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THE ASANTEHEMAA'S COURT AND ITS JURISDICTION OVER WOMEN: A STUDY IN LEGAL PLURALISM*

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I. Introduction

This article is set within a discussion of legal pluralism and is in two parts. The first part is theoretical and discusses the concept of legal pluralism and the ways in which populations and sub-groups seek to regulate their behaviours and transactions outside official state sanctioned structures and institutions operating within a nation state. At the same time, there is a selective use by such groups of the official legal system and structures in those areas of their lives which fall within the official.[1]

In the second part, the Asantehemaa's court in Kumasi is presented and discussed as an example of legal pluralism in action. The origins, and jurisdiction of the court, the mode of initiating proceedings before it, its relationship with the national legal system, its protection of women's rights and the future of the court are also addressed.

II. Legal Pluralism

By legal pluralism is meant the situation in whch two or more legal systems interact within a state [Hooker, 1975:6]. This is typically represented by the relations between the imported colonial law, now adopted and added to with elements of 'official customary law'[2], and promoted to the status of a national legal system on the one hand, and the operative indigenous legal systems of particular groups on the other hand. Hooker characterises the relations between these two systems as one of dominance and servience, and gives three features of the relationship:

i) the national legal system is everywhere politically superior, to the extent of being able to abolish the indigenous system;

ii) where there is a clash of obligations between the systems, then the rules of the national system will prevail, and any allowance made for the indigenous system will be made on the premises and in the forms required by the national system, and

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iii) in any description and analysis of indigenous systems, the classifications used will be those of the national system.[3] [See also Woodman 1988]

These features arise from a conception of law as a set of consistent principles valid for and binding upon the whole population and emanating from a single sovereign source. However, it is also clear from several studies [Santos, 1977; Moore, 1977; Merry, 1982] that the influence of the dominant sphere is constrained by its accessibility, and actors exercise some degree of choice over alternative fora for dispute settlement. Which legal sphere is increasingly resorted to therefore reflects perceptions on the part of actors as to its ability to protect their rights as well as its consonance with their actual lives [cf Snyder, 1977: 138 on the mobilisation of urban legal institutions by rural villagers in Senegal]. Sally Engle Merry's [1983] research among miners on the Copperbelt in colonial Zambia for instance shows how miners in an urban environment turned away from a mode of resolving disputes rooted in their rural ethnic identities to settlement for a more closely connected to the dominant European society and its legal culture. Thus the urban native court, citizens' advice bureaux and churches became the dominant fora. In Merry's view, village law appears to have become increasingly irrelevant to the social lives of urban Africans on the Copperbelt; this was in conformity with the changed mode and relations of production whereby production of copper on European-owned mines provided the chief means of livelihood for the usually migrant workers, and new authority and power relations became structured according to one's role in the production process.

Merry brings out some interesting observations which are relevant for our discussion of the Asantehemaa's court. These are that different legal spheres may have differing implications for diverse groups such as women, depending on the sphere's definitions of crucial areas of women's rights in marriage, divorce, property ownership and child custody. Access to new legal spheres may therefore significantly affect the normative definition of the rights and relative power of disputants, depending on which party has superior access and whose rights are enforced by the new sphere. Thus, for example, where women occupy disadvantaged positions, access to new spheres which enforce greater rights and prerogatives can substantially improve their bargaining power in relation to men. On the other hand, a new legal sphere may redefine the rights of men and women and reduce the bargaining position of women. Merry cites a classic example from Epstein's study of divorce among the

Lunda of Zambia in the 1950s which suggests that the imposition of native courts charged with administering customary law actually hindered women from getting divorces. It would appear that before the creation of the court, marital disputes were generally handled by private meetings of the senior kinsmen of the affected kin groups; divorce was generally easy and a woman was welcomed back by her own family, and her parents might themselves take the initiative in removing their daughter from an inattentive son-in-law.[4] However, with the statutory requirements that the Native Court issue a certificate to validate a divorce, a body of Lunda law generally developed which followed neither Lunda custom nor English law.[5] There were now attempts by the courts to preserve marriage if at all possible unless one party seemed very adamant. When a marriage was finally declared broken, the responsible party was required to pay substantial damages.[6]

Merry defines a legal sphere as consisting of a system of rules, a set of dispute settlement fora where socially legitimate third parties facilitate arriving at settlements, and some means for pressuring adherence to these settlements usually exist. Each legal sphere is characterised by:

i) a set of rules based in custom or enacted by a political authority;

ii) a set of regular, accepted procedures for handling disputes, either formal or informal which rely to varying degrees on adjudication, arbitration and mediation[7];

iii) a political and economic context within which the mediator, arbitrator or judge operates and from which he/she derives power to make decisions and to enforce them;

iv) a structure of accessibility specifying economic, gender linked, ethnic and other requirements for access to the legal spheres.

Merry also notes the unequal power of different legal spheres which reflect the nature of the particular political entities supporting each.

Bonaventura de Sousa Santos' [1977] research in a favela (squatter settlement) in Rio de Janeiro, Brazil exemplifies the relationship between two legal spheres, the official Brazilian legal system, and the Residents' Association of Pasargada, (the fictitious name of the favela). Because of the structural inaccessibility of the Brazilian legal system to the poor and needy, and the illegal character of communities such as Pasargada, internal legal systems are created to serve the needs of such communities. These systems become parallel to and sometimes even conflict with

state legality. Curiously, the state of tension and ambiguity existing between the Residents' Association (RA) and the state is not reflected at all levels of the state apparatus. Thus while the relationship between the RA and the police is precarious given the illegal character of the former, there is room to cooperate and the RA is able to secure the help of the police in its own affairs. Santos notes certain features of the Pasargada legal system which make it a desirable alternative to the professionalised, expensive, inaccessible, slow and discriminatory Brazilian state legal system through a description of its functioning and the setting in which dispute settlement and prevention occur. These are:

i) its non-professionalism;
ii) accessibility: there are minimal costs in terms of money and time, and it facilitates social interaction;
iii) it is participatory, as evidenced by the informality of the hearing and the way the 'presidente', the parties and witnesses interact. There is no representation by professional legal specialists nor are any formal rules followed. However as Santos also notes, this does not mean that the parties have full control of the process as they do in negotiations where the third party is reduced to an errand-boy or go-between;
iv) the consensual nature of the proceedings, as mediation is the dominant model for dispute settlement. This is explained in part as arising from the character of the association itself which promotes non-coercive justice; in part this is also due to the style of community life and density of population in Pasargada.

In such a situation, compromise becomes a crucial factor as the high level of social interaction will be damaged by the exacerbation of conflict.

In much the same ways and to differing extents, there exist within communities in Ghana such arenas of judgement or legal spheres, whether of an ethnic, clan-based, religious or chiefly character. People submit[8] to their jurisdiction in interpersonal matters and create a legality parallel to, or coexistent with that of the state. Thus within all villages, towns, and cities in Ghana, there are councils of elders who adjudicate or mediate in disputes involving members of the same ethnic groups, trade or profession in non-criminal matters. Even sometimes, with the connivance of the police, the state's criminal monopoly is also dented, and rape and assault cases for example are withdrawn for settlement before such tribunals.

III. The Asantehemaa's Court

An understanding of the jurisdiction and functioning of the Asantehemaa's court can be gained by discussing the position of the Ohemaa in Asante law and constitution.

III.1 The Ohemaa in Asante Law and Constitution

Rattray (1923); Meyerowitz (1951); Busia (1951); Oduyoye [1979] and Arhin (1983), among others, have discussed the position of the Ohemaa in Asante law. According to Rattray, the Ohemaa's stool is the **akonua panyin**, the senior stool in relation to the chief's stool. She took part in local government and in the selection and enstoolment of the Chief, and exercised the prerogative of selecting a candidate to the stool. She alone had the privilege of rebuking the chief and his councillors in open court, of addressing the court and of questioning litigants. It is in the light of this that Rattray says that the recognised seniority of the female stool was not an empty courtesy title. Petitions could also be addressed to the Ohemaa praying for pardon or mitigation of a sentence. Rattray states that the queen-mother had jurisdiction in her own court over the women connected with her own attendants, and in all cases of dispute between the chief and his wives. At the same time, the queenmother had authority over all the women in the state and attended ceremonies connected with birth and puberty, and was personally concerned with the morals of the young generation.

But the queenmother also appeared to have jurisdiction in certain cases where males were the litigants. Cases could be transferred from the Ohene's court to her court on application of both parties as litigation was cheaper before her court. In addition, the Ohemaa was entitled to a share of court fees (oath fees) derived from cases heard in the chief's court.

Arhin (1983) describes the Asantehemaa as a member of the Kotoko Council, the general assembly of Asante rulers. By her membership of the Council, the Ohemaa participated in the legislative and judicial processes, in the making and unmaking of war, and in the distribution of land. Arhin notes further that the Ohemaa of a state also had her own **ntam**, an oath, which was the formula for invoking the judicial process, and her own court and **akyeame**, spokes-persons or linguists, who acted as prosecutor and judge. An Ohemaa was also a refuge for a fugitive from the Ohene's court and he could successfully seek her intervention in cases carrying the death penalty. While the men dealt with **amansem**, matters of state, **efiesem** or domestic matters were dealt with by the Ohemaa.[9]

However in spite of this clear division of roles, female rulers were conspicuously absent from local administration under the various colonial ordinances setting up native courts and tribunals. While indigenous tribunals of male chiefs and elders were recognised and their powers and jurisdiction delineated, nowhere were women accorded any recognition. As Allott (1960), states, 'under the new Ashanti Native Courts Ordinance, the government no longer merely recognised the existing indigenous tribunals, of chiefs and elders, but took powers to constitute and regulate the native courts. Government could now prescribe the membership of the courts, suspend or dismiss members of native courts'.[10] This situation was of course not peculiar to Ghana, and much literature exists on how colonialism circumscribed the operation of pre-colonial political institutions and at best, only recognised male elders and chiefs who became, to varying degrees, agents of colonial rule.

Rattray expressed regret over the non-recognition of the power of those 'old women', the **ahemaa**, following his investigations as to their position. Their response was classic:

> 'The whiteman never asked us this; you have dealings with and recognise only the men, we supposed the European considered women of no account, and we knew you do not recognise them as we have always done'.[11]

But non-recognition or not, the Ohemaa's court continued to function. Oduyoye (1979) has gone so far as to suggest that it is due to the tenacity of the Ohemaa in administering protective regulations for women that matrilineal inheritance has survived in Asante and is guaranteed in national law. Oduyoye explores the struggle for supremacy of matri- and patri- elements in the family, politics and religion in Asante, and the Ohemaa's traditional role as the protector of women's rights.[12] The Ohemaa administered laws which attempted to ensure that women were not exploited sexually, and this meant placing the full responsibility for all unauthorised sexual relations and adultery on men. In the case of adultery, which is defined expansively in Asante law to include mere touching or playing with parts of the woman's body, and criminal conversation (**asom**), it is said that it is the woman's word that is taken as the truth; her connivance or consent does not reduce the seriousness of the offence as it is the man who is expected to develop self-control because of the conception of women as virtually unable to look after themselves.[13] Thus, in this case, the ideology which is pervasive in the society and which is normally utilised to

keep women in a subordinate position is employed by women to protect themselves. Another important function of the Ohemaa is in ensuring that husbands do not inherit their wives' private property as the couple do not belong to the same **abusua**, family, and therefore do not have community of property. But the husband is responsible for debts incurred by the wife while she resides with him, and he is responsible for her maintenance and that of her children, and she can sue to enforce it. This is supposed to be an equitable arrangement because the wife's kin group loses her services while she is married and as she now serves her husband, he is responsible for her maintenance and any debts she might incur.

It can be seen from the above summary that in Asante law and constitution, the Ohemaa had important roles and particular functions as regards women, and meticulous application of laws and regulations as regards sexual relations and private property served in some way to ensure that women's level of self-hood and respect was maintained.[14]

III

III.2 The Asantehemaa's Court: Composition

The Asantehemaa's Court sits once a week, on Tuesdays, unless there is a funeral celebration. The court is composed of the Asantehemaa and chiefs whose stools come directly under the Ohemaa. The question of which stools serve the Asantehemaa is at the discretion of the Asantehene, and at the installation of the chiefs concerned, they swear an oath to serve him and the Ohemaa. Predominantly these chiefs are **adikro** of small towns and villages in the Kumasi district most of whom swear their oaths or allegiance directly to the Asantehemaa.[15] The members of the court are known as the **Nkontimsofoo** and the **Nkonson**.[16] The former are also members of the Ohemaa's **Gyaase** or palace organisation. There is a quorum when there are representatives of both **Nkonson**, **Nkontimsofoo** and **Akyeame** (spokespersons). There are six Akyeame, but normally they are all not present. The chief **okyeame** to the Ohemaa is female, and is referred to as her **Obaapanyin**, female elder. But from my information, the other **akyeame** are male. Indeed, with the exception of the Ohemaa herself and her **Obaapanyin**, all the members of the court are male. When the Ohemaa is not present her **Obaapanyin** sits in her stead. In addition, **ahemaa**, queenmothers, from other towns and villages may sit in at the court to learn how to conduct judicial proceedings and may also participate in the proceedings by way of offering opinions or advice at the end of the proceedings. However, from observation, those who actually conduct the proceedings are male, and although it has not been possible so far to

date their participation and indeed dominance in the court, they seem to be well aware that matters and decisions might well be different if women were the judges.[17] The **modwoafoo**, the Ohemaa's attendants and servants, also sit in the court, but have no say in the proceedings. They act as bailiffs, directing summons to chiefs and sub-chiefs to present their subjects before the court, and one of them, a young girl, acts as a clay smearer, to the victorious party in litigation.

3 Juristiction

The Asantehemaa's court is concerned primarily with matters affecting women, principally matrimonial issues of divorce and maintenance; matters arising in the markets; and rights to **nfofoa**, fallow land. Marriage matters include divorce proceedings, cases between rivals, adultery of the wife, unfair treatment of a wife by a husband and other domestic and interpersonal matters. Cases between rivals often take the form of one 'putting another in fetish', to use the highly evocative colonial term; or invoking an oath against the other, the consequences of which could be fatal.

Traditionally, the market 'belongs' to the Ohemaa, and she has jurisdiction over all disputes arising therefrom. All the commodity queens swear their oaths to her, and on **dapaa**, feastdays of the ancestors, these queens bring commodities as tribute to be used to cook food for the blackened stools. They also report periodically on matters in the market to the **Akyeame** who inform the Ohemaa. Thus quarrels between traders in the market, extortionary acts or other behaviour of traders which could affect order and stability conducive to trade are dealt with. In turn, the Ohemaa can refer the matter to the City Council where her intervention fails to achieve the desired result, demonstrating the close relationship which has come to exist between traditional and modern authority.

It would appear that the Ohemaa's jurisdiction is territorial, and can be invoked by all residents in Ashanti or by all traders in the market irrespective of their origin. While each of the other ethnic groups and nationalities resident in Kumasi have their own elders and chiefs, these may refer matters coming before them to the Asantehemaa or Asantehene, in recognition of their overlordship in Kumasi.

The Asantehemaa's dispute settlement roles are twofold: these are adjudicatory and mediatory, and the latter role is the usual mode in matrimonial issues. This is known as **gwantoa**, in which the Ohemaa or her nominee acts as a third party to help the parties arrive at a settlement. A woman or

a man appeals to the Ohemaa to get her partner to continue with the marriage; given the social and political position of the Ohemaa, few men would refuse her mediation even if their minds were firmly made up, and would appear before her to make politely worded refusals. In such cases, there is often a resort to patriarchal ideology of how much a woman's esteem depends on her marital status, and the man is beseeched to forgive and forget. However, it is also true that the Ohemaa is regarded as **korafoo**, a rival, and apt to take the woman's side in a dispute, particularly where unfair treatment is alleged by the wife.

Mediation takes place in a discreet manner, and depending on the delicacy of the matters alleged may be held in chambers. Sometimes too, **akyeame** are sent out of town to mediate where the Ohemaa's jurisdiction is invoked.

However, the Ohemaa's jurisdiction is not limitless, and is circumscribed by national laws. Jurisdiction is refused in criminal matters, such as threats on life, and the matter is referred to the police. But it is interesting to note that the police also refer certain matters to the Ohemaa's court, pending the resolution of the substantial matter particularly where they feel ritual aspects or an oath is involved. Thus, where an oath is sworn on a pregnant woman,[18] in a case appearing before the police, she is advised to go to the Ohemaa's court to initiate proceedings to have the oath overturned as it is feared that the delays of the state courts could occasion death to her. In such ways, and without legal authority, the police and other institutions support the dualism and reinforce it, and seek to delineate areas which are the exclusive domain of state or national law, and those of traditional systems.

II.4 Initiating Proceedings

A person desirous of initiating proceedings goes first to the Okyeame and reports a matter to him - 'Nana, someone has insulted me', or 'Nana, my husband refuses to be married to me any longer. I appeal to you to ask him to continue with the marriage'. The latter complaint forms the basis for mediation which has been summarised above.

In the former case, she is asked if there are witnesses. If the answer is in the positive, the complaint can be laid. If not, she is told to wait and meet the respondent again to see if the insult will be repeated. It is is up to the **Okyeame** to decide whether a complaint can found an action, and he may advise the complainant to forget about the case as no action is proved. Where a complaint is made out, the Okyeame receives a fee called **Essiesieto dee** (a settlement fee), based on the gravity of the offence. This may be

decided by the complainant herself or by asking the **Okyeame** how much is used to make a complaint to the Ohemaa. The fee varies, but is now around ¢1,400.00. The complaint fee itself is ¢200.00, the **Okyeame**'s fee is ¢100.00, the messenger's fee is ¢100.00, and the remaining ¢1,000.00 are sitting fees for the court, half of which goes to the **Ohemaa** and the other half to her elders.

A messenger is sent to issue a summons to the party named and the complainant bears the expenses connected therewith. The service of summons takes the messengers to many towns and villages in Asante and the complainant bears the expenses of transportation, food and lodging if an overnight stay becomes necessary.

The respondent who is thus served can either agree to appear or may refuse. If the respondent agrees to appear the case can proceed. However, should he or she refuse, the complainant is given back her complaint fee and advised to seek an alternative forum. Where the respondent appears, he or she deposits an amount equal to the complaint fee called **ntaasoo**. If he says he has witnesses they are summoned at his expense. At the close of the case, the guilty party pays all the costs incurred by the victorious party.

A date is fixed for the hearing. A party or witness in her period cannot attend (as this is supposed to be a taboo). Where one party is not present when the case is called, she/he has to bear the costs of the other party unless she/he can give a good reason for non-attendance. Where both parties are present, the proceedings can begin. The respondent is asked if she knows the complainant and that a complaint has been brought against her. If she answers in the positive, the complainant swears an oath to speak the truth and is then asked to state her case. This oath can be sworn on the Bible or according to any other system of belief. Afterwards the respondent is told to ask any questions. The court can also ask questions of the complainant to clarify any matters. If the complainant has witnesses they are called in at this stage. The witnesses are asked their occupation and a witness fee is paid by both parties, part of which is given to the witnesses at the end of the case to compensate for their time. They are asked if they know the parties and the issue that has arisen. If the answer is in the positive, they are asked to swear an oath and then to narrate what they know. The complainant is told to ask any questions of her witness. The respondent can also ask any questions and the court can also ask questions from the witnesses.

After this the respondent is asked if he or she has anything to say. Afterwards his or her witnesses are called

and examined and at the end of the case, the members of the court or assessors are asked their opinions individually.

A conclusion is reached that the complaint has or has not been borne out and that even the complainant's own witnesses could not confirm her version. The complaint can be dismissed and a small girl then smears the respondent with clay thus declaring her victorious. The complainant is asked to give the respondent **dibim**, i.e. to apologise. The complainant may appeal to the Okyeame to do it for her and a fee may be offered to the respondent as compensation which may be accepted or waived. The parties are told that if any further problems arise they will be dealt with severely.

At the end of the proceedings, the parties and their witnesses are admonished and told to swear by Nana's '**kokonua**',[19] her sore foot, that there is no further problem between them. They have to thank the court. The unsuccessful party loses her deposits while the successful party has all her expenses refunded except the '**hwirewbosa**', the clay smearer's fee. The elders and others who sat in on the case are given parts of the money forfeited by the unsuccessful party.[20]

There can be appeals from the Ohemaa's court to the Asantehene's Court or to the Courts of other chiefs where a party is not satisfied with the ruling.

Normally persons who have submitted to the Ohemaa's jurisdiction will comply with the ruling, but where one party proves recalcitrant, the police may be asked to intervene, once again reinforcing the links between the state system and the indigenous system.

IV. The Asantehemaa's Court and the Ghanaian Legal System

The links between national institutions and structures on the one hand, and indigenous legal systems such as the Asantehemaa's court have been adverted to in noting the relationship of the Ohemaa's court with the police. Clearly, while respect for traditional authority and values embodied in the institution of chieftaincy has been proclaimed by almost all Ghanaian governments, its actualisation has varied, and relations between governments and chiefs have followed irregular trajectories.[21] State functionaries have also differed in the degree of respect and accommodation with indigenous systems and as Woodman [1988a] and others have shown, the state has altered radically the content of the systems and imposed its own conditions for recognition. Be that as it may, there is some recognition by the national legal system, of proceedings before such tribunals as being in the nature of an arbitration, and there is a long line of cases which set out the criteria for its validity.[22]

Generally, for an arbitration to be recognised, the following must be proved:

i) that there was a voluntary submission of the dispute by the parties to arbitrators for the purpose of having the dispute decided informally, but on its merits. Voluntary submission has been held not to be the mere presence of a party to a dispute at a meeting.[23] To constitute submission to arbitration in such circumstances there must be evidence that the full implications of the purpose of the meeting were explained to each party;

ii) A prior agreement by both parties to accept the award of the arbitrators, evidenced by payment of a fee;

iii) The award must not be arbitrary but must be arrived at after the hearing of both sides in a judicial manner, and

iv) publication of the award.

Where these elements are proved, it will operate to prevent a party to the arbitration from relitigating the same subject matter before another forum and the Ohemaa's **akyeame** sometimes attend the High Court in Kumasi to give evidence of arbitrations before them, where such matters are sought to be relitigated.

V. The Ohemaa's Court and the Protection of Women's Rights

The Ohemaa's Court is rooted in Asante political and constitutional structure, and is sustained by a social context which accords allegiance to the Golden Stool and its subordinate stools. Within the hierarchy of stools, the Ohemaa's has a clearly defined position, as has been shown above. In this study, the focus has been on the Ohemaa's judicial functions which primarily revolve around women in the Ohemaa's role as the protector and enforcer of women's rights. Given the socio-economic and cultural developments which have occurred in Ghana as a whole, such as for example, the growth of educational and employment opportunities, health, migration and a more heterogenous mix of the population, perceptive changes have also occurred in women's roles, statuses, values and beliefs. Even within Asante, certain regulatory activities of the **ohemaa** such as her inspection of pubertal girls have largely become redundant. Sexual norms and behaviour have also altered, at least for certain groups of the population. Thus overall, the space available to the **ohemaa** has contracted somewhat, but is still important and cases come to her court from villages and towns surrounding, and from within Kumasi.

It is not easy to ascertain precisely what changes have occurred in the composition of the Ohemaa's court over time,

and how far the present composition dates in antiquity. Yet it clearly represents a problem if the key institution available to protect women within the indigenous system exhibits such visible male dominance. In this way, the rights protected will largely accord with gender stereotypes of the nature of women and what is in their interests, and will also reflect the dominant views in the society on the accepted roles of women.[25] In the final analysis, women's subordination may be perpetuated even as some individuals receive justice and a satisfactory resolution of their disputes before the Ohemaa's court.

VI. Conclusion: The Future of the Ohemaa's Court

In the discussion above of the Pasargada legal system, Santos noted some features which made it a desirable alternative to the Brazilian state legal system. While the Pasargada and Asante legal systems have entirely different origins and legal statuses in the eyes of their respective national systems, they share some similarities arising from their servient or subordinate positions. Both systems are relatively accessible, do not maintain a professional caste of legal personnel,[26] and have participatory and consensual dispute settlement procedures. But whereas Pasargada law reflects the attempts by poor people to hold their own against the overreacting Brazilian state, this is not the case with the Asante state system. As has already been stated, the Ohemaa's judicial functions are firmly rooted in Asante law and constitution and were accepted by those who owe allegiance to the Golden stool, even when the Ohemaa had no official recognition. The Asantehemaa's court has survived these vicissitudes and has adapted itself to changed circumstances and secured recognition by some state agencies.

A further difference is that given its position in the hierarchy of stools in Asante, more attention is paid to rank and class in proceedings before the Ohemaa's court, and it cannot be said that all litigants feel they receive impartial justice. This feeling is exacerbated by the payment of sums of money for various purposes which raise questions of integrity, and it is not unusual for dissatisfied parties to murmur charges of improper conduct, to wit, receiving a bribe.[27]

Overall however, in proceedings before the Ohemaa's court, litigants interact in a milieu which has correspondence with their social situations and much salience for them. There are no policemen or specially dressed officials and no problems with language. At the same time, there are few delays and cases can often be disposed of at one sitting,

and while fees are charged which may be substantial for some, they are nowhere near lawyers' fees.

It remains to be seen what further adaptations will occur in the Ohemaa's court. From enquiry and observation, it appears that it is not only Ashantis who make use of the court nor only illiterate people. Will written records of proceedings be kept in the future as the personnel of the court become increasingly literate? How will the Ohemaa's court deal with new legislation affecting women's and men's property rights which allow a man to inherit his wife's private property in contravention of Asante law of property?[28] What accommodations with customary law will occur? How far will the national legal system in its unificatory and 'modernising' attempts take account of other legal spheres? Answers to these questions may be provided with time, and it is hoped that other studies will begin to focus attention on other dispute settlement fora among different communities in Ghana. These studies may well indicate the existence of much pluralism in both legal and other spheres of life.

NOTES

1. S.F. Moore 1977: 160, 161, points out how within a nation state, there are many parallel bodies not formally linked into any superordinate administrative system, and she suggests the utility of 'looking at a centralised system of political administration as existing on top of a great variety of organised social fields ..., whose members "plug" into the national system on occasion.'
2. There has been much writing and discussion on the divergence between the operative customary law, folk law or peoples' law, of particular groups and customary law as recognised and enforced in the courts. Until independence in all colonies, customary law was treated as foreign law and had to be 'proved' by the calling of expert witnesses etc. and applied only in civil matters subject to its not being repugnant to 'natural justice, equity and good conscience' or some similar formulation. But as Woodman's [1988: 181-209] argues, when state institutions are instructed to apply folk law, in practice they do not, but are apt to create a new body of law which they mistakenly call customary or folk law. Woodman explains the divergence in terms of a more or less conscious state creation of rules as the central characteristic of the state legal process to facilitate new social norms and desired directions, in the Ghanaian case, to one of market capitalism.

3. Hooker, 1975: 6. Woodman's [1988a: 184, 185] discussion of how customary law is applied makes the important point that by restricting the forms in which claims may be presented, types of remedies awarded, and the modes of enforcing those remedies, state courts have debarred themselves from recognising substantive rights which cannot be asserted and enforced through permitted processes, and rights existing in sociologists customary law are not rights in lawyers' customary law.
4. cf. Rattray, 1929: 18 who says that among the Akan, a wife's uncle or mother could take steps to dissolve a marriage where they had cause to believe that their daughter was being treated unfairly.
5. This is akin to the description of official customary law.
6. In a similar fashion, Pepe Roberts [1987] has discussed the attempts by the Sefwi State Council to regulate marriage between 1900-1940 in an attempt to restrict women's sexual autonomy and their alternatives to the provision of labour services on husbands' farms. Through a series of bye-laws whereby punitive measures were enacted to combat prostitution, sanctions against divorce and adultery, as well as positive measures to control the rising cost of obtaining a wife, the State sought to deal with the crisis in gender relations brought about by the commoditisation of production. However, these actions did not measurably appear to have succeeded, and although women continued to provide labour services to husbands' farms, they did so under changing conditions and asserted a right to parts of farms. Chanock [1982] has also discussed for Northern Rhodesia the ways in which customary law was remade by elders and males with the connivance of the colonial state to fit into the context of new times in an attempt to regain control over women. But see also woodman [1988a], for a contrary view.
7. Gulliver [1977] discusses in depth an aspect of the process of negotiations in dispute settlement by focusing on mediators. He distinguishes mediation from adjudication and arbitration. Quoting a professional mediator with approval, he says 'Mediation and arbitration have conceptually nothing in common. The one (mediation) involves helping people to decide for themselves; the other involves helping people by deciding for them.' Of adjudication he says "there are institutionalised rules, procedures and roles, and a more or less clear idea of due process .... Under negotiations there is initially no such structuring."
8. Submission is here used in a wide sense as people appear before the courts for a variety of reasons, most of which are bound up with the social and political position of the Ohemaa. Generally, those who invoke her jurisdiction or

respond to it do so from shared values and beliefs of allegiance to the stool and the supernatural sanctions which could attach for disobedience

9. Rattray, 1929: 316.
10. Allott, 1960: 108.
11. Rattray, 1923: 84.
12. Oduyoye, 1979, follows Meyerowitz in positing a time when the Ohemaa ruled in her own right.
13. Oduyoye, **op. cit.** p.12.
14. Oduyoye, **ibid.**
15. These are the Kokoben dikro; Seedi dikro; Kodee Pintin Nkwanta dikro; Oyo dikro; Oti dikro; Akoko amon dikro; and the Ofoase dikro.
    All these sub-chiefs swear directly to the Ohemaa.
16. It was explained to me that these were divisions like the Nifa and Benkum.
17. Interview, Okyeame Kwaku Nsiah.
18. On whether it was proper for an oath to be sworn on a pregnant woman given her ritual state of danger, I was informed that it was not an abuse of the oath. She can swear to exonerate or defend herself. Source: Interview, Okyeame Kwaku Nsiah.
19. This is the Ohemaa's taboo, and refers to an occurrence in the past which is remembered with great sorrow.
20. Thus I was presented with ¢40 for being present at a court sitting in 1985 and witnessing the conduct of a case.
21. See for instance Arhin (forthcoming) on chieftaincy under the CPP.
22. See for instance Aniamoah v. Otwiraa [1961] GLR 405; Osae v. Apenteng [1961] GLR 615; Asare v. Donkor Serwah II [1962] 2 GLR 176; Donkor v. Isifu [1963] 1 GLR 418; Mosi v. Fordjuor [1962] 2 GLR 74; Budu v. Caesar [1959] GLR 410; Asano v. Taku [1973]2 GLR 312. These cases refer to arbitral proceedings before different fora in various communities in Ghana.
23. Donkor v. Isifu [1963[1 GLR 418.
25. Thus my main informant, Okyeame Kwaku Nsiah, said to me, 'Women's dignity depends on male protection; let us have good marriages and good virtuous women'.
26. While there is no professional caste of people who subsist mainly on their legal fees and other payments, it is evident that at least the officials in the Asantehemaa's court are professionals and are well versed in substantive Asante law, evidence and procedure.
27. I witnessed this on at least two occasions in a single day. When the Okyeame heard the murmur, he asked the complainant to withdraw the charge or face a contempt action. The charge was withdrawn.

28. By the provisions of the Intestate Succession Law (PNDC L.III), either surviving spouse can inherit property, real and movable of the deceased.

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