OPERATIONAL AUTONOMY AND PUBLIC ACCOUNTABILITY IN STATUTORY CORPORATIONS: A CASE STUDY OF GHANA'S DEVELOPMENT EXPERIENCE AND A BLUEPRINT FOR REFORM

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Since the end of the Second World War, statutory corporations have become accepted instruments of economic activity on both sides of the Iron Curtain. A wave of nationalization acts brought major utilities under public control in Britain, France, Italy, and to a very limited extent, the United States. In colonial Africa, the statutory corporation also became the official instrument of the Imperial British Government's well-publicized policy of colonial reconstruction. Largely as a result of the increased reliance on socialist planning and the popularization of import substitution as a viable strategy for economic development, the statutory corporation still remains a widely-employed institution in post-independence Africa. As with most institutions in developing Africa with roots in the colonial past, the structure of the

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1See generally The Public Corporation: A Comparative Symposium (W. Friedman ed. 1954).


3Import-substitution, as a policy prescription, argues in favor of the creation of industries to manufacture locally hitherto imported items, especially where there is a demonstrated sizable market for the product. The resulting reduction in the volume of imports permits the use of a greater proportion of export earnings in purchasing plant and heavy machinery required for industrialization. The policy was popularized especially by Dr. Prebisch (formerly Secretary-General of the United Nations Conference on Trade and Development) who pointed out the tendency of the terms of trade to develop adversely against primary production countries. See Growth and Decline of Import Substitution in Brazil, 9 Econ. Bull. Latin Am. 1, No. 1 (1964); Macario, Protectionism and Industrialization in Latin America, 9 Econ. Bull. Latin Am. 61, No. 1 (1964); Birmingham, Integration and Economic Development, 1965 Ill. L.F. 795. See also 26 Parl. Deb. No. 9, cols. 198-99 (1962) (Ghana).

4Most of the English-speaking countries in Africa have created statutory corporations to stimulate economic growth. The following is a random sample of these statutes: Industrial Development Ordinance, ch. 517 (1954) (Kenya); Industrial Loans (Lagos and Federation) Ordinance, ch. 88 (1956), as amended Act No. 59 (1961) (Nigeria); Development Corporation Law, ch. 31 (1956), as amended Edict No. 15 (1966) (Northern Nigeria); Industrial Bank of Sudan Act, No. 32 (1961) (Sudan); Development Corporation Act, ch. 468 (1962), as amended Act No. 69 (1964), as amended Act No. 16 (1968) (Tanzania); Uganda Development Corporation Ordinance No. 27 (1955), Legal Notice No. 39 (1963) (Uganda).
statutory corporation has been influenced to a greater extent by prevailing practice in the developed world, especially Britain, than by the concrete features of the African setting. Yet it is by no means certain that the Anglo-American model of the statutory corporation is a suitable vehicle for public corporate activity in a developing economy.

This article attempts an analysis of the functioning of the statutory corporation in a developing economy. It is particularly aimed at determining whether the relevant legislation in the area has achieved the proper balance between the two most crucial indices of statutory corporate organization: operational autonomy and public accountability. Instead of dealing with the problem generally, however, the article will concentrate on the experience of the developing economy of Ghana. Obviously there is some danger in treating the problems of Ghana as being representative of those of the entire African continent. However, this danger is greatly minimized by the fact that in much of the continent both the motivations behind the establishment of statutory corporations and the general characteristics of economic underdevelopment are identical to those in Ghana. Moreover, Ghana is a particularly suitable case study because it conducted the experiment in statutory corporate activity on a much wider scale than any other English-speaking African country.

The Initial Problem of Definition

It is difficult to define the proper balance between operational autonomy and public accountability in a statutory corporation. To do so is to assume the basic question of what the role of the statutory corporation in economic development should be. Furthermore, a universal definition of the proper balance would have to assume what the structure of a proper economic development should be. This article will not deal

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"The model is really more English than American, although the same concepts of autonomy and accountability pervade public corporate organization in both countries.


"This is admittedly the reverse of the most common tool of analytical effort, i.e., abstraction from the secondary attributes of a phenomenon and concentration on its basic scaffolding. However, since the dominant features of statutory corporate activity are the same throughout English-speaking Africa, no advantage will be lost in employing this method of analysis.


"This is because of the Nkrumah government's strong commitment to socialist planning as evidenced by allocations made under the Seven Year Plan for Reconstruction and Development (1963-1970). See Seven Year Plan, Office of the Planning Commission 1-3 (1964). But see R. Genond, Nationalism and Economic Development in Ghana 217 (1969), where any description of Nkrumah's policy in terms of a socialist experience is termed "misleading."

"For an interesting treatment of the subject, see Frankel, Some Conceptual Aspects of Interna-
with the problems underlying these two assumptions. For this article's purposes, the proper balance is defined as that balance which allows a public corporation to most efficiently achieve, or strive to achieve, the goals stated in its charter.

Furthermore, "public accountability" will be defined as the degree to which a public corporation is subjected to a consistent range of legislative and other governmental controls for the purpose of ensuring its continued alignment with the stated aims of national policy. "Operational autonomy" will be defined as that amount of independent judgment which a corporation may be permitted to exercise to ensure that it achieves the flexibility requisite for its commercial operation.

I. STATUTORY CORPORATIONS IN GHANA

A. The Pattern of Colonial Legislation

The first statutory corporations in the colonial period were created as manufacturing subsidiaries of the Gold Coast Industrial Development Company, Limited. None of these subsidiaries was created by special statute; all were incorporated under the Companies Ordinance of 1906, a virtual carbon copy of the British Companies Act of 1862. Under the Companies Ordinance, the only government control over the subsidiaries was the control as exercised by a shareholder in an ordinary corporation.

While the private company device allowed the subsidiaries maximum independence, it also removed them from public accountability and control. Since they were not created by special statute, these subsidiaries did not answer directly to the legislature or to the government. Governmental control over their policies and operations existed only to the extent that the government-appointed board of the holding com-

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"This definition goes beyond the traditional meaning of public accountability which tends to emphasize financial responsibility. Accountability, as it is defined here, covers other areas of activity, such as research, job training, and education for which the corporation is equally answerable to the public. For a valuable treatment of accountability in the Nationalized Industries in Britain, see W. ROBSON, supra note 6, at 190.

"Created by the Industrial Development Corporation Ordinance No. 38 (1947) (Gold Coast). The Gold Coast was a British colony which, along with a portion of other lands under British trusteeship, was formed into the self-governing dominion of Ghana on March 6, 1957 and became the present state of Ghana on July 1, 1960. 10 ENCYCL. BRIT. 379 (1967).


pany—the Industrial Development Company (IDC)—could control them. But due to the anachronistic provisions of the 1906 Act under which the subsidiaries were incorporated, IDC control over their finances and policy was largely illusory. Of course, as to those subsidiaries in which the IDC did not have a controlling interest, governmental control was even more tenuous. Finally, since the subsidiaries were not subject to any policy direction either by the government directly or through the IDC, they were independent even as to matters of broad policy.

A case in point will illustrate these objections. The Cocoa Purchasing Company (CPC) was incorporated in 1952 under the Companies Ordinance with an authorized share capital of two thousand Ghana pounds (£G2,000). It was constitutionally a wholly-owned subsidiary of the Cocoa Marketing Board (CMB), a statutory body created in the same year and organized on virtually the same principles as the IDC. The Cocoa Purchasing Company was authorized under its articles of association to undertake, among other things, the purchase, storage, shipment, and export of cocoa. The issuance of loans was not one of its authorized functions. However, on the instruction of the Minister, the CMB (the parent company) made the CPC an agent for the issuance of loans to needy cocoa farmers on conditions stipulated by the government. The subsequent history of the loans scheme tells its own story.

Since the government had no de jure authority over the CPC, the conditions on which the loans scheme was to be administered had to be communicated to the CMB. Prior to this transmission, however, the CPC, on its own initiative and out of its own resources (all its shares were held by the CMB), decided to issue loans over the protests of the Minister. When the government established the requisite conditions, including a £G150 limit on loans for the relief of farmers’ indebtedness, the board of the CPC held that £G150 was simply inadequate and decided to raise the limit to £G1500. The variation was imple-

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15Since there were no shareholders in the subsidiaries, the Ordinance provisions relating to shareholder control did not afford any practical supervision of the management of the subsidiaries. Although the Ordinance provided for another method of supervision, viz, the appointment of ad hoc inspectors by the Governor, the relevant sections were so “brief and unsatisfactory” that they “were incapable of being effectively employed to prevent impropriety in management.”

See LAWS OF THE GOLD COAST, ch. 193, § 68-75 (1951); GOWER REP., supra note 14, at 163.


18Id.

19Id. at para. 23.
mented for an entire year before ministerial approval was finally communicated through the CMB to the CPC. A government report later blamed these and other irregularities of the CPC on the legal isolation from governmental and legislative control resulting from the mechanism of its incorporation. Commenting on that mechanism, the report lamented:

While such an arrangement has many practical advantages, as the law now stands, it has also the great disadvantage that it prevents the Minister from supervising in any effective way, the conduct of the Cocoa Purchasing Company. It will be appreciated that it is impossible for any Minister to control "by directions of a general character" to the Cocoa Marketing Board the detailed conduct of a limited company whose only link with the Government is that its shares are owned by a public authority.

Indeed, it is senseless to speak of a balance between corporate autonomy and public accountability in the subsidiaries because there was none. Through the symbolism of the private company device, the colonial government effectively removed the subsidiaries from the nagging queries of the new African majority in the legislative assembly. By and large it was the organization of the IDC itself that was to determine the relationship between public manufacturing corporations and the government in the post-independence period.

The IDC was set up in 1947 as a limited liability company. Unlike its subsidiaries, however, it was specifically exempted from the application of the Companies Ordinance. Government control over the IDC consisted of appointments and authorizations and examination of reports by the legislature.

The Governor-in-Council, the colonial chief executive, appointed five of a maximum number of seven members of a board of directors. Two

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\[20\] Letter from D. Abloth, acting Permanent Secretary of Ministry of Trade and Labour, to the Managing Director, Cocoa Marketing Bd., dated Aug. 15, 1955, Jibowu Comm'n Rep., supra note 17, at 5 app. B.

\[21\] Government Proposals in Regard to the Future Constitution and Control of Statutory Boards and Corporations in the Gold Coast 6 (1956) (Ghana) [hereinafter cited as Government Proposals].

\[22\] The Constitution of 1946 gave the Colony and Ashanti representative government for the first time. Elected members had a majority of six over the official and nominated members who were all colonial administrators. Although in practice the power of the Imperial Parliament was preserved in the form of a broad power vested in the Governor-in-Council to veto legislation "in the interest of public order," the African majority was still a powerful political weapon. See F. Brennion, The Constitutional Law of Ghana 37-39 (1962).

\[23\] Industrial Development Ordinance No. 38 (1947) (Gold Coast).

\[24\] Id. § 18.
of these five were required to be nominees of the two Councils of Chiefs. While the government held more than half of the shares available to the public, the Governor could appoint the two other board members from a group of persons nominated by the Legislative Council. Members of the board held office for at least three years, and the Governor determined their remuneration.

Dividend rates had to receive the Governor's written approval if they were in excess of nine percent per annum. Copies of the Corporation's profit and loss account and the report of the board chairman had to be sent to the Governor, who then was obligated to send them to the legislative assembly "as soon as possible."

An examination of the constitutive ordinance in its totality suggests that the colonial government was rather uncertain about the constitutional status of the IDC. Indeed, to a government officially committed to the export of primary products, a public corporation engaged in industrial activity was an embarrassing anomaly. The choice of a limited liability company as an instrument of public corporate activity, instead of the conventional public corporation, then in its formative years in Britain, was an attempt to fit that anomaly into the general laissez faire orientation of colonial policy. It is against this background that the relationship between the IDC and the legislative and executive bodies must be analyzed.

Although the Ordinance made provision for the issuance of shares to the public, it was contemplated from the beginning that the finances of the IDC would consist wholly of government appropriations. This was because domestic saving ratios were extremely low and further complicated by constraints imposed by the extended family system as well as public distrust of interest-bearing securities. Since risk-avoiding private financial institutions would not usually purchase securi-

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25Id. § 6(3).
26Id. § 6(4).
27Id. §§ 6(1)-(2).
28Id. § 15.
29Id. §§ 18(1)(a)-(b).
30Id. § 18(2).
31See Section II, infra.
32Industrial Development Ordinance No. 38, § 11 (1947) (Gold Coast).
33In an introduction of the Gold Coast Industrial Development Bill before the Legislative Council, the government indicated that it intended to hold all shares until "good results are shown." 2 LEGISLATIVE COUNCIL DEBATES 96 (1947) (Gold Coast).
35GOWER REP., supra note 14, at 2.
ties in "unprofitable" infant industries in the absence of government guarantees (which the Ordinance did not provide), the only significant source of financing was the publicly-held Cocoa Marketing Board surplus. But, while there was no question from the very beginning that the IDC was to operate as a government-financed public institution, controls over its policy and operations were extremely lax.

This laxity originated with the statement of the objects of the corporation, which were:

(a) with the approval of the Governor-in-Council to establish and conduct any industrial undertaking; and
(b) to facilitate, promote, guide and assist in the financing of,
(i) new industries and industrial undertakings; and
(ii) laboratories for the investigations of the commercial possibilities of products and the plants, equipment and technique necessary for making the same;
(iii) schemes for the expansion, better organization and modernization of, and the more efficient carrying out of operations in existing industries and industrial undertakings.

While the net effect of this statement was to make the IDC a central planning authority, there was not even the vaguest hint of the sort of industries it was to establish or of the policy objectives it was to seek. A clear-cut policy guideline should have been included in the enabling ordinance, but not merely because the IDC was engaged in industrial planning. Two other considerations make such a guideline an absolute necessity. The first of these, which has already been mentioned, is the fact that the subsidiaries were removed from governmental and legislative control by the method of their incorporation and the general body of laws to which they were subject. The second is that there was no extra-statutory government pronouncement such as the later-day Development Plan which the IDC's board could consult for authoritative direction. The only possible guide, the Metropolitan Colonial Development Act of 1929, did not speak to the industrialization of the colonies as such but was designed to enable advances to be made by the British Government to the colonies "for the purpose of aiding and developing agriculture and industry in the colony or territory and thereby promoting commerce with, or industry in the United Kingdom".

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6For an account of the vast foreign exchange earnings accumulated by the Cocoa Marketing Board in the colonial period, see W. BIRMINGHAM, I. NEWTADT & E. OMAHOE, A STUDY OF CONTEMPORARY GHANA 339-42 (1966) [hereinafter cited as BIRMINGHAM].
7Industrial Development Ordinance No. 38, § 4 (1947) (Gold Coast).
8Metropolitan Colonial Development Act of 1929, 19 & 20 Geo., c.5.
9BIRMINGHAM, supra note 36, at 441 n.1.
A second element in the laxity of governmental control of the IDC was the absence of a statutory power in the minister or other executive official to give directions of any nature to the IDC concerning any aspect of its business. Even the power of "general direction," which by 1947 was a standard form of public control of nationalized industries in Britain, was not made a feature of the IDC's relationship with the government.

It is difficult to determine whether the apparent lack of a clear-cut policy guideline and the laxity of government control were meant to insulate the IDC from the new African majority in the legislative assembly while leaving it a free hand to pursue policies that would pose no threat to the interests of British oligopolies. There is some evidence that the IDC was positively discouraged from taking its vague mandate too seriously. Whatever the motive, the important point is that in the first phase of the colonial experiment public control was rather minimal. The IDC subsidiaries determined their own economic objectives, pricing policies and auditing systems. Government control was limited to appointments to the board of the IDC and the examination of the subsidiaries' annual reports, whose form and content the subsidiaries themselves determined.

One result of the lack of policy direction in the IDC was that for the first several years of its operation, it operated essentially as a loans agency, financing private projects which were "only of secondary importance to the overall economy of the country." Most of these loans were ultimately written off as bad debts largely because the IDC's ordinance did not provide any machinery for the effective supervision of the loans or their recovery.

Changes in 1951 brought the IDC under closer governmental and legislative scrutiny. Prevailing mechanisms of control, as utilized in the organization of British nationalized industries, were introduced. Corporate funds consisted essentially of government appropriations or "advances" from the Ministry of Industries, but loans could be obtained from private or public commercial banks. In either case there was a government guarantee to repay both principal and interest. Apart from

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*See W. Robson, supra note 6, at 139-40.
**See note 14, supra.
*Birmingham, supra note 36, at 289.
*Industrial Development Ordinance No. 22 (1951) (Gold Coast).
*Id. §§ 8(2)-(3).
authorizing loans and advances to the corporation, the Minister appointed members of the board and the corporation's auditor.47

The most important element in the 1951 changes, however, was the power of the Minister to give "the Corporation such directions as he shall think fit as to the duties to be performed by the Managing Director."48 (emphasis added). The Governor-in-Council was also authorized to "give to the Corporation directions of a general character as to the exercise and performance of their powers in relation to matters appearing to the Governor-in-Council to concern the public interest."49 (emphasis added). Despite the obvious difference in the language of the two provisions their practical effect was the same: both the Minister and the Governor had authority to issue "general directions" to the board on broad issues of corporate policy.50

By the time of its dissolution51 the IDC was structurally a replica of the Anglo-American statutory corporation. It had a Managing Director nominally responsible to a Board of Directors, which in turn was responsible to the Minister. In principle the Minister was responsible to the legislature. The range of public controls started with appointments and ended with legislative reviews of annual reports.

B. False Analogies in the Pattern of Colonial Legislation

The premise underlying colonial corporation legislation was that the successful statutory corporation must maintain the dichotomy between "day to day" business affairs, in which the corporation must be autonomous, and matters of "general policy," in which the government may legitimately interfere. The board of directors was expected to keep the dichotomy operative at all times. However, the need to separate "day to day" and "general policy" decisions is not as distinct in the Ghanaian setting.

The line of demarcation between "policy" and "day to day" business is difficult to draw. Both categories possess a confusing penumbra. Policy formation occurs at a number of levels, and it is frequently difficult to maintain the distinction. A host of small decisions of "day to day" business could collectively involve an issue of national importance.52 If corporation A discharged two workers from one of its facto-

47 Id. §§ 8-15.
48 Id. § 14.
49 Id. § 13.
50 See JIBOWU COMM’N REP., supra note 17, at 8.
51 The IDC was disbanded in 1962 and its projects transferred to a newly created Ministry of Industries.
52 M. DIMOCK, BRITISH PUBLIC UTILITIES AND NATIONAL DEVELOPMENT 160-61 (1933).
ries, the action and its rationale may appear "day to day" on the surface, but it may involve broader issues of employment policy and the corporation's sensitivity to nationally determined employment guidelines. In Britain itself the distinction has always been attended by confusion, which usually arises during parliamentary debates. The amount and cost of transportation in London provided for members of the National Coal Board (NCB), the employment and remuneration of private firms for underground surveying by the NCB, the ages of members of Divisional Coal Boards, the number of non-industrial staff employed by the Board, and allegations that a Coal Board poster contained "provocative and crude political propaganda" have all been classified as "day to day" business. Yet some of these could conceivably involve issues of general policy on which the Minister may issue general directions. If the National Coal Board was, for instance, employing non-industrial staff in excess of its stated requirements, that could hardly be said to be none of the public's business. Similarly, if it used one of its departments to distribute political propaganda, issues of general policy could be raised.

To eliminate the artificiality and arbitrariness inherent in the dichotomy, the tendency in the British experience in recent times has moved towards more informal mechanisms of ministerial control. In the words of Professor Robson:

It has . . . become abundantly clear in recent years that the power to issue directions and other legal means of control possessed by the Minister are of far less importance in the relations between the government and nationalized industries than the influence exercised informally through discussion, negotiation and pressure.

This system of informal checks has worked reasonably well in Britain. Notwithstanding this fact, occasional charges are heard that statutory restrictions on the scope of ministerial direction unduly isolate the nationalized industries from public surveillance. In the Ghanaian experience the tendency was for the Board to deny the Minister vital information and reports that it was required by statute to furnish him on the ground that such information pertained to "day to day" management.

[See W. Robson, supra note 6, at 165-77.]
[Hanson, Parliamentary Questions on the Nationalized Industries, 29 Public Admin. Rev. 53-54 (1951).]
[Id. at 54.]
[W. Robson, supra note 6, at 142.]
[Hanson, supra note 54, at 61.]
[See, e.g., F. Golsa, Budget Statement 8 (1963-64) (Ghana), where the Minister makes an]
But even assuming that it is possible to draw the line of demarcation between that which is "day to day" and that which is "policy," the dogged theory that there is a direct causal relationship between stringent government controls and inefficiency in the working of the statutory corporation is open to some objection. Logically it is untenable, for it surely cannot be said that government directions on "day to day" matters lead inevitably to "inefficiency" irrespective of the quality of the directions and manner in which they reach the board. If the operative considerations are the quality of the directions and the manner of their administration, then the theory that government direction over details of management leads to less commercial viability is too dogmatic. But if the theory is not based on abstract logic, neither is it based on any cause and effect proof. Indeed, such proof may be impossible. How does one prove, for instance, that a drop in the efficiency of workers in factory B is due to the Minister of Industries' sending the management specific instructions that workers should be at work punctually? Although a recent study has established some correlation between total amount of control and its distribution and organizational effectiveness, it is important to note that the subject of the study was a purely administrative organization. It is therefore questionable whether the finding lends empirical evidence to the theory that such a cause and effect relationship in a business enterprise exists. Significantly, the same study reported that the correlation is much weaker in businesses that stress competition and individual initiative.

What may be called the Morrisonian dichotomy is grounded upon a desire to avoid the crippling bureaucracy that supposedly characterizes a government department:

The underlying reason for the creation of a modern type of public corporation is the need for a high degree of freedom, boldness and enterprise in the management of undertakings of an industrial or commercial character and the desire to escape from the caution and circumspection which is considered typical of a government.

This is essentially an a priori argument: since government control and

impassioned plea for information from the corporations.


For an example of such an administrative organization (The League of Women Voters) see Tannenbaum, Control and Effectiveness in a Voluntary Organization, 68 Am. J. Sociology 33-46 (1961).

60 Tannenbaum, supra note 59, at 121.

61 After Mr. (later Lord) Herbert Morrison, who in 1947 was President of the Council, Leader of the House, and principal architect of the modern public corporation.

62 W. Robson, supra note 6, at 47.
direction of government departments tends to produce red tape and inefficiency, it is highly probable that such controls will produce similar results in a statutory corporation. To avoid that probability the corporation's "day to day" activities must be exempted from political interference. Politicians, according to this argument, are "inquisitive and irresponsible guardians of the public interests," who represent divergent and often competing interests of different localities. Ministerial control over "day to day" activities would inevitably be influenced by these competing pressures. Furthermore, since political officials hold office for relatively short terms, corporate progress could be unduly fragmented if corporate management were to change coloration every time a new minister, authorized to meddle in the administration of a corporation, came into office. It is easy to see from the above that the Morrisonian dichotomy, a product of the political climate which followed World War II, is essentially a compromise between two competing ideologies in Britain: the socialist ideology of the Labour Party, with its commitment to a planned economy, and the laissez-faire ideology of the Conservative Party, with its distrust of government in business.1

While the arguments supporting the dichotomy have their merits,4 they do not have universal validity. Since the assumption that stringent government control leads to inefficiency is not based on logic, it must derive its validity from the dynamics of a given forum. The dynamics of underdeveloped nations usually militate against such an assumption. In Ghana, the assumption was unequivocally rejected by an informed report in 1956.11 After noting Morrison's arguments in favor of corporate autonomy in "day to day" activity, the 1956 government report added:

The Government has given careful thought to these arguments, but in the special circumstances of the Gold Coast they believe that the advantages of greater control of statutory authorities considerably outweigh the disadvantages.98

Some of those "special circumstances" were, and continue to be, the invariable confinement of expertise in other departments and ministries, the less significant effect of such extra-legal checks on corporate activity as trade unions, consumer councils, and the press,67 and the inevitable

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4For an interesting analysis of the prenationalization political debates, see Chester, Management and Accountability in Nationalized Industries, 30 Public Admin. Rev. 27 (1952).
4See Morrison, Public Control of the Specialized Industries, 28 Public Admin. Rev. 3 (1950).
9JIBOWU COMM'N REP., supra note 17, at n. 45.
9Id. at 9.
9In the experience of nationalized industries, consumers, consultative councils and trade unions
nepotism and corruption at all levels of corporate activity which accompany lax governmental control.8

The application of the Morrisonian dichotomy to the organization of the IDC is questionable on another ground. Unlike the nationalized industries in Britain, the IDC never engaged in manufacturing or production. Industrial and commercial operations of the IDC were assumed by subsidiaries, partly or wholly financed by it, incorporated under general corporate laws.9 As a type of holding company it was essentially engaged in policy formation, i.e., the creation of new industries within the context of a national economic strategy and the determination of their economic objectives. Thus, quite apart from the questionable validity of the dichotomy as discussed above, its application to the IDC was still disingenuous. The difficulty in determining when "day to day" policy became general policy was even greater with an institution such as the IDC which dealt essentially with various levels of policy decision. The result was the isolation of matters of national policy from ministerial or legislative scrutiny. A perfect example is the case of the IDC (Cinemas) LTD.70

In 1957 the IDC decided to enter the movie industry, although required by statute to emphasize manufacturing and production. Pursuant to this decision the corporation purchased a private concern, the West African Pictures Company, incorporated it as a subsidiary and appointed its proprietor the Managing Director of the new company. The Director continued to operate a private theater in competition with the IDC subsidiary and also appointed his illiterate brother as one of the managers of the new company. Rates at the company's public theaters were habitually in excess of advertised rates, and proceeds from ticket sales were constantly embezzled by the manager. Sometimes customers were not even issued tickets, and accounting procedures were completely chaotic. When a member of Parliament raised these anomalies during debate, the Minister directed the Board of the IDC to investigate the alleged irregularities in its subsidiary. However, the Minister refused to make the results of the investigation available to the public or answer any questions in the House related to the details of the findings, on the

provide very strong checks on the policy decisions of the public corporations. See W. Robson, supra note 6, at 243-75.

8A remarkable illustration of this tendency is the case of the Cocoa Purchasing Company. See Jibowu Comm'n Rep., supra note 17.

9See note 12 supra and accompanying text.

70This example and all its details are taken from a private member's motion introduced in the House on July 10, 1957. See 6 Parl. Deb. 1903-19 (1957) (Ghana).
ground that he had no legal power of direction over the subsidiary. Thus, broad matters of national importance regarding the operations of the subsidiary—conflicts of interest, nepotism in hiring, consumer protection—were legally removed from the purview of his control. What is more incredible is that the initial decision of the parent company to invest in the movie industry, although an important investment issue, was apparently treated as a "day to day" activity and thereby removed from ministerial direction.

C. Post IDC Reforms: Control Through Direct Legislation

The confusion that surrounded the proper structure of the IDC, the absence of effective powers of government direction and the remoteness of public control over the subsidiaries all arose in part from the inherent ambiguities in economic policy between 1947 and 1961.\(^\text{71}\) While the rhetoric of government officials suggested a firm commitment to industrialization, national expenditure was still dominated by the development of other sectors of the economy.\(^\text{72}\) Since, according to the government's economic advisor, Arthur Lewis, the lifeblood of industrialization was foreign investment,\(^\text{73}\) direct government activity was to be kept at a minimum.\(^\text{74}\) Consequently, it was not a matter of absolute importance that the proper legal machinery be devised for the execution of government industrial activity. However, the Lewis strategy failed. The entrepreneurial class by its own cost-benefit calculation opted to abide by the colonial policy of extraction and retail trade.\(^\text{75}\) Meanwhile,

\(^{71}\text{See BIRMINGHAM, supra note 36, at 30.}\)

\(^{72}\text{The First Consolidation Development Plans (1950-1959) made financial allocations as follows:}\)

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<th>Category</th>
<th>Allocation (£G million)</th>
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<tr>
<td>Agriculture and Natural Resources</td>
<td>7,616</td>
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<tr>
<td>Industry and Trade</td>
<td>5,548</td>
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<tr>
<td>Electricity</td>
<td>4,440</td>
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<tr>
<td>Communications</td>
<td>35,955</td>
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<td>Local and Regional Government</td>
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<td>Education</td>
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<tr>
<td>Information and Broadcasting</td>
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<tr>
<td>Housing</td>
<td>7,862</td>
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<tr>
<td>Health, Sanitation, Water Supplies</td>
<td>15,033</td>
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<tr>
<td>Police and Prisons</td>
<td>2,953</td>
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<tr>
<td>Miscellaneous</td>
<td>13,549</td>
</tr>
</tbody>
</table>

Source: Second Development Plan, ch. 1 (1959-1964). Economic and productive services thus constituted only 16.9% of the two plans.

\(^{73}\text{R. FITCH & M. OPPENHEIMER, supra note 42, at 82-83.}\)

\(^{74}\text{Id. at 83.}\)

\(^{75}\text{Id.}\)
the vast reserves that the Cocoa Marketing Board had accumulated over the years and "invested" in Britain had been drained and a balance of payment deficit had taken their place.\(^7\) By 1960, the Lewis strategy was no longer within the range of possible choice. The legal instruments of direct government activity came to require greater definition, and statutory corporations were therefore established by special legislation.

1. *The Statutory Corporation Acts*

The first Statutory Corporations Act enacted in 1959 provided for the establishment of public corporations by the Governor-General with a residual power of approval in the legislative assembly.\(^7\) The second Act virtually re-enacted the first but abrogated the residual power of approval in the legislature,\(^7\) and the current Act provides for the creation of statutory bodies by "legislative instrument" instead of "executive instruments."\(^7\) This last Act will form the basis of the discussion which follows.

The significance of the Statutory Corporations Act is that it allocates to the government the power to decide what industries shall be created and how they should be controlled—a function that hitherto had been exercised by the IDC itself. It has been noted that the delegation of this function to the IDC should have been made subject to specific direction by the government and periodic examination by the legislature, especially since the subsidiaries, once created, were totally removed from such controls.\(^8\) By giving the initial decision to the government, the

\(^7\)Id. at 91.

\(^8\)Statutory Corporations Act, No. 53, §§ 5-6 (1959) (Gold Coast).


\(^10\)Statutory Corporations Act, No. 232 (1964) (Ghana). The main distinction between legislative instruments and executive instruments appears to be the manner of their publication. Under Article 40 of the Republican Constitution of Ghana, the laws of Ghana included "enactments made . . . under authority of the Parliament established by the Constitution." Any enactment made pursuant to authority conferred by the Constitution or by Parliament became a "statutory instrument." The Attorney-General was authorized to declare certain statutory instruments "legislative" and others "executive." Under a declaration made by the Attorney-General pursuant to that authority, the Statutory Instruments Order, 1960, all instruments made under specified enactments or under powers expressed to be exercisable by legislative instrument were known as "legislative instruments." All other statutory instruments were "executive instruments." All legislative instruments must be published in the Gazette, but executive instruments need not be. A second possible distinction between the two instruments is that legislative instruments are, as their name suggests, juridical in content and practical in effect, while executive instruments are usually in the nature of administrative directions. This distinction is, however, misleading since some executive instruments operate as "laws," the violation of which automatically results in some form of sanction.

\(^{11}\)The observation may be compared with congressional criticism of the power of the Wartime Reconstruction Finance Company to set up subsidiaries without congressional approval. See 91 CONG. REC. 8547, 8560-62 (1945).
Statutory Corporations Act gave the President a unique opportunity to redefine the entire process of accountability and corporate autonomy without the need for direct legislative action. Significantly, this situation coincided with an increase in socialist rhetoric in official pronouncements.\(^1\)

The vesting of complete discretion in the President to determine industrial strategy is, of course, open to criticism. It may be argued that such power may be exploited easily for political advantage and that initial policy decisions should be subject to legislative approval premised upon the goals of the national policy. In rebuttal, it may be asserted that since both the Statutory Corporations Act itself and the legislative instruments creating the public corporations are subject to repeal or amendment, the legislature in fact has some leverage over governmental decision, albeit ex post facto. The experience of the IDC and the notorious scandals of the Cocoa Purchasing Company\(^2\) would seem to suggest that the Statutory Corporations Act should at least contain broad guidelines for the exercise of the President's power. Admittedly, a "checklist" of economic values will not guarantee that the most advantageous decisions will be made, but it will at least provide some objective basis for legislative control.

The corporations created under the Statutory Corporations Act were more tightly controlled by the Government, although, as we shall demonstrate, the colonial concepts of accountability and autonomy continued to underline the organization of the subsidiaries.

2. The State Enterprises Secretariat: A Case of Stillbirth

The State Enterprises Secretariat, the new holding company which replaced the Industrial Development Company, was born out of the frustrations of the colonial strategy. As such, its statute exhibits an obvious expansion of the range of government control.\(^3\)

Charged with the promotion of statutory corporations engaged in trade or industry, the State Enterprises Secretariat (SES) was given extensive powers over the operations of the subsidiaries. It was charged, among other things, to set annual goals and production targets for all the statutory corporations within its ambit of control, initiate training schemes and coordinate programs for the training of employees of individual corporations, purchase supplies and carry out periodic inspec-

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\(^2\)See JIBOWU COMM'N REP., supra note 17.

\(^3\)See Legislative Instrument, No. 457 (Ghana).
tions to ensure that government policy was obeyed to the letter. Its head, the Executive Secretary, was appointed by the President and charged with conveying government policy to the various subsidiaries. Every phase of SES operations was subject to “general or specific” direction by the President. The colonial dichotomy between “day to day” matters and “general policy” was therefore abolished.

Despite these numerous controls, the SES remained just another government agency vis-à-vis the statutory corporations. It never held any shares in any corporation and never set any goals or placed any orders for supplies. It conducted inspections, but these were essentially routine visits to various plants; reports from the numerous subsidiaries were usually vague. In practice the SES became a “post office,” carrying messages to and from the various statutory corporations, which themselves remained largely independent. The U.N. Report on the SES gives two reasons for the inability of SES to exercise its statutory powers of supervision over the subsidiaries: (1) lack of trained personnel and (2) inadequate legal controls. The first of these, of course, is true. The shortage of trained personnel is a common feature of underdevelopment. However, the argument that the SES lacked adequate legal controls over the subsidiaries is completely false. Even a cursory glance at the statute shows the exact opposite. What the Report fails to note is that the SES and its subsidiaries were operating on two distinct jural norms based upon two contradictory principles. On the one hand was the statute of the SES which gave it authority to effectively direct all aspects of the subsidiary’s activity, and on the other was the set of instruments creating the subsidiaries which, while acknowledging responsibility to a number of government departments including SES, expressly issued an injunction to all such departments against interference in matters of management. The practical isolation of the subsidiaries from the statutory controls of the SES, therefore, resulted equally from the lack of trained personnel and the basic incompatibility of the two pieces of legislation. An examination of the entire process of accountability in the subsidiary lends concrete proof to this argument.

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84Id. at pt. 11, § 2(7).
86Id. at 10.
87Id. at 5.
88Id. at 11.
89See Legislative Instrument, No. 475 (Ghana).
D. The Process of Accountability within the Statutory Corporation

1. Appointments and Dismissals

In all the subsidiaries, appointments to the board of directors are made directly by the Minister. All members of the board and their chairman are appointed by the Minister with the approval of the Cabinet for a minimum term of one year. Any member of the board may be removed by the Minister acting with the approval of the Cabinet. In order to ensure some continuity in policy, members ceasing to hold office are eligible for reappointment. Thus, the statutes vest the power of appointment and dismissal of board members exclusively in the Minister and the Cabinet. There is no policy statement in the statutes concerning qualifications or conditions for disqualification. The Minister has plenary discretion in the matter.

There are a number of competing considerations in the area of board appointments that can be abstracted from the general pattern of legislation in the Anglo-American experience. In a democracy it is considered axiomatic that vital appointments to public institutions should be made by the executive. Ministerial appointment of board members ensures their responsibility to the public and in turn provides the logical justification for the Minister's accountability to the legislature for the good conduct of such appointees. The practice of Appointing Trustees, introduced in the London Passenger Transport Act of 1933, was an anomaly and was tersely condemned as simply fantastic. On the other hand, if a spoils system is to be prevented, it is important that such appointments be based on competence. To that end, the Nationalization Acts generally require the Minister to appoint persons with demonstrated competence in specified fields of activity. Such provisions are

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91 Legislative Instrument, No. 412 (Ghana), which incorporated the State Meat Products Corporation, is used here as an example. The sections of Legislative Instrument, No. 412, usually correspond both in chronology and content to the relevant sections of all the other legislative instruments. Exceptions will be noted.

92 Legislative Instrument, No. 412, §§ 2-4 (Ghana).

93 Id. § 4.

94 Id. § 5.

95 In the words of Herbert Morrison, “Somebody ought to be accountable for the appointments. There should be somebody definite to shoot at.” See Accountability in Government Departments, Public Corporations and Public Companies 51 (R. Ennis ed. 1967).


97 The Public Service Board: General Conclusions, Public Enterprise 367 (W. Robson ed. 1937).

98 W. Robson, supra note 6, at 213-23.
not unlike that of the Tennessee Valley Authority (TVA) Act which prescribes a "Merit System" for appointments.99

Such statutory admonitions, to be sure, can only aim at making competence the prerequisite of such appointments. They do not, and cannot, guarantee that political considerations will not enter into the Minister's judgment. Indeed, if a tradition of rectitude in ministerial conduct existed, appointments would be based on competence even in the absence of a statutory command. Thus, it is misleading to blame the highly partisan nature of board appointments and the general incompetence of such appointees entirely on the absence of statutory prohibitions equivalent to those of the Anglo-American model.100 The problem goes to the very heart of post-independence political organization. Its solution will have to be more fundamental than the mere prescription of statutory guidelines for high level appointments, although there is some evidence that such guidelines could at least minimize the political abuse of the power of appointment.101

The more significant point, however, is that despite the State Enterprises Secretariat's general supervision of the conduct of the subsidiaries, it had absolutely no control over board or managerial appointments. It did not even serve in a consultative capacity. This fact greatly undermined its authority over the board, for it generated the feeling among members of the board that they could flout the dictates of the SES with impunity, since, in their estimation, they were only responsible to the Minister. These members usually insisted on direct communication with the Minister even when the instruments of their incorporation provided to the contrary.102 On the face of it, there is nothing wrong with a good rapport between board and Minister. For example, the relationship between board and Minister in nationalized industry in Britain is largely governed by extra-statutory conventions.103 In Ghana, however, the SES was legally responsible for "ensuring that these corporations are run efficiently and profitably and in accordance with the terms of the instruments of their incorporation."104 Thus, a dilution of SES authority

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101The management of joint state-private enterprises were generally chosen on the basis of merit. See U.N. Rep., supra note 85, at 8. They managed to maintain a high rate of efficiency. See BUDGET STATEMENT 60 (1966) (Ghana).
103W. Robson, supra note 6, at 142-46. For the opposite view that such a relationship makes the board overly dependent on the Minister, see Chester, The Nationalized Industry, THREE BANKS REVIEW 41-42 (Dec. 1952).
meant a relaxation of government control over the operation and the discipline of the board. This lack of discipline also affected the conduct of low-level personnel who were appointed by the board.105

In contrast to the method of board appointments, the Managing Director, who is in charge of the “day to day” administration, is appointed by the Minister with the approval of the Cabinet and upon the recommendation of the SES.106 Again, unlike the board, the terms and conditions of his service are contractual, and there is no provision for summary dismissal at the instance of the Minister. Despite authority both in Britain and in the United States to the effect that executive appointees may be removed before the expiration of their contractual terms,107 it seems reasonable to say that the Managing Director enjoyed greater security than the members of the board. However, his responsibility to a highly political and generally sycophantic board made such security largely illusory.108 Thus, the government’s power of appointment over the boards and Managing Directors of statutory corporations provided little leverage on the policy and conduct of high-level personnel. At best, the power generally guaranteed a sense of personal fealty in the appointees toward the Minister.109 Thus, the board and management sense of public responsibility was seriously perverted.

2. Control Over Financial Policy

In general, the most important point of contact between the government and the statutory corporation is the latter’s finances. This financial contact is evidenced in the corporation’s authorized capital, deprecia-

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105U.N. REP., supra note 85, at 8.
106Legislative Instrument, No. 412, pt. 6, § 3 (Ghana).
107The general position in the Nationalization Acts is that the Minister may remove a member of the board who in his opinion becomes “unfit to continue in office or incapable of performing his duties.” The precise meaning of this phraseology is unclear. The general rule seems to be that board members can be summarily dismissed without compensation, but that a dismissed member may be paid compensation where the “merits of the situation so require.” See 470 PARL. DEB., H.C. (5th ser.) 36 (1949) (two board members removed without compensation because a project’s cost exceeded their estimates); 475 PARL. DEB., H.C. (5th ser.) 206-08 (1950) and 476 PARL. DEB., H.C. (5th ser.) 218 (1950) (board chairman “retired” with compensation in face of project cost overrun). See also Morgan v. TVA, 28 F. Supp. 732 (E.D. Tenn. 1939), aff’d, 115 F.2d 990 (6th Cir. 1939), cert. denied, 312 U.S. 701 (1940), which suggests that Executive appointees to the boards of public corporations can be removed before expiration of their terms.
109The State Farms Corporation, for instance, “under the semblance of official transaction,” provided material and labor worth over £G730 for works at a private house occupied by a Minister. Id. para. 202.
The legislative instruments provide for government appropriations to cover the corporations’ authorized capital. There is some confusion in the various instruments concerning the manner in which the appropriations are to be made and by whom they are to be authorized. The board of the corporation makes the request through the SES for a specified amount and the “government” pays the amount upon the approval of the Ministry of Finance. In subsequent practice, the appropriations came out of the Finance Ministry, but initially there was great administrative confusion as to the source of the grants, and most of the corporations began operations on bank overdrafts. The ambiguity in the functions of the various bodies involved in appropriations persisted throughout the life of the SES. Thus, vital expansion and capital replacement costs in some of the statutory corporations had to be defrayed through bank loans carrying interest rates as high as 10 per cent, despite statutory provisions for government appropriations. Government control over principal aspects of the corporations’ financial policy was equally lax, again despite the formal provisions of the relevant statutes.

There are provisions—for instance, those authorizing the corporations to transfer up to five percent of their net profits to a staff welfare fund—which may be used, subject to specific rules approved by the SES, for such employee welfare facilities as “canteens, low interest bearing staff welfare loans, and for other purposes aimed at enhancing the welfare of the staff of the corporation.” Although the fund is expressed as a percentage of the net profits of the individual corporations, in practice those corporations that sustained continuing losses and those that did not even keep profit and loss accounts appropriated vitally needed capital for the provision of luxury items for high level personnel and for practically irrecoverable advances to employees. Despite the statutory requirement of SES approval, the boards of the corporations generally created and employed these funds without the knowledge of the SES. The practical supervision of the welfare fund

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110 Legislative Instrument, No. 412, pt. 3, § 2 (Ghana).
111 Id. pt. 3, § 1.
112 U.N. REP., supra note 85, at 9.
113 Id.
114 Id. Legislative Instrument No. 412, pt. 3, §§ 3 (1)-(4) (Ghana).
115 Id. pt. 3, § 3 (2).
117 Id. at 6.
was made even more difficult by corporations which did not keep profit
and loss accounts.

A second area of concern is the supervision of depreciation reserve
accounts which the legislative instruments invariably require the corpo-
rations to set up with the Bank of Ghana.\textsuperscript{118} All amounts chargeable to
the profit and loss account in respect of depreciation for buildings,
plant, equipment and other fixed assets must be transferred to the ac-
count at the end of the financial year.\textsuperscript{119} The instruments also limit the
use of the account to the replacement of fixed assets which are either
worn out or have become obsolete.\textsuperscript{120} Such accounts are meant to over-
come the reluctance among government-run enterprises to replace old
and worn out plants with new and efficient means of production and are
customary in the practice of statutory corporations.\textsuperscript{121} Because of their
obvious relation to the internal resources of the corporation (a corpora-
tion could cut its dependence on government financial assistance by
charging excessive amounts to depreciation), depreciation and reserve
accounts are generally made subject to specific and general government
direction.\textsuperscript{122} Under the legislative instruments, however, neither the SES
nor the Minister has any control over the basis on which depreciation
is computed or the manner in which depreciation funds may be utilized.
The Paper Conversion Corporation for example, did not even bother to
set up a depreciation reserve account.\textsuperscript{123}

Government control over capital expenditure, a third major focus of
corporate financial policy, is even more confused. At the beginning of
each financial year, the statutory corporations are required\textsuperscript{124} to prepare
a "production and financial plan" showing their expected turn-over and
gross receipts and a full breakdown of expected expenditures.\textsuperscript{125} One

\begin{footnotes}
\footnote{\textsuperscript{118} Legislative Instrument, No. 412, pt. 3, § 4(1) (Ghana).}
\footnote{\textsuperscript{119} Id. § 4(2).}
\footnote{\textsuperscript{120} Id. § 4(3).}
\footnote{\textsuperscript{121} W. ROBSON, supra note 6, at 313-18.}
\footnote{\textsuperscript{122} Such control in the case of nationalized industries is indirect but nevertheless effective. The
boards are generally required to include in revenue accounts only sums which are "properly
charged to revenue." In order to interpret this meaningfully the boards have to devise a consistent
formula for depreciation. The formula is currently regulated by the WHITE PAPER, CMND. No.
1337 (1961). A board cannot decide to charge an excessive amount to revenue for depreciation in
a particular year in order to reduce its dependence on external borrowing or government financing.
\textit{See generally Please, Government Control of the Capital Expenditure of the Nationalized
Corporation}, 33 \textit{PUBLIC ADMIN. REV.} 31 (1965).}
\footnote{\textsuperscript{123} ACCOUNTANT-GENERAL'S REP., supra note 108, at 31.}
\footnote{\textsuperscript{124} Legislative Instrument, No. 412, pt. 9, §§ 1, 2 (Ghana).}
\footnote{\textsuperscript{125} This is analogous to the "business type budget" that the U.S. public corporations are required
to submit annually under the Government Corporation Control Act of 1945, 31 U.S.C. § 847
(1964).}
\end{footnotes}
may note that there are theoretical objections to the advance publication of a budget by a public corporation. During United States Congressional hearings for instance, corporation spokesmen expressed the fear that their independence of commercial operation would be ham-strung by a United States budget publication requirement. Another objection raised over a similar requirement for British nationalized industries was that the practice could harm the ability of the corporations to resist wage claims, especially where the budget showed a substantial profit. In practice however, these fears have been belied in large measure because Congress has usually tended to tolerate a certain amount of generality in formulating the budget and allowing administrative transfer of budgetary funds between projects. Aided by such a compromise, advance budget publication could provide a useful check on waste, especially in administrative expenditure.

The problems with the equivalent Ghanaian provision were of a slightly different nature. To begin with, the personnel of the various corporations did not possess the expertise required for the preparation of such detailed plans. One may safely infer this from the fact that some of them for their entire lives were never able to prepare profit and loss accounts. The assistance of the Accountant-General's Office or the Office of the Planning Commission was sought rarely in the preparation of the plans, probably because it was not a statutory obligation. When qualified volunteers from these departments proffered their services, the corporations usually rejected such offers as unwarranted intrusions into managerial autonomy. The effective supervision of the production and financial plan is scattered nebulously among some seven different government agencies; the instruments require each corporation to send a copy of its plan to its parent Ministry, the SES, the Office of the Planning Commission, the Minister of Finance, the Bureau of Statistics and the Central Committee of the Party. The managing directors of corporations are further required to submit quarterly reports to all these

126The Commodity Credit Corporation, for instance, argued that variation in the price of goods which the corporation handled could not be predicted accurately in advance because of fluctuations in world price movements. The purchase price for the 1945 sugar crop, representatives argued, was subject to negotiation with the Cuban representatives in spring 1945. Under the new provision, the corporation would have to determine the price by July 1943. *Hearings on H.R. 2177 Before the House Comm. on Expenditures in the Executive Departments, 79th Cong., 1st Sess. 195 (1945).*


128U.N. REP., supra note 85, at 10.

129Statement by Mr. Ato-Manuel, formerly of the National Productivity Center, (currently with the University of Wisconsin at Madison) during a telephone conversation with the author December 23, 1969.

130Legislative Instrument, No. 412, pt. 9, § 1 (Ghana).
bodies except the central committee showing the extent to which their corporations have achieved the goals and policies set out in their plans.  

As a result of the extreme decentralization of the supervisory function and the inept articulation of the exact responsibilities of the various supervisory organs, the financial transactions of the corporations were simply disastrous. Capital goods were usually purchased under extremely inequitable supplier's credit terms, or at prices patently in excess of their market value or their potential for profit. Out of a total government grant of £G2,240,641, for instance, the Steel Works Corporation spent a “disproportionately high” amount of £G1,650,000 on plant and office construction. Schemes involving large capital outlays were undertaken without regard to their economic soundness or their relevance to the needs of the national economy. Administrative expenditure was especially irresponsible. The Accountant-General’s Report for 1964 charged that the continuing losses of the Fibre-Bag Manufacturing Corporation, although partly due to genuine economic problems, were aggravated by “the lack of proper control over the Corporation’s capital expenditure.” In one example the management spent about £G500 for the “purpose of a cow, sheep, drinks and other things for the performance of certain rites to clear the factory site of evils and dwarfs.” In another instance the corporation spent £G1,200 on a cocktail party to celebrate the anniversary of the formal opening of a factory. The true measure of the seriousness of these figures must be weighed against the background fact that the corporation involved was returning a steady annual loss of about £G141,563 on a total government investment of over a million pounds (sterling). Despite varying degrees of control over the expenditures of the statutory corporations by some seven government agencies and ministers, the impact of government control in the area was clearly negligible.

Part of the reason for the near total lack of effective control over capital expenditure, it has been noted, was the extreme decentralization

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131 Id. pt. 9, § 5 (10) & (12).
134 The State Cocoa Marketing Board, for instance, made purchases of office and residential property without proper valuation of the premises by competent authority and sometimes against management insistence that there was no need for such purchases. See id. para. 243.
135 Id. para. 185, at 28.
136 Id. para. 185.
137 Id.
138 Id. paras. 183-84.
of government supervisory control. Each of the seven agencies operated as a separate administrative unit. They lacked any coordination, and petty jealousies usually prevented the formulation of uniform policy directions. In addition, the legislative instruments performed poorly in defining the roles of each of these agencies as regards the financial commitments of the statutory corporations. Thus, the SES, although created as the main supervisory agency, was placed on the same level as the rest of the agencies. The Planning Commission, which had the expertise badly needed by the corporations, was given the same powers over the financial plans as the Central Committee of the Party or the Bureau of Statistics. Indeed, some of these departments did not know the exact nature of their responsibilities. The Minister of Communications, for instance, after a lengthy outpouring in Parliament lamenting the financial irresponsibility of the statutory corporations, charged that it was not the Finance Ministry's duty to check the continuing losses in statutory corporations. In his opinion, it was the SES, not the Ministry of Finance, which was responsible for the financial competence of the corporations. The SES could legitimately have retorted that both the Finance Ministry and the SES had the same statutory controls over the financial policies of the corporations.

Pricing policy, a fourth major aspect of corporate financial policy, was equally removed from effective governmental supervision. Although the corporate boards were required by the legislative instruments to consult the SES and Ministry on pricing policies, they remained independent in practice. The words of the statutes themselves permitted that independence; by limiting the leverage of the SES and the Ministry of Trade to consultation, the statutes left the boards as the final voice in the formulation of pricing policies. In some cases the prices of products had no rational basis; large and deteriorating stocks of products were reportedly a common feature of quite a few corporations.

These aberrations in financial policy, especially in pricing policy, were as much the result of statutory and administrative infirmities in the corporate organization as of the lack of a clear-cut, logically consistent governmental policy which the various government institutions having jurisdiction over the corporations could administer. The SES statute charges it with the "efficient and profitable" operation of statutory cor-

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146 See F. Golca, Budget Statement 8 (1963-64) (Ghana).
148 Legislative Instrument, No. 412, pt. 1, § 2 (Ghana).
150 Id.
orporations engaged in trade or industry or both," and the statutes of the individual corporations all refer to profitability. Official pronouncements insist on the capitalist test, the difference between aggregate revenue and average costs, as the measure of corporate efficiency.

This simple input-output test, which was part of the colonial legacy, was totally unresponsive to the economic problems of the statutory obligations. Most of the corporations were grossly over-capitalized, i.e., they acquired capital machinery at prices in excess of their value or profit potential. It was therefore impossible for them to maintain a level of charges capable of yielding a "profit" unless, of course, they were legally protected monopolies producing for an expansive market. Far from enjoying such monopolistic positions, however, the corporations were usually in direct competition with long-established products and were also operating against a strong wave of consumer resistance to locally manufactured products. Some corporations simply lacked the capital resources to operate acquired machinery at optimum capacity. A matter of equal significance is that several of the industries were undertaken because of the need to induce structural changes in the national economy and thus break the precarious dependence on the cocoa monoculture. The application of the profitability test to such corporations was thus inconsistent with the logic that induced their establishment.

The balance sheet test further obscured economic advantages that have greater significance for the national economy than the mere accumulation of internal profits. One such advantage is the saving of foreign

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145Legislative Instrument, No. 457, pt. 2, § 1 (a) (Ghana).
146Legislative Instrument, No. 412, pt. 3 § B (2) (Ghana).
147See, e.g., the Sessional Address by the President, Fifth Session, January 12, 1965. The relevant part of the address reads:
The number of state corporations which have been established has been determined by our policy of socialist reconstruction and the building of a socialist economy in Ghana. But the State Enterprises, like any other enterprise, have a duty to operate on a profitable basis and thereby earn sufficient returns on the initial capital invested by Government. Those in charge of State Enterprises must realize that the investments in the factories with which they were entrusted, are financed from the hard-earned savings of the individual taxpayer. . . . and the Party and the Government expect reasonable returns on these investments.
149The "resistance" is probably caused more by economic factors than by consumer prejudice against local products. For instance, between 1954 and 1961, local food prices increased 22%; imported food prices increased 10%. See Szereszewski, Pattern of Consumption, in Birmingham, supra note 36, at 106-17.
151SEVEN YEAR DEVELOPMENT PLAN, supra note 9, at 93.
exchange for the purchase of the capital requirements of industrial development. For instance, the State Mining Corporation, which sustained the largest aggregate losses and which was the most criticized of the statutory corporations, was compelled by a delicate unemployment problem to exploit ore that was considered unfit for private commercial exploitation. Despite continuing "losses," its net foreign exchange earnings were greater than the Ashanti Gilofields, a private company, which showed substantial annual "profits."\footnote{5} In a number of cases the conflict between the government's policy of maximizing profits and the political and economic implications of the official commitment to socialist planning were even more direct.\footnote{53}

While the internal contradictions and confusion in government policy made the assurance of social responsibility in the statutory corporations extremely difficult, the absence of an articulate policy objective and the lack of an acceptable yardstick of success made the statutory controls of the various agencies incapable of meaningful and effective application.

\section*{E. The Central Contraction}

So far this article has argued that the system of controls, direction and review provided for in the statutes did not have any real impact on the vital aspects of corporate organization. The discussion now turns to the statutory formula for ad hoc ministerial direction.

The Minister's relationship with the corporations is undeniably based on the logic of colonial policy. He is authorized to give "directions of a general character to the corporation as to the general policy of the corporation and the corporations shall be bound to comply with such direction."\footnote{154} Attention has already been drawn to the logical and conceptual problems with the Morrisonian dichotomy theory that dictated the restriction on the Minister's powers of direction.\footnote{5 To these may be added some evidence, partly intellectual and partly empirical, that the assumption that greater ministerial direction would lead automatically to "bureaucratic paralysis"\footnote{156} is open to serious doubt. In Britain, contrary to the Postmaster-General's fears, his responsibility to Parliament

\begin{figure}[h]
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\caption{Diagram of the central contradiction.}
\end{figure}

\begin{itemize}
\item \footnote{5See G. BING, REAP THE WHIRLWIND 397 (1968).}
\item \footnote{U.N. REP., supra note 85, at 9. See also ACCOUNTANT-GENERAL'S REP., supra note 108, para. 183, where it is noted that government imposed restrictions on pricing sometimes accounted for reported losses in statutory corporations.}
\item \footnote{Legislative Instrument, No. 412, pt. 11 (Ghana).}
\item \footnote{See text following note 58 supra.}
\item \footnote{Mr. Gaitskell's suggestion to that effect is in 443 PARL. DEB., H.C. (5th ser.) 74 (1958).}
\end{itemize}
for the details of his department's administration did not prevent the Post Office from initiating an imaginative public relations policy or from effecting a great measure of decentralization in the years immediately following the publication of the Bridgeman Committee Report.\textsuperscript{157} Other government departments have demonstrated a respectable amount of creativity despite their subjection to the full glare of parliamentary scrutiny.\textsuperscript{158} These and other arguments advanced previously\textsuperscript{159} at least suggest that the bureaucracy and the lack of imagination that are supposed to characterize traditional civil service organization are neither exclusively nor primarily the result of ministerial "interference." They may very well be the bequest of a more lackadaisical era when administrative processes were less complex than they currently are. As one authority has written, such bureaucracy and lack of imagination "reflect the tendency of any well-established organization immune from the competitive struggle for existence, to perpetuate routines that have proved not unsatisfactory in the past."\textsuperscript{160} (emphasis added).

The uncritical acceptance of the concept of restrictive ministerial direction in Ghana meant a further weakening of an already ineffectual system of government supervision and a watering down of the efficacy of legislative inquiry. Despite a 1956 government proposal that the National Assembly Standing Orders should be amended to permit questions on "day to day" management,\textsuperscript{161} the rule of parliamentary inquiry remained rather arbitrary, as the succeeding examples clearly indicate. To a member's question on the cost of production in the Ghana Paint Factory, the responsible Deputy Minister replied:

I can appreciate the Member's anxiety but he should be aware that the information is confidential. I cannot therefore release it in public. At any rate, if the Member calls at my Ministry the necessary papers will be made available to him.\textsuperscript{162}

The Deputy Minister's objection was not that the information was confidential—indeed he was willing to make it available to the member at his Ministry—but that the cost of production at the factory was an

\textsuperscript{157}\textsc{Report of the Bridgeman Committee on the Post Office, Cd. No. 4149 (1932) severely criticized the running of the Post Office and recommended its subjection to a full blast of Parliamentary inquiry. See also Hanson, Parliamentary Questions on the Nationalized Industry, 29 Public Admin. Rev. 63 (1951).}

\textsuperscript{158}\textsc{Hanson, supra note 157, at 64.}

\textsuperscript{159}\textsc{See note 58 and accompanying text supra.}

\textsuperscript{160}\textsc{A. Hanson, Parliament and Public Ownership 102 (1961).}

\textsuperscript{161}\textsc{Government Proposals, supra note 21, at 8.}

\textsuperscript{162}\textsc{Parl. Deb., col. 14 (1962) (Ghana).}
aspect of the factory's operation over which he had no de jure control. On another occasion, when Mr. S. I. Idrissu, an unusually inquisitive Member of Parliament, raised questions about irregularities at a state hotel, particularly the practice of Ministers and party bosses accommodating their mistresses at state hotels without paying any charges, the Speaker of the House snapped:

Order! I have told the Member several times that in criticising Ministries he must be careful not to go beyond the rules. The other day I pointed out that in accordance with Ministerial accountability, a Minister is responsible for the broad policy of a corporate body but he is not responsible for the day to day administration.

Apparently, in the Speaker's estimation, the fact that the alleged irregularities were embodied in the Auditor-General's Report then before the House did not make them any more subject to parliamentary inquiry. The arbitrariness of the Speaker's ruling is made manifest by the fact that the same Speaker allowed questions on a curious miscellany of subjects, viz., the number of gallons of gin produced by the Ghana Distilleries Corporation between 1960 and 1961 and the number of gallons of each brand produced; justification for the cost of locally produced toilet paper; the cost per ton of 40,000 hundredweight of nail wire imported by the Metal Industries Corporation; and the reasons for the increase in retail price of edible oil produced by the Nzima Oil Mills.

The distinction between these subjects and those relating to malpractices in the hotels is clearly not that the former relates to "day to day" affairs and the latter does not. The non-payment of charges by Ministers' guests at state hotels is no more "day to day" than the cost and the commercial justification therefor of imported raw material. Ministerial attitude towards questions was unnecessarily defensive. Admission of fault by the board or another Ministry was a commentary on personal inefficiency and any question indicative of irregularity was therefore conveniently categorized as "day to day." Inquiries such as those regarding the reasons for the increase in the retail price of edible oil

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163 He once personally detected pilfering at a state corporation and hotly pursued the thief.
164 Id., col. 525 (1963) (Ghana).
165 Id., cols. 526-27.
166 Id., col. 527.
167 Id., cols. 44-46 (1962) (Ghana).
168 Id., col. 227 (1963) (Ghana).
169 Id., col. 216.
170 Id., col. 216-17.
oil were allowed to be answered because there were easily demonstrable economic explanations over which neither Minister nor board had any control. The Speaker willingly condoned this attitude.

All this, of course, is not saying that parliamentary questions are the most effective way of exercising parliamentary control. There may be some validity in the charge that such questions tend to be "casual, capricious, superficial and inconclusive." The point here is that the confusion surrounding the interpretation of the statutory restriction on parliamentary questions reduced the efficacy not only of such questions, but also of a more comprehensive method of parliamentary control—debates on annual reports and accounts. The standard practice in Britain is to apply the restrictions only on the scope of parliamentary questions. Thus, comprehensive debate in the House of Commons takes place when the Minister submits the report and accounts of a nationalized industry. Supply Days, the Queen's Speech, Welsh Days and Scottish Days provide further, although more restricted, opportunities for debate. In Ghana, however, the restrictions on the scope of parliamentary questions were also applied to debate. As has been noted, members could not raise issues embodied in reports and accounts if they related to matters of "day to day" administration.

F. A Summary of the Major Problems

The major categories of problems in defining the accountability-autonomy dichotomy have been suggested above. They can be summarized as follows:

1. The first major problem is the lack of an articulate and consistent framework of economic and financial objectives in the various legislative instruments. This problem calls not for a detailed and rigid set of directives on the details of commercial activity, but rather for a set of explicit general guidelines capable of easy interpretation, which the corporation may consult when making vital decisions. This is an especially important matter in the case of the holding corporations. It has been noted that the lack of such a general guideline in the IDC ordinance resulted in its concentration on the catastrophic loans scheme. In the case of the SES, this lack encouraged the promotion of high-cost, paras-

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171 See A. Hanson, supra note 160, at 51.
172 Id. at 44.
173 Id.
174 See note 58 and accompanying text supra.
175 See W. Lewis, supra note 44, at 13.
GHANA'S STATUTORY CORPORATIONS

2. The second problem, which is actually a subcategory of the first, is the absence in the various statutes of a sensible criterion of success, which takes into account the special economic and social handicaps of the individual corporations and which is consistent with the dual imperatives of economic viability and social responsibility. Because of the lack of a realistic success indicator some corporations were regularly criticized and condemned on account of "losses" that they sustained in the process of providing other social and economic benefits incapable of measurement by the arithmetic of the balance sheet but just as important to the national interest as the accumulation of profit. The condemnation of the State Mining Corporation is a case in point.\textsuperscript{176}

3. The most important problem in the attempt to provide accountability for statutory corporations is the existence and composition of their boards of directors. While such boards have proved to be successful in the Anglo-American setting,\textsuperscript{177} they have thoroughly contaminated the entire process of accountability in Ghana.

The usefulness of the board rests on a number of factors peculiar to the so-called developed economy. Britain, for instance, inherited a large pool of people with past managerial experience in the nationalized industries. Even outside this pool, there was an abundance of men with the entrepreneurial skills required to run a corporation.\textsuperscript{178} In a developing economy the opposite is usually true. Furthermore, the urge to use such appointments to provide "jobs for the boys" or to neutralize political threats is, for reasons that go beyond this study, usually irresistible.\textsuperscript{179} Again in a multiparty system, possible censorship or criticism by the opposition party inevitably ensures a certain amount of rectitude in official appointment.\textsuperscript{180} As the case of Ghana clearly demonstrates, however, a developing economy tends to gravitate towards one-party rule.\textsuperscript{181}

\textsuperscript{176}See note 152 and accompanying text supra.

\textsuperscript{177}For an account of the very central function of the Board in the organization of nationalized industries in Britain, see W. Robson, supra note 6, at 212. See also Chester, supra note 63, at 43.

\textsuperscript{178}See Morrison, supra note 64, at 1.

\textsuperscript{179}General Ankrah, former chairman of the National Liberation Council was named a director of the Ghana Commercial Bank upon his "forced" retirement from the armed forces. The underlying motive for the appointment was political expediency. There was absolutely no doubt that General Ankrah would find the workings of a commercial banking operation an incomprehensible mess! See G. Bing, supra note 152, at 396-97.

\textsuperscript{180}See W. Robson, supra note 6, at 219.

\textsuperscript{181}Mr. Geoffrey Bing, one time Attorney-General and later Constitutional Advisor of the Nkrumah government, adequately described the forces that generate that tendency when he wrote:

The demand in Ghana for a one-party state was, in essence, a negative reaction to the
Once competence is removed, as it very definitely was in Ghana, as a basis for board appointments, the board’s relationship with the Minister becomes one of vassal and lord. This situation sets in motion a chain reaction that affects every level of corporate management.

4. The restriction of ministerial direction to matters of general policy provides delinquent Ministers with a shield against parliamentary scrutiny, which means that glaring irregularities in management continue unchecked, and at the same time deprives responsible Ministers of the power to ensure public responsibility in the board. The situation is aggravated further by the confusion surrounding what is “day to day” and what is “policy” which results in the arbitrary categorization of matters of national importance as “day to day” and the removal of such matters from the Minister’s effective jurisdiction.

5. A fifth major problem, which derives from the fourth, is the laxity of parliamentary control through debate and questioning. Again the rigid application of the Morrisonian dichotomy means in practice that details of financial malpractices cannot be questioned in the House even when they are embodied in financial accounts and reports submitted to that body.

6. The sixth problem is the lack of coordination among the various administrative organs entrusted with different degrees of control over various aspects of the corporation’s activities. The lack of supervision and direction resulting from the decentralization of supervisory roles makes itself manifest particularly in the financial management of the various corporations. The statutory designation of the SES as the conduit through which all directions, authorizations and information reaching the individual corporations has to pass is a halfway measure, whose usefulness is further dissipated in practice by direct communication between the agencies and the corporations. Since these supervisory agencies are the repositories of the existing expertise, their disorganization deprives the corporation of vital technical advice.

II. A Blueprint for Institutional Reform

Admittedly, certain of the problems that affect the operation of statutory corporations are purely economic or social, or both. The shortage long history of conspiracy from the days of the opposition MP’s [members of Parliament], Amponsah and Apaloo in the Awhaitey affair, to the MP R.B. Otchere’s involvement in the terrorism of later days. The two-party system was suppressed not in accordance with any specific theory, but simply because the existence of a second party appeared to give a cover for the organization of unconstitutional violence.

G. BING, supra note 152, at 443.
of raw materials and consumer bias against locally manufactured products were common problems in the Ghanaian experience. The extent to which these socioeconomic problems contributed to the gloomy history of public enterprise in Ghana is difficult to judge. No suggestions for reform can underplay the significance of these factors. Accordingly, the proposal that follows only aims at making the statutory corporations functioning units of a comprehensive economic strategy to the extent that this can be done by legislation.

The theory that emerges from the preceding analysis is that the most essential condition for the efficient operation of public enterprise in a developing economy is the improvement of the quality of government directions, channeled through a centralized and efficient organ to the statutory corporations. The usefulness of a board of directors also needs to be questioned. The ensuing proposal completely rejects the central axiom of the Anglo-American model of the public corporation that the closer the government gets into the business of the corporation the more inefficient the latter becomes. That model, after all, represents a political compromise that was supposed to be capable of yielding the best of the two worlds of the limited liability company and the government department. Significantly, the nature of the compromise has tended to reflect the political realities of a given forum. In France, for instance, a strong labor movement in the immediate post-World War II years produced the so-called tripartite principle in the composition of the governing board of the nationalized industries. While the facts of the Ghanaian experiment are capable of sustaining more than one set of conclusions, they clearly do not bear out the prophecy of the best of both worlds.

The new model, as presented, deals only with the relationship between the corporations, the Government and the Legislature, i.e., the elements of public control. Individual aspects of corporate organization are thus considered only to the extent that they form part of the process of accountability.

\[182\] See Birmingham, supra note 36, at 291.
\[183\] See W. Robson, supra note 6, at 59.
\[184\] Id. at 216.
\[185\] Especially since there are purely economic and social factors—shortage of raw materials, lack of trained personnel, consumer resistance etc.—which also actively affected the operation of the statutory corporations.
A. The National Commission on Public Corporations: Composition

Instead of the current holding corporation organized on commercial lines and accountable on the same principles and to the same extent as the active subsidiary, the model envisages a pool of experts presided over by a Minister with authority to veto decisions of the Commission which in his opinion conflict with the national interest. The Minister appoints members of the Commission on the basis of merit and the Cabinet approves the appointments. Dismissals follow the same procedure. The essential prerequisite of course is to place the most qualified individuals on the Commission. This is a goal that cannot be achieved merely by legislative fiat. Knowledge and prior experience in industry are necessary conditions and may be required by statute. But the Minister should be allowed the discretion to determine whether appointees also possess the resourcefulness and the drive and imagination that are required for policymaking. Appointments and the basis on which they should be made do not require extensive argument. The real problem is the prescription of the conditions on which such appointments may be revoked. This is the area in which two important considerations, viz., the personal need for security, without which men of integrity would be hard to attract, and the government's need to remove incompetent personnel inevitably clash. Thus, it requires an especially careful resolution. The pattern of legislation in the Anglo-American experience is rather contradictory in this area. The British Nationalization Acts generally require that members of the board be appointed for fixed terms, but the Minister usually can dismiss them at any time. The position in the United States is generally similar. The Chairman of the TVA, although he is appointed for a fixed term, has been held to be removable at any time by the President. The argument for summary dismissal by the appointing authority is of course powerful, but there is no denying that such dismissals undercut the security that appointees are supposed to enjoy.

\[\text{\textsuperscript{168}}\text{See Morgan v. TVA, 28 F. Supp. 732 (E.D. Tenn. 1939), }\text{aff'd, 115 F.2d 990 (6th Cir. 1939), cert. denied, 312 U.S. 701 (1940).}\]

\[\text{\textsuperscript{167}}\text{It has been suggested that:}\]

\[\text{The proper principle . . . is that members of the governing board should enjoy security of tenure for a limited number of years, specified at the time of appointment, and that they should be liable to dismissal at any time for disability, insolvency, neglect of duty, misconduct, or on other grounds if reasonable cause can be shown, but not otherwise . . . . (emphasis added).}\]

\[\text{W. ROBSON, NATIONALIZED INDUSTRY AND PUBLIC OWNERSHIP 242 (2d ed. 1962).}\]

This is hardly a satisfactory formula. It leaves two basic questions unanswered: What is reasonable, and who makes the determination?
There does not seem to be any problem with accepting the Minister's power of dismissal in clear cases such as physical disability, insolvency or proven neglect of duty. It is the exercise of that power solely on grounds of policy disagreements that has raised the most controversy. No easy solution is conceivable. In this proposal, however, it is hoped that the presence of the Minister on the Commission and his power to overrule policies that appear to him to conflict with the national interest will make arbitrary dismissals on grounds of policy differences highly unlikely. The approval of the entire Cabinet on such dismissals will further decrease their arbitrariness.

It will be noted from Table I that the Commission has at its disposal an entire center devoted to research and analysis of special phases of industrial activity. The Commission consequently is placed in a better position than either the SES or IDC to collect and coordinate technical data and information and to undertake the general supervision of the statutory enterprises. In order to enable the Commission to develop its own personality and to formulate conditions of employment most likely to produce maximum efficiency among its personnel it is removed from the civil service, although its members may be drawn therefrom.

1. The Nature of the Commission's Accountability

The establishment of the holding company as an ordinary commercial enterprise, whereby the holding company enjoyed the same amount of autonomy as the subsidiary, allowed the holding company to completely avoid its duty to the public at large. In the proposed model the Commission is recognized as essentially a policymaking body and as such is made fully accountable to the Legislature and to the Cabinet as to all matters concerning statutory corporate activity. The application of the Morrisonian dichotomy to the Commission is thus abolished. Responsibility to the Cabinet ensures that the policies of the Commission and its subsidiaries do not conflict with those of other government departments while accountability to the Legislature provides an extra check on the efficiency of investments and their conformity with the national interest.

There is at least one danger in placing the Minister on the Commission: He may become so intimately involved in the technical and other problems of the individual industries that he may become incapable of

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180 Witness the acrimonious debate that accompanied the forced resignation of Mr. Steven Handie, Chairman of the Iron and Steel Corporation of Great Britain in 1952. 496 PARL. DEB., H.C. (5th ser.) 55, cols. 774 ff. (1952).

190 See text following note 14 supra.
taking a comprehensive view of major aspects of broad policy. It is hoped that the Cabinet’s control over the Commission will provide that overall perspective. The Minister’s participation in the Commission’s decision-making process will give him enough intimacy with the operation of the subsidiaries to enable him to answer inquiries in the Legislature meaningfully. The principal objection to making the Commission fully accountable to the Cabinet and the Legislature is that this will make them overcautious and consequently unimaginative. Part of the answer to this objection is that extreme circumspection and the attendant lack of imagination need not follow from such accountability. Secondly, the Commission will be engaged in the formulation of policy decisions which are subject to ministerial direction under current standards. Thirdly, it should be noted that the Commission is not an elected body. It does not carry any political responsibility in and of itself. Therefore, to entrust it with the entire organization and operation of the subsidiaries without making it accountable to the Legislature would be fatal disruption of the “checks and balances” inherent in the democracy.

Specific aspects of the Commission’s organization, such as funding, audits and annual reports may follow the same pattern as that of the SES. The Commission’s funds will consist of annual parliamentary appropriations, but provision should be made for supplementary appropriations whenever necessary. Major items of expenditure should receive the Minister’s approval. Annual records and accounts should be prepared according to the specifications of the Auditor-General’s Office which will also be responsible for auditing the corporations. The Auditor-General’s Report together with the Commission’s Annual Report should be presented to the Legislature. There does not seem to be any reason to increase government control over the Commission’s finances. Most of its capital will go into administrative expenses since the finances of the individual subsidiaries do not form part of its budget.

2. The Nature of the Commission’s Relationship with the Subsidiaries

The logical justification for the Commission’s total accountability to the Legislature is its comprehensive power of direction and control over the subsidiaries. The proposed model does not envisage any restriction on the Commission’s powers of direction. The amount of autonomy that may be allowed the corporations in their commercial operation is thus subject to the discretion of the Commission. In practice, the Commission’s discretion will be exercised in relation to how much confidence it places in a particular management and the potential impact of any business activity on national policy. There is nothing in the Ghanaian
experience which suggests that this will lead to a stifling of initiative in management. On the contrary, the rigid prescription of areas of autonomy often led to the isolation of the subsidiaries from the expert advice they needed. With the entrepreneurial talent available in the Commission and its center, it will be safer to allow it a free hand in determining the proper amount of managerial autonomy than to prescribe statutory limitations which the Commission may find unjustifiable in individual cases.

In special areas of corporate finance, however, the Commission must issue directives to the subsidiaries. Thus, such matters as prices, borrowing, capital expenditure, budgeting and the operation of depreciation and reserve accounts, which were least controlled under the IDC and the SES, will be under expert supervision. The concentration of supervisory power in the Commission will prevent the overlapping supervision which previously permitted fiscal abuses in the operation of the subsidiaries. As a corollary of its power of supervision the Commission may enjoin direct communication between any administrative agency and the subsidiaries.

B. The Organization of the Subsidiaries

1. Management and Control

In the proposed model the most significant break with the current organization of the statutory corporations is the absence of a board of directors. The theory that a board of directors is an essential attribute of the public corporation is a myth that is accepted largely because incorporation laws generally require the setting up of a board of directors elected by stockholders. There is nothing in the history of the public corporation that suggests the board is an absolute necessity. The U.S. Inland Waterways Corporation and the Public Housing Administration operated effectively without boards. In the Ghanaian experience, there are serious reasons to question the board’s utility. Far from being the buffer between corporate autonomy and public accountability, it has been demonstrated that the boards were usually the conduit through which political and incompetent appointments reached the corporations. The perversion of the relationship between board and Minister not only undermined the authority of the SES, but seriously affected the quality of low-level personnel. It has been fashionable to

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1. See text accompanying notes 127-38 supra.
3. Id. at 45.
write off the general incompetence of board members as another example of the political excesses of a corrupt Nkrumah regime. In the opinion of this writer, this is an extremely narrow-minded interpretation of a complicated phenomenon. Generally, the performance of the current government in the area of official appointments has been no better than that of the dissolved military dictatorship of the National Liberation Council. The problem has its roots in the nature of party organization in the post-independence state. Once a party gets into office, the "spoils system" inevitably places important offices in some incompetent hands. Of course this is not a phenomenon peculiar to "underdevelopment," but there is a significant difference in degree. The tendency to appoint unqualified people to the boards is very likely to continue.

A more practical reason for the abolition of the board is the nature of the Commission's composition. The extreme centralization of policy formation in the Commission and the expert advice available to it make another layer of policy formation, i.e., the Board of Directors, positively redundant. A possible alternative would be to have a functional instead of a policymaking board, but such a device would make questionable use of already scant talent.

With the elimination of the board, the managing director assumes greater responsibility since he combines a certain amount of policy decision with the actual management of the corporation. Under the proposed model he will be appointed by the Minister on the recommendation of the Commission and he will enjoy the same amount of security as the members of the Commission. If he were to enjoy a greater amount of security, his accountability to the Commission might be seriously undermined. As has been noted, the extent of the director's accountability to the Commission, except in designated areas, is subject to the discretion of the Commission.

2. The Process of Accountability in the Subsidiary

The principal merit of the model in this area is that the statutory corporations are made accountable to only one identifiable body—the National Commission. The nebulous allocation of supervisory roles

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184See e.g., NATIONAL LIBERATION COUNCIL, THE REBIRTH OF GHANA 23 (1966).
185A national daily openly admitted the problem when it reported that bribery and corruption in high places and low places "has become unfortunately a feature of our national life . . . indisputable, disillusioning, and most distressing . . . , so serious that one wonders whether this social disease can ever be cured." Ghanaian Times, Oct. 16, 1967.
186Id.
188See text immediately preceeding note 189 supra.
among diverse agencies and ministries and the resulting chaos is thereby remedied.

Appointments and dismissals of high level personnel remain a part of the process of accountability; such appointments will be made by the Minister on the advice of the Commission.

As a first step towards improving the fiscal accountability of the corporations, their financial obligations should be clearly stated. The nature of their responsibility is certainly a matter which the Government should decide within the context of the overall national interest. A clear formulation of financial goals will require a comprehensive study, but a few suggestions may be offered here.

The major weakness of the present system of financial control is that it lacks a criterion of efficiency compatible with the social responsibilities of the various corporations. The test of profitability is too narrow and does not permit a comprehensive appraisal of the corporation's contribution to the national economy. If the profitability test is retained, the government may find it necessary to erect protective tariffs and to improve the supply of raw materials in individual cases. Given the present obstacles to manufacturing, however, it may be a more pragmatic policy to require the corporations to break even, or even to permit a loss, except in cases where overall operating conditions and the size of available market clearly permits the realization of "profits."

Revenue Account—Capital Account

Within the framework of a break-even policy, the corporations should, subject to specific direction by the Commission, ensure that surpluses on revenue accounts are at least sufficient to cover deficits over a specified period of years. Depreciation and reserve accounts and the basis on which these are computed should also be subject to specific direction by the Commission. A system of budgets and audits is inevitable if the Commission is to maintain its leverage on the finances of the corporations. The corporation’s budget, which may take the form of the current production and financial plan, is, as has been noted, prepared with the help of the relevant department of the Commission where necessary, and is also subject to the Commission’s specification. The Legislature may make modifications in the budget only when the na-

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There is no doubt that in certain cases stiff competition from already established products, and the shortage of raw materials pose serious problems. The Ghana Soap Factory, for instance, increased its earnings 300% during a temporary shortage of imported soap. See BIRMINGHAM, supra note 36, at 290.
It is hoped, however, that given the specialized nature of the Commission’s composition the Legislature will in practice accept the Commission’s approval of a budget as indicative of its conformity with the national interest. The current statutes do not give the Legislature any such power, but past experience suggests that a limited power of modification by the Legislature is desirable. Another feature which is absent in current legislation is the switching of expenditures as itemized in the budget. Whether in practice this injected an unnecessary amount of rigidity in expenditures is impossible to tell. To avoid that possibility it is desirable that the management of individual corporations be permitted to switch expenditures. The corporation, however, should limit itself to a statutory upper limit on amounts expendible on investment, to be fixed each year by the Commission. The system of auditing also needs special consideration since this no doubt constitutes a significant instrument of government control. The present system of auditing has limited efficacy. Under the current system the Auditor-General or any auditor appointed by him performs an efficiency audit aimed only at judging the effectiveness and efficiency of operations and not at ensuring conformity to appropriation limits. This is adequate for those corporations which either break even or make profits and are therefore self-financing. But as to those corporations which continuously sustain losses, and therefore are the beneficiaries of regular appropriations, there is an additional need for compliance with limits which an efficiency audit does not satisfy. A combination of regular financial audits and efficiency audits would be a better guide to the financial responsibility of the corporations. However, since the Commission is so intimately connected with the corporation’s budget and its overall policy, it would be unwise to entrust it with the entire auditing function. Under the model, the Commission will perform a regular financial audit aimed at determining the conformity of total expenditure to budgetary specifications. To provide an extra guide to corporate efficiency, however, the Auditor-General or any auditor appointed by him will perform the efficiency audit. Annual reports should also be prepared by the corporations according to the specifications of the Commission and presented to the Legislature. Each corporation should include in its annual report a list of all Commission directions.


This will undoubtedly enable the Legislature to appraise the merits of government policy.\footnote{\textit{This will inevitably curb the issuing of irresponsible or ill-considered directions. The Minister becomes accountable for the manner in which he employs his authority and is thus publicly responsible for the results of his direction. This will discourage the natural inclination among public officials to exercise authority without accounting publicly for it. \textit{See Chester, supra note 102, at 42-43.}}\footnote{\textit{See Government Proposals, supra note 21.}}}

III. Conclusion

Public discontent with the organization of statutory corporations has been smoldering for a long time. The demand for closer government control than the Anglo-American model allows has been voiced time and again.\footnote{\textit{See Government Proposals, supra note 21.}} The need for a positive proposal for reorganization cannot therefore be gainsaid. The proposed model is not offered as a panacea for the problems that beset statutory corporate activity in a developing economy. It is hoped, however, that it will initiate discussion and reappraisal of the fundamental assumptions of the current model, which are based on the colonial tradition, and that in the process of debate a better proposal more suited to the exigencies of underdevelopment will emerge.