

PARLIAMENTARY REFORM IN ZAMBIA:

***CONSTITUTIONAL DESIGN AND
INSTITUTIONAL CAPACITY***

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Congressional Research Service
U.S. Library of Congress

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This paper examines parliamentary reform in Zambia as a critical aspect of that nation's attempted transition from a one-party to a multi-party political system.¹ Following the presidential and parliamentary elections of October 1991, the first largely free and fair elections in Zambia in 23 years, some Zambian political leaders recognized that, if the democratic transition was to be successful and lasting, the National Assembly would have to become a more powerful and effective institution. In mid-1994, the prospects for meaningful parliamentary reform remain uncertain. What is more certain is the importance of these efforts for the prospects of democratic government in Zambia, as well as for the example of Zambia to other nations of sub-Saharan Africa that may contemplate their own transitions to multi-party democracy, with attendant changes in civic and economic relations. The Zambian experience also demonstrates that a successful democratic transition requires more than good intentions and even more than a willingness to engage in an open competition for power that produces a democratically elected government. It also requires a careful review of formal constitutional arrangements and informal institutional practices to identify reforms that are necessary to permit that government to function effectively and to enable the electorate to hold it accountable for its actions and inactions.

The apparent movement of so many regimes toward democracy during the last decade, in Eastern Europe, Latin America, and elsewhere, has sparked a renewed and welcome interest in both constitutional systems and institutional structures of government. To date, two general issues have received the most attention: first, the comparative advantages and disadvantages of parliamentary

¹The author wishes to thank the U.S. Agency for International Development and the members and staff of the Legislative Performance Study Group for introducing him to government and politics in Zambia. He also is very grateful to Charles Mwalimu of the U.S. Library of Congress and Michael Bratton of Michigan State University for their very constructive and informative comments. The views expressed here are solely those of the author and do not represent a position of either organization or of the Congressional Research Service or U.S. Library of Congress.

vs. presidential vs. mixed or hybrid models for allocating the powers and assigning the responsibilities of government, especially between its legislative and executive institutions; and second, the comparative advantages and disadvantages of proportional representation vs. single-member-district or "first past-the-post" systems vs. some combination of both for electing members of the national legislature or parliament.² The focus on these issues has been understandable and appropriate. They are issues that must be addressed early in the process of democratization, which almost inevitably involves some re-design of both constitutional structures and electoral systems.

Although it is true that many regimes which have called themselves democracies have not merited the name, it is equally true that, in practice as well as in theory, there has proven to be more than one satisfactory design for democracy. One of the more impressive aspects of the recent debates about the respective merits of different constitutional models and electoral systems is the general recognition that each has its own strengths and weaknesses, and that the fate of the democratization process does not depend on which basic model is chosen. The choices of democratizing nations generally have reflected their prior democratic experiences, their regional affinities, and even their decisions to emulate nations with similar geographic, demographic, and other characteristics--in other words, conclusions that one model or one system is more suitable than the alternatives, not convictions that only one model is legitimately democratic and potentially successful. In fact, it is striking how many of the democratizing Central and Eastern European regimes have implicitly acknowledged that there is no best choice by developing their own mixed systems, combining presidents and prime ministers, or electing some MPs from constituencies and others from regional or national party lists.

Not surprisingly, less attention to date has been devoted to the reforms that may prove equally necessary in the internal organization, procedures, and resources of parliaments/legislatures if the process of democratization is to create effective, stable, and lasting democratic regimes. The core concern from which this analysis proceeds is the control of governmental power, and its premise is that such a democratic regime requires, or at least benefits greatly from a congruence between constitutional design and institutional capacity.³

²For an interesting and provocative examination of both issues and their inter-relationships, see Matthew Soberg Shugart and John M. Carey, *Presidents and Assemblies* (New York: Cambridge University Press, 1992).

³"Congruence" is used here in a quite different sense than Harry Eckstein meant in his intriguing theory of congruence in authority relationships. For Eckstein, congruence involves resemblance. Here, the notion of congruence is related to suitability and compatibility. On Eckstein's theory, see *A Theory of Stable Democracy* (Princeton: Center of International Studies, Princeton University, 1961); *Division and Cohesion in Democracy* (Princeton: Princeton University Press, 1966); and "Authority Relations and Governmental Performance: A Theoretical Framework," *Comparative Political Studies*, 1969,

Congruence permits control. Congruence between constitutional design and institutional capacity is important for democratic government because it is requisite for effective control of government power. More specifically, a constitutional regime, no matter how carefully or conventionally designed, is unlikely to survive and prosper if its parliament or legislature is not endowed with institutional capacity suitable for exercising its constitutional powers and fulfilling its constitutional responsibilities. In this sense, institutional capacity encompasses (1) the organizational structure within which, and the procedures by which, members of the parliament/legislature are expected to work, (2) the resources available to them, individually and collectively, to do their work, and (3) the skills, experiences, and attitudes that they bring to their work.

Recognizing congruence or its absence involves both deduction from constitutional design and induction from successful experience. There is no logical necessity, for example, for separation-of-powers congresses to develop a system of subject-matter committees, but doing so certainly has proven to be advantageous. So while there may be disagreement over what congruence requires in theory, there is likely to be more agreement over what promotes congruence in practice. For example, it would be incongruent for legislators in a separation-of-powers system to rely solely on ministries for policy-relevant information and to adopt procedures that give the president formal control of their legislative agenda and effective authority to define their policy choices. Such arrangements would inhibit, if not preclude, legislators from acting as an effective counterbalance to presidential power, as separation-of-powers systems expect. It also would be incongruent for every member of the Dutch and Israeli parliaments, who are elected from national party lists, to be endowed with the personal staffs of United States Congressmen, who must engage in active constituency service and communication as well as in evaluating the constituency impact of proposed legislation. And it would be incongruent for members of either a parliament or a congress willingly to forego opportunities to develop their own policy expertise and to give passive and routinely unquestioning support to their prime minister or president.

There are essentially two (certainly not mutually exclusive) approaches to the problem of sustaining effective control over the exercise of democratic governmental power. One approach is largely external to the daily operations of government institutions: control-by-accountability, in which the public exercises effective control over the institutions of government through free, fair, and regular elections. Through elections, citizens exert post hoc control over the use of government power by evaluating the performance and competence of their governors and replacing them if necessary. This external, electoral control requires a constitutional and legal system that ensures voters an opportunity to become adequately informed about whatever the government does or fails to do on their behalf. In practice, this implies that the government must be, in contemporary parlance, "transparent" enough for the public to understand the positions and observe the actions taken by those they have elected, and that

there are adequate means, largely in the form of mass media free of government management, by which this information is disseminated to all those interested enough to consume it.

More relevant to our interest here in parliamentary reform is the second model, which is largely internal to government: control-by-balance, in which internal controls, within the system of government, on the exercise of power guard against its effective concentration in the hands of any one person or institution. Whether a monopolistic concentration of government power is expressed through plebiscitary presidentialism or unchecked parliamentary majoritarianism, it is incompatible with stable democracy. Monopolized power frees those exercising it from effective constraints on their decisions and actions until the next election, and also gives them the means to rig or cancel those elections so they can remain free from public control as well. To our minds, any system of government that lacks effective internal controls on the exercise of governmental power cannot be truly democratic, no matter how much the rulers may claim to be acting on behalf of "the people."

This emphasis on the necessity for internal controls might seem to imply a preference for constitutional forms similar to the American presidential system. But that is not the case; there is more than one way in which adequate internal controls can be arranged. The American model obviously is one of them. An almost absolute constitutional separation of the presidency from the legislature (parliament) encourages each to ensure (in its own interests and that of its members) that the other does not exceed its proper authority, and enables them to do so by dividing between them the power to legislate and the ability to control administrative organization, personnel, and activities. This does not mean, however, that parliamentary systems are defective, nor mixed systems that distribute powers among a president, prime minister, and parliament. The majority in parliament may create the government and retain the power to terminate it by withdrawing its confidence, but in bringing down the government it also may put its members at risk in new elections. More generally, the majority in parliament understands that its political fate will depend largely on the success of the government, so parliament and government are mutually dependent. In constitutional terms, therefore, parliament may control the government, but in political terms, it is usually in the interests of the majority in parliament to follow the leadership of the government it has installed in office. So the mechanisms for internal control in parliamentary regimes may be more indirect and subtle, but they can be fully effective.

What is essential is that there be some effective balance of power, deriving implicitly or explicitly from the constitutional structure, between legislature and executive, parliament and government. Preferably, both institutions recognize the need for such a balance and so refrain from trying to achieve lasting supremacy over the other. However, the balance still can be preserved, albeit with temporal shifts and recurring contentiousness, if both seek dominance but ultimately neither has the resources and authority to achieve and maintain it. For a constitution to provide for such a balance, as a general matter it first

must establish clear lines of authority among the institutions of government. No constitution can be devoid of all ambiguity, nor would it necessarily be desirable even if it were possible because that would deprive the political system of some potentially valuable flexibility. Yet the constitutional rules of the political game must be reasonably clear to all the players so that contests over the policies of the day do not raise fundamental questions of constitutional order.

Constitutional arrangements that provide workable internal controls on government power, though necessary, are not sufficient. The various institutions of government also must have the resources and facilities needed to exercise their powers effectively and thereby implement the system of controls the constitution envisages. And the men and women occupying positions of authority within the institutions must be willing and able to breathe life into constitutions and institutions that otherwise remain empty shells. Many regimes--east and west, north and south--have characterized themselves as democratic, but asserting the claim does not make it so. The international landscape has been littered with national constitutions that proclaimed democratic values and even established plausibly democratic regimes, but which had little if any relevance to the way in which their nations actually were governed.

This notion of congruence between constitutional design and institutional capacity is offered here not so much as a hypothesis but as a premise and perspective from which to examine the prospects for parliamentary reform in Zambia. Optimists among observers of international political trends can view recent and prospective developments in Zambia as early signs that the recent and widespread movement on other continents toward democratic regimes now may be extending to the nations of sub-Saharan Africa with a consequent reshaping of their constitutional systems and political lives.⁴ If this promise becomes reality, Zambia may stand as a model and source of encouragement to proponents of democratic reform in other African nations.⁵ However, the argument of this paper is that there has been and remains a serious incongruence that can jeopardize the success of the democratization process on which Zambia embarked, however tentatively and uncertainly, at the end of 1990. Taken separately, Zambia's recently revised constitutional design is

⁴See Douglas G. Anglin, "Southern African Responses to Eastern European Developments," *The Journal of Modern African Studies*, v. 28, n. 3, 1990, pp. 431-455; and, for a mid-1991 assessment, Samuel Decalo, "The Process, Prospects and Constraints of Democratization in Africa," *African Affairs*, v. 91, 1992, pp. 7-35.

⁵"They [international election observers] say the victory of Mr. Chiluba...and his newborn opposition party against Mr. Kaunda, one of Africa's "big men", should hasten the continent's "second independence"--the end of the post-colonial autocrats who rule their countries as personal kingdoms." "Zambia: An Historic Victory," *Africa Research Bulletin*, November 1991, p. 10344.

roughly similar to that of reasonably successful democratic regimes. Similarly, the capacity of its National Assembly is not all that different from that of parliaments in other regimes that most observers would credit as reasonably democratic. The problem to which this paper points is the incongruence between the two, as reflected in an institutional incapacity that is ill-suited to Zambia's constitutional design.

Zambia became independent of Great Britain on October 24, 1964. Formerly, it had been the protectorate of Northern Rhodesia and, from 1953, a member of the Central African Federation of Northern and Southern Rhodesia and Nyasaland until the federation's dissolution at the end of 1962. The multi-party system of the First Republic of 1963-1972 ended with the adoption in 1973 of a new constitution that enshrined the United National Independence Party (UNIP) of President Kenneth Kaunda as the single legal party that dominated Zambian government and civic life throughout the Second Republic. After almost twenty years of one-party rule, Kaunda acceded to growing demand for constitutional change. In 1990, he accepted a constitutional amendment that again legitimized a multi-party system, and in the following year, he was defeated for re-election by an umbrella opposition party, the Movement for Multiparty Democracy which, as its name implies, built its campaign around the promise of multi-party democracy.⁶ The questions now for the government in Lusaka and the people of Zambia are whether the promises of a functioning multi-party system are to be fulfilled and, if so, what further constitutional and institutional changes will be necessary.

The Development of Constitutional Design

This paper hopes to contribute to that dialogue. The approach to be taken here is first to examine in some detail the development of constitutional arrangements in Zambia, particularly the internal logic of the formal relationships that successive constitutions have proposed to establish among the primary institutions of national legislative and executive power, and the suitability of these relationships for the practical operation of a workable and

⁶For background on Zambia's political history, see Marcia M. Burdette, *Zambia: Between Two Worlds* (Boulder: Westview Press, 1988), especially chapters 4-5; Cherry Gertzel, Carolyn Baylies, and Morris Szeftel, *The Dynamics of the One-Party State in Zambia* (Manchester, UK: Manchester University Press, 1984); Richard Hall, *Zambia 1890-1964: The Colonial Period* (London: Longman Group Limited, 1976); David C. Mulford, *Zambia: The Politics of Independence, 1957-1964* (London: Oxford University Press, 1967); Jan Pettman, *Zambia: Security and Conflict* (New York: St Martin's Press, 1974); Andrew Roberts, *A History of Zambia* (New York: Africana Publishing Company, 1976), especially chapters 11-12; and Robert I. Rotberg, *The Rise of Nationalism in Central Africa* (Cambridge: Harvard University Press, 1965).

accountable democratic regime.⁷ We need not assume that formal constitutional arrangements will accurately describe the actual conduct of political and governmental life. Instead, we may assume the contrary by then turning from this examination of constitutional design to what we can discover about the institutional capacity of the Zambian National Assembly in practice from 1964 to the present, asking how it has functioned, or failed to function, and how it may be expected to function in the foreseeable future, especially in relation to the presidency.

The 1964 Constitution

Zambia's first constitution was not imposed unilaterally as a parting colonial legacy. Instead, it was the negotiated product of what Tordoff and Molteno characterize as a "cordial" constitutional conference in London at which UNIP insisted that a presidency be included in the resulting mixed system.⁸

[I]n May [of 1964], leaders of UNIP and the two opposition parties, ANC and the National Progress Party (formerly the settler UFP), flew to London to agree on the details of the independence constitution. The result was the acceptance of UNIP's demands for republican status, a unitary State and an executive presidency, modified, however, by elements of the British parliamentary system....

Consequently, the 1964 constitution established an institutional structure of legislative and executive powers that combined features of a Washington-model presidential system and a Westminster-model parliamentary system.⁹ Like a Westminster system and some other parliamentary regimes, all ministers

⁷It must be remembered that this analysis is concerned only with selected aspects of the various Zambian constitutions--only those that affected, more or less directly, the legislature and executive and the relations between them. In particular, it pays little attention to the relationships between these two institutions and the judiciary, especially the opportunities for judicial review of the legality and constitutionality of legislative and executive actions.

⁸William Tordoff and Robert Molteno, "Introduction," in William Tordoff (ed.), *Politics in Zambia* (Berkeley and Los Angeles: University of California Press, 1974), pp. 11-12. See also the *Report of the Northern Rhodesia Independence Conference, 1964*, presented to the Parliament of Great Britain by the Secretary of State for Commonwealth Relations (London: Her Majesty's Stationery Office; May 1964).

⁹All references to, and quotations from, the 1964 constitution are taken from Amos J. Peaslee, *Constitutions of Nations, Volume I - Africa*, Revised Third Edition prepared by Dorothy Peaslee Xydis (The Hague: Martinus Nijhoff, 1965), pp. 1024-1099. See also the Zambia Independence Act of July 31, 1964, and the Zambia Independence Order of October 15, 1964.

were required to be members of the National Assembly (Section 44). However, the constitution made no provision for a prime minister. Instead, like a Washington-style system, it provided for an popularly-elected President who was the de jure head of state (Section 31) and the de facto head of government.

The electoral system bound the President and National Assembly together inextricably--in what Pettman has called the "pair system"¹⁰--but without guaranteeing that the President would enjoy majority support in the legislature. Not only were elections to be held simultaneously for the National Assembly and the presidency, votes cast for the former were to determine the election of the latter. All members of the legislature were to be elected from single-member districts. And as a condition of candidacy, each parliamentary candidate was required to declare which presidential candidate he or she supported. Neutrality in the presidential campaign was not an acceptable option. In turn, presidential candidates could, but were not required to, endorse a candidate in each parliamentary constituency (Section 33).¹¹ There then was to be a combined election for president and legislature. Each ballot was required to list the candidates for the National Assembly and the presidential candidate each supported, and each vote cast for a parliamentary candidate was also treated as a vote for his or her preferred presidential candidate.

This unusual system made presidential and parliamentary elections inseparable. However, it did not assure unified control of the government; instead, it left open the possibility of a minority President without a voting majority in the National Assembly. The President was chosen by plurality election; the candidate receiving the greatest number of valid votes was the victor. There was no provision for a run-off election if no candidate received a majority of all the votes cast. With three or more presidential candidates, therefore, one of them could be elected with much less than a majority of votes and with far short of a majority of supporters in the National Assembly. In fact, this system did not even ensure that the winning presidential candidate would be the one supported by the largest number of winning parliamentary candidates. For example, if 50 parliamentary candidates supporting one presidential candidate won their seats with 51 percent of the vote, that

¹⁰Pettman, *Zambia: Security and Conflict*, p. 37.

¹¹Instead, UNIP party leaders sought to ensure that there would be only one, authorized party candidate for each parliamentary seat. "President Kaunda did not announce the names of the UNIP candidates until 23 November, three days before nomination day. The party leadership was concerned that independent candidates from within the party ranks might stand; they would name Kaunda as their presidential choice, but would cut into the votes of the official UNIP candidates. Throughout October and November the leadership, under Dr. Kaunda, used repeated threats to discourage such candidates." Robert Molteno and Ian Scott, "The 1968 general election and the political system," in William Tordoff (ed.), *Politics in Zambia* (Berkeley and Los Angeles: University of California Press, 1974), pp. 168-169.

candidate would receive fewer presidential votes than another presidential hopeful whose supporters won 99 percent the votes in 26 constituencies (assuming equal numbers of voters in each district).¹²

Such possibilities notwithstanding, it seems likely that the authors of the 1964 constitution intended and fully expected that this electoral system would produce unified political control of the legislature and the executive. The existence of a powerful and directly elective presidency--and as we shall see, the President under this constitution was powerful indeed--creates equally powerful incentives for creating no more than two parties or presidential electoral coalitions. And the constitution contains at least two hints that contested presidential elections were not anticipated, that not even two candidates were expected to run. First, it is striking that the constitution required parliamentary candidates to identify a personal loyalty to an individual presidential candidate but not to a political party.¹³ In fact, nowhere in the constitution as originally adopted were there any references at all to political parties, even though its authors could not have been unaware that a party system was accepted internationally as being valuable, if not necessary, for competitive elections.¹⁴

Second, the constitution addressed (in Section 33) the possibility that there could be only one validly-nominated presidential candidate, and that there might be constituencies in which no election would be required, presumably because there was only one parliamentary candidate. It is surprising that a democratic constitution would consider either situation to be a likely enough possibility to merit addressing. Furthermore, the constitution provided that, in such a case, "the returning officer" would declare the sole presidential candidate to have been

¹²Tordoff and Molteno make much the same point. William Tordoff and Robert Molteno, "Parliament," in William Tordoff (ed.), *Politics in Zambia* (Berkeley and Los Angeles: University of California Press, 1974), p 200.

¹³Ballot papers could list candidates' party affiliations, but this was not mandatory.

¹⁴A 1966 constitutional amendment did acknowledge the existence of political parties in the National Assembly by requiring an MP to resign if he or she ran for election as a member of a party and subsequently left that party. (Act No. 47 of 1966.) "Experience showed that it was unwise for an MP who wished to retain his seat to change parties in midstream. For, in the seven instances where this happened during the first Assembly, in not one were the electorate persuaded to follow their MP into his new party allegiance (and so policy stance)." Tordoff and Molteno, "Parliament," p. 205. On this issue, see Ali A. Mazrui and G.F. Engholm, "The Tensions of Crossing the Floor in East Africa," in Mazrui, *Violence and Thought: Essays on Social Tensions in Africa* (London: Longmans, Green and Co Ltd., 1969), pp. 122-146.

elected,¹⁵ and the unchallenged parliamentary candidate (and, therefore, his or her presidential candidate) would be deemed to have received the votes of *all* the registered voters in that constituency.

Although the constitution did not mandate this result, therefore, it requires little imagination to interpret it as being intended and expected to produce a President with a supportive legislative majority. The electoral provisions of the constitution do not specify who was supposed to dominate this political partnership--whether the President was expected to be the agent of his parliamentary majority or whether parliamentary candidates were expected to owe their election to their support for the most popular presidential candidate. However, the unbalanced distribution of constitutional powers within the government leaves no doubt that the President was intended to dominate the political system.

The single characteristic of a Westminster-style parliamentary regime that distinguishes it most clearly from a presidential-congressional system is the parliament's control over the formation and personnel of the "Government" or executive power. Whether or not all ministers are and must be MPs (and parliamentary systems differ in this respect), there invariably is a prime minister who is an MP and whose government is installed with the approval of a majority in parliament. Furthermore, of course, a parliamentary majority may dismiss the government at any time before the next scheduled elections, either by a vote of no confidence, constructive or otherwise, or by a vote against the government on a matter at the heart of its program. Under the 1964 Zambian constitution, all ministers were required to be members of the National Assembly, but that is the only essential respect in which the political system it created resembled a Westminster-style regime.

The President appointed all ministers who constituted the Cabinet of Ministers, over which the President presided.¹⁶ The remaining constitutional member of the Cabinet was the Vice President, who also was appointed by the President from among the body of National Assembly members (Sections 45 and 41). None of these appointments, individually or collectively, was subject to approval by the Assembly. Although the Vice President and ministers may have been members of the National Assembly, they were in no sense selected or

¹⁵The "returning officer" for presidential elections was the Chief Justice (Section 40), who was appointed by the President and whom the President could remove upon recommendation of a tribunal consisting of members the President also appointed (Section 99). A cynic would view all this as creating at least the appearance of a conflict of interest working to the advantage of a President seeking re-election.

¹⁶A 1969 constitutional amendment created the office of Secretary-General to the Government, to be appointed and removed by the President. This officer was made responsible for arranging Cabinet business and also for recording and conveying its decisions. (Act No. 1 of 1969, February 11, 1969)

approved by the Assembly. By the same token, the constitution made no provision for the National Assembly to dismiss the Cabinet or any of its individual ministers, nor even to recommend dismissal. There is no reference to, or even intimation of, individual or collective ministerial responsibility to the National Assembly, which is essential to parliamentary government. It was the President and the President alone who was empowered to remove ministers (Section 44) and the Vice President (Section 41).¹⁷

Tordoff and Molteno observe that "[t]he procedure of the Zambian Cabinet follows the Downing Street model."¹⁸ More important, however, was the President's uncontested control over the Cabinet which, in practice, made it much more akin to a U.S. presidential cabinet than to a cabinet of collective parliamentary responsibility.¹⁹ With respect to presidential control over the ministries and other government instrumentalities, the 1964 constitution was unambiguous: "The executive power of the Republic shall vest in the President and, subject to the provisions of this Constitution, shall be exercised by him either directly or through officers subordinate to him" (Section 48). So although the constitution did not formally designate him as such, the President was just as clearly the de facto head of government as he was explicitly the de jure head of state. Ministers were subject to presidential direction as well as appointment and removal. Individually, "[a] Minister shall be responsible, under the direction of the President, for such business of the government of Zambia (including the administration of any department of Government) as the President may assign to him," and collectively, "[t]he Cabinet shall be responsible for advising the President with respect to the policy of the Government and with respect to such other matters as may be referred to it by the President" (Section 51).

¹⁷The Vice President or any minister had to relinquish office if he or she ceased to be a member of the National Assembly (Sections 41 and 44). However, these provisions did not create a means for legislative control because the constitution did not give the National Assembly the authority to expel any of its members for any reason.

¹⁸William Tordoff and Robert Molteno, "Government and administration" in William Tordoff (ed.), *Politics in Zambia* (Berkeley and Los Angeles: University of California Press, 1974), p. 249.

¹⁹Morgan argues that UNIP intra-party politics constrained the President's selection of Cabinet members and his ability to impose his will without regard to Cabinet opinion. "In fact, in the multi-party state, the President probably required the support of some, at least, of his Cabinet before a particular policy went ahead. His position in regard to the Cabinet may have been stronger than that of a modern British Prime Minister's but it was not as commanding as the United States President's." David Gwynn Morgan, "Zambia's One Party State Constitution," *Public Law*, Spring 1976, p. 59. Even so, any such constraints remained extra-constitutional.

There were no corresponding provisions for ministerial or cabinet accountability to the National Assembly, nor did the constitution make any presidential appointments subject to legislative confirmation. Under Section 52, the President was to appoint and could remove the attorney general. And Section 115 gave the President authority over government personnel decisions generally: "power to appoint persons to hold or act in any office in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the President."²⁰

The sole constitutional control that the National Assembly had over President and Government was its ultimate authority to remove the President from office on grounds that could include "gross misconduct" (Section 36). However, there were three significant limitations on this impeachment power. First, the National Assembly could exercise this authority only by a three-fourths vote of the entire membership of the National Assembly. Second, it could do so only if the charges against him had been supported by a tribunal selected by the Chief Justice whom, in turn, the President appointed and could remove upon recommendation of a tribunal he also appointed (Section 99). And third, in the event that three-fourths of the members voted to remove the President from office, he had the option of dissolving Parliament rather than accepting removal from office.

From the perspective of presidential power, therefore, the 1964 constitution clearly intended to establish a separation-of-institutions system. But it did not also include corresponding sharing-of-powers provisions, such as confirmation by the National Assembly of high-level appointments and unilateral National Assembly control over presidential impeachment, that characterize the U.S. separation-of-powers regime. What of the other side of the coin: the constitutional powers assigned to the National Assembly and the constitutional role of the President in the law-making process? Was the National Assembly to be equally dominant and autonomous within its assigned constitutional domain?

The National Assembly consisted of 75 (in 1967 increased to 105) members elected from single-member districts to serve five-year terms unless it was

²⁰The sole exception to the President's removal power was the Auditor-General, whom the National Assembly could remove by majority vote without any presidential involvement (Section 119). With respect to certain appointments and disciplinary actions, Section 115 did require the President to consult with a public service commission, but that commission was to consist of members whom he could appoint and remove (Section 114). Presidential control over personnel did not extend to the Clerk of the National Assembly and his subordinates (Section 70).

dissolved prematurely;²¹ it also could include as many as five members whom the President was empowered to appoint and remove (Sections 58 and 65).²² Interestingly, though, the National Assembly did not constitute the Parliament of Zambia. Instead, Section 57 vested legislative power "in the Parliament of Zambia which shall consist of *the President* and a National Assembly."²³ Although this might be taken to imply a greater joining or sharing of legislative powers than is characteristic of presidential systems, it is more likely that it only was intended to recognize the existence and importance of a presidential veto power. To that extent, the constitution did vest some legislative power in the President, as does any constitution that gives the chief executive more than a suspensive veto over proposed legislation. Other sections of the constitution apparently were consistent with this distinction between National Assembly and Parliament. For example, the National Assembly was empowered to elect its own Speaker, but it was Parliament that could change the number of elected seats in the National Assembly (Section 67). In other words, the size of the legislature could be changed by the regular law-making process.

The President's veto power was neither absolute nor suspensive. Under most circumstances, when the President withheld his assent to a bill, he was required to return it to the National Assembly which then had six months within which it could, by a two-thirds vote of the entire membership, enact the bill over his veto.²⁴ However, there were two exceptions to this general rule.

²¹Section 9 of the Zambia Independence Order of 1964 continued to divide Zambia into 65 "main roll constituencies" and "ten reserved constituencies." The increase in elective membership from 75 to 105 was made by the Constitution (Amendment) (No. 3) Act of 1967.

²²The constitution referred to the five members the president could choose as "nominated members" (Section 65), but they actually were appointed and removed solely by the president. To the extent that "nomination" implies a subsequent act of approval, it was a misnomer in this case. The National Assembly was empowered to elect its Speaker who, if not an MP at the time of his election, would be treated as a member (Section 58), but could only vote to break a tie (Section 79). (Section 79 did not distinguish between the voting rights of an MP elected as Speaker and a Speaker who became an MP by virtue of his election to the office.)

²³Not part of either the National Assembly or the Parliament was the House of Chiefs that Section 86 authorized to consider and discuss any bill or other matter that the President referred to it. The House of Chiefs then could submit resolutions to the President who was to lay them before the National Assembly. This did not seem to imply any obligation on the part of either the President or the National Assembly to act on the resolutions.

²⁴This voting requirement strengthened the President's hand. Under Article 79, "any question proposed for decision in the National Assembly shall be determined by a majority of the votes of the members *present and voting*" (italics

First, the President did not have to return a vetoed bill if a tribunal, selected by the Chief Justice whom the President had appointed, reported that some or all of it was inconsistent with the constitutional provisions on protection of fundamental rights and freedoms of the individual. In such a case, the presidential veto was absolute unless he chose to submit it for the National Assembly's reconsideration. And second, even when the National Assembly attempted to override a presidential veto, the President had the option of dissolving Parliament rather than having the bill become law (Section 71). The thought that the President might exercise this option surely could have given some legislators second thoughts before voting to override a presidential veto.

Notice that Section 71 provided for a presidential dissolution of Parliament, not only the National Assembly. The effect of such an act, then, was to trigger a new combined legislative and presidential election under the procedures summarized earlier. The constitution did *not* give the President power to dissolve the National Assembly, without also putting himself at risk, when it disagreed with him. In this respect, the 1964 system did not give the President quite as much leverage as it might have. However, if the authors of the constitution did not anticipate that there would be a competitive party system--and recall that the constitution made no mention at all of parties--then an election solely for National Assembly seats might not have served the President's interests. Without the President "at the head of the ticket," so to speak, voters would have been handed election ballots that lacked any "labels" to identify which candidates would support the President and which would not.

Including the President within the definition of Parliament also was potentially important in another respect. During time of war, Parliament could extend its five-year life one year at a time for a maximum of five additional years (Section 83). If we take every reference to Parliament in the constitution to be a reference to the National Assembly *and* the President, then a President with a compliant majority in the Assembly could extend his term of office (and theirs) to as long as ten years before having to face the voters.²⁵ On the other hand, if the President were to find himself confronting an unfriendly legislature, he could have recourse to his authority, under Sections 82 and 83, to limit the length of its sessions by setting the date for each session to begin (subject only to the requirement that the National Assembly meet during every twelve-month period) and to prorogue it at any time, thereby ending its session.

added). Overriding a presidential veto, however, required support from two-thirds of "*all the members of the Assembly*" (italics added).

²⁵The constitution made no provision for declarations of war. Instead, Section 49 designated the President as Commander in Chief and assigned him "the power to determine the operational use of the armed forces..." Absent an explicit grant of power to the National Assembly, this could well be interpreted as giving the President the unilateral authority to commit Zambia to war and, not incidentally, triggering the provisions of Section 83.

Although clearly not the head of a Westminster-style parliamentary government, the President also enjoyed some powers vis-a-vis the National Assembly that are not typical of presidential systems. For example, he could attend and address the National Assembly at any time, not when invited to do so (Section 75). His appointed Vice President was "the leader of government business in the National Assembly," rather than an Assembly member elected by his or her colleagues (Section 50). (In addition, the Vice President was "the principal assistant to the President in the discharge of his executive functions" and also could hold ministerial posts.) Although subject to the equivalent of impeachment, the President enjoyed total immunity from civil proceedings in his private capacity and total immunity from criminal proceedings in *both* his official and private capacities (Section 43). In short, the President literally was above the law. The 1964 constitution included no corresponding immunity protections for members of the National Assembly, even for statements made in debate. Furthermore, Section 67 gave the President added leverage over legislators by authorizing him to appoint, without National Assembly approval, the members of Electoral Commissions that could re-draw constituency boundaries (and potentially do so to the disadvantage of recalcitrant incumbents).

The President enjoyed two additional powers that undermined the National Assembly's control over national fiscal and budgetary policy--the "power of the purse" that so many observers have placed at the heart of Congress' power in the American constitutional system. First, the National Assembly could not initiate most taxing or spending proposals. Only at the recommendation of the President could the legislature consider a bill or amendment that would impose a new tax or change an existing tax in a way that did not reduce it, or a proposal that would provide for new spending or change some existing spending authority without reducing it (Section 74). And second, the President could authorize the expenditure of funds without prior National Assembly concurrence if he "considers that there is such an urgent need to incur the expenditure that it would not be in the public interest to delay" it until the National Assembly could approve it (Section 107). If the National Assembly was not expected to be in session for most or all of each year, such a provision could have been justified as a necessary contingent procedure to permit the government to react to emergencies and other unanticipated developments. But even if such was the benign reason for this provision, the National Assembly would have had little choice but to accept, if not enthusiastically approve, the expenditure of funds already spent.

Finally, Section 29 empowered the President to declare states of emergency, and in fact, Kaunda imposed a state of emergency in 1964 that remained in effect throughout all the years of UNIP rule, until Kaunda's eventual successor cancelled it in November 1991, only a week after the election that finally drove the long-time President from office.

On its face, this presidential power was circumscribed because the National Assembly could revoke a presidential declaration at any time and by simple

majority vote, and because the declaration would lapse automatically if the National Assembly failed to confirm it in no more than 21 days. On the other hand, a compliant Assembly could allow the state of emergency to continue indefinitely so long as it renewed its approval every six months. Five years later, a 1969 constitutional amendment significantly strengthened the President's hand in two respects.²⁶ First, the length of time a presidentially-declared state of emergency could remain in force without National Assembly approval was extended to 28 days, and the 28-day period was not to include any days during which Parliament was dissolved. Thus, if the President announced a dissolution within a month after declaring a state of emergency, it could remain in effect for three months or more without legislative approval.²⁷ And second, the amendment also dropped the requirement that the National Assembly could approve a state of emergency only for six months at a time. Instead, a legislatively-endorsed state of emergency would remain in effect unless and until the National Assembly acted affirmatively to terminate it (or until a new President took office).

Even more important, nowhere did the constitution, as originally adopted or as amended, define the effect of a state of emergency: what rights were or could be curtailed, and what authority and discretionary powers the President could exercise that were otherwise denied to him. In a constitution that in many other respects was quite detailed and carefully drawn, the failure to address this question left a gaping--and, almost certainly, a deliberate--hole in the constitutional fabric of controlled government powers.

In sum, the 1964 constitution established a Parliament but not a parliamentary system. As Morgan aptly summarized it, "Zambia's Independence Constitution...possessed a feature which was only acquired by other anglo-phone African countries through later amendment. Not only was the President Head of State and Head of the Executive, but as Head of the Executive he enjoyed the strengths of the British Prime Minister and the United States president without the weaknesses of either."²⁸

The Parliament included the President but the National Assembly neither elected him nor controlled his government. The President was required to select his ministers from among the members of the National Assembly, but that was virtually the only respect in which the legislature was involved in the selection, direction, or removal of government officials. In fact, the President enjoyed greater unilateral executive power than does the American president. On the other hand, the National Assembly was not equally well-protected against

²⁶Act No. 33 of 1969 (October 21, 1969).

²⁷Under Article 92, three months was the maximum time permitted to elapse between a dissolution and the convening of the newly-elected Parliament.

²⁸Morgan, "Zambia's One Party State Constitution," p. 42.

presidential influence and intervention. The distribution of formal authority strongly favored the President and failed to give the National Assembly the constitutional leverage necessary for it to effectively restrain the exercise of presidential power. Finally, the electoral system created the possibility, though it did not ensure, that National Assembly members would be elected *because* of their support for a presidential candidate, and that the successful parliamentary candidates would provide the president with a passive and dependable majority to ratify his policies and confirm his actions. It was under these constitutional arrangements that Zambia was governed until the end of the First Republic.

The 1973 Constitution

Indicative of the premises that the authors of the 1964 constitution had in mind was Section 31 which, after providing that there "shall be a President of the Republic of Zambia who shall be the Head of State," simply stated that "[t]he first President shall be Kenneth David Kaunda." It was not enough to provide that the person serving as head of government at the time the constitution took effect would continue in office as President until the next presidential election.²⁹ They thought it fitting to elevate Kaunda as an individual to constitutional status, documenting the anticipated personalism of Zambian politics and also strongly suggesting that the constitutional imbalance favoring presidential power was no accident.

The 1964 elections under this constitution produced a National Assembly in which the United National Independence Party (UNIP) held 55 of the 65 "main roll" elective seats, with the remaining ten going to the African National Congress (ANC); the five members the President "nominated" (appointed) also were or became UNIP members.³⁰ Notwithstanding this numerical superiority, however, Gupta observed several years later that "the Government is clearly uneasy about the opposition."³¹

²⁹Ironically, this was precisely the approach taken in the act bringing into force the 1973 constitution. Section 8 provided that "[t]he person holding the office of President immediately before the commencement of this Act shall....continue in office until the person elected at the first election to the office of President under the provisions of the Constitution assumes office." Perhaps in 1964 there might have been some question as to who would be President if the constitution itself had not named Kaunda; in 1973, there was not.

³⁰The predominantly white National Progress Party won the ten "reserved roll" seats. The reservation of these seats was abolished before the 1968 general election.

³¹Anirudha Gupta, "The Zambian National Assembly: Study of an African Legislature," *Parliamentary Affairs*, v. 19, n. 1 (Winter 1965-1966), p. 51.

The superior debating talents of some Opposition Members cause quite a lot of concern to the Ministers some of whom are not yet sure about their parliamentary performance. On the other hand, the wide public interest taken in the Assembly debates makes it all the more important for Government front-benchers to show off their parts or face a certain amount of unpopularity.

"Under the pressure of these circumstances," he concluded, "the ruling party has now started the campaign for imposing one-party rule in the country."³²

The December 1968 general elections perpetuated Kaunda's hold on the presidency and UNIP's electoral dominance in the National Assembly³³--UNIP winning 81 seats (and enjoying the support of the five appointed members) compared to 23 for ANC, and one independent. "This imbalance between the parties meant that the opposition ANC never seriously considered itself an alternative government. It never, for instance, formed a Shadow Cabinet."³⁴ Nonetheless, these election results failed to relieve the discomfort that facing organized, legal opposition evidently caused Kaunda and UNIP's other leaders. The African National Congress had made some gains in the elections and another opposition party, the United Progressive Party (UPP), was formed in 1971.³⁵

So, "faced with the possibility that UNIP might lose its parliamentary majority to a combined ANC-UPP challenge in the 1973 general elections, he [Kaunda] banned the UPP and detained its leaders."³⁶ In February 1972, the same month that the UPP was banned, Kaunda also appointed a commission to

³²Ibid.

³³On intra-party politics within UNIP during the late 1960s, see William Tordoff, "Political Crisis in Zambia," *Africa Quarterly*, v. 10, n. 3 (1970), pp. 225-236; and on the development of inter- and intra-party competition during 1964-1968, see Thomas Rasmussen, "Political Competition and One-party Dominance in Zambia," *The Journal of Modern African Studies*, v. 7, n. 3 (1969), pp. 407-424. See also James R. Scarritt, "Elite Values, Ideology, and Power in Post-Independence Zambia," *African Studies Review*, v. 14, n. 1, April 1971, pp. 31-54. UNIP had sprung from the African National Congress which had deteriorated into minority status by independence in 1964. Kaunda had been Secretary-General of ANC from 1953 to 1958; UNIP was formed in 1959 and he became its leader in the following year.

³⁴Tordoff and Molteno, "Parliament," p. 202.

³⁵See Robert Molteno, "Zambia and the one party state," *East Africa Journal*, February 1972, pp. 6-18.

³⁶Michael Bratton, "Zambia Starts Over," *Journal of Democracy*, April 1992, p. 83.

make recommendations for constitutional change; in November, the Government published its reactions to the Commission's proposals.³⁷ In theory, at least, one-party government does not necessarily imply concentrated presidential powers, and in fact the Commission favored parliamentary supremacy, limited presidential tenure, and a Prime Minister with authority to appoint and dismiss Cabinet members.³⁸ However, it remained for the Government to pick and choose among the Commission's recommendations.

The political irrelevancy to which the National Assembly had been reduced was illustrated by the way in which the Government's constitutional changes were first adopted. "On 8 December 1972 National Assembly standing orders were suspended to allow the second and third readings of the Constitution (amendment) Acts nos. 3, 4 and 5 on the same afternoon, and the one-party state became law with almost no debate."³⁹ Pettman summarizes some of the justifications offered for the change in regime:⁴⁰

The one-party state is...said to be more in tune with indigenous politics, and the multi-party system is rejected as yet another Western colonial intrusion, unsuited to African needs. Opposition is a luxury a poor country cannot afford, and may hamper development by making it difficult to adopt policies in the long-term interest of the whole state. Opposition is opportunistic, it is only sectional and, in the case of the ANC, tribal, and so is incompatible with the ideal of "One Zambia, One Nation". Nationhood is far from secure, and because many ethnic groups exist within the state's borders with few real links between them, a multi-party system will develop along tribal and sectional lines and so further undermine nationalism.

With the adoption in August 1973 of a new consolidated constitution, Zambia was formally transformed from a constitutional regime that did not

³⁷Republic of Zambia. *Report of the National Commission on the Establishment of a One-Party Participatory Democracy in Zambia. Summary of Recommendations Accepted by Government.* Government Paper No. 1 of 1972. On these events, see Tordoff and Molteno, "Introduction," pp. 33-35.

³⁸Pettman, *Zambia: Security and Conflict*, p. 237. See also Pettman, "Zambia's Second Republic--the Establishment of a One-Party State," *The Journal of Modern African Studies*, v. 12, n. 2, June 1974, pp. 231-244; Simbi V. Mubako, "Zambia's Single-Party Constitution--A Search for Unity and Development," *Zambia Law Journal*, v. 5, 1973, pp. 70-71; and Patrick E. Ollawa, *Participatory Democracy in Zambia*. London: Arthur H. Stockwell Ltd., 1979, especially pp. 250-270.

³⁹Pettman, *Zambia: Security and Conflict*, p. 239.

⁴⁰*Ibid.*, p. 64.

provide for political parties to one dominated by the single legal political party.⁴¹ As previously noted, the 1964 constitution originally had not even referred to political parties. Its 1973 successor created a self-described "One-Party Participatory Democracy."⁴² According to Section 4:

(1) There shall be one and only one political party organisation in Zambia, namely, the United National Independence Party (in this Constitution referred to as "the Party")....

(2) Nothing contained in this Constitution shall be so construed as to entitle any person lawfully to form or attempt to form any political party organisation other than the Party, or to belong to, assemble or associate with, or express opinion or do any other thing in sympathy with, such political party or organisation.

In addition to entrenching UNIP within Zambia's constitutional structure, the 1973 constitution made the presidency even more dominant than it had been under the 1964 regime. The approach of the new charter toward presidential-legislative relations is revealed by Section 5 of the Constitution of Zambia Act, 1973, which arranged for the transition between the two regimes. That section assigned to the President the unilateral power for two years to amend any law by issuing whatever statutory instruments (i.e., proclamations, regulations, or orders having the force of law) "as may appear to him to be necessary or expedient for bringing that law into conformity with the provisions of this Act or the Constitution...." There was no requirement for the National Assembly to review or approve these decrees, either immediately or eventually, or to be consulted or participate in any other way in their formulation.

Nonetheless, a striking characteristic of the 1973 constitution--in addition to its one-party features, of course--was the degree to which it preserved the general contours as well as many of the specific provisions of its 1964 predecessor. The authors of the 1973 charter did not find it necessary to start

⁴¹All references to, and quotations from, the 1973 constitution and the Constitution of Zambia Act, 1973 (Act No. 27 of 1973), the Constitution of Zambia (Amendment) Acts of 1974 and 1975 (Acts No. 18 of 1974 and No. 22 of 1975), and the constitution of the United National Independence Party (UNIP) are taken from Neville Rubin, "Zambia," in Albert P. Blaustein and Gisbert H. Flanz (eds.), *Constitutions of the Countries of the World* (Dobbs Ferry, NY: Oceana Publications, Inc., 1974. On the 1973 constitutional regime, see Morgan, "Zambia's One Party State Constitution," *passim*.

⁴²It is interesting, though perhaps nothing more, that the fifteen broad objectives laid out for the Party in Article 4 of the UNIP constitution include no reference to preserving or promoting democracy. Although the Party sought, among many other things, to "encourage Zambians to participate in all sectors of the economy," there was no comparable expression of interest in stimulating participation in government and public affairs.

all over again. They could preserve most of the existing constitutional arrangements, making the changes necessary to accommodate the one-party regime and in most other respects limiting themselves to relatively marginal adjustments and additions. Not surprisingly, however, to the degree that these changes affected the balance between legislative and executive power within the regime, their individual and cumulative effect was to strengthen an already dominant President.⁴³

As under the previous regime, a new presidential election was to be triggered by dissolution of Parliament. But there would be no contested elections, of course. The leader of the Party automatically became the sole candidate for President of the nation;⁴⁴ Article 38 only required that he receive a majority of the votes cast in the ensuing "election."⁴⁵ Nor was there any reason to expect the President to dissolve Parliament because of a political or policy impasse. Henceforth, the President and all members of the National Assembly would be drawn from the same--the only--party.

Although there remained the prospect of intra-party disagreements over policies and personalities, the new electoral process for the National Assembly gave the Party leadership an effective weapon to manage them. To create a semblance of electoral competition for legislative seats, there were to be primary elections to select three candidates in each constituency. However, the Party's rank-and-file membership was explicitly excluded from participating in these elections. The primary electorate was limited to holders of certain designated

⁴³"The Constitution does not constitute a sudden swerve from what went before. The Independence Constitution was amended over 30 times and the tenor of these changes was to remove fetters from the executive, a trend which is certainly not reversed in the new Constitution. More important, though, the new Constitution is in many respects a codification of practices and tendencies which had grown up under, and sometimes in spite of, its predecessor and which had given rise to the use of the term, 'the dominant-party State.'" Morgan, "Zambia's One Party State Constitution," p. 44.

⁴⁴Although we are not concerned here with UNIP's internal affairs, it is worth noting that the Party's constitution did little to replace inter-party competition for the presidency with intra-party competition. Article 8 of the Party's charter provided that the UNIP president, who would become the sole candidate for the national presidency, was to be elected at the Party's General Conference. However, "the Central Committee [of the Party] shall, before the General Conference is held, agree on the candidates the Central Committee will support for the office of President of the Party and for the membership of the Central Committee...."

⁴⁵Once nominated, according to Morgan, the Party's candidate "is then presented to the general electorate to confirm, by putting a cross against the eagle, or to reject by marking the hyena." Morgan, "Zambia's One Party State Constitution," p. 50.

Party positions (e.g., the Party's Regional Youth and Publicity Secretaries and the Party Chairman, Secretary, and Treasurer in each constituency), and even their preferred candidates were subject to veto by the Party's Central Committee (Article 75).

So Party leaders and activists firmly controlled the parliamentary candidates from among whom the voters would choose:⁴⁶

Over time,...the UNIP elite manipulated the electoral rules in order to consolidate its control over the recruitment and rise of political leaders. The UNIP Central Committee began disqualifying parliamentary candidates after the primaries (in an average of one-fifth of all constituencies), especially if they were suspected sympathizers of former opposition parties or members of an emerging independent bloc in the National Assembly.

Although these procedures could not prevent major schisms from developing within the Party, they could protect against individual Party mavericks reaching, or remaining in, the National Assembly.

The legislative structure remained largely unchanged under the new constitution. The Parliament continued to comprise the President and the National Assembly (Article 63).⁴⁷ And the Assembly's elected members continued to be chosen in single-member districts the boundaries of which were drawn by a presidentially-controlled commission (Articles 73-74). The size of the elected membership was increased to 125 members but, as before, the Parliament could change that number by law.⁴⁸ The number of presidentially-appointed (and removable) members was increased to a maximum of ten. In addition, the Speaker was listed as an additional member because Article 69 now *prohibited* the National Assembly from electing one of its own members to the office. As before, the legislature was to elect and remove its chief official, the Clerk, by

⁴⁶Bratton, "Zambia Starts Over," p. 84. Concerning the 1973 elections, Morgan reported that "14 Ministers and Ministers of State were refused re-election. A mere handful of candidates were returned unopposed. In over half the constituencies a primary election was necessary. The power of veto was used in about 26 cases only." Morgan, "Zambia's One Party State Constitution," p. 55.

⁴⁷The House of Chiefs and its consultative role were retained (Article 96). The limited importance of this body is suggested by the fact that its members were not required to be Party members.

⁴⁸The fact that the quorum for conducting business in the National Assembly was set at one-third of its membership (Article 86) supports the inference that it was not expected to demand and attract the regular attention of all its members. (The quorum requirement had been only one-fourth under the 1964 constitution.)

resolution (presumably meaning majority vote); the Speaker was authorized to hire and fire all subordinate legislative staff (Article 78).

It was in the organization of executive power that the 1973 document made the most striking changes in constitutional arrangements. Party and government positions were commingled. UNIP was made more than the single legal political party; the Party was integrated into the structure of government. For example, the office of Vice President was abolished. In his place, it was the Party's Secretary-General whom Articles 40 and 42 designated as the person to carry out presidential functions whenever that office was vacant or the President became disabled.⁴⁹ Correspondingly, Article 7 of the Party constitution made the Prime Minister was an ex-officio member of the UNIP Central Committee. Article 12 of the UNIP charter also authorized the President, the Prime Minister, or the Party's Secretary-General to convene joint meetings of the Cabinet and the UNIP Central Committee.

The linkages between Party and government were made even tighter and more explicit by the 1975 constitutional amendments, one of which inserted articles on the Party's Central Committee between those on the President and those on the Prime Minister and the Cabinet. Their placement was not accidental. Article 47C established the constitutional primacy of the Central Committee over the Cabinet:

(1) The Central Committee shall formulate the policy of the Government and shall be responsible for advising the President with respect to the policy of the Party and the Government and with respect to such other matters as may be referred to it by the President.

(2) Where a decision of the Central Committee is in conflict with a decision of the Cabinet, the decision of the Central Committee shall prevail.

Previously, the second of these clauses had appeared as Article 12 of the UNIP constitution; now it was thought necessary or desirable to incorporate it into the national charter.

Unlike the 1964 constitution, the 1973 document created the office of Prime Minister (Article 48). However, this innovation was not accompanied by other changes that would have moved Zambia closer to a mixed or hybrid system such as the French or those that have recently been created in so many of the democratizing Central and Eastern European regimes and the former Soviet states. Although Article 55 designated the Prime Minister as "the head of Government administration," the President remained the de facto head of

⁴⁹The Secretary-General of the Party is to be distinguished from the Secretary-General to the Government. This position, which had been established by a 1969 constitutional amendment, was re-named Secretary to the Cabinet, presumably to avoid confusion.

government as well as the de jure head of state (under Article 37).⁵⁰ The November 1972 government report on the National Commission's constitutional recommendations emphasized that the Prime Minister was expected to be an administrator, not the chief policy-maker in the national government, and that he was to be subordinate in all respects to the President:

[T]he Commissioners decided that there be a President who would be assisted by a Prime Minister, thereby separating the policy-making from the administrative institutions....Government noted that Zambia has many enemies surrounding her and therefore the implementation of the One-Party Participatory Democracy as well as Humanism, together with the attendant problems, require a unified command under an Executive President. They recalled the problems of the past eight years [i.e., since Zambian independence] the solution of which should not have been so easy under a divided executive authority.⁵¹

The Prime Minister actually became the third-ranking official in the government. The 1973 constitution gave the Secretary-General of the Party powers and positions that seemed intended to elevate him in standing above the Prime Minister. It was the Secretary-General, not the Prime Minister, whom the President could authorize to perform functions of his office when he was ill or out of the country (Article 43). The Secretary-General also was made an ex officio member of the Cabinet and authorized to preside over Cabinet meetings in the President's absence. Only when both the President and Secretary-General were absent was the Prime Minister to preside (Article 50).

As before, the President was empowered to appoint and remove all ministers, including the Prime Minister, who once again had to be members of the National Assembly. The one change was the new requirement that the President consult with the Prime Minister before naming or replacing other ministers and the Attorney General (Articles 48 and 57). In 1975, these articles were amended to require consultation as well with the Secretary-General of the Party. The Secretary-General also was given the same consultative role as the Prime Minister in the President's assignment of ministerial responsibilities (Article 56). However significant (or insignificant) these consultations were expected to be in practice, the Cabinet and its ministers, including the Prime Minister, finally remained accountable solely to the President. There continued to be no constitutional provision for individual or collective responsibility to the

⁵⁰The Prime Minister also replaced the Vice President as "the leader of Government business in the National Assembly" (Article 55). This dual assignment could only have meant one of two things: either the Prime Minister was not actually expected to be the chief administrator in practice, or the burden of ensuring National Assembly support for Government initiatives was not expected to be onerous. Both undoubtedly were true.

⁵¹Government Paper No. 1 of 1972, p. 4.

National Assembly, nor any obvious constitutionally-sanctioned device by which the legislature could require ministerial accountability.

Furthermore, the 1975 amendments changed the formal function of the Cabinet in a way that emphasized the constitutional primacy of Party over government. Whereas the 1973 constitution originally reiterated the 1964 provision that the Cabinet was responsible for "advising the President with respect to the policy of the Government" (Article 56), this function was amended two years later. It became the responsibility of the Party's Central Committee to "*formulate* the policy of the Government" and advise the President on Party and government policy (Article 47C); Article 56 was amended to restrict the Cabinet to "advising the President with respect to the *execution* of the policy of *the Party by the Government...*" (italics added).

In most other respects, the 1973 constitution preserved or made only minor changes in presidential powers, including:

- Presidential authority to declare states of emergency (Article 30).
- Exclusive presidential authority to exercise or delegate executive power (Article 53)
- Presidential authority to act as Commander in Chief and to "determine the operational use of the armed forces" (Article 54)
- *- • Presidential veto powers (Article 79)
- Exclusive presidential authority to initiate most legislative proposals affecting taxing and spending (Article 82)
- Presidential authority to attend and address the National Assembly (Article 83)
- Presidential authority to prorogue and dissolve Parliament (Article 93)
- Presidential authority to appoint and remove the Chief Justice and other judges, including the other justices of the newly-created Supreme Court (Articles 108-113)

The new constitution retained the Parliament's authority during time of war to enact annual laws extending its normal five-year lifespan for up to five additional years (Article 93). Also re-adopted were the procedures by which the National Assembly could at least attempt to remove the President from office (Article 41), and the broad grant of presidential immunity under Article 47. There still was no corresponding grant of parliamentary immunity in any form, though Article 91 did state that "[t]he National Assembly and its members shall have such privileges and immunities as may be prescribed by an Act of Parliament."⁵²

⁵²By law, speech and debate in the National Assembly are protected from civil and criminal proceedings, as are written statements to the Assembly or one of its committees. (National Assembly (Powers and Privileges) Act of 1956, as amended through 1970; Part II.) Indeed, Zambian law imposes criminal penalties for various offenses against the National Assembly. Two of the listed offenses are noteworthy: (1) publishing "any false or scandalous libel on the

There were no significant changes that increased the powers of the National Assembly, whether or not at the expense of the President. On the other hand, the President did receive two potentially important new powers. First, Article 62 gave him authority to create offices and make appointments to them outside of the civil service. And second, Article 117 created an ombudsman of sorts in the form of a Commission for Investigations which the President could direct to investigate (or refrain from investigating) the conduct of virtually all public officials and employees.⁵³ The President himself was explicitly exempted from the Commission's scrutiny; members of the National Assembly were not.

The net effect of the 1973 Zambian constitution on the control of government power from within was to legitimate and perpetuate the National Assembly's marginal role in national policy-making. If the National Assembly's authority was not explicitly reduced, its relative position was weakened by new or expanded grants of presidential authority and by the subordination of the government to the Party. Even more than before, the legislature lacked the constitutional powers necessary to effectively restrain the exercise of presidential power, power that now was acknowledged to rest at least as much on the President's position within the Party as on his constitutional authority in government. As a matter of constitutional law as well as practical politics, and notwithstanding the allocation of formal powers between the National Assembly and the President, whatever it might be, all nationally-elected officials were accountable to a third force, the Party, in which the President was pre-eminent.⁵⁴ It is not surprising that it became common to refer to "the Party and its Government."

The Mvunga Commission Report

On October 31, 1988, President Kaunda began his sixth five-year term as President of Zambia, having once again been UNIP's unchallenged candidate for office. In early 1990, he responded to growing public discontent by agreeing to hold a referendum on whether Zambia should return to a multi-party system. The referendum originally was scheduled for October 17, but Kaunda first

Assembly or any report which wilfully misrepresents in any way any proceedings of the Assembly or any committee;" and (2) publishing or printing "any libels on any member concerning his character or conduct as a member and with regard to actions performed or words uttered by him in the course of the transaction of the business of the Assembly." (Ibid., Part IV.)

⁵³See Mubako, "Zambia's Single-Party Constitution," pp. 76-80.

⁵⁴On the one-party constitution, see Charles Mwalimu, "The Influence of Constitutions on the Development of a Nation's Law and Legal System: The Case of Zambia and Nigeria," *Saint Louis University Public Law Review*, v. 8, n. 1, 1988, pp. 157-188.

postponed it until the following August and then simply cancelled it and announced, on September 24, 1990, that his party was prepared to renounce its constitutional monopoly and that Zambia should prepare for multi-party elections. On November 30 of that year, the National Assembly unanimously approved a constitutional amendment to permit other political parties to register and present candidates for election to both the National Assembly and the Presidency, with new elections to be held late the following year.⁵⁵

To recommend new constitutional arrangements, on October 8 Kaunda appointed the Constitution Commission of Inquiry chaired by Professor M.P. Mvunga. The Commission submitted its report on April 25, 1991.⁵⁶ The Government responded with a White Paper that addressed each Commission recommendation point by point, indicating whether or not the Government was prepared to accept it, with or without amendments.⁵⁷ The Government accepted the overwhelming majority of Commission proposals, in most cases without change, although, as we shall see, it did reject one recommendation that might have significantly affected the future of presidential-legislative relations.

Of particular importance to this inquiry was the Commission's mandate "to examine and determine a system of Government that would ensure the separation of the powers of the Legislature, the Executive and the Judiciary so

⁵⁵On the events leading to the Third Republic, see Carolyn Baylies and Morris Szeftel, "The Fall and Rise of Multi-Party Politics in Zambia," *Review of African Political Economy*, July 1992, pp. 75-91; Michael Bratton, "Zambia Starts Over," *Journal of Democracy*, April 1992, pp. 81-94; *The October 31, 1991 National Elections in Zambia* (Washington and Atlanta: The National Democratic Institute for International Affairs and the Carter Center of Emory University, 1992), hereafter cited as the NDI and Carter Center report, especially Chapter 3; and Richard Joseph, "Zambia: A Model for Democratic Change," *Current History*, May 1992, pp. 199-201. More generally, on democratization in Africa, see Michael Bratton and Nicolas van de Walle, "Toward Governance in Africa: Popular Demands and State Responses," in Goran Hyden and Michael Bratton (eds.), *Governance and Politics in Africa* (Boulder: Lynne Rienner Publishers, 1992), pp. 27-55; Richard Joseph, "Africa: The Rebirth of Political Freedom," *Journal of Democracy*, Fall 1991, pp. 11-24; and National Research Council, *Democratization in Africa: African Views, African Voices* (Washington: National Academy Press, 1992).

⁵⁶Republic of Zambia. *Report of the Constitution Commission*. (April 1991). In this report, the Commission noted relevant proposals that the President had made; its own recommendations reveal that it did not always accept these proposals.

⁵⁷Republic of Zambia. *White Paper: Government Reaction to the Mvunga Commission Report*. Government Paper No. 2 of 1991.

as to enhance the roles of these organs."⁵⁸ The question of whether the new multi-party regime should resemble a parliamentary or a presidential system evidently had been settled in advance. The new constitution would embody a separation of powers, such that:⁵⁹

each organ of the State, namely the Executive, the Legislature and the Judiciary will perform its functions without undue interference from the other organs. Each organ therefore should be left to do what is assigned to it under the Constitution. If any organ is not performing well it ought to be reminded and its performance monitored by way of accountability. This is not interference but a system of checks and balances in the interest of good government.

If we take separation of powers to be a summary statement of Neustadt's familiar formulation of "separated institutions sharing powers,"⁶⁰ our review of the 1964 and 1973 constitutions revealed constitutional systems that generally created formally separated legislative and executive institutions, but with one glaring exception: all ministers, including the Prime Minister under the 1973 regime, were required to be members of the National Assembly. On the other hand, the constitutional designs under which Zambia had been governed since 1964 did not provide as well for a *balanced* sharing of powers by these largely separated institutions. Specifically, the President was virtually autonomous in his authority over the selection of government officials and over the organization and administration of the government and the implementation of laws. The National Assembly did not share in these powers to any significant degree. On the other hand, the President did have significant constitutional means by which he could share in the law-making power by either influencing or circumventing the National Assembly.

If we understand this condition to have been a deficiency of the 1964 and 1973 constitutional designs, we can ask if the Constitutional Commission recognized it and what new arrangements (if any) the Commission proposed to address it. In fact, the Commission invited just such questions. In its report, it summarized, with implied approval, these "understandings of separation of powers."⁶¹

Separation of powers is very much accepted to avoid interference among the three organs. There should be equality between organs,

⁵⁸Republic of Zambia. *Report of the Constitution Commission*. p. 4.

⁵⁹*Ibid.*, p. 13.

⁶⁰Richard E. Neustadt, *Presidential Power*. New York: John Wiley & Sons, Inc., 1960, p. 33.

⁶¹*Report of the Constitution Commission*, p. 14.

each organ should have veto powers over the other. No one organ should have absolute powers.

Power should not be vested in one body or indeed one person. Parliament should be independent as the principal instrument of enacting laws.

Indeed, the Commission went considerably further in the introduction to the chapter of its report on the legislature. It reported that those who appeared before it "were unanimous that Parliament should be the highest legislative body in the land:"⁶²

Most of them expressed the view that Parliament should have more constitutional powers than any other organ of the State and that it should be the custodian of most of the powers of the State currently vested in the President. The view was expressed that the Legislature should enjoy complete freedom from the Executive and, as the people's representative organ, it should have the freedom to legislate for the good of the Republic without any interference from other arms of government.

In light of what we know about the 1964 and 1973 constitutional regimes, implementing these statements would have entailed a significant realignment of powers and responsibilities within the structure of government. Yet when we examine the Commission's specific recommendations, we find that, in most respects, it proposed to leave intact the fundamental constitutional arrangements under which Zambia had been governed. On balance, its recommendations did lean in the direction of strengthening the National Assembly. However, its report did not address some of the major constitutional sources of presidential strength and legislative weakness, implying by its silence that it saw no need to change them. And one of its most important proposals for expanding legislative power was one of the very few proposals that the Government rejected outright.

The one potentially important respect in which the Commission proposed to reduce the power of the presidency was by limiting presidents to serving for two five-year terms (3.6).⁶³ As critics of the 22nd Amendment to the U.S. Constitution have long contended, such a term limit not only blocks personal ambition, it also undermines presidential influence by making it much more difficult for a president in his second term to be convincing in offering future rewards or threatening future sanctions. However, perhaps not too much should be made of this recommendation. By 1991, Kaunda had already been

⁶²Ibid., p. 115.

⁶³This and subsequent references in similar form are to the numbered sections within each chapter of the Commission report--in this instance, for example, to Chapter 3, section 6.

President for more than twenty-five years and few probably expected him to serve for more than another decade under any circumstances. So unless the Commission (and the Government in accepting the term-limit proposal) was farsighted enough to anticipate Kaunda's defeat in the October 1991 election, many of those concerned may well have assumed that this restriction would not have any practical significance for perhaps fifteen years, when Kaunda's eventual successor would begin his second term.

In other respects, the Commission in its report either did not address existing presidential powers or it explicitly proposed to preserve them; and in each case the Government accepted its recommendation. The Commission deliberately rejected separating the positions of head of state and head of government, recommending "an Executive President" instead of what it called "a Titular President and an Executive Prime Minister" (3.2). It held that the President should continue to have the power to dissolve the National Assembly "if the latter makes it unmanageable for him to govern" (3.4) which, as before, would trigger new legislative *and* presidential elections.

The Commission also rejected having the National Assembly elect the President, proposing this power only if no presidential candidate won a majority of the popular votes in two successive direct elections (3.8). And presidential and National Assembly terms of office were to continue to be coterminous (3.6). Separating presidential and legislative elections would have put the President's legislative influence at risk by increasing the likelihood of significant political and policy disparities developing between the chief executive and the majority in the National Assembly. Finally, the Commission proposed expanding presidential immunity protections by extending his immunity beyond his tenure in office for all official acts and omissions, and also for all private acts and omissions unless he had been impeached and removed from office and even then only with parliamentary approval (3.14).⁶⁴

With respect to the legislature, the Commission and the Government agreed that the National Assembly should be expanded to 150 elected members, while preserving the President's power to "nominate" (appoint) and remove as many

⁶⁴Commission and Government positions concerning states of emergency were somewhat muddled. The Commission recommended that a state of emergency should be "subject to parliamentary approval and review as laid down in the present Constitution" (9.1). But as the Government noted in its White Paper, the existing constitution did not require periodic parliamentary review and approval, as had the 1964 charter. Nonetheless, the Government approved the Commission's recommendation, which the Commission presumably intended to include the requirement for parliamentary re-approval of a state of emergency at six-month intervals. Yet in the same White Paper, the Government also accepted without comment a Commission proposal that "[t]he declaration of a state of emergency should be *as at present* subject to Parliamentary approval and periodic review" (*italics added*). *White Paper: Government Reaction to the Muunga Commission Report*, p. 8.

as five additional members (5.7).⁶⁵ The Speaker would be an additional member whom the National Assembly would continue to elect, but not from among its members (5.10). The Commission believed that a member who was elected Speaker would have difficulty discharging his responsibilities to his constituency. Furthermore, the Commission evidently assumed that the National Assembly would select as Speaker someone who was above partisan politics, arguing that a Speaker from "outside" would be impartial and that a Speaker would have to "be non-partisan in order to maintain neutrality."⁶⁶

The Commission recommended (and again the Government accepted) three potentially important increases in legislative power. First, it proposed parliamentary ratification of international treaties (5.7). Second, it suggested amending the procedures for removing the President from office by denying him the option of dissolving Parliament rather than leaving office after three-fourths of the National Assembly had voted to remove him (3.12). And third, the Commission proposed some expansion of the National Assembly's budgetary control. "In order to enhance Parliament's authority and power, it should approve the national budget *but should not alter the total figure*, as well as control public expenditure, and, in camera, scrutinize defence, security and any special expenditure" (italics added).⁶⁷ This proposal implied a rejection of the existing constitutional provisions that denied the National Assembly the right to initiate or increase taxes or spending. On the other hand, in rejecting parliamentary power to change the proposed total level of spending, the Commission did not envision the National Assembly as an equal partner with the President (much less the dominant partner) in making national budget policy.

In a more marked departure from the status quo, the Commission (and the Government) supported creation of a bicameral legislature for Zambia, with a new Chamber of Representatives to complement the existing National Assembly. The Chamber was to comprise 45 members, with three elected members and two chiefs coming from each of Zambia's nine provinces (5.10); the House of Chiefs was to be abolished (8.4). In the Commission's view, and perhaps with the U.S. Senate in mind, it was the new Chamber of Representatives that should be empowered to ratify treaties, confirm appointments, and "impeach officers holding constitutional and public offices" (impeachment presumably being taken to include trial and conviction) (5.10). We can only assume that the Commission

⁶⁵The Commission considered but rejected a proposal to permit elections to recall MPs (5.7).

⁶⁶*Report of the Constitution Commission*, p. 141.

⁶⁷*Ibid.*, p. 135.

and the Government would still have supported these powers for the legislature if it had known that bicameralism ultimately would be rejected.⁶⁸

A complex of issues to which the Commission devoted considerable attention was the allocation of powers to appoint, confirm ("ratify" in Zambian parlance), and remove senior government officials, especially cabinet ministers. Under terms of the 1964 and 1973 constitutions, the President appointed all ministers but only from among the members of the National Assembly. The Commission proposed preserving the President's appointment power, but concluded that the new constitution should not require ministers to be Assembly members. Instead, it proposed that "a Cabinet may be appointed from either outside and/or inside Parliament, provided that if such Cabinet is appointed from outside Parliament, it should be subject to parliamentary ratification...."⁶⁹ Although this statement is ambiguous, the Commission probably meant that individual ministers from outside the legislature should be subject to confirmation, not that the entire Cabinet should be confirmed if any of its members were not Assembly members. In any case, as we shall see, the Commission envisioned circumstances in which a President might want to look beyond the National Assembly for all his ministers.

Putting aside for the moment the question of confirmation, the Government was equally ambiguous in responding to the Commission's proposal on the question of who was qualified to be a minister. In its White Paper, the Government contended that the "Constitution for the Third Republic should provide for a Cabinet *appointed from outside Parliament* and shall function outside Parliament. *A Member of Parliament who is appointed to Cabinet has to relinquish his Parliamentary seat*"⁷⁰ (italics added). (The 1964 and 1973 constitutions did not require a National Assembly member to resign his or her parliamentary seat upon appointment as minister.) Perhaps the Government intended that the President would select his ministers from the National Assembly but that they would then resign immediately before assuming their new duties.

Interestingly, the Commission justified its position--that ministers should not have to be Assembly members--by calling attention to what might happen if having separate presidential and legislative multi-party elections created the same kind of divided control of government that the United States grew to know during recent decades. What if the President's party did not enjoy a legislative

⁶⁸Perhaps because the Commission proposed a second chamber in addition to the National Assembly, it sometimes referred in its report and recommendations to "Parliament" when it may have intended only to refer to the proposed two houses of the legislature but not also to the President.

⁶⁹*Report of the Constitution Commission*, p. 99.

⁷⁰*White Paper: Government Reaction to the Muunga Commission Report*, p. 12.

majority and if ministers had to be National Assembly members and were subject to confirmation? The Commission's argument implied a fear that, under these circumstances, the National Assembly would refuse to confirm the President's ministerial nominees from his own party which did not enjoy a legislative majority. With such a possibility in mind, the Commission decided that the President should have the option of looking outside of the National Assembly for his ministers:⁷¹

Election of the President by direct popular vote poses the likely possibility of a popularly elected President having his defeated party as a minority in Parliament. This can pose a constitutional crisis of a President having either no Cabinet or a Cabinet from the majority party which is not his own and therefore potentially hostile to the programme of the President's party. Such an impasse would cripple the Country in that Government administration could grind to a halt."

On the other hand, the Commission did not explain why, in cases of divided government, it expected the majority in Parliament to be more receptive to ministerial nominees who were not legislators. Perhaps the Commission assumed that "outside" nominees would have no partisan affiliation and would not be overt supporters of the President and his program.

When it turned to the role of the National Assembly (or Parliament, on the assumption that its proposal for a second chamber would be implemented) in approving presidential appointments, the Commission envisioned a much more active and important role for the legislature than it had enjoyed under the earlier constitutions. The Commission concluded in general that "Parliament should ratify all appointments to constitutional offices whose independence is guaranteed by the Constitution, but the President's decision will be over-riding on the second occasion should ratification be withheld."⁷² Although the Commission was not prepared to give the legislature a veto over such presidential appointments, it was willing to give it a voice that it had not had before.

But what were the presidential appointments that would be subject to parliamentary review? They were to include the major judicial selections: Supreme and High Court judges, including the Chief Justice, and the judges of the newly-proposed Constitutional Court (6.10). The Commission also recommended that the office of Vice-President be re-created and that the President's appointee to this office be subject to "parliamentary ratification"⁷³

⁷¹*Report of the Constitution Commission*, p. 97.

⁷²*Ibid.*, p. 136.

⁷³Once again the Vice President was to act as President in case of death, incapacitation, or absence (3.19). Recall that the 1973 Constitution had provided for presidential duties to fall to the Secretary-General of the Party.

(3.21). However, the Commission did not find that the nominations of all senior officials should be put to parliamentary votes. It proposed that "senior Defense and Security personnel should be appointed by the President without the need for parliamentary ratification."⁷⁴ All these recommendations the Government accepted.

In a major departure from past constitutional arrangements, the Mvunga commission also proposed that presidential nominations for ministerial positions be subject to "ratification." However, this was one proposal that the Government was not prepared to accept. The appointment of ministers was to remain an exclusive power of the President, and both Commission and Government agreed that he also should retain exclusive power to remove the ministers he appointed. The Commission observed that, "under the separation of powers, the executive powers of the Republic vest in the President."⁷⁵ Therefore, the President should retain the sole authority to dismiss ministers (3.25). To this end, the Commission rejected proposals for parliamentary votes of no confidence, whether directed against individual ministers or the entire Cabinet, arguing that a "vote of no confidence is by convention only practiced in those systems of government where the leader of the winning and majority party in Parliament is the head of government."⁷⁶

In apparent contradiction, the Commission also managed to recommend that "the Cabinet be individually and collectively responsible, accountable and answerable to Parliament as this is the basis of parliamentary democracy,"⁷⁷ a position in which the Government concurred. Out of context, this statement would be taken to endorse a parliamentary regime with its characteristic votes of no confidence. In context, however, it appears to have been only a statement of principle that the Cabinet should be sensitive and responsive to the legislature, but not constitutionally controllable by it. Consistent with this interpretation was the Commission's recommendation to abolish the office of Prime Minister (3.23). In explanation, the Commission merely stated that "[t]here was little support for the establishment of office of the Prime Minister" (3.23), indicating that it could not have been a very consequential office, for

That would no longer be possible under a multi-party regime. The Commission also would recommend abolishing the position of Prime Minister, who had been second in succession as acting president.

⁷⁴*Report of the Constitution Commission*, p. 184.

⁷⁵*Ibid.*, p. 102.

⁷⁶*Ibid.*, p. 104.

⁷⁷*Ibid.*, p. 102.

better or for worse.⁷⁸ In the Commission's and Government's shared view of the new constitution, the National Assembly would continue to have no part in creating governments or bringing them down.

The 1991 Constitution

The era of UNIP rule in Zambia came to an end on October 31, 1991, when presidential candidate Frederick Chiluba, formerly the head of the Zambia Congress of Trade Unions, won three-quarters of the vote in defeating the 27-year incumbent, Kenneth Kaunda. Chiluba's party, the Movement for Multiparty Democracy (MMD), which had been formed in July 1990, captured 125 of the 150 elective seats in the National Assembly. The MMD won three-quarters of the parliamentary vote; Chiluba received an equivalent percentage of the presidential vote. However, the constitution under which President Chiluba assumed office had been adopted on August 2, 1991, several months before the elections.

In large part, therefore, it was up to the pre-election UNIP government to decide on the terms of the new constitution under which the Party was to lose its monopoly control of political power and governmental position. Although Kaunda and other UNIP officials must have recognized that, after almost three decades, they might even lose majority control, many UNIP legislators and ministers might well have assumed that they would continue to govern after October under the constitution they voted to adopt in August. Yet the negotiations over the final version of the new constitution also reflected the UNIP government's increasingly precarious position.⁷⁹

Chiluba's first task [after becoming president of the MMD in March 1991] was to contest the form of the new constitution that President Kaunda was trying to impose. He objected strongly because it would strengthen the presidential powers at a time when the need was for more parliamentary accountability. His threat to boycott further political discussions brought Kaunda to meet him for the first time and agree to revisions to the constitution that would be acceptable to both sides.

These negotiations produced a 1991 constitution that incorporated most, but not all, of the Mvunga Commission recommendations that the Government

⁷⁸Having proposed to reverse the 1973 decision to replace the office of Vice President with that of the Prime Minister, the Commission considered but rejected returning to the Vice President his power or duty under the 1964 charter to be the Government's leader in the National Assembly (3.19).

⁷⁹"Frederick Chiluba's Challenge," *New African*, December 1991, p. 12.

had accepted.⁸⁰ As a result, the new charter embodies a clear, though ultimately modest, change in the essential shape of Zambian constitutional design. Whereas the net effect of the 1973 constitution appears to have been to strengthen effective presidential power, the 1991 constitution moves in the opposite direction--on paper at least, toward some strengthening of legislative powers. The most important change made in 1991, of course, was the removal of all references to UNIP and the unique and uniquely powerful constitutional status it had enjoyed for most of the last twenty years. In most other respects, the changes made in 1991 in legislative and executive powers were largely incremental. On balance, though, these changes tend to favor the National Assembly by giving it enhanced opportunities to assert itself if it chooses to do so.

The new constitution (and the accompanying transition act) preserved intact many of the President's powers. He again received transitional authority to make whatever amendments were necessary to bring existing laws into conformity with the new constitutional arrangements, and to do so unilaterally, without reference to or participation by the National Assembly.⁸¹ Under the constitution itself, he remains head of state in whom is vested the executive power of the nation (Article 33). He also remains empowered to appoint and dismiss all ministers, who are responsible to him and subject to his directions (Articles 44 and 46).⁸² As the Commission had recommended, the office of Vice President has been re-constituted to replace the office of Prime Minister, and the President once again is given authority to appoint, direct, and remove this official as well (Article 45).⁸³ The President also continues to preside over the Cabinet, to which has been restored the responsibility for formulating government policy and advising the President (Articles 49 and 50).⁸⁴

⁸⁰All references to, and quotations from, the 1991 constitution and the Constitution of Zambia Act, 1991 (Act No. 1 of 1991) are taken from Timothy Ferguson, "Zambia," in Albert P. Blaustein and Gisbert H. Flanz (eds.), *Constitutions of the Countries of the World*. Dobbs Ferry, NY: Oceana Publications, Inc., 1992.

⁸¹Constitution of Zambia Act, 1991, sec. 6.

⁸²More generally, Article 44 provides that, except where the constitution or some law provides otherwise, "any person appointed by the President under this Constitution or that other law may be removed by the President."

⁸³The Vice President has had restored to him the authority to preside over the Cabinet in the President's absence (Article 49), and to perform other functions of the President in cases of vacancy, incapacity, or absence (Articles 36 and 38-39).

⁸⁴As the Commission and Government had agreed, the position of the President also has been strengthened by extending beyond his tenure in office his immunity from criminal proceedings arising from his actions or inactions in

The 1991 constitution does *not* incorporate the Commission's recommendation that the President no longer be required to select ministers only from among the membership of the National Assembly. Here the Government apparently accommodated its opponents in the forthcoming general election. Bratton reports that the Commission's report was released "to a chorus of opposition complaints about its bias in favor of the incumbent party....The opposition objected especially strenuously to a provision allowing the president to choose cabinet ministers from outside the National Assembly, a proposal that critics feared could perpetuate the practice of recruiting top state officials from the UNIP Central Committee."⁸⁵ So this Commission proposal was dropped, as was its recommendation for a new Constitutional Court.

Another proposal the new charter did not include was the Commission's preference for a bicameral legislature.⁸⁶ Instead, it preserves the Parliament consisting of the President and the National Assembly as a unicameral body of 150 elective members, though this number remains subject to statutory change, and as many as eight presidentially-nominated members (Articles 62 and 76).

office, unless the National Assembly votes to remove a former President's immunity (Article 43). As before, parliamentary privileges and immunities have no comparable constitutional foundation; they are to be prescribed by law (Article 87).

⁸⁵Bratton, "Zambia Starts Over," pp. 87-88. "UNIP proposals to remove the cabinet from Parliament [i.e., to eliminate the requirement that ministers be National Assembly members] and to create a bicameral system were abandoned prior to the election after the MMD opposed them." "Zambia," *The Parliamentarian*, January 1992, p. 68. See also the NDI and Carter Center report, pp. 28-29. One observer has suggested to the author that the fate of this proposal turned on each party's expectations about the outcomes of the anticipated presidential and parliamentary elections. He suggests that Kaunda, UNIP, and their supporters on the Commission originally anticipated that Kaunda would win re-election but that UNIP might not control the newly-elected National Assembly. For this reason, they were amenable to the idea of dropping the requirement that ministers be drawn from the National Assembly. And the idea was opposed for much the same reason by Chiluba and MMD who foresaw the likelihood of the same outcomes. The compromise, this observer believes, was to retain the established procedures for ministerial selection but to increase the President's influence over National Assembly membership (and the pool of potential ministers) by increasing the number of members he could "nominate."

⁸⁶Article 74 does provide that "[t]he National Assembly may by a resolution passed by two-thirds majority of its members establish a House of Representatives to perform such functions as may be prescribed by the Constitution." But this is the only reference in the constitution to any House of Representatives; no functions for it are prescribed.

Members continue to be elected from single-member districts of roughly equal population, though Article 77 requires that there must be at least ten constituencies in each of Zambia's nine provinces. The quorum requirement for National Assembly plenary sessions remains at one-third (Article 84), as does the requirement that the Speaker be elected from outside its membership (Article 69). As the Commission report foreshadowed, the constitution resurrects a 1966 constitutional amendment by providing that a member of the National Assembly is to lose his seat if he or she changes parties or joins a party after having run as an independent (Article 71). In addition, the same article also provides for the first time that an Assembly member's seat also is supposed to be declared vacant "if he acts contrary to the code of conduct prescribed by an Act of Parliament," but the Constitution is silent on the question of how this is to be determined and accomplished.

The President may continue to participate in legislative affairs by: attending and addressing the National Assembly at any time (Article 82); making urgently needed expenditures without prior approval by the National Assembly (Article 101);⁸⁷ exercising the exclusive power to propose legislation for new or increased taxes or spending (Article 81); and vetoing bills under the same terms as had been provided by the 1973 constitution, including the authority to dissolve Parliament rather than allow his veto to be overridden by a two-thirds vote (Article 78). If and when he does order a dissolution, the President also must stand for re-election. In anticipation of competitive multi-party elections, the new constitution also provides that, if no presidential candidate is elected by majority in two rounds of voting, the National Assembly shall choose the President from between the two candidates who received the most popular votes (Article 34).

The President continues to be designated as Commander-in-Chief (Article 33) but now, for the first time, he also has the explicit power, in consultation with the Cabinet, to declare war (Article 29),⁸⁸ though it is not clear if these provisions actually grant him any greater discretionary authority than he already enjoyed. On the other hand, Article 30 has restricted presidential power to impose states of emergency. A state of emergency now is to terminate unless approved within seven days by the National Assembly, and affirmative National Assembly approval must be repeated at 30-day intervals (not the 60-day periods

⁸⁷Parliamentary approval must be sought after the fact. Article 100 also carries over the substance of an earlier provision allowing Parliament to permit a presidential proposal for tax legislation to take effect temporarily even before it is enacted into law.

⁸⁸"An Act of Parliament shall provide for the conditions and circumstances under which a declaration [of war] shall be made...." However, and in light of Zambia's constitutional history, it would be an ambitious interpretation of this clause for the National Assembly to attempt to give itself a statutory right of consultation or approval.

specified in the 1964 constitution).⁸⁹ As before, however, the seven-day period does not include time during which Parliament is dissolved, permitting the President to impose a state of emergency for several months if he is willing to subject himself and the National Assembly to new elections. The same rights and procedures also continue to apply to an ill-defined situation "which, if it is allowed to continue may lead to a state of public emergency" (Article 31). Most important, the current constitution, like its predecessors, contains no specification of what powers are triggered and what rights are or may be restricted or suspended when this presidential power is invoked.

The 1991 constitution also imposes three new and potentially significant constraints on presidential influence. The first was not proposed in the Commission's report. Although the President may dissolve Parliament at any time, not just in order to avoid a veto override, the National Assembly also may dissolve itself by two-thirds vote, thereby compelling a new presidential election as well as new parliamentary elections (Article 88). The President's dissolution authority had always been a weapon to be wielded with care because it put his own incumbency at risk, but at least the President could control the timing of new elections. Now the legislature can exercise the same judgment in the unlikely event of a political impasse so severe that two-thirds of the legislature believe that new elections are the best or only way to resolve it.⁹⁰

Second, the constitution incorporates the Commission's recommendation that the President be limited to serving two five-year terms (Article 35). And third, as the Commission also proposed, for the first time certain presidential actions and some appointments are subject to parliamentary approval. Now the National Assembly has the authority (under Article 44) to accept or reject presidential proposals to establish or abolish ministries and departments (though this requirement does not seem to extend to his power, under Article 61, to constitute and abolish "offices for the Republic"). Also, the current constitution does not carry over the presidential authority to create offices and to make appointments to them outside of the civil service system. And now the National Assembly is empowered to confirm the President's nominees to be Secretary to the Cabinet, Attorney-General, Solicitor-General, and Director of Public Prosecutions (Articles 53-56). As before, the National Assembly has special powers concerning the Auditor-General. Under Articles 107-108, the President appoints this officer, subject to parliamentary confirmation. But

⁸⁹On March 4, 1993, President Chiluba declared a new state of emergency which the National Assembly voted to extend for three more months. The precipitating event was discovery of what became known as the "zero option plan" developed by some UNIP members to discredit and destabilize the new MMD government. See "Zambia: Minus zero," *The Economist*, March 20, 1993, p. 50.

⁹⁰As before, in time of war Parliament by law may extend the life of the National Assembly one year at a time for a maximum of five additional years (Article 88).

unlike the four officials just named, the Auditor-General may be removed not by the President but only by vote of the National Assembly upon recommendation of a tribunal the Assembly also appoints.⁹¹

In the same vein, although the constitution fails to establish the Constitutional Court that the Commission proposed and the Government supported, it does incorporate the recommendation that presidential nominations of the Chief Justice and other Supreme Court and High Court judges should be subject to parliamentary ratification (Articles 93 and 95). On the other hand, the President retains authority to remove judges from office on recommendation of commissions he appoints (Article 98). There is no provision (nor was there one in earlier constitutions) for parliamentary impeachment, conviction, and removal of judges.

Important as this new parliamentary confirmation power may prove to be, it is subject to two important limitations. First, the President is empowered to appoint a nominee to office without National Assembly approval if the legislature already has rejected his first two nominees for that office (Article 44). Although this provision protects against an office remaining vacant because of a political deadlock, it also requires Assembly members to think carefully before rejecting a presidential nominee; a subsequent nominee to that office may be even less appealing but may not be subject to parliamentary approval.

Second, the National Assembly's new confirmation power does not extend to the Vice President and ministers of the Government. As under the 1964 and 1973 constitutions, these officials must be selected from among the members of the National Assembly, yet they are appointed and removed exclusively by the President (Articles 45 and 46). Although the current constitution accepts the value of parliamentary confirmation of some appointments, it does not extend this procedure to precisely those officials who, with the President, are primarily responsible for policy formulation and execution. Nor may the National Assembly remove any of these officials from office, even by the procedures by which it may impeach and remove the President himself.

Thus, although Article 51 does state, in much the same terms as the Commission, that "[t]he Cabinet shall be accountable collectively to the National Assembly," it is difficult to envision what operational meaning this assertion is intended to have.⁹² The ministers of Government (and the Vice President) may

⁹¹The Investigator-General, by contrast, is appointed by the President and is not subject to parliamentary "ratification." However, he also may be removed at the initiative of the National Assembly, not the President (Article 90).

⁹²A working paper prepared for the Legislative Performance Study Group comments that this article "subjects Government Administration to the (sic) National Assembly scrutiny. In fact, to oversee Government administration in this regard means to see whether the Government of the country is being carried on in accordance with the Constitution and laws made thereunder. If

be members of the Parliament but they are not at all responsible to it in any way that defines the fundamental features of parliamentary regimes. The National Assembly of Zambia has the potential to be a stronger institution under the current constitution than under either of the earlier charters. Nonetheless, it clearly is a legislature in what is essentially a presidential system. If it is to fulfill its constitutional potential, therefore, it must have the institutional capacity to engage effectively in the recurring contests for power that typify this kind of regime.

The Constitution of Northern Rhodesia

Before looking in more detail at the National Assembly itself, it will be worthwhile at this point to detour briefly back in time to ask what the last colonial constitution of Northern Rhodesia reveals about the development of constitutional thought and design as they were reflected in the three Zambian constitutions we have just examined, especially with regard to the powers of and relations between executive and legislative institutions.

What is most striking is the degree of continuity between the last constitution of Northern Rhodesia and the constitutions of independent Zambia. In many respects, the 1963 colonial constitution became a model for its Zambian successors.⁹³ This is not surprising; this charter was put in place less than a year before Zambian independence, and it differed significantly from the much more controversial 1962 constitution under which took place what Mulford called "Northern Rhodesia's first truly national election campaign."⁹⁴

The 1963 constitution was intended to establish a transitional regime. This also was true of the order setting the specific procedures for the transition between constitutional regimes. For example, the unilateral authority that Zambian Presidents later were given to make changes in existing laws necessary to accommodate new constitutions derived from the authority that the Governor of Northern Rhodesia had enjoyed under the 1963 Order in Council. Similarly, the Zambian constitutional provisions on the "protection of fundamental rights and freedoms of the individual" were largely taken verbatim from the

there is anything wrong in the system, members can point out the same to the Executive and the Executive is duty-bound to answer, explain or remedy the matter."

⁹³The Northern Rhodesia (Constitution) Order in Council, 1963, to which the Constitution is attached as a Schedule; Statutory Instruments, 1963, No. 2088, published on January 1, 1964.

⁹⁴Mulford, *Zambia, The Politics of Independence*, p. 229.

corresponding chapter of the 1963 charter.⁹⁵ More generally, however, Tordoff and Molteno concluded in 1974 that:⁹⁶

The colonial government of Northern Rhodesia had wide-ranging and arbitrary powers which contravened all the important civil liberties. The Zambian government inherited these powers from the Governor of Northern Rhodesia, and has not found it necessary to enlarge upon them in any important respect.

The authors of the first Zambian national constitution also adapted other 1963 provisions while retaining their essential forms and purposes. For example, the Zambian constitutions have provided for tribunals to give advisory opinions concerning proposed bills and statutory instruments alleged to violate any constitutionally protected rights and freedoms. The 1963 constitution of Northern Rhodesia assigned the same responsibility to a Constitutional Council that the Zambian regimes did not preserve (Sections 19-22). And Burdette observes that "the executive president under the first constitution inherited the wide-ranging and arbitrary powers of the colonial governor."⁹⁷

The idea that the President is an integral part of the Zambian Parliament is consistent with the 1963 colonial provision that "[t]here shall be a "Legislature for Northern Rhodesia which shall consist of Her Majesty and a Legislative Assembly" (Section 32).⁹⁸ The Governor of Northern Rhodesia also had the same exclusive authority subsequently given to the Zambian President to propose bills to initiate or increase taxes or spending (Section 57). On the other hand, the Governor had an absolute veto power (Section 56) that the President has not enjoyed. Like the National Assembly of Zambia under the First Republic, the Legislative Assembly of Northern Rhodesia consisted of 75 elected members; it is notable, however, that the Governor did not have the same authority that the President has had to appoint additional members of his choosing.⁹⁹ And in contrast to the National Assembly, the colonial Legislative

⁹⁵An exception was the set of provisions added in 1964 concerning declarations of states of emergency; the colonial constitution of 1963 contained no comparable provisions.

⁹⁶Tordoff and Molteno, "Introduction," p. 8.

⁹⁷Burdette, *Zambia: Between Two Worlds*, p. 75.

⁹⁸Chapter V established a House of Chiefs with essentially the same advisory role it exercised under the first two Zambian national constitutions. On the predecessor of the Legislative Assembly, see J.W. Davidson, *The Northern Rhodesia Legislative Council* (London: Faber and Faber, Ltd., 1948).

⁹⁹The 1963 constitution divided Northern Rhodesia into 65 "main roll constituencies" and "ten reserved constituencies," with one MP to be elected from each. MPs from the reserved constituencies were to be elected by "reserved roll

Assembly could elect one of its 75 members as Speaker (Section 33), and the presence of only one-fifth of the membership was required to constitute a quorum (Section 50).

More important, the 1963 colonial constitution provided for a Prime Minister, an office that Zambia did not re-establish until ten years later. (Kaunda assumed this position in January 1964.) The office of Governor of Northern Rhodesia was more than a titular position, but the constitution clearly implies that the daily administration of affairs was expected to be delegated to the Prime Minister and the other members of the Cabinet of Ministers (Sections 72-73). Section 75 directed that, as a general matter, "[i]n the exercise of his functions under this Constitution or any other law the Governor shall act *in accordance with* the advice of the Cabinet or a Minister acting under the general authority of the Cabinet" (italics added). Although this directive was accompanied by various exceptions and provisos, it does indicate that the locus of policy-making and implementation was expected to lie within the Cabinet, not in the Governor's office.

Whereas the later Zambian constitutions designated the President to chair Cabinet meetings, the Governor had no formal part in Cabinet deliberations. Not only was he not a constitutionally-designated member of the Cabinet (Section 71), he was not expected to attend its meetings. Instead, Section 76 directed the Prime Minister to inform the Governor in advance of each Cabinet meeting and the agenda for it, and then to provide him with "the minutes of the meeting showing the matters discussed and the conclusions reached by the Cabinet at that meeting." The Cabinet and, by implication, its ministers individually were to function independent of immediate gubernatorial supervision and control. This stands in sharp relief to the direct and complete authority that the President of Zambia has been empowered to exercise.

The Northern Rhodesian constitution did provide a precedent for the requirement of all three Zambian charters that ministers be members of the National Assembly. However, the 1963 constitution was somewhat more flexible. Not all these ministers were required to be members of the Assembly at the time of their appointment; three of the maximum number of 13 ministers could be non-members (Section 69).¹⁰⁰ However, ministers who did not come from the ranks of the Legislative Assembly apparently were expected to join them as soon as possible. Section 70 permitted a minister to serve in office for

voters" who were (1) Europeans and (2) those who were neither African nor European and declared that they wished to be registered as reserved roll voters (Sections 38-42).

¹⁰⁰Section 33 provided in part that a "Minister who is not a member of the Legislative Assembly may attend and take part in the proceedings of the Assembly or of any committee of the Assembly, but nothing in this subsection shall entitle a person who is not a member of the Assembly to vote in the Assembly or any of its committees."

only six months unless he was "a Minister appointed from among the members of the Legislative Assembly or who, while holding office as a Minister, becomes a member of the Assembly."

In clear contrast to Zambian constitutional design, the Northern Rhodesian ministers were not only members of the Legislative Assembly; they were its agents. Generally speaking, the 1963 constitution sought to create a parliamentary regime in a colonial context. The Governor formally appointed the Prime Minister, but the latter was not his agent so he was not free to appoint whomever he might have preferred. "The Governor, acting in his discretion, shall appoint as Prime Minister the member of the Legislative Assembly who appears to him best able to command the support of the majority of the members of the Assembly, and shall, acting in accordance with the advice of the Prime Minister, appoint the other Ministers..." (Section 69). Although the Governor's authority in this regard was not wholly ministerial, it was essentially comparable to the discretion that is exercised by contemporary presidents and monarchs in parliamentary regimes.

The Legislative Assembly had similar effective control over the fate of governments appointed with its support. The Northern Rhodesian constitution provided for votes of no confidence. As befits a colonial legislature, the Assembly did not have the formal authority to bring down the Government; that power rested ultimately with the Governor. However, the constitution specifically listed two circumstances in which he might remove the Prime Minister from office: if the Legislative Assembly passed a vote of no confidence in the Government, or if the results of a general parliamentary election satisfied the Governor that "in consequence of changes in the membership of the Assembly resulting from that election, the Prime Minister will not be able to command the support of a majority of the members of the Assembly" (Section 70). Also under Section 70, all other ministers served at the pleasure of the Prime Minister (they could be dismissed by the Governor "acting in accordance with the advice of the Prime Minister") or only until the Prime Minister lost office, whether because of a vote of no confidence or for some other reason.

In similar fashion, although Section 62 gave the Governor discretionary authority to prorogue or dissolve the Legislative Assembly at any time, it also specifically noted three circumstances under which he might agree to a dissolution: (1) if the Prime Minister recommended it; (2) if the Prime Minister failed to resign after the National Assembly passed a resolution of no confidence in the Government; or (3) if there was no Prime Minister and the Governor concluded that "there is no prospect of his being able within a reasonable time to appoint to that office a person who can command the support of a majority of the members of the Assembly."

In other words, the Prime Minister and his Government were expected to receive and maintain the confidence of a parliamentary majority, just as the prime minister and cabinet of an independent parliamentary regime are expected

to do. These lines of authority and control gave practical meaning to Section 71:

The Cabinet shall be collectively responsible to the Legislative Assembly for any advice given to the Governor by or under the general authority of the Cabinet and for all things done by or under the authority of any Minister in the execution of his office.

In sum, the Legislative Assembly of Northern Rhodesia had constitutional ways and means by which it could hold the Cabinet accountable for its policies and decisions--ways and means that the National Assembly has lacked, notwithstanding the assertion of the 1991 constitution that "[t]he Cabinet shall be accountable collectively to the National Assembly" (Article 51).

Here arises what is, for our purposes, the most interesting and important contrast between the 1963 and 1964 constitutions. The Northern Rhodesian charter provided for enforceable collective cabinet responsibility; the Zambian charter, adopted the following year, did not. The explanation probably lies in the nature of the political and governmental transition that was taking place. As a transitional constitution, the 1963 document was drafted with the understanding that Northern Rhodesia soon would become Zambia and in preparation for that development. Therefore, the constitutional design provided a reduced role for the colonial governor and an enhanced role for the representative assembly. The prime minister and cabinet were made directly responsible to the assembly while the governor retained a kind of ultimate, residual authority.

When independence did arrive, the 1964 constitution represented a mixture of Westminster principles and colonial experiences. No doubt indigenous political traditions, the politically dominant position that UNIP already had achieved, and the authority that Kaunda exercised within UNIP all combined to play an important and possibly decisive part in shaping Zambia's decision not to adopt a pure Westminster-style parliamentary regime. But the relatively smooth transition to independence undoubtedly also was a factor. Kaunda became prime minister of a UNIP-dominated government in January 1964. As Mulford observes, "[e]xcept for the change to republican status and the departure on 24 October of the Governor, Northern Rhodesia's transition was completed by early 1964."¹⁰¹ As President, Kaunda effectively succeeded the governor. There were essentially two paths Zambia then could take. It could reduce the constitutional role of the governor's successor to a largely honorific head of state, or it could empower the President by giving him effective powers more akin to those that colonial governors had exercised before the 1960s.

Especially because taking the former path would have required Kaunda to choose between becoming head of state or remaining head of government, it is not surprising that Zambia chose the latter. And as we have seen, having

¹⁰¹Mulford, *Zambia: The Politics of Independence*, p. 338.

rejected enforceable cabinet responsibility in its 1964 constitution, Zambia moved progressively further in the direction of increased de jure and de facto presidential power until the recent end of Kaunda's regime.

The Record of Institutional Capacity

Having reviewed the development of constitutional design in Zambia, it remains to examine (with greater brevity, fortunately) the institutional capacity of the National Assembly, first by assembling the limited information available on the parliament as it functioned during the First and Second Republics, and then by taking a brief look at its current organization and resources. The constitutional history discussed above would lead us to expect either that the National Assembly has been, and remains, relatively weak and ineffectual, or that it has had to assert itself vigorously, and equip itself well, in order to carve out and maintain an influential place in successive constitutional systems that clearly have favored presidential power. But the formal provisions of constitutions often create misleading and even fundamentally mistaken expectations about how governments and political systems function in practice. What kind of institution has the National Assembly actually been, and what institutional capacity does it bring to the implementation of the new Third Republic constitution?

The National Assembly in Practice

From the perspective of this study, the most striking thing about the scholarly analyses of Zambian government and politics during the First and Second Republics is how little is said about the National Assembly. It usually is mentioned in passing, if at all, as an institution of little more than incidental importance for the practical process of national policy-making. The most thorough examination of the National Assembly in operation is Tordoff and Molteno's discussion of the legislature during the First Republic.¹⁰² In their imposing building that epitomized its position in the polity and society.¹⁰³

Zambia's new National Assembly building occupies a dominant position some four miles from the commercial centre of Lusaka. Costing over one million kwacha, with the external walls of its four-sided chamber sheathed in copper, it reflects the scale and source of the country's opulence. Yet the building is in use for only a small part of the year. Its visitors' galleries are seldom full. No throngs of constituents toil up the hill to see their representatives. The very newness and quietness of the building, and the polished sophistication

¹⁰²Tordoff and Molteno, "Parliament," pp. 197-241.

¹⁰³Ibid., p. 197.

of its interior, symbolize the limited part which the National Assembly plays in the Zambian political scene.

Writing several years later, Tordoff also characterized the Zambian legislature of the Second Republic (as well as its Tanzanian counterpart) as a "residual legislature"--a description with which few if any of his fellow analysts evidently would disagree--made so by "the advent of presidentialism in African government, where key decisions are often taken by the President without the concurrence of the Cabinet, let alone reference to Parliament.....Though neither constitution grants the President law-making powers..., this restraint, within the context of a single-party state, is more apparent than real."¹⁰⁴

The advent in 1972-1973 of formalized one-party rule did not bring about any fundamental change in the institutional power and practical importance of the National Assembly. Instead, it largely institutionalized a condition of weakness that had been evident almost from the beginning of the First Republic in 1964. Compare, for example, Tordoff and Molteno's summary characterization of the National Assembly under the First Republic with Roberts' later description of the parliament under the regime of "One-Party Participatory Democracy":¹⁰⁵

While making due allowance for the indications since 1969 of the second Parliament's increasing vigour, we must still conclude that neither the National Assembly as an institution nor Mps in their individual capacities have played a crucial role in the Zambian political system.

Parliament has scarcely been a forum for major debates and decisions on national issues, while few members have been at all sensitive to the hardships of the vast majority of their constituents. The relative insignificance of Parliament is due partly to economic circumstances; it is not a meeting-place for conflicting economic interests, while up to 1970 at least the high level of government revenues obscured the need to argue over economic priorities. But the preponderance of UNIP in Parliament has further confirmed Parliament in its role as a discussion club rather than a potential challenge to government.

It is from the combined dominance of President and Party that the weakness and irrelevance of the National Assembly derived. As head of both "the Party and its Government," Kaunda often exercised power unilaterally, without any

¹⁰⁴William Tordoff, "Residual Legislatures: The Cases of Tanzania and Zambia," *Journal of Commonwealth and Comparative Politics*, v. 15, n. 3, November 1977, pp. 235-249.

¹⁰⁵Tordoff and Molteno, "Parliament," pp. 240-241; Roberts, *A History of Zambia*, p. 248.

semblance of collective cabinet decision-making and certainly without deference to the National Assembly.

Writing toward the end of the Second Republic, Burdette joined other observers of Zambian government in remarking on the degree of "presidentialism" that had come to characterize the political system:¹⁰⁶

Ultimately, the president controls both party and government and governs more and more unilaterally with his advisors....Unleashed from any constraints built into the multi-party system, Kaunda has fashioned the presidency into an institution dominated by one man.

Whatever inclination Kaunda initially may have had to develop policy for Zambia in consultation with his Cabinet of Ministers declined as Cabinet members become more frequently, bitterly, and openly divided. Molteno and Tordoff offer these divisions as a prime reason why, during the First Republic, the Cabinet soon became less important as a forum for decision-making, concluding that Kaunda "responded to the in-fighting among leading members of his party and government by taking more and more decision-making into his own hands."¹⁰⁷

Kaunda took advantage of his exclusive power over ministerial appointments and removals by using Cabinet (and other) appointments as a way of recognizing, satisfying, and balancing the ethnic, regional, and other factions that developed within UNIP. But perhaps precisely because he often selected ministers for such reasons, he chose not to involve the Cabinet collectively in decision-making. In addition, he evidently sought to prevent ministers from developing their own power bases within the government by a practice of frequent "reshuffling" by which he not only moved ministers and other officials from one post to another, he also redefined the posts and their responsibilities.¹⁰⁸ Pettman describes some of the consequences for the effectiveness of the Cabinet and its ministers, and for the increasing concentration of power in presidential hands:¹⁰⁹

¹⁰⁶Burdette, *Zambia: Between Two Worlds*, p. 107.

¹⁰⁷Robert Molteno and William Tordoff, "Independent Zambia: achievements and prospects," in William Tordoff (ed.), *Politics in Zambia* (Berkeley and Los Angeles: University of California Press, 1974), p. 383.

¹⁰⁸Burdette, *Zambia: Between Two Worlds*, p. 75.

¹⁰⁹"Few ministers have the opportunity to become familiar with their portfolios. This could lead to a situation of dependence on their permanent secretaries, but they, too, are frequently shifted...." Pettman, *Zambia: Security and Conflict*, p. 45.

The Zambian Cabinet functions according to Kaunda's personal will, and he does not necessarily seek ministers' advice on major issues. The Cabinet rarely exists as a distinct entity, and when it does meet, once a month, others including top party, civil service, and police officials attend too. The Cabinet is a poor third to the President and UNIP's Central Committee as a policy-making instrument. Individual ministers receive detailed direction from State House in all but routine matters. Even here, they are at a disadvantage, since ministers and ministers of state are often moved with great frequency....The difficulties are increased, too, by regular reorganization of administration, the splitting off of departments from one ministry and placing them under another, or the creation of new ministries....In these circumstances, overall direction from State House is perhaps the only factor which permits any stability of policy and operations.

Clearly, then, Kaunda made no persistent effort to mimic the practices of collective Cabinet deliberations and decision-making that are characteristic of Westminster-style parliamentary systems. And whether intentionally or not, his personnel and organizational practices would have made such practices difficult, if not pointless, to implement.

Such presidential dominance was generally consistent with the explicit provisions and implicit conceptions of the various Zambian constitutions. With respect to the exercise of legislative power, the charters joined the President with the National Assembly to constitute the Parliament, but the two institutions were not at all equal partners at any time since 1964. Although by no means a scientific finding, the following comments from an early 1993 focus group study suggests the degree to which the President was perceived to have dominated the National Assembly:¹¹⁰

Participants in rural areas and rural population centers were also vague about the distinctive roles of different branches of government. Question: where do MP's work? Answer: at State House (that is, presidential palace). Question: what does Parliament do? Answer: it meets with the President.

Especially during the First Republic, Party control of parliamentary nominations mitigated against the development of strong constituency ties that, in other political systems with "first-past-the-post" electoral systems, give MPs at least some political leverage in resisting demands to support their party or president. In 1968, for example, Kaunda is reported to have chosen MPs' constituencies for them,¹¹¹ after having announced that no UNIP candidate

¹¹⁰Michael Bratton and Beatrice Liatto-Katundu, "A Preliminary Assessment of the Political Attitudes of Zambian Citizens: A Report on Focus Group Discussions. Manuscript; March 11, 1993; p. 9.

¹¹¹Tordoff and Molteno, "Parliament," p. 212.

would be allowed to run from his or her native region.¹¹² Consequently, "a UNIP Member lacked any strong inducement to impress his constituents with the extent and quality of his participation in the Assembly."¹¹³ Nor did Party control over nominations (in what most often were non-competitive elections even before the one-party republic) give MPs much incentive to develop personal loyalties through constituency service.¹¹⁴

The party regards the parliamentary constituency as party property rather than as the domain of the MP representing it in the Assembly, and the interests of constituents are usually handled by the full-time party officials in the area. MPs do not visit their constituencies frequently and, where they have not emerged through the local organisation, may have little or no personal political base.

The prospect of obtaining a parliamentary nomination--and the eventual hope of receiving a ministerial appointment--helped the national party organization maintain the loyalty and diligence of local party workers.¹¹⁵ And UNIP did select a disproportionate share of National Assembly nominees from the ranks of party officials, who might be expected to be more amenable to party discipline. In 1964, two-thirds of UNIP MPs "were full-time political leaders before being elected to Parliament."¹¹⁶ And in 1968, "[o]f the total 105 UNIP candidates, fifty-one had at some earlier stage in their careers served in local party posts, and a further sixteen had been national organisers. Only twenty-seven candidates had no formal experience in the organization....Clearly, loyalty and service to the party were the dominant criteria in the selection of UNIP's candidates."¹¹⁷

Among other consequences, the predominance of party workers among National Assembly candidates left fewer opportunities for other occupations and economic interests to achieve their "fair share" of parliamentary representation. For example, the National Assemblies elected in 1964 and 1968 included few trade union officials in what was a relatively urbanized and industrialized economy, and not a single small farmer.¹¹⁸ Molteno and Scott believe that this situation discouraged the relatively few organized economic interest groups from

¹¹²Pettman, *Zambia: Security and Conflict*, p. 53.

¹¹³Tordoff and Molteno, "Parliament," p. 238.

¹¹⁴Molteno and Scott, "The 1968 general election...," p. 177.

¹¹⁵*Ibid.*

¹¹⁶Tordoff and Molteno, "Parliament," p. 219.

¹¹⁷*Ibid.*, p. 171.

¹¹⁸Tordoff, "Residual Legislatures," p. 236.

seeking to mobilize the legislature to achieve their policy objectives. "Given this pattern of recruitment and the consequent under-representation of important segments of society, interest groups continue to by-pass the Assembly in favour of direct relations with the executive."¹¹⁹

The number of small businessmen (and others with professional and administrative experience) in Parliament increased notably during the Second Republic, leading Tordoff to conclude that "the quality of the backbench was substantially improved."¹²⁰ Perhaps ironically, there actually was more electoral competition during the Second Republic than there had been during the First, as the lack of actual inter-party competition in many constituencies gave way to widespread intra-party competition resulting from UNIP's primary elections. And Baylies and Szeftel argue that, in contesting UNIP party primary elections, businessmen had important advantages in the form of their wealth, prestige, and strong local connections.¹²¹ Consequently, the National Assembly became more of a forum for business interests that were critical of the socialist inclinations of the Kaunda regime.

However, several factors minimized the effect of these changes in the background, resources, and views of individual MPs on the collective performance of the National Assembly. First was the high rate of turnover. Baylies and Szeftel report that incumbents "represented 34 per cent of those elected in 1973 and 38 per cent in 1978."¹²² Second, MPs always remained aware that their continued parliamentary service, and with it the possibility of ministerial promotion, depended on continued party support--support of both local party activists, who voted in the UNIP primary elections, and of national UNIP officials, who still could disqualify the candidacy of incumbents who survived these primaries. Not surprisingly, "disqualifications seemed to be intended in part to prevent the return of parliamentarians who had been

¹¹⁹ "The absence of constituency and interest-group pressures on MPs also makes it easier for them to accept without modification or opposition all legislative and budgetary requests of the executive; it inclines them, too, to refrain from any initiatives of their own." Molteno and Scott, "The 1968 general election...", p. 179. See also Tordoff, "Residual Legislatures," p. 236.

¹²⁰Tordoff, "Residual Legislatures," p. 237. See also Cherry Gertzel, "Dissent and authority in the Zambian one-party state 1973-80," in Gertzel, et.al., *The Dynamics of the One-Party State in Zambia*, p. 83.

¹²¹Carolyn Baylies and Morris Szeftel, "The rise to political prominence of the Zambian business class," in Gertzel, et.al., *The Dynamics of the One-Party State in Zambia*, p. 58. See also Robert H. Bates and Paul Collier, "The Politics and Economics of Policy Reform in Zambia." Manuscript, February 1, 1992, pp. 27-28.

¹²²Baylies and Szeftel, "The rise to political prominence of the Zambian business class," p. 61.

particularly and vociferously critical of the executive during the previous Parliament and to discourage the formation of an opposition bloc in the National Assembly."¹²³

And third, the continuing constitutional requirement that ministers must be drawn from the ranks of MPs had the perverse and perhaps unintended consequence of removing some of the potentially most valuable members from effective parliamentary service.¹²⁴

As early as April 1969, out of eighty-one elected UNIP Members, seventeen (including the Vice-president) were Cabinet Ministers and sixteen were Ministers of State serving either in Lusaka or at provincial headquarters; seventeen were District Governors, and one was ambassador to Ethiopia. By August 1972, the number of Cabinet Ministers had risen to twenty-five, while a further twenty-nine MPs were Ministers of State and seven were senior diplomats; this left a mere twenty or so UNIP back-benchers.

Similarly, Bates and Collier reported that, as recently as 1990, only 15 of the more than 120 MPs did not hold appointive (and, presumably, time- and attention-consuming) government posts.¹²⁵ The one respect in which Zambian constitutional design has reflected the practice of many parliamentary systems has proven to seriously undermine the National Assembly's institutional capacity by distracting most of its members from concentrating on their parliamentary responsibilities and by giving them a vested interest in supporting the government, if necessary against the legislature in which they serve.

Ironically, the National Assembly does not appear to have been significantly more effective during the First Republic than during the Second as a forum for criticizing government policy and holding it accountable for its actions and commitments. During 1964-1968, the legislature met for an average of 53 days per year, and slightly less often during the following four years.¹²⁶ And Tordoff and Molteno conclude that, during this time, when there were one or more legal and recognized opposition parties, the ANC did not use the National Assembly consistently and effectively as a forum to criticize UNIP government policy. During the first Zambian Parliament of 1964-1968, "[b]y and large it [the

¹²³Baylies and Szeftel, "Elections in the one-party state," in Gertzel, et.al., *The Dynamics of the One-Party State in Zambia*, p. 38. See also Bates and Collier, "The Politics and Economics of Policy Reform in Zambia," pp. 27-28.

¹²⁴Tordoff and Molteno, "Parliament," p. 212. See also Molteno and Scott, "The 1968 general election....," p. 176.

¹²⁵Bates and Collier, "The Politics and Economics of Policy Reform in Zambia," pp. 27-28.

¹²⁶Tordoff and Molteno, "Parliament," p. 227.

ANC] failed to take advantage of the opportunities which parliamentary procedure provided for criticism of the government. Even in debate it neither proved very tenacious in its opposition nor were the speeches of its Members replete with constructive policy alternatives. They tended towards angry invective...."¹²⁷ The ANC MPs became more active and aggressive after the 1968 elections,¹²⁸ but the small number of them was not the only factor hampering their effectiveness.¹²⁹

[F]ew speeches by back-benchers on either side of the House showed much evidence of careful preparation, with detailed research into the relevant government publications and other sources of information. The Assembly's library is not much used by Members, nor are the services of the research officer who was appointed by the second Assembly to assist MPs. One searches Hansard in vain for frequent penetrating analyses--defensive or critical--of the major problem areas facing Zambian government and society. Very few significant policy innovations are suggested from the floor of the House.

The role of UNIP backbenchers early in the First Republic "was almost non-existent. They had a strong tendency not to participate. They were reluctant to make speeches in debate. With only one exception (June 1964), no UNIP back-bencher ever put a question between January 1964 and December 1968.¹³⁰ In her study of the later one-party regime, Gertzel reports that UNIP MPs sometimes did criticize government policy, but she finds no evidence that they regularly were able to effect noteworthy policy changes. "The significance of the National Assembly lay...less in its control of the executive than in the opportunities it provided for an independent forum where political debate could

¹²⁷Tordoff and Molteno, "Parliament," p. 231. "Limited use was made of the parliamentary question, and adjournment on a definite matter of urgent public importance (in terms of Standing Order No. 30) was never requested. Few substantive motions were tabled as a means of initiating debate on matters of national importance." Ibid. p. 228.

¹²⁸"Members of the opposition do not propose legislation or present detailed policy alternatives, but criticise government policy by means of motions of adjournment or of condemnation, mainly related to the rights of opposition or the benefits of economic development. They voice frequent frustration at their lack of influence, and the by-passing of the National Assembly both by use of government regulation in the Government Gazette, and because many important issues are not even brought before the House, but are dealt with at Freedom House (UNIP National Headquarters) or even at UNIP rallies." Pettman, *Zambia: Security and Conflict*, p. 46.

¹²⁹Ibid., p. 228.

¹³⁰Tordoff and Molteno, "Parliament," p. 235.

be conducted outside the structures of the party...."¹³¹ Tordoff concurs that MPs elected to the National Assembly in 1973 sometimes did make themselves heard, in defense of constituency or regional interests and in criticism of specific government actions and general government policies. Now MPs who anticipated facing other UNIP candidates in their re-election campaigns had more reason to speak for their constituencies. And the larger number of MPs with business connections were less supportive of the general trends of government policy. Nonetheless, Tordoff concludes that the National Assembly's policy-making contribution was "incidental."¹³²

[I]f one takes specific issues in the law-making process, MPs do not obviously change the content or direction of government policy. Few government bills have been amended as a result of backbench pressure under the Second Republic, though four instances did occur in the first year of the new Parliament.

President Kaunda apparently did not find much value in ministerial criticism or parliamentary scrutiny. In February 1971, before the end of the First Republic, he forbade ministers and provincial governors from questioning government policy.¹³³ Although this "code of silence" did not apply to UNIP back-benchers in the National Assembly, any of them who hoped to receive some ministerial or other government appointment surely knew that they would be expected to abide by it as well. When back-bench criticism persisted under the one-party regime, UNIP's National Council decided in April 1974 that "the party's disciplinary rules should extend to M.P.s' statements in Parliament," and that:¹³⁴

no M.P. shall engage in activities which are a breach of Party disciplinary Code, and any one abusing [parliamentary] privileges and immunities for personal aggrandisement or with intent to divide the nation shall be disciplined by the Party.

A year later, Kaunda rebuked MPs for "anti-party and anti-government mouthings,"¹³⁵ and the parliamentary Standing Orders were amended to permit the Party to discipline MPs for statements made in the National Assembly "with the result that M.P.s became guilty of a breach of party rules if their debate in Parliament brought the name of the party into ridicule or contempt. Whether such breach of the rules had occurred, would be decided by

¹³¹Gertzel, "Dissent and authority in the Zambian one-party state," pp. 83-84.

¹³²Tordoff, "Residual Legislatures," pp. 241-243.

¹³³Tordoff and Molteno, "Parliament," p. 225.

¹³⁴Gertzel, "Dissent and authority in the Zambian one-party state," pp. 84-85.

¹³⁵Burdette, *Zambia: Between Two Worlds*, pp. 106-107.

the party. The freedom accorded the backbencher in the one-party state to speak and vote as he wished on any issue was therefore circumscribed by party control."¹³⁶

As we would expect under these circumstances, the Party, Cabinet, and especially the President dominated the formalities of the legislative process--a process in which the National Assembly and its members appear not to have played much of an independent part. First, during the First Republic, according to Tordoff and Molteno, virtually all bills that eventually were presented to the President for his assent had been approved at the outset by the Cabinet before being presented to the National Assembly for consideration.¹³⁷ And according to Burdette, essentially the same situation continued to prevail during the Second Republic:¹³⁸

Executive power has also expanded in parliament. Bills originate (by and large) in the departments, ministries, and the president's office. They move on to the cabinet office and Freedom House (party headquarters) for clearance and then to the national assembly. If the president withholds his assent to a piece of legislation, the assembly cannot override him.

Second, the UNIP-controlled government exercised the sole legislative initiative even under what was ostensibly the multi-party regime of the First Republic. Writing in the early 1970s, Tordoff and Molteno report that, "[s]ince independence, not only has no private Bill been passed by the Assembly, but no back-bencher has even introduced a private Member's bill."¹³⁹ Recognizing that policy decisions actually were made within the Party, often in concert with the affected ministries, MPs quite reasonably concluded that it would be both safer and more productive to try to influence this de facto legislative process. "If they had legislation to propose they preferred to persuade the party to adopt it rather than run the risk of incurring official displeasure by introducing it into

¹³⁶Gertzel, "Dissent and authority in the Zambian one-party state," pp. 84-85. Gertzel concludes that MPs "remained undeterred by the threat, with the result that the National Assembly assumed a prominence it had rarely enjoyed in the past for the public expression of criticism of the party." Ibid., p. 85. See also Bates and Collier, "The Politics and Economics of Policy Reform in Zambia," pp. 27-28.

¹³⁷Tordoff and Molteno, "Parliament," p. 198.

¹³⁸Burdette, *Zambia: Between Two Worlds*, pp. 106-107. "All legislation is first approved by the Central Committee [of the Party], and steered through the National Assembly under a UNIP whip along strict party lines." Pettman, *Zambia: Security and Conflict*, p. 46.

¹³⁹Tordoff and Molteno, "Parliament," p. 228.

the National Assembly."¹⁴⁰ The executive's monopoly over legislative proposals persisted throughout the years of the UNIP regime.¹⁴¹

And third, no observer has suggested that the National Assembly scrutinized legislation very carefully on its way to enactment. Legislation first was presented to the caucus of UNIP MPs, who were expected to ratify the proposals of the "Party and its Government."¹⁴² Again, Tordoff and Molteno are our best, and almost only, source.¹⁴³

The lack of prolonged critical or constructive debate on government Bills was reflected in several ways. First, the average number of days it took for a Bill to pass through all its stages in the National Assembly was low, while a few Bills were rushed through the Assembly in one or two days only. In the second place, more than half of all government Bills were passed without amendment; back-benchers almost never moved amendments to such Bills and, on the rare occasions when opposition MPs did so, their amendments were rejected. Finally, it became customary for no debate at all to be held at the committee stage and third reading of a Bill. Thus the second-reading debate covered both the principle of the Bill and detailed criticism--if any--of its clauses. This is still the current practice.

And there is no indication that the practice changed significantly at any time before the demise of the Second Republic. As one result, the constitutional provisions for presidential vetoes were almost entirely irrelevant because there was no likelihood that President Kaunda ever would have to exercise them.

¹⁴⁰"There is no evidence, however, that any significant number of Bills originated in this way on the initiative of UNIP back-benchers." Tordoff and Molteno, "Parliament," p. 235.

¹⁴¹"Even today, all legislative proposals emanate from the executive branch, usually through the cabinet. Although MPs may introduce 'private members' bills', the requirement that legislators personally cover all costs means that this provision is seldom, if ever, exercised." James Wunsch, Michael Bratton, and Peter Kareithi, "Democracy and Governance in Zambia." Manuscript. June 15, 1992, p. 26.

¹⁴²But "the parliamentary caucus seems at most times to have been a quiescent body, meeting only a few times a year and then only for a couple of hours." Tordoff and Molteno, "Parliament," pp. 236-237.

¹⁴³Tordoff and Molteno, "Parliament," pp. 228-229. According to their data, the National Assembly passed a total of 427 bills between 1964 and 1970; 158 (or 37 percent) of them were amended in committee. However, "[t]he great majority were government amendments. Private Members almost never moved amendments and, if they did, they were rarely accepted." Ibid., pp. 226-227.

One of the sharpest distinctions between the U.S. presidential and British parliamentary systems arises from their respective treatment of the executive's budget proposal. In the United States, the President's budget submission only begins a year-long process of negotiation and legislative deliberation during which Congress makes innumerable changes in the amounts provided and the purposes for which they are to be used. By contrast, the House of Commons is expected to approve the budget as the single most important and comprehensive statement of the government's priorities and policies; to reject or even significantly amend the budget could well prove tantamount to a vote of no confidence.

In this respect, the First and Second Republics of Zambia appear to have adopted a "mixed" system in which the National Assembly made few if any major changes in President Kaunda's budgets, but the President did not consider himself bound to obtain legislative approval for all government spending. First, defence-related spending was not subject to parliamentary approval or disapproval. The 1991 Constitution Commission noted that "[e]xpenditure on defence and public security is charged directly on the general revenues without parliamentary approval of the amounts to be spent in any given year and the expenditure is not subject to parliamentary review."¹⁴⁴ Second, as we have noted, the Zambian constitutions empowered the President to approve spending that the National Assembly had not authorized in advance, and several scholars recently have observed that Kaunda capitalized on that opportunity: "whereas the National Assembly is nominally the sole authority for approving expenditures from the general revenues of the republic, in the past the president has simply mandated supplementary estimates and excess appropriations without regard to the budget approved by parliament."¹⁴⁵

If widespread and frequent, this practice made it that much more important for the National Assembly to review government spending after the fact. For this purpose, it could turn to the reports of Zambia's Auditor-General. The National Assembly's Public Accounts Committee has relied, and continues to rely, almost exclusively on these reports as the basis for its inquiries. But even when the Committee has questioned expenditures, it evidently has been ignored with impunity. In its 1991 report, the Constitution Commission quoted a statement of the Office of the Auditor-General:¹⁴⁶

[T]he recommendations and observations by the Select Committees on Public Accounts have not been implemented or acted upon promptly with the result that the Executive have come to take for granted that

¹⁴⁴*Report of the Constitution Commission*, p. 119.

¹⁴⁵Wunsch, Bratton, and Kareithi, "Democracy and Governance in Zambia," p. 26.

¹⁴⁶*Report of the Constitution Commission*, p. 118.

no action or non implementation of the recommendations is not punishable.

"In other words, there are no punitive measures for failing to implement the recommendations of the Public Accounts Committee," even when the Auditor-General and that committee identify unconstitutional and other unauthorized and improper expenditures."¹⁴⁷

Tordoff and Molteno had reached much the same conclusion about the Public Accounts Committee under the First Republic:¹⁴⁸

The only select committee which does scrutinize the actions of the executive is the Public Accounts Committee. Even this committee during the first and second National Assemblies [1964-1968 and 1969-1973] usually produced only one report a year. By its own admission, the committee has failed to have a corrective effect on the civil service's lax adherence to prescribed financial procedures and to the detailed authorisations of public spending which the Assembly itself passes.

Their analysis indicates that, whatever its failures and deficiencies, the Public Accounts Committee was unquestionably the most significant of the National Assembly's few committees during the First Republic. There were several house-keeping committees, "[b]ut in the field of committees which watch the activities of the executive, the Zambian Assembly has almost none."¹⁴⁹

No select committee has ever been appointed to investigate some particular problem which is worrying Members or the general public. There is no select committee on the estimates. While the economic reforms of April 1968 and subsequent years have vastly expanded the public sector, the Zambian National Assembly lacks a select committee on nationalised industries, or any other machinery to superintend the activities of the firms in which the State now has a major shareholding.

Furthermore, they observe, despite the permanent state of emergency that prevailed throughout the First Republic (and the Second), the National Assembly of the pre-1973 multi-party regime lacked a committee on statutory instruments to review and monitor the regulations and decrees that were promulgated without the need for prior legislative approval.

¹⁴⁷Ibid.

¹⁴⁸Tordoff and Molteno, "Parliament," pp. 200-201.

¹⁴⁹Ibid.

The parliamentary committee system was expanded during the Second Republic, with a few select committees being created from time to time to conduct inquiries. Referring to business opposition to government economic policy, for example, Bates and Collier conclude that:¹⁵⁰

The high point came with the 1977 report of the Parliamentary Select Committee that called for an end to price controls; a curtailment of government support for state industries; a reduction in government spending, particularly for social welfare programs; and the greater use of markets. In seeking to revive Zambia's flagging economy, the Parliamentarians criticized as well the government's foreign policy and advocated an end to restrictions on trade with Southern Africa.

Yet even this select committee had no more than a minimal impact on Zambian national policy, and neither this nor any other parliamentary committee has had any authority to review and evaluate legislation before its enactment.

The National Assembly in the Third Republic

If the National Assembly, even under the 1991 Constitution, continues to lack ample constitutional powers to control the Government, especially by giving and withdrawing its confidence, it also has not yet allocated to itself the resources that it would require to act as an independent and effective, if not equal, partner in the policy-making process and thereby, to some extent at least, to balance and limit presidential power. Of particular importance, the Assembly's committee system does not provide it with the specialized expertise that would enable committee members or the parliament generally to undertake the kind of informed and independent evaluations of Government proposals and performance that a viable "separation of powers" system requires.

To conduct special inquiries and investigations, the Assembly may create temporary select committees, but it has done so only six times between 1971 and 1992, and even these committees reportedly have worked for no more than one to three weeks each.¹⁵¹ The Standing Orders do provide for thirteen "sessional committees" whose members are to be appointed at the beginning of each session. The burden of reviewing and critiquing Government actions falls to eight of these committees:

- Committee on Social Services

¹⁵⁰Bates and Collier, "The Politics and Economics of Policy Reform in Zambia," p. 31.

¹⁵¹Select committees are governed by Standing Orders 121-135. This and all references that follow to the standing orders are to those orders as amended up to June 6, 1985 and published as *National Assembly Standing Orders, 1986* (Lusaka: Government Printer, 1986).

- Committee on Agricultural Lands and Cooperatives
- Committee on Foreign Affairs
- Committee on Local Administration
- Committee on Parastatal Bodies
- Committee on Delegated Legislation
- Committee on Government Assurances
- Committee on Public Accounts

None of these committees is authorized by the Standing Orders to initiate legislation and the Standing Orders do not give them explicit authority to review and evaluate Government bills. Notice also that only the first three--perhaps four--of them have responsibility for defined and limited arrays of policy issues that would permit and encourage their members to develop detailed policy expertise. The other four committees have more functional responsibilities that can involve many or most major policy issues. For instance, there are more than 200 parastatal entities affecting most major sectors of the economy. Yet the National Assembly assigns responsibility (by Standing Order 144) for examining the reports and reviewing the activities of all parastatal bodies to one committee rather than allocating them to subject matter committees specializing, for instance, in housing, transportation, trade, and communications policies. It seems unlikely that the 10 MPs who serve on the Committee on Parastatal Bodies could make more than a dent in their potential workload, no matter how hard-working and well-intentioned they might be.

The same challenge would seem to confront the last-named three committees in even more severe form. The eight-member Committee on Delegated Legislation is expected (under Standing Order 143) to examine *all* statutory instruments and subsidiary rules and regulations to ensure that they are constitutional and consistent with the laws under which they are issued. This task would seem to require that its members be or become conversant with the details of all laws and the policy issues underlying them, regardless of subject, that might give rise to statutory instruments and other Government-issued directives. Similarly, Standing Order 145 directs the Committee on Government Assurances to examine the Government's compliance with *all* the assurances and promises that ministers make to the Assembly, again without regard to the subjects involved. And the ten members of the Public Accounts Committee are to examine the accounts detailing *all* expenditures made by the Government, with or without the National Assembly's prior approval. It is difficult to imagine that any of these tasks can be performed thoroughly by the eight to ten members of each committee.¹⁵²

¹⁵²The Committee on Government Assurances also is expected to examine annual reports of *all Government ministries and departments* in the context of the autonomy and efficiency of Government ministries and departments and determine whether the affairs of the said bodies are being managed according to relevant Acts of Parliament, established regulations, rules and general orders....(emphasis added) Standing Order 145(2)(c), p. 78.

With respect to the Public Accounts Committee, it also is important to note that neither that committee nor any other is authorized to review and report prospectively on the budget for the forthcoming fiscal year. Whatever budget control the National Assembly exercises has largely been retrospective. Wunsch and colleagues observe that the National Assembly recently has "secured an unprecedented agreement from the Ministry of Defence to submit an itemized budget...",¹⁵³ an agreement that they attribute to the impact of a new generation of more professionally qualified MPs. More generally, however, they conclude that "the parliamentary committee system does not operate effectively."¹⁵⁴

The budget discussions in the Committee of Supply [a form of plenary, not committee, meeting] are cursory and uncritical. It can only decrease, but not increase, estimates provided by the Ministry of Finance. *This limitation includes the National Assembly's own budget.* The Public Accounts Committee can do little more than review the Auditor General's annual budget since it possesses little capacity of its own to investigate or correct financial abuses. (italics added).

Although we lack the information to evaluate directly the work and activities of these committees, it is suggestive that each of them evidently is reported to have issued only one written report per year on average.¹⁵⁵ Moreover, the Committee on Local Administration reportedly does its work primarily in response to account audits of local councils that are submitted by the Ministry of Local Government and any pertinent audits undertaken by the Auditor-General. Similarly, the Committees on Public Accounts and on Parastatal Bodies also reportedly react to reports of the Auditor-General, whose office apparently has not yet been able to inquire into the accounts of each of the 200-plus parastatals. Their evident reliance on the reports of the Auditor-General poses an additional problem for these committees: the National Assembly receives the Auditor-General's reports a year after the events and actions to which the reports refer, often making it difficult or impossible for the National Assembly to recommend timely and effective remedial action.¹⁵⁶ And

¹⁵³ Wunsch, Bratton, and Kareithi, p. 27.

¹⁵⁴ Ibid.

¹⁵⁵ When committee reports recommend that some action be taken, Government is expected to respond within 60 days after the National Assembly adopts the committee report. However, National Assembly staff report that ministries frequently fail to comply with this deadline, and instead reply after roughly three months time and only after parliamentary prodding.

¹⁵⁶ These committees do have authority, under Standing Order 136(2), to issue subpoenas, including subpoenas *duces tecum*. As a resource for monitoring Government activity, however, the practical value of this authority is limited by the President's statutory power to refuse compliance concerning any defense

the Government evidently is not always responsive. According to a staff report prepared for the National Assembly, as of mid-1992, "446 audit queries for which the Public Accounts Committee had recommended corrective action have still not been resolved. Some of the audit queries date as far back as 1973."¹⁵⁷

The remaining five committees have responsibility only for matters internal to the Assembly. Three of them--the Library Committee, the Committee on Parliamentary Procedure, Customs and Traditions, and the House Committee, with responsibility for management of National Assembly buildings, facilities, and services--are reported to meet only rarely. The other two, however, appear to have potentially significant powers. The Committee on Absence of Members from the Sittings of the House and Sessional Committees is empowered to recommend to the House whether absent members should be disciplined or suspended. And the Standing Orders Committee has jurisdiction over amendments to the Standing Orders and proposals affecting the salaries, pensions, and allowances of members and staff. More important, this committee apparently has the remarkable authority to impose decisions on such matters without approval of the full National Assembly. Standing Order 137 provides that it is to circulate any report and recommendation it makes and, if one or more members object, "the committee may consider the validity of such objection and may either cause the report or recommendation to be brought up for consideration by the House or resolve that the report or recommendation be deemed approved by the National Assembly, in which case the report or recommendation shall be so deemed."

Also significant is the extent to which the Standing Orders give Mr Speaker the tools to concentrate effective control over the committees in his own hands. Of the eight investigative or oversight committees listed above, Mr Speaker appoints the members of all of them except for the members of the Public Accounts Committee who are to be selected by the National Assembly as a whole. Mr Speaker also designates the chairman of six of the seven committees whose members he appoints.¹⁵⁸ Mr Speaker also appoints members to all five of the "housekeeping" committees and, until recently, chaired four of them himself. The UNIP Chief Whip chaired the Committee on Absences of Members; now Mr Deputy Speaker holds that position. In 1992, Mr Speaker is reported to have relinquished the chairmanship of the House, Library, and Parliamentary Procedure Committees, but he retains the chairmanship of the important Standing Orders Committee, which not only can make unilateral changes in the Standing Orders and members' benefits, but which also is empowered by

matter or "any matter affecting the public service." National Assembly (Powers and Privileges) Act of 1956, as amended through 1970; Part III.

¹⁵⁷"The Committee System in the Zambian Parliament." Unpublished manuscript, 1992; pp. 21-22.

¹⁵⁸Standing Order 146 is silent on the chairmanship of the Committee on Local Administration.

Standing Order 121 to appoint members to any select (investigating) committees the National Assembly may create.

Directly or indirectly, therefore, Mr Speaker can control most committee appointments and chairmanships, and the influence and prestige that can accompany them. Moreover, he has a "stick" that is as important as these "carrots." Under Standing Order 150, "where under any standing or sessional order any person or the Standing orders Committee is authorized to appoint the members of any committee, that person or committee shall have power to discharge any member so appointed and to appoint another member in substitution for the member discharged." A member who offends or alienates Mr Speaker does so at the risk of whatever position or power he or she hoped to achieve through the National Assembly's committee system. Furthermore, a National Assembly staff report asserts that Mr Speaker even has the authority to approve committees' agendas, annual reports, and plans for field visits. "Even speeches to adopt reports by Chairmen in the House must be approved by the Hon. Mr Speaker before they are delivered."¹⁵⁹

Not only do most committees lack effective autonomy within the National Assembly, their potential effectiveness is constrained by the limited resources available to them. There are only four meeting rooms available for use by all the committees and their staff is limited. (There are no offices for individual MPs.) A Committee Office reporting to the Clerk of the National Assembly provides support to the committees--primarily to the sessional oversight committees. As of 1992, the total staff complement was 19, of whom nine had titles suggesting professional (as opposed to clerical and other support) responsibilities.

More generally, the National Assembly's "establishment list" showed a total staff complement of 525 as of early 1993. Of these positions, however, 311 (or 59%) were filled by security officers, drivers, messengers, caterers, cleaners, gardeners, and "domestic servants." By a subjective though generous estimate, 85 (16%) of these staff, including library staff and "parliamentary debates assistants", held non-clerical positions that may give more or less direct support to the National Assembly's legislative activities. Another, independent estimate in 1992 found a total National Assembly staff of 563, of whom about 80, including secretaries, who served MPs; all others were assigned to perform some sort of non-legislative function. By contrast, almost 100 persons comprised the parliament's security staff, and an equal number provided food services and staffed the motel that the National Assembly maintains for its members.

One inevitable consequence is that, notwithstanding the best efforts of its legislative/policy staff, the National Assembly cannot provide its members and committees with the information and research support they would need to have a continuing and significant independent effect on making new law or

¹⁵⁹"The Committee System in the Zambian Parliament," p. 16.

evaluating the impact of existing law. As Wunsch and colleagues wrote in 1992:¹⁶⁰

The committee system's handicaps can be traced to severe shortages of resources. There are only three offices and 10 generalist committee staff to service 150 MPs! This staff is undertrained, being unable to offer informational or procedural advice to members. MPs also lack personal staffs and are even unable to rely on the National Assembly for basic secretarial or more than minimal telephone services. Also, the Assembly's research unit is understaffed and its capacious modern library is seriously short of books; the most recent periodical on the shelves dates from 1987.

These resource problems are typical of the conditions in which parliaments of relatively poor countries must work, and it would be wrong to suggest that this condition is what the leaders and members of the National Assembly would want it to be. However, the thesis of this analysis is that those who have been in a position to shape the National Assembly have been guided by a conception of their institution which has not encouraged them to strengthen it. Specifically, they apparently have viewed it as a parliament in a Westminster-style system which is not expected to be an assertive and independent force in law-making.

In light of Zambia's colonial history, it is not surprising that the British example has been a powerful and defining one. Tordoff and Molteno saw the result in the National Assembly of the First Republic:¹⁶¹

Despite the incorporation of Zambian traditional culture in the internal architecture of the chamber--its murals, its woodwork, and the presidential chair framed by two huge elephant tusks--much of Westminster's formal ceremony and custom is also reproduced. A costumed serjeant-at-arms, bearing a splendid copper mace, precedes Mr. Speaker, himself gowned and bewigged, into the chamber. The formal rules of procedure follow those of the British Parliament closely and, in cases of doubt, the Standing Orders (1967) of the National Assembly are to be interpreted in the light of the relevant practice of the House of Commons.

It is instructive to compare the most recently-published (1986) Standing Orders of the National Assembly for conducting public business with the corresponding Standing Orders of the British House of Commons from 1966,

¹⁶⁰Wunsch, Bratton, and Kareithi, p. 27.

¹⁶¹During the first National Assembly (1964-1968), "[e]ven the British tradition of having a member of the opposition as chairman of the Public Accounts Committee was followed...." Tordoff and Molteno, "Parliament," p. 199.

shortly after Zambian independence.¹⁶² As of mid-1985, the National Assembly had 172 Standing Orders governing its organization and activities in committees and plenary session. A cursory comparison of these rules with the 1966 British Standing Orders reveals that 22 were drawn largely verbatim, in whole or in part, from Westminster and another nine were clearly derivative, in whole or in part, from the British code. Furthermore, Standing Order 166 indicates that the explicit reliance on British practice that Tordoff and Molteno found in the 1967 Standing Orders had not totally disappeared, even after several decades of independence:

In a case not provided for in the rules of procedure, or in a case where there is a difference of opinion as to the interpretation of any such rules, Mr Speaker shall decide, taking into account the customs and usages of the Assembly since its inception *and the relevant practice in Commonwealth Parliaments* (emphasis added).

The de facto and then de jure dominance that UNIP enjoyed made it inappropriate for Zambia to design its Chamber to resemble the confrontational architecture of the House of Commons in which Government and Opposition face each other. Yet the National Assembly's usages--e.g., references to the "Serjeant-at-Arms" and to visitors as "strangers," and to "debate on a Motion of Thanks to His Excellency's Address" (Standing Order 41) which almost certainly derives from the British "Debate on the Address thanking her Majesty for her Speech"--only add support to the conclusion that it is Westminster that the National Assembly has taken and, to a considerable degree, continues to take as its model, even though its own experiences and the development of Zambian constitutional and political experience has caused it to move in its own direction.

Implications for Parliamentary Reform

One thesis of this analysis has been that any evaluation of the need, and any proposed agenda, for reform of the institutional capacity of the National Assembly of Zambia must take place within the context of the history and current state of Zambia's constitutional design. That design is of a political system that retains some formal resemblances to British parliamentarism, but that much more closely resembles, in theory as well as in practice, American presidentialism. A second thesis developed here is that there has been, and remains, a striking lack of congruence between this constitutional design and the Assembly's institutional capacity. The Assembly has not demonstrated the independence and assertiveness that is required of a legislature if it is to

¹⁶²*National Assembly Standing Orders, 1986, and Standing Orders of the House of Commons (Public Business), 1966* (London: Her Majesty's Stationery Office, 1966). Standing Orders for the National Assembly under the First Republic are not accessible, nor have the 1985 Standing Orders undergone major revision since the advent of the Third Republic.

effectively balance and control presidential power in a separation-of-powers system. And not only has the Assembly acquiesced to presidential dominance, both before and during the one-party regime, it has failed to develop the organizational structure and institutional resources that a more autonomous role in policy making and policy review would require.

If the Government in Lusaka was the agent of the parliamentary majority, the institutional weaknesses of the National Assembly would matter far less. The responsibility for initiating legislation and largely controlling the Assembly's agenda and decisions would rest with the Government, as it typically does in parliamentary regimes, but the Assembly would retain the final recourse of unmaking a Government that lost its support. But lacking this ultimate power, the National Assembly has been, and evidently remains, a weak parliament in a strong presidential system. This situation does not bode well for the development and institutionalization of a democratic regime in which there are effective protections against excessive concentration of power in one person or institution.

The question remains: what are the prospects for change, either in the form of further constitutional changes that would strengthen the Assembly at the expense of the presidency, or in the form of institutional capacity-building that would enable the Assembly to assert itself more actively and effectively within the existing constitutional context?

"When demands for constitutional change arose, UNIP systematically resisted them and hunkered down to defend its cherished prerogative of making up the rules of the political game."¹⁶³ Will the government of President Chiluba and the Movement for Multiparty Democracy (MMD) react differently to the same temptation? In mid-1992, the Government claimed to have constitutional reform on its agenda:¹⁶⁴

Chongwe [Roger Chongwe, then Minister of Legal Affairs] said that the constitution passed under the previous one-party parliament should be rewritten because it consolidates too much power in the hands of the president. The legal affairs minister suggested that there could be a titular president with an executive prime minister who sits in Parliament.

A year later Chongwe was replaced and, to date, the prospects for constitutional change have remained in limbo.

Perhaps ironically, and as the MMD's name implies, it was support for changes in the political process more than changes in policy outcomes that

¹⁶³Bratton, "Zambia Starts Over," p. 89.

¹⁶⁴Melinda Ham, "End of the Honeymoon," *Africa Report*, May/June 1992, p. 63.

brought together the diverse elements comprising the newly-formed party that upset President Kaunda and his well-entrenched regime. "The MMD is a broad coalition of businessmen, trade unionists, academics, churchmen, and dissident UNIP politicians. They include free-marketeers, social democrats and a few old-style Marxists."¹⁶⁵ They also included UNIP dissidents or others who saw the proverbial handwriting on the wall. According to Baylies and Szeftel, at least twenty MMD parliamentary candidates in 1991 were former or sitting UNIP MPs; twelve were or had been members of the Cabinet or UNIP's Central Committee, and six others had held other high office in the Government or the Party.¹⁶⁶ Yet Bratton and van de Walle wonder whether multi-partyism was much more than a slogan:¹⁶⁷

[O]pposition leaders raised multiparty democracy as a convenient banner under which to gather inchoate demands for political change. The notion of political pluralism sparked popular support insofar as it was the antithesis of the discredited system that had led to the present mess. Yet, as articulated by protesters in African countries, the call for multiparty democracy seemed to signify little more than a general discontent with the political status quo and an urge to try something--anything--different."

Even more ironically, the very success of the multi-party movement may pose the greatest danger to achieving its ostensible goal. In the October 1991 elections, President Chiluba won roughly 80 percent of the presidential vote and his MMD took 125 of the 150 seats in the National Assembly. UNIP was decimated as an effective political force, and it has had difficulty in re-building itself since then. One reason, Bratton suggests, lies in the political habits that UNIP encouraged for so many years:¹⁶⁸

¹⁶⁵"Revolution by ballot," *The Economist*, October 26, 1991, p. 49.

¹⁶⁶Carolyn Baylies and Morris Szeftel, "The Fall and Rise of Multi-Party Politics in Zambia," *Review of African Political Economy*, July 1992, p. 83.

¹⁶⁷Bratton and van de Walle, "Toward Governance in Africa," p. 42.

¹⁶⁸Bratton, "Zambia Starts Over," p. 93. A related problem is the lack of effective alternatives to UNIP. "Although there are more than 30 small opposition parties, none of them have a substantial following or offer alternative policies to the government. UNIP is the only one with any national structure and it was so heavily discredited and defeated in last year's general election, it is unlikely to make a comeback for some years. Lobby groups are few and ineffectual on major policy issues. Trade unions--formerly the only opposition in Kaunda's one-party state--have lost a lot of steam now that their charismatic leader, Chiluba, is the national president." Melinda Ham, "Zambia: One Year On," *Africa Report*, January/February 1993, p. 40.

[O]ne-party rule inculcates a patrimonial political culture in which people come to believe that their well-being depends on attaching themselves to the coattails of powerful political leaders. These habits die hard. After the elections in Zambia, MMD supporters have looked to the new government with automatic expectations of rewards for helping unseat the old regime. And the losers have embarked on mass conversions to MMD, presumably motivated by the opportunistic assessment that it no longer "pays to belong to UNIP." Such actions tend to reinforce a political culture of quietude and loyalty rather than deepening the roots of active criticism, opposition, or dissent.

Yet it is precisely the willingness to criticize, dissent, and oppose that is an essential quality of legislators in presidential regimes. And it is a quality that must be demonstrated by members of the President's own party if legislative independence is to be preserved when that party dominates both branches of government.

Because of the overwhelming nature of the MMD's victory (or Kaunda and UNIP's defeat), there has not yet developed any effective, organized opposition, at least within the National Assembly, that truly limits the Government's freedom of action. As Baylies and Szeftel observe, "[c]onstitutional change has altered the right to form parties and participate in elections but presidentialism remains at its core and executive power has not been institutionally circumscribed. The overwhelming victory of the MMD and the weakness of UNIP mean that the multi-party system is formal rather than real. And the nature of the MMD itself seems to reproduce the structural conflicts and factional intrigues which transformed UNIP from one of Africa's most effective mass movements into a shell for transmitting presidential orders. In that way MMD seems to reproduce rather than replace UNIP."¹⁶⁹

On the other hand, one effect of relatively free democratic elections, especially those that produce a change in incumbency that amounts to a change in regime, is to create new public expectations. Once people experience the power they can exercise through elections, they are likely to become much more reluctant to see that new-found and sometimes hard-won power diminished by the emergence of a new *de facto* one-party regime or eviscerated by the consolidation of a new *de jure* one-party regime. As part of their ongoing study of the evolving political culture in Zambia, Bratton and Liatto-Katundu report that three-fourths of the respondents in a national survey were "willing to credit the political transition of 1991 with the installation of real democratic gains: far from 'becoming another single-party state', the current regime was thought to offer Zambian citizens 'a real choice among different political parties and

¹⁶⁹Baylies and Szeftel, "The Fall and Rise of Multi-Party Politics in Zambia," p. 91. See also "Zambia's Choice," *New African*, December 1991; and Carol Graham, "Zambia's Democratic Transition," *The Brookings Review*, Spring 1992.

candidates'."¹⁷⁰ Any initiatives of the MMD government that might disillusion these respondents may encounter more resistance than Kaunda and UNIP encountered in the late 1960s.

Nevertheless, the danger remains that, instead of transforming Zambia from a one-party state into a multi-party state, the events of 1990-1991 may result in a transition from one single-party regime to another. At a minimum, the temptations of power suggest that it would be unwise to rely on the beneficence of the Chiluba government to voluntarily undertake constitutional changes that will seriously reduce presidential power vis-a-vis the National Assembly. However, changes in constitutional design are not the only potential protection against unfettered presidentialism. By building the institutional capacity of the National Assembly within the existing constitutional structure, the members of the Assembly have the means and opportunity to enhance its powers and the prospects for stable democratic government, and then even to take the initiative to promote constitutional change, if they have the will to do so.

¹⁷⁰ Michael Bratton and Beatrice Liatto-Katundu, *Political Culture in Zambia: A Pilot Survey*. Working Paper No. 7, *MSU Working Papers on Political Reform in Africa*. East Lansing: Department of Political Science, Michigan State University, 1994.

