The Shadows Behind the Law: An Overview of the Legal System in Ghana

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Introduction
A good decision making process is one of the most important pillars of good governance. In our everyday life, we need to follow and understand the decision-making process of government and how they are consistent with relevant legal provision or our common laws more especially within the powers of the three arms of government. When government decisions are consistent with the relevant legislation and operates within the limit of the power given, embedded with a fair legal frameworks that are enforced by an impartial regulatory body for the protection of its stakeholders, then we can bodily ascertain that rule of law is at its optimum play in the governance structure.

Most countries in Africa still suffers from poor governance structure and Ghana is not left out of this socio-political canker, even though much is being made to transform it into a more egalitarian society whereby rule of law becomes the conqueror of the day. This paper seeks to explore how the legal system in Ghana works and how it could be improved comparatively. The first part of the paper gives an overview of the legal system in Ghana at a glance. In the second part I will throw more light on the three arms of governments and how they work, the third part will focus on the external forces behind the rule of law which I have termed ‘the shadows behind the law’ and its implication to the legal system in Ghana. Part four will be the conclusion elaborating on the taxonomy of a good legal system.

I. The Legal System in Ghana at a Glance
Ghana's legal system was built on a foundation of received Anglo-Saxon common law, statutory law, and other documents, such as those indicating the legal existence of the various military regimes. In addition to these imposing laws, there is an enduring body of largely unwritten customary usages and practices that still are a contextual feature of the modern legal system of Ghana. The legal pluralism is evidenced by a co-existence of indigenous customary laws and practice, which received Anglo-Saxon common law, and some religious law, especially in the areas of marriage and inheritance events of the past
The legal system has been pretty much influenced by pre-independence rule by British Administration and benefited from the English reform which was introduced through the Judicature Act of 1873–75 structure of the court system. The Supreme Court Ordinance of 1876 begot Divisional and District Commissioner’s courts and other lower courts, while the Supreme Court remained the highest tribunal in Ghana during this early time. Many appeals during this time were lodged to the West African Court of Appeal (WACA) which was established in 1866 and faded out in 1873, and was re-established in 1928 but Ghana withdrew from WACA following independence.

Shortly after independence, few changes were made to the court system through a democratic government spearheaded by His Excellence, Dr. Kwame Nkrumah. Following the first military coup in 1966, the National Liberation Council passed a decree abolishing the Supreme Court and vested judicial power in two sets of courts: the Superior Court of Judicature and the Inferior Courts. Constitution of Second Republic also created a Supreme Court, Court of Appeals and High Court of Justice and Inferior Courts. In 1972, the Supreme Court was again abolished, this time by the National Redemption Council, the military government that followed that of the Second Republic, reasoning that, with the suspension of the 1969 Constitution, there was no need for a court to interpret and enforce it. The functions of the Supreme Court were transferred to the full Bench of the Court of Appeal. The Armed Forces Revolutionary Council through another coup d’état in 1979 and handed over power to an elected government, the Third Republic, and the Supreme Court was re-established under the Third Republican Constitution, following the same court structure provided for under the 1969 Constitution, there was a Superior Court consisting of the Supreme Court, the Court of Appeal and the High Court.

The Constitution of 1979 preserved the pattern of courts established since 1960. Supreme Court re-established and status quo has been maintained since the 1981 military coup, with slight diminution in number of members of the Court. Tribunals were created by constituted law and the original law amended in 1984 to achieve social justice, rather than the rule of law. The system provides for tribunals at the national, regional, district and community level.

2 Redden, “Ghana” in Modern Legal Systems Cyclopedia, vol. 6, Buffalo, NY, 1990; Rubin & Cotran
3 The Judicial System in Ghana is available at :http://www.judicial.gov.gh
and is governed by a Public Tribunal Board. What is good to know is enormous addition of laws by revolutions which transfer the relations of law between the citizens and the State. On 28th April, 1992, the Constitution of Ghana was approved through a national referendum after 92% of the population supported it, and has since become the supreme law of the Republic of Ghana defining fundamental political principles, establishing the structure, procedures, powers and duties of the government, structure of the judiciary and legislature, and spells out the fundamental rights and duties of citizen. Currently, the equality of all persons before the law and their freedom to enforce their rights and liberties in a Court of Law is guaranteed under the Constitution. The Judiciary is the branch of government given authority to interpret, apply and enforce the laws of Ghana.

II. The Three Arms of Governments

Ghana’s Government is made up of three branches of government which includes the Executive (President), Legislature (Parliament) and the Judiciary (Supreme Court). Ghana being a member of the Commonwealth of Nations has a President as the head of the state and Commander-in-Chief of the Ghanaian Armed Forces and the head of the executive branch of the government of Ghana. Chapter 8 of the Constitution of the Republic of Ghana states the duties and the powers of the President. The president is required to uphold the Constitution, exercise executive authority of the Republic of Ghana and preserve the safety and homeland of the Republic of Ghana. The President shall take precedence over the populace of the Republic of Ghana and may refer important policy matters to a national referendum, and he may execute or cause to be executed treaties, agreements or conventions in the name of the Republic of Ghana.

The legislative branch of the government is in charge of law making, this mandate is authorized under article 93(2) of the Constitution. The legislative power of Ghana is vested in Parliament and is exercised in accordance with the Constitution, it further stress that no person or body other than Parliament has the power to pass any measure with the force of law except by or under the authority conferred by an Act of Parliament.

The Judiciary is the third arm of government empowered by the constitution and the laws of the Republic of Ghana, autonomous and vested with the Judicial Power of the nation.

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It has the sole responsibility of interpreting the Constitution and laws and administering justice. They also ensure the speedy and unfettered administration of Justice brought to the door step of the people and the provision of other services for all manner of persons, groups and institutions without fear or favor and maintain a high standard of efficiency in the delivery of justice. Under article 125(3),” The judicial power of Ghana shall be vested in the Judiciary, accordingly, neither the President nor Parliament nor any organ or agency of the President or Parliament shall have or be given final judicial power”, and under article 127(1),”In the exercise of the judicial power of Ghana, the Judiciary, in both its judicial and administrative functions, including financial administration, is subject only to this Constitution and shall not be subject to the control or direction of any person or authority”\textsuperscript{6}. Therefore, the judiciary is supposed to be free from government interference and any form of political game plays.

III. The Shadows Behind the Law-The threat to the Legal System in Ghana

Under democratic governance, rule of law plays an important role towards the dispensation of justice, it is the legal and political framework under which all citizens and institutions including the state are held accountable. Laws then need to be circulated, equally enforced and independently adjudicated consistently with legal provisions of a country. French philosopher Baron de Montesquieu warned that “...where the executive power not to have a right of restraining the encroachments of the legislative body, the latter would become despotic; for as it might arrogate to itself what authority it pleased, it would soon destroy all the other powers”\textsuperscript{7}. The concept of separation of Powers as described by the French philosopher Baron de Montesquieu was to be a model for the governance of a democratic state and a key fundamental principle in a parliamentary democracy. But in Ghana, the President appoints Judges including the Chief Justice, and protected by a principle called ‘the security of tenure’, the appointed judge cannot be sacked which means they serve for their whole lifetime once they are fit to carry out their duties. Even though article 125(3) of the 1992 constitution spells out the autonomy of the judiciary and as such the judges, the executive arm of the government headed by President continue to influence the work of the judiciary to its own benefit and not to the benefit of the ordinary Ghanaian, who die so early from common hunger and simple diseases due to insufficient health care facilities and poverty. For example, cases involving a politician, political party members whose party is in

\textsuperscript{7} The quote of Baron de Montesquieu is available at: http://www.americassurvivalguide.com/montesquieu.php
power are treated differently from the ordinary Ghanaian in the Court of Justice. Political patronage systems continue to be deeply rooted in all government offices, and the general public has little or no trust in the current government’s way of handling corruption issues⁸ and this is gradually wiping people’s trust in the judiciary as a whole. Toppled with this phenomenon, is the western hegemonic influence of global integration schemes and other social movements that continue to exploit the judicial system, through poor legal transplants facilitated through financial aid agreements and compliance. These shadows behind the legal system in Ghana are of great threat to the democratic dispensation and the fairness of the regulatory body for the good people of Ghana, as we see in the air an existence of special form of laws for the rich, the vulnerable and the politician.

IV. Conclusion
Taxonomy reflects the legal culture of a given legal system, and it is actually the product of the interaction of the legal tradition and of the new sensibilities of which its aging calls for its replacement⁹. Hence, the taxonomy of any legal system should be constantly reflected upon, and if necessary amended to meet the dynamics of the people which it governs.
The rule of political law, the law of development and transition as argued by Ugo Mattei, a renowned comparative law activist is of the view that, the most important forms of social rule-making which include law, politics and religion as evidenced by the existence of different actors who perform different roles should not be dictated by necessity. Rather, if such laws become relevant to the efficient performance of an arm of government, it should be put across board to ensure that rule of law becomes the order of the day. This is not to argue that political and legal process can be sealed from each other, as there is always constant interaction between the two social controls. Since Ghana’s independence, the executive branch of the government through autocratic disposition has personalized intense rivalry between political parties and ethnic elites to capture the judiciary and several economic resources own by the state. The only public and effective anti-corruption agency, the Commission on Human Rights and Administrative Justice is crippled by law as it cannot prosecute offenders but only refer matters to the Attorney General who is appointed by the President for prosecution. The interplay of this kind of executive governance is encouraging the organization of ethnic groups, autocracy and violent tendencies of managing public

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affairs. Nevertheless, the shadows behind our laws should uphold to their limit to make room for the judiciary to exercise their judicial power in the common interest of Ghana, without subjecting judges to a control or direction of any person or authority as it happens most of the time.
References


2. The Judicial System in Ghana is available at :http://www.judicial.gov.gh


7. The quote of Baron de Montesquieu is available at: http://www.americassurvivalguide.com/montesquieu.php


9. Redden, "Ghana" in Modern Legal Systems Cyclopedia, vol. 6, Buffalo, NY, 1990; Rubin & Cotran