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Supreme Court at 150: Law, democracy and the foundations of prosperity

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Published 23 minutes ago 16 min read  

New institutions shape a nation's prosperity as quietly as its highest court.

Investors may focus on inflation, exchange rates, taxation, and infrastructure, but long-term economic confidence rests upon something even more fundamental: whether citizens and businesses trust that the law will be applied fairly, predictably, and independently.

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That is why this year's 150th anniversary of Ghana's Supreme Court deserves attention not only from lawyers and judges, but also from business leaders, investors, policymakers, and every Ghanaian who cares about the country's future. Few institutions on the African continent can trace such a continuous history.

Fewer still have accompanied a nation through colonial administration, independence, constitutional experimentation, military rule, democratic renewal, and the emergence of one of Africa's most respected constitutional democracies.

Anniversaries naturally invite celebration. They should also invite reflection.

During my years living and working in Ghana, I often found myself speaking with investors, development partners, and government officials about the country's comparative advantages. Ghana possesses abundant natural resources, an entrepreneurial population, respected universities, and a strategic location within West Africa.

Yet I frequently argued that one of its greatest strengths received far less attention: the quiet confidence that disagreements would ultimately be resolved through institutions rather than instability. That confidence has many sources, but none is more important than an independent judiciary.

The significance of the Supreme Court's sesquicentennial therefore lies not simply in its longevity, but in what that longevity represents. Institutions endure only when successive generations continue to find them worthy of preservation.

Courts earn public confidence not because they are old, but because they consistently demonstrate fairness, independence, intellectual rigor, and fidelity to the law. Their greatest contribution is often invisible.

They create the stability that allows governments to govern constitutionally, businesses to invest confidently, entrepreneurs to innovate boldly, and citizens to believe that disputes will be resolved by law rather than by power.

As a member of the Ghana Bar who has worked in Ghana on governance, democratic institutions, and justice-sector reform, I have long admired the country's judiciary. Like every enduring institution, however, its history is neither simple nor uniformly triumphant.

It is a story of progress and retreat, courage and caution, decisions that strengthened constitutional liberty and others that later generations have viewed with understandable regret.

That complexity should not diminish this anniversary. On the contrary, it is precisely what makes the Court's 150-year journey worthy of thoughtful celebration.

Although the Bond primarily addressed criminal jurisdiction and public order, it reflected a broader recognition that commerce, governance, and peaceful coexistence depended upon institutions capable of resolving disputes according to established legal principles rather than personal influence or force. Even at that early stage, the relationship between justice and economic development was already becoming apparent.

Those early judicial arrangements gradually evolved into a more formal court system, culminating in the Supreme Court Ordinance of 1876, which established a permanent superior court for the Gold Coast. Like many colonial institutions, it was created to serve an imperial administration rather than an independent African democracy. Yet history often produces unexpected inheritances.

Institutions established for one purpose sometimes evolve to serve another. Over time, Ghana's judiciary ceased to be merely an instrument of colonial governance and instead became an institution through which Ghanaians interpreted, developed, and ultimately defended their own constitutional order.

When Ghana achieved independence in 1957, the courts inherited both traditions and responsibilities. They now served not the British Crown but a sovereign republic seeking to define its constitutional identity.

They also inherited the difficult responsibility of balancing executive authority, parliamentary sovereignty, individual liberty, and judicial independence within a young nation confronting extraordinary political challenges.

Those challenges emerged quickly.

The constitutional optimism that accompanied independence soon encountered profound tensions concerning executive authority, national security, and individual rights. Perhaps no decision illustrates those tensions more clearly than *Re Akoto and Seven Others*, decided in 1961.

The case arose after several political opponents of President Kwame Nkrumah challenged their detention without trial under the Preventive Detention Act. They argued that the Constitution's declaration of fundamental principles and freedoms should prevent such executive action.

The Supreme Court concluded, however, that those constitutional provisions were not judicially enforceable limitations upon governmental authority. They expressed important constitutional ideals, but they did not create legal rights that courts could enforce against the executive.

Viewed through the lens of today's constitutional jurisprudence, *Re Akoto* occupies an uncomfortable place in Ghana's legal history. It has become less a precedent to celebrate than a lesson to remember.

At the same time, historical fairness requires understanding the constitutional framework within which the justices were operating. The 1960 Constitution differed fundamentally from the constitutional architecture adopted under the Fourth Republic.

Judges decide cases within the legal texts before them, not within the constitutions later generations might wish had existed. That historical context helps explain the Court's reasoning, even if it cannot erase the lasting significance of the decision or its consequences for civil liberty.

The years that followed placed even greater strain upon Ghana's constitutional institutions. Coups d'état repeatedly interrupted civilian government. Constitutions were suspended and replaced. Military administrations exercised authority that often left little room for ordinary constitutional adjudication.

Throughout those turbulent decades, the judiciary, like many public institutions, struggled to preserve professional integrity under extraordinarily difficult political circumstances.

The darkest chapter came not in a courtroom, but on a quiet June night in 1982.

On June 30, Supreme Court Justices Fred Poku Sarkodee, Cecilia Koranteng-Addow, and Kwadwo Agyei Agyepong, together with retired Major Sam Acquah, were abducted from their homes and brutally murdered.

Their deaths shocked Ghana and reverberated throughout the Commonwealth legal community. More than four decades later, they remain enduring symbols of the price that defenders of the rule of law may sometimes be called upon to pay.

Every year, the Judiciary commemorates these jurists as the Martyrs of the Rule of Law. Their legacy deserves more than ceremonial remembrance. Their murders remind us that judicial independence is not an abstract constitutional doctrine discussed only in law schools and appellate opinions.

It depends upon real men and women prepared to administer justice without fear or favor, even when doing so carries personal risk. Throughout history, societies have discovered that the independence of courts ultimately rests not only upon constitutional text, but also upon individual courage.

If *Re Akoto* demonstrated the dangers of excessive judicial deference, the events of 1982 revealed the terrible consequences that can follow when respect for legal institutions itself begins to erode. Together, these episodes profoundly influenced Ghana's constitutional evolution and shaped the thinking that ultimately produced the 1992 Constitution.

When constitutional democracy returned under the Fourth Republic, Ghana consciously embraced a stronger vision of judicial authority. The Constitution reflected lessons learned over decades of

constitutional supremacy, and entrusted the Supreme Court with safeguarding the constitutional order itself.

The intellectual foundations of that transformation had already begun to emerge in *Tuffuor v. Attorney-General*. Although decided under the 1979 Constitution, the case helped establish one of the defining principles of Ghanaian constitutional law: the Constitution is not an ordinary statute to be interpreted narrowly according to technical rules.

It is the supreme law from which every institution of government derives its authority and to which every institution ultimately remains accountable.

That understanding fundamentally reshaped the judiciary's constitutional role. Courts were no longer simply resolving disputes between private litigants or interpreting legislation enacted by Parliament.

They became guardians of the constitutional compact itself, responsible for ensuring that every branch of government remained faithful to the nation's supreme law.

As the Fourth Republic matured, the Court's constitutional confidence became increasingly evident. In *New Patriotic Party v. Inspector-General of Police*, widely known as the Public Order Case, the Court gave robust protection to the constitutional freedom of assembly.

By confirming that citizens could not be required to obtain governmental permission before exercising fundamental constitutional freedoms, the Court reaffirmed an essential democratic principle: constitutional rights belong to the people. They are not privileges dispensed at the discretion of the state.

The significance of that judgment extended far beyond public demonstrations. Democracy requires more than periodic elections. It depends upon the ability of citizens to organize, assemble, criticize, advocate, and persuade between elections.

By protecting those freedoms, the Court strengthened not only constitutional doctrine but the democratic culture upon which constitutional government ultimately depends.

The Court continued to build that jurisprudence in subsequent decisions, including the *CIBA* case, which reinforced constitutional protections for freedom of association and political participation, and important cases defining the constitutional responsibilities of independent institutions such as CHRAJ.

Collectively, these decisions reflected a judiciary increasingly willing to police constitutional boundaries while respecting the separation of powers. They also demonstrated a Court growing more confident in its role as the guardian of democratic governance rather than merely the interpreter of statutory law.

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Questions involving land tenure, chieftaincy, succession, and customary rights have required the Court to reconcile inherited legal doctrines with legal traditions that long predate colonial administration.

That ongoing dialogue has enriched Ghana's constitutional order and reflects a legal system that draws strength both from its common-law heritage and from the country's own customary institutions.

A similar institutional commitment appeared in the celebrated *31st December* case. There, the Court confronted difficult questions concerning the relationship between constitutional democracy and official commemoration of a military coup.

The decision reflected a broader constitutional truth that continues to resonate today: democratic governments must be careful that public institutions never appear to legitimize the unconstitutional overthrow of constitutional government.

In a nation that had experienced repeated interruptions of democratic rule, that principle carried profound constitutional and symbolic importance.

It also underscored an enduring lesson of Ghana's constitutional history: democratic institutions cannot flourish unless constitutional government itself remains worthy of public allegiance.

The Supreme Court's constitutional jurisprudence continued to mature as Ghana's Fourth Republic developed. Cases involving political parties, electoral disputes, executive authority, independent constitutional bodies, and the interpretation of the Constitution increasingly reflected a judiciary prepared to engage the nation's most difficult questions within the framework of law.

Like every constitutional court in a vibrant democracy, the Supreme Court has issued decisions that have attracted both praise and criticism. That is neither surprising nor unhealthy. Courts entrusted with resolving the country's most consequential disputes should expect disagreement.

Their legitimacy ultimately rests not upon universal approval, but upon public confidence that every litigant receives a fair hearing before independent judges applying constitutional principles with integrity and intellectual honesty.

Perhaps nowhere has that institutional maturity been more visible than in the presidential election petitions. The petitions following the 2012 and 2020 presidential elections placed the Court at the center of intensely contested political disputes. Millions of Ghanaians followed the proceedings with understandable passion. Every witness, every legal argument, and every judgment carried enormous political consequences.

Reasonable people continue to disagree about aspects of those decisions, just as citizens in other democracies often debate the judgments of their highest courts. Yet history may ultimately remember

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disputes to constitutional processes rather than to violence or unconstitutional means. The Court provided the forum through which those disagreements could be heard publicly, tested rigorously, and resolved peacefully.

That achievement should never be underestimated. Across the world, disputed elections too often become constitutional crises, civil unrest, or military intervention. Ghana demonstrated another path.

It showed that even the nation's highest political office remains subject to constitutional adjudication. The willingness of political leaders and citizens alike to accept judicial resolution—even while continuing to criticize particular judgments—has become one of the defining characteristics of Ghana's democratic success.

The Court's constitutional role, however, extends well beyond protecting political liberty. It also serves as one of the quiet foundations of Ghana's economic development.

Commercial disputes rarely attract the attention generated by constitutional litigation, yet their cumulative importance is enormous. Over the decades, the Supreme Court has helped shape the legal environment within which Ghana's economy functions.

Its jurisprudence has clarified questions concerning contracts, banking, taxation, land ownership, administrative fairness, corporate governance, public procurement, mining concessions, petroleum regulation, and the lawful exercise of governmental authority. Collectively, these decisions form part of the legal architecture upon which modern commerce depends.

Businesses do not ask courts to guarantee commercial success. They ask for something both simpler and infinitely more valuable: predictability. Investors want confidence that agreements will be interpreted consistently, that government agencies will exercise statutory powers lawfully, that property rights will be respected, and that disputes will be resolved by impartial judges applying established legal principles rather than political influence or personal connections.

That predictability has become increasingly important as Ghana's economy has diversified beyond its traditional strengths in cocoa, gold, and timber.

Financial services, telecommunications, manufacturing, renewable energy, petroleum, digital commerce, logistics, and regional finance all depend upon sophisticated legal institutions capable of resolving increasingly complex disputes.

As commercial relationships become more intricate and investment flows more international, the Supreme Court's responsibility for providing coherent and principled legal guidance becomes correspondingly more significant.

natural-resource management, industrial policy, and economic development.

Those decisions properly belong to elected officials. Constitutional democracy, however, also requires assurance that governmental authority remains subject to legal limits.

By reviewing executive and legislative action for constitutional compliance, the Supreme Court helps maintain the delicate balance between democratic decision-making and the rule of law. That balance protects not only individual liberty, but also the long-term credibility of Ghana's economic institutions.

International investors frequently speak of "country risk." The phrase often evokes inflation, exchange-rate volatility, sovereign debt, or political instability.

Equally important, however, is legal risk. Investors seek confidence that contracts will be honored, regulations applied fairly, judicial remedies will remain available when disputes arise, and constitutional guarantees will be respected regardless of which political party forms the government.

A respected and independent Supreme Court cannot eliminate commercial risk, but it significantly reduces legal uncertainty. In doing so, it quietly lowers the cost of investment while strengthening Ghana's reputation as a reliable place to do business.

For that reason, the Supreme Court should be understood not only as a constitutional institution, but also as an economic institution. Every carefully reasoned judgment that reinforces legal certainty contributes, however indirectly, to investor confidence.

Every decision demonstrating judicial independence strengthens Ghana's standing among businesses, trading partners, lenders, and entrepreneurs looking for a stable jurisdiction in which to invest. The rule of law is not merely one characteristic of a successful economy. It is one of the conditions that makes sustained economic success possible.

As Ghana continues positioning itself as one of Africa's leading commercial and financial centers, this relationship between law and development assumes even greater importance.

The decision to locate the Secretariat of the African Continental Free Trade Area in Accra reflected international confidence in Ghana's political stability and institutional maturity. That confidence, however, cannot be taken for granted. It must continue to be earned through institutions capable of inspiring trust both at home and abroad.

The African Continental Free Trade Area promises to reshape commerce across the continent by reducing barriers to trade and encouraging regional economic integration. Yet trade agreements alone do not create prosperous markets.

The Supreme Court therefore stands not merely as the guardian of constitutional democracy, but also as one of the institutions that will determine whether Ghana realizes its full potential as a regional commercial and dispute-resolution hub.

In recent years, the Court has also become part of a broader constitutional conversation extending beyond Ghana's borders. Like other leading apex courts throughout the Commonwealth and Africa, it increasingly engages comparative jurisprudence from jurisdictions such as South Africa, Canada, India, the United Kingdom, and other common-law democracies while remaining firmly rooted in Ghana's own constitutional traditions. That willingness to learn from comparative experience without sacrificing national constitutional identity reflects the confidence of a mature judiciary.

The challenges facing the Court during its next 150 years will differ dramatically from those confronting its predecessors in 1876—or even the framers of the 1992 Constitution. Artificial intelligence, digital finance, cybersecurity, climate change, environmental governance, data privacy, biotechnology, intellectual property, cross-border commerce, and increasingly sophisticated financial markets will generate constitutional and commercial questions that earlier generations could scarcely have imagined. The quality of Ghana's judicial institutions will become even more important as those challenges emerge.

Fortunately, the Judiciary has already demonstrated encouraging leadership through expanded digital services, electronic filing initiatives, virtual proceedings where appropriate, and continued efforts to improve judicial administration.

Those reforms deserve sustained support. Justice delayed has always imposed human costs, but it also imposes economic costs. Businesses cannot make informed investment decisions when commercial disputes remain unresolved for years. Entrepreneurs hesitate when regulatory uncertainty persists. Efficient judicial administration is therefore not simply an administrative objective; it is an important element of national competitiveness.

At the same time, modernization must never come at the expense of the values that have given the institution its legitimacy. Public confidence ultimately depends upon judicial independence, transparency, integrity, intellectual rigor, and unwavering fidelity to the Constitution. Technology can improve efficiency. Only principled judging can preserve trust.

Institutions earn respect not because they have existed for many years, but because they continue to deserve public confidence. Ghana's Supreme Court has experienced moments of both triumph and disappointment during its century and a half of service.

It has rendered decisions that expanded constitutional liberty and others that history has viewed more critically. It has operated through colonial administration, independence, constitutional transformation,

Perhaps that is its greatest accomplishment.

The history of Ghana's Supreme Court demonstrates that the rule of law is never self-executing. It depends upon institutions willing to defend constitutional principles, lawyers prepared to advocate for them, public officials committed to respecting them, and citizens who understand that democratic government ultimately rests upon law rather than power.

The lessons of *Re Akoto*, the courage of the Martyrs of the Rule of Law, the constitutional vision reflected in *Tuffuor*, the protection of fundamental freedoms in the Public Order Case and *CIBA*, the reaffirmation of constitutional government in the *31st December Case*, and the peaceful resolution of presidential election disputes together tell a single constitutional story. It is the story of a nation learning, sometimes painfully, that democracy cannot endure without strong institutions capable of earning and preserving public confidence.

One hundred and fifty years after its establishment, Ghana's Supreme Court stands as far more than the nation's highest judicial tribunal. It is one of the principal foundations upon which Ghana has built its reputation for constitutional government, democratic stability, and economic credibility. Investors may first notice the country's markets, resources, or strategic location. Over time, however, they come to appreciate something even more valuable: the confidence that the rule of law provides.

That confidence is among Ghana's greatest competitive advantages.

As the country looks toward the next generation of democratic and economic progress, the Supreme Court will continue to play a role that is both quiet and indispensable.

Its judgments will shape not only constitutional doctrine, but also investor confidence, commercial certainty, and public trust. If the Court continues to approach those responsibilities with independence, wisdom, humility, and fidelity to the Constitution, its greatest contribution to Ghana may still lie ahead. Steven is a Former Deputy Mission Director, United States Agency for International Development/Ghana Barrister and Solicitor of the Supreme Court of Ghana Graduate, Ghana School of Law. hendrix.steven@gmail.com+1 920-750-865 www.stevenhendrix.com [linkedin.com/in/stevenhendrix/](https://www.linkedin.com/in/stevenhendrix/) Twitter @hendrixse

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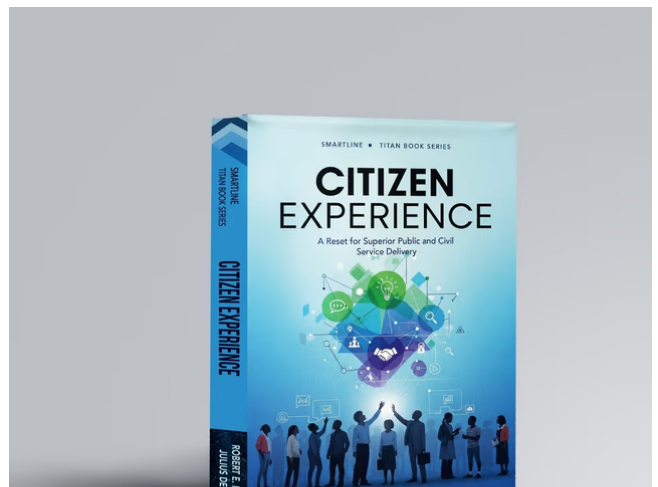
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