

Religion, International Human Rights Standards, and the Politicisation of Homosexuality in Ghana

Seth Tweneboah¹

Abstract

Existing narratives on same-sex intimacies in Africa have largely shed light on the ways in which religion and custom serve as a limiting factor to the rights of same-sex partners. Less attention has been paid to the politicisation of homosexuality as well as the tensions and cooperation among the differing normative authorities in society. Using homosexual controversies in Ghana as a case in point, this paper interrogates the political valence of religious and customary notions of sexuality. I examine the religion-state relationship by showing how the State of Ghana relies on its domestic sources of plural legal orders and authorities to assert its sovereignty over external interventions. The paper rests on an analysis of the worth of ethnographic materials and existing literature to argue that religious and customary paradigms on marriage and sexuality provide avenues for contesting external political pressure and legal influence.

Keywords: Ghana, homosexuality, law, human rights, politicisation

Introduction

Indigenous Ghanaian societies largely reveal ambivalent and complicated forms of marriage and sexual intimacies.² Among the Akan, for example, studies have identified at least twenty-four different forms of heterosexual marriages, each of which has created one form of tension or the other.³ These differing conceptions of marriage shed crucial insights into the changes contemporary Ghanaian society has undergone in terms of

¹ Seth Tweneboah (PhD) is a lecturer at the Religious Studies Department of the Kwame Nkrumah University of Science and Technology, Kumasi, Ghana. He received his PhD in Religious Studies at the Victoria University of Wellington, New Zealand. Seth has two Master's degrees from University of Ghana, Legon and Florida International University, Miami. His research focuses on the religion-law interrelationships in Africa. He has published in a number of reputable journals including the *Journal of Law, Religion and State*.

² Dorothy Dee Vellenga, "Who Is a Wife? Legal Expressions of Heterosexual Conflicts in Ghana," in *Female and Male in West Africa*, edited by Christine Opong (London: George Allen & Unwin, 1983), 144-55. See also Italo Signorini, "Agonwole Agyale: The Marriage Between Two Persons of the Same Sex Among the Nzema of Southwestern Ghana." *Journal De La Société Des Africanistes* 43, no. 2 (1973): 221-34.

³ Dorothy Dee Vellenga, "Changing Sex Roles and Social Tensions in Ghana: The Law as Measure and Mediator of Family Conflict." Doctoral dissertation, Columbia University, 1974, 55-83.

sexual relations. They are also key to reflecting on the legal and human rights concerns of recent homosexual controversy, namely, when embarking on anti-homosexual discourses in Ghanaian society, do the people have the same notion of marriage and sexuality as it exists elsewhere? Addressing this conceptual nuance is significant in foregrounding the controversy over same-sex marriage as a religious as well as a secular challenge.

In this paper, I seek to explicate how Ghanaian religious and customary conceptions of marriage and sexual intimacies provide a basis for the ongoing tension over same-sex relationships in Ghana. To achieve this task, the paper

1. will interrogate the interrelationship between politics and religion within the context of sexuality, pinpointing the various historical processes which the ongoing discourse on same-sex has taken shape;
2. will examine the religion-state relationship in Ghana, paying sufficient attention to how the state relies on its domestic sources of plural legal orders and authorities to resist external interventions;
3. will reflect upon how, despite anxieties over widespread homosexuality being a source of tension between the different normative traditions, they are also an avenue for collaboration between diverse actors especially in resisting what society holds as imported practices;
4. will show, finally, how the ongoing controversies over homosexuality are deeply significant to shedding more insights into the notion that religious resources are not mere drivers of socio-political tensions. These are rather also a solution in itself.

Methodologically, the paper relies on the worth of ethnographic materials gathered from interactions with mainly the church and other well-meaning authorities in Ghanaian societies. The views of these key informants were gathered with fieldwork done during 2014-2015 in the Ashanti and Brong Ahafo regions of Ghana. This information was supplemented with an analysis of a number of existing scholarly literature and statements of high-profile Ghanaians. The information gathered was useful in trying to explain the complex interconnections between religion and politics within the discourse of sexuality.

The extent to which the politics of homosexuality are linked to governmentality, power, and influence,⁴ is largely underexplored. Yet, tensions over homosexuality reveal an interesting convergence of, and power play between the differing plural legal traditions. To be able to appreciate the ongoing controversy over homosexuality, there is the need to interrogate how religious and customary paradigms of sexuality are linked to the signification of power, identity, and influence which are a source of contestation among the various normative traditions and authorities. Section one of the paper, therefore, attends to this concern.

Religious values and imaginations are core features of how Ghanaians approach questions of homosexuality. The claim of section two is that, historically, there has been a broad interrelationship between the religious, the legal, and the political dimensions of homosexuality in Ghana. The section illustrates the way that in the ongoing politicisation of homosexuality, the religious and the customary are translated into the legal and the political realm and *vice versa*.⁵ In particular, the section shows the extent to which the state law, prohibiting homosexual relationships, reflects Victorian values of the nineteenth-century colonial Christianity, and that it is now used by both Christians and state actors to defend traditional values.⁶

Section three examines the instrumentalisation of sexuality as a means of consolidating state power and control. It details how religious and customary resources are mobilised to resist efforts to legalise homosexuality in Ghana. In section four, I look at the current relationships between the different legal orders and how different forms of conflict emerge out of these and the role religion plays in this. The thesis of the section is that religious and customary solidarity are vital for the nation-state to assert its sovereignty when it comes to responding to external pressure to legalise homosexuality. The final section concludes the discussion by reflecting on the extent to which religion publicly engages law and politics in Ghana using sexuality as a case study. This section demonstrates how religion aids the state of Ghana in negotiating its

⁴ Jonathan Joseph, *The Social in the Global: Social Theory, Governmentality and Global Politics* (Cambridge: Cambridge University Press, 2013).

⁵ Kathleen E. Hull, *Same-Sex Marriage: The Cultural Politics of Love and Law* (Cambridge: Cambridge University Press, 2006), 5.

⁶ Adriaan van Klinken and Ezra Chitando, "Introduction: Christianity and the Politics of Homosexuality in Africa," in *Christianity and Controversies over Homosexuality in Contemporary Africa*, edited by Adriaan van Klinken and Ezra Chitando (New York: Routledge, 2016), 3.

international obligations, focusing on the rights challenges associated with this.

I. Notions of sexuality

Studies on sexual intimacies in African societies have expanded knowledge on the ways in which religious-cultural notions of sexuality have, historically, been used to entrench political positions in society. Sylvia Tamale's *Confronting the Politics of Nonconforming Sexualities in Africa*, for example, provides convenient grounds upon which to understand how postcolonial African leaders have deployed heterosexual narratives as a smokescreen to perpetuate despotic control of power on the continent.⁷ The use of anti-homosexual rhetoric for political gains becomes compounded when religious and customary beliefs and imaginations are invoked. For purposes of political convenience, as Adriaan van Klinken and Ezra Chinado observe, in most parts of Africa, religion and culture have generally come together to curb the freedom of homosexuals on the continent.⁸

Recent aggressive anti-homosexual stances in Ghana, and most of Africa, are thus not only a religious affair, but also betray a systematic traditional mechanism of governmentality. That is, indigenous regulation on gender and sexuality is an organised means of what society holds as its rightful ordering of citizens. Emmanuel Akyeampong has already examined gender imbalance in society, showing how in the sixteenth century, for example, some Akan communities institutionalised the office of "public women" who were engaged in meeting the sexual needs of unmarried young men.⁹ He recounts that while the women involved were first ritualised to avert any spiritual catastrophe in society, the underlying philosophy was that meeting the young men's sexual needs was an important stabilising force in society. Importantly, this system was also meant to prevent any possibility of discord in society especially among the young unmarried men. Thus, for political convenience, managing tension resulting from sexual desires provided a means for determining which type of gender and sexual relationship would be allowed.

⁷ Sylvia Tamale, "Confronting the Politics of Nonconforming Sexualities in Africa." *African Studies Review* 56, no. 2 (September 2013): 31-45.

⁸ Adriaan van Klinken and Ezra Chitando, "Introduction: Public Religion, Homophobia and the Politics of Homosexuality in Africa." *Public Religion and the Politics of Homosexuality in Africa* (London and New York: Routledge, 2016), 1-16.

⁹ Emmanuel Akyeampong, "Sexuality and Prostitution Among the Akan of the Gold Coast C. 1650-1950." *Past & Present* no. 156 (August 1997): 144-73.

Among the Nankani of northern Ghana, Rose Mary Amenga-Etego observes that the concept of woman to woman marriage was a symbolic relationship for the continuous perpetuation of the lineage. Her analysis of this practice rules out any possibility of intimate sexual encounter between the women spouses involved, but it crucially reveals a form of gender disparity through male hegemony in society. Women to women marriage, she argues, was “the last desperate religio-cultural practice employed to reclaim and reinstate the male genealogical descent structure of the people.”¹⁰ She therefore blames Nankani religious and customary rationales for serving as a form of governmentality. Thus, the practice of a symbolic marriage provided a shrewd mechanism for perpetuating a patriarchal and authoritative social and political relationship in the Nankani society.

In the early 1930s, a new form of sexual revolution occurred when some Asante chiefs ordered the arrest of all women who were over fifteen years of age and unmarried.¹¹ Several women were locked up until they could find a lover who would pay for their fines. Here too, the context is of crucial importance. While the colonial administration suspected that the law benefitted the chiefs monetarily, the chiefs claimed, hereby, to be curbing sexual immorality, seen as the cause of chaos in the community. According to Jean Allman,

This chaos, often articulated in the language of moral crisis, in terms that spoke of women’s uncontrollability, of prostitution and venereal disease, was, more than anything, about shifting power relationships. It was chaos engendered by cash and cocoa, by trade and transformation.¹²

Akan women at the time had, gradually, become economically independent through capitalist endeavours in the form of the cocoa business. These women also declared ownership and authority over their sexual needs. They, therefore, had little or no dependence on men apart from, for some, to bear children. By this time, modernisation associated with colonialism was steadily making an impact on society. As the discussion below further details, this possible conflict between indigenous and introduced economic and political values created a situation where

¹⁰ Rose Mary Amenga-Etego, “Marriage Without Sex? Same-Sex Marriages and Female Identity Among the Nankani of Northern Ghana.” *Ghana Bulletin of Theology* 4, New Series (December 2012.): 2.

¹¹ Jean Allman, “Rounding Up Spinster: Gender Chaos and Unmarried Women in Colonial Asante.” *Journal of African History* 37 (1996): 195-214.

¹² Jean Allman, “Rounding Up Spinster.” *Journal of African History* 37 (1996): 198.

sexuality was used by chiefs in an attempt to bring people who had fallen off the indigenous path, back on track.

In contemporary times, sexuality continues to provide a lens for seeing the tensions between tradition and modernity. Couched in religious and customary narratives, homosexuality is an indigenous political weapon of controlling the modern society. The introduction of colonial and postcolonial political systems has made possible the ongoing diminution of formal chiefly powers. It must be pointed out that with the increasing influence of modernisation and social change in chiefly controlled territories, chiefs have challenged in multiple ways, any change they deem as a threat to their authority.

Homosexuality, which is cast as a foreign practice, has therefore become a chiefly tool for asserting their political authority. As a type of indigenous sexual deviation, homosexuality is held as an offence against ancestral law. Because the ancestors are held as not just spiritual lawgivers, but also owners of the land, traditional authorities interpret homosexuality as a treasonable offence. They see it as a rebellion against the land and the ancestors whose hegemony was, in the previous society, barely challenged. The case of a divisional chief in the Wenchi Traditional Area supports this. According to him:

That thing [homosexuality], even in the olden days when our ancestors sat and founded the various towns, the custom did not allow that women should sleep with women, as for that if you were caught, sometimes the two of you were banished from the town. If you are not banished too, they can mulct you or they can demand something like say a ram to pacify the land on which it occurred and the stool and stuffs like that. And so from the times past, we tabooed it; and so it won't happen that because now some are doing it, we will allow it. No.¹³

An evangelist noted for his harsh criticism of traditional religious beliefs and practices, for example, also reinforces this indigenous notion. He asserts that beyond the biblical prohibition of the practice, homosexuality is a taboo:

When *nananom* [the ancestors] came and there was no Bible," he points out, "they still abhorred it...They will tell you [the homosexual] that you have brought filth to the town...And so that thing that is coming [homosexuality] I believe that *Nananom* [the chiefly authorities] don't condone it the same way we Christians don't condone it."¹⁴

¹³ Interview on 16 December 2016.

¹⁴ Interview with Evangelist A, 15 February 2015.

In a secular and rationalist society, the claim that homosexual practice brings “filth” is deemed as laughable and irrational. I contend, however, that in contemporary Ghana, this claim reflects the importance society attaches to “purity and danger” as related to sexual activities.¹⁵ As a modern nation-state which emerged out of a former sacred traditional state, the imagined “filth” is understood within the context of an alleged pollution of the sanctity of society. While the approach to remedying this “filth” differs, both indigenous religious adherents and Christians view the so-called “filth” as having the potential to attract *musuo* (misfortune). Traditionally, *musuo* has to be remedied if the society is to survive the onslaught of modernisation. In discussing the tensions over homosexuality, then, it is important not to belittle the moral panic associated with the alleged “filth” that people believe homosexuality brings to society. I must stress that understanding this religious and customary thinking is vital. It will help approach questions related to ongoing homosexual controversy in ways that will not be met by Christians and traditionalists as an imposition of introduced values.

II. A question of legal dimension

Despite state norms which protect individual freedoms, including sexual freedom, the state is unable to fully invoke its legal systems in topics related to homosexuality due to the strong hold of religious and customary notions on sexuality. State regulation of what it considers legitimate and illegitimate marriage, heterosexual monogamy, and age of sexual consent and marriage, is not only a mechanism of controlling its members but also a way of responding to the needs of the moral majority of society. In a society where research has shown that over 96% of the population is against homosexuality,¹⁶ and over 98% (the highest rate globally according the Pew Research survey) see it as morally unacceptable,¹⁷ it is understandable to see why the state of Ghana invokes religious arguments to resist the legalisation of homosexuality.

¹⁵ Mary Douglas, *Purity and Danger: An Analysis of the Concepts of Pollution and Taboo* (London and New York: Routledge, 1966), 3, 54.

¹⁶ Pew Research Center, *The Global Divide on Homosexuality: Greater Acceptance in More Secular and Affluent Countries* (Pew Research Center, 4 June 2013), 1.

¹⁷ Pew Research Center, *Global Views on Morality: Ghana*, Global Attitudes & Trends (Pew Research Center, 2013), <http://www.pewglobal.org/2014/04/15/global-morality/country/ghana/>

The Ghanaian constitution and other statutory instruments¹⁸ guarantee the rights and freedoms of the individual. Article 14 (1) of the constitution, for example, guarantees the personal liberty of every individual and recommends that no person shall be deprived of such personal liberty except in cases permitted by law. The constitution also recommends that these fundamental liberties be respected and upheld by all. However, in the face of the challenges confronting the legal systems and the weaknesses of other machineries of government, the state sometimes ignores the critical issues involved in the protection and promotion of fundamental human rights. Part of the state's responsibility is thereby taken over by non-state actors. These actors are major partners of development and non-state justice and security systems in society. Recognising this, the state balances individual rights with competing claims of society. Thus, while state legal norms recognise the personal liberties of the individual, the state also emphasises public interest.

Because of their closeness to the masses and their influence in society, agents of religious, customary, and ethno-cultural institutions, whose voice is respected and listened to by their people, have played a key and active role in this. The problem is that these agents have also, in some cases, resorted to imposing communally sanctioned or customary legal punishments that are sometimes excessive and also conflict with or undermine other rights of the individual, raising issues of concern.¹⁹

The challenge here is that existing provision regarding sexual relationship, for example, in the Criminal Code is legally elusive and nebulous, creating conceptual and practical problems. Conceptually, under this Code, it is a crime to engage in an "unnatural carnal knowledge." The definition of "unnatural carnal knowledge" creates further confusions. Section 104 (2) of the Code provides that an unnatural carnal knowledge "is sexual intercourse with a person in an unnatural manner." This section of the Code follows both an old and existing traditional, colonial, Islamic, and Christian trajectory, namely, conjugal relationship must involve a man and a woman. However, in a society that is gradually becoming conscious of legal universalism, the establishment of what constitutes an "unnatural carnal knowledge," is unclear and also practically difficult to sustain in court. According to Section 99 of the Code, "unnatural carnal knowledge shall be deemed complete upon proof of the least degree of penetration." This clearly assumes a male-to-male sexual intercourse although the law

¹⁸ Article 295 (1) of the constitution defines "statutory instrument" as "an instrument made, whether directly or indirectly, under a power conferred by an Act of Parliament or a Decree or a Law."

¹⁹ Atiemo, *Religion and the Inculturation of Human Rights*, 155.

has been applied to cases of both sexes. For example, in a case that gained national interest, an Accra Circuit Court charged a senior medical doctor with defiling an under-sixteen-year old boy contrary to Section 101(2). This section of the Code provides that, "Whoever naturally or unnaturally carnally knows any child under sixteen years of age, whether with or without his or her consent commits an offence and shall be liable on summary conviction to imprisonment for a term of not less than seven years and not more than twenty-five years." The doctor was also charged with another count of engaging in an unnatural carnal knowledge.

This case has interesting legal significance for some reasons. People's interest in the case could largely be attributed to the social and professional standing of the accused, whether or not he would be treated like any ordinary person. Also, the media broke the news at a time that there was mounting pressure on the state to declare its stance on same-sex marriage. Significantly, the case was deemed to be a major test case for the state's interpretation and enforcement of the provision of the Criminal Code regarding "unnatural carnal knowledge." In the end the doctor was found guilty of defilement and was sentenced to twenty-five years imprisonment.²⁰ It is arguable that the presiding judge tacitly focused on the first count, evading the second charge which evokes so much local and international controversy especially as its unclear interpretation has become a major concern for many pro-gay activists. The judge was reported to have stated that "it was unnecessary for the prosecution to have preferred the charge of unnatural carnal knowledge against the convict, indicating that the offence could not have been sustained with defilement."²¹

The "unnatural carnal knowledge" provision may aptly be interpreted to equally involve heterosexual anal sexual intercourse and sexual relations between two females, on condition that a degree of penetration is established. As just noted, there have been rare occasions where people have been charged with this provision especially in the case of two women. During February 2016, for example, a woman was charged with engaging in unnatural carnal knowledge when she was alleged to have inserted a dildo into the private part of another woman after she reportedly intoxicated her victim with vodka beer and other liquors.²² These

²⁰ Seth J. Bokpe, "Ali-Gabass Begins 25-year Jail Term," *Daily Graphic*, 14 July 2015.

²¹ Jeffrey De-Graft Johnson, "Doctor Jailed 25 Years," *Daily Guide*, 14 July 2015.

²² "Woman Charged For Inserting Artificial Penis Into Co-Tenant's Vagina," *The Chronicle*, 3 February 2016.

notwithstanding, controversies and challenges associated with the law are ongoing subjects of interrogation for legal functionaries.

III. Religio-political response to widespread homosexuality

To further illustrate how sexuality is used as a political weapon, it is imperative that, while homosexuality was for long assumed to be practised even as a “silent trade,”²³ within the public domain and particularly in chiefly controlled lands, little attention was paid to activities and operations of homosexuals. For example, as late as 2003, an Accra Circuit Court jailed four men for engaging in sodomy.²⁴ Very little was heard about this sentence and this did not generate any significant public discussion. In 2004, a gay and lesbian group came to the public domain. It is unclear if the 2003 episode of jailing the four men led to a counter-hegemonic reaction of the “coming out” of this group. The group was reported to have urged the government to, as a matter of urgency, decriminalise the colonially inherited law that prohibits homosexuality in Ghana.²⁵ They were also believed to have threatened to boycott the general elections which were scheduled for December 2004. Again, despite this agitation, little was heard or known about this group and chiefly anxiety and societal interest in homosexual activity was still not significantly felt. In 2008 the homosexual group was again said to have threatened to boycott that year’s general elections if something concrete was not done about their plight.²⁶

What we might call “widespread homosexuality,” however, became a major public concern in 2006 when the media reported of the first proposed gay and lesbian conference, scheduled to take place at the Accra International Conference Centre. This proposed conference inspired a general panic. It also generated news headlines and gained attention in public debates and discussions. A radio caller was reported to have warned: “Let us wait until they gather in Accra and we can cut them in pieces.”²⁷ In that same year, the media also heightened the activities of

²³ Serena Owusua Dankwa, “It’s a Silent Trade’: Female Same-Sex Intimacies in Post-Colonial Ghana.” *Nordic Journal of Feminist and Gender Research* 17, no. 3 (September 2009): 192-205.

²⁴ “Four Homosexuals Jailed 2 Years Each,” *Daily Graphic*, 8 August 2003.

²⁵ “Ghana’s Gays Organise to Fight British Criminal Law,” *Afrol.com*, 19 August 2004, <http://www.afrol.com/articles/13832>

²⁶ “Gays To Boycott Elections?” *Gye Nyame Concord*, 23 May 2008.

²⁷ Kwame Essien and Saheed Aderinto, “Cutting the Head of the Roaring Monster: Homosexuality and Repression in Africa.” *African Study Monographs* 30, no. 3 (September 2009): 121-35.

homosexuals when it was reported that Ghanaian children were at risk of abuse by homosexuals, especially foreign tourists, reiterating the exotic character of the practice. Citing a study conducted by an NGO *Save the Children*, the media drew a correlation between poverty and homosexual exploitation of boys. It was reported that 56% of the children surveyed indicated that they have been sexually defiled or engaged in homosexuality for money.²⁸

By 2009, homosexuality was a sensitive topic for discussion, specifically when a Western Regional Focal Person in HIV/AIDS claimed that over 2,000 registered gays and lesbians were found in the capital of the region, Sekondi-Takoradi.²⁹ This panic news was taken as a confirmation of the notion that the practice was a threat to the Ghanaian society, albeit the degree to which it threatens and brings *basa basa* (chaos) in society has still not been proven.

While homosexuality was originally not an issue of major concern, at the turn of the twenty-first century, its politicisation as a reaction to demands for equal treatment and the need to demarcate identity, made it a matter of public interest. Once it gained public political attention, church leaders found the need to wage into the debate. For example, following the persistent media report on homosexual activities, the Christian Council of Ghana in 2011 condemned the practice, cautioning the government not to endorse what they called a “detestable and abominable act” since endorsing it will bring the wrath of God and “the consequences will be unbearable” for the nation.³⁰ The question of interest here is why it became an issue of concern to church leaders, which I discuss below.

First, churchly engagement in homosexual politics is a result of transnational religious and political power play. To be sure, America’s religious rights play a crucial role that deserves to be mentioned as far as homosexual tensions in Africa are concerned. For some years now, American evangelicals have been accused of fanning anti-homosexual sentiments in some African countries, especially in Kenya, Uganda, and Nigeria. According to critics of such moves, the Ugandan Anti-Homosexual Act, for example, received a great boost from American

²⁸ “Fa Wo to Begye Sika’ Syndrome Rises,” *Gye Nyame Concord*, 11 December 2006.

²⁹ “Thousands Attend First Anti-gay Protests In Ghana,” *Ghanaweb.com*, 4 June 2010, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Thousands-Attend-First-Anti-gay-Protests-In-Ghana-183484>

³⁰ Ghana New Agency, “Christian Council Joins Calls to Condemn Homosexuality in Ghana,” *Ghananewsagency.org*, 19 July 2011, <http://www.ghananewsagency.org/details/Social/Christian-Council-joins-calls-to-condemn-homosexuality-in-Ghana/?ci=4&ai=31187>

evangelicals who saw “Africa as something of a last frontier for right-wing policy.”³¹ American religious and moral revulsion against homosexuality, largely, has received a fertile ground in most of Africa. African church leaders who have spoken against or resisted homosexuality in the Anglican Church, for example, have mostly taken inspiration from or looked up to North America.³²

In Ghana, churchly engagement in what started as a political issue was a means of the local churches asserting their authority and also cutting certain ideological ties with the churches in the global North. This form of churchly ideological decolonisation finds its expression in the tensions between the Presbyterian Church of Ghana and its partner in the US.³³ Following the passage of the same-sex legislation in the US, the Presbyterian Church of Ghana announced that it has severed ties with the Presbyterian Church of the United States of America. It also called for the withdrawal of its New York based pastor, a former moderator of the Presbyterian Church of Ghana. This situation brought acrimonious tension between him and the then moderator whom the former moderator accused of fuelling tensions.³⁴ Following a series of tensions between the two parties, the US-based former moderator announced his resignation from the Presbyterian Church of Ghana.³⁵ Some have accused the then moderator, Reverend Professor Emmanuel Martey of hiding behind homosexuality to further a political agenda by eliminating people perceived as a threat to his position.³⁶ At the core of this tension, however, is how homosexuality is used as a means to assert domestic church authority over international partners whose ideals on sexuality are held as inconsistent with domestic sexual orientation.

³¹ Alexis Okeowo, “A Rising Tide of Anti-Gay Sentiment in Africa,” *The New Yorker*, 28 February 2014, <https://www.newyorker.com/news/news-desk/a-rising-tide-of-anti-gay-sentiment-in-africa>

³² See, for example, Tom Heneghan, “African Anglicans Denounce Church of England Gay Bishop Rule,” *Reuters*, 10 January 2013, <https://uk.reuters.com/article/uk-anglican-africa-gay-idUKBRE90909Q20130110>. See also Sam Hodges, “Church of Nigeria in Full Communion with Anglican Church of North America,” *The Dallas Morning News*, 11 September 2009.

³³ Akosua Asiedua Akuffo, “Tension in Presbyterian Church over Homosexuality,” *Myjoyonline.com*, 8 October 2015, <http://www.myjoyonline.com/news/2015/October-8th/tension-in-presbyterian-church-over-homosexuality.php>

³⁴ “Presby Withdraws US Pastor over Gay,” *Daily Guide*, 8 October 2015.

³⁵ Debrah Fynn, “Immediate Past Moderator Resigns from Presby Church,” *Daily Graphic*, 16 April 2016.

³⁶ Dorcas Abedu-Kennedy, “We Won’t Allow Prof Martey to Destroy Presby Churches – US Moderator,” *Adomonline.com*, 23 October 2015, <http://ghana-news.adomonline.com/news/2015/October-23rd/we-wont-allow-prof-martey-to-destroy-presby-churches-us-moderator.php>

Some church leaders have expressed the fear that the infiltration of Western cultural practices such as homosexuality into traditional Ghanaian familial values is a tacit limitation of the family size and the usurping of the sovereignty of God endowed with the family unit.³⁷ Here, the link between homosexuality and religious and cultural sovereignty is significant. Elsewhere, Paul Morris has argued that if sovereignty does not lie easily or simply in legal norms but rather “in something more fluid than this conventional wisdom, something that is covert and only exposed during times of emergency, then we have excellent grounds for reconsidering sovereignty.”³⁸ In the same vein, we see an overlapping exercise of control over sexual morality between national and international actors. In the minds of Ghanaian church leaders, once the nation as a state party to international human rights protocols does not have full control over its values on sexuality, then there are excellent grounds to reconsider Ghana’s sovereignty, hence the need to invoke the sovereignty of God.

Second, church actors’ engagement in anti-homosexual campaigns which are also clear legal and human rights issues, are seen not only as transnational religious tensions but also internally, it is a proselytising strategy. With a few exceptions like the then Moderator of the Presbyterian Church of Ghana just cited, most of the ardent and open individual condemnation of homosexual practices often come from pentecostal pastor-prophets. It is difficult to pin the reasons to a particular determinant, but one explanation is that as part of their proselytising approach, because most of the pentecostal actors belong to independent Christian organisations, it is easier for them to freely voice their opposition than those under the institutionalised churches. An evangelist explains:

My fellow brothers know the truth [about the “sin” of homosexuality] but they are afraid to come up with it. They want the message and not the cross. They don’t want people to speak against them. All the things I say they know it. Some of them even call and praise me. They explain to me that because of the nature of their church, if they say certain things in public, they will be dismissed or transferred...“that their church has

³⁷ “Same-sex Marriage Is a Threat to Family Life – Catholic Bishop,” 8 April 2014, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/Same-sex-marriage-is-a-threat-to-family-life-Catholic-Bishop-305593>

³⁸ Paul Morris, “The End of Multiculturalism? Religion, Sovereignty and the Nation State.” in *Global Perspective on the Politics of Multiculturalism in the 21st Century: A Case Study Analysis*, edited by Fethi Mansouri and Boulou Ebanda de B’béri (New York: Routledge, 2014), 225.

policies; they said they shouldn't say this or shouldn't say that...." So it's about fear. And they are the people making the work difficult for me.³⁹

Beyond being a proselytising issue, churchly anti-homosexuality rhetoric also has a political dimension. Ezra Chitando and Adriaan van Klinken suggest that churchly active engagement in the politicisation of homosexuality is connected to the reality of the aggressive competition in the "religious market" among Christians, and in Nigeria and elsewhere, between Muslims and Christians.⁴⁰ In Ghana, the timing of churchly anti-homosexual public statements, as noted, is considerable. Gifford has noted that by the beginning of the Fourth Republic, the two most significant religious bodies in Ghana noted for their vociferous public statements were the Ghana Catholic Bishops Conference and the Christian Council of Ghana.⁴¹ The fact that public anti-homosexual narratives coincided with the active pentecostal engagement in the public sphere, provides crucial perspectives into appreciating the role Christianity – particularly pentecostalism – plays in the politics of homosexuality in the public domain.

IV. Same-sex in the public sphere

In a plural legal society such as contemporary Ghana, the state's response to religious and social anxieties over same-sex hysteria enables us to contextualise the normative challenges associated with addressing tensions between universal human rights standards and domestic cultural values on sexuality. It has already been said that the Fourth Republican regime emphasises individual moral sovereignty. The new state also promotes the flourishing of the individual without constraints of religious, customary, and social obligations, including marriage and sexuality. From the above controversies, it is apparent how homosexual narratives are central to the intricate conflict of normative values and legal norms. We see a conflict between the state's responsibility to protect individual sexual sovereignty and personal self-determination; we also see the state's respect for the religious and customary values of its populations. Achieving this task, involves some normative challenges including how it ought to maintain the balance of power between individual and communal autonomy. In this section, therefore, I examine the political ideological use of religious and customary notions of sexuality. Despite the imposed supremacy and centrality of the Ghanaian nation-state, its civil law structures, as noted earlier, are not enough to resist the strong impact of

³⁹ Interview on 15 February 2015.

⁴⁰ Van Klinken and Chitando, "Introduction," 6.

⁴¹ Paul Gifford, *African Christianity: Its Public Role* (Bloomington & Indianapolis: Indiana University Press, 1998), 69.

external forces. As such, it invokes religious and customary ideals to reject external demands to legalise same-sex.

In the face of the state of Ghana's inadequacy in meeting certain international human rights standards, religious and customary systems and authorities are deployed to resist external pressure. As a secular state "inextricably bound up with religion and the spirit world,"⁴² the state of Ghana largely depends on religion-based normative systems and authorities to resist external influences regarding homosexuality. Political actors insist that demands to conform to universal sexual morality would systematically weaken Ghana's cultural and social peculiarity. On March 2014, for example, Professor Mike Oquaye, the current Speaker of Parliament, lamented what he deemed a clear attempt by Western liberal states, in collaboration with the World Bank, in "ganging up in a collective action against Africa."⁴³ The political historian noted that international intimidation resulting from legalisation of same-sex was very serious and urged African nations to come out with a united front so that societal ideas, beliefs, values, and practices "which form the cornerstone of our acculturation should not be undermined."⁴⁴ Clearly the professor and political actor was not invoking Ghana's secular legal norms which cannot stand the influences of legal universalism. As a result, he appealed to the religious and cultural values of Ghana which have much purchase at the local and national level.

Homosexual practice has in the last couple of years become a political arena of ideological contests between liberal and non-liberal nation-states. International aid to end poverty and other social challenges in Africa has been tied to the receiving country's adherence to basic political and human rights standards. During February 2014, for example, the World Bank announced the suspension of \$90 million in loans aimed at improving the Ugandan health sector following the passage of the country's 2014 Anti-Homosexual Act. Countries such as Denmark, the Netherlands, and Norway also followed suit to freeze all aid to the Ugandan government.⁴⁵ This morally controversial decision was preceded by similar demands in November 2011 at the Commonwealth Heads of Government Meeting in

⁴² John S. Pobee, "Religion and Politics in Ghana: A Case Study of the Acheampong Era 1972-1978" (An Inter-Faculty Lecture on Thursday 10 January 1980, Accra: Ghana Universities Press, 1992), 1.

⁴³ Mike Oquaye, "Homosexuality and Lesbianism: A Global Threat to Africa," *News Ghana*, 23 March 2014, <http://newsghana.com.gh/homosexuality-lesbianism-global-threat-africa/>

⁴⁴ Mike Oquaye, "Homosexuality and Lesbianism: A Global Threat to Africa."

⁴⁵ Mike Pflanz, "Keep Your Gays and Keep Your Aid, Uganda Tells the West," *The Telegraph*, 28 February 2014.

Perth, Australia. During this meeting, then British Prime Minister, David Cameron, announced that Britain was considering cutting aid to countries which failed to respect gay rights.

While external conditionalities such as the above have since the 1990s led to several economic and political reforms including ongoing democratisation of the continent, there have also been some residual effects in terms of religious and customary tensions. The demand for the adherence to liberal ideals such as the legalisation of same-sex marriages, problematises the dominant struggles between the West and post-colonised states such as Ghana. The refusal on the part of some African states to yield to this external demand has led to mischaracterisations such as homophobic Africa.⁴⁶ However, more important for this discussion is how local values regarding sexuality become directly involved with universal legal contests. Not only is the subjugation of the human body and sexuality a tool for maintaining state power in the Foucauldian sense, but through the politics of homosexuality, the state's normative legitimacy can and does become a stage for political manipulation.

A major concern regarding this demand was that once the legalisation of same-sex partnerships are tied to certain requirements especially before securing external help, then it creates a dependency-syndrome between the rich, liberal, donor countries, and the needy, non-liberal, recipient nations. As Professor Oquaye laments, conditions set by donor states are said to undermine local ideals which are held as core identifiers of the states' uniqueness.

To the extent that liberalism evolved within particular enabling historical and political contexts,⁴⁷ conditions set by liberal states and organisations in connection with same-sex partnerships raise further tensions between local values and national and international human rights norms. In strong liberal societies, individual actors have the power and the means of challenging the state. Individual agency works in an entirely different context in traditional societies. In Ghana and most of Africa, because of the widespread religious and customary influences, the government acting on behalf of the society and its people has its own exceptional challenges. State agents very often refer to social norms and values, which are references to traditional and religious values. Although such a simple deferral to religion is a result of the absence of a distinctive state position

⁴⁶ Patrick Awondo, Peter Geschiere and Graeme Reid, "Homophobic Africa? Toward a More Nuanced View," *African Studies Review* 35, no. 3 (December 2012): 145-68.

⁴⁷ Nikolas Rose, *Powers of Freedom: Reframing Political Thought* (Cambridge: Cambridge University Press, 1999), 139.

on same-sex marriage, the claim that religion functions as the foundational basis for certain legal and human rights actions and discourses in Ghana cannot be dismissed. Traditional and religious values influence individual actions and public debates and decisions in matters of national and universal significance.

In view of this, political actors have persistently invoked this reality to make a unique case against legalising homosexuality. For example, during July 2015 when the US President, Barack Obama, visited Kenya, he cautioned African political and religious leaders on the need to safeguard sexual minorities. In response, the Kenyan President, Uhuru Kenyatta, reminded President Obama that it is very difficult to impose on people that which they themselves do not accept. In Kenya, like most of Africa, he said, “gay rights is really a non-issue,”⁴⁸ thus, giving credence to the earlier position that homosexuality was originally not an issue of public concern. He posited that unlike advanced countries like the US, Kenya’s immediate day-to-day needs were health issues, infrastructure, roads, women empowerment, and education. The Kenyan President emphasised that “maybe once, like you [the US], [we] have overcome some of these challenges, we can begin to look at other ones, but as of now the fact remains that this issue is not really an issue that is at the foremost minds of Kenyans and that is a fact.”⁴⁹ While President Kenyatta couched his rejection of President Obama’s demand in a crafty secular argument, beneath it lies religious and cultural ideals of a sovereign Kenyan state, which as he said, is different from those of liberal countries like the US.

Confronted with this reality, many African governments very often invoke religious and customary polemics in asserting political sovereignty. An imminent threat of societal destruction due to homosexuality, thus, becomes a potent political and moral power through which the state’s “exclusive control culture”⁵⁰ is maintained. However, at the same time, if indeed the state’s legal authority and national sovereignty depend on its ability to control its populations and institutions,⁵¹ then anxieties over the eminent destruction of the societal foundation as a result of homosexuality

⁴⁸ Kiran Moodley, “Kenya President Uhuru Kenyatta Clashes with President Obama on LGBT Equality: ‘Gay Rights Is Really a Non-issue,’” *Independent*, 27 July 2015, <http://www.independent.co.uk/news/people/kenya-president-uhuru-kenyatta-clashes-with-president-obama-on-lgbt-equality-gay-rights-is-really-a-10418267.html>

⁴⁹ Kiran Moodley, “Kenya President Uhuru Kenyatta Clashes.

⁵⁰ Stanley Cohen, *Folk Devils and Moral Panic: The Creation of Mods and Rockers* (London and New York: Routledge, 2002), 66.

⁵¹ Jean L. Cohen, *Globalization and Sovereignty: Rethinking Legality, Legitimacy, and Constitutionalism* (Cambridge: Cambridge University Press, 2012), 68.

becomes a technique of maintaining state sovereignty, even if only by implication. For example, subsequent to the demand made by David Cameron cited above, the then President of Ghana, Professor John Evans Atta Mills, rejected this condition by explicitly invoking national sovereignty, cultural values, and societal norms. The law professor argued that David Cameron, like any other political leader, was entitled to opinions that reflected the norms and ideals of his society. Yet, he argued, neither Cameron nor any other leader had

the right to direct other sovereign nations as to what they should do especially where their societal norms and ideals are different from those which exist in Prime Minister Cameron's society. I, as president of this nation, will never initiate or support any attempt to legalise homosexuality in Ghana. As a government, we will abide by the principles enshrined in our Constitution, which Constitution is supreme.⁵²

This coheres with my claim that religious convictions and customary values and ideals furnish the nation-state with the solidarity its needs to assert its full sovereignty. The state of Ghana, as elsewhere, no longer has absolute authority and exclusive jurisdiction over its borders, its laws and its population. As a state party to many of international protocols and treaties, its control over matters of policies, sovereignty, legal authority, and influence is not absolute, but fragmented. Abuses of power and violations of human rights are not merely breaches peculiar to a state. As a state party, international communities can at any point in time call it to account for such abuses. State parties' human rights records and commitments are also readily available to outsiders and are constantly monitored by special rapporteurs who are representatives of international organisations. With this in mind, Ghana's claim to territorial sovereignty alone is not enough to insulate it from issues of gay rights. Due to high societal opposition to the practice, it is understandable why President Mills would link Ghana's sovereignty with the sanctity society attaches to sexuality as extra basis for his insistence on Ghana's position on same-sex relationship. It is also clear why many Ghanaians accused President Akuffo Addo for missing the opportunity to unequivocally state his unwillingness to initiate moves for the legalisation of homosexuality in Ghana.

While Ghana's constitution and other statutory laws protect individual freedom including sexual rights, we also see how religious-customary values play an important role in deciding which rights are to be guaranteed

⁵² "Ghana Will Not Legalise Homosexuality," Youtube.com, 4 November 2011, <https://www.youtube.com/watch?v=px0XQwmiQ68>

and which ones are to be repressed for the survival of the nation-state. We get an affirmation that while contemporary Ghana is constitutionally secular, because of the saturated nature of religion and custom, at any point in time it holds fit, it can curtail individual rights under domestic and international human rights if it feels these systems are threatened.

State agents' conception of partners of same-sex relationships as sexual deviants is akin to those held by traditional and church leaders. They perceive the homosexual practice as constituting a menace to social norms and traditional values. While such dangers are decidedly imagined or exaggerated, they nonetheless become bases for limiting certain individual autonomy. Homosexuals are blamed for economic and other failures of the country.⁵³ As the Millian harm principle proposes, the only justifiable basis for which intervention is needed is to prevent harm to others.⁵⁴ We see a similar argument made by President Mills, namely that Ghana as a sovereign nation-state will not accept any aid if that will eventually destroy (harm) the very society that the aid is meant to improve.⁵⁵ Just like the chiefly and church actors, the state couches homosexuality as harming the moral community. Intriguingly, while it is still not clear what the nature of harm or "destruction" homosexuals bring to society, the fear of this "harm" has been used to resist external pressure and influence in connection with homosexual rights, raising further challenges for the enforcement of national laws and the development and human rights in Ghana.

Conclusion

This paper has furthered an understanding of the way in which religion publicly engages law and politics in Ghana. It has illustrated the idea that when Ghanaians, including high profile political actors, resist the legalisation of homosexual relationship, they are in principle signalling that, despite the constitutional guarantee of sexual freedom, the rights of homosexuals must be respected within the context of religious and customary definitions society has given to marriage and sexuality. I have contended that the ongoing tensions over homosexuality are a part of a systematic means through which society has used sexuality to maintain power and order. Throughout its encounter with foreign normative

⁵³ "NDC Guru Blames Economic Woes on Pro-gay Saboteurs," *Ghanaweb.com*, 3 July 2014, <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/NDC-Guru-blames-economic-woes-on-pro-gay-saboteurs-315360>

⁵⁴ John Stuart Mill, *On Liberty* (Ontario: Batoche Books, 2001), 13.

⁵⁵ "Ghana Will Not Legalise Homosexuality."

systems and even before that, sexuality was used as an important marker of regulating society and also maintaining chiefly power. In the new society, traditional authorities who wish to maintain the remaining authority, have insisted on the application of their ancestral norm on sexuality as a means of demanding allegiance to chiefly office.

The second unique contribution of this paper is that I have shown that in the politics of homosexuality, we see a very fluid and dynamic relationship between traditional and church actors. By characterising homosexuality as un-Ghanaian, a “filth,” and a danger to local values, there is no doubt that the values in question are those of traditional customary and familial ideals. The churches in Ghana have used the preservation of this ideal as a basis to sever practical and ideological contact with their partners in the global North.

Besides, because state power is inadequate to confront universal human rights and other legal standards, the state relies on religious values and authorities to assert its imposed sovereignty. In analysing recent homosexual controversy, I have demonstrated that in a plural legal society such as Ghana, homosexuality has become a fertile zone for ideological and practical contestations between domestic and universal political power and influence. Despite the normative differences, all the three traditions construct anti-homosexuality as a collective cultural value. Doing so requires a political use of past narratives in an attempt to construct what society holds as a better future.

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