

21 CONFLICTUAL INSERTION OF MARRIAGE ORDINANCES IN BRITISH COLONIAL AFRICA: THE GHANAIA EXPERIENCE

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INTRODUCTION

On 19 November 1884, the British colonial government led by Governor William Alexander George Young enacted Ordinance No. 14, entitled “An Ordinance for regulating the Law of Marriage”, which introduced a new and important dynamics into the marriage landscape of the Gold Coast. Gold Coast was the former name of Ghana. The terminology of the Ordinance would subsequently be used in place of the full title of the 1884 law. This Ordinance, though introduced into the Gold Coast as if it was an ordinary Ordinance, was, in reality, completely different in value and effect. This is because the Marriage Ordinance of 1884 sought fundamentally to change the very foundations of social life by introducing and placing monogamy above polygamy. In addition, it recrafted intestate succession in the colony in a way that was unprecedented. Expectedly, the Marriage Ordinance of 1884 met with a mostly conflictual response according to social standing, patriotism, cultural and religious beliefs. There was little evidence to show from the files related to this legislation in Ghanaian archives to indicate why the government felt it was necessary to change a previously less intrusive legislation on marriage enacted from Lagos but applicable also to marriage in the Gold Coast.² According to Shirley Zabel, a researcher into West African marriage laws in British archival sources, has explained aspects of the drafting processes. The British desired to correct what they perceived as wrong marriage and inheritance customs in the Gold Coast society. Zabel’s historiography has shown that a need expressed by one German couple to officially register their marriages lay at the origin of this legislature.³ A similar need had earlier necessitated local authorities of island of St. Helena, a British overseas territory in the Atlantic, to send the first draft of the Marriage Ordinance to the home office in England. The resultant Marriage Ordinance in 1853 became the first to be enacted in a British colony.⁴ After, St. Helena, Ceylon and Hong Kong also passed marriage laws. Ultimately, the Hong Kong marital law model was chosen, with some modifications, to become the blueprint for the Gold Coast Ordinance.

1 Department for the Study of Religion, University of Ghana, Legon.

2 PRAAD ADM 4/1/7, Ordinance No. 21, Lagos, of 1863, entitled “The Registration of Ordinance”.

3 Zabel S. 1979. “Legislative History of the Gold Coast and Lagos Marriage Ordinance: III”, *Journal of African Law* 23(1):10-36.

4 Zabel S. 1969. “The Legislative History of the Gold Coast and Nigerian Marriage Ordinances: I”, *Journal of African Law* 13(2):64-79.

Zabel calls the Gold Coast Ordinance the grandfather of marriage ordinances in the rest of British Africa because it was the first.⁵

Zabel further reports that the decision-making processes for the Ordinance in the British colonies were rigorously done and employed many resources. The process entailed a great deal of consultation and forward and backward movement. The intention was to provide the best remedies to existing flawed situations.⁶ However, this was not always the case, as decisions were also guided foremost by like British self-interest.⁷ This implied that some decisions taken in the colonies for their advancement, in reality, left them worse off. Indeed, patriarchy played an important role in British decision making. Particularly, colonialists perceived Africans as being uncivilised and needing to be saved from themselves.⁸ Another important consideration accounting for the weaknesses in British colonial legislation was their inability to appreciate correctly the anthropological issues at hand. They misinterpreted cultures, reasoning, desires and aspirations of the peoples of their colonies. This point was even conceded by Attorney General A Willoughby Osborne, who was dissatisfied with many aspects of the Ordinance.⁹ It is therefore not surprising that the 1884 Ordinance became a point of social conflict.

Scholars other than Zabel have written on the Marriage Ordinance of 1884 in the Gold Coast.¹⁰ Law researcher Arthur Phillips specifically discussed the conflict between statutory law and native laws in Nigeria, making reference to the Gold Coast Ordinance. The two countries had a common marriage legislation.¹¹ Similarly, colonial law historian HF Morris has taken the discussion further by examining the developmental process involved in enacting marriage ordinance laws across British Africa.¹² The literature has, however, been written from a purely technical legal perspective. As a way of departure, this chapter focuses on the socio-religio-cultural implications of the Ordinance and stresses its historical conflictual nature making it an issue of religion and security. Furthermore, it traces the fate of the Ordinance more than century on. The chapter is constructed using archival documents from Ghana, alongside the secondary literature and is supported by qualitative research involving mainly unstructured interviews. Analysis focuses on conflictual points in

5 Zabel, "Legislative History of the Gold Coast and Lagos Marriage Ordinance: III".

6 Zabel, "Legislative History of the Gold Coast and Lagos Marriage Ordinance: III".

7 Emudong CP. 1997. "The Gold Coast Nationalist Reaction to the Controversy over Higher Education in Anglophone West Africa and Its Impact on Decision Making in the Colonial Office, 1945-47", *The Journal of Negro Education* 66(2):139-144.

8 Emudong, "The Gold Coast Nationalist Reaction to the Controversy over Higher Education in Anglophone West Africa".

9 PRAAD SC 22/390, *The Gold Coast Leader* 5(210) 39/06/1906, 4.

10 Allott AN. 1958. "Marriage and Internal Conflict of Laws of Ghana", *Journal of African Law* 2(3):164-184.

11 Phillips A. 1995. "Conflict between Statutory and Customary Law of Marriage in Nigeria", *The Modern Law Review* 18(1):73-76; Essien, "Sources of Law in Ghana".

12 Morris HF. 1979. "The Development of Statutory Marriage Law in Twentieth Century British Colonial Africa", *Journal of African Law* 23(1):37-64.

21. Conflictual insertion of marriage ordinances in British colonial Africa

the Ordinance, with further focus on the failed development of the Native Marriage Registration Law in 1930, the corrective laws of the Provisional National Defence Council (PNDC) and, finally, a consideration of the Ghanaian sentiments on the Ordinance in 2017 gleaned through interviews for this research.

What were the exact points of contention around the 1884 Marriage Ordinance and how did the conflict manifest? Susan B Kaplow writing in the *Canadian Journal of African Studies* has explained that this Ordinance was to provide civilisation to the colony – civilisation in the sense that it did provide nuclear families, consisting of husbands, wives and children, the security to continue the primitive accumulation of wealth that favoured British businesses. This was to make the young colony have strong social foundations.¹³ The 1884 Marriage Ordinance was therefore purposely designed for the Gold Coast in typical patriarchal fashion.¹⁴ Consequently, the colonial state used its full might to back the Ordinance and refused all supplications of withdrawal or alteration.¹⁵ In response, most of the people of the Gold Coast treated it as an intrusion into their socio-cultural space and a ploy to enable the British to be more controlling. The Marriage Ordinance was therefore caught between pro-colonial politics of domination and attempts at introducing some form of civilisation, and contrary socio-cultural resistance. Though religion became an area of conflict, the Ordinance itself was purposely secular. Nevertheless, it raised a great amount of religious upheaval.¹⁶ These different points of dissatisfaction and disagreement became the basis of conflicts between the state and various interest groups in the Gold Coast. The conflict itself never degenerated into an insurrection, but remained as a continuous vehement and emotional national protest for many years that culminated, to a large extent, in the flouting of the law with impunity. The colony was so large and the eyes of the British could not see every case of bigamy.¹⁷

Hitherto, marriage was predominantly practised under the different existing native customs and traditions, which were not backed by enforcement through national legislation. Native marriage across the country, then and now, is sectoral – depending on ethnicities, clans and family requirements, but with some general ingredients of customs, traditions, dowry payment and divorce, if need be. These marriages were potentially polygamous in nature and were also guided by systems of succession and inheritance. The marriages were contracted between families, not just the two individuals engaged in the relationship. The age for contracting

13 Kaplow SB. 1978. "Primitive Accumulation and Traditional Social Relations on the Nineteenth Century Gold Coast", *Canadian Journal of African Studies* 12(1):19-36.

14 Asiiimwe F. 2009. "Statutory Law, Patriarchy and Inheritance: Home Ownership among Widows in Uganda", *African Sociological Review / Revue Africaine de Sociologie* 13(1):124-142.

15 PRAAD SC 22/390, J. M. Sarbah, *The Gold Coast Leader* 5(210) 39/06/1906, 3.

16 PRAAD SC/22/392, *The Gold Coast Nation* VI(267) 5/5/1917, 3.

17 I personally grew up to meet Christian polygamists living in the cities of Ghana. They had marriages contracted both under the ordinance and the customary law. The fact that nothing happened to them indicated that the charge of bigamy could be effected if it would come to the attention of the authorities. In the event that this practice was widely accepted, the British could not do much about it.

native marriages also differed across the country. At the time of the introduction of the Ordinance, factors such as menstruation were the guide to girls' maturity for marriage. Today, no one in Ghana can marry under the age of sixteen, and those contracting marriage under eighteen must do so with parental consent.¹⁸ Traditional marriage practices in Ghana are undergirded by cultural tenets which provide for social cohesion and religious content, including beliefs associated with particular religious practices, deities and ancestors of a given society. Naturally, any hegemonic encounter in which one might become subservient or threatened with possible extinction would elicit struggle and confrontation. Therefore, the conflict between African traditional and Christian marriages was perceived within the broader context of competing religions.

Christian marriage was introduced into Ghana by the different church missions as part of their church-planting activities.¹⁹ It is monogamous in nature – a monogamy both cultural and religious. The New Testament's prescription of monogamy as propagated by the Apostle Paul was the acceptable form of Christian marriage in the churches planted by the Traditional Missionary Churches (TMCs).²⁰ Subsequently, Christian Churches have engaged in running battles with polygamy in the different cultures with which they have engaged.²¹ The form of Christian marriage brought to the Gold Coast was a legacy from the establishment of Erastian Christendom in Europe and the consequential adoption of monogamy as a cultural practice. Monogamy was and is carried out in the West irrespective of religion.²² It is therefore not surprising that monogamy encountered and confronted the traditional marriage in Ghana from these two fronts of culture and religion.

There is a variant of polygamous Christian marriage which must be mentioned here. It is an unorthodoxy characterised as Christian marriage because its practitioners do so as Christians and are recognised by their churches. This polygamous type of marriage was and is predominantly found in African Indigenous Churches (AICs).²³ The AICs freely hold to the Old Testament's system of polygamy, which is closer in praxis to African tradition, in general. The more endowed with wealth he was, the more a wives a polygamous man acquired, along with children. In this, AIC polygamous prophets and pastors led the charge. Typically, AIC marriage was contracted under the customary laws without a core standard liturgy of

18 The Child Marriage Unit, Ministry of Gender, Children and Social Protection. 2016. "Too young to marry but old enough to have sex?", myjoyonline.com, 16 June.

19 Essien V. 1994. "Sources of Law in Ghana", *Journal of Black Studies* 24(3):246-262.

20 PRAAD SC 22/391, The Gold Coast Leader VIII(363/4), 87.

21 Mndaweni C. 1990. "African Marriages Still at the Crossroads in South Africa", *The Comparative and International Law Journal of Southern Africa* 23(3):361-373.

22 Kaveny MC. 2006. "Erastian and High Church Approaches to the Law: The Jurisprudential Categories of Robert E. Rodes, Jr", *Journal of Law and Religion* 22(2):405-432.

23 Gitari D. 1984. "The Church and Polygamy", *Transformation* 3(1):3-10.

21. Conflictual insertion of marriage ordinances in British colonial Africa

solemnisation, as the case is with TMCs.²⁴ This practice is perhaps carried out as part of the AICs struggle to reclaim African values into Christianity.²⁵ In response to the Apostle Paul's advocacy and admonition for monogamist practices, the AIC pastors cite David and other biblical figures. Polygamy did not impede prophetic ministry, neither did it prevent God's friendship with Israel.²⁶ Hence, they call into doubt the imaging and equation Christianity to monogamy. One important development that has effectively reined in or slowed down their position is the fact that AICs have seen a decline, largely due their ostracism and condemnation by evangelical Christians with Pentecostal charismatics leading the charge.²⁷ Islamic marriage, or "Mohammedan marriage", as the British colonialists called it, is the third form of marriage that was considered to be a native form of marriage in Gold Coast at that time and, therefore, was not legislated until the beginning of the twentieth century.²⁸ Islamic marriage, like its Christian counterpart, is faith-based and derives its authority and legitimacy from the Quran, as Christian marriage does from the Bible.²⁹

THE GOLD COAST MARRIAGE ORDINANCE OF 1884: PROVISIONS AND CONFLICT

The Marriage Ordinance of 1884 was a thirteen-page document with many clauses.³⁰ It provided a form of marriage that was registered and certified by state. This certification became legal proof that could be used for all manner of documentation. It was vested in the governor or his appointed representative registrar. The Ordinance was essentially a secular document, in that it permitted any person irrespective of religion to be so served. The Ordinance legislated monogamy on a national scale, following upon earlier legislation on Christian marriage promulgated in 1863 by the British colonial government in Lagos to govern the English and Christians in the Gold Coast colony. Under the terms of the 1884 Ordinance, it was not sinful to be polygamous or promiscuous. Polygamy became a criminal offence

24 PRAAD SC 22/391, The Western Echo, April–May, 5; Singleton M. 1975. "Polygamy and Tyre Pressures: The Sacramentality of Customary Marriage Polygamy and Tyre Pressures: The Sacra Mentality of Customary Marriage", *New Blackfriars* 56(665):436–448.

25 Kollman P. 2010. "Classifying African Christianities: Past, Present, and Future: Part One", *Journal of Religion in Africa* 40(1):3–32.

26 Clarke CR. 2006. "African Indigenous Churches in Ghana Past, Present and Future", *Journal of African Instituted Church Theology* II(1):5, 15.

27 Meyer B. 2004. "Christianity in Africa: From African Independent to Pentecostal-Charismatic Churches", *Annual Review of Anthropology* 33:447–474.

28 Hiskett M. 1976. "Commissioner of Police v. Musa Kommanda and Aspects of the Working of the Gold Coast Marriage of Mohammedans Ordinance", *Journal of African Law* 20(2): 127–146.

29 Hiskett, "Commissioner of Police v. Musa Kommanda".

30 PRAAD 981/30, Ordinance No. 14, An Ordinance for Regulating the Law of Marriage, 19/11/1884.

for couples married under the Ordinance, whether they married within or outside of the church. Promiscuity was not referenced in the legislation.

The Ordinance could be administered by two types of officials, namely a secular court appointed registrar and government-approved, ordained ministers in recognised churches. Any violation of these regulations resulted in the nullification of the marriage process. Banns were supposed to be posted before the marriage through the obtaining of licences. Any person who was unhappy with the proposed marriage had the right to file a caveat, in which case a judge would decide whether the marriage had to be stopped or allowed to proceed. Parental consent to marriage was to be sought by celebrants who were under 21 years. A widow or widower under 21 did not need to seek parental consent. The marriage needed to be celebrated at a registered premise. Those who died intestate, as well as their offspring, became subjected to succession laws of England under the Ordinance. Any person who contravened the contents of this law by committing bigamy, fraud, or any other offences would be subject to fines and or imprisonment.

The Marriage Ordinance of 1884 raised a number of points of conflict with the existing culture of marriage in the Gold Coast. First of all, the Ordinance was viewed as a foreign English cultural and religious imposition, which nationalists felt had to be resisted in the same manner as other activities of the British. It fell in line with the predominant view at the time of the cultural superiority of the colonialists.³¹ The conflictual effect of Ordinance as foreign cultural invasion was addressed by opposing natives at the presentation of any opportunity. For instance, Nana Amanfie Ansa, regent of Asebu area in the then Central Province of the Gold Coast, using all the politesse he could muster, described the Ordinance as an appendage to the types of marriages that could be found in the colony in 1930.³² This would have greatly displeased the colonial authority, whose intension in introducing their precious ordinance was the provision of a solid foundation for an African society.³³

The Ordinance was also held out by the British as a better model of civilised marriage in terms of marital fidelity and sanctity. Polygamy, which was the predominant practice in the Gold Coast, was cunningly outlawed by legislating monogamy. Polygamy has been so deep culturally in the Gold Coast and present-day Ghana that even a monogamous man would be made a polygamist once he became a chief. The British legislation of monogamy was derided by nationalists who saw the British as being hypocritical. They maintained that the native peoples of the Gold Coast might be promiscuous, but it was mostly in the context of polygamy. However, the British multiplied concubines who unlike wives did not

31 PRAAD SC 22/388, Ixion, *The Gold Coast Chronicle*, 1(30) 29/06/1891, 3.

32 PRAAD, File 981/30, Nana Amenfie Ansa, *Registration of Marriages Contracted Under Native Customary Law*, 13/9/1930.

33 PRAAD, *Registration of Marriages Contracted Under Native Customary Law*, 24.

21. Conflictual insertion of marriage ordinances in British colonial Africa

contribute domestically and thus did not bring any visible social relief to their customary spouses. One writer recommended to the British that they own up and, by implication, leave Africans alone.³⁴

The Ordinance was promoted with all the might at the disposal of the British, which made it critics apprehensive, in a further point of conflict. They feared the Ordinance would ultimately supplant existing native customs of marriage. As the Ordinance promoters touted the Ordinance's relationship to Christianity, it advertently divided the natives' front, especially in the cosmopolitan centres, with arguments for and against.³⁵ There were running battles of words between African "ordinance converts" and those offering resistance. Even Governor William Brandford Griffith joined the fray to argue for civilising effect of the Ordinance. While emphasising individual family units, Griffith argued against the extended family system in the *Gold Coast Leader* newspaper. These arguments indicated that the Ordinance was more than a marriage issue. It was a coup d'état to overthrow the foundations of the Gold Coast culture.³⁶ Although secular in essence, its monogamous stance permitted the churches to appropriate it to themselves. In religious affairs, the British were seen to have taken sides against African Traditional Religion (ATR), a stance that had the potential to further supplant the existing native traditions of marriage. The British finding support for their pet law among the churches did nothing to correct this view. In fact, it suited them.

As if it was not enough provocation to ostracise polygamy, the British introduced an intestate succession provision that had no relation with the legality of a marriage within the Ordinance. The point of conflict here was that society had already set out the various relationships they had with their families, which were now being overturned. Before this, various ethnicities in Ghana had their own systems of inheritance, but the 1884 Ordinance dedicated different sections directing how property was to be administered in case of intestacy. These provisions were completely different from the Ghanaian customary intestate laws. They were more along the lines of the British purpose of remedying a social problem in the Gold Coast. This became another major source of conflict, because it was the first time that the British had interfered with the various ethnic succession laws in the Gold Coast. Statutory marriage became a pretext for redirecting intestate succession with which the British had been unhappy.³⁷ Thus they created a socio-cultural confrontation between themselves on one hand, nationalists and would be successors of intestate people on the other. Before this time no spouse could inherit from an intestate partner in any way possible. That meant that intestate deaths left

34 PRAAD SC 22/391 11(79) 1/7/1899, 3.

35 PRAAD SC 22/388, *Gold Coast Chronicle* 1(180) 6/4/1891, 1.

36 PRAAD SC 22/390, *The Gold Coast Leader* 5(210) 39/06/1906, 3.

37 Zabel, "Legislative History of the Gold Coast and Lagos Marriage Ordinance", 23-25.

widows and children desolate.³⁸ By the traditional practices, whatever properties widows and children had obtained with their husbands and fathers was left to the deceased's brothers, nephews, nieces, parents, and others on the maternal side, where the system of inheritance was matrilineal. The law consequently prevented matrilineal inheritors, with serious economic outcomes. As well, those with patrilineal inheritance could allow children who were of age to inherit property alongside the matrilineal descendants.³⁹ The law therefore set out to deliberately protect its adherents and to cut out native inheritance laws using the state's might. The changes that occurred in people's lives as a result of these inheritance laws of course had security and life assurance implications.

Furthermore, the offspring of unions contracted under the Ordinance were also automatically protected by the Ordinance. Such children were treated in terms of inheritance as British subjects. Therefore, when they died intestate, they were also inherited according to British law. It was assumed that people who adapted to the use of the Ordinance were Christian and their offspring needed to be protected from what the British considered as abusive modes of succession.⁴⁰ In the process of hashing out these new intestacy provisions, the idea of legitimate and illegitimate birth status, hitherto unknown in the thinking of Gold Coasters, was introduced. This produced hardship for children born out of wedlock in the event that a parent married under the Ordinance died intestate.⁴¹

Radically, under the 1884 Ordinance, people could marry without seeking the permission and involvement of their families after 21 years of age.⁴² This idea demonstrated a critical misunderstanding of the constructs of relationship, rules and taboos associated with the wider society. Marriage was considered to be a family affair, uniting two extended families in a bond that should not normally be contracted without their involvement. Ashanti historian AAY Kyeremanten for instance discusses the traditional processes of acceptance or rejection between men and women, in which families proposed suitors for their sons and daughters based on different considerations. In the Akan context, he noted, there could be no intra-clan marriages, apart from those belonging to the Aduana clan.⁴³ In addition,

38 Dzidzornu DM. 1995. "Human Rights and the Widow Material Security: The Case of the 'Intestate' Ghanaian Widow", *Verfassung Und Recht in Übersee / Law and Politics in Africa Asia and Latin* 28(4):489-521.

39 Awusabo-Asare K. 1990. "Matriliny and the New Intestate Succession Law of Ghana", *Canadian Journal of African Studies / Revue Canadienne Des Études Africaines* 24(1):1-16.

40 Awusabo-Asare, "Matriliny and the New Intestate Succession Law of Ghana".

41 Ollennu NA. 1971. "The Changing Law and Law Reform in Ghana", *Journal of African Law* 15(2):156.

42 Allott, "Marriage and Internal Conflict of Laws of Ghana".

43 The Akan ethnic group is composed of universal sub-divisional clans, among them the Aduana Clan. The universality is such that irrespective of town or dialect these clans are present. Therefore, people living in different Akan traditional areas find common identity within these clans.

21. Conflictual insertion of marriage ordinances in British colonial Africa

one was not supposed to marry from the maternal extended family, but one could marry from the father's maternal family.⁴⁴ Therefore, by empowering anyone at the age of 21 to be married on their own initiative, meant these laws and taboos could be circumvented. The ordinance effectively undermined some socio-cultural norms, which provided benefits to the couple and society at large. Apart from the elimination of family consent at age of 21, the law also made it possible for men to marry without providing a dowry. This was not only a taboo, but a wholesale change of economic paradigm, as some families budgeted with the dowries to be received in mind.⁴⁵ Consequently, to remedy these defects, many Africans opted to satisfy both sides of the conflictual divide in choosing use the Ordinance. They performed all of the native customs of marriage, as well as those required by the Ordinance – as it were they married twice.⁴⁶ In this way, the Ordinance failed to destroy completely the traditional aspects of family life.

In terms of women's rights, the Ordinance was a gender and human rights game-changer. It sought to provide personal marital rights to women, insisting that no one could force a woman to get married against her will under its provisions.⁴⁷ It is significant to observe that, in all the banter and argumentation that took place over the introduction of the Ordinance, the views of women were scarcely represented. The African woman was imaged as the submissive wife of the man – even a commodity. Where she failed to comply with the directives of the husband, she was returned to her parents such as one would a letter to its sender. In some Ghanaian ethnicities, the dowry was returned.⁴⁸ This practice was arguably unfair, as the woman should have been compensated at least for the years she had "served". Sometimes, she had no say when the marriage dowry was being collected to marry her off to suitors she did not even know.⁴⁹ Her willing participation in marriage rites may have been dependent on her faith, background and other considerations, such as education, profession, personal wealth and other influential factors.⁵⁰ Obviously, a law that was a foreign imposition and made the woman the central figure in determining her marital destiny was going to be at odds with the time-held and widely practised systems of marital patriarchy and dominance. Parents felt their children were disobeying their wishes, and husbands complained about

44 Kyerematen AA. 1967. "Traditional Marriage in Ghana", *Rivista Trimestrale Di Studi E Documentazione Dell' Istituto Italiano per l'Africa E l'Oriente* [Quarterly Review of Studies and Documentation of the Italian Institute for Africa and The East] 22(1):95-97.

45 Nsereko DD. 1975. "The Nature and Function of Marriage Gifts in Customary African Marriages", *The American Journal of Comparative Law* 23(4):682-704.

46 PRAAD, 1884 Ordinance, Clause.

47 PRAAD, 1884 Ordinance, Clauses 12 and 29.

48 PRAAD, File 981/30, Nana Amenfie Ansa, Registration of Marriages Contracted + Under Native Customary Law, 13/9/1930.

49 PRAAD, File 981/30, No. 209/4/18, Letter from the Northern Territories Commissioner.

50 PRAAD SC 22/391, The Gold Coast Aborigines 1(41) 5/10/1898.

the growing independence of their wives.⁵¹ Naturally, there would be consternation and anger at the Ordinance. Today, nevertheless, the legal code forbids forced marriages.⁵²

The principal actors on all sides of the conflict, in both government and society, were males – thus leaving one to wonder what opinion women possessed in the matter. Indeed, the claim in the Gold Coast was that females outnumbered men and therefore needed polygamy to give them mates. This view was rebuffed by a writer who spoke of the degrading effect of polygamy on womanhood and praised monogamy with the argument that “[m]onogamy has done more for the elevation of the female than any other custom of civilization”.⁵³ Not surprisingly, educated women at the time preferred the Ordinance to native marriage.⁵⁴ This preference would, arguably, be universal to all women. The Ordinance provided equal societal footing for women and men to the extent that males no longer could send away their wives without any consequences.⁵⁵ The men paid alimony, as well, and were not entitled to the return of the marriage dowry paid to the woman’s family. Besides, women, like men, could now do the sending away by filing for divorce.⁵⁶

DITHERING CHRISTIAN RESPONSE: CASE OF THE METHODIST CHURCH

In addition to the points of conflict mentioned in the previous section, one of the main points of contention with regard to the Marriage Ordinance of 1884 was that it was perceived, and correctly so, to be an extension of Christian influence and culture. The veracity of this perception lies more in what the Ordinance intended – the spirit of the law – than what it said. The Ordinance, as Shirley Zabel has indicated, was framed to help the Christian church by empowering Christians who marry.⁵⁷ However, the actual reaction among Christians in the Gold Coast was at some points ambiguous towards the law. Some church members complained about the negative effect the law was having on culture and society at large.⁵⁸ Others were concerned about the effect of law on evangelism. Forebodingly, the churches were accused of tying the salvation of people to the law and were warned as to the impending depletion of its membership.⁵⁹

51 PRAAD SC 22/388, Ixion, The Gold Coast Chronicle 1(23) 11/05/1891, 3.

52 Mensah-Brown K. 1969. “Marriage in Sefwi-Akan Customary Law: A Study in Ethno-Jurisprudence”, *Sociologus, Neue Folge* 19(1):39-65.

53 PRAAD SC 22/388, Ixion, The Gold Coast Chronicle 1(30) 29/06/1891, 3.

54 Awusabo-Asare, “Matriliny and the New Intestate Succession Law of Ghana”.

55 Daniels WCE. 1962. “Family Law and Succession”, *Journal of African Law* 6(1):49.

56 PRAAD SC 22/390, The Gold Coast Leader V(234) 15/12/1906, 3; Allott, “Marriage and Internal Conflict of Laws of Ghana”.

57 PRAAD SC 22/388, Gold Coast Chronicle 1(30) 29/06/1891; PRAAD SC 22/388, Gold Coast Chronicle 1(16) 23/03/1891.

58 PRAAD SC 22/391, The Gold Coast Leader VIII(363/4), 87.

59 PRAAD SC 22/391, The Gold Coast Aborigines 1(7) 12/2/1893, 2.

21. Conflictual insertion of marriage ordinances in British colonial Africa

Unsurprisingly, some newspaper reports accused the Methodist Church of having demanded the legislation of marriage in 1884. This accusation, of course, was not wholly true, from discussions captured by Zabel. It appears the church put in some pressure for the legislation to be enacted when Governor William Alexander George vacillated in signing the Ordinance into law.⁶⁰ Yet, just a year after the enactment of the Ordinance, the Wesleyan Annual District Committee Meeting sent a letter to the governor on 28 January 1886 expressing some strong reservations. After courteously claiming to understand why the law was introduced, the committee went on to enumerate five reasons why they believed the Ordinance was “unnecessary” in the present form in the Gold Coast.⁶¹

First, the Methodist Committee deemed the Ordinance to be impracticable regarding the resources required to fully enforce it, because the general means of locomotion which was principally by walking greatly made it impossible to implement. Second, the Ordinance was considered to be economically oppressive. It cost 8 shillings and 6 pence, together with other costs, to present an affidavit to the registrar in the Gold Coast, but only a shilling in England which had a better economy with more elaborate systems of registration. Third, there were problems in that licencing and registration offices were to be in colonial office in big towns and churches scattered across the country then. These locations were fewer compared to the large expanse of land and numbers of eligible people. Fourth, the committee believed that the Ordinance’s requirements were something that should be reconsidered at a more opportune time in the future. Fifth, the possible impediments posed by the Ordinance would cause a retardation of the gospel and rather increase immorality, because people would not be able to access it. People would rather marry by native custom than go through the laborious process of Ordinance marriage. In the face of these difficulties the Committee made an appeal for the Ordinance’s withdrawal.⁶²

It is clear that the Christian protagonists were divided and probably unprepared for the practical realities of the Ordinance. This position appeared to please opposing nationalists. In 1898, the *Gold Coast Aborigines*, a secular pro-nationalist newspaper, took the Methodist Synod, an even higher hierarchal body than the previous committee, to task for hurriedly accepting the Ordinance as a workable law. It accused the Synod of being insensitive and destroying native custom, instead of working at its inculturation in the same way the Apostle Paul did with the New Testament churches.⁶³ It is possible that the attack of the nationalists was because some members church members supported their views and wanted the Ordinance withdrawn while the Synod was in favour. They, therefore, felt betrayed by the church in promoting the Ordinance.

60 Zabel, “Legislative History of the Gold Coast and Lagos Marriage Ordinance: III”.

61 PRAAD SC 22/387, *The Western Echo*, 24/04/1886, 4.

62 PRAAD SC 22/387, *The Western Echo*, 24/04/1886, 4.

63 PRAAD, SC 22/391, *The Gold Coast Aborigines*, Vol. 1, No. 7, 12/02/1898, 2.

A FAILED NATIVE MARRIAGE REGISTRATION LAW

The tenuous acceptance of the Marriage Ordinance of 1884 by the majority of the Gold Coast came into focus forty-six years after its inception. It came in the form of a failed attempt by the British, in 1930 to register native marriages without changing their nature, methodology or details. I cite the vehement protest that caused this proposal to be withdrawn as evidence of the depth of negative feeling that had continued to be ignited by the Ordinance. This proposed legislation entitled Native Marriage Under Native Customary Law Registration (NMUNCLR), was introduced by the Commissioner of Ashanti Province, AJ Cutfield. The proposal came with a draft law to Accra. Cutfield claimed he had done due diligence and many of the chiefs in Ashanti favoured its enactment.⁶⁴

The purpose of this suggested law was to remove doubts that marriages had occurred between two people, providing a means of proof of marriage that could be employed for official use. In trying to avoid the difficulties associated with the Ordinance this time around, the state set out to consult as broadly as possible among both government and African officials.⁶⁵ The first sign that the law would not be passed came when the then attorney general declined to work on it stating, "It is impossible for me to frame any model set of bye laws for the matters therein (formulation of a law), stated as I have insufficient knowledge of the local conditions and the native laws and customs relating to marriage in the different chiefdoms of Ashanti."⁶⁶

Cutfield's draft was nevertheless sent around for consultation. To ensure that the information provided by those who registered their marriages was true, it was proposed that any person who gave false information was either going to be fined 10 pounds or imprisoned for three months.⁶⁷ After two years of vigorous activity, government official G Puckeridge signing for the colonial secretary wrote a circular to the provinces: "... relating to the registration of marriages contracted under native customary law and to ask you to be so good as to inform the Provincial Council that it is not proposed at present to take any further steps in the matter."⁶⁸

The draft NMUNCLR was rather simple, comprising seven clauses without subsections, and the key condition for participation was voluntary.⁶⁹ It was to be administered by Gold Coast native chiefs and yet it failed to be accepted. It met with resistance because of the proposed administration charge of 5 shillings.⁷⁰ Some

64 PRAAD, 981/30/11/June/1930, Acting Chief Commissioner.

65 PRAAD, 981/30/33, 16, No. 17/34/30, 16 Jan 1931, The Ashanti Commissioner, Kumasi, 981/30.

66 PRAAD, 981/30/12, 30 July 1930, N.J.A. Jones, Acting Colonial Secretary.

67 PRAAD, file 981/30, Ashanti Bye-Laws, 1930.

68 PRAAD, file 981/30, G. Puckeridge, Colonial Secretary, 1/09/1931.

69 PRAAD, file 981/30, Ashanti Bye-Laws, 1930.

70 PRAAD 981/30 G.A.S. Note, Colonial Secretary, Amendment of Sections 23 and 25 of Ordinance No. 4 1924, By Laws Colonial Secretary, 6/01/1931.

21. Conflictual insertion of marriage ordinances in British colonial Africa

natives entertained fears that chiefs would abuse their authority in the process.⁷¹ Apart from the protests raised against increasing the power of chiefs over native marriage, the bitterness and suspicion arising out of the conflict over the Ordinance appear crucially to inform both the primary and secondary protests. It will be appropriate to once again refer to Asebu regent Nana Amanfie Ansa's protest letter, which stated,

... we have already the Marriage Ordinance of 1884 (then CAP 96) regulating marriages in this Country. This has in many cases proved to be a foreign institution which serving as a graceful appendage to our own marriage customary laws, has proved to be unsuitable to local conditions with the result that the compliance with its concomitant provisions (right of succession, etc.) has failed to receive the appreciation of the great masses of the people in this Country and I am of opinion that any attempt under any pretence whatsoever to make legislation for our marriages will be met with an uproar of the people.⁷²

There is no doubt that the colonial administration tried to explain that the proposed native marriage registration law would not be as intrusive as the Ordinance. Yet Nana Ansa interpreted whatever was proposed from the perspective and feelings of anger he harboured towards the Ordinance. Understandably, he opposed it, and he was not alone. Similarly, the people of Aowin in the Western Province also unanimously spoke against the proposition, giving as their reason for the opposition that "there was nothing wrong with marriage (native), as it was without registration". They feared that "once registration was established power might gradually accrue to the chiefs to enforce monogamy."⁷³ While the government talked about registering polygamous marriages, the Aowin people heard or interpreted it to mean monogamy. Their suspicion was based on the way monogamy was legislated by the Ordinance. They consequently took it upon themselves to stop a possible legislated monogamy from a far way off!

It is possible that the British withdrew this proposed law along the way because it was not culturally and ideologically close to their interests. Of course, in that consideration, it was not worth the uproar which Nana Ansa had threatened should the law be proclaimed. Hence the comments the Commissioner of the Western Province made when his Province rejected the proposed law fairly summarises the official view at the time: "My own view is that the Colony is not yet sufficiently advanced to admit of such a step being taken. If registration was made compulsory there will be a tremendous outcry against it and if it is made voluntary the marriages will not be registered."⁷⁴

71 Views from Wassa-Fiasi PRAAD 981/30, 13/09/1930 Report from Western Province, By Commissioner Western Region which also rejected the proposal.

72 PRAAD, File 981/30, Nana Amenfie Ansa, Registration of Marriages Contracted Under Native Customary Law, 13/9/1930.

73 PRAAD, File 981/30, 7/09/1931 Letter by Colonial Secretary.

74 Views from Wassa-Fiasi PRAAD 981/30, 13/09/1930, Report from Western Province, By Commissioner Western Province.

This conclusion begs several questions. That the British believed that the colony was not advanced enough for the proposed law in 1930 that had an easier mode of applicability compared to the complex Ordinance No. 14 of 1884 in many ways constituted a strange logic. For the country was better developed in 1930 than 1884. One would have expected the British then to have repealed the Ordinance instead of maintaining it and receiving constant criticisms if the supposed implementers were that backward. Indeed, it was normal practice for the British to regularly repeal laws that were redundant or troublesome by passing the appropriate acts. Evidentially, Ordinance No.1 of 1893 decreed on 30 March was used to repeal several laws which could have included the Marriage Ordinance of 1884, but that was not done. Why did they leave this more complex 1884 legislation in place and withdrew the simpler 1930 Native Marriage Ordinance in order to allow the colony to become more advanced before continuing with its implementation? It is this type of inconsistency and condescendence in behaviour regarding issues in the Gold Coast which earned the British accusations of being patriarchal, superiority complexed, culturally subversive, hypocritical Christians with regard to the Ordinance.⁷⁵

A CENTURY ON AND REDRESS THROUGH CORRECTIVE LEGISLATURE

A century after the introduction of the Marriage Ordinance of 1884, some important corrective legal developments have become worthy of discussion. First, the Ordinance has been amended to become the Ghanaian law known as Marriage Ordinance CAP 127.⁷⁶ In addition, some new laws have been enacted that affect the conditions of intestate succession. These are the Intestate Succession Law (PNDC Law 111), Customary Marriage and Divorce Registration Law (PNDC 112) and Head of Family Accountability (PNDC Law 114), all of which were enacted on 14 June 1985. Law 114 which regulates the administration of inheritance by family heads is not the subject of discussion here. The other PNDC Laws 111 and 112 close the statutory recognition gap between customary marriage and CAP 127. The stipulations of Law 111 redistribute the self-acquired property of any person who dies intestate.⁷⁷ It therefore supersedes inheritance under the Ordinance. There are different combinations and permutations of these provisions, depending on which close family members, in the form of children, wife, father and mother surviving the deceased are on the first level of inheritance. The siblings and other extended relations of the intestate may benefit where all the people in the first rank have expired.⁷⁸ The intent to protect widows and widowers, as well as their children, is clearly present here, as it was with the British ordinance. However, legitimacy of birth was a non-issue in this law – all children have equal rights.

75 PRAAD SC 22/388, Ixion, The Gold Coast Chronicle, Vol. 1, No. 23, 11/05/1891, 3.

76 Dzidzornu, "Human Rights and the Widow".

77 Gedzi VS. 2014. "Pndc Law 111 in Ghana and International Human Rights", *Global Journal of Politics and Law Research* 2(2):15-26.

78 Daniels WCE. 1987. "Recent Reforms in Ghana's Family Law: Essays in Honour of A.N. Allott" 31(1/2):93-106.

21. Conflictual insertion of marriage ordinances in British colonial Africa

The PNDC Law 112 provides for the registration of both the enactment and divorce in customary marriage.⁷⁹ It is similar to the failed native registration law and does not prescribe what particular customs and rituals to contract. Neither does it stipulate, in particular, who can officiate at such marriages. What Law 112 does is to allow customary marriage to be defined as it is by every ethnicity without seeking to standardise it. In this context, a person can continue to be polygamous.⁸⁰ Law 112 records marriages and divorces in their culturally pristine states and then provides a certification. The parties in these marriages prove the fidelity of the marriage contract by having their parents or those that play the *in loco parentis* role to confirm their application for registration.⁸¹ A similar process applies in the case of customary divorce. It becomes a valid proof of the state of marriage to be employed in any official documentation. This law has thus come to resolve a conflicting point between the British colonial formulators of the Ordinance and its subsequent supporters. Ghanaians have maintained that their customary marriage is as valid as any marriage anywhere.⁸² The idea that customary marriage was downgraded and rendered fickle and suspicious in the eyes of the colonialists smacked of great disrespect for that which is authentically African. In the typical patriotic posturing of the PNDC, this law was decreed to right a century-old social inequality. Ultimately, CAP 127 was amended in 1985 to provide for the registration of customary marriage as a way of consolidating PNDC Law 112.⁸³ It nevertheless remained the purveyor of monogamous marriage.⁸⁴ Currently, there are steps to replace the intestate succession law and replace it with one that shared property among polygamists.⁸⁵ If were to be done, it would roll back the culturally hegemonic attempt by the British to introduce monogamy. In that case, socio-religious factors will determine the occurrences of polygamy or monogamy.

THE MARRIAGE ORDINANCE OF 1884 AND GHANAIAN MARRIAGE TODAY

The second important development after a century of the legislating the Marriage Ordinance of 1884 is that it has gained wider acceptability, well beyond religious divisions and cultural pride. In research for this chapter, some qualitative research interviews were conducted to ascertain the current public perception of the Ordinance. The principal question was to find out what the interviewees knew about being married under the CAP 127 Marriage Ordinance. Marriage under the

79 Daniels, "Recent Reforms in Ghana's Family Law: Essays in Honour of A.N. Allott".

80 Daniels, "Recent Reforms in Ghana's Family Law: Essays in Honour of A.N. Allott".

81 Daniels, "Recent Reforms in Ghana's Family Law: Essays in Honour of A.N. Allott".

82 Woodman GR. 1985. "Ghana Reforms the Law of Intestate Succession", *Journal of African Law* 29(2):118-128.

83 CAP 127, Marriages Act 1884–1985, Part 1.

84 CAP 127, Marriages Act 1884–1985, Part 3.

85 Kyei Y. 2014. "New Law to Protect Spouses", *The Ghanaian Times*, 13 November.

Ordinance, when held in a church setting, was popularly described as “wedding” and as “signing” at the civil marriage registry.⁸⁶

Among the most significant findings of the research for this chapter were that most people who have the means and are family conscious preferred to either have a registry or church marriage under CAP 127. The majority of the people who would not consider marrying under the Ordinance gave various reasons. There were those who thought they could not afford to get married or who simply did not want to get married at all, even under customary marriage. The legal implication and the costs involved dissuaded them. The second set of people opting out were those who saw the Ordinance as an imperialist imposition and believed that Ghanaian systems of marriage were sufficient enough. Lastly, there were Muslims and other people who still believed that this was Christian ceremony. Some did not even know about a registry marriage. When the financial and religious bottlenecks were removed, however, it turned out that people, some Muslims included, preferred the Ordinance.

Moreover, in spite of the promulgation of PNDC family laws, some people, especially women, wanted the marital and protective stability that CAP 127 brought. Although they did not need the Ordinance to settle issues of marriage registration and intestate succession, they resorted to the Ordinance anyway.⁸⁷ CAP 127 still criminalised polygamy which the PNDC laws do not. I must add, however, that the knowledge of the workings of these recent laws is rather minimal compared to that of the Ordinance.

The wedding ceremony, especially among Christians and their leaders, was the standard way of Christian marriage. But here, the issues of high cost of marriage are being mitigated by various innovative ways, such as holding both the customary and ordinance ceremonies on the same day to reduce expenses. For instance, in the case of one couple, the young man was of the view that, though they were Christians, it would be simpler and more economical to sign at the registry in Accra. However, his girlfriend disagreed vehemently saying, “I have kept myself and sacrificed every possible premarital pleasure to get married this way. I will have my walk on the aisle before my family and friends. I will not be denied this one time glory.” This assertion by the young lady may well summarise the sociological importance attached to the Ordinance by those who marry under its authority.

CONCLUSION

The Marriage Ordinance of 1884 was promulgated in the Gold Coast to change African behaviours with regard to marriage and succession into British ones. In this way, it began to alter the nature of the family unit through marriage and inheritance. Christian conversion of some polygamists resulted in broken homes whose future

⁸⁶ The interviewees included 30 unmarried University of Ghana students, 10 unmarried streetworkers at Agboghloshie Market in Accra, 40 married people interviewed within the Accra central commercial area, 6 Christian marriage counsellors, and 3 Muslim marriage counsellors, all in Accra. The interviewees were purposefully selected.

⁸⁷ Awusabo-Asare, “Matriliny and the New Intestate Succession Law”.

21. Conflictual insertion of marriage ordinances in British colonial Africa

was difficult to determine. These changes had implications for secure livelihoods, upbringing and social progress. Although there is little empirical evidence of the extent of the social disruption, extant studies confirm these assertions. There is evidence that nearly fifty years after the Ordinance, people in the Gold Coast continued to complain about it and as a result threw out a similar but less intrusive legislation for registering native polygamous marriage out of the prevailing anger against the Ordinance. Another key issue that rubbed Gold Coasters wrongly was the empowerment of widows to inherit, which radically changed the status of some women. Again, the law was seen as a Christian tool of marriage and was opposed by other religions. A centenary of years on, the PNDC introduced laws that corrected the major issues that made this law so unpopular during the colonial era. These changes notwithstanding, the Ordinance had become the preferred choice of marriage, principally among women, who believed it saved them from polygamous situations. It remains a matter of law and security for women and children who would be assured against the possible difficulties of polygamy by and large.