

BOOK REVIEW

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W.C. Ekow Daniels and Gordon Woodman, eds. Essays in Ghanaian Law: Supreme Court Centenary Publication 1876-1976. Legon: The Faculty of Law, University of Ghana, 1976. Pp. XII + 273.

American academic lawyers, who became interested in Africa in the early 1960s, have a tendency to consider the establishment of the common law courts there as a recent phenomenon. Though lawyers and the anthropologists before them have had respect for the long continuity of customary law, they have rarely appreciated the extended history of received law in Anglophonic Africa. This historically limited view of American law teachers may be due to the fact that legal history is rarely a required subject in American law schools. Despite the dominance of the American realist school of jurisprudence and the growing body of empirical studies of the legal system (much of it in the sociology of law literature) the U.S. legal curriculum is devoted almost exclusively to reading appellate court opinions. The emphasis is on current decisions and little attention is given to material prior to the 1930s. In Britain, on the other hand, where law is taught in the universities sometimes more as an undergraduate social science than as professional preparation, the history of the common law, and even Roman law, often are required subjects.

It comes as a bit of a surprise, therefore, to realize that there has been more than a century of written case law in numerous parts of Africa. The Liberian Law Reports begin with an 1861 case and the Zanzibar Law Reports start from 1868. Common law courts had been active in the Gold Coast since at least 1844,¹ and there are published opinions from about the same time;² the court structure of which the present judicial system is the lineal descendent dates from the promulgation, on March 31, 1876, of the Supreme Court Ordinance³ by the Governor of the Gold Coast Colony. The present volume was published to attest to the centenary of this event. Eleven essays cover the history of the courts and contain extensive reviews of a century of statutory and case law development in a variety of subjects.⁴ Though many pieces draw heavily on previously published articles and books, much of the material is new. Not since Burnett Harvey's Law and Social Change in Ghana (1966) has there been a one-volume overview of the Ghanaian legal system. This alone makes the book a major event.

The majority of the essays are concerned with the courts set up by the British and the development of the received law. There is little discussion of customary law. The approach by the Ghanaian contributors is very much in the English academic manner--rather formal and stylized to the American reader. These pieces continue a mode begun by Anthony Allott in his Essays in African Law, with Special Reference to the Law of Ghana (1960) and continued in such works as W.C. Ekow Daniels's Common Law in West Africa (1964).

Dean Ekow Daniels's survey of family law in the current collection and A.K.P. Kludze's account of changes in the law of succession are well executed examples of the majority of the essays. The former begins with an account of the English concept of marriage, shows the conflicts caused by the clash with selected customary notions (among the Fante, for example) and with Muslim law, sets forth the major provisions of the Marriage Ordinance of 1884⁵ and the Matrimonial Causes Act of 1971,⁶ and makes several thoughtful proposals for future changes. Kludze's discussion of succession starts from the English Wills Act, 1837⁷ and follows through to Ghana's Wills Act of 1971.⁸ Along the way he sets forth the leading Ghanaian cases and continues his well-known disagreements with retired Justice Ollenu as to the correctness of their holdings. His essay exhibits solid scholarship.

An essay by Gyandoh, written in his usual engaging style, is a history of the higher courts' protection of individual liberty. Personal freedoms have had a narrow scope in Ghana under both the British and the successive regimes since Independence in 1957. The constraints have come not only from the executive and the legislature but have also been self-imposed by the courts. Though the Bench is now fully Ghanaian, antipathy to judicial activism has been retained from the colonial courts. Despite this history, there have been some brave stands by a few judges. These acts of defiance, fully documented by Gyandoh,⁹ have usually been in the form of rulings calling for adherence by the Government to the letter of procedural requirements, as in the detention cases. Inevitably, when the correct procedure is used or a supervening legislative instrument is created, the executive wins and the prisoner stays locked up. But the courts have made their point. Given the current political climate in Ghana, Gyandoh is unusually forthright in his comments. His is one of the most interesting accounts in the book.

Two innovative essays in the collection are by English contributors, Gordon Woodman and Robin Luckham. Woodman, now living in England, taught for many years on the Legon Faculty and writes here on "Land Law and the Distribution of Wealth." He characterizes Ghanaian legal research since the establishment in 1958 of the Law Department at the University of Ghana as "investigation and categorisation of the black-letter rules of law,

er the rules recognized by the legal profession as valid, authoritative law."¹⁰ (Most of the Essays are in this vein.) He wants to change the direction of legal research and investigate "the relationship between these rules and Ghanaian society and economy."¹¹ He is not interested in the law's relationship to economic growth as such.¹² Rather he wants to discover the causal relationships between land law and distribution of wealth. For this he admits there is a lack of accumulated evidence.¹³ His discussion contains conjectures on the motivations behind attempts to alienate (transfer to a fee simple title) land that was collectively held by the stool or skin. Both rural and urban land transactions are discussed (cocoa farms and building plots). Alienation has been a familiar theme in Ghanaian case law.¹⁴ Woodman reviews these developments to answer one of the recurring questions in development jurisprudence: whether law leads or is led by social change. He concludes:

The result of the clash between legal rules and social trends...[has been that] the legal rules were changed to allow the alienations. Thus the law in no way prevented, changed or caused social development. Rather, social development swept away a law which stood in its path....This suggests that, far from the rules of law being a cause of the social development recorded, the reverse has been the case.¹⁵

Woodman's essay is obviously an introduction to a plan of inquiry which will be greatly enhanced by empirical research. The following piece by Robin Luckman, "The Economic Base of Private Law Practice," contains the results of just the kind of new, empirical legal research that Woodman advocates. Luckham, a sociologist, conducted a series of structured interviews with practitioners throughout Ghana. He found Ghanaian lawyers to be a highly individualistic group. There are only a small number of firms and those who share chambers rarely have partnership agreements. Few specialize in any one subject. On the whole lawyers service the needs of the rural and informal sectors of the economy rather than the urban centers and large-scale business firms. The last named are few in number and are often foreign owned. It is the activities of the small-scale capitalists--the cocoa farmer, the lorry owner, the trader--that provide the bulk of the legal business in Ghana. In fact cocoa, Ghana's largest export earner, still dominates the law as it does the economy. As Luckham says: "[Law] is...linked to cocoa to such an extent that in cocoa centers like Kumasi, Sunyani and Koforidua litigation still fluctuates with the cocoa seasons and fluctuations in the producer price."¹⁶ Thus land, inheritance, and chieftaincy matters--subjects still predominately governed by customary law rules--are at once both the most prestigious areas of practice as well as the most common. The successful senior law-

yers practice in these areas and also control the Bar Association. They are followed by those who concentrate their practice in commercial and company law. Bringing up the rear are those in civil injury work and criminal practice. Luckham did find, however, that Ghanaian attorneys handle cases in more than one field. Since most operate as solo entrepreneurs, they can scarcely afford to turn down a case just because of its subject matter. Cases come from a network of friends and acquaintances that each practitioner builds for himself. Village letter writers, for instance, often refer clients. Oddly, little business comes from the attorney's home area.

During interviews many practitioners complained to Luckham of the difficulties they experienced in dealing with clients, many of whom are illiterate and have little command of English or the attorney's own dialect. Attorneys also operate with a more Western sense of the value of time and the nature of business relationships. As a senior Accra practitioner told Luckham:

"I hate being a solicitor--sitting in my office talking to clients who will take four hours to tell a story which should only take five minutes...and then they'll go and come back the next day and start telling me the same story all over again. Clients turn up at the house at all times. They seem to regard me as a sort of public property you can come to at any time. Half of the time I am doing the work of a psychiatrist. Sometimes I have to pretend I'm not in or else I'll have to come out and talk to them. Some I just tell to shove off. Of course, the whole problem would be solved if one were to use a strict system of time payment--two hours for so much--but that would keep so many away."¹⁷

Despite these hardships, attorneys are well-off financially. They are "a substantial though by no means extravagantly wealthy group of individuals."¹⁸ They grumble that successful businessmen seem to make more from the same expenditure of time and effort and the older lawyers remember times when cocoa prices were higher and there were fewer attorneys. Still, considering Ghana's population as a whole, her attorneys are well-heeled.

Luckham's piece is unusually interesting. One hopes that his empirical method will be followed by others in future legal research in Ghana.

All in all these Essays are a major contribution to the literature on Ghanaian law. The book is ably edited, proofed, and indexed as well as being well printed. Its production shows the guiding hand of Janet Daniels, editor of the Review of Ghana Law, who has done so much to further legal scholarship in Ghana.

NOTES

¹See Bennion, Constitutional Law of Ghana, 7-8 (1962).

²See Sarbah, Fanti Customary Laws (1897).

³No. 4 of 1876.

⁴The essays are: "The Supreme Court One Hundred Years Ago" by A.N.E. Amisshah; "A Note on the Supreme Court Ordinance, 1876" by T.O. Elias, of Nigeria; "Chieftaincy under the Law" by retired Justice N.A. Ollennu; "Liberty and the Courts: A Survey of the Judicial Protection of the Liberty of the Individual in Ghana During the Last Hundred Years" by Professor S.O. Gyandoh, Jr.; "Marital Family Law and Social Policy" by Dean W.C. Ekow Daniels; "Legislative Control of Freedom of Contract" by S.K. Date-Bah; "The History of Public Corporations" by R.B. Turkson; "Land Law and the Distribution of Wealth" by Professor G.R. Woodman; "The Economic Base of Private Law Practice" by R. Luckham; "A Century of Company Law--An Overview" by A.K. Fiadjoe; and "A Century of Changes in the Law of Succession" by A.K.P. Kludze.

⁵Cap. 127 (1951 Rev.).

⁶Act 367.

⁷7 Will. 4 & 1 Vict., c. 26.

⁸Act 360.

⁹He draws heavily on Gyandoh & Griffiths, A Sourcebook of the Constitutional Law of Ghana (1972).

¹⁰Essays, p. 158.

¹¹Ibid.

¹²The literature on law and economic growth is exemplified by International Legal Center, Law and Development: The Future of Law and Development Research (1974), one of the works Woodman cites.

¹³By way of contrast, the black letter rules of Ghanaian land law, both customary and received, have been extensively

documented. Book-length treatments are Ollennu, Principles of Customary Land Law in Ghana (1962), Bentsi-Enchill, Ghana Land Law: An Exposition, Analysis and Critique (1964), and Kludze, Ewe Law of Property (1973).

¹⁴One of the most famous cases is Golightly v. Ashrifi, 14 W.A.C.A. 678 (Gold Coast, 1955).

¹⁵Essays, p. 176 (footnotes omitted).

¹⁶Ibid., p. 213.

¹⁷Ibid., p. 192.

¹⁸Ibid., p. 214.