

CHAPTER 16

THE EFFECTS OF THE MAINTENANCE OF CHILDREN ACT
ON AKAN AND EWE NOTIONS OF PATERNAL RESPONSIBILITY

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An attempt will be made in this paper to look at the effect of one form of government legislation upon the duties and responsibilities of a father in relation to the maintenance of his children in the event of a separation or divorce. It first examines why the government felt it necessary to enact such legislation i.e. The Maintenance of Children Act No. 297, what the legislation stipulates and how it appears to operate. Traditional notions of rights, duties and responsibilities, as well as what seems to be actual practice are then examined briefly. Finally, some observations are made as to what effect, if any, the legislation has had upon the Akan and Ewe approach to rights, duties and responsibility for maintenance.

Background to the Act:

The Department of Social Welfare and Community Development which has functioned since 1944 has been the main social agency in the country dealing with family problems. Its first attempt at what were termed "personal welfare services", was begun in Sekondi in June 1949. Later, as more trained staff became available, the service was extended to Accra and Kumasi. The Department saw itself as anticipating the disruptive effects of industrialization and urbanization. The number of cases were small in the beginning and were termed: "family assistance", but each year the case load became larger and by 1960, the Department's annual report became more explicit about the nature of the cases listed under the heading "Social Assistance". The report stated that: "most of the 1,117 cases dealt with during the year involved maintenance of children by an absent father"¹ In 1961, the annual report claimed that 70% of the 1,132 cases "resulted in some measure of success, in that the children were maintained for some six months,

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but it was not possible to check for a longer period to see whether payments were being kept up".² In the 1962 report the Department had a total of 1,544 cases the previous year of which 577 were said to have proved successful. The apparent lack of success in handling these cases was attributable to a number of factors among which were, "the intransigence of the fathers involved and the lack of a legal basis to the system"³ (that is the department's system of handling the cases). A memorandum was then submitted to the Government on the subject and a draft Bill was to be placed before the National Assembly early in 1963. This move, as the 1963 report states, was not acceptable to the members of Parliament. The bill produced such controversy and so strong was the opposition that it had to be withdrawn. This same report indicated that in 1962 over a thousand cases were handled "mostly unsuccessfully".

In 1965, the Department, under a lady minister, Mrs. Susana Al Hassan, reintroduced the bill and it passed into legislation, a much watered-down version of its original self.

Up to the date of the passage of this Act in 1965, the Department handled any complaints regarding lack of maintenance of children by their fathers as part of their normal day-to-day duties. They relied mainly on persuasion as a technique and, as it was noted in the 1963 report, they found this method increasingly unsuccessful. Under the new bill, the minister was empowered to set up "Committees" (later termed "Conciliation Committees") to hear complaints against fathers who neglected to maintain their off-spring both born and unborn. These Committees were also to make recommendations as to the amount such a father should pay after assessing his financial situation. However it is to be noted that the first paragraph of the Act also uses the words "to persuade the father to make reasonable provision"⁴. The Department of Social Welfare and Community Development was, under the Act, given legal sanction (acting on behalf of the Minister) to receive the complaint, to go into it through its Committees and to recommend "such reasonable allowance not exceeding £10.00 a month for the maintenance of a child".⁵ Should the mother be dissatisfied with the ruling, or should the father fail to appear, refuse

or fail to comply with the ruling or deny he is the father, then the Act specifies that she should go to court as outlined in Part II or Part III of the Act. Thus, under the Act, the Department's hand was hardly more strengthened, as the ruling recommended by the Committee was not legally binding on the father and the onus of proceeding to court was still left with the mother of the child or, as indicated under Part II, the person in whose care or custody the child is left. The act makes no provisions for punishment of the father should he fail to pay (unless attachment of his salary or pension could be thus considered). It did, on the other hand, provide for a £20.00 fine in case the person to whom the maintenance is paid "misapplies" the money, "withholds proper nourishment" or "abuses or maltreats" the child. The Department of Social Welfare took on the role of the "inspectorate" in this area as is indicated by one of its directives to field officers.

The Social Administration Unit of the Department of Sociology decided to carry out a small survey in the 1967/68 academic year to try to determine whether or not the Department's field officers were correct in the assertion that the Act was not very effective. Accordingly, six students were recruited to work in: Accra/Tema, Kumasi and Sekondi/Takoradi. The Tamale area had originally been included but plans for this had to be dropped at the last minute because satisfactory arrangements could not be made.

A questionnaire was prepared, pre-tested on cases selected from one of Accra's Zone offices, and in final form was adopted after necessary corrections. The students were asked to select 100 cases from the files in each area, at random, between June 1965 and December 1967. They were asked to select only those that indicated some form of marriage had existed (that is: either native customary, Ordinance or concubinage). To this basic criterion another was added, namely that the man and the woman were at some time considered by others to be husband and wife. As a result of the criterion set, only a total of 267 cases could be selected from the existing files for the three areas. Of these 186 women who had brought complaints were interviewed. The other 81 persons had either moved away from the set radius of 30 miles or had left no forwarding address or could not be traced from office files which were sometimes

inadequately filled in.

The data obtained and most relevant to the theme of this paper is as follows:⁶

1. Regularity of payments:

Out of the total of 186 cases, 54 or 29% regularly paid the amount that they had been assessed at the "Committee" hearing. Of these, 6 paid less than the amount and a further 6 paid more than the amount. The number who were not at the time making any payments were 126 or 68%. While 6 or 3% were found to pay the maintenance at irregular intervals.

It does not appear that the ethnic composition of the marriage had much bearing upon the regularity or otherwise of the payments. The percentages showing no payments were higher in all groups, especially among the Akan (21.6%) and the Fanti (12.9), among couples of the same ethnic background except in the case of the Ewes where it was the reverse, but only by .5%. The number paying regularly was higher among the Akan when they were of the same ethnic background but the reverse in the case of the Fantis. The percentage for the Ewe was the same for both groupings.

It could be argued that assessments made might have been considered high in terms of the occupational pursuits of the fathers. The law stipulates that the maintenance should be a reasonable amount not exceeding £10.00 per month for the maintenance of a child. The survey showed that it was the clerical workers, professionals and administrators who were the most delinquent and next the manual workers and the self-employed. The clerical workers were found to be more regular with payments than any of the other groups mentioned. Unfortunately, the survey although quoting the amounts assessed during the period covered by the survey, did not correlate the figures with either the number of children involved or the occupation of the fathers.

2. Reasons for non-payment of maintenance:

According to those respondents whose husbands objected at the hearing to paying the maintenance, the refusal was based on one of the following reasons:

- a) The amount fixed by the Committee was too high and they could not afford it.
- b) There was still a dispute going on between the mother and the father.
- c) The mother had refused the father custody of the child.
- d) The father did not wish the woman to benefit in any way from the money he would pay in maintenance.
- e) The father had offered to patch up the breach but this had been refused by the woman.
- f) The man had denied paternity.

Since few clues as to why the fathers in the sample did not accept their responsibilities are to be found in the figures referred to above, an examination of customary ideas of paternal responsibility, as well as what obtains in practice may shed further light on the problem.

The Akan:

Among the Akan the father of the child is traditionally responsible for his care and welfare until puberty when it is his duty to "marry the child". The father is also responsible for any charges in connection with his son's immoral conduct. When a man dies it is his children who provide his coffin.

Descent group membership, inheritance and succession to major political offices is counted through the matriline and it is from his mother that the child traces his blood-ties which, as Rattray wrote, is "the one factor that really counts".⁷ From his father, who names him, it is thought that he inherits a spiritual aspect the "ntoro" which according to Rattray, is believed to exert a very powerful influence. The child's material advantage, as far as inheritance is concerned, lies with his mother's people and should there be a separation or divorce all indications are that the child goes with his mother but is not prohibited from going to his father for short or long periods. Rattray thought the legal position of the father was very weak and states that "his legal responsibilities are correspondingly few."⁸ Ollennu, on the other hand in his book on "The Law of Testate and Intestate

Succession in Ghana", states that "children in a matrilineal society are entitled to support, training and education from their deceased father's estate"9 Such a statement seems to imply a corresponding responsibility during the father's lifetime. Fortes affirms this aspect by stating that "it is regarded as the duty and pride of a father to bring up his children, that is, to feed, clothe and educate them."10 He goes on to say that a conscientious father would do this even after divorce of the mother. Fortes thinks this is strongly regarded as his responsibility and that only upon his failure does an uncle, mother or other kinsman take this on. The latter interprets actions on the part of the Ashanti on the matrilineal side as those of obligation, while those that stem from relations with the father as moral and nurtured by love and affection. Most of the literature however, which attempts a description of the father's role among the Akan refer to his legal position as Rattray does, that is as "weak". The general interpretation seems to be that this lack of legality behind the father-child relationship lends a moral tone to his actions and makes them sanctions of choice rather than of obligation.

As regards custody two points of view are expressed in the literature: Thus Rattray states that a father has the right to custody of his child in the event of divorce or separation, while Fortes asserts that he cannot claim their custody "as a right" in the event of a divorce. A 1969 publication entitled "Ashantis of Ghana" by J.W. Tufuo and C.E. Donkor states, "the woman is the custodian of the children of the marriage and they are in essence hers".11 All oral information on this subject indicates that present-day attitudes link the inheritance factor with custody when there is a separation or divorce. The usual statement is: "The children are for the mother's side". Rattray felt, however, that the spiritual bond of the ntoro exercised a restraining influence on the actions of the maternal kin. The Ashanti appear to believe that it may be harmful to cut a child off from the paternal side even if materially he stands to gain little.

It would seem, therefore, that a man who is separated or divorced from his wife would have to value tradition and pride very much as an incentive to carry out a role which is mainly moral in implication. He will have to value highly his role as a trainer, educator, as

the father whose children owe him a coffin upon his death in order to set aside the material considerations which prevail in present-day economic circumstances. Oral information indicates that many a man rationalises that since the children are "not for him", his is a choice to make as to whether he will contribute. From the remarks made by women, in the survey alluded to above it would seem that in practice some men regard the fact that they are no longer receiving services from the woman as crucial to the decision whether to support the children. Moreover they interpret the saying, "the children are for the woman's side" to mean they have no right to custody. Thus an Akan father may rationalize away whatever notions he had of responsibility for his children's upkeep.

The Ewe

The situation among the Ewe, unlike that of the Akan, is very clearcut. All oral information gathered for the writing of this paper categorically places the responsibility for their upkeep with the father or members of his family. This is considered normal for all Ewe. If there is a divorce or separation, any child who is considered too young to leave its mother remains with her until such a time when he is able to fend for himself (about 8 years of age). He will then live mostly with his father or his father's people and pay visits to his mother.. It is the normal expectation in properly constituted marriages that the child's father will provide maintenance even if the child remains with the mother. In the father's absence or his inability the father's family are expected to maintain the child.

The Ewe have a strong tradition that the knowledge of one's father, his family and his clan are of importance not only for inheritance purposes, but also for the social and psychological purpose of establishing one's sense of being. The father is the giver of the name and it is he and his family who are later likely to play an important role in negotiations for marriage. The Ewe would consider it shameful, for a child (especially for boys) to be without knowledge of one's father. One informant thought this varied considerably. One informant went so far as to say that "Ewe custom holds up to ridicule children who do not know their fathers or who do not visit them".

Thus, it appears that cultural tradition strongly urges that the ideal is for children of a broken marriage

to be taken over by the father or his people. Even if they remain with their mothers without maintenance by the father it is expected that they will later see their father's house.

Officials of the Social Welfare Department in Ho indicate some increase in the number of applications for maintenance from absent fathers. In their opinion most of the complaints are from women whose marriages have not received parental blessing or who have entered a conjugal relationship without going through the various formal negotiations required. Unlike cases of what are termed, "proper marriages" such women are reluctant to ask their parents to intercede on their behalf for maintenance. In addition, the parents of a woman whose marriage has not been completed would be reluctant to allow the children to go to the father's people as such children are not seen as his to claim. This is probably the sanction they hold, encouraging him to complete the required formalities for marriage.

Among the Anlo Ewe interviewed the opinion was firmly expressed that complaints about lack of maintenance would hardly reach the ears of the Social Welfare Department. It is said that a woman may lodge a complaint with the man's parents, but to do this publicly would amount to showing lack of a sense of responsibility for her children as well as lack of initiative. The Anlo woman they said would be ashamed to be accused of laziness or lack of industry where her children are concerned.

One last point that often came up in oral accounts of both the Akan and Ewe and which is of interest to mention is that both among the Akan and Ewe there is the expression of the idea that a man or woman is being "cheated" if that person stands to gain little as regards inheritance and yet spends money bringing up the child without the help of those considered legally responsible for this aspect and to whom the child "will eventually go".

Observations and Conclusions:

From the foregoing account several inferences come to mind:

1. The Akan:

An act such as this should have taken into account traditional up-bringing practices as well as their conditioning effects which are responsible for the attitudes people hold about particular social problems and the loopholes they create to justify their stand. Where conditions are no longer ideal and a couple separate or divorce, the Akan man would rationalize that the children are "for the mother's side" therefore no matter how much he gives they are not for the enhancement of his own people. Even if the law says he can have custody awarded to him, his strong sense of tradition prevents him from demanding it. So too his traditional outlook as to the legal rights of his children and their inheritance prospects make him encourage them to cleave to their mother's people. If they are well off, this lets him out of the responsibility. Material considerations here outweigh the moral which is, after all, the ideal. The law has had little effect in promoting what writers agree is regarded by the Akan as a moral responsibility and one of choice.

2. The Ewe:

The same comment that begins the above paragraph also applies to the Ewe where the notion of responsibility is very clear cut. However, a man who, for whatever personal reason, wishes to postpone taking up his responsibility will rationalize that the child will eventually come to stay with him because traditionally everyone is taught that his or her material advantages lie with the father and his people. Since a woman of Eweland would be ashamed to lodge a complaint and would dislike accusations from the community that she is lazy or cannot find a way of caring for the children, she would not initiate any action against the children's father as the law requires. She is likely to wait for the children to grow up sufficiently, then when she decides that she is being "cheated" or that she has borne enough of the responsibility alone, the children will then be sent to their father or his people who would not refuse to care for them.

3. In General:

(a) The law would seem to have used mainly a

British approach to parental responsibility and one which accords more with the patrilineal mode of inheritance where the situation is clear cut. It does not provide for the matrilineal inheritance situation where the father or his successor's role can be interpreted as permissive. Part I of the act specifically states that an application for maintenance can only be made against the father by the mother. It has also not reckoned with the strongly ingrained idea of the Akan who link inheritance and custody or of the notion that one ought to "get something" out of a situation into which one has invested.

(b) Part I of the Act does not provide for the social situation of fostering which is so prevalent in Ghana. Applications must be made by the mother. Only under Part II of the Act is there permission for a person other than the mother to apply for help from the child's father. Court action is the only way. Such clients do not often have the financial means to initiate such a course of action.

(c) In a country that is still strongly bound by tradition, the law, as it stands, is unrealistic because it does not seem to have taken into consideration the type of client it is catering for, her economic circumstances and her socially ingrained attitudes. The suggestion that court action be instituted by the mother if the steps taken in Part I of the action fail, is one such example. In the survey earlier mentioned in this paper, most women could not see themselves going to court either because they hadn't the money, the time and/or, this was not the kind of action their families or the surrounding community would encourage. Indeed, such a course of action would be considered a disgrace to themselves or to their families.

(d) Although the Act attempts to use the traditional approach of arbitration through the use of "Conciliation Committees", it has not incorporated (and probably could not in a large urban environment) the other vital aspect of arbitration as a means of settling marital disputes. The arbitration procedure works and has worked in the close communal situation because the social pressure to do what is considered "right" comes from persons who are known and with whom the parties are in constant contact. The use of total strangers, as occurs in the Social Welfare Department, lessens

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2. Students in the 1969/71 session of the Certificate Course in Social Administration of the Sociology Department.
3. Ewes residing in Legon some of whom are Senior Staff members of the University of Ghana.

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