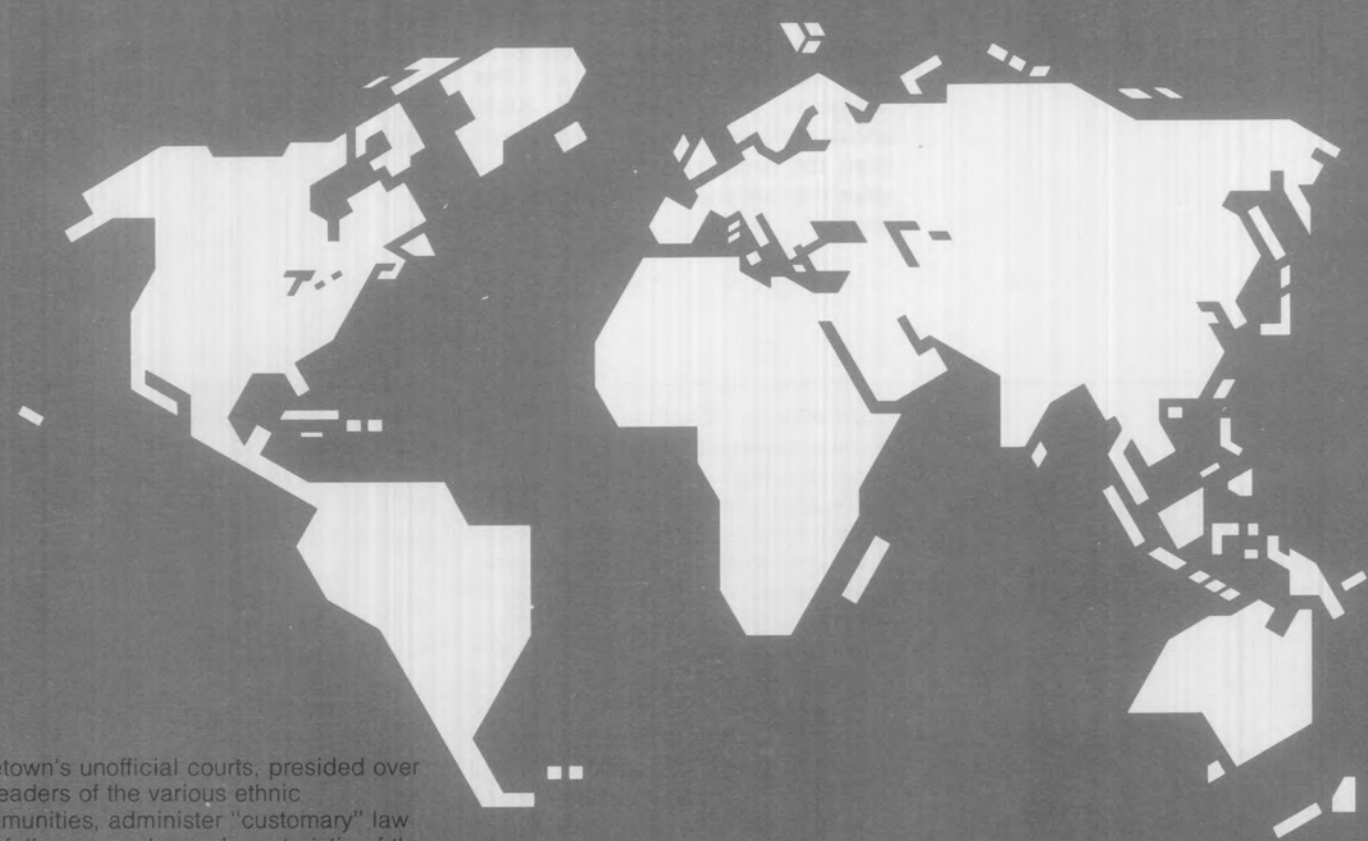


The Unofficial Urban Courts in Freetown  
Part I: The Institutionalization of  
Tribal Headmen

by Barbara Harrell-Bond



Freetown's unofficial courts, presided over by leaders of the various ethnic communities, administer "customary" law and follow procedures characteristic of the indigenous legal system. Although illegal, they are a practical response to the unmet legal needs of the urban majority.

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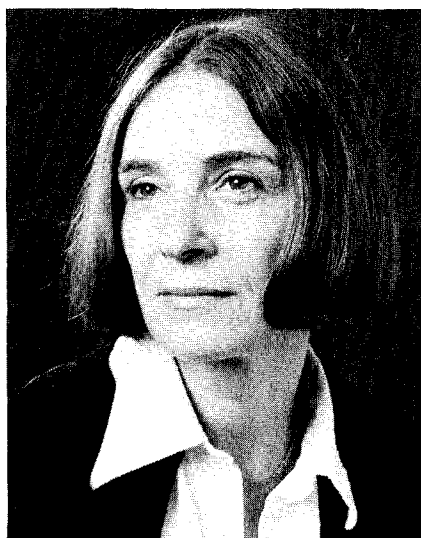
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*...the people of the Colony are among the most litigious in the British empire, if not in the world. Faction and inter-tribal fights have largely disappeared in favour of the lawsuit.... To be engaged in an action, particularly before the Supreme Court, appears to be the pleasure, not to say the ambition of the average citizen.*

*The more protracted it is, the more he seems to like it. Expense, even with the prospect of almost certain defeat, has no terrors for him. He and his family and connections contribute without stint.<sup>1</sup>*

These words were written as part of the introduction in a private printing in 1917 of some judgments rendered by S. King-Farlow, a judge with years of experience in the judiciary of the Colony of Sierra Leone and elsewhere on the west coast of Africa. He is only one of many observers of West African society who has commented on the "overlitigious" character of behavior in this part of the world. It is quite true that conflicts and disputes occurring between individuals, even at the most trivial and mundane level, nearly always lead to a public hearing which could be described as litigation.

Sierra Leone, like most post-colonial African countries, is beset with the problems arising from a plural legal system that is, in part at least, a legacy of the colonial era. Three systems of law are recognized: English law (which is the basis for the statutory law); indigenous customary law; and to a limited extent, Islamic law.

When the Colony of Freetown was founded in 1787, English law was imposed. In 1896, when the Protectorate was declared—an area now divided into three administrative provinces on

the map—the British governed its population by indirect rule. This meant the Chiefs were allowed to administer their areas under the direction of the colonial government and apply the so-called customary law of the area. Although English-type courts and statutory law have been gradually extended throughout the country, everyone living in the provinces today has access, if they so wish, to Local Courts which administer customary law. In the Western Area (the former Colony), the only official courts are English-type courts and the law they apply is based on English law.

With Islamic law, the situation is even more complicated. At the turn of the century, prominent Muslim leaders in Freetown petitioned for and gained partial recognition of Islamic family law practices. What they achieved was recognition of marriage, divorce, and inheritance according to Koranic law. No formal courts were instituted for its administration. Although most Sierra Leoneans are Muslims, the individual's right to stake a personal claim to Koranic law is still far from clearly defined.

As explained in an earlier *AUFS Report*, during the colonial period the population of Sierra Leone was divided, for legal purposes, into the categories "Native" and "Non-native."<sup>2</sup> Non-natives are descendants either of the freed slaves who were resettled in the Colony after being returned from Britain and the New World or of the "Recaptives," those freed from slaveships destined for the Americas but intercepted en route and released in Freetown. The settlers were regarded as British subjects and their "personal law" was and is English law. Natives, on the other hand, comprise those in-

indigenous to the hinterland of Sierra Leone. These include 18 different language or ethnic communities and their personal law is the customary law of their "tribe," regardless of their place of birth or residence. Indigenous legal practices have never been systematically recorded or codified, that is, enacted into formal legislation.<sup>3</sup>

Today tribal or ethnic identification had political importance all over Africa, another unfortunate legacy of the colonial period. To explain the historical processes responsible for this tragic condition in contemporary Africa would be beyond the scope of this Report. Nevertheless, its topic—the institutionalization of tribal headmen



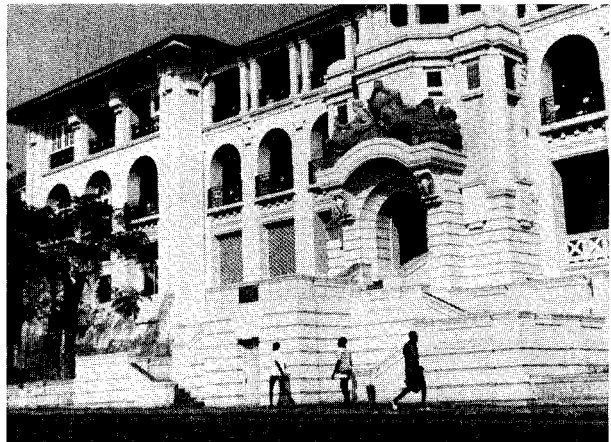
Source: J.I. Clarke, *Sierra Leone in Maps*, University of London Press, London, 1966, p. 29.

in Freetown—illustrates how the aims of imperialism were achieved through creating conditions that promoted and sustained what are today regarded as ethnic or tribal differences.

Although about 80 percent of the current population of the Western Area is indigenous by origin—meaning, in legal terms, that the personal law of this majority is the customary law of their tribe—there has never been official recognition of customary legal practices and no courts have been established to administer that law.<sup>4</sup> Non-natives—or Creoles as they are called today—represent about 20 percent of the population. Yet the courts and content of the statutory law for the Western Area continue to be based upon the English model. Surprisingly, this situation has persisted since independence in 1961 even though the culture and social organization of the vast majority of Freetown's urban population are ordered along traditional or indigenous lines and political power is in the hands of the Native majority.

When I went to Sierra Leone to lead a team study of family law, we expected to gather data on customary legal practices in the provinces where the Local Courts were authorized to administer this law. In Freetown and throughout the Western Area it was presumed the only source of court cases would be the English-type courts. Quite by chance, my cook became embroiled in a serious marital dispute,<sup>5</sup> and through his troubles I discovered one “unofficial” court presided over by a woman chief, Ya Alimamy Turay, and a court speaker called Sultan. Ya Alimamy Turay told me her husband had been the headman, or “chief” as she called him, of this court. When he died she had assumed his duties. Because she was a woman and now very old, she had enlisted the services of a jury of elders and Sultan, a successful trader and a highly respected, prominent member of the local Muslim community.

She told me what had happened to her court in 1967 after the military government deposed all headmen in the Western Area and banned their activities. People continued to bring their cases to her and she had perforce to hear them secretly inside her house. After the return to civilian rule in 1968, she continued to hear disputes but her caseload was so heavy as to make concealment



*Outside the Law Courts in Freetown. “A court is the most patent symbol of political authority.”*

practically impossible. Since she was a close relative of one prominent politician and a friend of the President, Siaka Stevens, she went to see him. “Pa Siaka” understood her situation, she claimed, and gave her permission to hold her court.

Ya Alimamy's court was only the start: more than 30 such unofficial courts were discovered in Freetown alone. While most heard cases in the evenings or on Sundays when people were free from work, some courts met every day. All administered “customary” law and followed procedures characteristic of the indigenous legal system. To limit a study of family law in the Western Area to those cases heard in the English-type courts was patently impossible.

There were other reasons why these courts were an important focus for investigation. Their clientele represented the majority, the lower socioeconomic groups living in Freetown. Yet many individuals incurred costs in the unofficial courts as high as Le.30.00 (\$30.00), a sum equal to a high monthly income for most. Moreover, every kind of dispute was brought before the unofficial courts, although many of them could have been decided by the Magistrate Court, where the costs are minute by comparison. Why, then, did so many very poor people take their cases to, or submit to the authority of, these unofficial and illegal courts?

This series of Reports will focus on the unofficial courts and attempt to provide answers to such questions. Part I sketches the history of the

institutionalization of headmen (the heads or "chiefs" of the unofficial courts) in Freetown, since it is not possible to understand contemporary African conditions without some knowledge of the historical factors that shaped them. Part II outlines the character of social relations and aspects of the indigenous culture and examines the nature of the life of the urban poor from their own perspective to explain what may appear to be an overuse of courts among West Africans. The final two Reports deal with the unofficial courts themselves, which represent a grassroots response to profound social and psychological requirements of African townsmen.

While the case materials and other data derive from Freetown, similar institutions have developed in many other West African cities, although they have not been studied in such detail.<sup>6</sup> It must also be emphasized that the courts from which the case materials derive are "unofficial"; they have no legal jurisdiction to hear cases or to impose penalties. Despite this fact, these institutions have existed since the early days of the Colony and have persisted in the face of repeated attempts by the colonial, and later the independent, governments to suppress their activities.

### **The Development of Ethnic Communities in Freetown**

The apparently neat division of peoples and legal systems between Native and Non-native and Colony and Protectorate was complicated from the beginning. There was always an indigenous or nonsettler population living in the Colony and their numbers increased throughout the nineteenth and twentieth centuries through migration to Freetown, the capital and main source of paid employment. The settlers, however, were the primary recipients of British education and administrative favor and both they and the colonizers were loath to extend the benefits arising from the classification British subject to the migrants.

The Colony's settler population, itself extremely heterogeneous as regards language, culture, and geographical origin, gradually produced a distinctive Creole culture held together in part by their development of Krio, a predominantly spoken language which also became the lingua franca of the Provinces. Although from the very beginning they had intermarried with the indigenous peoples, this privileged group

defined itself as separate and distinct from the local population. Their attitude of superiority is illustrated by a quotation which appeared in 1888 in the *Sierra Leone Weekly News*, a Freetown paper identified with the Creole community.

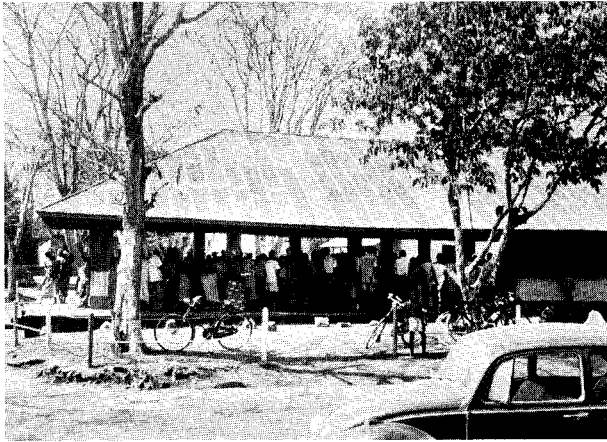
*The other side of Sackville Street, as you go from Kissy Street to Foulah Town is, at present, awaiting the immediate interference of the Inspector of Health. At no other portion of the city, are the nationality, manners, and customs of the people as diversified as they are in this locality. The Mandingoes, the Serakoolies, the Bassas, the Lokkoh, the Yonnies, and, in fact, the numberless lost tribes of Africa, are to be found there, doing nothing else than infringing the rules of propriety and cleanliness. Pass that way at five or six o'clock in the morning, when filth and rubbish are wide awake.<sup>7</sup>*

Other characteristics besides uncleanness were attributed to the Natives or "aborigines" as they were disparagingly called. A letter from "A Patriot" appeared in the press, complaining about the employment of aborigines in the police force. The writer refers to the "three-fold" character of the aborigine: "burglar, watchman, and constable."<sup>8</sup> The Creoles urged the government to zone the city and recommended that "...the swarm of Mendis and other aboriginal tribes, who infest this metropolis from end to end should be apportioned to plots of land in one or another of our deserted villages...."<sup>9</sup> Another writer considered "The City" of Freetown already to be a separate entity:

*When we speak of "The City," we mean, of course, the area enclosed by Little East Streets, and Poultny and Water Streets with the Maroon Town flanking it on the West and South-western sides, as a respectable compliment. The portions remaining...should be styled "Freetown." The City is marked by good sober dignity...Freetown...by the confused noises of...heathen population.<sup>10</sup>*

These attitudes of superiority/inferiority still persist and influence relationships within the urban community, as the following excerpt from an interview reveals:

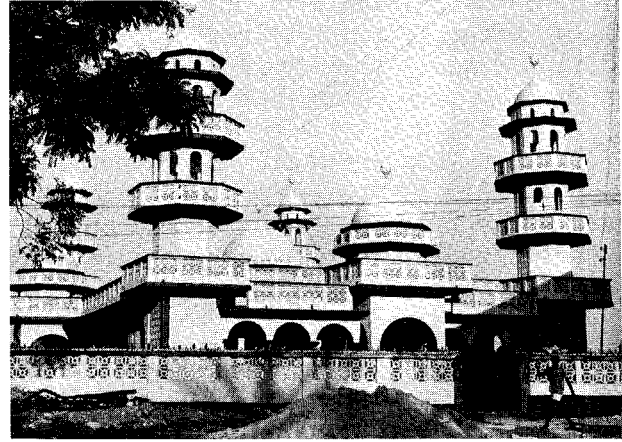
*The white men are very clever, when we were under them they exploited us, but we never knew.*



*A Local Court in the Eastern Province. "Everyone living in the Provinces has access to courts which administer customary law."*

*They bit us but at the same time we never felt the pain of their biting. They knew how to exploit, but since we have been independent we have been facing hard times.... The Creoles are fighting hard to paralyze our efforts to improve. They suppress us in all fields of life. In schools, in offices, in the courts. It is only because you are a Temne that I have decided to encourage such a conversation with you. Had you been a Creole, I would not have encouraged you here. We have decided to keep quiet for the moment. I know that God will one day help us and restore us from the domination of the Creoles. They are expert opportunists. They are always after sweet things, but the end of their reign is not far. Whenever you go anywhere to seek a job, they will try to know whether or not you are a Creole. If you say you are not, your chance of getting the job is very remote. You can only get it after bribing more than you would earn monthly.<sup>11</sup>*

Throughout the nineteenth and twentieth centuries, economic factors have given impetus to population growth and the tendency toward segmentation of Freetown into ethnic communities. Groups of Kru, for example, were encouraged to emigrate from coastal Liberia because of the Colony's need for their specialized skills as seamen. The Colony's trading potential drew others, who became permanent residents. Their links with the interior extended the Colony's field of social relations throughout the entire Sierra Leone-Guinea area. Others were recruited to provide a labor force for specific projects and



*The majority of the population of Sierra Leone are Muslims.*

many remained as manual laborers. The problems of survival in the unfamiliar city environment led to the emergence of communities of interest among these immigrants.

The colonial government's bias in favor of the Creole population, and the tendency for this group to view itself as separate from and superior to the "Native" groups, also encouraged solidarity among the immigrants. The Colony's British institutional structure set the ground rules for the organization of social life. These structures determined, to a large extent, both economic opportunities and access to many other resources necessary for survival in the urban situation. Legal institutions, the content of the law (English), and the enforcing agencies were all imposed by the central, colonial authority. Educational and even religious institutions were established under the auspices of the foreign regime. None catered to the needs of Freetown's immigrant population, which nevertheless established a place for itself by providing supplies and services, mainly through long-distance trading links, that were indispensable to the Colony's survival and economic expansion.

Thus it was natural that from among the trading group a number of "big men" emerged as leaders of the Native communities. Their households constituted a core of residents around which the new immigrants could locate themselves. The "big men" provided a vital service over which they had a virtual monopoly—that of landlord, housing being a first requirement on arrival in Freetown. From their estab-



lished positions within the urban society and their knowledge of its institutions, they could also assist the newcomer in learning strategies to manipulate the environment to serve his needs. If, for example, the colonial government required a labor force, the "big men" were prepared to supply it. Since finding gainful employment was difficult, the immigrant would enter into a client relationship with anyone who could help him obtain it. "Big men" thus expanded their personal networks by adding those who were bound by such obligations.

The communities which formed in this manner gradually developed their own internal institutional structure, not to compete with the official colonial structures but to meet those needs for which the official institutions did not make provision, or to assist those who were excluded from achieving the skills necessary for full participation. Thus they not only provided their members with assistance in obtaining a livelihood, but also for their religious, educational, and adjudicatory needs. This last-mentioned function has been, from the earliest days until the present, one of the most important services community leaders performed, because the structure of interpersonal relations and the organization of family life of the immigrant or Native population fell outside the competency of the official institutions of the municipality.

Some individuals acquired sufficient economic and social importance to move into the mainstream of Freetown society—that is, the "Non-native" or "Creole" culture. To "pass" as a Creole, it was necessary to attain some Western education, to own property, and usually to adopt Christianity. The number who did so, however, was insignificant in relation to the persistent flow of migration from the countryside to the city. Moreover, the relative impermeability of Freetown institutions and the persistent pattern of social interaction between the Natives and Non-natives insures that many of the basic needs that motivated the formation of these ethnic communities from the outset continue to propel the immigrant in their direction.

*Members of the Masonic order going to their cars after a funeral—"The Sierra Leone colonists and their descendants identified themselves with British culture and education and defined themselves as distinct from and superior to the local population."*

### Ethnic Leadership in Freetown

In the early years of the Colony the lack of British administrative staff placed a considerable responsibility for self-government upon all the people. In 1823 there were only 128 Europeans in a population of 15,081 and many of these Europeans were traders and not colonial administrators. Leaders in various local communities were known as headmen and the Colonial government relied on them unofficially to help administer the Colony. There is some evidence that at times the authority of the headmen was greater than that of the village superintendents appointed by the government. In 1818, for example, in the village of Wilberforce, located in the hills near Freetown, a Kosso was brought to trial for the murder of a fellow countryman. Although the village superintendent should have taken responsibility for the case, it was the headman who arranged for the burial of the victim and apprehended and punished the murderer.<sup>12</sup>

The headman system developed as an informal institution, then, in response to the need for leadership among the immigrant communities of Freetown. It is possible to identify four roles the position of headman involved:

1. The patron of newcomers, helping them to find lodgings and employment, and to adapt to city life.
2. A spokesman for their communities and symbol in the competition for prestige among groups and in presenting an image to the colonial government.





3. An agent for the government, helping to implement its policy within their communities. (This often brought headmen into direct conflict with the aims and interests of their followers.)

4. Serving as a judge, and treating disputes according to the content and procedures of the indigenous legal system

Of these four roles, the fourth was the most important from the immigrant's perspective.

Although the function of headmen had been recognized since at least 1801, only in 1905 did the colonial government take the first steps to incorporate it into its administrative policy. Official recognition, which included the payment of stipends, increased the headmen's status, while cultural factors reinforced the importance of the institution. For example, statutory law in the Colony, being based upon English concepts, did not recognize polygamous marriage. Indeed, it was a local practice the British were determined to eradicate in the Colony. Headmen, however, by means of their judicial functions, provided help in supporting the values and structure of the

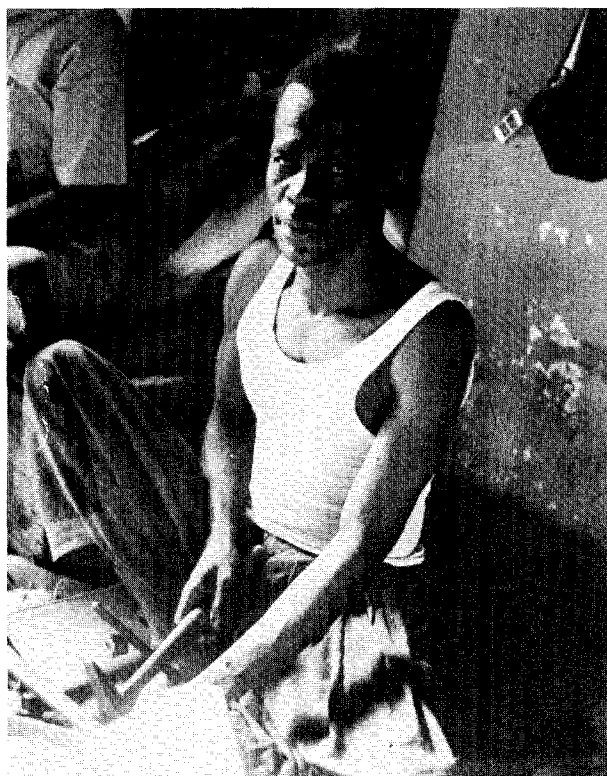
family system as practiced by the immigrant population, which was non-Christian.

The government, even after the 1905 legislation, always viewed recognition of headmen as a temporary measure until it could increase its own administrative staff. The bureaucratic structure, which was gradually expanded throughout the nineteenth century, conformed increasingly to the British model. The leadership that had developed among the settlers was either eliminated or absorbed into the colonial government bureaucracy. This structure was both exclusive and "doubly" alien—that is, the colonial bureaucracy was staffed by a few Europeans and a large number of Creoles whose cultural orientation was equally Western. It was in no way an integrative institution for the urban population but rather served to intensify and maintain the cultural gap between Natives and Creoles. As a result, the structure of family life and other domestic matters remained outside the competency of official legal institutions.

Radical political and constitutional changes in the 1950s altered the relationships between the immigrant communities of Freetown and the Creoles. The British were preparing Sierra Leone for independence and the Creoles were well aware that the numerical superiority of the Native population (the Creoles represent less than 2 percent of the total population of Sierra Leone) would insure its political control of the independent state.

Differences between the Creoles and the Native population were expressed in part in inconsistent or weak policies regarding extralegal institutions like those of tribal headmen. Immediately after independence (1961), the party in power, the Sierra Leone People's Party (SLPP), and the military government that followed it, discouraged the headmen from performing their customary functions. In 1967, the military government ordered that all reference to tribe be discontinued, and abolished the position of all tribal headmen. Like Ya Alimamy Turay, most headmen found it necessary to go "underground." Their stipends were withdrawn and they were

*A leather craftsman—"Migrants to Freetown from the rural areas provided a labor force and a variety of skills."*



officially in political disgrace. Yet headmen continued to command the loyalty of their own communities and, finally, in 1975, the civilian government not only extended official recognition but also took other administrative and legislative steps which could further emphasize ethnicity and enhance the position of headmen in urban areas throughout the country.

### **Implications of Institutionalization**

The right and responsibility to assume judicial duties are inseparable from the political authority of the institution of headship, which has its roots in the indigenous sociopolitical system. Western democratic societies are pervaded by a myth that judicial and executive functions must be separate, but, despite the formal arrangements in any society, a court is the most patent symbol of political authority. The notion of this separation of executive and judicial functions is alien to the West African political culture; thus the naming of a headman, whether informally by the community or through official governmental appointment, invariably leads to the establishment of a court. It is this duality that makes the headman issue so sensitive to a government that is self-consciously modernizing, particularly in its efforts to promote a *national* consciousness.

When the National Reformation Council (NRC) seized power in 1967, Brigadier Juxton Smith, NRC chairman, made a speech from the Sierra Leone Broadcasting Station in which he stated that Sierra Leoneans are all one people and that he himself "knows no tribe." Instructions were issued that the word "tribe" should be deleted from all official documents. The NRC's attention was then drawn by the Ministry of the Interior to the fact that there were some 24 *tribal* headmen in the Western Area, all of whom were paid governmental stipends. The NRC was caught in a bind: on the one hand it had stated that it would uphold the customs and traditions of the people of Sierra Leone, on the other hand, support for recognition of tribal headmen blatantly contradicted their program to create unity and extinguish tribalism.

The National Reformation Council ordered that a report be made on the activities of tribal

*The population of Freetown has always been dependent upon produce grown in the rural areas.*

headmen in Freetown from which some policy could be devised. The report, entitled "The Abolition of Tribal Headmen in the Western Area and throughout Sierra Leone," observed that the appointment of headmen had engendered feuding rather than encouraging unity and listed three arguments against the continuation of the system. First, it was no longer serving the purposes for which it had been established; second, it tended to accentuate tribal divisions, contrary to the NRC's promotion of national unity; and finally, it created discrimination by differential treatment of citizen classes. The report stated that if the council decided to abolish the system, the Department of Social Services would be capable of dealing with any problems created by the vacuum.

The NRC decided to abolish the headman system altogether. All tribal headmen were asked to report to the NRC and were informed that their positions had been liquidated as from October 16, 1967. Their stipends were paid up to and including this date.

The military government then took steps to replace the juridical services provided by headmen. Legislation was introduced extending the jurisdiction of the Magistrate Court to include cases involving customary law. But the National Reformation Council never had the opportunity to see the effects of this policy.

The military regime was overthrown on April 17, 1968, and a civilian government headed by Siaka Stevens assumed control of the country. All NRC decrees were declared null, yet less than three months later, the new civilian government



had to confront the same issue: what to do with regard to tribal headmen in the Western Area.

During the period 1968-1975, government policy was in fact ambivalent. "Stranger" tribes—that is, ethnic communities composed of peoples regarded as indigenes of another country (these included the Bassa, Kroo, and Foulah)—were thought to require the leadership of a headman to enable the government both to control their activities within Sierra Leone and to limit further emigration. The government recognized, however, that once headmen were permitted among these groups, all other ethnic communities would demand similar recognition.

In the absence of clear policy, unofficial headmen were continuing their leadership roles all over Freetown and the Western Area, especially their most important function—that of adjudication. Some based their right to act as headmen in a particular locality on the "permission" granted them by a local Member of Parliament or other political figure.

Complaints about the illegal or "unofficial" courts poured into the Ministry of Interior. At one point, riot police were called in to quell a disturbance resulting from a court decision in one part of Freetown. The following case illustrates some of the problems with which the Ministry had to cope during this period.

A complaint against the Temne tribal headman in Wellington village was forwarded to the Ministry of Interior. He was accused of having charged an unreasonable fine of Le.38.00 in court costs and another Le.40.00 for "woman damage."<sup>13</sup> The complainant reported:



*For your information, the chief expressed his view to me that the Government gave him all [rights] to implement any such actions against any offender brought before him so that I could take him to any Minister. I therefore crave your indulgence to curb out these evil acts now proceeding in this man's court and giving the Government a bad name.*

The civil servants were clearly caught in a dilemma: no decision had been made regarding headmen and the courts they operated all over the city were clearly illegal, yet they were fully aware that the politicians required the support of ethnic communities who in turn were demanding recognition of a headman. The government again sidestepped the issue by referring the Temne headman in Wellington to the Criminal Investigation Department (C.I.D.), requesting them to investigate the charge of malpractice. In the end, the only action was to call the headman into the office of the Ministry of Interior for a warning and he was required to refund the fines he had imposed on the complainant. Even when two other cases were taken to the Magistrate Court, they were defined as debt cases; the headmen were not charged with illegal judicial activities. The issue was considered in the local press.

*JURISDICTION TO BE DEFINED. There seems to be some confusion in the matter of Local Courts in the country, and it seems that the matter should be put right. There seems to be the misunderstanding that Local Courts with all the powers of arrest and subpoena, can operate in the Western Area.*

*It is not uncommon to see summonses and warrants made by local courts in the Western Area.*

*Much worse it is not uncommon to see men armed with these warrants trying to enforce the mandates of the warrants.*

*It is a sorry spectacle to see men and women presented with these warrants being quite carefree and unconscious of them.*

*These people of course know that these courts have no function or legal status in the Western Area and can ignore them.*

*A mass rally of one tribal community.*



*The Tribal Headmen elected after "re-instatement" in 1976.*

*But it appears that there is a breakdown in confidence and perplexity in government when this happens.*

*The supposed litigants are perplexed to find that there is no authority in the President of the Court.*

*The litigants are perplexed too at the seeming disregard to the authority of the state which empowered the president [i.e., the headman or chief of the court]. The president of the court is offended that his authority should be flouted and his dictates unanswered.*

*All this is minor beside the real havoc that can be caused if someone was arrested on the warrant of a Local Court and that person brought action before the High Court.*

*It seems that as a matter of urgency the position should be cleared and the jurisdiction of the courts defined.<sup>14</sup>*

The government responded by appointing another committee to study the problem again.

The report it produced argued for the reinstatement of headmen throughout Freetown and the Western Area. Headmen, in the view of the committee, could assist in the collection of local tax and perform other valuable services for the government. It was therefore agreed that for the present it would be politically, socially, and economically expedient to recognize Tribal Headships generally. The Minister of the Interior reminded the Cabinet that opinion was divided, however, and many would still argue for abolition of the institution as one that discouraged unity and social cohesion.

The Cabinet could reach no consensus and the decision was deferred while other expert opinions were solicited from the Judicial Adviser and another civil servant with extensive experience in local government. The Judicial Adviser is the officer responsible for supervising local courts in the Provinces and was himself a Native (or, as they are more commonly referred to now, a Provincial). In his report he observed that as he understood the Cabinet had decided, in principle, in favor of reinstating headmen, he would confine his remarks to the question of their judicial activities and the absence of provision in the Western Area for the administration of customary law.

The Judicial Adviser recommended the establishment of courts in the Western Area similar to the local Courts in the Provinces on the grounds that the vast majority of the population followed the customs and traditions which were beyond the competence of the English-based law. Moreover, he pointed out that even the headmen had never been legally authorized to hold courts and exercise judicial powers, most of them believed, wrongly, that they had been.

*There has therefore been a long felt need among the tribes of the Western Area to bridge this hiatus which most people strongly believe creates a serious social problem by not making adequate provision to meet the needs of a large section of the community.... Tribal societies have always had their tribal courts.... Perhaps it will be true to say that in our present set-up the only object of securing appointment to the post of Tribal Headman is to exercise judicial functions.<sup>15</sup>*

He went on to note that the "judicial set-up" in the Western Area could only administer English law:

*It follows therefore that even simple cases such as "woman damage" and all cases governed by "customary law" cannot be heard by these [English] courts. While their counterparts that is, the natives in the Provinces can get remedies in their Local Courts, the tribes in the Western Area cannot get redress in the Magistrate Court for the same wrongs.... Needless then to emphasize the hardship and inconvenience which the people have suffered in the past. Little wonder why a bold step was taken in this direction by the defunct National Reformation Council to bring social justice to the natives.... It was perhaps unfortunate that a trial was not given to this experiment.*

It was therefore the Judicial Adviser's "considered view" that a law enacted on the basis of the defunct NRC decree which would have extended the jurisdiction of the Magistrate Court to administer customary law in the Western Area would have a "salutory effect" by bridging the serious gap in the administration of justice in the Western Area.

The local government expert also provided the Cabinet with his views on the subject of the reinstatement of headmen. If the institution of headship was to be maintained, he declared that the nomenclature should be changed so that no tribe would be identified with a particular head. It would be better to appoint a headman over certain localities and, as far as their judicial activities were concerned, he should be assisted



by elders representing the tribes living in the area. These arrangements would, he suggested, encourage the gradual amelioration of tribal relations. He was not particularly sympathetic to the idea of providing either headmen or courts as a means of accommodating the cultural or social differences inherent in the various ethnic communities living in the Western Area. Indeed, he went so far as to say that, "The Western Area has an established social set-up [i.e., based on the British model] and immigrants into this area should leave behind some of their tribal behaviours and try to fit into the existing society."

Three more years passed before any action was taken on these or any other submissions to the Cabinet. Finally, in 1975 a bill amending previous legislation was passed in Parliament.<sup>16</sup> It reinstated headmen on the basis of one for each different tribe, with the law defining their functions. These included assisting the police and Justices of Peace in the discharge of their duties, helping with the collection of local taxes, serving as liaisons between their communities and the government in matters of local and national concern, and *adjudicating in any dispute arising out of customary marriages*.

The previous legislation, however, prescribed a penalty for any headman who exercised *any* jurisdiction, civil or criminal, of any nature whatsoever in respect to the members of his tribe, and this part of the law was not amended by the new bill. Thus in one section of the law the headmen were assigned adjudicatory functions and in another penalties were prescribed for fulfilling them. An attempt was made to resolve this anomaly with yet another piece of legislation which contained the proviso that a headman would not be subject to these penalties in the exercise of any of his functions or duties as laid down in the new legislation.

The most significant factor in the new law was that it gave headmen the duty to register customary marriages and divorces, a provision which had been made for people living in the Provinces in the early 1960s. Thus, for the first

*The Western Area Temne Women's Jama—"Economic factors have given impetus to the tendency toward segmentation of ethnic communities."*

time since the founding of the Colony in 1787, formal provision for the recognition of customary marriages and divorces was extended to the Natives (or Provincials) living in the Western Area.

The leaders of the ethnic communities in Freetown were ecstatic. Elections were held and altogether 16 headmen were appointed to serve the various communities. Headmen who had been holding courts since 1967 when the government-appointed headmen had been deposed, but who were not among the 16 selected, were forced to close down their courts.

It was well known that headmen relied heavily on the earnings they received from court costs and fines and so, when the matter of what stipends would be paid to them was raised, the entire question of their *judicial* activities was

again under review. The problem was referred to the Chief Justice, a prominent Creole. His advice on the new legislation led to another amendment in which the term "adjudicate" was replaced by "investigate" (any disputes arising out of customary marriages). In his opinion, the whole structure of the legislation including the new amendments "show quite clearly and in specific terms that in the Western Area no Tribal Headman is to exercise judicial functions."

So once again, by 1977, the position of tribal headmen returned to what it had been for the greater part of this century. Headmen may not hold courts or adjudicate in disputes. Although doubtless unable to avoid fulfilling their traditional judicial roles within their communities, the official attitude to these activities is that they are illegal.

(October 1979)

#### NOTES

1. S. King-Farlow, *Some Gold Coast Judgments, 1915, 1916, 1917, and the Masai Case, in the Court of Appeal for Eastern Africa, 1913*. Privately printed, 1917.

2. See Barbara Harrell-Bond, "'Native' and 'Non-Native' in Sierra Leone Law," [BHB-1-'77], *AUFS Reports*, West Africa Series, Vol. XVII, No. 1, 1977. These terms will be used in their legal sense throughout this series of Reports. The use of the term "Creole" has become interchangeable with the term "Non-Native" when talking about Sierra Leone, particularly the original Colony area now designated the Western Area.

3. Customary law was defined by the British as being the legal system practiced since time immemorial. It is, in fact, a very flexible system that is constantly adapting to changing conditions. There are no "tribal areas" in Sierra Leone and the population, even in small, remote villages, is ethnically heterogeneous. The principles of customary law of the 18 ethnic groups are virtually the same. The differences which do exist are mainly ritual or symbolic and these differences are associated with different geographical areas rather than with ethnic groups. The notion that there are tribal differences as far as customary law is concerned persists, however, because of the political importance of the notion of tribe. There is one clear exception to these generalizations. The Kono people, who live in the diamond-bearing part of the Eastern Province, practice sororal polygyny, that is, a man may marry the younger sisters of his first wife. This is regarded by other ethnic communities as incest, although they allow sororate marriage, that is, in the case of a wife's death, the widowed husband may marry one of her sisters. Creoles always cite the Kono as the example of primitive practices of the indigenous population. Those Natives—or Provincials who are not Kono cite them as

proof of important differences in the laws of the various ethnic communities—an argument often used to justify the appointment of tribal headmen in Freetown.

4. There is one exception to this statement. If a case involving a Native reaches the High Court, expert testimony may be introduced regarding the content of their personal customary law.

5. See "An adultery dispute with no legal remedy," *Kroniek Van Afrika*, New Series, 1975/1.

6. See Barbara Harrell-Bond, A. Howard, and D. Skinner, *Community Leadership and the Transformation of Freetown 1801-1976*, The Hague, 1978, Chapter Nine, for a discussion of these other examples.

7. February 4, 1888.

8. *Sierra Leone Weekly News*, March 24, 1900.

9. *Sierra Leone Weekly News*, February 10, 1900.

10. *Sierra Leone Weekly News*, September 15, 1900.

11. An interview by a research assistant with a Temne headman in Freetown, translated from Temne and Krio, 1973.

12. J. Peterson, *Province of Freedom: A History of Sierra Leone*, London, 1969.

13. "Woman damage" is the local description of an adultery case. The husband has the right to claim compensation from his wife's lover.

14. *Unity*, May 9, 1972.

15. MI/Q/42, No. J.A. 3/5, MP 51, November 23, 1971.

16. The Tribal Administration (Western Area) (Amendment) Act, 1975, No. 11 of 1975.