

Book Review

Reflections on the Supreme Court of Ghana

Samuel Kofi Date-Bah

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“The Supreme Court of Ghana”, wrote Dr Bimpong-Buta, former editor of the Ghana Law Reports, “has nurtured, promoted and asserted this democratic system of government as shown by some of its ground-breaking and epoch-making decisions”.¹ Yet, much of the analysis of Ghana’s democratisation focuses on political parties, the media, parliamentary and presidential elections. In *Reflections on the Supreme Court of Ghana (Reflections)*, however, Samuel Kofi Date-Bah, the judge who led the Supreme Court of Ghana in *Professor Stephen Kwaku Asare v The Attorney General (Asare)*² to write the obituary of canonical, literalist interpretation of constitutions and, instead, issued a fresh birth certificate for the purposive interpretation of Ghana’s Constitution, provides an account of Ghana’s Supreme Court in the making of the country’s constitutional political economy and vibrant democracy. Cast widely in the traditions of institutional political economists such as JR Commons who studied court decisions in order to understand political economy, such as in *The Legal Foundations of Capitalism*,³ *Reflections* is also distinct in the sense that it focuses not only on one aspect of the economy, say property rights, but rather on broader social transformation. Besides, the book is not written by an observer, but a researcher-participant in the delivery of judicial decisions in Ghana.

As a fellow of the Ghana Academy of Arts and Sciences, former professor of law in Ghana and Nigeria, and justice of Ghana’s highest court for ten years, SK Date-Bah is well positioned to write this book. Yet, *Reflections* is not merely about Date-Bah’s idiosyncratic views, memoirs or diaries from serving on the Supreme Court bench. Rather, it is the nesting of cumulated experience and judicial decision making and opinion on which he reflects in the book. A contribution to the JCL Studies in Comparative Law, *Reflections* focuses on Ghana’s experience with in the Commonwealth and other judicial jurisdictions. This is indeed a welcome contribution to constitutional political economy.

The main aim of the book “is to throw light on Ghana’s Supreme Court as an important national governance institution and to make a contribution to comparative law”.⁴ The book “also aims to promote a conception of the law as an

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- 1 SY Bimpong-Buta “The role of the Supreme Court in the development of constitutional law in Ghana” (LLD dissertation, University of South Africa, Johannesburg, 2005) at 32.
 - 2 [2003–4] SCGLR 823.
 - 3 JR Commons *The Legal Foundations of Capitalism* (1924, The Macmillan Company).
 - 4 SK Date-Bah *Reflections on the Supreme Court of Ghana* (2015, Wildy Simmonds and Hill Publishing) at 1.

instrument of social action and policy”.⁵ Consequently, the scope of this scholarship is much larger than Bimpong-Buta’s important doctor of laws work that appeared in 2005.⁶ *Reflections* deals with constitutional law too, but is ten years more up to date and substantially wider in scope. In this treatise, Dr Date-Bah identifies his audience as “practising lawyers in Ghana and academic lawyers everywhere, scholars who follow supreme courts in emerging democracies, comparative lawyers generally, students and the general Ghanaian public”.⁷ A review of the book must, therefore, be set against these aims. So, how does the book seek to achieve its aims and meet the needs of its target audience?

The book begins by providing the historical context within which the Supreme Court in Ghana was established, stressing how the present Supreme Court has no real equal in the history of Supreme Courts in Ghana and strongly making the case that the Supreme Court of Ghana has powers so awesome that it hardly has any equal in the world save, perhaps, the Supreme Court of India. These powers are original, supervisory, appellate and even electoral. Each function is extensively analysed in one chapter. Chapter 2 delves into the role of the Supreme Court as a constitutional court, chapter 3 is about the Supreme Court as a supervisor of other courts, chapter 4 is on the Supreme Court as a final appellate court, chapter 5 is on the Supreme Court as a review court, while chapter 6 is about the Supreme Court as an election court. In chapter 7, the book looks at other jurisdictions of the Supreme Court, namely determining whether certain documents should be allowed to be produced in court if it is a concern that publicising certain documentation may be injurious to national security or harmful to the public interest, whether and how people who might have been punished or suffer for legitimately resisting the overthrow of the Ghanaian Constitution should be compensated and the view that the Supreme Court should have jurisdiction in issues bordering on justice that are not dealt with by any other court in Ghana (residual responsibility).

However, that is not where it ends: the book has 12, not seven, substantive chapters. Chapter 8 sheds light on the judicial process at the Supreme Court, while chapters 9 to 11 respectively look at some game changing decisions handed down by the Supreme Court (including issues about dual citizenship), the Supreme Court’s effort to indigenise Ghanaian law by purging it of colonial and neo-colonial influences, and the Supreme Court’s broader contribution to society and the economy (for example, through land law, property rights, inheritance and contract, and elections and appointments of key state officers and officials). The conclusion, in chapter 12, is not only a summary, but also a call to action in areas in need of modest, moderate and drastic change. Throughout the book, recent topical issues in contemporary Ghanaian society are discussed directly, such as independence of the Supreme Court, corruption and contempt. The functionalist approach used by the author to show that the law is not simply regarded

5 Ibid.

6 Above at note 1.

7 Date-Bah *Reflections*, above at note 4 at 256.

as such but rather that it should be regarded as interlocked with society, polity and economy cements the book's place in constitutional political economy and also provides a compass for practitioners to understand their role not as simply mechanically or technically interpreting the law, but as agents of social change.

As a teacher of property and political economy, this reviewer was expecting reflections on the philosophical and historical debates underpinning ideas about property, property-based inequality and the role of property in social transformation, but none was provided. What are the theoretical lenses or philosophical orientation of the judges at the Supreme Court? What is the balance of liberal to conservative, social democratic to liberal, labour to environmental in the Supreme Court? Although germane to the aims of the book, these questions are not addressed. The book is well presented, although the effectiveness of using important, but not widely understood, Latin maxims can be debated in light of the book's avowed interest in reaching a broader readership.

There is, however, substantially more to be said in favour of *Reflections*. Chapter 9 is brilliant. It is informative in what it does, such as looking at corruption and appointments based on the author's analysis and insights; chapter 7 on the Supreme Court's additional functions and chapter 10 on the Supreme Court's contribution to law, politics and socio-economy are also illuminating. Chapter 6 is likely to be of interest to those who followed the landmark *Presidential Election Petition*⁸ of Ghana, as Date-Bah gives away some clues on how he might have voted and ruled in that case, in addition to what could have been done better or differently. Overall, the book provides a strong basis to have and develop public trust in the Supreme Court. While Justice Date-Bah makes many suggestions for improvement, including giving more support for judges to have seminars and highlighting the importance of research assistants, Date-Bah shows that "the Supreme Court has, in the past decade ..., exhibited these qualities of independence, impartiality, diligence and application to duty".⁹ These qualities, then, are what from a comparative law perspective can usefully guide Supreme Courts elsewhere, as well as other courts in Ghana.

Reflections succeeds in achieving its goals. In addition, it provides a map to navigate complex constitutional matters, a compass for what practical steps remain to be taken to strengthen the Supreme Court further and a nudge to interesting research questions to develop constitutional political economy in Ghana, comparatively and internationally. SK Date-Bah deserves commendation and his book wide recognition and readership.

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8 NO.J1/6/2013.

9 Date-Bah *Reflections*, above at note 4 at 256.