DEVELOPMENT OF THE LAW OF GHANA

WITH SPECIAL REFERENCE TO INDUSTRIAL AND COMMERCIAL DEVELOPMENTS

by

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In examining this topic I wish to consider three main questions :

(1) What is the law of Ghana?

(2) How is this law developing?

(3) How far does the legal system permit or encourage the industrial society?

We may look at the law of Ghana as a typical example of an African territory and its problems and developments in the legal sphere, bearing in mind that the country received its independence only in 1957, that its legal system contains many relics of the colonial era (when it was called the Gold Coast), and that the reshaping of Ghana society is motivated by ideological and political, as well as by commercial, considerations.

1. THE LEGAL SYSTEM OF GHANA.

British colonial rule, long present on the coast, was established in the interior in the years after 1843 by a piecemeal process, the Gold Coast substantially taking its present shape only at the beginning of this century, and Togoland being added after the first world war. Up till colonial times the different peoples of the area (who did not constitute a unified entity but consisted of a number of tribal societies) had their own indigenous African systems of customary law. Gradually English law was extended along with British rule, the position being formalized in 1874 with

the erection of the Gold Coast Colony so called, the colony receiving at the same time a ready-made legal system derived from the England of the time. The common law, the doctrines of equity, and the statutes of general application in force in England on the 24th July, 1874, were extended en bloc to the infant colony, and became its general law. Statutes passed in England after this largely arbitrary date did not usually apply in the Gold Coast; and the local Gold Coast legislature could add to or vary the English law it had received by local ordinance; but this power was, for many years, exercised with great restraint, so that in essentials the law of the Gold Coast remained linked to that of England in 1874.

The Gold Coast law in practice did, however, differ greatly from that in force in England, because the pre-existing customary laws were recognized by the British, and continued to regulate almost all the private and civil relations of Africans (in other words, of the whole population). There were few non-Africans; as Africans evolved they tended to adop English ways, but this only affected a tiny minority.

Up till now Ghana has been typical of most other African territories in that it has been an *agricultural*, and not an industrial, country. Originally the agriculture was for subsistence only; more recently (i. e. over the past 50 years) cash-crops have been very widely grown, especially cocoa in the southern half of the country. The agriculture has been a peasant-agriculture, and there have been no large estates (unlike in East and Central Africa). Growth of cash-crops, and the consequent involvement of the mass of the population in the money-economy, has led to great advances in wealth, education, etc. (Ghana is one of the richest countries per capita in Africa.) What industry there has been has been either *extractive* (mining for gold, diamonds, manganese; timber), or the limited *processing of local materials* for local use (e.g. manufacture of furniture) — but this latter has been largely of the craftsman and cottage - industry type.

A relatively uncomplicated legal system was sufficient to cope with this level of activity ; so there was little attempt to revolutionize the law as received, or the indigenous laws. It is

interesting to note that the Gold Coast received the law of a highly industrialized nation (the United Kingdom), even though English law of the period had perhaps been slow to follow the developments which had taken place in society. This law of an industrial nation was available to fall back on (since it constituted the general law of the Gold Coast), if required by the Gold Coast courts; though it had failed to keep pace with the times since being received and "frozen" by the Gold Coast at its 1874 stage.

An illuminating comparison can be made between the development of the English and the Ghana legal systems. In England the slow evolution of the law *followed* the flowering of the Industrial Revolution. The legal revolution in Ghana, on the other hand, is *preceding* the industrial revolution there. This is because a new dogma has become current in African economic planning: — it is felt that the old pattern of primary producing countries trading their products for the products of the industrial nations is out of date, as it exposes the economy to the harsh winds of world economic slumps and booms, and provides too narrow a base for economic, and hence for social, expansion. Diversification and industrialization are all the rage in Africa today; a one-crop country like Ghana is particularly keen to diversify. Hydro-electric power is seen as the "open-sesame" to this new economic world.

The Ghana Government has therefore announced, under the Development Plan that it has recently published, a new policy of industrialization. But law reform is already actively going ahead, more especially in those branches of the law with commercial significance. By the time the new factories are built, the new laws will be ready to regulate business and private affairs.

To summarize, the legal system in Ghana has been complicated by (i) the reception of an extraneous law; (ii) the co-existence of local indigenous laws.

2. SPECIAL FEATURES OF THE GHANA LEGAL SYSTEM WHICH HELP OR HINDER COMMERCIAL DEVELOPMENT.

The desire to industrialize has led to a close re-examination of every aspect of Ghana law; and it almost appears as if any

rule of law can be modified if it is felt to hinder economic development. (This marxian attitude is also found in such colonial territories as Kenya, Uganda, Southern Rhodesia, etc.)

Among the targets for criticism have been (i) the general out-of-dateness of the general law (basically that of England as at 1874); (ii) the uncertainty as to what this law is or how much of it applies in Ghana, and the complication of the legal system (though this is not so complicated as that of Israel, for instance); (iii) the uncertainties arising from the existence of African customary law, wich is unwritten, and must have altered (in a way difficult to ascertain) from the traditional usages of the people.

Many of these complaints have centred on the law governing *land tenure*. There is some uncertainty as to title, and registration of title has been advocated to assist foreign and other businessmen who wish to get a secure title to land they wish to develop, free from competing or overriding family claims, and so on. There is uncertainty as to what the customary law is today: in particular, contrary to widespread belief, individual forms of tenure are found all over Africa today, but the extent of individual interests is still uncertain in some areas. In other words, cash farming has led to assertion of individual rights at the expense of tribal and family clans. It has been suggested that variations between different systems of customary law should be eliminated or reduced — but this sets many major social and legal problems. Study of the customary law is urgently needed.

A matter calling for special attention is the position of the "non-native" (i.e. non-Ghanaian) in regard to tenure of land in Ghana. Strict control was originally exercised by the colonial government on the acquisition of land by non-natives; this was with a view to restricting the activities of concession- hunters who might have defrauded the indigenous occupiers of their land. Under the Concessions Ordinance, 1900 (as re-enacted cap. 136). the non-native can usually only acquire a lease for 99 years over rural land, and cannot get an absolute title. A court can inquire into the adequacy of consideration given to the African title-holders, can see whether native rights of use are adequately protected or compensated, etc. Under the Land and Native Rights Ordinance,

cap. 147, occupation by non natives is still more rigidly controlled in Northern Ghana. These restrictions are still in force; one must ask whether they are now in the public interest. Concessions are usually obtained from the land-owning "stools" of chiefs, and must also be approved by the elected Local Authority.

Family law and marriage. Does the traditional system of social organization into tightly knit clans and family groups impede or stimulate capital formation and business enterprise generally?

Succession. This matter is now being examined by a commission. Africans in the south already have customary oral wills, and can also make a will in English form. Marriage under the Marriage Ordinance (i.e. in western form) may also alter the pattern of succession from the customary one. Some people have maintained that the family and succession system, by which the self-acquired property of man dying intestate devolves on all the members of his family jointly, leads to the one-man company dying with that man. Many promising businesses would not, therefore, emerge from the initial stages.

3. THE MACHINERY OF THE LAW AND THE LEGAL PROFESSION.

Much is now being done to attract foreign businessmen. Some of them may wish that the law affecting them — and especially commercial law — should be simple and fair, that the administration of justice is cheap and speedy, and that competent legal advice and representation are available. Ghana has a more complicated legal system than, say the U. K.; hence a premium is placed on competent legal advice. But the existing practitioners are mainly advocates and not business lawyers. The new Law School just established will, it is hoped, produce more of the solicitor type of lawyer, which should aid the development of commercial enterprise as well. The machinery of justice is being reformed.

4. THE CONTENT OF THE LAW AFFECTING INDUSTRY AND COMMERCE.

The major relic of the colonial system is a strong tendency towards centralization and the planned economy. State corpora-

tions have been set up to control or produce, central control is very strong, and a sort of socialized economy was handed over to the new rulers. The Agricultural and Industrial Development Corporations are an illustration of this tendency.

Owing to there being little business activity, and practically no industry, there are or were few special local laws; what there were were based on English models. English amendments to these statutes were sometimes incorporated into the Gold Coast laws, usually somewhat belatedly. Especially important was the recruitment and conditions of service of unskilled labour, which arose from the various mining enteprises to be found in the country. So the *Labour Ordinance*, enacted 1948, cap. 89, rigorously controls these matters. One of the most interesting sections in the Ordinance is s. 4 which provides —

> "(1) No scheme of economic development likely to involve recruiting shall be commenced in any area save with the written permission of the Commissioner of Labour first obtained.
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> (2) Before granting such permission the Commissioner of Labour shall, in consultation with the [Native] Authority concerned, ensure that such measures shall be taken as may be practicable and necessary —
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> (a) to avoid risk of pressure being brought to bear on the populationcorned by or on behalf of any employer in order to obtain the labour required;
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> (b) to ensure that, so far as possible, the political and social organization of the population concerned and its power of adjustment to the changed economic condition will not be endangered by the demand for labour; and
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> (c) to deal with any other possible untoward effect of such development on the population concerned."

It is worth noting that "employer" here means persons, firms, government departments, people of all races. The Labour Ordinance generaly shows a paternalistic attitude, by supervision of recruiting (Part II), by controlling the details of contracts of service (Part III), and so on. Contracts of clerical workers are also controlled. Procedure is specified for dealing with breaches of contract by employer or employee. There is special control of the employment

of females, children and young persons in industrial, commercial or agricultural undertakings. Provision is made for the Minister to appoint a Wages Board to investigate and recommend on the level of pay of any workers. The Minister may make an Order enforcing the recommended minimum remuneration and other conditions of employment.

Among other recent relevant legislation there was a Trade Unions Ordinance, cap. 91 (now repealed), A Factories Ordinance, No. 33 of 1952, making provision for the health, safety and welfare of persons employed in factories and other places, with provision for the appointment of Inspectors (along the English pattern), a Workmen's Compensation Ordinance, cap. 94, etc. Otherwise the pre-independence laws relating to commercial and industrial matters are a mixed and oddly assorted bunch, e.g. Trade Marks, cap. 180, Weights and Measures cap. 277, Pawnbrokers cap. 189, Bills of Exchange, cap. 195.

These few laws usually reproduce English law. It is noticeable that they are reraly amended locally, even if they have been amended in their country of origin.

5. WHAT IS BEING DONE NOW TO ADD TO THE RELEVANT LAW.

Up till 1951 there was little legislation on these topics. Since the coming of responsible African government in 1951 there has been a certain measure of revision of the laws; whilst since independence in 1957 there has been initiated a complete overhaul of the legal system. Here an interesting contrast can be made with Western Nigeria and its experience. Western Nigeria is in many ways comparable economically and politically to Ghana; and there has been in existence for some years now a Law Revision Commission under the chairmanship of a former Chief Justice of Nigeria, Sir John Verity. The Commission has been engaged on the task of bringing the Region's statute law up to date. The method it has adopted is to incorporate, so far as possible, the most recent developments of the law in England into regional Laws. Thus the land law of Western Nigeria has been brought roughly into line with that of England through the adoption of most of the 1925 legisla-

tion. The task of the Law Revision Commission has now been completed to the extent that the Regional Government is in a position to repeal the general provision in its laws that the English common law, doctrines of equity, and statutes of general application in force in England on 1st January, 1900, shall constitute the foundation of the law of the Region.

The process of law reform in Ghana has been more *ad hoc*. The company law of Ghana is now being examined and revised by a sole Commissioner, Professor Gower of the University of London. The patent, etc, law is similarly under revision by a Canadian expert. The law of succession is being examined by a commission under the chairmanship of Mr Justice Ollennu of the Ghana Court of Appeal. The law of trades unions has been radically affected by the Industrial Relations Act, 1958, which set up a novel pattern of trade union structure and activity for the country, incorporating features derived from the laws of the United States and Israel as well as from other non-English sources. Here another contrast with the progress of law revision in western Nigeria can be noted: in Ghana the law reformers are showing themselves much more eclectic in selecting the new law that they apply to Ghana; whilst in western Nigeria they seem content to look to the English legal system for guidance.

There are many gaps in the modernization of the commercial and industrial law of Ghana. The contract law has not been revised up to date; and the Statute of Frauds, for example, is still in force in Ghana. The law of agency, the law relating to sale of goods, bills of exchange, insurance, carriage of goods by sea and air and land, partnership, etc, could all do with some modernization in line with the rapid growth and complication of commercial activity in the civilized world during the last 50 to 100 years. This is one aspect of the reception of English law unaccompanied by subsequent receptions of amending legislation.