Religion in the Public Sphere: Challenges and Opportunities in Ghanaian Lawmaking, 1989-2004

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I. INTRODUCTION

The word “secularism” suggests that political and religious realms are essentially on parallel tracks and that the two words cannot be uttered in one breath. In Ghana, however, religion and politics have been inextricably linked since pre-colonial times.1 Though Ghana was conceived as a secular state, Christianity became the primary religion during the era of colonial rule, and English common law (with its Judeo-Christian foundations) underpinned many new laws that have guided the State since that period.2

In past decades, four Ghanaian laws have highlighted a clash of religion, culture, and politics in the area of religious liberty in Ghana. This Article analyzes these four laws and concludes that although the laws have created some challenges, they have also generated opportunities for dialogue between religion, customs, and tradition on the one hand, and lawmaking in Ghana on the other. When religious and political bodies engage in this dialogue, laws can be created to enhance human rights that harmonize with religious and cultural values rather than collide with them. Such dialogue is also helpful as legislators involve civil society in the legislative process through adequate consultation.

The first law, the Intestate Succession Law of 1985, was meant to reflect Ghana’s adherence to human rights norms3 by addressing the

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2. See GhanaWeb.com, Legal History and Notable Features of Ghana Law, http://www.ghanaweb.info/law_cms/article.php?ID=2276 (last visited Mar. 21, 2005); see also Samuel K.B. Asante, Over a Hundred Years of a National Legal System in Ghana: A Review and Critique, 31 J. Afr. L. 70, 75 (1987) (“[B]ut the oak still flourishes with virtually all its English foliage, and the established practice of judiciary in Ghana over the past hundred years has been one of blind adherence to the substance of English law and, what is even more significant, unquestioning acceptance of the principles of English reasoning.”).
3. See Legal History and Notable Features of Ghana Law, supra note 2.
problems that existed in the sphere of marriage and marital succession.4 By granting spouses specific rights in each other’s property,5 the law significantly changed the system of land and property distribution that was in place prior to 1985, when Ghanaian law did not recognize the rights of widows to marital succession.6 The second law, the Religious Bodies Registration Law of 1989, prescribed a necessary registration procedure for all religious organizations, including the old churches established by the missionaries.7 The Ghanaian Parliament passed the third law, the Criminal Code (Amendment) Act of 1998 in order to protect the rights of women and children by banning religious servitude.8 The fourth law, the Draft Domestic Violence Bill, is now in public debate. The proposed bill is a public initiative designed to respond to the continuous problem of spousal and child abuse9 and is meant to protect these vulnerable persons against domestic violence through the issuance of protective orders.10

While these four laws have created some conflict, they have also created important interactions between religion and politics in Ghana. They demonstrate the involvement of politics in the religious sphere and add to the dialogue that will lead to maintaining religious freedom while adequately reforming customs that violate human rights. Since this dialogue has come about primarily in reaction to the laws after their passage, I recommend that dialogue that critically

4. See infra Part III.A.
6. See generally id.
7. E.K. Quashigah, Legislating Religious Liberty: The Ghanaian Experience, 1999 BYU L. REV. 589, 594. The law had this sweeping effect because it defined a religious body 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.” Id. (quoting Religious Bodies (Registration) Law of 1989, PNDCL No. 221 § 20 (1989)).
interrogates cultural values take place within communities before such laws are passed.

Part II of this Article provides a brief overview of the relationship between religion and politics in Ghana. Part III discusses the four laws in greater detail and analyzes the challenges generated by each law, namely, the public reactions of religious constituencies that view the laws as limiting their religious freedom. Part IV provides a comparative analysis of how the four laws reveal patterns and trends that challenge traditional notions of custom and religion in the lawmaking sphere while providing a vehicle to effectuate change and improve human rights. Finally, Part V offers a brief conclusion.

II. A BRIEF OVERVIEW OF POLITICS AND RELIGION IN GHANA

Traditional African societies provide examples of how religion and politics blend. As Hans Haselbarth asserts, “It belongs to African tradition that we cannot easily distinguish between the secular and religious realm, not even in politics.” Following this tradition, religion and politics have been married in the antiquity of the traditional state and leadership in Ghana, and attempts to put them asunder have been resisted.

Thus, religion has been inextricably linked with the public sphere in Ghana since pre-colonial times. In traditional thought and practice, leadership of ethnic groups had legitimacy in religion. Before the area now known as Ghana was colonized and given the colonial name “Gold Coast,” traditional leadership of various ethnic groups closely intertwined with religion. Chiefs and leaders of the community functioned in priestly roles on certain ritual occasions. Their legitimacy as leaders often had religious meaning, and as their persons were regarded as sacred, it was often difficult to draw a line between

12. See, e.g., POBEE, supra note 1, at 11.
13. See, e.g., id.
their secular and religious duties. This union of religious and political leadership is manifested in notions of divine kingship or the divine rights of the king. In some communities, such as among the Ga, Ewe, and Tongu ethnic groups, the original leadership was priestly and devolved into chieftaincy only with European colonization of Africa. Many traditional areas have state gods and gods attached to their stools (the thrones on which rulers sit as symbols of chieftaincy). Traditional political leaders also had priests as key advisors. Divination and oracles provided the medium of ascertaining divine approval for policies and decisions of the State. “Traditional law” was somewhat conjoined with religion and was often shrouded in taboo, which when


17. Nukunya, supra note 14, at 7, 79 (“It is important to distinguish between Divine Kingship and the doctrine of ‘divine right of kings,’ which holds that kings have authority independently of their subjects’ will, that the authority to rule comes from god and the subjects cannot challenge it. Divine Kingship holds that the king himself is a god or, more accurately, possesses god in his body.”). See also K.A. Busia, The Position of the Chief in the Modern Political System of Ashanti (1995); E.G. Parrinder, Divine Kingship in West Africa, in Numen 3 (1956).

18. “Priestly” denotes that they are religious functionaries, trained and sacralized to perform religious rites and rituals. The chief, however, was directly responsible for the political, military, social, and economic organization of the community.


20. The traditional state as a political/ethnic unit is normally under the patronage of a traditional god seen as the guardian deity of the people. There is a difference between the chief’s stool and the ancestral stool. One scholar explained that “[t]he ancestral stool is a sacred object which is never exposed to public view. Only the chief (when fully enstooled) and a few, important elders may see the ancestral stool.” A. Kodzo Paaku Kludze, Chieftaincy in Ghana 100 (2000). Regarding the stool’s role in relation to the current chief, another author explained that

the word “stool” is used to denote the office of the chief or the king. To say “the Ashanti stool” . . . means the same as saying the “English throne.” Thus, when the Akan talk about the “stool land,” the “stool money,” the “stool farm,” of such and such a place, they mean the land, money, or farm attached to the chieftaincy or kingship of the place, which therefore may be called the property of its present ruler as he has charge over it.


broken attracted not only civil opprobrium, but at times, religious restitution as well.\textsuperscript{22}

British colonial rule did not necessarily end religious influence within the traditional public sphere, especially in British West Africa, where the system of “indirect rule” employed traditional rulers as part of the structure of governance.\textsuperscript{23} Colonial rule established the modern state and with it a new relationship between the state and religion.\textsuperscript{24} Though Ghana was conceived as a secular state, Christianity was identified with colonial rule because it was the religion of the Colonizers. English common law, with its Judeo-Christian foundations, buttressed many new laws that guided the State during that period.\textsuperscript{25} Islamic law also influenced the development of law, especially family law.\textsuperscript{26}

Eventually colonization ended, and both Ghanaian nationalism and a new evaluation of the role of religion in the Ghanaian public sphere emerged. Religion subtly influenced the process of decolonization in Ghana—nationalist agitation for independence was often linked with a call for African cultural renaissance.\textsuperscript{27} The rise of nationalism particularly challenged Christianity to become culturally relevant to Ghana and Africa. Many of the nationalists who fought for independence had been trained in the mission schools, and they advocated for Christianity to shed its European outlook and to support the move toward self-government and decolonization. In addition, many independent African churches and their leaders supported the nationalist struggle for independence.\textsuperscript{28}

\begin{footnotes}


\textsuperscript{23} For discussions of the colonial system of “indirect rule,” see A.E. AFIGBO, WEST AFRICAN CHIEFS DURING COLONIAL RULE AND AFTER 5 (1971); M. CROWDER, INDIRECT RULE: FRENCH AND BRITISH STYLE 3 (1964).

\textsuperscript{24} See Quashigah, supra note 7, at 591.

\textsuperscript{25} See Legal History and Notable Features of Ghana Law, supra note 2.


\textsuperscript{28} See POBEE, supra note 1, at 144–46; H.W. TURNER, AFRICAN INDEPENDENT CHURCH 97–98 (1967).

\end{footnotes}
Since the emergence of Ghana as an independent nation-state, religion has remained in the public sphere in Ghana in spite of the persistent constitutional pronouncements that Ghana is a secular state. These pronouncements began in 1957 immediately after independence with the enactment of the Avoidance of Discrimination Act.\(^{29}\) This act aimed to “prohibit organizations using or engaging in ethnic, regional, racial or religious propaganda to the detriment of any other community, or securing the election of persons on account of their ethnic, regional or religious affiliation and for other purposes connected therewith.”\(^{30}\) This position has been maintained in different wordings in the 1969, 1979, and current 1992 constitutions.\(^{31}\)

Despite this constitutional declaration that Ghana is a secular state, “Civil Religion” remains in Ghana. The “Civil Religion” referred to here denotes the use of religious images and symbols in public and political life aimed to invoke patriotic piety and to unite people of different nations into one “nation.”\(^{32}\) Many civil religion rituals are used in Ghana, with some substituting African rituals for Western ones—for example, libation prayer\(^{33}\) at official state ceremonies. Additionally, in Africa the use of religion in the public sphere goes beyond the normal understanding of civil religion as indicated above. Two sub-varieties of religion in politics are peculiar to West Africa: religious nationalism and political manipulation of religion. Related to the latter is a pervasive use of religion during elections.

Elections are a prime example of the strong link between religion and politics in Ghana and demonstrate that politicians (who are aware of the pervasive influence of religion on the people of Ghana) use various religious fora and sometimes even religious leaders to campaign in order to win elections. The conjunction of religion and politics in

\(^{29}\) Avoidance of Discrimination Act, No. 38 (1957).
\(^{30}\) Id.

\(^{31}\) See GHANA CONST. ch. 5, art. 12, cl. 2; ch. 5, art. 17; ch. 5, art. 21, cl. 1; ch. 5, art. 26, cl. 1; ch. 7, art. 55, cl. 4 (1992); ch. 4, art. 21 (1969); see also Quashigah, supra note 7, at 596.


\(^{33}\) Libation involves the offering of alcoholic beverages or water to supernatural agencies such as God, the gods, and ancestors as part of the process of invocation and communion between them and those praying. *Id.* Explaining libation, one author stated, “Among very many West African ethnic groups, the ritual of libation—pouring a liquid or dropping some food on the ground accompanied with a prayer—is quite common . . . . [T]he pouring of libation is a witness to the existence of the spiritual world.” FISHER, supra note 22, at 36.
Ghana is normally heightened during elections because some politicians attempt to create discord between their opponents and particular religious groups by accusing them of disrespect for such groups. The four elections held under Ghana’s Fourth Republican Constitution are illustrative. During the first election in 1992, the presidential candidates invoked religion to tell the people to elect a “God-fearing man” as president, and this religious rhetoric became a contentious issue. During the 1996 election, religion was again summoned to ascertain truth and falsehood. Candidates used traditional religion oracles to divine whether people who received gifts from politicians and who promised to vote for them had fulfilled their part of the deal and to determine whether accusations leveled against politicians were true or false. The 2000 election, where the main issue was whether the political parties with Christian presidential candidates should have Muslim running mates, was seen as a direct intervention from God, with angels coming to vote for the current government in power, the New Patriotic Party (NPP). These elections demonstrate the constant influence of religious beliefs on national elections and highlight the heightened connection in Ghana between religion and politics.

The changing government models used since Ghana’s independence in 1957 have also influenced the relationship between...
church and state. Whenever Ghana went through military juntas, it contributed immensely to the rise of new religious movements, and the religious leaders wielded influence in the affairs of the State. Whenever there has been democratic governance, the older mainline churches (such as the Methodist, Catholic, and Presbyterian churches) have flourished in the public sphere because they themselves have democratic structures, have a far larger membership than the new religious movements, and have influence in the government on important national issues.

Thus, although Ghana has no official religion and the post-independence Ghanaian Constitutions, including the 1992 Constitution, have adopted no official religion, religion has not been kept out of the public sphere. The vast majority of Ghanaians adhere to a formal religion, and religious ideas logically flow from these religions. Thus, it is not surprising that the preamble to the 1992 Constitution begins “IN THE NAME OF THE ALMIGHTY GOD,” clearly acknowledging the people’s belief in God. Naturally, in a country where a large percentage of the population adheres to religious beliefs, it is difficult to make religion a private affair as religious people and bodies form a constituency in public life. The four laws discussed in the next section demonstrate specific instances of the encounter of religious liberty with the public sphere in Ghana.

III. THE FOUR LAWS

A. The Intestate Succession Law (PNDCL 111) of 1985

The Intestate Succession Law of 1985, also known as the Provisional National Defense Council Law 111 (“PNDCL 111”), was created by the Ghana Law Reform Commission.
Religion in the Public Sphere in Ghana

(“Commission”).\textsuperscript{44} The Commission existed primarily to review statutory and customary laws and to suggest new legislation to reflect Ghana’s desire to conform to human rights norms.\textsuperscript{45} The Commission identified marriage and marital succession as the area of primary concern since the customary laws of some Ghanaian ethnic groups did not recognize the rights of widows to marital succession.\textsuperscript{46} The new law, however, conflicted with the beliefs of certain Ghanaian ethnic and religious groups, which resulted in some people refusing to follow the law.

The system of distribution that existed prior to 1985 created problems among matrilineal groups in Ghana.\textsuperscript{47} Customary succession laws in Ghana prohibited widows and children from sharing in the deceased’s estate, while the estate instead benefited the deceased’s maternal relations.\textsuperscript{48} PNDCL 111 was created to address these problems by “provid[ing] a uniform intestate succession law that [would] be applicable throughout the country irrespective of the class of the intestate and the type of marriage . . . contracted by him or her.”\textsuperscript{49} As noted in the government memorandum on the law, PNDCL 111 “[s]ection 20 renders inapplicable various other English statutes, customary and religious

\textsuperscript{44} This law was passed by the Ghanaian legislature after a recommendation from the Commission in 1985 and was amended in 1991. See Legal History and Notable Features of Ghana Law, supra note 2. Additionally, the principles of PNDCL 111 were embodied in Article 22 of the 1992 Ghanaian Constitution: “A spouse shall not be deprived of a reasonable provision out of the estate of a spouse whether or not the spouse died having made a will.” G\textsc{hana} Const. ch. 5, art. 22(1). The constitution also provides that “spouses shall have equal access to property jointly acquired during marriage.” Id. art. 3(a).


\textsuperscript{46} See generally Richardson, supra note 5, at 22 (discussing inheritance laws in Ghana).

\textsuperscript{47} Matrilineal groups trace descent lineally through the female line. See Fenrich & Higgins, supra note 45, at 271 (“In matrilineal communities, children belong to their mother’s family. Thus, a matrilineal extended family would include a woman, her mother, her brothers and sisters, her maternal aunts and uncles, her male and female children, her daughter’s children, and so on.”).

\textsuperscript{48} See NUKUNYA, supra note 14.

\textsuperscript{49} Government Memorandum, Intestate Succession Law (1985), quoted in Richardson, supra note 5, at 22.
laws on intestate succession which are at present applicable in this country.\(^{50}\)

PNDCL 111 significantly changed the system of land and property distribution that was in place prior to 1985. It applied to distributions any citizen of Ghana made, “irrespective of the class of the intestate and the type of marriage (statutory or customary) contracted by him or her,”\(^{51}\) provided that the marriage was registered at the Registrar General’s Department.\(^{52}\) The law gave the surviving spouse larger portions of the estate and granted spouses specific rights in each other’s property.\(^{53}\)

Although designed to remedy the problems associated with traditional matrilineal succession, PNDCL 111 affected both patrilineal and matrilineal ethnic groups in Ghana. In a matrilineal community, “the self-acquired property of an intestate becomes family property.”\(^{54}\) However, under traditional definitions, family is defined in such a way that “a wife does not belong to her husband’s family; neither does the husband to the wife’s family.”\(^{55}\) Furthermore, “[u]nder all systems of customary law in Ghana, a widow is not a member of her husband’s family.”\(^{56}\) Similarly “[a]s in the case of widows in the matrilineal communities, widows in patrilineal communities do not traditionally have specific shares in

\(^{50}\) Id.

\(^{51}\) Richardson, supra note 5, at 22.

\(^{52}\) PNDCL 111 came into force with a complementary law—PNDCL 112, the Customary Marriage and Divorce Law, Section 15—which required the registration of customary marriage in order to benefit from PNDCL 111. This requirement was optional, and persons wishing to benefit were to register their customary marriages within three months after the marriages occurred. Those who were married under customary law before the law came into effect also had three months to register their marriages after the law was passed. See PNDCL 112, pt. I, 2(2). Although registration was not required, it did not mean that the law did not threaten traditional order. Those who opted for it were seen as compromising tradition. This was the conception of the people and not necessarily a legal or logical derivative.


\(^{56}\) Dankwa, supra note 54, at 2; Fenrich & Higgins, supra note 45, at 273 (“The two individuals remain members of their separate lineages.”).
the estate of their deceased husbands."57 Thus, the new law threatened to change the order of the family as traditionally understood by certain ethnic groups.

Some ethnic and religious groups did not agree with the new law, and their disagreements illustrate the tension between political authority and religious beliefs in Ghanaian society. The Akan ethnic group58 and Muslims were the most prominent groups that disagreed with the law. The law greatly affected the Akan—a matrilineal group and the largest ethnic group in Ghana.59 The reaction of some Akan was that their system of inheritance was under siege and the organic family structure faced destruction by “an alien system considered by traditionalist[s] to be mechanical and individualistic.”60 Some argued that the traditional Akan system of inheritance could be defended from the new law on the grounds that “preservation of purity of stock, that is to offset a situation whereby family property might go astray, even to the extent of strangers having to deal with a family’s ancestors.”61 Connecting ancestors with property brings objections to the law within religious realms.

The Intestate Succession Law likewise affected Muslims’ customary succession practices. The Marriage of Mohammedans Ordinance 1907 provided for administrative and procedural matters relating to the registration of Muslim marriages and divorce.62 Section 10 of the Marriage of Mohammedans Ordinance (Cap 129) provided that “[o]n the death of a Mohammedan whose marriage has been duly registered under this Ordinance, the succession to his or her property shall be regulated by Mohammedan law.”63 However, the government memorandum on the Intestate Succession Law opined that “the rules of Islamic intestate succession were too complicated and it should be possible to simplify them, particularly in the course of an effort to unify the rules of succession prevailing in the country.”64 The new law in section 19(b) of the Intestate

58. For an overview of Akan society, see Mikell, supra note 54, at 226–30.
60. Id.
61. Id.
62. See Legal History and Notable Features of Ghana Law, supra note 2.
63. Marriage of Mohammedans Ordinance, Cap. 129, § 10 (1907).
Succession Law repealed Cap 129 section 10 and simplified some of the rules of intestate succession.65 One area of such simplification that posed a challenge to Muslims was the equal sharing between male and female children.66 Although proponents of the Intestate Succession Law viewed one of its benefits as introducing gender balance into customary and religious inheritance customs, the Muslims did not view this aspect of the law positively.67

Muslims do not believe that the state has the authority to simplify sacred laws, and they do not consider statutory and customary marriage and inheritance laws as applying to Muslims who have their own religious laws.68 Prior to the passage of the Intestate Succession Law, the Muslim community in Ghana had not bothered to register marriages under the Mohammedan Law of 1907 and had simply applied religious law in matters of succession.69 After the Intestate Succession Law was promulgated, Muslims still preferred to follow religious law instead of statutory laws of marriage and inheritance.70 Muslims justify their non-adherence to the Intestate Succession Law by pointing out that they did not have the problems of customary law succession that the Intestate Succession Law was intended to overcome, since the Quran explicitly spells out how property should be shared as inheritance.71

Many Muslims still follow their religious norms on succession and inheritance, and many are ignorant of the statutory requirements on marriage and divorce in both Cap 129 and the PNDCL 111. In

65. Intestate Succession Law, PNDCL 111, § 19(b) (1985); see Fenrich & Higgins, supra note 45, at 284 n.138 (noting that the Quran requires that a male child inherit twice as much as a female child).


67. Id.; see also Fenrich & Higgins, supra note 45, at 335 (“Resistance to the intestate succession system created by Law 111 is perhaps strongest in Muslim communities because the system differs from the distribution set forth in the Koran.”).

68. See EW ASSOCIATES, DRAFT REPORT, GTZ LEGAL PLURALISM AND GENDER PILOT PROJECT, FAMILY LAW FOCAL AREA STAKEHOLDER WORKSHOP ON LEGAL PLURALISM IN GHANA AND THE MOSLEM RELIGION AND PRACTICE—CHALLENGES AND STRATEGIES (2003) [hereinafter DRAFT REPORT].

69. See id.; see also Fenrich & Higgins, supra note 45, at 283–84; Mervyn Hiskett, Commissioner of Police v. Musa Kommanda and Aspects of the Working of the Gold Coast Marriage of Mohammedans Ordinance, 20 J. Afr. L. 127, 131 (1976).

70. Tijani, supra note 66.

71. See DRAFT REPORT, supra note 68.
fact, the government memorandum on the Intestate Succession Law stated that

[t]he Marriage of Mohammedans Ordinance, Cap, 129 . . . is hardly ever enforced. Its registration provisions are probably not known to many Muslims, and the existence and situation of the registers is even less common knowledge either to Muslims or to the legal profession. So that the condition precedent for the application of Islamic rules of succession is not often satisfied.\textsuperscript{72}

Even in cases where customary law and Islamic law are mixed, PNDCL 111 is not accepted as a unifying law.\textsuperscript{73} Thus, the one reason offered by the Government for the repeal of the Marriage of Mohammedans Ordinance Cap 129 remains.\textsuperscript{74}

The provisions of PNDCL 111 and the Marriage Registration Law PNDCL 112 are not known to many Muslims.\textsuperscript{75} Even fifteen years after the promulgation of PNDCL 111, some Ghanaians are still ignorant of it, and many Ghanaians, especially those in rural areas, do not take advantage of it.\textsuperscript{76} Traditional religion has hindered the enforcement of the law and “customary laws and practices were rooted deeply not only in the minds of some traditional rulers but also among the elite who preferred the customary succession to the interstate law.”\textsuperscript{77}

\textsuperscript{72} Government Memorandum, Intestate Succession Law 1 (1985).
\textsuperscript{73} See Tijani, supra note 66. Tijani conducted research in Dagbon (located in Northern Ghana) in 2000 and discovered that PNDCL 111 was not accepted as a unifying law. He similarly failed to encounter anybody adhering to PNDCL 111, even though he thought it had similarities with Islamic law, especially in terms of specifying in details and percentages how the property of the deceased must be shared. Id.
\textsuperscript{74} See Government Memorandum, Intestate Succession Law 1 (1985).
\textsuperscript{75} See Tijani, supra note 66; DRAFT REPORT, supra note 68.

[fifteen years after the enactment of the PNDCL 111, relief is still out of the fair reach of the average Ghanaian woman and child. The enactment of PNDCL 111 is a step in the right direction in terms of protection of the inheritance rights of widows and children. Though its impact is yet to be determined scientifically, it can be said that its implementation has been difficult, especially in the rural areas of Ghana and its impact below average.

Id.
Fundamental religious beliefs do not always coincide with secular laws on succession, and the disagreement and misunderstanding can lead to a repudiation of law by some religious sects.

B. Religious Bodies (Registration) Law of 1989 (PNDCL 221)

In June 1989, the Provisional National Defense Council (PNDC) passed the Religious Bodies (Registration) Law of 1989 (PNDCL 221), which required that every individual congregation register with the National Commission for Culture in an effort to control the proliferation of religious bodies. The law remained in effect until 1992 when the new Ghanaian Constitution rendered the law unconstitutional because the registration procedure contradicted the constitution, which guarantees everyone the right of “freedom to practise any religion and to manifest such practice.”

PNDCL 221 prescribed a mandatory registration procedure for all religious organizations, including the old churches established by missionaries. The procedure for registration required all religious bodies operating in Ghana to file registration documents with the

79. See Quashigah, supra note 7, at 594.
80. GHANA CONST. ch. 5, art. 21(1)(c), available at http://www.ghanareview.com/parlia/Gconst5.html. Currently, religious institutions register with the Registrar General’s Department by fulfilling general requirements that apply to non-governmental organizations (NGOs). Through this they gain formal government recognition and are granted tax-exemption on their non-profit activities such as charitable and educational activities. This registration process is clearly not used as a means to control religious bodies.
81. See Quashigah, supra note 7, at 594. These older churches were included in the law because the law defined a religious body 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.” Id. (quoting PNDCL No. 221 § 20).
82. The law prescribed that the following information shall be provided with each application:

(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 . . . 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 religious 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 place 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

642
Religious Affairs Committee, which in turn advised the National Commission for Culture on whether a particular religious organization could be registered. Although the law failed to state the criteria for acceptance, it did require the religious organizations to procure a certificate to operate and gave the government the right to inspect the churches' facilities, functions, and to audit their accounts. The law was announced on June 14, 1989, and all religious bodies, regardless of the length of their existence, were expected to register by November 14, 1989.

PNDCL 221 set up the Religious Affairs Committee (RAC) to work with the National Commission for Culture (NCC) in overseeing the process of registration. Section 10 of the Law mandated that the Chairman of the Commission facilitate the implementation of the Law. In a memorandum to the Government, the Christian Council of Ghana (CCG) and the Ghana Catholic Bishop’s Conference (GCBC) argued that “[Section 10] should be deleted in order to avoid the situation where such a chairman may decide by himself how the law should actually be implemented which might eventually lead to misapplication of its provisions.”

When the law passed, the Head of the National Commission for Culture was a Muslim, and rumors quickly spread that the law was a deliberate attempt to curb the growth of Christianity to the advantage of Islam. Additionally, many leaders thought that the law was designed to harass the older churches. The chairman of the

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83. See Quashigah, supra note 7, at 594.
86. PNDCL No. 221 § 5; Quashigah, supra note 7, at 594.
87. PNDCL No. 221 § 10.
89. The Head of the National Commission for Culture at the time was Dr. Mohammad B. Abadallah.
90. These were churches such as the Presbyterian Church of Ghana, the Anglican Church, the Evangelical Presbyterian Church, the Baptist Church, and the Methodist Church of Ghana, among others. For a detailed account of the relationship between church and state
military regime in power at the time, Flt. Lt. J.J. Rawlings, frequently clashed with older religious bodies, especially the CCG and the GCBC. These bodies had relentlessly served as a prophetic voice defending human rights in a regime with no official opposition; thus, many churches, including these churches in particular, felt this law was designed to attack them.91

Many new religious movements, especially “charismatic” churches, had thrived in Ghana beginning in the late 1970s.92 Since the new churches drew their membership mainly from the older churches, some believed that curbing the proliferation of new churches would protect older religious organizations.93

Even though the law was ostensibly designed to protect older religious organizations by preventing their members from drifting to the new religions, the majority of religious organizations in Ghana decided that the law violated their religious freedom, and they refused to register with the government.94 The new church groups, regarding the registration as a process of legitimization, were anxious to register. The older churches, under the umbrella of the CCG and the GCBC, openly questioned and resisted the law.95

The heads of the older churches were further offended by the government’s failure to consult or inform them about the law before it was announced.96 On the day it was announced, the CCG sought clarification from the ministry of interior and requested copies of the law. After receiving copies of the law two months later, the two bodies submitted recommendations for the amendment of the law as a follow up to an earlier memorandum.97 In their Pastoral Letter, the


91. See Pastoral Letter, supra note 85. Additionally, some thought that the law was meant to slow the growth of Christianity. See Quashigah, supra note 7, at 595.


94. See Quashigah, supra note 7, at 595.

95. See id. (“Not surprisingly, PNDCL 221 was totally rejected and ignored by the major established religious groups in the country.”).

96. See Pastoral Letter, supra note 85.

97. See id. at 2–3. After receiving the copies of the law, the CCG and GCBC set about a process of dialogue with the government by meeting with the Ministry of Interior’s
CCG and GCBC pointed out that they originally believed that only the national head offices of individual churches were supposed to register, not every individual congregation nationwide.\textsuperscript{98}

In addition to making recommendations to the government, the CCG and GCBC also made strong reservations in a pastoral letter about the nature and purpose of the law.\textsuperscript{99} They noted that they saw the law as “a direct contravention of the freedom of religion enshrined in the United Nations Charter on Human Rights to which Ghana subscribes”\textsuperscript{100} and as placing “in the hands of government a tool by which the activities of all the religious bodies and especially churches can easily be controlled.”\textsuperscript{101} They also declared that the law could create an opportunity for “people to cash in and cause all sorts of unnecessary problems for others as a result of religious intolerance,” and that they were aware that “harassment . . . [was] being meted out to some congregations by those who have decided to interpret [the law] in their own way.”\textsuperscript{102}

These two councils, though they acknowledged that the proliferation of churches was creating problems, urged that

government should, in all matters relating to freedom of worship, reflect restraint in the measures it takes. Where the due processes of the law can be used to check misdemeanors and subversion of good order, it would appear to be always better to resort to the courts than to direct political or governmental intervention. The experience of Christianity down the centuries is that banishment of religious expression has created in many places a condition for subversion and disorder far worse than the toleration of open operation of religious groups could ever create.\textsuperscript{103}

Moreover, although the two bodies encouraged all congregations to procure forms for registration and make them ready

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\footnote{representative Mr. Justice D.F. Annan on August 11, 1989. He gave them assurances that the government would “welcome comments and recommendations for the amendment of PNDC Law 221.” \textit{Id}.}

\footnote{\textit{Id}. at 3. The implications of requiring every congregation to register were that some congregations could be denied the right to operate.}

\footnote{\textit{Id}. at 7.}

\footnote{\textit{Id}.}

\footnote{\textit{Id}. at 10.}

\footnote{\textit{Id}. at 8.}

\footnote{\textit{Id}. at 6–7.}
\end{footnotes}
for processing, they decided not to register. On the day of the deadline for registration, they issued a joint letter stating that they could not in good conscience register under the law as it stood since it infringed on the fundamental human right of freedom of worship. Though the government did not back down, it did not close down or prosecute any churches. Clearly the open resistance of the CCG and the GCBC put pressure on the government revealing the influence of religion in the public sphere. In 1992, the new Ghanaian Constitution rendered the law unconstitutional because the registration procedure contradicted the Constitution, which guarantees everyone the right of “freedom to practise any religion and to manifest such practice.” Several years after the law was rendered unconstitutional, a new law created controversy among religious groups.


The Ghanaian Parliament passed the Criminal Code (Amendment) Act of 1998 in order to protect the rights of women and children by banning religious servitude. Although the act was designed to protect these groups, it conflicts with aspects of some traditional faiths because of its prohibition of all forms of customary and ritual servitude.

104. Id. at 3.
105. See Quashigah, supra note 7, at 595. But see EUR. COUNTRY OF ORIGIN INFO. NETWORK, U.K. HOME OFFICE, GHANA, COUNTRY ASSESSMENT § 5.31 (Apr. 2001), available at http://www.ecoi.net/pub/dh735_00232gha.html (stating that “the government put a freeze on the activities of two international sects, the Jehovah’s Witnesses and [T]he Church of Jesus Christ of Latter[-]day Saints” until November 1991 and December 1990, respectively, and that the Ghanaian government disbanded two indigenous sects (citing RESEARCH DIRECTORATE OF THE DOCUMENTATION, INFORMATION AND RESEARCH BRANCH (DIRB), CANADA, GHANA: FREEDOM OF RELIGION (May 1991)).
106. GHANA CONST. ch. 5, art. 21(1)(c), available at http://www.ghanareview.com/parlia/Gconst5.html. Currently, religious institutions register with the Registrar General’s Department by fulfilling general requirements that apply to non-governmental organizations (NGOs). Through this they gain formal government recognition and are granted tax-exemption on their non-profit activities such as charitable and educational activities. This registration process is clearly not used as a means to control religious bodies.
108. See Quashigah, supra note 7, at 606.
Many Ghanaians interpreted the act as targeting the traditional religious practice of Trokosi. The practice of Trokosi is an element of traditional religion where young virgin girls are sent to religious shrines for a period of time—up to three years—to atone for the crimes committed by their male relatives. Trokosi was traditionally understood as a means of controlling crime within traditional communities; however, the practice in recent times has been identified as a dehumanizing practice that violates victims’ fundamental human rights.

109. Id. at 601–03; U.S. DEP’T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT, GHANA (1999), available at http://www.cesnur.org/testi/art/art_ghana99.html (“In 1998 Parliament passed, and the President signed, comprehensive legislation to ban the practice of trokosi in comprehensive legislation to protect women’s and children’s rights. Human rights activists believe that the goal of eradicating the trokosi practice is attainable with the new law.”).

110. Some sources report that the length of time, however, is much longer than three years:

Once at the shrine, the priest is the only one who can decide when the girls have atoned for the sin and free them. They are expected to stay with priests from the age of about eight up to 15 and sometimes much longer. Sometimes, even lifelong servitude may not settle the debt to the gods. Occasionally, the family must offer another female virgin if the Trokosi dies while at the shrine. If the Trokosi is not replaced, it is alleged that the refusal will lead to a recurrence of calamities in the family of the wrongdoer. It can go on for generations. Different girls pay for the same offense, from generation to generation. Today, there are some women bound to shrines who represent the fifth successive generation to pay for a [single] crime.


112. The practice has attracted national and international condemnation. Some international human rights organizations (e.g., International Needs, Commission for Human Rights and Administrative Justice, and the Center for Studies of New Religions) and individual scholars have recognized the victims’ rights violations of Trokosi. See, e.g., Quashigah, supra note 7, at 602–04; Danuta Villarreal, Comment, To Protect the Defenseless: The Need for Child-specific Substantive Standards for Unaccompanied Minor Asylum-Seekers, 26 HOUS. J. INT’L L. 743, 776 n.210 (2004) (reporting that this practice involved substantial amount of sexual...
The 1992 Constitution\footnote{113} and the human rights conventions to which Ghana belongs\footnote{114} criminalize Trokosi. The Criminal Code (Amendment) Act of 1998 added detailed law to effectively prosecute those who indulge in Trokosi, and it clearly identified the persons to be held liable for the practice. The law provides:

(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.\footnote{115}

Non-governmental organizations (NGOs), notably International Needs (Ghana) and the Federations of Women Lawyers, have embarked on attempts in certain shrines to liberate the Trokosi women with some success. See Robert Kwame Ameh, Trokosi (Child Slavery) In Ghana: A Policy Approach, in GHANA STUDIES 1, 36 (1998).

\footnote{113} See Bilyeu, supra note 110, at 494–500 (discussing Trokosi as a violation of the Ghana Constitution); Quashigah, supra note 7, at 605 (citing GHANA CONST. arts. 15(1), 16(1)–(2), 26(2)); Adrien Katherine Wing & Tyler Murray Smith, The New African Union and Women’s Rights, 13 TRANSNAT’L L. & CONTEMP. PROBS. 33, 47 (2003) (stating that “the Ghana Constitution . . . flatly bans slavery,” including Trokosi (citing GHANA CONST. art. 16(1)).

\footnote{114} See Bilyeu, supra note 110, at 477–94 (1999) (discussing how Trokosi violates seven international conventions signed by or entered into by Ghana); Quashigah, supra note 7, at 605 (citing 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)); Wing & Smith, supra note 113, at 47 & n.85 (citing eight conventions, declarations, and treaties to which Ghana is a member, all of which ban Trokosi).


(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 persons to the performance of the custom, ritual; or

(c) to be present at any activity connected with or related to the performance of the customary ritual . . . .
Thus, the act banned the practice of Trokosi to protect the rights of victims of the practice, namely women and children.

Traditional practitioners of Trokosi were naturally upset by the law. The Afrikania Mission, a neo-traditional religious movement, provided an organization for traditional practitioners of Trokosi to voice their reactions to the law. Trokosi became a cause célèbre of the Afrikania Mission, and the group held well-organized media programs and interviews to object to what it deemed a misrepresentation and criminalization of the cultural practice. The Mission accused Christian non-governmental organizations (NGOs) of orchestrating and misrepresenting the practice to demolish traditional faith. As noted in a submission to the Minister of Interior, “[t]he way the campaign against [the Trokosi] Institution is proceeding gives the impression an attempt is being made to replace African Traditional Religion with Christianity. This is unfortunate and discriminatory. Christianity failed to prevent crime in Europe.”


116. For more information on the Afrikania Mission, see Samuel Gyanfou, A Traditional Religion Reformed: Vincent Kwabena Damuah and The Afrikania Movement, 1982–2000, in CHRISTIANITY AND THE AFRICAN IMAGINATION (David Maxwell & Ingrid Lawrie eds., 2002). Osofo Kofi Ameve, who hails from the Volta Region in Ghana where the practice of Trokosi is found, was the leader of the movement from 1993–2003. Ameve mobilized and rallied the leaders of the affected shrines to protest. Some prominent individuals from the area, including a presidential aide to President Jerry John Rawlings, joined the protest.

117. For example, the Ghanaian Chronicle reported:
Osofo Tordzagbo, Secretary General at Afrikania Mission, speaks about the issue. “Our research has proved that Trokosi as defined by abolitionist NGOs is false. Totally false,” he says. “[A Trokosi shrine] is not a place where you go and then you are subjected to all sorts of human rights abuses.”

Instead, Tordzagbo says that the practice of sending girls to shrines is really about training them to become role models for their families. “The concept here is to have a role model for the family from which the criminal comes,” he explains. “That person is like bringing peace to the family.”


118. The proponents preferred to call the Institution Troxovi, referring to the types of shrines that received the girls rather than use Trokosi, the traditional designation for the girls.
In the face of the conflict over *Trokosi*, the Afrikania Mission promoted the formation of the National Association of *Trokosi* Shrines by providing the government with petitions against the work of NGOs trying to eradicate the practice of *Trokosi* and against the government’s proposed laws.\(^\text{119}\) After several arguments, the Afrikania Mission petitioned the Minister of the Interior as follows:

Penultimately, any law which is purported to abolish the [*Trokosi*] Institution will create problems the law will be unable to solve. This is apparent in the ascendancy of crime and immorality in the communities in which the Institution exists since the beginning of the attack on the Institution. Secondly, it is better the [*Trokosi*] Institution exists in the open than to drive it underground.\(^\text{120}\)

Although the act prohibiting religious servitude exists, its effectiveness is questionable. So far, there has been no prosecution under the act, and the practice of *Trokosi* continues. As one scholar has noted:

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.\(^\text{121}\)

Thus, although the act is progressing toward better enforcement rights for women and children, Ghanaians must be educated for the law to be effective. In addition to the controversy surrounding this act, concern about preserving the social fabric also marks current ongoing discussions in Ghana in reaction to a Draft Domestic Violence Bill.

**D. Draft Domestic Violence Bill (2003)**

A draft of the Domestic Violence Bill has been under debate in Ghana since 2003 and is currently provoking cultural and religious

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\(^{119}\) See COMMISSION ON TROXOVI SHRINES, FACT FINDING MISSION TO GENUINE TROXOVI SHRINES REPORT, (Nov. 18, 1998) (addressed to the Minister of Interior).

\(^{120}\) See id.

\(^{121}\) Id.

Quashigah, supra note 7, at 606.
conflicts. The bill, which consists of three parts, is a public initiative responding to the continuous problem of spousal and child abuse in Ghana. Its purpose is to augment the Criminal Code 1960 (Act 29), which criminalizes assault and battery, rape, defilement of children, and incest. The proposed bill has evoked a strong reaction from certain religious communities, who believe that the law confuses cultural norms and has the potential to cause societal harm.

In 2000, several women’s rights organizations and governmental organizations prepared a private members’ motion for Parliament on domestic violence and pushed for the enactment of the bill in order to protect “persons especially vulnerable, such as women and children, against domestic violence, through the issuance of civil protection orders.” In 2003, an organization known as the Gender Violence Support Network began spreading propaganda for the bill. That year, the draft of the bill was presented to the Parliament for consideration. The Parliament concluded that among other provisions, the provision criminalizing marital rape “had the potential of resulting in broken homes”; therefore, the Parliament found the need “to subject those provisions of the bill to extensive public discussion.” The bill is currently in public debate on these particular provisions that allegedly threaten traditional conceptions of the family.

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123. The bill first defines domestic violence, then details civil protection orders, and finally, lists other miscellaneous, related provisions. Id.
124. To read more on the issue of domestic violence and spousal abuse, see Ofei-Aboagye, supra note 9; Ayisi Agyei, supra note 9.
126. For example, the International Federation of Women Lawyers and the Gender Violence Support Network are a part of the coalition.
127. For example, the National Coalition on Domestic Violence Bill Legislations, Ghana Law Reform Commission, and the Ministry of Women and Children Affairs all joined in the motion.
128. A private members’ motion is one where the Bill is moved in Parliament by an individual parliamentarian rather than by the State.
129. Zaney, supra note 10. The organizations were motivated by a 1999 Ghana Law Reform Commission report recommending such a bill.
A group of several NGOs known collectively as the National Coalition on Domestic Violence Legislation Bill in Ghana is now the main advocate of the bill. The Coalition argues:

Currently, the law in Ghana is inadequate for dealing with the particular crime of domestic violence. The provision[s] of the Code do not take into account the special context of domestic relationship[s] nor the fact that domestic violence may be a pattern of incidents as opposed to a one-time occurrence. The only sanction provided is imprisonment. The criminal code still contains an archaic English law which justified the use of force in marriage. . . . [T]his section is a violation of the fundamental human rights of the parties in marriage and goes contrary to the constitution of Ghana and all the International Conventions to which Ghana has lent its full support. The Coalition is engaged in a publicity drive that aims to educate the people and by so doing to gain support for the Bill.

The government of Ghana has taken over the enactment of the Bill so that it is no longer to be moved as a private member’s motion. In a memorandum on the bill, the Attorney General and Minister of Justice, explained:

The object of the Bill is to provide victims of Domestic Violence with a broader set of remedies in the form of protection orders. . . . It will also accord with international commitments and obligations of the Republic under the convention on the Elimination of all forms of Discrimination against women (CEDAW) ratified by Ghana in 1986 and the convention on the rights of the Child 1989 (CRS) also ratified by Ghana. By ratifying these conventions, the Republic has taken on the obligation to protect certain groups and provide the special care and assistance required for the physical and mental well being of women and Children among others.

Public reaction to the bill has assumed various forms. Those who advise caution argue that the bill goes against Ghanaian cultural and religious norms. While these norms do not support violence, some definitions of domestic violence such as marital rape and proposed punishment for various offenses are seen as violating cultural norms.

132. The Ministry of Women’s and Children Affairs initially also actively campaigned for the bill to be passed. See Ranford Tetteh, Overcoming the Challenges of Women Emancipation, DAILY GRAPHIC (Accra, Ghana), June 10, 2004, at 7.
133. Government Memorandum, Domestic Violence Bill 2.
aimed both at avoiding litigation and at handling and resolving domestic conflict. In warning that the draft bill would do more harm than good to society when passed into law, Judge Abdul Fatawu Yakubu stated that “if care was not taken, many homes will be broken when the bill is passed into law by parliament.”\textsuperscript{134} He continued:

[F]or instance if a married woman reported a case of marital rape against her husband the man could receive a prison term of between five and 25 years, just as any man who raped another woman . . . if a man refused to speak to his wife for a specific number of days, the wife could take the husband to court and if he is found guilty he would be punished.\textsuperscript{135}

The bill has forced Ghanaians to grapple with the question of rape within marriage—an idea directly opposing the old cultural conceptions that it is not polite for a woman to agree readily to sexual intercourse.\textsuperscript{136} Among the Ewe ethnic group in Ghana, for instance, this is expressed in the saying literally translated as, “Women do not say ‘yes’ at the first instance.”

Muslims specifically have reacted negatively to the proposed bill. When the Coalition organized a workshop to explain the bill, Muslims expressed their appreciation of its good intentions, but also noted that some of the provisions were vague enough to allow women “to threaten and dominate their husbands, things that could lead to the disintegration of marriages.”\textsuperscript{137} They also felt it would influence the effective disciplining of children.\textsuperscript{138} In the northern region of Ghana, where there is a large Muslim population, some Muslim women were reported to have threatened to protest against the bill, saying that it contradicts principles of Islam. They argued that “the Bill would create disrespect in Muslim Families because it sought to give more power to women than men.”\textsuperscript{139} The women

\textsuperscript{134.} Bill Can Do More Harm than Good, DAILY GRAPHIC (Accra, Ghana), June 7, 2004.
\textsuperscript{135.} Id. Indeed, J. Mawulolo harped on the latter example, remarking that “we should remember that when a man is provoked, he talks very little, if at all. But when a woman is in a rage, the words flow and flow endlessly.” Justice Mawulolo, Make It a ‘Domestic Virtues and Peace’ Bill, DAILY GRAPHIC (Accra, Ghana), June 9, 2004, at 7.
\textsuperscript{136.} See Rape Within Marriage: How Does it Feel? DAILY GRAPHIC, June 17, 2004, at 9.
\textsuperscript{137.} Imams Unhappy with Bill, GHANAIAN TIMES, June 14, 2004, at 1, 3.
\textsuperscript{138.} Id.
\textsuperscript{139.} Section of Muslim Women Reject DV Bill, DAILY GRAPHIC (Accra, Ghana), May 14, 2004, at 18.
preferred that the causes of such violence—poverty, illiteracy, and mistrust among married people—be removed through intensive education rather than a bill. These women strongly believed that although the bill promised to protect family life, the bill ultimately threatened it instead.140

The proposed bill and laws discussed above are intended to improve the social condition of Ghanaian women and children. Additionally, they all have the similar effect of creating challenges and discussion between religious groups and the government. Such challenges can be good as long as lawmakers involve civil society by recognizing religious and cultural factors in the legislative process.

IV. COMPARATIVE ANALYSIS

This section provides a comparative analysis of how the four laws discussed above reveal patterns that challenge traditional religious and cultural norms, and concomitantly generate opportunities for dialogue between religion and customs on the one hand and Ghanaian lawmaking on the other. The three laws relating to gender and human rights issues—the Intestate Succession Law, the Criminal Code (Amendment) Act of 1998, and the proposed Domestic Violence Bill—are indirectly linked to religious and cultural factors and caused a reaction from religious communities, while the Religious Bodies Registration Law directly threatened religious freedom before lapsing with the 1992 Constitution.

A number of challenges are evident from the public and religious reactions to the four laws. The most significant challenge is the enforcement of the laws. In the cases of the Intestate Succession Law of 1985, the Religious Bodies Registration Law of 1989, and the Criminal Code (Amendment) Act of 1998, the laws have not been successfully enforced. This is mainly because they clashed with cultural norms and religious beliefs.

The three gender-sensitive laws bring to the fore of Ghanaian public law what is culturally understood as belonging to the private domain of family and religious life. These religious and cultural concerns demonstrate how international human rights conventions and globalization challenge local cultural practices, which are often underpinned by religion. The challenges evoke the “universalism

140. See id.

654
versus relativism” debate because there is a perception that “international human rights norms, considered to be ‘Western’ in origin, are not sensitive to cultural values and norms which prevail in the non-Western world.”

For example, whereas advocates of the Domestic Violence Bill argue that it is appropriate legislation because domestic violence undermines the sanctity of families, opponents argue that some definitions of domestic violence undermine marital relationships and male cultural qualities. Opponents argue that the punishment advocated by the law would break not only the nuclear family but extended families as well. A survey reveals that some women, especially in the rural areas, fear that if the laws were applied and they were to report their husbands, their husband’s families, and even their own families, would cast them and their children aside. This outcast state would lead to hardship when the husband is imprisoned for the offense. Thus, it seems that many women want their husbands to be punished for abusing them, but not too much. Opponents have also revealed concerns that the law ignores the Christian principle of reconciliation as the law is seen as entrenching domestic violence at times. Consequently, some feel that part of the law calls for abandoning Christian values.

A second challenge created by the laws exists because the content and implementation of the various laws reveal that changing customs by means of legislation can be problematic because, at times, the “modern” laws offend the people’s traditional sense of good judgment. For example, the proposed Domestic Violence Bill is seen as destructive, rather than helpful, to family life within the cultural context of Ghana. Opponents of the Criminal Code (Amendment) Act of 1998 felt that the custom Trokosi, which the people believed prevented crime in society, was itself criminalized by a modern legal system, revealing tension between religions and the legislature over how to provide crime control and protection.

141. Ameh, supra note 112, at 36.
142. See Mawulolo, supra note 135, at 7.
143. Interview with Rev. Abamfo Atiemo, Dep’t for the Study of Religions, Legon (Sept. 23, 2005).
144. Id.
The third challenge illustrated by the four laws concerns questions about how lawmaking in Ghana takes cognizance of legal and religious pluralism. In the case of both the Intestate Succession Law and the proposed Domestic Violence Bill, all supporters of religious traditions were anxious that secular punitive measures were not being used to preserve the family. Paradoxically, it might seem that if the non-secular means were successful, the need would not have arisen for the laws. Thus the religions are challenged to see how to inculcate certain values in followers so that the need does not arise for such laws to be enacted by the state to regulate conduct. In reality, both the state and religion can take preventative measures to prevent the rise of crimes and discrimination against women and children. As noted above, some Muslim women prefer that the causes of such violence—poverty, illiteracy and mistrust among married people—be removed through intensive education rather than a bill they believe threatens the very family life that lawmakers are trying to protect. This challenge demands that the state go beyond merely punishing misconduct due to structures that cause the evils and seek to remove such structures.

Finally, the four laws reveal a fourth challenge that the government faces—how to address the issue of inter-religious balance in laws. As discussed above, people find reasons other than official State explanations for the purpose of promulgating the various laws. For example, the popular reasons for passing the Religious Bodies Registration Law were that government was attempting to muzzle the big churches and that the Head of the National Commission for Culture, a Muslim, wanted to prevent the growth of the Christian Church. In the case of the Criminal Code (Amendment) Act of 1998, traditionalists believed that Christians, through NGOs, and the government were attempting to destroy the

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146. See Section of Muslim Women Reject DVB, supra note 139, at 18.
147. See supra Part III.B.
149. See supra Part III.B.
A traditionalist, Dale Massiasta, in a submission to the Acting Attorney General of Ghana regarding the law, opined:

“We have to give back the right of religion to the people and not deny it with the excuse of reform which is inimically usurped by the constitution. The age which Sigmund Freud thought would have been the time of humanity to leave religion, the time he thought man would have come of age and would not have been guided and controlled by religion, has not yet come. And to pretend in this country that it is constitutional to replace people’s beliefs because they are naked and not powerful is the final thrust of disrespect to God. I strongly advise the Government to shelve the Bill.”

Thus, ordinary perceptions of these laws are that they threaten the freedom of one’s religion, while advancing another, newer religion. Such prejudices undermine laws that intersect religion and the public sphere, and therefore governments should always carry out intensive consultation and education with sensitivity to the people affected by the laws.

It can therefore be suggested that since there are often feelings that Western norms are being imposed on Ghanaians, it will not be sufficient for lawmakers to argue from the standpoint that the laws are being passed because Ghana is signatory to various international conventions. Lawmakers should employ a cross-cultural, universal approach in educating the people to accept such laws. The various public debates carried on about the laws also reveal that there is the need for lawmakers to involve civil society through adequate consultation. This is especially important in a society where most people are illiterate and unaware of the laws of the state.

In spite of the challenges posed by these laws, the laws also opened up opportunities for constructive dialogue between religion and culture and the modern state, through lawmaking that sees culture as a dynamic force. State and religion must begin a dialogue in order to enhance human rights and equalities while continuing rich religious traditions.

150. See supra Part III.C.
152. See Ameh, supra note 112, at 1, 19.
V. Conclusion

Religion and politics have been and continue to be intertwined in Ghana. From the roots of Ghanaian history until now, laws and religious beliefs affect each other. The recently developed laws discussed above have led to confrontations and discussions of religious liberty in Ghana. Each of the laws, though designed to protect human rights and to regulate the State, have had dramatic cultural and religious implications. Although the laws have created some challenges, they have also generated opportunities for lawmakers and religious communities to communicate and to work together to create legislation that will further the well-being and human rights of the people and to do so in a manner that acknowledges the religions and customs held so deeply by the diverse Ghanaian people.

During this era of globalization and cultural transformation, the real issue that arises at the intersection of religion and the public sphere is how to connect with the values of the people and to pass legislation to reflect those values and enforce fundamental human rights in a way that is fair to all religions.