out that the Council is a new species in British constitutional forms, and warned that "it is likely that our habits may be somewhat unconventional."³ It is hoped that the Council may develop into the kind of agency Lennox-Boyd wanted it to be: "an impartial and vigilant guardian of the interests of all communities."⁴

The African members of the Legislative Council object to the Council of State on the grounds that it is unnecessary and claim they had no part in

1. Cmnd. 369. 1958. op. cit., p. 3.
2. Cf. E.A.&R. June 5, 1958, pp. 1252-1253, for biographic data on the chairman.
3. Gray. op. cit. p. 258.
4. Cmnd. 369. 1958. op. cit., p. 5.

its creation. Lennox-Boyd admitted, in the House of Commons, that he did not discuss the new institution "in its complete form" with any of the elected members' organizations before he left Kenya.¹ He added, however, that he picked up ideas as to what he thought the racial leaders would consider a "fair settlement" and apparently concluded they were looking for safeguards against possible discriminatory legislation. If there were a feeling of mutual distrust in Kenya, then, as Lennox-Boyd put it, the Council of State would "provide a feeling of security for the people of all races."²

Lennox-Boyd was not queried, however, about the possibilities of discrimination under the new constitution, or against whom discrimination might occur. Even though the Africans received additional seats in the Legislative Council, the non-European representatives are still in a minority there. Numerically speaking, the African and Asian representatives could not prevent discriminatory legislation if the European and Government members of the Legislative Council were intent on such action. On the surface, at least, it would appear that the Council of State would operate to the advantage of the Africans.

One of the first statements of the Council of State was to protest that the 1958 Hotel Regulations raised standards to such an extent that Asians and non-Europeans would be forced out of business or required to raise their prices unduly in order to meet the costs of maintaining higher standards.³ The Council's action was clearly intended as a protection for Africans and Asians, against what may be construed as European

1. H.C. Deb. v. 577. 14 November 1957. col. 1117.

2. Ibid., col. 1115.

3. Cf. E.A.&R. August 14, 1958. p. 1586.

efforts at discrimination. Yet, the Africans still object to the work of the Council.

What are the reasons for this African protest against the Council? At this point, it is only possible to speculate, but there are three possible causes for the attitude of the Africans toward the Council. First, there is the consideration that the Africans do not want the Council to be successful in its work. Political discrimination against the Europeans may be remote at this time, but it is still more than possible against the Africans. As long as the Africans can point to injustices in the governmental system they can show cause for agitation against the present constitution. The loss of any cause for argument lessens the possibility for change.

On the other hand, the second speculation shows greater political acumen on the part of the Africans. If the Council of State is successful, and changes in the Government occur in 1960 as proposed, the Council may serve to protect the Europeans against a possible non-European majority in the Legislative Council. Thus, an African majoritarian position, which is the aim of the African leaders, would be frustrated by the tactics of delay and revision which the Council could easily utilize. Last, and probably most important, the Council of State is empowered to make regulations for any future increase in the number and means of electing the specially elected members of the Legislative Council. The Africans want a larger representation in the Legislative Council, and they seek universal suffrage. Any provision which interferes with these goals is met with African opposition.

MULTI-RACIAL GOVERNMENT--PROGRESS AND PROBLEMS

Reactions to the 1958 Constitution

Introduction

When Lennox-Boyd appeared in the House of Commons to defend the abolition of the Lyttleton settlement and explain his plans for the new Kenya Constitution, he made two major points regarding Whitehall's future plans for Kenya. First, he announced that the Colonial Office did not foresee a date at which the British Government could relinquish control over Kenya.¹ Implicit in this statement is his recognition that the plural society in Kenya is in no way prepared for independence and that the continued presence of the British Government is necessary for political stability there.

Second, and perhaps more significant, he pointed out that Whitehall's ultimate purpose "would be to enable all who have made their homes in Kenya, of whatever race, to feel they have an enduring role to play and that the standards they have set shall be maintained." Lennox-Boyd could not have made a clearer statement regarding Whitehall's attitude vis a vis the European settlers in Kenya. British standards in Kenya, it appears, will be maintained at all costs, whether the Africans want them or not. If Whitehall intended creating a partnership government in Kenya, it is one in which the British Government and the Europeans are the senior partners and the Africans serve in the capacity of junior partners newly promoted from apprenticeship.

1. H.C. Deb. v. 577, 14 November 1957, col. 1115.

2. Ibid. A conservative African periodical commented editorially that the new constitution indicated a "move away from communal representation, and the increasing opportunity for Kenyans of each and every race to make a vital contribution in the country's affairs..." African World, January 1958, p. 23.

The Labor Opposition, replying to Lennox-Boyd in the House of Commons, suggested that it was an error to impose a new constitution in Kenya without obtaining agreement from all racial groups,¹ and that a constitutional conference for Kenya seemed to be in order.² From this exchange an observer could anticipate the immediate political future in Kenya. Since that time the Africans in the Legislative Council have made these two points time and again, and it is clear they will continue to operate on these premises. This chapter is primarily an account of African political reactions to the Constitution of 1958, for the current record of Kenya's political controversies is one initiated primarily by the African elected members of the Legislative Council. That record, it should be noted, is one which the Africans have thus far created within the constitutional framework of Kenya.

1. H.C. Deb. v. 577 14 November 1957. col. 1112.

2. H.C. Deb. v. 579 3 November 1957. col. 197.

African Reactions

The African elected members of the Legislative Council flatly rejected the Lennox-Boyd proposals and attempted to disengage themselves from any responsibility for it. O. A. Odinga, an elected member, made a characteristic comment:¹

We shall have nothing whatsoever to do with the new constitution, and it follows that we are not actually involved in any arrangements which result from the constitution.

Consequently, they refused to accept their portfolios on the Council of Ministers and sharply criticized admitting specially elected members to the Legislative Council. Saying that their objective is "undiluted democracy", i.e., a governmental system in which the majority is fully represented,² they rejected the six additional seats that Lennox-Boyd proposed in November 1957.³ Mboya indicated he was not interested in making a bargain with the British Government, that he wanted a truly democratic government for his people.⁴ The Africans accused the British Government of resorting to an "old-fashioned, colonial and imperialist technique used in the past to preserve colonial rule and in this case continue to ensure white settler domination."⁵ Denouncing British "trickery" and "self-deception" the Africans said they were prepared to resign their posts in the Legislative Council and go to the country for a vote of confidence.

1. African World. February 1958. p. 36. Quoted in an editorial on a press conference with the Africans. Odinga, incidentally, defeated B. A. Othman, a nominated member of the Legislative Council in the African elections.

2. New York Times. November 14, 1957. 3:5

3. In January 1958 the African elected members boycotted the Legislative Council debates which provided for constituencies and arrangements for the six new elected African representatives. The bill was passed without difficulty. E.A.&R. January 23, 1958. p. 678.

4. Economist. November 23, 1957. p. 668.

5. "News Briefs." Africa Special Report. Vol. 2, No. 11, December 1957. p. 9.

The African elected members did not give up their seats in the Legislative Council, however, and since November 1958 they have consistently used their position in the Legislature to register official protests in the debates of the Council.¹ They refuse to accept portfolios with the Government and there is little indication that they will retreat from this position.²

The reactions of the Kenya Government and the Europeans is simply expressed as a "holding the line" tactic. Lennox-Boyd can report in the House of Commons that the constitution is at work in spite of the growing intransigent mood of the Africans.³ Group Captain L.R. Briggs, Kenya's European Minister without Portfolio continues to point out: "If Africans participated in the Government they would come to realize the magnitude and complexity of the political problems...."⁴

1. Cf. Leg. Co. Deb. v. 76, part I. May 22, 1958. col. 768-809 and col. 837-884. This was a budget debate on African affairs and the Africans used every opportunity to discuss political grievances rather than specific issues of housing and community development. Occasionally the Speaker (Sir Ferdinand Cavendish-Bentwick) would ask an African member "to please try to get back to the subject under discussion." col. 795.

2. Cf. Gikonyo Kiano. "Political Trends in Kenya." Africa South. Vol. 3, No. 1. October-December 1958. pp. 69-76.

3. H.C. Deb. v. 587. 8 May 1958. col. 1398.

4. E.A. & R. January 20, 1958. p. 700. Quoted from a speech made by Briggs to a European group in Eldoret.

To all this, Mboya adamantly replies that Kenya's government ought to be changed at once.¹ Meantime, as the Government in Kenya continues, with or without the cooperation of the Africans, Mboya's Laborite friends in the House of Commons look in vain for African participation in the Council of Ministers² and occasionally ask Lennox-Boyd: "Is it [the constitution] not bound to fail if the African population is opposed to it?"³

1. E. A. & R. March 27, 1958. p. 943.

2. H.C. Deb. v. 585. 1 April 1958. col. 113.

3. H.C. Deb. v. 587 8 May 1958. col. 1398-99.

General Reactions and Attitudes

How do the Europeans and the Government "hold the line"? The ban on African political organizations continues, and only district-wide political organizations are allowed. Since the constituencies often include several districts, no African elected member can organize a political party which covers his entire constituency. A permit is required for public meetings and speeches must be tape-recorded.¹ Following a rock throwing incident at a speech by Mboya in Nairobi, all African public meetings were banned in that city from January 19, 1958 until February 20.² Since the ban coincided with the election campaign period for the new African members in the Legislative Council, it was with cause that Mboya bitterly commented that this was a means of insulating "the rest of Kenya from Nairobi politics and to shut me personally out of the political influence of the country."³

The Kenya Government considers the ban on country-wide African political organizations as necessary to security, since they fear a renewal of a national subversive movement. Recently the Government has found evidence of a new, under-ground terror organization, Kiama Kia Muingi, thought to be a passive branch of the Mau Mau.⁴

1. H.C. Deb. v. 581. 4 February 1958. col. 155-156.

2. H.C. Deb. v. 583. 6 March 1958. col. 147.

3. New York Times. January 24, 1958. 11:4.

4. New York Times. April 14, 1958. 3:6.

In January 1958 the Kenya Government proscribed this movement as "dangerous to the good government of the Colony"¹ and as late as

April 29, 1958, Lennox-Boyd expressed grave concern that Kiama Kia Muingi is a threat to security in Kenya.²

Uneasiness among all the population increased when the Kenya Government finally announced a ban against the carrying of pangas (long-bladed bush knives) and any other kind of "offensive weapons" after dark.³ Although proscribing secret organizations and limiting the activity of legal and public groups are distinctly different measures, both the Europeans and the Africans confuse the two measures. Many Europeans suspect a nation-wide organization would be the framework for a dangerous secret society and African leaders consider the ban on organizations and public meetings as repressive measures.⁴

1. E.A.&R. January 23, 1958. p. 676.

2. H.C. Deb. v. 587. 29 April 1958. vol. 342. W. F. Coutts, Chief Secretary in Kenya, eventually felt compelled to issue a statement that the security situation was under control, although security measures were essential to public order in Kenya. Cf. E.A.&R. December 18, 1958. p. 498.

3. New York Times. January 24, 1958. 11:4. Cf. also: "News Briefs." Africa Special Report. Vol. 3. No. 2. February 1958 p. 5.

4. The Africans have been exceedingly clever in circumventing a January 1959 ban against public meetings in the Nairobi districts. On February 16, 1959, Tom Mboya organized a "dance festival" in honor of John Stonehouse (British Laborite member of Parliament, later expelled from Northern Rhodesia as a "prohibited immigrant" for allegedly provoking political disorder there. Cf. New York Times. March 5, 1959). A crowd of some 800 Africans attended and heard Tom Mboya, who began his speech with: "You know we're allowed to make no speeches...." and proceeded, speaking in Swahili, to discuss political issues in Kenya. There were songs, African dances and entertainment in much the same fashion as a Tammany Hall clambake. Cf. New York Times. February 16, 1959. 2:5.

The African elected members object to the restrictions placed on their political activities. On more than one occasion they have made it patently clear they are not in sympathy with the Kiama Kia Muingi and that everyone - Africans and Europeans alike - would have a great deal to fear from a new terrorist movement. They point out, however, that if national African political organizations were allowed, the Africans themselves could detect and stop subversive movements.¹ Suppressing African organizations, so they argue, only leads to forcing a frustrated nationalist movement underground where it cannot be controlled.²

Because of the limitations placed on African political activities, the African elected members of the Legislative Council are placed in a dilemma. If they are too extreme in their public speeches and arouse the African crowds to violence or public incidents, they face more Government restrictions. If they are too mild or moderate in their approach, their own friends will suspect that they accept Government policy. In either event, the African leaders face frustrating circumstances.

1. In February 1959, British Laborite Barbara Castle made the same suggestion in the House of Commons. Julian Amery, Under-Secretary of State for the Colonies, replied; "African political meetings did not prevent the emergence of Mau Mau." E.A.&R. February 19, 1959. p. 738.

2. Leg. Co. Deb. v. 72. part II. June 6, 1957. col. 954-955.

Reactionary European elements in Kenya are unwilling to extend to Africans the political rights they reserve for themselves. This is mainly out of fear that strong nationalistic forces will overwhelm the African population and lead to uprisings. The governmental institutions in Kenya may be workable, but the lack of communication between Europeans and Africans creates suspicion between the two groups. After the elections for the six additional Africans were over, a reactionary editor commented:¹

As we fully expected, they bring into the Chamber six more assentors to the Mboya policy of refusing to work the Constitution under which their seats have been created.

The remark was well-timed, since the newly elected Africans disclaimed the new constitution as soon as they were seated in the Legislative Council. To this the editor deprecatingly remarked: "... the silly young men who are satisfied with nothing except themselves."² As Gikonyo Kiano, one of the new members of the African delegation in the Legislative Council suggested, the Government and people of Kenya must accept the responsibility of introducing elections for the Africans.³

1. E.A.&R. April 3, 1958. p. 964.

2. E.A.&R. April 10, 1958. p. 996.

3. Kiano. "Political Trends in Kenya." *op. cit.*, p. 75. Kiano has a B. A. in economics from Antioch College, an M. A. from Stamford University and a Ph. D. in political science from the University of California.

The Specially Elected Members

In March 1958 the African elected members announced they would boycott the Legislative Council meetings on the days the specially elected members were nominated and elected.¹ They also indicated that they would not cooperate, recognize or work with any African who accepted nomination or election as a specially elected member.² The elections went on without further incident in the Legislative Council, and more Africans than any other group came forward as candidates.³ Outside the Legislative Council, however, the African elected members were active in their opposition to the election of the specially elected representatives, and while trying to thwart the new constitution they indulged in tactics which eventually brought them before a court of law.

In April seven of the African elected members distributed a pamphlet denouncing the Lennox-Boyd settlement and those Africans who were seeking a place in the Legislative Council as specially elected members. Inveighing against such Africans as "stooges, quislings and Black Europeans", the Africans wrote:⁴

The stooges whom we have been telling you about should be treated with the contempt they deserve. In this struggle for our freedom a time comes when what the majority desire must be respected and when a few self-seeking opportunists must not be allowed to stand in the way of our political development.

1. E.A.&R. March 13, 1958. p. 880.
2. H.C. Deb. v. 587. 1 May 1958. col. 48.
3. H.C. Deb. v. 587. 8 May 1958. col. 1398.
4. E.A.&R. April 24, 1958. p. 1075.

For this act the Kenya Government summoned the Africans to Nairobi Magistrates' Court to face charges of libel and attempt to intimidate Africans who announced their candidacy for the specially elected seats.¹ The prosecutor for the Crown found them guilty of libel and fined each one £ 75.² The Court announced that the purpose of the trial was to preserve "freedom of speech, thought and action among the African community not to stop anyone expressing their political views."³

Clearly, the African elected members had a different concept of free speech, but the problem their action posed is an example of the political dilemma in Kenya today. The Court could have pressed charges under an Election Offences Ordinance which might have cost the Africans their seats in the Legislative Council. This action would have been undesirable, since it would have made Mboya and his six colleagues martyrs in the eyes of the Africans. Moreover, it would have drastically reduced the African membership in the Legislative Council and aroused the African population to either violent or passive resistance. If the British resort to a "get tough"

1. Alan Rake. "The Lessons of Libel:" Africa South Vol. 3, No. 1. October-December, 1958. p. 78. The pamphlet was not the only African method in protesting the elections of the specially elected members. Mboya's Nairobi Peoples Convention Party organized two "sacrifice days" and during that time many Africans boycotted buses and bars and refused to buy cigarettes.

2. An interesting, though highly prejudiced account, of the proceedings can be found in E.A.&R., June 5, 1958, pp. 1259-1260 and June 19, 1958, pp. 1305-1306. Editor Joelson's occasional reactionary views were more than apparent in his reporting. Joelson had earlier commented: "that blatant attempt to intimidate anyone who might emerge as an African political spokesman has failed, and nine Africans, some with good records, have already allowed their names to be mentioned as candidates." E.A.&R. April 17, 1958. pp. 1021-1022.

3. "News Briefs." Africa Special Report. Vol. 3. No. 6. June 1958. p. 8.

policy in Kenya they may forfeit any and all African cooperation. If Whitehall makes too many concessions it will not be able to hold the line against African politicians, and the European population may suffer.

In any event, the Government of Kenya survived the incident and so did Mboya and his friends. The specially elected members were chosen, and the Legislative Council proceeded with its business as usual. And, in the fashion of newly elected groups, the specially elected members created an Association for themselves and issued a manifesto, saying their primary object is to promote "policies for the benefit of Kenya as a whole without sectional or racial bias."¹ It should be noted that the Specially Elected Members Association is probably the only multi-racial political group in Kenya, since its membership consists of four Europeans, four Africans, three Asians, and one Arab. The relationship between the specially-elected Africans and the constituency elected Africans is not clear. Since Mboya and his colleagues have labelled the specially elected Africans as "stooges", and they associate themselves with the multi-racial aspect of Kenya's Government, we can speculate that the relationship between the two African groups is not too strong.

1. Cf. H.C. Deb. v. 587. 1 May 1958. col. 48. for the complete statement of the Specially Elected Members' Association.

The Africans Debate the Constitution

From the very beginning of elected African representation in the Legislative Council the African members consistently asked for a constitutional conference which would re-consider the governmental structure in Kenya. The Colonial Office refused these requests with the same regularity. For the most part, African leaders in Kenya have limited themselves to peaceful means of agitating for a constitutional conference. Although they have occasionally exchanged bitter remarks with other members of the Legislative Council and frequently exhorted crowds of Africans to political agitation, they have been peaceful (never docile) and have operated within the constitutional framework of Kenya. The climax of this method of opposition to the constitution came June 24, 1958, in a Legislative Council debate. At this time the Africans made a formal and eloquent plea for a new constitution, and all their activities in the Council since then are anti-climatic. The debate sums up the argument on both sides of the question and reveals far more than an account of scattered comments and speeches by Africans and Europeans.¹

On June 24, 1958 the African representative Muliro introduced a resolution to the Legislative Council, requesting that a constitutional expert be appointed to examine the present constitution and make recommendations for its improvement, and that a constitutional conference be called with a view to creating a new government which would create harmony and stability in Kenya.² Muliro summarized the accumulated African grievances, and hopes, in Kenya to support his case.

1. Leg. Co. Deb. v. 76. June 24, 1958. col. 2175-2261 for the full debate.

2. Ibid. col. 2175.

If Kenya is to have a democratic government, he pleaded, then the principles of democratic government should be applied. The Africans want greater representation in the councils of government; they wish to assert themselves as the majority in a democratic society,¹ and believe they are entitled to the same meaningful opportunities for political expression which the Europeans and Asians enjoy.² If the British Government could meet these requests the Africans would feel trust and respect for the Kenya Government.³ Recounting the history of the Colony, Muliro pointed out that the British Government usually gave the Europeans whatever they wanted, and that Whitehall continues to follow a policy of appeasement in the new Constitution.⁴ Kenya, he concluded, is an African country, why not let it be democratically governed by Africans?

The supporting arguments from the African members indicate that they carefully planned their respective positions prior to the debate. They gave comprehensive explanations of their attitudes and grievances. If Kenya could not be governed democratically and their plea for a constitutional conference rejected, then return Kenya to a bona fide colonial rule⁵ and make no pretense about self-government and a multi-racial policy.

1. Ibid., col. 2185.

2. Ibid., col. 2188.

3. Ibid., col. 2190.

4. Ibid., col. 2188.

5. Ibid., col. 2216.

Kiano complained that the multi-racial concept is too vague to be meaningful. "It simply says there will be a racial mixture"¹ he added, and this does not necessarily give Africans adequate representation. The Government's policy made the future "uncertain and unsatisfactory" since the African did not know where it would lead. How could Africans be expected to support this?²

According to the African view, they cannot accept portfolios in the Council of Ministers because the Government policy is unfair to the Africans. "I would be betraying the people whom I have represented"³ said Mr. Arap Moi. If the Government will not extend the use of communal elections for future representation of the Africans in the Legislative Council, how can an African honestly agree to the Government's policy? The Government gives universal suffrage to the Asians and Europeans, but not to the Africans. Is it reasonable to expect an African member to support that? Are the Africans any less the Queen's subjects than the Europeans and Asians?⁴ Belittling the "pruned ministerial posts" as appeasement efforts, Mr. Ole Tippiis insisted that the present constitution was imposed on Kenya and asked: "if they think they can push it through and then at the same time call for cooperation..."⁵

1. Ibid., col. 2242.

2. Ibid., col. 2242.

3. Ibid., col. 2227.

4. Ibid., col. 2228.

5. Ibid., col. 2222.

A constitutional conference would be a means of creating African trust in the Kenya Government, another member claimed. Until all racial leaders could "shed suspicion, hatred" and try to find some mutual understanding, Kenya could never have a workable constitution.¹ The Africans predicated that political harmony could never be achieved if, the Africans were refused opportunities to participate in the development of the country.² In an almost threatening tone, one African pointed out: "No one in Kenya can stop the Africans today if the whole African community today rises."³

The Africans drew support from other racial representatives who acknowledged the logic of their argument. Gradually debate grew bitter and revealed Asian and Arab resentment against the Europeans, as well as a split among the Europeans themselves. Mr. Travadi, speaking for the Asians, pointedly remarked that neither the Asians nor the Africans were satisfied with the new constitution, that the Asians received no additional seats on the Council of Ministers and that⁴:

.... there is only one community which seems to be satisfied with this present Constitution, and this is the European It is the minority, and not the other races which are dictating and ruling this colony.

1. Ibid. col. 2227.
2. Ibid. col. 2207.
3. Ibid. col. 2208.
4. Ibid. col. 2225.

As far as the Asians were concerned, African non-participation in the Government required courage and ought not be criticized.¹

The present constitution gives inadequate representation to both the Asians and the Africans,² and the method of filling specially elected seats produced representatives who were acceptable to the Europeans and the Government, not necessarily spokesmen for the Asians and Africans.³ The Asians felt a conference was necessary to consider these inequities, and that all racial groups should be allowed to participate.⁴

The Arabs, through Mr. Almoody, joined the African plea for a conference. Suggesting that the welfare of the majority in Kenya was at stake, he added that the Arabs, who received only one specially elected member, had misgivings about the future under the present constitution.⁵

The European support for the African position came primarily from S. V. Cooke, who maintained that the British Government was obliged to call a conference. Cooke reasoned that under the settlement made by Secretary of State Griffiths in 1952, all racial groups were to agree to any changes in Kenya's Government.

1. Ibid., col. 2192.

2. Ibid., col. 2195.

3. Ibid., col. 2193.

4. Ibid., col. 2195-2196.

5. Ibid., col. 2238-2239.

He felt the Africans accepted the Lyttleton constitution as an expedient to meet the Mau Mau emergency, but no such difficulty existed when the Lennox-Boyd arrangement was effected in 1957. The Africans, he continued, were entitled to a hearing since they had valid grounds for objecting to the present government.¹

In reply, the Europeans did not meet the arguments posed in favor of the conference. From this point on, however, the debate became heated and acrimonious as W. F. Cou tts (now Chief Secretary) accused the Africans of non-cooperation and suggested they were trying to defeat the constitution.² Why call a constitutional conference, he asked, while the present constitution was working?³ Other Europeans pointed out that the Africans already had increased representation in the Legislative Council, and if they accept these seats, how can they reject the constitution which provided the additional representation? Did the Africans want to eat their cake and have it too?⁴

Most of the European members (nominated and elected) felt the constitution "should be given a fair trial" and that changes were bound to come in time. Since the constitution had been in operation only four months it seemed illogical to consider a revision.

1. Ibid., col. 2202-2204.
2. Ibid., col. 2247-2250.
3. Ibid., col. 2246.
4. Ibid., col. 2197.
5. Ibid., col. 2217.

Moreover, the presence of constitutional commissions and signs of political unrest would discourage foreign investors from using their capital in Kenya and the economy of the country would suffer.¹

Throughout the debate it was clear that the Africans carefully reasoned their position and that the Asian and Arab communities were sympathetic with them. The conservative and numerical strength of the Europeans seemed to make it unnecessary for them to counter the arguments of the Africans. They relied on Whitehall's policy, enunciated by Lennox-Boyd in the House of Commons a few months earlier when he answered a question on a constitutional conference for Kenya: "I think that these proposals [the constitution] ought to be given a fair trial and a substantial working period before they should be reviewed."²

Tom Mboya, who concluded the debate, made an impassioned plea for democratic government in Kenya.³

Let us make our mistakes and learn from these mistakes, because it is then that we shall gain experience that we all need if this country is going to develop.

Some people think that the African must be safeguarded for the time being. Safeguarded from what? If the Africans need any safeguards ... he needs them from the European settler politics in this country.

Probably more significant than any remark made in the debate was Mboya's evaluation of the African request for a conference. He sees their move as "an attempt by the African Elected Members to pursue a policy of constitutional change through constitutional and peaceful means."⁴

1. Ibid., col. 2218.

2. H.C. Deb. v. 582. 18 February 1958., col. 1006.

3. Leg. Co. Deb. v. 76. June 24, 1958. col. 2252

4. Ibid., col. 2250.

Commenting that if the Africans fail to get what they want through peaceful efforts, Mboya said they may turn to other means. Asked by Coutts if this were a threat, Mboya replied that it was not, but "it is a fact and let us face facts for once."¹

As Mboya warmed to his subject he grew more scathing in his remarks. What kind of logic was there in saying that fourteen elected Africans could represent six million Africans as well as fourteen elected Europeans could represent fifty-two thousand Europeans? Is it fair that the Europeans have four ministers in the Council of Ministers while the Africans have only two?² Mboya closed by warning that Kenya was drifting into a dangerous period and that the Government could expect no cooperation from the Africans unless the constitutional issue is settled.

The Aftermath

The African motion for a constitutional conference was defeated. Undaunted, a few days later the African Constituency Members of the Legislative Council sent a memorandum to Lennox-Boyd requesting changes in the Kenya Constitution. They proposed: communal elections for Africans with a universal franchise; twelve additional seats in the Legislative Council; abolishing the specially elected seats; reducing the size of the Council of Ministers and making all non-official Ministers responsible to the Legislative Council; and abolishing the Council of State. At the same time they emphasized their desire for "parliamentary democracy and government by the majority of the inhabitants of this country."³ In

1. Ibid., col. 2251.

2. Ibid., col. 2253-54.

3. Cf. E.A.&R. December 4, 1958. p. 416, where the statement is printed in full.

effect, the African leaders attacked the basic propositions on which the 1958 constitution rests.

The African leaders made their position clear: they want a constitutional conference and until then they will not cooperate with the Government. As Mboya put it, in his concluding remarks of the debate on the constitution:¹

All we are saying, Sir, is that this Constitution is unworkable without the support and co-operation of the African people. In its present form it will neither receive the support nor the co-operation of the African Elected Members. Let there be no mistake about that.

Although the Africans lost the debate, they have not lost the battle or given up the struggle. They made their future position clear, and when that session of the Legislative Council ended there should have been no doubt that they would continue their opposition to the present constitution.

When the Legislative Council reconvened in November 1958, the African elected members renewed their argument with the Government. At the opening meeting of the Legislative Council, the Governor delivered his annual address. Reviewing the policies inaugurated by Lennox-Boyd, the Governor declared:²

.... changes will not take place unless there is negotiation in the true sense of the word The Government is always open to reasonable suggestions. However, as it is now constituted, it can and, if necessary, it will carry on the administration of this country The basic constitutional position of the Colony remains unchanged.

At this point, Mboya reportedly gave a pre-arranged signal, and all the African elected members stood and left the room. The Governor continued

1. Leg. Co. Deb. v. 76. col. 2255. June 24, 1958.

2. E.A.&R. November 13, 1958. p. 308.

his speech, outlining his program for the year and concluded with:¹

The Kenya Government, in carrying out its responsibilities, intends to continue the orderly and peaceful advance of the African people in every sphere and to make sure that all who have made their home in Kenya will feel that they can continue with confidence to make their contribution to the country's development and progress.

The Governor made his position clear: there was to be no change in the constitution and the Government would carry on with or without its African elected members.²

Lennox-Boyd made the next move on November 24. In a despatch to the Kenya Government he instructed the Governor to reply to the African Constituency Elected Members' memorandum relating to changes in Kenya's constitution.³ Lennox-Boyd rejected each of the African requests, saying that the basic principles of multi-racial government, the specially elected seats, limited racial representation in the Legislative Council and the Council of State, were all essential to good government in Kenya. He said he was "aware of no circumstance which would justify any major departure from the settlement" although he would be willing to review "existing arrangements" in due course and "after sufficient experience" with the present constitution. Responding to the Africans' plea for a democratic government, Lennox-Boyd pointed out that the development of democracy comes with the "changing features of the social scene" such as "a fairly homogenous population ... a sense of

1. E.A.&R. November 13, 1958. p. 308.

2. The fourteen Africans were censured by the Speaker of the House on a motion by the Chief Secretary for "grossly disorderly conduct" and they were suspended from the Council for three days. *Ibid.*, p. 310. Interestingly enough other Africans also criticized Mboya and his colleagues. The Central Province Advisory Council, a group of chiefs and prominent Kikuyu, passed a resolution disapproving the walk-out and disassociating themselves from it. *Cf.* E.A.&R. December 4, 1958. p. 416.

3. *Cf.* E.A.&R. December 4, 1958. p. 415, where the despatch is quoted.

corporate nationhood" which supersede cultural and racial cleavages. As Lennox-Boyd sees it, these essentials are not yet present in Kenya.

At the same time, Lennox-Boyd supported both the Governor's policy, i.e., that no changes are to be made in Kenya's constitution at this time, and the political position of the Europeans in the Colony. His support of the Governor is to be expected, since the Governor is the agent of Whitehall. But, his response on the role of the Europeans is significant, since it reveals that Whitehall is still committed to the European position in Kenya. "One important feature of a mature society," wrote Lennox-Boyd, "is a readiness to accord weight and respect to the opinions and interests of numerically smaller groups." Undoubtedly this is a difficult proposition for the African leaders in the Legislative Council to accept.

Events since Whitehall's reply to the Africans' memorandum indicate that tension between the Europeans and Africans is mounting. There are several levels of discontent, all of which hinder the constitutional development of Kenya. A few examples should suffice as illustrations.

The Kiama Kia Muingi secret society is apparently still active in Kenya. In November 1958 the Minister for Defense and Internal Security revealed that within the year 349 cells and communities of the society had been broken up and that 473 persons had been convicted for subversive activities connected with Kiama Kia Muingi.¹ By February 1959, however, the Under-Secretary of State for the Colonies, Julian Amery, admitted in the House of Commons that the new secret society had "gone very deep" in certain areas of Kenya.² The existence of the Kiama Kia Muingi will

1. E.A.&R. November 13, 1958. p. 310.

2. E.A.&R. February 19, 1959. p. 738. He did not say which areas.

handicap efforts of the African leaders to obtain political advantages such as nation-wide political organizations and the right to hold public meetings unhindered by government regulations.

Even rumors play a part in the unrest. Two are of particular interest. In February 1959 it was rumored that Kiama Kia Muingi, known in Kenya as K.K.M., changed its name to Kariuki Kamuri Macharia, meaning "Revival of the Lost Light." Presumably this referred to the alleged Mau Mau leader, Jomo Kenyatta who is to be released from prison where he is serving a sentence for conviction on charges of Mau Mau terrorism. The rumor persisted and became a source of concern to many Europeans who feared that Kenyatta's return would mean renewed terrorism with the K.K.M. Eventually the Governor felt compelled to reassure the European public that Kenyatta would be restricted to the Northern Province when he was released.¹

Another rumor was apparently circulated by Mboya, who published an article in an African newsheet² referring to an alleged plan by which the Federation of Rhodesia and Nyasaland had tentatively agreed to sell arms to Europeans in Kenya "for a showdown with the Colonial Office in the event that they accede to African demands."³ W. F. Coutts, under questioning in the Legislative Council, denied the report.⁴ In both instances the rumors caused a considerable disturbance and suspicion between Africans and Europeans, and Government officials were called on to

1. Cf. E.A.&R. February 12, 1959. p. 704, for this account.

2. The Uhuru (Freedom), owned by the People's Convention Party and subsequently proscribed by the Kenya Government for inciting racial hatred. E.A.&R. March 12, 1959. p. 819.

3. E.A.&R. February 19, 1959. p. 742.

4. E.A.&R. February 26, 1959. p. 757.

clarify the situation. Although the use of rumors as a means of exacerbating race relations may be a common occurrence, it can reach serious proportions in a plural society such as Kenya where race relations are reaching a crisis:

European attitudes show signs of hardening.¹ In February 1959 the European Elected Members' Organization issued a political statement regarding their position. "Kenya is the home of Europeans and Asians as well as Africans", they pointed out.² Although they are willing to cooperate with the Africans for economic, social and political development, the Europeans said they "are not prepared to see the achievements of the pioneers in Kenya undermined by irresponsible people to the detriment of all races and creeds." The editor of East Africa and Rhodesia stated the case for British influence in Kenya in an editorial; Europeans should not:³

.... equate the surrender of British control in Africa with the spread of liberty surrender means the denial of liberty to the masses, who are far better protected by impartial, disinterested and experienced administrators of our race than by unbalanced, inexperienced and self-seeking politicians of their own race....

The Indians appear to be confused as to what position to take. In April 1958 the Kenya Indian Congress threatened to demand Indian resignations from the Legislative Council if the Kenya Government did not attempt to meet the African demands for constitutional changes by December 31, 1958. At the beginning of 1959 members of the Indian Congress split over the issue as to whether or not they would carry out their

1. Cf. statement of Mrs. A. R. Shaw, a nominated member of the Legislative Council, who feels that the Europeans in Kenya should stand firm for what has been won by their achievements. E.A.&R. February 19, 1959. p. 738.

2. E.A.&R. February 26, 1959. p. 761.

3. E.A.&R. January 8, 1959. p. 559.

threat.¹ M. R. Desai, a prominent Hindu, commented that non-participation in the Kenya Government would be "suicidal" for the Indians, and might even be dangerous to the community since it would encourage the Africans to increase their political agitation. As yet, the Indians have not withdrawn from the Kenya Government; one can only speculate that they are undecided as to whether they ought to support the Europeans or the Africans. One factor appears to be clear, however, and that is the extent to which the racial lines are drawn between Europeans and Africans. The Indian dilemma as to which group to support indicates that political allegiance in Kenya is not directed at the Kenya Government, but either to European standards or to African nationalism.

1. E.A.&R. January 22, 1959. p. 624.

Part V

CONCLUSION

CHAPTER XIII

MULTI-RACIAL GOVERNMENT - EPILOGUE OR PROLOGUE ?

Epilogue

It is possible to argue that the present multi-racial government is but epilogue to the constitutional development of Kenya, and that multi-racial government is a permanent political arrangement. The argument rests on a few facts and some speculation.

The facts which militate in favor of continued multi-racial government in Kenya are primarily legal and historical. Kenya is a British Colony and Protectorate and the nature of the British presence there, at least for the time being, means government by fiat. This would preclude any governmental system which the British Government did not want. If Whitehall should decide that the multi-racial government is adequate and suitable for Kenya's plural society, there is not much the Africans can do, at present, to change the situation. This assumes, of course, that Great Britain has both the will and the power to enforce administration of the multi-racial policy against any form of African resistance.

The second argument which favors continuation of multi-racial government is the presence of the European community. Their influence pervades the whole of Kenya's life. Historically we have seen that the Europeans are responsible for initiating the economic and political development of Kenya. European investment in agricultural and commercial enterprises not only stimulated the economy but brought with it improved health and educational standards. In turn this aided the growth of the native population and encouraged educational advancement. Through these efforts the Europeans won a preferred position in Kenya; at the same time they created African competitors for status.

Although European influence has not always been to the good, since it initially produced serious social disequilibrium in the native culture, it altered the history of Kenya in many respects. European demands for participation in governmental affairs caused the British Government to introduce parliamentary institutions in Kenya long before the rest of the population was prepared for political responsibility. Moreover, since the Europeans were the first racial group to participate in the government, they won a traditional position and acquired administrative experience in Kenya which the other races now lack. Eventually this led to demands from the other racial groups for similar political rights.

The Europeans, historically, have had sufficient influence with the British Government (sometimes only because they were Europeans) to hinder the extension of political rights to the other communities. And the British Government itself often asserted that the Africans were ill-prepared to assume political responsibility. As we have seen in cases involving the Indians as well as the Africans, the Europeans held a dominant political role in the governmental institutions until 1958.

Even today the Europeans are in an advantageous position. Although they hold only fourteen out of the thirty-six constituency elected seats in the Legislative Council, this number is far out of proportion to their actual population in Kenya. Moreover, if all the Europeans, including nominated officials and members of the Government, are counted, the European influence dominates one half, that is forty-two out of eighty-four members, of the Legislative Council. Out of the total membership of the Legislative Council the Africans, who represent the largest segment of the population, hold twenty-four official and unofficial seats; of these only fourteen are constituency elected. Selection of the remaining four specially elected and six nominated members are subject to European influence. Thus, political influence in the Legislative Council

is heavily weighted in favor of the Europeans and the Africans tend to rely on extra-legal measures, such as boycotts or walk-outs, to make their influence felt and to attract attention of both the natives and the Government. At this point it is not clear whether the Africans can rely on the Asians for political support in the immediate future, but even with the additional thirteen Asian official and unofficial members joining the Africans, they still do not have a legislative majority. Neither do the Africans enjoy influence with the Governor in the way the Europeans do; therefore they cannot rely on the Governor to use his power on their behalf when European and native interests are in conflict.

The Europeans also dominate the Council of Ministers, since they are allotted four members as opposed to two for the Africans. At present none of the constituency elected Africans will accept positions on the Council of Ministers and this leaves the field of policy formulation entirely to the Europeans. All this assumes that the Kenya Government will continue to act favorably on behalf of the Europeans, and there is little evidence to show that it will not. Historically, Whitehall has intervened to lessen European influence, but when left to itself the Kenya Government has usually yielded to European pressures.

A third argument which supports multi-racial government is the political handicap placed on the Africans in terms of restrictions on country-wide political organizations and public meetings. This negative aspect of multi-racial government reduces communication between the African leaders and the African population at large. Although this handicap is not insurmountable, it lessens the effectiveness of African leadership to such an extent that unification of the African political community will be delayed while multi-racial government makes inroads in the process of constitutional development.

There are also grounds for speculating on the stay power of multi-racial government. The Fall 1958 European elections returned a majority of "moderates" to the Legislative Council who appear to be prepared to make limited concessions to the Africans. These Europeans seem to be aware that African political pressures are irresistible in the long run and they wish to win the good will of African leaders against the day when Africans may have the power to affect European economic and political interests. It is possible that the Europeans may absorb the political and professional African elite into their social life and thus cut them off from native influence. If the Europeans were to allow the African elite an equal share in parliamentary activity, it is conceivable that the latter would accept the European presence as both an economic necessity and a reasonable political arrangement.

At the moment the British Government believes that the multi-racial policy in Kenya is the most suitable form of government for that country. The Government does not lack the power to enforce this policy, or the conviction that it is necessary to protect European interests. If the British Government wishes to ensure that "all who have made their homes in Kenya can continue to make their contribution," the multi-racial concept must remain as a cornerstone of Kenya's constitutional structure.

The case for a true parliamentary system under a multi-racial structure in Kenya is weak. Three factors contribute to this: the lack of a common will; the doubtful character of self-government in a multi-racial state; and the tension in race-relations which frequently leads to disruptive quarrels between the Europeans and Africans.

A common loyalty to the political community is basic to a successful parliamentary system. The plural society of Kenya is a loose amalgamation of European, Indian and Arab communities and an African society which as yet has not realized effective cultural and political unity. The Africans

are unprepared to admit there is any necessity for a good relationship among the races in Kenya, and unless this is achieved there will never be grounds for compromise of conflicting interests. The Africans do not accept the presence of the Europeans and the Europeans have not accepted the political situation caused by the plural society. Neither group is prepared to respond to the political ambitions of the other. The Europeans, and rightly so, fear for their political well-being if the Africans are granted equal political rights. The Africans resentfully oppose any governmental system which permits European domination over a country they consider their own.

There is a lack of trust and sympathy between these two races which causes them to turn inwardly to their own interest, rather than outwardly to the needs of the political community at large. National unity cannot be achieved under these circumstances because political energies of the racial groups are dissipated in conflict. The problem in Kenya is not so much disagreement on what is fundamental, but the failure of the races to find a basis for cooperative relationship in spite of fundamental differences.

The structure of the multi-racial government in Kenya operates against achieving self-government. The African will to establish self-government under these circumstances is lacking, and the structural arrangements of the government are not convincing evidence that parliamentary government can be realized. First and foremost, the Africans do not accept the multi-racial policy and therefore have no commitment to preserve it. There is little reason to believe that that they will continue to operate within the constitutional structure indefinitely if they have no faith in their political future under it. For example, as long as they are limited to communal electoral rolls and vote under a limited

franchise while other racial groups enjoy a universal franchise, they will consider their political position as less significant than that of the Europeans. They view such a situation as politically unequal and undemocratic and under the force of circumstances may resort to extra-legal or even illegal means to change the government. Even if the Africans obtained an unofficial majority in the Legislative Council they would be a permanent opposition in representative government. What they seek is responsible government, with the opportunity to control their own affairs.

The multi-racial government in Kenya does not answer the question: self-government for whom? At the moment it means self-government for the Europeans. If the African had their way, it would mean self-government for the Africans. And if the European and African elites united, it would mean an oligarchy over the rest of Kenya. Under these circumstances there is not even a theoretical basis to believe self-government is possible, for which self would be governing?

The tensions between Africans and Europeans follow from the absence of a common will and the defects of a multi-racial state as a parliamentary system. The past relationship between Africans and Europeans is a mixed one, since both good and ill came from it. The Europeans brought improvement in health and educational standards which have contributed immeasurably to African progress. They also created problems for land hungry Africans and raised social, educational and political barriers to African advancement. The African leaders today tend to emphasize the unpleasant aspects of the European presence; this renews old and bitter memories in the native, obscures any good the European may have accomplished and invigorates African nationalism. Under this variety of handicaps, a true parliamentary system is unlikely in Kenya. African opposition thwarted the Lyttleton Constitution

of 1954 and it appears that African leaders may be able to be as destructive with Lennox-Boyd's Constitution of 1958. The British Government brought the forms of parliamentary government to Kenya, but the true values of such a system cannot be realized under the present plural society. There is no means, as yet, to offer equally significant political roles to each racial community.

Prologue

There is greater likelihood, however, that the current multi-racial government in Kenya is but prologue to a new African state. A new era in Kenya's constitutional development may be opening up in which the Africans will eventually achieve their goal: to have a major share in the government of their own country.

Under the present multi-racial system the Africans may have limited representation in the Government, but the fact remains that they are represented. Moreover, ~~fourteen~~ of the Africans in the Legislative Council are elected members who can exploit their position with the Government, the electorate and to some extent, with world opinion.

The African elected members have already shown their power in the Government. In 1957 they defeated the Lyttleton Constitution of 1954 by refusing to cooperate with the Government; they rejected positions of influence on the Council of Ministers and agitated for additional representation in the Legislative Council. They succeeded in thwarting multi-racial policy on two substantial grounds. The Africans insisted that they had had no part in the making of the Lyttleton Constitution and argued that since they were not consulted and did not give their approval to the new government they need not be expected to cooperate. Further, and more convincing, they claimed that they were elected on a campaign pledge to reject the Lyttleton settlement, and that they therefore spoke for the African people.

On the strength of this first victory in thwarting multi-racial policy the African leaders in the Legislative Council continue to use their influence to undermine the current governmental structure.

Early in 1958 they dissociated themselves from the election of the specially elected African members and boycotted legislative activity which arranged for the election of the six additional Africans to the Legislative Council. Although they did not stop either election, they went on record before their constituents as being opposed to multi-racialism. While African leaders are hampered in their efforts to reach constituents through Government restrictions on political organizations and public meetings, they continue to meet on district levels. Eventually they will be able to exploit latent African resentments against the white man in Kenya, and possibly rally the natives to unity under the aegis of nationalism.

The tension between the African and European races in Kenya can be expected to increase. Race relations, embittered by years of European dominance, are under the strain of small irritating incidents between blacks and whites and the fear of renewed native terrorism. The K.K.M. is still active, in spite of vigorous Government efforts to bring it under control. The elected African leaders realize that violence and disorder will bring repressive measures and delay their political progress. They undoubtedly look upon it with some consternation. At the same time, the possibility of another terrorist movement similar to Mau Mau plays into the hands of the African leaders. They claim that if given greater political freedoms they can control this movement. Moreover, until K.K.M. actually breaks out in rebellion, the Africans can use it as political blackmail against the Europeans.

The cruelty and cost in lives and money caused by Mau Mau must give both the Europeans and Whitehall pause. How long is the British Government willing to cope with a multi-racial situation which may explode and once again require troops and enormous expenditures

to control? In the past, when Whitehall supported the preferred position of the Europeans against the Africans, the native population had no popular representatives to plead their cause. Further, the British Government was economically prepared to enforce its will against recalcitrant colonies.

The situation today is quite different. Europeans who look upon the present constitution as an unstinted act of generosity have lost sight of the fact that during nearly forty years of colony status Kenya and its native inhabitants have changed radically. Improvements in educational and economic spheres have produced a growing, albeit small, African middle class, who are prepared to claim their rights in their own country. The African leaders are not unaware of democratic procedures in the Western world or of the political advancements of other African countries such as Ghana and Nigeria. International relations have changed too. It is no longer fashionable for Western powers to hold colonies; assuming that there is a public opinion in the Western world, that public opinion even considers colonialism as undemocratic and unfeasible.

In the light of changes in the native population, the unpopularity of the Europeans and colonialism in Kenya, and the pressures of world politics, the British Government may eventually be willing to make significant political concessions to the Africans. Tom Mboya and his colleagues may not see "undiluted democracy" in their day, but they stand to gain sweeping political rights if Whitehall decides to sacrifice European interests for a peaceful and honorable settlement as a means of avoiding the strains and bloodshed of rampant African nationalism which is taking place elsewhere in Africa.

It is unlikely that the British will withdraw altogether from Kenya in the immediate future since that would be entirely detrimental to the European population. But if Whitehall should grant semi-responsible government or autonomy to the Colony and make broad concessions to the Africans, there is a strong possibility that a modified form of parliamentary government could be developed. We can only speculate on the outcome.

A modified popular democracy, which provided for African representation in the Legislative Council and Council of Ministers in proportion to their numbers, and protection for European economic and political rights, would have several consequences. A turbulent period of political activity would follow. Reactionary Europeans would probably pull up stakes and return to Great Britain. Other Europeans would most likely stay and accept the consequences of living by a democratic creed. The Indians and Arabs would undoubtedly adapt themselves to the new situation, as they have done many times during their centuries of residence in Kenya.

The Africans would be faced with a long period of political adjustment. Their first problem would be to accustom themselves to the complicated democratic processes which they have accepted uncritically in the past. For example, applying the concept of "one man one vote" in Kenya's native society, with its extremes of culture and poverty and varying individual abilities, may lead the Africans to accept a qualified franchise. This could be accomplished under the guise of a universal franchise with strict property, literacy and civic service requirements. Such a situation would not be much different from the early British and American experience with democracy.

Absolute political unity among the native tribes may not be achieved, but the Africans do have a common basis for agreement if for no reason other than the fact that they draw on a general and common African heritage. Although the African elections indicated tribal trends in voting, political parties could function on a congress type system which would produce political results sufficient to African needs. Whatever the political adjustments may be, the institutions would be parliamentary in nature although they would of necessity be designed to meet the peculiar problems of African society. In any event, African tribes accept the existence of one another today, and are prepared to recognize and respond to mutual needs. They would have a commitment to the state and place its preservation above tribal considerations.

These speculations assume that the Africans are capable of self-government. It is true that many Africans still believe in sorcery and witchcraft and have little comprehension of the meaning of representative or responsible government. Much the same can be said for early British and American peoples too. Many Africans also believe that good government is no substitute for self-government. The chances for parliamentary government are theoretically stronger in an African state where there is a real possibility of the emergence of a common will than in the present multi-racial structure which artificially embraces all groups and does not hold out a bona fide hope for true self-government. At present, Kenya's multi-racial state shows no signs of developing beyond the structural façade of a parliamentary system. At best the Constitution of 1958 can create patterns for future generations to follow.

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