LAND, CHIEFTAINCY, AND POLITICAL STABILITY IN COLONIAL GHANA

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Introduction

This paper draws attention to the interrelationships of colonial policies on land, chieftaincy and political stability and aims at an examination of the colonial developments which culminated in the passage of the Native Administration (Colony) Ordinance of 1927. Only landmarks in colonial legislation such as the 1927 Ordinance are used to illustrate the main point of the paper, and also to emphasize the essential unity of policies in the three areas. It is not intended here to suggest that these three policy areas could be seen in isolation from other colonial concerns but rather to illustrate the essential unity of purpose that underpins public policies in general and thereby links the goals of one policy to the other.

The Ghanaian economy and society before the imposition of colonial rule may be described simply as pre-capitalist. British colonial rule effected substantial changes in these related sectors. The result was the development of a new mode of organising production and distribution as well as the emergence of new social groups. Such changes were not just different from their antecedents. They were also opposed to them in so far as their underlying orientation, interests and norms were antithetical.

Of particular import was the growing opposition to the traditional structure of power which the nascent social groups represented and often demonstrated rather vociferously. It soon became clear to the colonial regime that if such opposition groups were left unchecked, their activities might culminate in the demise of, or drastic modifications in, existing native institutions - in particular, chieftaincy and that could jeopardise the life of the colonial regime itself.

To forestall this, the colonial regime committed itself almost irrevocably to the defence of chieftaincy, in particulat, but also to chiefs[1] as a specific social group. The chain of colonial ordinances on chieftaincy was designed to achieve this stability. That is, colonial laws on chieftaincy were motivated by the need to contain the ever rising social discontent which increasingly threatened the position of the chief. Ultimately, therefore, the stability of the social order in which chiefs constituted the leading social group became a primary concern of the colonial regime as well as of the chiefs themselves. Both of them were bound together by a common interest in communal land tenure. Therefore, the colonial regime did at the same time act to sustain communal land tenure in spite of the overwhelming evidence of change toward freehold.

British Colonial Jurisdiction

Colonialism implied the imposition of some aspects of the culture of the colonising power on the colonised society.[2] For instance, the continued investment of British capital in the colony would also involve the transfer to the colony of established British legal ideas, concepts and notions of property rights as guides to public policy in the colony. Even before 1874, when the British proclaimed Ghana as a colony, an Order in Council of 1856 had laid the foundations for the systematic reshaping of local norms, customary laws and practices. Apart from extending the jurisdiction of the Supreme Court and the Judicial Assessor beyond the confines of the British forts, it also provided for the administration of native law and custom. Among the subjects that came within the competence of the English courts were those dealing with land and its products.

The Native Jurisdiction Ordinance of 1883 which, with very little change, remained in force, for 44 years, ushered in an era of greater colonial intervention in the local politics. Under it a number of bye-laws were made which defined the rights and responsibilities of native authorities (that is, chiefs and their councils) in the matter of royalties which were to be charged on certain farming enterprises and mining operations. These rights and duties of native authorities were amplified in the Native Jurisdiction (Amendments) Ordinance of 1910 to include the

management of unoccupied lands, conservation of forests, regulating the mining of gold and other minerals, and proper cultural practices.

It is significant that this Ordinance dealt with land matters. The background to it is that the period between 1874 and 1883 was, indeed, one of considerable economic activity involving overseas (mainly British) mining concessionaires and speculators as well as traders in rubber, palm kernel oil and kola. From the correspondence of W.A. Cuscaden (Civil Commissioner for Tarkwa) to Governor Sir Samuel Rowe,[3] we learn of a veritable scramble for mining concessions in the Tarkwa area (of the present Western Region). In all, five gold mining companies were operating in the Tarkwa area alone and two others in the Appolonia and Ankobra areas (of the same region).

According to Cuscaden, this scramble had induced such an indiscriminate granting of concessions in these areas that "there is hardly a square mile in the province of Apinto (i.e. the old Wassa District) which had not been rented out". The confusion arising from indiscretion in the grant of concessions had already created "the land question" and jeopardised the rights of both the chiefs in the district as well as European companies operating there. To bring the situation under control, he had urged the formulation of rules and regulations "for the better guidance both of the European and the native landowners", and to protect the proprietary rights of indigenous miners and

cultivators.[4] It is clear therefore that communal land tenure was being disturbed even during this early period.

This situation stood in sharp contrast with that in the eastern part of the colony where no precious mineral deposits were then known to exist. In the latter, the oil palm, rubber and kola were exploited in their natural state and the land tenure was apparently undisturbed. There was therefore no "land question" yet, and the colonial regime had no reason to be anxious about the tenure. Rather it was anxious to keep existing trade routes open in order to facilitate the flow of the trade in those products. By the 1890's, this policy had paid off handsomely,[5] mainly because British capital was restricted to the marketing, rather than the production, of the commodities in question.

Nonetheless, the colonial regime was compelled to give serious thought to the land question as a burning issue in colonial development, generally, because elsewhere in the colony British capital was active and needed protection. As observed by the West Africa Lands Committee (WALC),[6] the 'gold rush' in the colony had had a beneficial effect on the London stock market and there was, therefore, an urgent need to inject order into the land market of the colony in order to avoid panic on the London stock market. The proposed solution to the then growing anarchy in land transactions was the Lands Bill of 1897. The objectives of this Bill were succintly stated in its preamble. Among other things it took cognizance of the fact that "the uncertainty of native tenure is

calculated to retard the development of the Colony and noted therefore that

> it is expedient to provide for the proper exercise of their powers by those entrusted with the disposal of public land and to prevent the improvident creation of interest therein and rights thereover, and to facilitate the acquisition of public land by private persons on proper conditions and to decide upon the validity and scope of claims founded upon grants of lands, minerals or other concessions alleged to have been already acquired from native chiefs or other persons ...

Governor Maxwell summarised the spirit of the law when during the second reading of the Bill he stated:

> It is an effort to provide a simple method of obtaining a good title to public land reserved for certain purposes, of dispensing with the tedious process of vesting it in trustees by deed. (Emphasis mine)[7]

It might be argued, therefore, that the purpose of that bill was simply to apply directly English legal precepts to land transactions and modify customary laws relating to land rights in order to ensure "a permanent heriditable, transferable right of proprietorship which the Supreme Court will enforce".[8] That bill could not become law; but the motive behind it was clear enough.

In addition to Ordinances passed in 1856 and 1883, the Supreme Court Ordinance of 1876 also played a crucial role in subordinating Native law to English law, and thereby facilitating the processes of

change in the social and economic structure of colonial Ghana. Section 14 of this Ordinance imposed English common law, doctrines of equity and all statutes "of general application" then in force in England as from July 24, 1874 on the Gold Coast Protectorate i.e., the Western, Central, Eastern and the Volta Regions of Ghana. And even though Section 19 recognised the primacy of indigenous law and custom in matters affecting the indigenous people, the superiority accorded English ideas of justice and morality nullified this formal recognition. It effectively established what may be described as a dual system of laws in which the English one dominated. It was probably because of the operation of this lopsided dualism that the then Chief Justice, Sir W.B. Griffith, could express the view that "the tenure of land can vary with the status of the owner" because if land was sold to an European it automatically ceased to be governed by customary law.[9]

This dual legal system and Sir William's legal opinion should be understood against a background of considerable economic activity and consequent changes in the structure of landownership, however minimal the changes were at the time. For example, the scramble for concessions and the attendant insecurity of title experienced by European concessionaires had already prompted the enactment of two Land Registry Ordinances in 1883 and 1895 to enable those who had

acquired concessions to register their interest in such acquisitions. But it also meant that the failure of the 1897 bill left pending the problem of security of land titles for expatriate concessionaires. To provide an extra measure of security for such European investors, the Concessions Ordinance of 1900 was enacted to "institute a machinery for giving protection to foreigners seeking title security in respect of interests in lands acquired by them".[10] This law went a long way to restore the confidence of foreign investors in land transactions. The effect was spectacular. It gave a fillip to the scramble for both mining and timber concessions in the colony[11]—acquisitions which conferred rights entirely contradictory to those known under customary law. To all intents, therefore, freehold interest was on the ascendancy, and private property in land was gaining roots as part of the overall growth of ideas and convictions about individualism which was occurring in civil society. Subsequently they would become part of the consciousness of the people: the people would develop a "land consciousness" determined by the ideology of individualism which was (and is) distinct from any that may have prevailed in pre-capitalist Ghana.

In the gradual process of change toward individual land ownership the courts had a specific role to play. Through their interpretation of the law they would affirm the reality which the law was meant to legalise and promote; and they would not act in any manner that might negate this immanent purpose.

Therefore in relation to land tenure, the courts would as much as possible uphold the nascent freehold interest in land without forcing a premature rupture in communal tenure. But as I will argue below, decisions of the colonial courts would always reflect the particular social and political imperatives of the time. The laws they were called upon to administer were no exception to this. Sir William was, therefore, simply giving legal affirmation to social reality when he ruled in the much quoted Lokko versus Konklofi case of 1907 that the occupant of the disputed land was occupant in "fee simple". Evidently the urge to acquire private property in land had become strong and widespread under the impact of the exchange economy.

Traditional Order Undermined

In his discussion of pre-capitalist economic formations - "where landed property and agriculture are the basis of the economic order and where the economic object is therefore production of use value" - Marx points out that the fundamental condition for one's possession of communal property rights in land is one's membership of the communal group.[12] But more especially, "The prerequisite of the continued existence of this community is the maintenance of equality among its free self-sustaining peasants, and their individual labour as the condition of the continued existence of their property."[13]

This statement agrees with what Rattray found among the Asante. He points out that before settled agricultural life, "every member of the tribe had equal rights to wander over and hunt upon the land which belongs to the group".[14] And not even the development of commercial agriculture and the consequent development of the member's usufructuary interest would negate the allodial title of the community which was vested exclusively in the stool. It merely qualified it.[15] This was the case because the right of the citizen, as Asante said, derived from his citizenship and was not transferable as it affected the entire cosmological and political basis of the native state. It is to maintain the religious and constitutional unity of the communal polity as well as the sovereignty of the stool that traditional jurisprudence forbade alienation even of the usufructuary interest in land to outsiders.[16]

Colonial rule disturbed this natural unity and stability of the communal polity. Its first major point of impact was the economic basis of the polity - land, which was the objective condition of labour of members of the community. European mining activities, as has been pointed out above, pioneered the process of turning land into a commodity. This process ran contrary to the basis of traditional polity. Its mechanisms for ensuring the natural equality, unity, stability and survival of the members which were bound up with communal tenure, were accordingly disrupted. Thenceforth the social

structure began to undergo gradual changes[17] in accordance with the emerging new relations to productive property, including land and capital in the gold mining industry. That is, communal land tenure could no longer serve as a firm religious and political basis for the unity, stability and survival of the traditional order: it was no longer exclusively communal.

In those changing conditions not all members of the community would own their labour, because "Ownership of one's labour [which was] ..... mediated through the ownership of the conditions of labour - the plot of land, which is itself guaranteed by the existence of the community"[18] could no longer be entirely sustained. Many lost their citizenship - in the traditional sense; and a redefinition of citizenship began to emerge. As the basis of citizenship in traditional society was thereby being undermined the security which that order offered its members weakened correspondendingly. In particular, the new stratum of property owners that was emerging would develop a more national (i.e. Ghanaian) outlook and aspiration such that its members would be acting in opposition to the claims of the traditional order - especially, against all those, including chiefs, who would continue to exercise political and economic power on the basis of the old order. The growth of the cocoa industry would push this process farthest.

Commercial Agriculture and Social Conflict

The development of commercial agriculture greatly appreciated the value of lands in the forest belt, and thereby produced new and more powerful interests in land. For instance, between 1900 and 1915, the growing importance of the palm oil industry had attracted an additional wave of European firms to acquire palm bearing lands. In addition to the rather extensive acquisitions for mineral and timber exploitation, many more large tracts of land were acquired outside the ambit of the Concessions Ordinance of 1900, and for as long as 99 years. In the process, many chiefs abused their allodial title to the lands of their 'subjects'. During the 1920 - 1940 period this development was intensified by the stupendous growth of the cocoa industry, in particular as many migrant farmers from other parts of the country 'invaded' the cocoa belt to compete with the local people for land. Chiefs responded to this sudden expansion of the market for land by doing active business in land sales. They either made outright sales of communal lands to such migrant farmers; or they rented then out under various tenancy arrangements.[19]

The effect of this new development on communal land tenure was severe. For invariably both migrant and 'subject' farmers developed a permanent interest in their lands such as would transcend that of a mere user. The usufruct was enhanced to incorporate unfettered right to alienate their farms, houses and the land itself. This development

was so glaring that even the WALC (with its remarkably conservative outlook) could not but observe that the "perpetuity of tenure" enjoyed by both subject and stranger farmers had developed all the attributes of a freehold.[20] By and by, prospective Ghanaian landowners have come to prefer outright purchase of land backed by a written document. They have developed a "land consciousness"; and a "new individualism" which is distinct from the traditional version has gained root among them.

The threat this development posed to the traditional order was quite obvious to chiefs and their elders. For example, the Akim Abuakwa Paramountcy had been so alarmed by the rampant sale of stool lands to stranger farmers that it had tried to restrict it. When that failed it contented itself with asserting mere "jurisdictional rights over the lands so alienated".[21] It was obvious that the development was (and still is) irreversible.

Commercial agriculture had political effects as well. According to Asante, traditional jurisprudence requires that stranger farmers do recognize local custom, and transfer their allegiance to the authority of their host chief.[22] On the contrary, the migrant cocoa farmers quite often lived outside of the authority of their host chief - especially if they lived in urban environments like Agona Swedru[23] or congregated in such large numbers as the Krobo who had moved into parts of Akyem Abuakwa territory were noted for. This development considerably weakened the authority of the chief.

Ultimately, however, it was the multiple and widespread conflict which the changes in agriculture induced, especially around many chiefs in the colony, that caused quite a wave of concern in official circles. There were, for instance, boundary disputes between traditional states because the boundaries of lands which had been sold happened to overlap owing to their vagueness. Stranger farmers became embroiled in protracted land disputes with their hosts concerning their interest in the lands they had cultivated for years,[24] or over the size of the land rents charged by the communal lords of the land,[25] or over questions of allegiance.[26] These posed a threat to the stability of traditional society.

More serious developments were however the cases of conflict which erupted between chiefs and their subjects, and which often led to destoolments.[27] Official colonial reports indicate that this was widespread during the 1919-1924 period. While from 1904 to 1908 there were only seven cases of destoolment, these had reached forty-one between 1919 and 1924. "In the Central Region (for example) practically the whole of the Paramount Chiefs, with exceptions that can be numbered on the fingers of one hand, have all been recently destooled or are on the point of being destooled by their people."[28] The Eastern Region was not immune to this social plague either.[29] Invariably, the cause lay in the unauthorised sale of communal land[30] and the reckless dissipation of the proceeds from such sales.[31]

The active elements in those anti-chief movements were subjects who had themselves become wealthy beneficiaries of the cocoa boom. They had become prominent members of the Asafo and, in some cases, also spearheaded the formation of secret societies which were originally restricted to the coastal towns and villages of the Colony. Once formed, they (the Asafo) were employed as a weapon against corrupt and unpopular chiefs.[32] And even though those agitations did not directly question the legitimacy of chieftaincy, they nonetheless indicated the growth of potentially antagonistic contradictions within the social structure. Hence the expressed concern of both chiefs and the colonial regime.[33] The proposal by the WALC for checking the development of freehold and for strengthening native customary law[34] must therefore be understood against this background of the need to sustain the communal social structure and thereby safeguard the colonial order which rested on it.

Decline of Traditional Authority

The chief's authority was the foremost casualty of these changes: it waned as the subjects' rights in communal land came under immense pressure or were changed, and as the ideas and norms they held about land rights also began to change. As Asante has explained, the individual member's right to use part of the communal land was closely bound up with his obligation to give certain services, including

allegiance, to the political sovereign. Some of those obligations were regarded as "indica of the stoll's dominium". As the usufruct acquired the attributes of a freehold, chiefs found themselves increasingly unable to enforce the performance of those traditional obligations.[35] At the same time, both stranger and subject farmers no longer felt obliged to render any of those types of obligations to the chief after payment of the normal customary fee, because land had become a commodity. It had therefore ceased to function as the basis of political obligations.

The sale of large tracts of land to migrant farmers from the same ethnic group often compounded the crisis of authority facing chiefs; for very often large concentrations of such migrant farmers holding contiguous farm lands would continue to hold allegiance to the stool of their home polity. This was the case where the Paramount Chief of Akwapim periodically asserted jurisdictional rights over Akim Abuakwa lands bought and inhabited by Akwapim migrant farmers. In similar instances like the Gomoa migrant-farmers in the Agona area, the migrant-farmers would secure the leadership of their own chiefs in litigating against their host chiefs over alleged exrortionate rents. The cummulative effect of these changes on the economic and social structure of society was in fact a political crisis for chiefs. The need to ensure social peace therefore became a pressing concern for the colonial regime as the twentieth century wore on.

A Question of Stability

At the same time as the authority of chiefs waned, it was clear that those chiefs who had been able to make beneficial use of their fiduciary rights in land had been able to consolidate their political power and had become a formidable force for communal unity and stability. This was particularly so with a number of chiefs in the cocoa belt.[36] It was reasonable, therefor, that the colonial regime should refrain from any acts which might precipitate the collapse of communal land tenure on which chieftaincy thrived. In fact, colonial policy makers and their advisers were aware of the interconnections between land tenure, chieftaincy and political stability: that "Native institutions ... are rooted in the land". In a more forthright statement of this fact one colonial official had declared: "Native rule depends upon the native land system. They must stand or fall together ... the native system of land tenure must be preserved at all cost".[37] Hence the colonial regime's permissive - often contradictory - attitude toward communal tenure in spite of its obvious conflict with the free market economy. Any understanding of the logic of colonial land policy requires a thorough appreciation of the key role chiefs played in ensuring a stable colonial rule.

Asante[38] has attributed this logic partly to a laissez-faire ideology which permeated colonial social policy, and partly to the positivist intellectual orientation of British trained judges

who would not base their interpretation of the law on the emerging social reality but would rather passionately uphold a dying ideal social type. I would however argue that in the conditions of increasing social tension the question of stability would take precedence over all others.

As the anti-chief movement gained momentum the question that demanded prompt answer was how to stabilise the political order. Buell[39] provided the answer. He argued that "As long as the land is held for the people and distributed by the chief, his authority has an economic sanction, and his people have self-sufficient means of livelihood within the boundaries of the tribe. Thus anchored the bulk of the population is permanent rather than nomadic - the group is held in tact". He explained that this would stabilise the rural population who were a vital political resource for chiefs. A stable communal land would ensure "a contented peasantry living on the soil". The opposite of this would be a dispossessed peasantry that would, above all, become migratory with calamitous consequences for native administration[40] and for tribal society generally.[41] There was also the economics of this solution. A stable peasantry would ensure the production of vital cash crops at a cost lower than plantation production.[42]

However, maintaining communal land tenure did not imply freezing the system in its classic form. Within its mould a class of peasant producers with proprietary rights in land would be encouraged for

political as well as economic reasons.[43] This is why, as stated above, there was much enthusiasm for the peasant economy on both political and economic grounds. Accordingly, even though it was thought necessary to protect customary law as an effective mechanism of social control, the colonial political economy demanded that customary law should, where necessary, be made to serve the interest of the peasant farmer. That is, it should be possible at all cost for him to own the land he has tilled for many years.[44]

The Concession Ordinance of 1900 had been based on the need to protect communal tenure, the peasant's proprietary interest and the capitalist investor's need for security of title, a piece of legislation that contained within itself three contradictory interests. In a letter addressed by the Deputy Governor, W.C.P. Robertson, to the Secretary of State and dated April 30, 1913, this top colonial official had dilated extensively on these contraditions.[45] However his commitment to the defence of all three interests would not permit him to propose any new measure that would resolve this contradiction openly in the interest of one of them. The colonial purpose dictated that the contradiction be sustained.

Meanwhile social stability ought to be maintained. To avoid any precipitous changes that could seriously jeopardise the traditional social balance, therefore, Buell[46] proposed that the acquisition of proprietary rights by the peasantry be done through

the judicial process rather than by legislative fiat. Accordingly, in colonial Ghana the orderly transition from communal land tenure to freehold was secured by the courts - in accordance with Buell's prescription. In ensuring this, the courts demonstrated a shrewd political sensitivity for social stability. What appears to Asante[47] as three phases in judicial attitudes to the impact of the economic and social changes were, therefore, judicial responses to the political imperative for a stable society during various stages of this historical change in the country.

Concerning the colonial objective of perpetuating a peasant society in the country, the Land and Native Rights (Northern Territories) Ordinance of 1927 (as amended in 1931) is quite significant. This law vested all lands in the 'North' in the colonial governor and also affirmed that the subjects of the various communities would be entitled to their small plots of land through the usual customary channels. By the latter provision, this law ensured that the authority of the chiefs and power of customary law would remain part of psychological makeup of the peasantry.

This law is classic because it manifested the colonial administrative doctrine of governing the colonised peoples through their own native institutions. First: in order to avoid creating a landless peasantry the colonial governor had to prevent the alienation of large tracts of land. This in turn ensured that the rural population was stabilised and made available for maximum use -

in the case of the North as cheap seasonal labour in the mines and later on the cocoa farms, both in the southern part of the country. Second it ensured that the population would remain effectively under the discipline of their own chiefs and the sanction of customary law. On the whole the law assured the colonial regime the requisite social condition - that is, social peace - for realising the colonial purpose. In the words of Buell,[48] "the maintenance of the tribal group and tribal institutions is necessary for the maintenance of native law - an amazingly intricate but in most cases sensible system which controls practically every aspect of native conduct". But the greatest merit in maintaining native laws and institutions, according to Lugard,[49] lay in their ability "to adapt ... to changing circumstances".

It is this doctrine of colonial government through native institutions that Lugard so assiduously elaborated, perfected and gave political substantiation to in his The Dual Mandate In British Tropical Africa as the doctrine of Indirect Rule. According to a report on the former British colony of Cameroons "The belief which underlies this policy is that every system of government, if it is to be permanent and progressive, must have its roots in the frame-work of indigenous society".[50] And as it was recognised that chieftaincy enjoyed solid native roots, and that the chief was the "de facto and de jure ruler of his own people"[51] colonial government had to be based on this native institution. Meanwhile the blazing discontent which was engulfing chiefs could not be ignored. In order

to avert possible social collapse the colonial regime had only two options: chiefs had to be vested with appropriate legal authority; and if their authority was threatened it should be prepared to demonstrate superior force, where necessary.[52] Or else it "shall be obliged to deal with a rabble, with thousands of persons in a savage state, all acting on their own impulses, and making themselves a danger to society generally".[53] The colonial regime opted for the policy of containing social malcontents rather than confrontation with them. In this way, it was able to protect chieftaincy.

The two major chieftaincy-laws enacted in 1904 and 1927 served this purpose. The Chiefs Ordinance of 1904 provided for the confirmation by the Governor as to whether a chief had been either installed or destooled in accordance with customary law. Despite the nationalist charges of official interference at the time, the real purpose of this law was to make the position of the chief unassailable in law since the Governor had the final say in key matters concerning chieftaincy. Apparently the situation of rampant destoolments was brought under control by this law; so that the colonial regime would no longer consider it urgent to enact a new law which would have given chiefs powers to enforce their own judgements, because there was peace and prosperity in the colony.[54]

By the 1920's, however, the era of social peace was over. In particular the anti-chief movements had resurfaced and become widespread, as the figures quoted at page 45 above confirm. Added

to this was the formation in 1920 of the National Congress of British West Africa by the urban-based educated elite of the colony in conjuction with their counterparts in the other British West African colonies. Among other things, the Congress made claims which threatened the political position of chiefs as a leadership group recognised by the colonial regime. Its members earnestly disputed the claim to leadership by chiefs. They regarded themselves as more qualified and competent than chiefs to offer the kind of enlightened leadership required in a modern society. The colonial regime was aware of the new developments and the obvious threat they posed to the authority and prestige of the chief. Chiefs were equally aware of the deterioration in the social situation. But they were above all more anxious about what appeared to be a show of benign indifference from the colonial government; and they did not hesitate to complain to the colonial government.[55]

In the light of all these, official action in defence of chiefs, and of chieftaincy in particular, could no longer be deferred. The governor of the colony, Sir Hugh Clifford, attempted to grapple with the problem of political stability created by recent developments in the colony. He, for the first time, increased the representation which chiefs had enjoyed on the colonial Legislative Council. Following the so-called innovation of 1911, when one chief had been appointed to the Legislative Council, he succeeded in raising to 3 the number of seats for chiefs as unofficial members. This brought

them at par with what the educated members of the Congress already enjoyed - also as un-officio members.[56] It was, however, the 1925 Constitution that gave a firm indication of the colonial government's resolve to protect chiefs and chieftaincy against the growing social menace. It enhanced the representation of chiefs as a group on the Legislative Council and also provided them with a framework for unity and concerted political action through the Provincial Councils which it established. Following this, chiefs showed a stronger inclination than before to cooperate with the colonial government in safeguarding the institution of chieftaincy. The Native Administration (Colony) Ordinance of 1927 was the result of this demonstration of mutual confidence and support.

This law did what the Native Jurisdiction Ordinance of 1883 and the Chiefs Ordinance of 1904 had failed to do. It recognised for the first time the State (Oman) Councils and the relative authorities of the Paramount Chief and sub-chiefs. It further defined the jurisdiction of the state councils as tribunals of first instance. It provided that state councils could "determine all causes or matters civil or criminal arising from within the State wherever such causes or matters are governed by the Native Customary Law" of the state. And the Provincial Councils were constituted into courts of appeal. Their decisions in land appeals were final. They could also adjudicate on disputes of a constitutional nature relating to title, office of a stool, etc., arising between two paramountcies of the same province.

In sum, therefore, the 1927 Ordinance substantially strengthened chieftaincy. Especially, it considerably increased the prestige and power of chiefs by transforming the Provincial Councils which were mainly electoral bodies under the 1925 Constitution into administrative and judicial organs of the colonial state. And it implied a more effective role for chiefs as agents for ensuring law and order in the colony. In this connection, the special care that was taken to enhance the powers of native tribunals under the Native Courts Ordinance of 1944 is worthy of note,[57] because to have failed to strengthen the native courts would have been a political mistake.[58]

Conclusion

Governments thrive on the support of definite social groups which are usually the most powerful, just as much as such powerful social groups are able to maintain their dominant social position only with the support of governments. But neither governments nor hegemonic social groups operate in material vacuum. They are based on well organised economic resources. This is what sustains both of them. And ultimately, the material base is the factor that firmly links governments to the leading social groups which give them ultimate political support. If their interests should coincide in th mode of organising the production and distribution of the social wealth, they would tend to act in concert at the level of so social policy. Otherwise they would contradict each other at the

same level and create the conditions for fundamental social changes. If the former should prevail, the purpose of the law would be to ensure that the minimum social conditions exist for the production of material wealth and the enhancement of spiritual culture. In effect, the reciprocal relationship between governments and leading social groups is predicated on the need for social peace as a prerequisite for effective production and distribution. The law is more or less the embodiment of specific interests and goals such as these.

In colonial Ghana this congruence of interests occurred between the colonial regime and chiefs. The nexus was land, the most important factor of production. For the chief, land provided the material basis for his authority as well as the sovereignty of his stool and polity. And for the colonial regime, it was the source of vital but cheap minerals and agricultural products needed for industrial production at home. Thus even though colonial rule was initially regarded as a violation of the integrity and autonomy of the traditional polity, chiefs soon felt obliged by the need of material aggrandisement and later for social survival to accommodate the 'intruders'. For the colonial regime it was clear that the success of the colonial mission depended on how successfully a congruence of interests could be realized between the colonial power and the dominant social group of the colony. The mutual benefit which would accrue from this congruence of interests was

summarized by Lugard as follows:

> The forces of disorder do not distinguish between them (i.e. chiefs and the colonial authority - K.N.), and the rulers soon recognise that any upheaval against the British would equally make an end of them. Once this community of interest is established, the Central Government cannot be taken by surprise, for it is impossible that the native rulers should not be aware of any disaffection.[59]

Law, as indicated above, is an embodiment of the interest, aspirations and will of the block of social groups that is dominant. In colonial Ghana therefore the law would be made to consolidate not only the colonial regime but also chieftaincy. Consolidating the allied forces of domination in colonial Ghana implied consolidating the prevailing mode of production in which land was the most important factor of production, and in which the land and the labour of its people were combined to serve the interest of Britain. And it further implied consolidating the existing relations of production in which peasant producers were preponderant and could at the same time be used either to produce cash crops cheaply or as cheap unskilled labour in the mines. It would above all ensure a compliant people who submit to other colonial exactions with little or no protests. The fascination of colonial officials with the peasantry stemmed from these considerations. In fine, colonial laws were not neutral. They

were systematically guided, in their evolution and function, by a conjucture of values, ideas and interests. In the present case, those ideas, values and interests sustained the centrality of commmal land, chieftaincy and customary law as the pillars of stability within the colonial social order. To this end, colonial laws did function with considerable unity of purpose. In pursuit of this goal the law was directed against social malcontents: it functioned on the side of the forces of law and order. The colonial regime could count on the enthusiatic cooperation of chiefs to attain this goal because it was in their interest as well to sustain the status quo.

NOTES AND REFERENCES

1. Refers generally to key political office holders at various levels of the traditional power structure but especially to paramount chiefs and those immediately below them who played an important role in the colonial political administration.

2. This is the argument in Kwame Ninsin "Christianity, education and the culture of domination in colonial Africa", paper prepared for the Workshop on Christianity in Africa: Missionaries and Change held in Geneva, 20-22 August, 1984 by The African Society of Social Sciences. See also Carnoy, Martin: "Education as Cultural Imperialism". New York: David Mckay Co. Inc., 1974.

3. In British Parliamentary Papers. 60 1874-1883. p. 549.

4. Ibid.

5. Dispatch from Governor Sir W.B. Griffith (KCMG) to the Colonial Secretary, 12 June, 1983. (C. 7225).

6. This Committee had been set up in 1912 by the British Colonial Office to examine the laws then in force in Britain's West African colonies and Protectorates relating to land and land rights and to make recommendations concerning the necessity, if any, for amendments.

7. Proceedings of the Gold Coast Legislative Council. Quoted in Correspondence and Papers, West African Lands Committee.

8. Cd. 5103. Quoted in Lugard, Lord F.D. The Dual Mandate in British Tropical Africa. London: Frank Cass, 1965. p. 305.

9. Quoted in West Africa Lands Committee (Africa West) N. 1048 Draft Report. p. 40.

10. Bentsi-Enchill, K. Ghana Land Law. Lagos: African Universities Press, 1964. p. 334.

11. Ninsin. "Social and Political Pressures on land rights in Ghana: An Overview." In Brown, C.K. and Thakur, A. (eds.) Rural Sociology of West Africa. Heinemann; forthcoming. p. 6 of mimeo. Dept. of Political Science, University of Ghana, Legon.

12. "Economic Manuscripts of 1857-1859" in Marx, K. and Engels, F. Pre-Capitalist Socio-Economic Formations. Moscow: Progress Publishers. p. 90. See also Asante, S.K.B. Property Law and Social Goals in Ghana, 1844-1966. Accra: Ghana Universities Press, 1975. pp. 4 - 11.

13. Marx. ibid.

14. Quoted in Asante. Op. cit. p. 4.

15. Asante. op. ci. pp. 4 - 5.

16. Op. cit. p. 7.

17. For evidence concerning this trend which had produced a landless class of workers, see the Sixth Monthly Report by Mr. Henry Higgins to the Administrator of the Colony. In British Parliamentary Papers. Op. cit.

18. Marx. op. cit. p. 91.

19. Hill, P. The Gold Coast Cocoa Farmer. London: OUP, 1956 and The Migrant Cocoa Farmer of Southern Ghana. Cambridge: CUP, 1963, provides far-reaching findings in this connection.

20. See Africa West No. 1046 (Draft Report) para. 301-302.

21. Asante. op. cit. pp. 35 - 40.

22. Op. cit. pp. 7 - 8.

23. Owusu, Maxwell. Uses and Abuses of Political Power. Chicago: UCP. pp. 81 - 82.

24. Kom, Enock D. "Land Tenure Reform" in Amissah (ed.) Title Registration: Land Resource Management and Land Use Policy. Kumasi: LARC/UST, 1980. pp. 105 - 106.

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27. Busia, K.A. The Position of the Chief in the Modern Political System of Ashanti. London: OUP, 1951. pp. 106 - 109.

28. Quoted in Buell, R.L. The Native Problem in Africa. London: Frank Cass, 1965 (second impression). p. 786 fn. 6.

29. Kimble, D. A Political History of Ghana 1850-1928. Oxford: Clarendon Press, 1963. pp. 470 - 472.

30. Danquah, J.B. Akan Laws and Customs. London: Routledge, 1928. pp. 212 - 222.

31. Busia. op. cit.

32. Kimble. op. cit.

33. For instance see Busia. op. cit. pp. 105-109 and Kimble, op.cit.

34. West African Lands Committee (Africa West) N. 1048 Draft Report. pp. 315.

35. Asante, pp. 4 - 11.

36. Examples of such chiefs are cited by Kimble. op. cit. pp. 471 - 472 and Owusu. op. cit. p. 87.

37. Quoted in Buell, op. cit. p. 762.

38. Asante. pp. 29 - 35; 164 - 165.

39. Buell, pp. 751 - 850.

40. Buell. p. 774.

41. Casely-Hayford, quoted in Buell. p. 802.

42. Buell. pp. 772 - 773.

43. Lugard. pp. 294 - 296.

44. Lugard. p. 312.

45. In letter from the Deputy Governor W.C.P. Robertson to the Secretary of State dated 30th April, 1913. Quoted in West African Lands Committee Correspondence and Papers. pp. 80-82.

46. Buell, p. 818.

47. Asante, pp. 40 - 62.

48. Buell. p. 720.

49. Lugard. p. 312.

50. Quoted in Buell. p. 717.

51. Lugard. p. 203.

52. Lugard. pp. 203 and 217.

53. Quoted in Lugard, p. 216.

54. Kimble. pp. 467 - 468.

55. Kimble. pp. 490 - 491.

56. See Kimble pp. 433-434 for a discussion of Sir Hugh's thinking on this matter of representation in the colony.

57. For the statistics of cases heard at those courts see Hailey, Lord, Native Administration in the British African Territories. London: HMSO, 1951. Kraus Reprint 1979. p. 214.

58. Statement by the Attorney-General of the Colony. Quoted in Buell. p. 804.

59. Lugard. p. 210.