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The Rise Of British Jurisdiction In Ghana

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THE RISE OF BRITISH JURISDICTION IN GHANA
WRITTEN BY JONQIL VAN

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It was with their belief in me that I was able to take the step in traveling abroad to West Africa. This includes their support while in Ghana, through phone calls and letters.

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ABSTRACT

This paper will present to the reader a history of the evolution of legal practices and the rise of the British jurisdiction in Ghana. It will span from the 1600's to the present day, discussing specific treaties, bonds, and important events that occurred. Its main objective is to prove that at no time did the aboriginal leaders hand over all sovereign right to the British. The jurisdiction and body of law was acquired throughout time at a slow, yet powerful pace that has left Ghana today with a legal system that mirrors that of the Europeans.

INTRODUCTION

From the point in the Europeans landed on Gold Coast the presence of their culture strongly influenced the native Africans. This includes things such as textile and material goods, eating habits and food resources, diseases and health issues, and political and judicial matters. Throughout the centuries inevitably this natives gradually took up many of the customs of these Europeans. Today when visiting the Gold Coast or Ghana one would notice that the lifestyle of the people, though still in native customs and values, has been affected greatly by the Europeans, specifically the British, who for many years ruled the country. British thoughts and ideals have been firmly ingrained into Ghanaian culture.

The purpose of this is to not look at every single aspect of the native culture that has affected by colonialism, for that would impossible. This paper will look specifically at the in which the loss of jurisdiction to British caused judicial practices to transform over the last two hundred years. This paper will analyze four separate time periods. Each chapter will begin with a short briefing of the political state in the particular time period that is been discussed. It will then proceed to analyze crucial event and treaties. The first chapter will give a short history of judicial practices and treaties prior to the year of 1830. The following chapter will examine the time period between 1830 and 1850. This time period is crucial for two key reasons: the work that George MacLean did dealing with jurisdiction had a impact on the next hundred years in the legal system, and secondly, the events that took place, including numerous treaties were well documented allowing extensive research into this era. This paper will conclude by inspecting the time period between 1850, around the death of MacLean, to 1910. The developments made here in the legal system are extremely pertinent. This chapter will show the immense amount of changes and the loss of the chiefs' power, rights and jurisdiction.

This paper will prove by examinations and numerous facts that British legal practices used in the Gold Coast territories, and or Ghana, was gradually acquired, and at times by such moderate, slow, and imperceptible steps that even now many questions of how Ghanaians law came about is not free from doubt and difficulty.

Methodology

As mentioned earlier in my acknowledgments, during a history lecture given by Professor Addo Fening, I made the decision to work from the Bond of 1844 for my individual study project. I had known that I wanted to study something pertaining to law, but was unsure what exactly I wanted to prove. The Bond of 1844 completely intrigued me. The concept of aboriginal leaders handing criminal jurisdiction over to the British seemed out of key. Having just a short explanation on the Bond, I instantly and ignorantly assumed that at that particular point in which the bond was signed, the legal issues and loss of jurisdiction become very prevalent in the everyday lives of the native rulers. What I had failed to see, yet soon learned, was that this bond was in no way the beginning of the rise of jurisdiction for the British, it was just a documented piece that actually acknowledge it. I made it my next goal to fully explore numerous treaties and bonds before and after the Bond of 1844. Having read nearly the entire book Fanti National Constitution by John Mensah Sarbah, I was able to gain a clearer more accurate understanding of not only the Bond of 1844, but also the actual process in which the British went about gaining power, rights, and jurisdiction from the local rulers.

At this point Dr. Eric Quaye introduced me to my ISP advisor, Kwadwo Mensah, a professor at the University of Cape Coast and an active lawyer. After sitting down and conversing with him, I was able to pinpoint exactly what I wanted to do. I had two objectives firstly, I was going to look at how the treaties in the past have affected modern day Ghanaian law, especially criminal law, and secondly, I was going to examine criminal proceedings and the process and act of law today. This was to be accomplished by attending court cases with my advisor.

Unfortunately after meeting with my advisor for the first time I was unable to catch him again for another two and a half weeks. During this time he became extremely busy and was traveling to and from Accra periodically. Having received a letter from him stating that he could not meet for another week I made the decision to travel to Legon and attempt to meet with Mrs. Mensah Bonsu, another lawyer, along with Professor Addo Fening a historian. The day I arrived in Legon was also the day the workers strike began. Many of the professors were not on campus and the libraries were closed. I waited around Legon for three days and was unable to accomplish anything. At this time I returned to Cape Coast to visit with my advisor. This did not happen for yet another week because of his work.

Throughout this time I continued reading books on the history of British jurisdiction along with a couple modern day legal books. I was able to attain my research material through Mr. Afari Gyan, the George Padmore African Research Library, and the Ghana Law School library. By week three I had an enormous amount of information on the history of Ghana Law and a little on modern day law. At this point I met with my advisor for the second time. He gave me a book to read on

criminal proceedings and the name of a few articles that I should find and read, he then headed to court.

In the end what worked for me was research and reading. I had to do a lot on my own and it was talking to various people about my project that led me to where I needed to go for books. What didn't work was waiting around for my advisor. As you read this paper you will see that it in no way resemble my plan and thesis that I had at the beginning of the four weeks. I was forced to change my project into a more historically based Individual Study Project.

I am pleased with my finished project simply because I was able to pull something together. On the other hand I know that had I been able to follow through with my initial plan, that is had everything gone smoother, I would have had a much stronger finished piece that I was thoroughly proud of. I do not in anyway wish to down play this project. I enjoyed all the historical information that I attained, and by all means learned far more than I had planned in this area.

Part One

The Gold Coast Before 1830

It would be nearly impossible to look at how the British influenced and changed the legal system of Ghana without going back in history, prior to what we know now as the “famous” treaties and bonds. For this is the place where change began, not at the signing of such pieces, like the Bond of 1844. Bonds and treaties that were signed in the mid 1800’s were the result of what happened in the past.

First we must look at the definition and motive behind law. Every society finds it necessary to regulate the behavior of its members: to make them stop certain acts that, for reasons obvious to them, are crucial to the upholding of the society. At the same time they must control and make the people of the society perform acts that are considered useful for the public. In other words, rules of conduct must be established in order to ensure the stability of a certain society. These rules come into play in two key ways. Social rules may be created and obeyed through habit or usage, thus rules of tradition constitute one form of control. This would more commonly be seen in an African society. The other way is through jurisdiction and law, a form strongly emphasized within the European society. “The concern of a definition of law is simply to attempt to delineate a legal realm of social control....the task is to state those characteristics that distinguish laws as a specie of norms from other social norms.”¹ To delineate a legal realm of social control through norms, yet the norms that the European settlers knew were different from what the native Africans knew. Thus, upon landing on the Gold Coast, the beginning of constant struggle for power, jurisdiction, and rights began between European settlers and the aboriginal rulers.

Narratives of travelers from the early 1600’s to the 1700’s show that natives at no time willingly submitted to any oppressive measures placed upon them by the Dutch, Danes, or the English. There were many instances when the natives fought back with power against the settlers. One example would be when the people of Elmina took into confinement the Dutch governor and his officers in the castle for ten months. Twenty or so years later in 1681 the English agent at Cape Coast Castle lost eighteen slaves who had escaped into the town. The townspeople protected the runaways and after being threatened by guns from the castle, they formed an army of over seven hundred people, and charged the officers. These are only two of many examples that display the fight for freedom and rights of the natives.

In the late 1600’s the Dutch attempted to execute jurisdiction over criminal and civil matters, and to assume the power of life and death in the coast towns. Prior to this new fight for jurisdiction things had been congenial, but the English began to increase their trade and sought to

¹ Law in Aid of Development, Page 6

build forts and factories. The Dutch became threatened. They began to work against the natives only to weaken trade for the English. This was done by placing harsh punishments on those locals who engaged in any trade with the Dutch competitors. This act failed because of the large sums of money they owed to the local rulers for rent. Thus they could not wholly prevent the natives from trading with other European traders. Although this is one of the first well documented cases in which settlers tried extremely hard to gain jurisdiction and power.

It was in 1753 that the English and the Dutch finally became so aggravated with the constant fighting between the natives over small debts, that they chose to take matters into their own hands. It was written in the Journal of the African Society that,

“The solution of the question of the ultimate control of the Coast was therefore forced on the Europeans by the action of the natives. The existence of these disputes had the further effect of compelling the English to take up the task of adjudication in the general quarrels of the natives. It was obviously a necessary condition to efficient trading on the coast that these quarrels should be settled equitably, and it was from this point of view, and not from any feeling of duty to the native population, the question of establishing a real government over English settlement was first approached.”²

Although many may argue that what the settlers saw and felt they needed to do was inaccurate, and that the Gold Coast not being their home ground, were in no position to move forward, they did. The above quote quite clearly shows the reader exactly what the mind set of the Europeans was.

In the year of 1821 under the rule of the King of England, Sir Charles McCarthy was appointed Governor of the Gold Coast settlements. Upon his arrival he held a public meeting making a statement about the new government and laws of the settlements. He then established petty debt courts at Cape Coast Castle and other trading stations. He selected local merchants and officers who were open to help him, as magistrates. The officers readily tried civil and criminal cases brought to them. The natives took this as an opportunity to collect outstanding debts. (This will be furthered discussed to Part Two)

From this point forward the jurisdiction and creation of laws through treaties and bonds began to increase immensely. It is crucial to take into consideration when reading this history that there are two sides being presented. As seen in the journal article, the European straightforwardly blamed the need for jurisdiction on the natives. They believed that their “barbarous and cruel” practices were beyond help, thus they needed order. The natives on the other hand easily could have made the statement that it was the action of the settlers that caused the disruption. For example the act to causing wars between the natives to increase the supply of slaves.

² The Fanti National Constitution, Page 75

Unfortunately the natives history as not documented as thoroughly nor accurately. Reading this history, one must keep in mind the biases created in history.

Part Two

The Administration of George MacLean

At the beginning of the nineteenth century the British, Danes and Dutch all were extremely active along the Gold Coast. The British and Danes supported the coastal towns, while the Dutch supported the Asante. From 1821 onwards the British openly supported the southern states and took direct responsibility of the administration in the forts. They handed over administration to British traders who were given a £4,000 annual subsidy. The forts were run by a council in Cape Coast elected by British merchants who had inhabited the area for more than one year. The council was led by a president elected by its members. They were instructed to use their authority and jurisdiction only over those living in the forts. They were specifically told to not interfere with the local politics.

By 18453 jurisdiction over the forts had spread out along the coastal states, with the exception of Elmina, and for approximately forty miles inland. This amazing spread was a result of the work of Goerge Maclean, the appointed president of the colonial council. He was introduced into the administration in October 1829 as neutral arbitrator with the goal to better relations between the British and the natives. Maclean realized that sufficient trade and the increase in missionary activities would not exist unless peace and order was established in Ghana. He projected forward with belief that administering a judicial system into the Gold Coast was the most appropriate step to take.

Maclean first great act was to conclude a treaty between the king of Ashanti and the British Government with their allies on the 27th of April, 1831. In the clause, the treaty stated that the king of Ashanti would deposit six hundred ounces of Gold in Cape Coast Castle, and deliver two princes of the royal blood as security into the hands of the Governor for six years in order to keep peace. It is in the second clause that he will see a movement towards British jurisdiction, it states: In order to prevent all future quarrels which might lead to an infraction of the treaty, the following rules and are agreed upon: (a) the path are to perfectly open and free to all persons engaged in lawful comers, and persons molesting traders in any way to be liable to punishment; (b) panyarring to be rigorously punished, and no chief or master to be herd responsibly for the crimes of his servant unless committed with his sanctions or by orders; (c) the King of Asanti renounces all title or right to any homage or tribute from the kings of Denkera, Assin, and others formerly his subjects.¹ The main objectives of this treaty was to secure, protect, and extend trade for the British. It did so by removing all obstacles that reduced trade by lifting regulations that pertained to trading routes. The treaty opened doors inland for the British, giving them not only the security of trade but also the ability to make a move towards colonialism. It is also the first written modification or amendment of the customary laws of the country made after conference with and by the local

¹ The Revolutionary Years: West Africa Since 1800, Page 154

rulers. For that, it is extremely significant and is the starting point for numerous more treaties that came in the near future.

After achieving the Asanti peace agreement that was centered on “rules and regulations for the better protection of lawful commerce” Maclean then designated a British governor at Cape Coast as arbiter of all conferences between the signatories under the form of peace-keeper. Throughout the 1830’s Maclean sought to gain and maintain peace among the southern states chiefs, and to stop human sacrifices, attacks or raids on peaceful traders, panyarring, and abolish slave trading.

As stated above Maclean’s most objective and influential methods to gain what he did. Upon his arrival Maclean left all criminal cases to the local people, yet in 1836 having not felt confident in the present justice system carried out by the aboriginal leaders, Maclean made the decision to either attend cases himself or send a representative from the council to make sure justice was really being served. Gradually he asserted his right to hear all important cases and serious crimes. He also placed magistrates in Dixcove, Anomabo, and Accra, while using the soldiers of these forts as police to ensure that order was maintained.

By the early 1840’s peace had been established and British power and jurisdiction had been introduced and administered in Ghana. Although, Maclean’s judicial power was great the British still had no legal authority. British recognizing this found need to take up direct responsibility of the administration of the forts. As a result, under the recommendation of the Parliamentary Select Committee of 1842, Captain Hill was sent as governor of the forts. George Maclean was appointed judicial assessor. Upon Hill’s arrival he got eight Fanti rulers to sign what has become known as the Bond of 1844. This bond introduced English justice into the Gold Coast territories and abolished such customs as human sacrifice, but stopped short of any direct intrusion in the government of these communities. The Bond of 1844 stated that: 1) the signatory chiefs recognized the power and jurisdiction that had been exercised in their states and declared that “ the first objects of law are the protection of individuals and property.” 2) Human sacrifice and “other barbarous customs, such as panyarring, are abominable and contrary to law.” 3) the customs of the country were to be “molded in accordance with the general principles of British law.”*² Eventually through time Hill got eleven more chiefs to sign this bond.

This sovereignty of the chiefs was still recognized due to the fact that the new jurisdiction granted to the British was limited only to criminal cases, and was to be exercised along side the chiefs. Because Maclean was appointed judicial assessor the practise of British law remained similar to that of the past until his death in 1847. It is crucial to state that because of MacLeans earlier position this was not important as it may seem. The Bond of 1844 simply affirmed the

² The Revolutionary Years: West Africa Since 1800, Page 156

existing judicial situation on paper and recognized Macleans former administration for what it had created.

It is relevant to repeat that at no time did the local chiefs hand over direct responsibility of all judicial matters. The judicial assessors were to act as assistants to the chiefs in cases. Trials were to take place in front of the queens officers and the chiefs of the area. The sentences were carried out by the aboriginal leaders.

There are two extremely important factors that decreased the authority of the chiefs and increased the British power, which is seen quickly after the death of Maclean. First, Cruishank, an Englishman who lived on the Gold Coast for eighteen years and acted as governor for sometime, sums it up quite clearly when he states:

‘Indeed, we had no legal jurisdiction in the whatever. It had never been conquered or purchased by us, or ceded to us. The chiefs, it is true, had on several occasions, sworn allegiance to the crown of Britain: but by this act they only meant the military services of vassals to a superior. Native laws and customs were never understood to be abrogated or affected by it.’³

This is a common error that was made by many of the British. This is an error pertaining to allegiance, an error caused probably unclear notion which many have between sovereignty and independence, and in no way lessened by an imperfect knowledge of the position of a protected person according to local customary laws. It is clear that the upon the signing of the bond the signatory chiefs felt they were gaining British protection. Unfortunately the British saw the signing of the bonds to be a clear giving of jurisprudence in the administration of local justice. The African rulers did not see the word allegiance in the same context as the British, thus they had assumed quite unreasonably that in signing protection treaties African rulers willingly parted with their sovereignty.

Secondly, lack of money and availability of the local people between 1844 and 1850 increased the use of British law. When local disputes broke out the people needed administration. The chiefs and headmen were generally too expensive to go to. They often required extensive gifts, fees, and fines. The magistrates courts, before 1850, only required a small sum for summons, thus fewer material resources came to the magistrates court. Although the magistrates’ court had legal jurisdiction on only criminal cases, it was more often used for minor disputes by the local community. In Cape Coast and Anomabo in the fourth quarter of 1844 there were sixty-one out of eighty-eight minor dispute cases, such as small debts. Only six serious cases, pertaining to murder and robbery were acted on. The remaining were domestic complaints, including minor assaults, disputes over slaves and pawns, and complaints by slaves over their treatment. In the second

³ The Fanti National Constitution, Page 88

quarter of 1845 128 cases were tried. Ninety-one of those cases regarded small debts, there were two cases of murder, six thefts, plus minor disputes. In 1851 one single magistrate would hear approximately one hundred-twenty cases a month, most of which dealt with small claims.*⁴ The magistrates court became quite clearly a popular place to go to deal with disputes. The majority of these cases were not in any way required to be acted upon in the magistrates court, rather they were independently brought there due to financial reasons.

In connection to Maclean's office, his original intention of assuming authority in an area in which indigenous leadership seemed to be temporarily lacking, he created a flexible system for widespread involvement in the internal affairs of the states of the Gold Coast, and especially in the lives of the residents of the coast towns. Maclean's system was expanded, institutionalized and made more inflexible by his successors. The availability of the alternative system of justice served to further weaken the authority of the chiefs and to embroil the British more deeply in the daily lives and affairs of the country. Maclean's administration and successors went about creating a realm of British influence under lying the judicial prerogatives of the chiefs and weakening chiefly power by provisional alternative system of justice which could be used to circumvent the authority of the chief. Although this may have not been Maclean's initial objective, through colonialism and the various treaties that he created it did occur.

⁴ Social Change and The Growth of British Power in the Gold Coast, Page 74

Part Three

Britain Obtains Direct Responsibility

After the death of George Maclean all judicial practices began to turn against the local rulers. Treaties created during Maclean's time in office became mere acknowledgments of what was. The beliefs and practices that were used began to hold little to no importance. By the 1865 the bond of 1844 was no longer relevant. Rather than the chiefs deferring to the British courts in selected situations, the British claimed the authority over not only what was or was not to be heard in the chiefs courts, but also over the every existence of the courts.

The British enacted the first law providing for a Supreme Court of Civil and Criminal Jurisdiction on 26th of April, 1853. The chief justice was the judicial assessor at that time. The law included "the right of a suitor to appeal from the decision of his chief to a council of wise men and captains." The Ordinances granted jurisdiction on the Legislative council to hear appeals. The new court of appeal consisted of the governor, the judicial assessor, and at least one neutral council member. Instantly, after this law was put into order six amending Ordinances were passed. The last being enacted on the 21st of November, 1866. This particular law made better provisions for the administration of justice within the settlements on the Gold Coast and its dependencies.

The mishandling by the British of the Asante invasion of 1863 is yet another point in which loss of control for the aboriginal leaders occurred. The invasion led to the creation of the British Parliamentary Select Committee of 1865. It's mission was to go into the affairs of the British West Africa settlements and make sure there was on further extension of British power and jurisdiction, nor any more treaties offering protection. It was also to "encourage in the natives the exercise of those qualities which may render it possible for us more and more to transfer to them the administration of all the governments, with a view to our ultimate withdrawal from all except probably Sierra Leone." *¹ These orders were not completely different. Instead of withdrawing the British chose to fight further in. In 1866 they exiled Aggrey, the king of Cape Coast, when he openly objected to appeals against the decision of his court being sent to the British court. Furthermore they restored their negotiations with the Dutch. This led to an exchange of forts in 1867 and four years later a buying of all Dutch forts on the coast of Ghana. Three years later the British claimed the whole of southern Ghana as a crown colony.

Speculations have been drawn to whether or not the natives fought the new ruling of the British. Aside from Aggrey's strong attempt, the people made a serious effort by creating the Fanti Confederation in 1869. This confederation was created in hopes of establishing, for the natives, an improved form of government. Although, the leaders of the group were treated as conspirators and traitors. Some were prosecuted while others were unlawfully imprisoned. The Fanti Confederation was thus destroyed. This confederation was only one movement formed to help the local people

¹ The Revolutionary Years: West Africa Since 1800, Page 158

and fight against the jurisdiction of the British and their settlements. It was officers under the Crown that had the movements were invalid, thus by the use of sufferance towards the natives, the British Crown acquired absolute power and rights. The circumstances in which this power was gained should be clearly understood and repeated: at no point did the aboriginal rulers give sole power and / or rights to the British.

In 1869 focus was drawn to certain complaints about the administration of justice. It was said that there was too much law and little equity in the assessor's court: that lawyers were permitted to intervene to an "extent ruinous to unsuspecting natives and to the destruction of all confidence in the British courts of law."² Lord Granville, the Secretary of State for the Colonies admitted this to be true and brought forth the apparent need for a judicial assessor. It was also decided that in order to have a functioning government the assurance and co-operation of the neighboring chiefs and headmen was crucial, along with the ability that native questions should be decided by the chiefs. Of course revisions and the assistance of an assessor were necessary, along with the final decision of the Governor.

Upon arrival of the new judicial assessor and chief magistrate it was found that the commandants held commission of justices of peace, but all too often, as seen in Part Two, they dealt with civil actions such as small debts, and not criminal cases. This was opposing the laws created earlier, yet it had been going on since the mid 1840's for various reasons. The chief magistrate instantly questioned the exercise jurisdiction and the use of law. On the 9th of May, 1872, he stated, 'With the progress of the country, it becomes the more expedient to obviate the risk of miscarriage of embarrassment in the administration of justice in any of its branches.'³

During this time a war between Elmina and Fantilanad had broken out. The Asanti monarchy had attacked numerous settlement outside its land barriers, badly wounding many of the villages. Many European armies choose to intervene, and eventually got the Asanti back onto their own ground. It was on July 24th 1874 the detached settlement from this war became a colony. The supreme court was transferred all rights and jurisdiction connected with administration of justice, which the queen had acquired by treaty and other state document that held lawful authority. In the proclamation of 1874, which it became known as, the extent of the queen's jurisdiction were defined to include 'the determination of appeals from the native tribunals to magistrates, the supervision and regulation of native prisons, and the by authority of the government of disputes arising between different chiefs and rulers.'⁴

The aboriginal rulers at no time had in mind to give up all jurisdiction, power, and right to the British authority. They never agreed to become British subject, nor cut themselves free from their past and traditions. Originally no right or power was to be used by the queen's officers unless

² The Fanti National Constitution, Page 105

³ The Fanti National Constitution, Page 106

⁴ The Fanti National Constitution, Page 108

under the consent of the aboriginal leaders. The British crown and the authority manipulated the jurisdiction and power of the aboriginal leaders, stripping from them what was rightfully theirs. It is seen many friendship and protection treaties between England and Gold Coast that this holds true. Two examples of native rulers and their people being deprived of their judicial powers and other sovereignty right over time can be seen in the Sefwi treaty of 1887 and the Adansi treaty of 1895. The Sefwi treaty dealt with the dismemberment of the Asanti kingdom. The principal parts stated that : ii. The Governor of the Gold Coast colony hereby takes the country of Sefwi under the protection of Great Britain.

ii. The Government of Her Majesty the Queen of Great Britain and Ireland, Empress of India, will not prevent Kweku Inguan, King of Sefwi, or his lawful successor either in the levying of revenues appertaining to them according to the laws and customs of the country, nor in the exercise of the administration thereof; and Her Majesty's Government will respect the habit and customs of the country, but will prevent human sacrifices; and slave dealing, when brought to the notice of the government, will be punished according to the laws of the Gold Coast Colony.'⁵

The Adansi treaty of 1895, similar to many treaties of the time period declares in article seven that the:

'King or his chiefs and principal head man and their lawful successor will not be prevented from levying customary revenue appertaining to them according to the land and customs of their country, nor in the administration thereof; and Her Majesty's Government will respect the habit and customs of the country, but will not permit human sacrifice; and slave dealing, whenever discovered, will be punished according to Gold Coast laws.'⁶

These treaties were not used as a form of protection for the settlements. Rather the treaties were a form of threat towards those rulers who had not signed treaties with the British. As soon as the protection and friendship treaty was signed the ruler and his people would be considered conquered. In 1901 the Asanti was in the order of Council declared to be British possession by right of conquest, as well as Gold Coast territory. In and around 1910 some Supreme Court decisions declared that there was no aboriginal judicial tribunal, unless under the Native Jurisdiction Ordinance. (The Native Jurisdiction Ordinance was destroyed by the Supreme Court Ordinance in 1876.) It was proclaimed that on the principles of English law, the English sovereign is the only foundation of justice and honor. This concept blatantly object the foundation of the treaties and their obligations. It was from this point on, the will and beliefs of the crown ran the country, not the wish of the people, nor the aboriginal rulers constitutional history.

⁵ The Fanti National Constitution, Page 111

⁶ The Fanti National Constitution, Page 112

Conclusion

“The Sovereignty of Ghana resides in the people of Ghana in whose name and for whose welfare the powers of government are to be exercised in the manner and within the limits laid down in this Constitution.”*¹ This is the very first clause in the Ghana,” the sovereignty that was re-established on March 5, 1957. Kwame Nkrumah and other members of the Convention People’s Party had fought for nearly ten years to regain independence from the British. The British having seen the support of the people of Ghana, eventually, after struggling and fighting the independent parties, agreed to pass the motion calling for independence. At which point Nkrumah’s rule began in 1957 and lasted all the way through to 1966. In 1960 the adoption of the new republican constitution was created.

Although independence was established many traditional practices had been lost over the hundreds of years of colonialism. The legal system had become one resembling that of the British courts and lawyers, which is seen both in criminal and civil proceedings, along within today’s constitution.

The judiciary section of the Ghana National Constitution consists of twenty-one pages and thirty-six clauses. When moving forward to the Chieftaincy section one would see that it includes four pages and holds seven clauses, proving that the power of the chief is legally near to insignificant. There has indeed been the establishment of a National House of Chiefs and a Regional House of Chiefs to “preserve” tradition and customs, yet they are all under the ruling of the Supreme Court and Parliament. “The National House of Chiefs shall have appellate jurisdiction in any cause or matter affecting chieftaincy which has been determined by the Regional House of Chiefs in a region, from which appellate jurisdiction there shall be an appeal to the Supreme Court, with the leave of the National House of Chiefs, or the Supreme Court.”*² Thus reminding the reader that that the chiefs sovereignty is a concept of the past.

In 1865 the King of Cape Coast, John Aggrey, criticized Maclean saying that he “in a very peculiar, imperceptible and unheard-of manner, wrested from the hands of our kings, chiefs and headmen their power to govern their own subjects.” In opposition to the rise in British jurisdiction he further wrote to Governor Conran in 1866 “ the time has now come for me, to record a solemn protest against the perpetual annoyance and insults that you persistently and perseveringly continue to practice on me in my capacity as legally constituted King of Cape Coast.... the government in England has expressed its desire that we, kings and chiefs of the Gold Coast, are to prepare ourselves for self government and no protection.”³ As seen above this self government did not come about for another one hundred years. ‘The perpetual annoyance and insults,’ also continued

¹ The Constitution of the Republic of Ghana, Chapter One, Constitution, 1 – 1, Page 1

² The Constitution of the Republic of Ghana, Chapter Twenty- Two, Chieftaincy, 273 - 1, Page 165

³ The Revolutionary Years: West Africa Since 1800, Page 160

for one hundred years. Today Ghana is ruled by one president and the foundation of social rules is based on the constitution that holds little support for the traditions and customs of the past.

In objection to a bill created in 1898, John Mensah Sarbah expressed that he would ‘deprived the aborigines of their right in the soil or their native land, making them mere settlers of the (British) Government with disastrous social consequences....’⁴ This statement can be used to encompass all event in the past regarding the rise of British jurisdiction and how it effected and natives of Ghana.

⁴ The Fanti National Constitution, Page xiv

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