

5-1-1999

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Recommended Citation

E. K. Quashigah, *Legislating Religious Liberty: The Ghanaian Experience*, 1999 BYU L. Rev. 589 (1999).

Available at: <https://digitalcommons.law.byu.edu/lawreview/vol1999/iss2/6>

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Legislating Religious Liberty: The Ghanaian Experience

*Dr. E.K. Quashigah**

The role of religion is paradoxical. It makes prejudice and it unmakes prejudice. While the creeds of the great religions are universalistic, all stressing brotherhood, the practice of these creeds is frequently divisive and brutal. The sublimity of religious ideals is offset by the horrors of persecution in the name of these same ideals. Some people say the only cure for prejudice is more religion; some say the only cure is to abolish religion. Churchgoers are more prejudiced than the average; they also are less prejudiced than the average.¹

I. INTRODUCTION: RELIGION AND POLITICS

Religious differences exist in almost all countries. Religion is a very strong instrument which can either pull a country together or, if misapplied, split a country apart. It has been one of the most common bases for discrimination and abuse of the rights of others since the two major religions of contemporary times, Christianity and Islam, gained ascendancy into world affairs. When pursued along political lines, religion can devastate the lives of many. The unfortunate examples include: the fate of the Jews in Germany during the Second World War, the fratricidal wars currently going on in Algeria and the Sudan, the activities of Islamic fundamentalists in Egypt, Christian fanatics of the Lord's Army in Uganda, the religion-based massacres in Yugoslavia, and the exploits of the Taliban in Afghanistan. These examples show how religious extremism can create misery among a people.

Because of the potentially volatile nature of religion when introduced into national life, most nations have decided to eliminate religious influence from public life as much as possible.

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1. GORDON W. ALLPORT, *THE NATURE OF PREJUDICE* 444 (1988), *quoted in* BAHIIYIH G. TAHZIB, *FREEDOM OF RELIGION OR BELIEF: ENSURING EFFECTIVE INTERNATIONAL LEGAL PROTECTION* 9 (1996).

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Religious beliefs are sensitive, emotional issues for many men and women which appeal not to human logic, but rather to irrationality. Likewise, a person denied of strongly held religious beliefs is a person without a soul; he or she is robbed of the very factor that keeps hopes alive. It is for these reasons that it is often much easier to create fanatics and martyrs in the religious field than in any others. Thus, questions bordering on religion are often very volatile and difficult to manage. It is therefore not surprising that most of the longest wars in the history of the human race were those sparked by religious bigotry.

Separating government and religious institutions respects the religious beliefs of others. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief stresses the importance of respecting all religious beliefs: "Religion or belief, for anyone who professes either, is one of the fundamental elements in his conception of life."² Any attack on the belief or religion of any person is thus an attack on one's very existence; it is, at the least, an attack on one's humanity. In this regard, any action of the state which would impinge on any belief system or religious conscience of a people should be taken with extreme caution. After all, the state exists to ensure the realization of the humanity of all.

There exists the extreme danger of governmental machinery being utilized by religious bigots to discriminate against others for religious reasons. Hence, there has been the incessant effort by many to dissociate the state from religious beliefs so as to avoid religious conflicts which have the potential of easily destroying a state. According to Arnold Toynbee, "religious conflict is not just a nuisance but is a sin. It is sinful because it arouses the wild beast in Human Nature. Religious persecution, too, is sinful because no one has a right to try to stand between another human soul and God."³

History has shown a continuous trend of separating state from religion. As the years pass, we have seen this trend increase. In Europe during the 18th century, the basis for reli-

2. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief, G.A. Res. 36/55, U.N. GAOR, 36th Sess., Supp. No. 51, at 171, U.N. Doc. A/36/51 (1981).

3. ARNOLD TOYNBEE, A HISTORIAN'S APPROACH TO RELIGION 252 (1956).

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gious practice was *cujus regio ius religio*, implying religious conformity with the interests of the monarch. With the demise of the monarchies and the emergence of republics, that idea has died out; a republic is a government of all and religious beliefs cannot be thrust upon the people. Ghana's history exemplifies this trend.

II. HISTORY OF RELIGION AND POLITICS IN GHANA

A. *The Colonial Period*

Prior to the colonization of Ghana, religious beliefs were a very personal concern of the individual. Religious persecution was virtually nonexistent because the concept of God was a personalized matter taken from individual ancestral roots. It would have been unheard of to compel another person to forsake his own method of worship and adopt that of the conqueror. It followed that because religious freedom was upheld, it was possible for foreign religions, especially the Christian and Islamic faiths, to intrude into the area and make extensive claims on the faith of the people. Because traditional religions in Ghana were very accommodating, it was not strange for an African to accept baptism into a Christian church and still hold on to traditional religious practices.

From the very period of the imposition of British colonial rule over the territory which became modern-day Ghana, various legislation was promulgated, effectively derogating religious liberties of the native population who practised traditional religions. The colonialists came to measure the African traditional religions against their own conceptions of spirituality, decency, and morality and were quick to proscribe any religious or cultural practice that was not in conformity with their own. Their objective was clearly to subject traditional religious beliefs and practices to standards set by the colonizing Europeans using Christian standards as the yardstick.

For example, as early as 1892 an ordinance was promulgated that enabled the Colonial Governor in Council to suppress the celebration or practice of any native custom, rite, ceremony, or worship which appeared to him to tend towards a breach of the peace.⁴ The Native Customs Ordinance of 1892, as

4. See Native Customs (Colony) CAP. 97 (1892).

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it was called, proscribed some native customs, which were derogatorily described as fetish worship,⁵ while other rites were only celebrated with written permission from the District Commissioner.⁶ As a result of the Native Customs Ordinance, the Dipo custom, a puberty rite of the Krobo people of Ghana, was proscribed. Despite its proscription, the Dipo remained a custom. As part of this rite, girls were paraded through the streets of the towns and villages semi-nude to exhibit their maturity. Under the ordinance, any traditional ruler who permitted the celebration, as well as any fetish priest who took part in the celebrations, was liable to imprisonment. The Ordinance also had the effect of prohibiting certain native customs known as yam custom and Black Christmas, such that these could only be celebrated with the permission of the District Commissioner.

The Ordinance further prohibited the worship or invocation of any fetish which “is pretended or reputed, has power to protect persons in the commission of, or guilty of crime, or to injure persons giving information of the commission of crime, or which has been suppressed by order of the Governor in Council.”⁷ This was a clear inclination on the part of the colonial authorities to impose colonial values on the spiritual beliefs and practices of the people which did not conform to the introduced Christian values.

B. The Immediate Post-Independence Period

Immediately after gaining its independence in 1957, Ghana moved toward ensuring increased religious freedom through the Avoidance of Discrimination Act.⁸ The headnote to this legislation described it as an act “to prohibit organisations using or engaging tribal, regional, racial or religious propaganda to the detriment of any other community, or securing the election of persons on account of their tribal, regional, or religious affiliations and for other purposes connected therewith.”⁹ The Act essentially sought to prevent

5. *See id.* § 4(2).

6. *See id.* § 3.

7. *Id.* § 5.

8. *See* Avoidance of Discrimination Act, No. 38 (1957).

9. *Id.*

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the possible resort to religious, tribal, and regional differences as political propaganda, and is still on the statute books.

As early as 1961, the first republican government made a conscious effort to eliminate religion as a controlling factor in the public educational system. Section 22 of the 1961 Education Act states that:

- (1) No person shall be refused admission as a pupil to or refused attendance as a pupil at, any school on account of the religious persuasion, nationality, race or language of himself or of either of his parents.
- (2) No test or enquiries shall be made of, or concerning the religious beliefs of pupils or students prior to their admittance to any school or college.
- (3) No person attending or desirous of attending a school as a pupil shall, if his parent objects, be required to attend or to abstain from attending, whether in the institution or elsewhere, any Sunday school, or any form of religious worship or observance or any instruction in religious subjects.¹⁰

This provision was designed to eliminate any religious compulsion in the educational system in Ghana and thereby give each person the freedom to choose his or her own religious convictions.

Nonetheless, the British paternalistic attitude was carried over into the post-independence era by the Chieftaincy Act of 1961, which provided that “[f]etish oaths (other than fetish oaths sworn by persons before making an affidavit or prior to giving testimony before a court or a Traditional Council) and oaths sworn for an unlawful purpose are hereby declared to be unlawful; and no person upon whom or against whom the oath is sworn shall be bound by it.”¹¹ This provision demonstrated the scant regard which the political authorities accorded native religions, especially when the Act sought to give the impression that one could be relieved of the obligations procured under oath. In fact, in traditional religion, the oath operates from the spiritual perspective and not necessarily from the purely practical perspective. In traditional Africa, the oath operates quietly by imposing spiritual, rather than material, obligations on the individual.

10. Education Act, No. 87, § 22 (1961).

11. Chieftaincy Act, No. 81, § 51 (1961).

C. The 1989 Religious Bodies Law

Perhaps the boldest attempt ever made by any government in Ghana to contain religious activity, and therefore religious liberty, was by the military government under the Provisional National Defence Council (PNDC).¹² Despite earlier legislation expanding religious freedom, in 1989 the PNDC government sought to control religious activity by promulgating the Religious Bodies (Registration) Law of 1989 (PNDC 221),¹³ which regulated the establishment of religious bodies. PNDC 221 created a regulatory body known as the Religious Affairs Committee (the Committee),¹⁴ which was to operate in conjunction with an already existing body, the National Commission for Culture (the Commission).

Under PNDC 221, religious bodies, whether or not already existing, were required to apply for registration. The Commission could register a religious body only upon the recommendation of the Committee.¹⁵ For the purposes of this law, a religious body was defined as "any association of persons, or body or organization—(a) which professes adherence to or belief in any system of faith or worship; or (b) which is established in pursuance of a religious objective."¹⁶ Though it is doubtful that lawmakers ever conceived of such an application, the meaning ascribed to a religious body was wide enough to cover even the all-pervasive traditional religions.

12. The PNDC government seized power from a constitutional government in December, 1981. It held on to power, ruling by decrees called Laws, until January 1993 when a constitutional government was installed under the 1992 Constitution.

13. See Religious Bodies (Registration) Law of 1989, PNDC 221 (1989).

14. See *id.* § 5.

15. See *id.* § 4.

16. *Id.* § 20. This definition seems to conform to the definition of religion found in the Model Law on Freedom of Religion and Beliefs to be: "the personal commitment to and serving of one or several beings or spiritual masters with worshipful devotion; a system or systems of belief, faith, creed or worship; the service of the divine; or to the sacred beliefs, observances and practices of traditional culture." Dinah Shelton & Alexandre Kiss, *A Draft Model Law on Freedom of Religion*, with Commentary, in RELIGIOUS HUMAN RIGHTS IN GLOBAL PERSPECTIVE: LEGAL PERSPECTIVES 559, 562 (Johan D. van der Vyver & John Witte, Jr. eds., 1996). The Model Law was a project undertaken by individual experts to provide "model legislation on freedom of religion based on international human rights standards and the findings of the United Nations Special Rapporteur on Religious Intolerance." *Id.* at 559-60.

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According to PNDCL 221, any body of persons that intended to apply for registration as a religious body must furnish the following information:

- (a) a copy of the constitution of the religious body which shall specify its objects, rules and regulations;
- (b) the names, occupation and addresses of the trustees referred to in section 7(1) of this Law and the principal officers of the religious body;
- (c) the emoluments or other benefits of the principal officers of the body;
- (d) the location and the address of the headquarters of the body;
- (e) evidence of the numerical strength of its male and female membership and the spread of the membership in the country;
- (f) particulars indicating that the places of worship or activity are suitable for the purpose;
- (g) a declaration that the places and mode of worship do not constitute a health or environmental hazard to the members of the [religious] body or to the public in general;
- (h) the social and community work programme other than evangelistic or religious programme, if any, of the body; and
- (i) the financial statement and intended source of funds of the body.¹⁷

The implication from the above registration information left no one in doubt that PNDCL 221 was designed to control religious activity in Ghana. Not surprisingly, PNDCL 221 was totally rejected and ignored by the major established religious groups in the country, and although the government was a military dictatorship, it was left without a say.¹⁸ When the 1992 Constitution entered into force, guaranteeing the “freedom to practise any religion and to manifest such practice,”¹⁹ PNDCL 221 was rendered unconstitutional.

D. Religion and the 1992 Constitution

The 1968 Constitutional Commission expressed its appreciation for the absence of a state church in Ghana. The Constitutional Commission noted that “[h]appily for us in

17. PNDCL No. 221, § 6(2) (1989).

18. This fact exhibits the potential force that the religious groups themselves can often exert to resist threats to religious liberty.

19. GHANA CONST. art. 21(1)(c).

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Ghana, there is no State Church.”²⁰ The danger inherent in a state church is very obvious: it will create a group of citizens who will be accorded certain rights which might be denied to others who are not members of that church. It is such situations which eventually lead to persecution, especially if the non-state church members are in the minority. The Constitutional Commission explained the dangers of a state church with the words of Harold Laski: “A State Church is bound to receive privilege in some shape or form; and no citizen enjoys genuine freedom of religious conviction until the State is indifferent to every form of religious outlook, from Atheism to Zoroastrianism.”²¹ Freedom of conscience, which includes freedom of thought and of religion, was therefore guaranteed in the 1969 Constitution.²² This guarantee reoccurred in the 1979 and 1992 Constitutions of Ghana.

The relationship between the government of Ghana and religious groups assists in assuring this freedom. Bahiyyih G. Tahzib identified eight possible arrangements which can exist between the state and religion:

- state religions;
- established churches;
- neutral or secular as regards religion;
- no official religion;
- separation of church from state;
- arrangements with the Catholic Church;
- protection of legally recognized religious groups; and
- *millet* system, recognizing a number of religious communities.²³

With reference to these possible arrangements, the 1992 Constitution of Ghana definitely does not purport to create any state religion or establish any churches; neither does it have any special arrangement with the Catholic Church (or any other church), nor specifically recognize any religious communities. It is clear that Ghana has no official religion;

20. The Proposals of the Constitutional Commission for a Constitution for Ghana § 227 (1968).

21. *Id.*

22. See GHANA CONST. art. 21(1) (1969).

23. TAHZIB, *supra* note 1, at 345 (1996).

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there is an implicit support for a separation of churches from the state, and all legally recognized religions are protected.

Ghana, one might surmise, is therefore a secular state, but it is not necessarily an atheistic nation. The 1992 Constitution declares the Ghana people's belief in God.²⁴ However, Article 56 of the 1992 Constitution makes clear the nature of the relationship which can exist between the state and religions. This article states, "Parliament shall have no power to enact a law to establish or authorise the establishment of a body or movement with the right or power to impose on the people of Ghana a common programme or a set of objectives of a religious or political nature."²⁵ No religion can, therefore, be elevated into a state religion.

In addition, the 1992 Constitution abhors the possibility of a religious group taking control of the reins of government. It therefore prohibits the formation of political parties with religious character. According to Article 55(4), "[e]very political party shall have a national character, and membership shall not be based on ethnic, religious, regional or other sectional divisions."²⁶ Religion, as a strong emotive instrument, can easily be exploited as a basis for discrimination if the government rides to power on the platform of a religious political party. The intention of Article 55(4), therefore, is that religion must be eliminated as the platform for any political party.

Ghana has no state religion. Nevertheless, the various civilian constitutions have confirmed the people's belief in God and, where possible, some effort is made to accord some representation to well-defined associations of religious groups. Of significance is the composition of the National Media Commission in Article 166(1)(a)(iv) and (v) of the 1992 Constitution.²⁷ That article provided for the representation on the Commission of both Christian and Moslem groups.

These attempts at involving religious groups in governance cannot be seen as an approbation or elevation of a group of

24. The preamble of the 1992 Constitution begins "IN THE NAME OF THE ALMIGHTY GOD." GHANA CONST. preamble.

25. *Id.* art. 56.

26. *Id.* art. 55 § 4.

27. *Id.* art. 166.

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churches over and above others. Nothing can be read into these efforts as obvious, or even innocuous, state support for any particular church or doctrine. The involvement of churches in certain aspects of governance by the Constitution could be seen merely as an effort towards ensuring greater participation in governance by as many organized aspects of the Ghanaian society as is possible. Ghana's constitutional stance on religion may best be described by what Justice Douglas wrote of the United States Constitution:

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. We sponsor an attitude on the part of government that shows no partiality to any one group and that lets each flourish according to the zeal of its adherents and the appeal of its dogma.²⁸

III. CURRENT ISSUES ON RELIGION AND POLITICS

A. *The Creeping Incidence of Indirect Coercion: Religious Prayers and Public Functions*

While the 1992 Constitution appropriately distances politics from religious influences, not all questions regarding this separation have been resolved. One contemporary issue with religious implications is the practice of performing religious prayers at public functions. It has become the tradition for the three major religious groups in the country, Christians, Moslems, and traditionalists, to perform opening ceremonies at state functions.

The difficulty in determining the relationship between government and religion is certainly not unique to Ghana. Even American courts have not had it easy; dissenting opinions most often attach to their decisions in this area. In *Zorach v. Clauson*, for example, Justice Douglas, for the Court, refuted the concept of absolute separation of church and state.²⁹ In dissent, however, Justice Black advocated an absolute

28. *Zorach v. Clauson*, 343 U.S. 306, 313 (1952).

29. *See id.* at 313.

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separation, insisting on “a wall between church and State which must be kept high and impregnable.”³⁰ Whichever of these approaches one might suggest for Ghana, there will still exist a lack of justification for the performance of some religious supplications at public functions.

Even though Justice Douglas advocated a more liberal relationship of church and state, he nevertheless left no one in doubt that the state should never encourage the ascendancy of one religious group over others. According to him, “[t]he government must be neutral when it comes to competition between sects. It may not thrust any sect on any person. It may not make a religious observance compulsory. It may not coerce anyone to attend church, to observe a religious holiday, or to take religious instruction.”³¹ Permitting religious prayers at public functions is nothing other than thrusting the religious practices of the organized majority on others who must always endure the often irritating incantations of other religious sects.

There exists an element of insipid coercion of religious minorities when the state permits prayers of the religious majorities to be performed at state or public functions. When at every state or public function we give slots only to the Christians, the Moslems, and the traditionalists to perform their prayers, we are clearly indicating to other religions that their minority status precludes them from public programs. As early as 1962, the astute Justice Black of the United States Supreme Court made the point that “[w]hen the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain.”³² Apart from being a source of coercion, the practice could be viewed as amounting to discrimination against non-Christians, non-Moslems, and non-traditionalists.

Article 17(2) of the 1992 Constitution prohibits discrimination on the grounds of religion,³³ and discrimination

30. *Id.* at 317 (Black, J., dissenting) (quoting *McCullum v. Board of Educ. of Sch. Dist. No. 71*, 333 U.S. 203, 212 (1948)).

31. *Id.* at 314.

32. *Engel v. Vitale*, 370 U.S. 421, 431 (1962).

33. *See* GHANA CONST. art. 17(2) (“A person shall not be discriminated against on grounds of gender, race, colour, ethnic origin, religion, creed or social or economic

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is defined in article 17(3) to include a situation where some are granted privileges or advantages which are not granted to persons of another description.³⁴ It is, therefore, clearly unconstitutional that religious groups are permitted to offer prayers at public functions. The practice, as it presently stands, amounts to the placing of an official stamp on these three religions. As Justice Black has warned, "one of the greatest dangers to the freedom of the individual to worship in his own way lies in the Government's placing its official stamp of approval upon one particular kind of prayer or one particular form of religious services."³⁵ Experience over the years has shown that governmentally established religions and religious persecutions go hand in hand.³⁶ It is possible for one to argue that such prayers do not involve any sort of proselytising and that nobody is under any pressure to utter the prayer. Nevertheless, such an audience may be described in a sense as a "captive" audience.³⁷

An interesting development emerging in Ghana is that there are people among the major religions, especially among the Christian majority, who are beginning to question why the traditionalists should also be accorded a place at public functions. Thus, in a small way, even though the government has not officially recognized any religion over and above others, we have begun to see glimpses of religious bigotry in the current structure. This is especially true when some think that their God is the only "true" God, and that traditionalists, with their practice of pouring libation, should be prevented from performing at state functions. To many, especially Christians, the "[p]ouring of libation . . . is nothing but invocation of demons."³⁸

It is disturbing to note that the complaints are not coming from the minority religions which have not been represented in these events, but rather from among those majority religions which have been accorded the honor of performing religious

status.").

34. *See id.* art. 17(3).

35. *Engel*, 370 U.S. at 429.

36. *See id.*

37. *See id.* at 442 (Douglas, J., concurring).

38. Emmanuel Oppong Baah, *Abokobi's Shinning* [sic] *Example*, THE MIRROR, May 24, 1997, at 2.

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exercises at state functions organized with public funds. For now, we have been lucky to have had grumblings expressed only in undertones in the conference rooms of churches and on the pages of newspapers.

When the parliament of Benin Republic recently decided to legislate the Voodoo National holidays for the large groups of traditional religionists in Benin, Christians and Moslems there reacted unfavorably. According to reports, “[t]he move has also been unpopular in the mainly Muslim north, the home of [former President] Kerekou, and it has gone down just as badly with the southern Catholic community, who see voodoo as regressive, and little more than a tourist attraction.”³⁹ Former President Kerekou declared on record that voodoo was an evil practice, and he moved to destroy sacred temples all over the nation.⁴⁰ This illustrates the danger of persecution which usually goes along with the involvement of the political authority in matters having to do with the determination of the proper religion for a people.

When the State organizes a public function and accords preferences to certain religions by allowing them to offer prayers, one cannot claim that a state religion is thereby created. However, the state is definitely financing a religious exercise, and as Justice Douglas has asserted, “once government finances a religious exercise it inserts a divisive influence into our communities.”⁴¹

It is possible for some to seek to explain away the present situation as a rather minor issue, but we may take the caution sounded elsewhere that “[t]he breach of neutrality that is today a trickling stream may all too soon become a raging torrent.”⁴²

B. Possible Conflicts Between Religious Freedom and Other Rights: The Trokosi Practice

Religious practices most often accompany certain social practices. So long as there are different religions and different social circumstances, conflicts will often arise, especially where the religious practices affect the rights of other persons who

39. Karim Okanla, *Voodoo Nation*, FOCUS ON AFRICA, Apr.-June 1996, at 44, 45.

40. *See id.* at 44.

41. *Engel*, 370 U.S. at 442 (Douglas, J., concurring).

42. *School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 225 (1963).

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might or might not be members of the particular religious group. It is for this reason that the right to freedom of religion, unlike the right to human dignity, is not always guaranteed in absolute terms.

The International Covenant on Civil and Political Rights, for instance, states that the right to freedom of thought, conscience, and religion is subject to "such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others."⁴³ Some of the practices which will come within the ambit of these limitations have been enumerated by the United Nations to include "the sacrifice of human beings, self-immolation, mutilation of the self or others, and reduction into slavery or prostitution, if carried out in the service of, or under the pretext of promoting, a religion or belief."⁴⁴

The Constitution of Ghana also follows suit by limiting the manner in which religious freedom is practiced. Article 21(1)(c) of the 1992 Constitution guarantees the freedom to practice any religion and to manifest such practice. Further, article 26(1) also provides that "[e]very person is entitled to enjoy, practise, profess, maintain and promote any culture, language, tradition or religion subject to the provisions of this Constitution."⁴⁵

Two other provisions of the Constitution, however, permit some derogation from the right to freedom of religion. Article 21(4)(e) enables laws to be made for the purpose of "safeguarding the people of Ghana against the teaching or propagation of a doctrine which exhibits or encourages disrespect for the nationhood of Ghana, the national symbols and emblems, or incites hatred against other members of the community."⁴⁶ Thus, any religion which seeks protection in Ghana must respect the integrity of Ghana. In addition, Article 26(2) prohibits "[a]ll customary practices which dehumanize or are injurious to the physical and mental well-being of a

43. International Covenant on Civil and Political Rights, art. 18(3), G.A. Res. 2200, 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966).

44. ARCOT KRISHNASWAMI, STUDY OF DISCRIMINATION IN THE MATTER OF RELIGIOUS RIGHTS AND PRACTICES at 29, U.N. Doc. E/CN.4/Sub.2/200/Rev.1, U.N. Sales No.60.XIV.2 (1960).

45. GHANA CONST. art. 26(1).

46. *Id.* art. 21(4)(e).

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person.”⁴⁷ If we mean to include religious exercises in the category of customary or cultural practices, Article 26(2) would seem to cover practices such as the Trokosi.

1. Description of the Trokosi practice

The Trokosi practice is one such religious or cultural practice which came under scrutiny in light of the 1992 Constitution. This practice is an aspect of a religious tradition which has become, over the years, corrupted and reduced into a rather heinous form of the original practice. The Trokosi practice was a system under which young virgin girls were sent into fetish shrines to atone for the misdeeds of relatives. In its original conception, the young girls were sent there, not because any of their relatives had committed transgressions, but for the same reasons other girls entered convents. From that perspective, the Trokosi system was designed to create a class of traditionally elite women, or “Fiasidi.” These “marriageable king’s initiates” were to become the mothers of the elite men and women of the society, the kings, the philosophers, the seers, and other men and women of virtue.⁴⁸

In its debased form, the priesthood demands young virgin girls as servants for the gods. While in the shrines, the girls are sexually abused and denied basic care, including medical care. They are also not given the opportunity to attend schools and are economically exploited. They live in virtual slavery, serving the needs and pleasures of the priests. In its present abused form it represents a system ridden with debauchery, immorality, and resulting in the denigration of the purity of womanhood; the exact opposite of what it was designed to achieve.⁴⁹

Life in traditional societies operates in a complex system of cultural, religious, social, and other aspects, each having very close links to the other. Practices which appear essentially

47. *Id.* art. 26(2).

48. See Dr. Datey-Kumodzie, Report on the Fiasidi Institution (year not available) (unpublished manuscript, on file with author).

49. The story is told by some initiates of the Trokosi shrines of how they are subjected to deprivations, sexual and physical abuse. For a detailed account of the nature of some of the abuses, see E. K. Quashigah, *Religious Freedom and Vestal Virgins: The Trokosi Practice in Ghana*, 10 J. AFR. SOC’Y INT’L AND COMP. L. 193 (1998).

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religious, for instance, can carry with them very important economic and social implications, and vice versa. So long as these practices have relevance in the economic, social, and cultural lives of a people, the social system itself will regulate or control these practices. When, however, a dislocation occurs in the system, a lot of distortions in the society appear; the values which had held the old system together snap, and the regulatory mechanisms which had kept it relatively pure cease to exist. This is especially true when the economic system gets transformed due to outside influence, and the other aspects of the old system are not able to keep pace. The consequence, then, is that the original traditional practices are left to degenerate into practices which become completely debased forms of what had existed. This is the fate which has befallen the Trokosi system.

Under the contemporary notion of rights, including human rights, "freedom is the power to do anything which does not harm others."⁵⁰ The fate that has befallen the Trokosi or Fiasidi system is reminiscent of those other, otherwise hallowed traditions, which, having come under strain in changing social, economic, and cultural systems, are taken over and operated by people who do not understand the original virtues which informed them. These people then control such institutions to satisfy modern economic and social needs which are completely devoid of the original purposes.

Any attempt to denigrate any cultural and religious practice, no matter how unconscionable it might appear to the majority, is bound to be met with resistance. Such efforts are interpreted as religious persecution by others. In fact, traditionalists have resisted the attack on the Trokosi system, calling it fanatical Christian evangelism. According to Tobgui Addo VII, the Fiaga of the Klikor Traditional Area, who spoke on behalf of "Chiefs, Traditional Priests and People,"⁵¹

[t]he [National] Commission [on Culture] is certainly aware of
the spate of evangelism that has been imported into our

50. Andre-Jean Arnaud, *The Concept of Human Rights: A Landmark for Understanding a Progressive Development*, in *THE CRIMINAL PROCESS AND HUMAN RIGHTS: TOWARDS A EUROPEAN CONSCIOUSNESS* 110 (Mireike Delmas-Martey ed., 1995).

51. Memorandum from Tobgui Addo VII, Fiaga of Klikor Traditional Area to the National Commission on Culture 1 (Aug. 17, 1994) (on file with author).

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traditional society and the conflict situations created by its efforts to suppress traditional culture. Especially when our Constitution makes provisions for the abolition of certain customs and religious practices in this traditional society, this suppression of our religious freedom takes cover under the excuse of making 'constitutional' changes. At least, in the past nine years, Christian churches in particular have made every effort to suppress the beliefs, customs, practices and the teachings of our society. This is highlighted by the lampoon, JESUS CHRIST CONQUERS KLIKOR.⁵²

The bitterness of the traditional elite can be gleaned from the sarcastic statement that "[u]nfortunately or fortunately, our culture, our traditions and customs, have not been responsible for the two World Wars that killed and maimed millions of people all over the world."⁵³

The abuses of the Trokosi system represent, in a microcosm, the conflict between the communal social system of the traditional African societies and the individualistic Western mode of social organization, which is rapidly edging out the former. It is a struggle of a traditional system against a modernizing influence. These traditional practices had built-in checks that prevented the abuses with which they are now ridden. The attack by modernization on the traditional system has affected the effectiveness of the internal self-regulatory functions of the traditional systems.

2. *Illegality of the Trokosi practice*

The Trokosi system as it is now practiced completely contravenes a number of local and international legal instruments. Starting with the 1992 Constitution, Article 26(2) declares that "[a]ll customary practices which dehumanise or are injurious to the physical and mental well-being of a person are prohibited."⁵⁴ The practice clearly contravenes Article 16 of the 1992 Constitution which prohibits slavery or servitude and forced labor.⁵⁵ The living conditions and treatment of those who

52. *Id.*

53. *Id.*

54. GHANA CONST. art. 26(2).

55. *See id.* art. 16(1), 16(2).

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practice Trokosi also contravene Article 15, which makes the dignity of all persons inviolable.⁵⁶

Article 4 of the African Charter on Human and Peoples' Rights also upholds the integrity of the person.⁵⁷ Ultimately, the Trokosi system, in its present form, is an infraction upon the rights of its victims and any effort at its purification would be constitutional. What might not be constitutional would be any attempt to proscribe it outright because the people have the right to believe whatever they wish to believe. Promoting respect for human rights is often better achieved through cooperation and consensus rather than through confrontation and the imposition of incompatible values.

3. *Criminalization of the Trokosi practice*

The massive public outcry against the practice jolted parliament into action, leading to the enactment of the Criminal Code (Amendment) Act of 1998. Section 314(A) of that act provides that:

(1) Whoever-

- (a) sends to or receives at any place any person; or
- (b) participates in or is concerned in any ritual or customary activity in respect of any person with the purpose of subjecting that person to any form of ritual or customary servitude or any form of forced labour related to a customary ritual commits an offence and shall be liable on conviction to imprisonment for a term not less than three years.

(2) In this section "to be connected in" means -

- (a) to send to, take to, consent to the taking to, receive at any place any person for the performance of the customary ritual; or
- (b) to enter into any agreement whether written [or] oral to subject any of the parties to the agreement or other person to the performance of the customary ritual; or
- (c) to be present at any activity connected with or related to the performance of the customary ritual[.]⁵⁸

56. *See id.* art. 15(1).

57. *See African Charter on Human and Peoples' Rights*, art. 4 (1981), reprinted in *INTERNATIONAL LAW: SELECTED DOCUMENTS* 509 (Barry E. Carter & Phillip R. Trimble eds., 1995).

58. Criminal Code (Amendment) Act, § 314(A) (1998).

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Even though the legislation has been put in place, the need for education has been overwhelmingly recognized. This recognition is essential because what is being challenged is not just a mere practice of a people, but a cultural practice that is so deeply rooted that it can only be uprooted with caution. Caution is necessary to ensure that a substantial aspect of the social fabric is not destroyed in the process.

IV. CONCLUSION

Ghana is a secular state in which the conscious effort is made to exclude the influence of religion from public life. Nevertheless, there exists the need for a constant self-censure by the state to avoid the unconscious creation of state religions and the consequential neglect of the rights of minority religious groups.