

# DIVIDED SOVEREIGNTY TRADITIONAL AUTHORITY AND THE STATE IN GHANA

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## Introduction

Using the case of Ghana, it is argued that traditional authorities (also called chiefs) form a parallel power to the state because, in most cases, chiefs derive (or claim to derive) their legitimacy and authority from pre-colonial roots while the contemporary African state is a creation of, and a successor to, the imposed colonial state. Because the state and chiefs derive their authority and legitimacy from different sources, sovereignty and legitimacy in the post-colonial state is divided. This division has created a number of political problems for African states with regard to the processes of development and democratization.

When chiefs have been seen as competitors for sovereignty, the state has moved to limit their power. The state's view of its relationship with chiefs is analyzed through constitutional and legislative instruments as well as the evidence of challenges to the state's peace and security created by certain chieftaincy disputes. These are used to explore the question of divided sovereignty.

This state-chief dynamic transcends the particular policies of any one government. That is to say that the needs of the state to be able to reproduce itself may drive other specific aspects of state policy, or, to put it another way, the state's needs provide a central thrust containing parameters, one of which is the need for the state to manage its relationship with chiefs over sovereignty, authority and legitimacy. Specific events may guide state policy within these parameters.

## Divided Sovereignty

Stretton has noted that different authors can take an analytical concept and impose

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very different meanings upon it, according to their needs (Stretton 1969). I wish to examine the concepts of sovereignty, legitimacy, power and authority only to the extent that they help us to understand one set of significant divisions in the politics of state-chief relations at the concrete level. and also to a more limited extent at the abstract, conceptual level.

As a Canadian, I may say that the concept of 'sovereignty' is not without interest to me. In this work, however, sovereignty is of interest because it is a key component of the common definitions of the state. If we can find some significant difference in the ways in which sovereignty operates in African countries such as Ghana because of the presence of 'traditional authorities' or chiefs from the ways in which it operates in Canada, then our conception of the state needs to be reconsidered at some future time.

That bible of orthodox North American social science, the *International Encyclopedia of the Social Sciences* defines the state as "a geographically delimited segment of human society united by common obedience to a sovereign" (Watkins 1968: 150). The contributor, Watkins, goes on to sharpen the focus of the centrality of sovereignty to the concept of the state: "The state is a territory in which a single authority exercises sovereign powers both *de jure* and *de facto*." It might be said that the state is the government of complete sovereignty in order to distinguish it from its various component parts rooted in the state's own legitimacy. Before examining the roots of legitimacy, let us first examine this idea of the state being the "single authority [that] exercises sovereign powers."

King is not so unequivocal as Watkins on the question of the final power. He defines sovereignty as the "power or authority which comprises the attributes of an ultimate arbitral agent... entitled to make decisions and settle disputes within a political hierarchy with some degree of finality" (King 1987: 492). Sovereignty has four major attributes: (1) it is located at the highest level in a political hierarchy, (2) it is the final power, (3) it has the greatest public generality of effect, (4) it is independent but subject to interaction with other sovereign and non-sovereign bodies and influences. It is on the questions of 'highest power' and 'final power' that the interactions of traditional authorities ('chiefs') and the state in Ghana suggest the need to modify these common conceptions of sovereignty.

King (1987: 492) notes that the 'diffuseness' of the highest power does not preclude the latter's existence. Indeed he argues that such diffuseness of sovereignty is characteristic of federal states where there is not one locus of power. It might be said that King argues federalism is a case of 'diffuse sovereignty'. However, he concedes that in such cases, the "...highest' power tends to reduce to a 'final' power: a decisional procedure may lead to distinct power centers." He goes on to argue that "[a] sovereign decision is final in the

specific sense that no *inferior* (subordinate) agent within the hierarchy can (or is entitled to) reverse it" (King 1987: 493).

This raises the interesting question of whether or not traditional authorities in Ghana (and in other states) are inferior agents within the state hierarchy. The 1979 and 1992 Ghanaian Constitutions give some weight to the idea that chiefs may not be 'inferior agents'. These Constitutions formally exclude the Parliament from the determination of who was or was not a chief, yet the National House of Chiefs, a body composed of chiefs but formally ensconced in the state constitution, has this power (see below for further discussion). Can an entity that appears to be sovereign in most respects co-exist with an entity that appears to be sovereign in one respect?

What is the nature of sovereignty here? Is it diffused or divided? Is it akin to a constitutional prohibition on the executive and legislative branches of government from intervening in the judicial branch? King argues:

Sovereignty can be clearly divided among a plurality of agents (whether legislators in a sovereign assembly voting upon a measure, or different branches of a government or state [provinces, regions] in a federation) without in any way detracting from finality of decision. (King 1987: 495)

But his division is clearly one of diffuse sovereignty because he assumes a common root of legitimacy within the state. Even a 'complex federal democracy' such as the United States has derived its roots of legitimacy from a single system, i.e., the British colonial state in North America - much changed though the U.S. state may now be through its own experiences. By contrast, Ghana (and many other African states) derive from two sources: the imposed European colonial states and the pre-colonial African polities. There are thus two different bases of legitimacy. What King frames as a procedural question vis-à-vis the question of finality of individual or collective sovereign agents should rather be framed as a question of the basis of the legitimacy of the 'sovereign'. King's examples of the diffusion of sovereignty amongst several agents surely presuppose that they all share a common framework or basis of authority and legitimacy. If this is so, then the case of states containing traditional authorities (be they countries in Africa, Asia or the Americas) is a different situation because the two sets of actors are rooted in different bases of legitimacy.

Legitimacy, Connolly (1987: 279) argues, is the basis by which a political order seeks "the allegiance of its members". Baynes (1993: 533) writes that legitimacy is "a political order's worthiness to be recognized". Both Connolly and Baynes note that the basis of that recognition has changed over time and that differing

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bases of legitimacy exist today. Baynes notes:

Because the reasons offered in support of an order can differ - the preservation of customary forms of social life, the continuity of a legally recognized dynasty, the maintenance of peace and security, the promotion of general welfare, etc. - one can also speak of different conceptions of legitimacy according to the reason given. (Baynes 1993: 533)

Such bases of legitimacy may be secular or religious. (Baynes 1993: 533-534; Connolly 1987: 279-280). In the latter case, Connolly writes that "custom is touched by divine purpose and political authority is anchored in a larger cosmic order" (Connolly 1987: 279) This conception is remarkably like that used in conjunction with traditional authority in Ghana where sacred authority is constantly used to legitimate the political authority of the 'chiefs'. This sacralization strategy of legitimation is implemented from the moment of inauguration of the new officeholder to that abdication, removal or death. The custom of traditional authority in Ghana depends on the sacred. As will be seen in the discussion of the Fourth Republican Constitution, certain aspects of 'chieftaincy' were not allowed to come under the control of the Ghanaian state in the form of Parliament. Implicit in this decision is a recognition of the special sacred roots of traditional authority. These constitutional provisions are evidence that elements within the Ghana state recognized that traditional authority is special and distinct from at least such a major state institution as Parliament.

It will be further argued that the sacred and political bases of legitimacy in traditional authority in a contemporary, post-colonial state such as Ghana are rooted in the pre-colonial period. In other words, traditional authorities draw their legitimacy from roots other than those of the Ghanaian state. 'Chiefs' legitimacy comes (mainly) from the sacred and political order that existed before the imposition of the colonial state. 'Chiefs' or traditional authorities may have been modified to greater or lesser extents by the colonial and postcolonial states, but traditional authority's legitimacy pre-dates the latter two state forms. The colonial and post-colonial states depend on legitimation strategies that are rooted elsewhere than in the pre-colonial period, whether these are conquest, treaty, popular consent or something else.

Baynes raises a further point that is of concern to our argument at this point when he suggests it is useful to examine "the state's capacity to generate belief in its legitimacy" (Baynes 1993: 534). A key conceptual and political question asked in this regard is whether or not traditional authorities and the post-colonial African state compete for legitimacy even if they seek legitimacy from nearly (perhaps mainly?) mutually exclusive sources. In other words even if it is a question of

mangos and oranges, are there still only so many pieces of fruit to be eaten? Is legitimacy a zero-sum game? What are the implications for the exercise of sovereignty, power and authority in such a situation?

Friedman argues that if power is to be understood as "the ability to compel obedience", authority is to be distinguished as legitimated power, i.e., power perceived by those involved as being rightfully or legitimately exercised (Friedman 1987: 28). Thus if traditional authorities and the state draw upon (largely) mutually exclusive bases of legitimacy, putting aside for the time being the question of sovereignty, chiefs and the state can be regarded as exercising legitimate power, i.e., authority, each in their own sphere. In turn, it could be argued that, just as legitimacy, authority and power are divided asymmetrically, so too is sovereignty divided between traditional authorities and the colonial and post-colonial states.

Western definitions of authority, such as that of Friedman, seem to assume that there is an undivided basis for recognition of the true holder of authority. The question that arises here is what happens when sovereignty, legitimacy, authority and power are divided as they appear to be in some African states such as Ghana. The Ghanaian state sees itself as the source and repository of authority and sovereignty because it sees itself from the perspective of classical Western theories of the state in international law. However, numbers of Ghanaians, including chiefs, do not see the state as having authority in certain matters of chieftaincy. The prohibitions in the 1992 Constitution, discussed below, are one example of this belief.

If chieftaincy were a private matter, such as religion in contemporary Ghana, the state would not have such difficulty withdrawing from it. Then the lack of recognition of the state's claim to authority over chiefs by many chiefs and other Ghanaian citizens would not be important to the state. However, because chieftaincy is traditional authority and is exercised in an overtly public and political arena, the state constantly finds itself in continuing contact, competition or cooperation with traditional authority over a variety of policy issues. In turn these reflect a division of authority, power, legitimacy and sovereignty. Thus at the concrete level and at the conceptual level, the post-colonial state is challenged, usually inadvertently, by traditional authority. Therefore we should not be surprised to discover that the relationship of the postcolonial state (and also its colonial ancestor) with traditional authority is marked by ambiguity at the least.

### Office, Regalia and Political Parties

Prior to the imposition of European colonial rule, sovereignty was exercised by a

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host of polities. These ranged from states, who controlled nearly all of what is now Ghana, to differently-organized systems of authority which were being drawn increasingly into relationships with the former. The expanding Asante state entered into a variety of arrangements with many of the others (Wilks 1989; Boahen et al. 1986; Fynn 1971). This sovereignty was manifested in a wide variety of ways by these pre-colonial states.

As part of a larger research project, a study was made of indicators of sovereignty, which are of particular relevance to our argument on divided sovereignty. Twenty-five indicators of sovereignty drawn from constitutional and legislative instruments were selected through which to examine the changing relationships between the pre-colonial states and, first, the colonial state and, then, the post-colonial state. These indicators facilitate the examination of the transformation of pre-colonial states into traditional authorities, otherwise called chiefs, and the emergence and growth of divided sovereignty in one particular African post-colonial state, Ghana, as well as the emergence of chieftaincy management strategies of the colonial state and post-colonial state in their relationships with chiefs.

The indicators allow an initial analysis of the degree to which the state (colonial or postcolonial) permitted or gave the powers to be exercised by chiefs in the lengthy period during which they were transformed from pre-colonial states and other polities into traditional authorities operating within the political and geographical boundaries of the state (post-colonial or colonial). The indicators are the powers to perform the following functions: the determination of who the legitimate traditional authorities are (including the processes of political succession) and the place of that office in the political hierarchy; the seizure of royal regalia during legitimation disputes; local government; financial control or the administration of a treasury; tax collection; tribute collection; criminal law administration; civil law administration; customary law administration; law creation (legislation); prisons administration; policing; executions; enslavement (or pawning); imposition of other customary sanctions; imposition of corporal punishment; imprisonment; land allocation; and compulsory labour (whether for the state or traditional authority). Other indicators include: state enforcement of obedience to traditional authority; the creation of organizations by the state to manage its relations with chiefs or to research customary practice and traditional authority structures; the allocation of seats to chiefs in the legislative and other state bodies by the state; the creation of new joint structures for chiefs by the state; and whether or not (or to what degree) chiefs were permitted by the state to participate in party politics. The constraint of space limits this analysis to three of the above indicators during mainly the post-colonial period. The indicators will be examined in light of a number of

constitutional and legislative instruments.<sup>1</sup> Such instruments are markers of important political change.

One key indicator is the right or ability to determine chiefly status.<sup>2</sup> This includes both the consideration of who legitimately occupies a given office of a pre-colonial state/polity (in its transformed or untransformed manifestation), that is to say, who is or should be the 'chief', as well as the place of that office in the political hierarchy. Such an indicator touches on questions of sovereignty, legitimacy and political succession. Since one of the key aspects of sovereignty is the ability (i.e., power) and the right (i.e., legitimacy) to make the final determination of any political choice in a state/polity, it follows that the determination of who should occupy a given office, and its place, in a political hierarchy will reveal much about the nature of sovereignty, power and legitimacy in that power network. The determination of official status involves not only the selection mechanism but also that of de-selection, i.e., it includes the determination of who is fit to continue to occupy a particular office or structure, in this case one related to chieftaincy.

The point at which this determination shifted from the control of the various pre-colonial states and polities to that of the colonial and post-colonial states is not uniform within what is now Ghana, nor was the mechanism of transformation uniform. For example, in 1847, following a long-standing jurisdictional dispute in the then pre-colonial state of Akuapem (a.k.a. Akwapim) in what is now the Eastern Region of Ghana, between the king or paramount chief (the *omanhene*, i.e., the Okuapehene) and one of his divisional chiefs (the Benkumhene, who was chief of the town of Larteh-Ahenease), the Danish Governor on the coast declared that henceforth Denmark had the right to confirm or remove the Akuapem king or 'chief' (Kwamena-Poh 1972: 49). However this Danish power was short-lived as in 1850 the Danes transferred their interests (or 'rights') to the British, who later went on to implement their colonial control through the extension of their Bond of 1844 and their 1874 declaration of sovereignty. Besides diplomatic negotiations, another mechanism was that of war. The British required at least three wars, those of 1874, 1896 and 1900, definitively to exert sovereignty over the Asante kingdom, including the right to confirm or withdraw recognition with respect to the offices of the Asante state.

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<sup>1</sup> Van Rouveroy van Nieuwaal (1987, 1993) has used a similar methodology of constitutional and legislative indicators in his work. Arhin (1991: 27-54) uses it in examining a different set of questions, relating primarily to the evolution of Kwame Nkrumah's policy towards chiefs during his governments from 1951 to 1966.

<sup>2</sup> I am grateful to Gordon Woodman for his comments on this point.

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Following the imposition of colonial rule, the British colonial state itself issued a number of constitutional and legislative instruments dealing with the right to determine the status of traditional authorities. From 1951 to 1957 there was a form of joint rule with Nkrumah's nationalist party, the Convention People's Party. This formed a special transitional category of colonial rule, but the earlier colonial state policy on this indicator was continued. The overall colonial policy was that state recognition was necessary for the former pre-colonial political authorities (now traditional authorities or chiefs) to be able to exercise their status and duties as chiefs. This was specifically mentioned in the Native Jurisdiction Ordinances, 1878 and 1883, the Chiefs Ordinance, 1904, the Native Jurisdiction Bill, 1922, and the Native Administration Ordinance, 1927, amongst others. The state's policy of requiring state approval at some stage of this process continued from this colonial period into the joint British-Nkrumah governments and indeed into the Nkrumah governments of the post-colonial state, i.e., from 1951 to 1966.<sup>3</sup>

Despite the overthrow of the Nkrumah government in 1966, the military and civilian governments of the Ghanaian post-colonial state, until the Third Republican Constitution of 1979, continued this policy of the state having a final, determining say in who was properly a chief in the eyes of the state. For example, the anti-Nkrumah military government of the National Liberation Council (1966-1969) deposed a number of chiefs who had been elevated to paramountcy or otherwise recognized by Nkrumah in allegedly irregular (i.e., non-customary) circumstances. The Constitution of 1969 of the Second Republic (1969-1972) specifically in Articles 154 and 155 declared that the state of Ghana had the power and right to determine the status of a chief but only for the purposes of that chief's dealings with the state. Given that chiefs needed to be able to deal with the state for all types of government-controlled development projects and funds, chiefs really had little choice but to accept state sovereignty in this matter, but the principle of some sort of special, non-state-controlled customary sphere for chiefs was recognized, if rather minimally, in constitutional terms.

The Chieftaincy Act, 1971 (Act 370) of the Second Republic, besides establishing

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<sup>3</sup> The following instruments, inter alia, attest to this: the Local Government Ordinance, 1951 (No. 29), the State Councils (Colony and Southern Togoland) Ordinance 1952 (No. 8) [N.B. the use of the term 'state' referring to chieftaincies], the State Councils (Ashanti) Ordinance 1952 (No. 4), the State Councils (Ashanti) (Amendment) Ordinance, 1955 (No. 38), the State Councils (Colony and Southern Togoland) (Amendment) Ordinance, 1957 (No. 8), the State Councils (Ashanti (Amendment) Ordinance, 1957 (No. 3), the 1960 Constitution, the Chieftaincy Act, 1961 (Act 81), the Chieftaincy (Amendment) Acts 1963 (Act 185 and Act 216).

much of the state's chieftaincy management framework that has lasted to the present, confirmed this trend. While the initial customary determination of a chief's status was to be made at the level of the office, appeals could be made to the state-created joint-chieftaincy bodies of the Traditional Councils, the Regional Houses of Chiefs, the newly-created National House of Chiefs and then on to the Minister, i.e., the member of the Ghana cabinet responsible for chieftaincy. Such matters as those of legal procedure could be appealed through the Ghanaian state's court system. The Minister was additionally empowered to prohibit a person from claiming to be a chief. The National House of Chiefs was empowered to establish a "National Register of Chiefs" in order to record all changes of status (e.g., installation, abdication, deposition, death) for all chiefs in all regions in Ghana. The 1972 Chieftaincy (National and Regional Houses of Chiefs) Procedure Rules (C.I. 27) and the 1972 Chieftaincy (Proceedings and Functions) (Traditional Councils) Regulations (L.I. 798) of the military National Redemption Council government further reinforced the state's influence over this indicator by, respectively, laying down rules of procedure in the operations of the National House of Chiefs and the Regional Houses of Chiefs and defining further the jurisdiction of Traditional Councils.

The Constitution of the Third Republic (1979-1981) marked a significant shift in the Ghanaian state's ability to deal with the determination of the status of chiefs. This power was, by the Constitution, removed from the control of the government and handed over to the chiefs who controlled the House of Chiefs system as, in this matter only, an autonomous enclave. On certain legal matters appeals to the Ghanaian courts, and even a final appeal to the Supreme Court, were possible. Thus to a certain extent the Ghanaian (post-colonial) state gave up certain aspects of its power, i.e. of its sovereignty at the instigation of its 1979 Constitution makers.

This state policy continued throughout the Third Republic and into the fourth year of the Provisional National Defence Council (PNDC) government (1982-1993) of Flt. Lt. J.J. Rawlings. The Provisional National Defence Council (Establishment) Proclamation (Supplementary and Consequential Provisions) Law, 1982 (PNDCL 42) reaffirmed the 1979 arrangements.

However as certain chieftaincy disputes proved to be more difficult to solve and some became (or threatened to become) violent, involving deaths, injuries and loss of property, the PNDC shifted back to requiring state approval of the change in status of a chief. The Chieftaincy (Amendment) Law, 1985 (PNDCL 107) forbade any person to be treated as a chief or to exercise any chiefly duties, as defined by the Chieftaincy Act, 1971, until that person was recognized as a chief by the PNDC Secretary responsible for Chieftaincy Matters. The Chieftaincy (Membership of Regional Houses of Chiefs) (Amendment) Instrument, 1987 (LI 1348) marked the PNDC's recognition of the elevation to paramountcy of certain

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chiefs in the Brong-Ahafo Region and the consequent expansion of that Regional House of Chiefs. The PNDC became so concerned at four chieftaincy disputes that it issued the Chieftaincy (Specified Areas) (Prohibition and Abatement of Chieftaincy Proceedings) Law, 1989 (PNDCL 212) ordering an immediate end to any attempts to use custom, the courts or the Houses of Chiefs to withdraw recognition from those four government-recognized chiefs. These policies continued until the 1992 Constitution, approved by a referendum on April 28, 1992, was implemented on January 7, 1993 on the inauguration of Ghana's Fourth Republic.

The Constitution of the Fourth Republic marked a move back to the underlying orientation of the Third Republican Constitution. The Consultative Assembly, selected by the PNDC, which drew up this Constitution, contained a significant number of chiefs who appear to have guided state policy back to a 'hands-off' position for Parliament with regard to state determination of who is a chief. By Article 270 of this Constitution, Parliament (or any person or body on whom Parliament attempted to confer this ability) was prohibited from having a role in the recognition of chiefs. Instead the National House of Chiefs, the Regional Houses of Chiefs and the local Traditional Councils were to determine the validity of chiefly succession and status. The National House of Chiefs was to continue to operate the register of chiefs and was to take over the function of the gazetting, i.e., publishing official recognition, of chiefs from the government's Chieftaincy Division or Secretariat.

Article 270 was one of the entrenched provisions of the Constitution that could only be amended by parliament after a lengthy and cumbersome process involving consultations with the Council of State as well as the National House of Chiefs and approval by a national referendum having a forty percent voter turnout and an approval rate of at least seventy-five percent. Any other Parliamentary bills affecting chieftaincy had to be referred to the National House of Chiefs before they could be considered by Parliament. Decisions of the Judicial Committees of the National House of Chiefs, the bodies responsible for chiefly status cases, could be appealed to the Supreme Court of Ghana. Article 275 did bar persons from becoming chiefs if they had been convicted of high treason, high crime, offences against the security of the state, fraud, dishonesty or moral turpitude. To prevent any confusion, Article 277 defined a chief exclusively in traditional terms:

'[C]hief' means a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queenmother in accordance with the relevant customary law and usage.

Thus, with the above-mentioned exceptions, the Ghanaian state was forbidden by the Fourth Republican Constitution from fully exercising its sovereignty over chiefs with regard to the selection and de-selection of traditional authorities, on the basis that they derived their legitimacy from roots outside that of the present post-colonial state and of the former colonial state, i.e., 'customary law and usage'.

Overall the state in Ghana in its colonial and post-colonial forms has moved, with the exception of three periods, to exercise its sovereign right to make the final decision on whether a person should or should not occupy an office of traditional authority. The fact that the state found it necessary to enact a significant number of constitutional and legislative instruments to deal with this issue suggests that those who guided the state recognized that the state did not enjoy exclusive, unchallenged authority and legitimacy in the exercise of its sovereignty on this particular issue. They do seem to have felt that the extension of the state's sovereignty into the remnants of the sovereignty, and the still very considerable legitimacy, of the traditional authorities rooted in their pre-colonial states and polities was politically necessary. While the leaders of the colonial state and the post-colonial state might differ over whether to increase or decrease chiefs' control over local government or other functions, overall there was a continuity in state policy over the need to control the determination of the status of chiefs. The three post-colonial exceptions were the periods of the Third Republic (1979-1981) the early PNDC governments (i.e., 1982-1985) and the Fourth Republic (1993 onwards). If the period from Independence in 1957 until the end of 1994 is considered, then during something like four-fifths of the existence of the Ghanaian post-colonial state, it kept final control over the occupancy of the traditional authorities' offices.

More work is needed to explain these three exceptions because there appear to be contradictory pressures at work. The partial withdrawal of state power from chieftaincy recognition during the Third and Fourth Republics coincided with governments that were friendly to chiefs. But the very early part of the PNDC period was marked by considerable friction between the PNDC revolutionaries and chiefs; and yet the later PNDC was friendly to the chiefs but moved to reassert control over their recognition.

The power and legitimacy to take control of chiefly regalia (swords, crowns, skins, drums, etc.) is an indicator that is related to the question of chiefly recognition since a person is not recognized by custom as being a chief unless he (or more rarely she) has possession of the regalia. Thus control of the regalia is a key part of the politics of traditional authorities: it has often been the flashpoint for violence as factions competing for the chiefly office try to gain or keep control of the regalia. Both the colonial and post-colonial states enacted a number of

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constitutional and legislative instruments seeking to give them the power to seize the regalia in order to prevent or halt violence in chieftaincy recognition disputes or to install their favoured person favoured as chief.

Amongst these instruments were: the Stool Property Detention Ordinance, 1904, that gave this power to the colonial District Commissioners; the Chieftaincy Act, 1961 (Act 81), the Chieftaincy (Amendment) Act, 1963 (Act 216) and the Chieftaincy Act, 1971 (Act 370) that gave it to the post-colonial state's minister (although the 1971 Act stipulated that the Minister should consult the local Traditional Council). The 1979 Constitution removed this power from the state-as-government and gave it to the Regional House of Chiefs. Following from the PNDC's move in 1985 to regain control of chiefly recognition, its Chieftaincy (Amendment) Law, 1987 (PNDCL 180) gave the Secretary for Chieftaincy the power to override other jurisdictions if there was a pressing need such as the threat of violence. The 1990 Mim Stool Property (Seizure) Instrument (E.I. 4) was used by the PNDC Secretary for Chieftaincy to seize the Mim stool property. Government in its executive and legislative arms lost its preemptive ability to seize regalia before fighting broke out under the Fourth Republic's Constitution. Some sources claimed that this loss would result or had resulted in an increase of violence in chieftaincy disputes (Interviews, Ghana, November 1992, and August 1994), but this has proved difficult to substantiate because the actual pattern of such occurrences is only just now being evaluated.

The third indicator examined in this part of the study is that of chiefly participation in the party politics of the state. Chiefs have been seen as constituting a different and separate source of political legitimacy from that of the colonial and post-colonial state. Hence there have been numerous attempts to mobilize the chiefs' legitimacy in support of the various factions, organizations and political parties competing for state power. These have ranged from attempts by the British, Nkrumah's nationalists, other parties and chiefs themselves to gain control of the colonial state and the future post-colonial state, to attempts by various political parties to win votes in a constituency during an election by allying with the chief and using his prestige for the party candidate's benefit.

For the state, there is a great difference between chiefs' involvement in a political party supportive of the state and their involvement with a political party that might be accused, whether unjustly or not, of being secessionist, as was the Asantehene-backed National Liberation Movement (NLM) in the 1950s.<sup>4</sup> During most of the

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<sup>4</sup> Witness the founding of the NLM at the request of the late Asantehene, Prempeh II, to oppose Nkrumah. See for example the autobiography of Baffour Osei Akoto (1992) or the work of S.Y. Andoh (1987).

time of the PNDC, political parties per se were banned. When they were legalized in May 1992, following the approval of the new Constitution in the April referendum, the Political Parties Law, 1992 (PNDCCL 281) and Presidential Elections Law, 1992 (PNDCCL 285) did not permit chiefs to take part in the then upcoming Presidential and Parliamentary elections in November and December 1992. This accorded with the provisions of the Constitution of the Fourth Republic, 1992. Article 55 (8) prevented chiefs from being a founding member, leader or executive member of a political party (provisions which echoed the events surrounding the NLM). Furthermore, Articles 60 (3), 62, 78 (1), 79 (2), 94 (3) para. (c), 95 (1) and 96 (1) para. (a) prevented chiefs from being elected as President, Vice-President, Speaker or Deputy Speaker of Parliament, a Minister or Deputy Minister or Member of Parliament. Chiefs were effectively removed from being actors in the legislative and top executive spheres of the state.

### Peace and Security: Chieftaincy Disputes and the State

The continuing political importance of chieftaincy or traditional authority to many Ghanaians is illustrated by a series of chieftaincy disputes which erupted into violence during the period December 1993 to August 1994. These events are but a slice of a larger phenomenon on which further analysis is being conducted.<sup>5</sup> These disputes reveal a depth of regard by Ghanaians for one part of their political culture and authority that goes beyond that already shown in the numerous litigations over who should or should not be a chief. It is assumed that people engage in political struggle up to the level at which people are killed and injured and property burned, otherwise destroyed or looted, when their emotions are deeply stirred. In such situations people's conceptions of authority and legitimacy are sharply challenged, and underlying and unresolved questions of political loyalties may emerge, even to the point of challenging the contemporary post-

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<sup>5</sup> Peter Skalník (1986) looked at the massive outbreak of fighting in 1981 between the Konkomba and their Nanumba overlords in the Northern Region. Susan Drucker-Brown (1988-89) examined the B'moba-Konkomba 'episodes' of fighting in Mamprusi during 1986-1988. Ray (1986) notes the serious fighting between the Gonja overlords and the Vagala who attempted to replace Gonja chiefs. Numerous other examples drawn from across Ghana, and going back to the colonial period exist in the literature. Further analysis of the so called 'smaller incidents' of violence involving chieftaincy disputes is being conducted to better understand their scope, nature and meaning for the conduct of political life within the contemporary African state. It should be noted that the ethnic component of chieftaincy disputes is only noted in this work, but will be examined in future publications.

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colonial state's monopoly of violence that is one of the conditions for the recognition of a state's sovereignty. In such circumstances the sovereignty, legitimacy, authority and power of the contemporary state is, at the least, subject to actual or potential division or sharing, whether voluntary or not. A brief, preliminary examination of six such events is in order. These are five small-scale incidents and one major outbreak: all involved loss of life.

On December 11, 1993, the ceremony installing the new paramount chief of the Efutu Traditional Area at Winneba was disrupted for a time by the stone-throwing and war songs of the unsuccessful other royal family. (The chieftaincy rotates between the two families). The new paramount chief was installed only because the police of the Ghanaian state used armed force to disperse the attacks of the disgruntled other royal family on the successful royal family. One person was shot and three were seriously injured. (*People's Daily Graphic*, December 13, 1993)

At the end of January, 1994, fighting broke out between the Abiriws and Akropongs of the Akuapem paramountcy in the Eastern Region, not far from Accra. At least two people were killed in a traditional authority boundary dispute concerning burial sites before the Ghana police separated the two sides. (*Ghanaian Voice*, 31 January-2 February, 1994, Interviews, August-September, 1994, Ghana).

On April 27, 1994 the chief of Jema in the Western Region was attacked, destooled and beheaded by a 'mob' following his attempt to use his chiefly powers to change a domestic arbitration decision against his wife. Order was only restored when Ghana police reinforcements, including a homicide squad, arrived, arrested forty-one people, and began to patrol against further disturbances. (*Daily Graphic*, May 4, 1994).

At Daboya, Northern Region, a dispute broke out over which of two brothers should be enskinned as Yazoriwura. This is a sub-divisional chieftaincy, the holder of which is eligible for the divisional chieftaincy of the Wasipewura at Daboya and thence the kingship of the Gonja. Despite a judgment of the Judicial Committee of the Northern Regional House of Chiefs restraining the divisional chief, the Wasipewura enskinned a candidate as Yazoriwura. It was alleged that the new Yazoriwura's younger brother and his forces, recently back from fighting on the Dagomba kingdom's side in the 1994 round of civil war involving the Konkomba subject people, attacked his elder brother, killing him. Three others were killed and at least two injured in the fighting. The Wasipewura's palace was burned and the Wasipewura was forced to flee to the regional capital where he remained for several months, unable to return. Government forces were unable to arrest the younger brother or any others, i.e., to reassert state control, in Daboya for at least several months. (*Daily Graphic*, July 5, 1994, Interviews, August-

September, 1994, Ghana)

In August 1994 fighting erupted in Banda, Brong-Ahafo Region, over one of the chieftaincies. As in Winneba, two royal families were contesting, in this case for the position of the Banda chief's linguist (i.e., spokesman and chief of staff) which was to rotate between them. The disappointed family attacked the other. Several people were killed and over thirty houses were burned. Development in the area was paralyzed. (*Daily Graphic*, 1994, Interviews, August-September, 1994, Ghana)

As a result of the most serious fighting related to a break-down in traditional authority during the time period under consideration, on February 9, 1994, President Rawlings proclaimed, in accordance with Article 31 of the Constitution of the Fourth Republic, 1992, a State of Emergency in seven districts of the Northern Region. These districts were the site of the struggle of the Konkombas to establish their own set of traditional authorities. The Konkombas demanded their own chiefs led by a Konkomba paramount chief, who was to be recognized by the Ghanaian state and thereby given a seat in the Northern Regional House of Chiefs alongside the already existing paramounts of the Mamprusi, Dagomba, Nanumba and Gonja kingdoms, and be recognized by these kingdoms, which have been overlords of the Konkombas. This dispute also involved Konkomba claims to land attached to each of the future Konkomba chieftaincies.

This situation is of such complexity that it cannot be adequately analyzed here. However it can be said that over at least one hundred years the Konkombas have grown dissatisfied with being 'ruled' by traditional authorities belonging to other ethnic groups, and have come to desire the ending of what they regard as alien overlordship (Skalník 1986). The Dagomba, Nanumba and Gonja kingdoms regard the Konkombas as immigrants who accepted their overlordship (and hence sovereignty) as a condition of being given access to farming land. The kingdoms have accordingly rejected the Konkomba claims to have their own traditional authorities. Before the fighting broke out the Ghanaian state did attempt to initiate negotiations between the parties but these were rejected, most notably at the Northern Regional House of Chiefs in December, 1993.

Fighting between Nanumbas and Konkombas was sparked by a domestic dispute on February 1. The conflict quickly spread to cover seven districts in which Konkombas were in dispute with their Nanumba, Dagomba and Gonja overlords: Yendi, Tamale Municipal, Gushiegu-Karaga, Saboba-Chereponi, Zabzugu-Tatale, Nanumba and East Gonja. As many as three thousand people were killed over a period of several months. First, Konkomba militias overran Dagomba, Nanumba and Gonja settlements and even the Ghana Police Station and armoury in Bimbilla, the Nanumba district capital, as well as besieging other towns, including Yendi,

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which (besides being a district capital) is also the traditional capital of the Dagomba kingdom. Then Dagomba, Nanumba and Gonja forces were mobilized and began counterattacks. Tens of thousands became refugees. The intensity of the fighting was horrific, with massacres occurring on both sides. Dr. P. Ferguson has noted that in a number of cases Konkomba attacks were focussed on the traditional regalia and written histories of particular Dagomba chieftaincies.<sup>6</sup> These may have been attempts to destroy the symbols of political legitimacy of the Dagomba traditional authorities.

Order was only restored when the Ghanaian state sent hundreds of soldiers into the affected areas on the instructions of President Rawlings with the approval of the Ghana Parliament. The state of emergency was only lifted in August 1994. Negotiations were only in the most tentative stages at that time. Furthermore, the District Assembly elections for those seven districts were postponed from March until much later in the year.<sup>7</sup>

The immediate state response to the Northern traditional authority war of 1994 suggests that there was also a sense of frustration by the state at the inability of traditional authority to control its own sphere of responsibility. Reacting on February 12, 1994 to the outbreak of the major fighting, President Rawlings as Head of State in a speech delivered on his behalf by the Presidential Adviser on Chieftaincy Affairs, criticized the institution of chieftaincy for not being able to prevent or stop the violence, and for being in fact a source of it rather than facilitating peace between the factions. He stated that the legitimacy and relevance of chieftaincy was threatened by these weaknesses:

Certain imperatives fall on the chiefs of this country because it is becoming increasingly true that at the root of this rapid profusion of strifes lies some kind of stool or skin [i.e., chieftaincy], palaver and at the deeper root cause in land

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<sup>6</sup> Besides interviews conducted in Ghana during August and September 1994, other sources included private correspondence and newspapers. The following 1994 issues were especially helpful: *Daily Graphic*, February 11, 14; *Ghanaian Times*, February 11, 12, 14; *Ghanaian Chronicle*, February 10-13, 14-16; *Ghanaian Voice*, February 16-20. See also Dr P. Ferguson's oral presentation to the conference from which this volume is derived, Kumasi, September 5, 1994.

<sup>7</sup> After this was written, in May 1996 the National House of Chiefs elevated 48 chiefs in the Northern Region. These included three Konkomba chiefs, two other 'minority' group chiefs, 15 Dagomba chiefs, 15 Gonja chiefs, seven Nanumba chiefs and six Mamprusi chiefs. (*Ghanaian Times*, May 24, 1996)

litigation. (*Daily Graphic*, February 4, 1994).

The President thus raised the question: how could the state and chiefs operate effectively in carrying out development if traditional authority disputes broke down state-maintained peace and security. Unsaid, but perhaps implied, was the state's expectation that traditional authority would keep under control its share of authority, power and legitimacy and be able to manage them peacefully, if traditional society was to be considered more than a component of civil society. These overlaps of traditional authority with the state have implications for the state's share of authority.

What do these tragic events have to say concerning our examination of sovereignty, legitimacy and authority with regard to the relationship between the post-colonial state and traditional authority in Ghana? The state was unable to prevent, and was unable for some time to stop repeated losses of control, power and authority over significant numbers of people who owed obedience to the state as its citizens but who were also subjects claimed by traditional authorities.

Undoubtedly the traditional authority civil war in the Northern Region was the most significant in terms of its scope, but the other five incidents are also significant. They are a few examples of the continuing problem that has been present in all the regions for a considerable period of time and which extends back through the various governments of the postcolonial state to the colonial state and thence to pre-colonial times.

All of the six sets of events examined above show that in furtherance of their political goals with regard to traditional authority, sizeable numbers of people have acted, consciously or unconsciously, to violate the sovereignty, legitimacy, authority and power of the state as well as to violate fundamental human rights and freedoms, including the right to life and protection of the privacy of home and other property, of their fellow citizens which are guaranteed by the state, in this case as manifested by Articles 12, 13 and 18 of the Fourth Republican Constitution of 1992. The violence demonstrates that people's political loyalties are not given totally to the state, but are divided between two sources of authority: the state and traditional authority (a.k.a. chieftaincy). Furthermore authority and power are divided between these two actors, although the state has retained sufficient power in the last resort to close down violations of its sovereignty, authority and legitimacy by those who act within the sphere of traditional authority without regard to the state.

Needless to say these violent events also demonstrate the continuing importance of chiefs and traditional authority to many Ghanaians. They also suggest that there is a need for the state, chiefs and researchers to analyze further the position of

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traditional authority vis-à-vis the state and civil society, i.e., within the larger social formation, and for the state and chiefs to create effective policies to manage this relationship within this context.

### Conclusion

Chiefs derive their claims to legitimacy, authority (including that of their own 'customary' systems of law), and indeed even sovereignty from their pre-colonial roots. The contemporary African state is a creation of, and a successor to, the imposed colonial state. It is therefore argued that chiefs form a parallel power to the state and that this has raised a number of political and conceptual problems that have not been adequately addressed, let alone resolved.

In Ghana the post-colonial state is sovereign in nearly all powers, but it appears to co-exist with another entity, traditional authority, which has distinct claims to sovereignty, legitimacy, authority and power. As the Figure suggests, this is a very asymmetrical division.

As long as the final power aspect of sovereignty is preserved, the division of sovereignty (and indeed of the other subordinate concepts) is not necessarily inimical to contemporary post-colonial states in Africa.<sup>8</sup> Such divisions between chiefs and the state are responses to this pattern of state-creation in African countries such as Ghana.

In Ghana there have been several trains of thought about the means of preventing chiefs or traditional authority from emerging as competitors with the state for sovereignty. The state has several options. It may move to subordinate traditional authority effectively and to incorporate it within the structures of the state, redefining the power and geographic boundaries of traditional authority: this was part of Nkrumah's strategy. Second, structures such as the Houses of Chiefs may be used by the state to grant enclave status to chiefly authority, legitimacy and the remnants of chiefly sovereignty enveloped by the state. This appears to have been the strategy of the constitution makers of the Second, Third and Fourth Republics. Third, chiefs may be removed from the competition for state power by constitutionally forbidding them from playing active roles in the state institutions charged with organizing such competition within the state's electoral framework, i.e., political parties. This strategy seems to have been adopted by the Fourth Republic's Constitution framers.

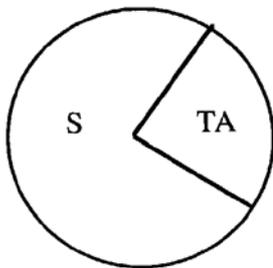
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<sup>8</sup> Here Woodman's (1988) concept of deep legal pluralism opens up new avenues of analysis.

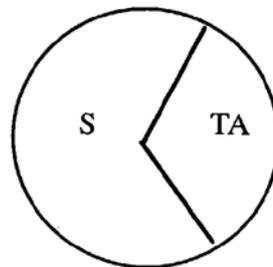
How this state-chief relationship is managed is of critical importance in saving hundreds, if not thousands of lives in Ghana and across Africa. Peace and security are integral to development and democratization. The issues of divided sovereignty demand more research and policy debate if the development of mechanisms to handle them is to be fully successful.

Figure 1: Illustrative Depiction of the Division of Sovereignty, Legitimacy, Authority and Power Between a Post-Colonial State (S) and Traditional Authorities (TA)

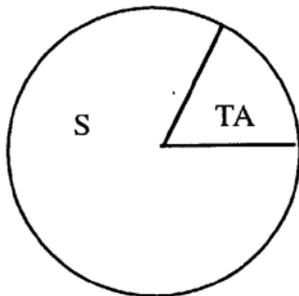
1. Sovereignty



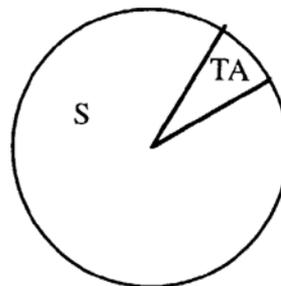
2. Legitimacy



3. Authority



4. Power



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