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Atiemo, A.O.

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2. RELIGION AND HUMAN RIGHTS: LINKING TRADITION AND MODERNITY IN THE CONTEXT OF GLOBALISATION

'Human rights provide a vital linkage between traditional values and modern needs of good government.'[1]

2.1 Introduction

The relationship between religion and human rights has usually been seen as an uneasy one.[2] The complexity of the issue is heightened by certain intellectual and political challenges of the contemporary world that require a clarification in any attempt to explore how human rights may be, or already are, embedded in local cultures. The challenges in view are expressed in terms such as secularisation, globalisation, and culture and how these are theoretically or practically related to religion and human rights. Indeed, aspects of the discourse on secularisation have often looked at the relationship between modernity and tradition in terms of a contrasting binary. Yet, a positive engagement between the two is recognised as a factor with great potential for the transformation of societies, such as are found in Africa, which have a religious orientation to most fundamental issues of life. This chapter discusses such issues that are relevant to the current discourse on religion and human rights.

2.1.1 Human Rights

Emerging from the ashes of a world war executed with a rather brutish disregard for the life of the other, the modern concept of human rights has been deliberately held out as neutral from all particularistic ideological inclinations, including the religious. The desire of the framers of the Universal Declaration of Human Rights (UDHR) to achieve universality for the project prevented them from giving consideration to what religion might contribute to human rights. Despite the strong lobbying of religious individuals and groups at the drafting of the UDHR[3] the final document and subsequent related instruments are held to be purely secular.[4] This decision to avoid religion in the social and political reordering of the world through the formulation, propagation and implementation of the new legal and moral tool of human rights, came to find support in the theory of secularisation that became dominant from the 1960s onward.[5]

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[1] Ghana Bishops' Conference, 'The Catholic Church and Ghana's Search for a New Democratic System' in Kwame Ninsin, *Ghana's Political Transition 1990 – 1993: Selected Documents* (Accra: Freedom Publications, 1996) 38 -53.

[2] Abdullah A. An-Na'im, (ed.), *Cultural Transformation and Human Rights in Africa* (London/New York: Zed Books Ltd., 2002) 24.

[3] One of the drafters, for example, was Monsignor Roncalli who later became the primate, Pope John XXIII. J. Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent* (Philadelphia: University of Pennsylvania Press, 1999) 1 & 2; Robert Traer, 'Religious Communities in the Struggle for human rights' in *Christian Century 28,* (September 1988) 837; Canon John Nurser, 'The "Ecumenical Movement" Churches, "Global Order," and Human Rights: 1938 – 1948' *Human Rights Quarterly,* 25 (2003) 841 – 881.

[4] Joseph Runzo, 'Secular Rights and Religious Responsibilities', Joseph Runzo, Nancy M. Martin and Arvind Sharma (eds.) *Human Rights and Responsibilities in World Religions* (Oxford: One World Publications, 2002) 13.

[5] Inger Furseth, 'Secularization and the Role of Religion in State Institutions,' *Social Compass* 50/2 (2003) 191-200.

The secularisation theory, which became paradigmatic in the social sciences, especially, in the mid-twentieth century, was informed by developments in Western European societies that insisted on separation between religion and politics. In that intellectual climate, the relevance of religion for modern social life was dismissively discounted. The secularisation theory that held sway in the Western world and was shared by liberal intellectual elites[6] in other parts of the world predicted the certain death of religion and the rise to ascendancy of secularism as tradition receded and modernity advanced.[7] Peter Berger summarises the theory, 'that idea is simple: Modernization necessarily leads to a decline in religion, both in society and in the minds of individuals.'[8] This theory was also used as a prognostic framework for the then newly-emerging nation states of Africa and elsewhere. The expectation was that the religious worldviews of those societies would give way to secular ideas as the influence of modernity spread.[9]

2.1.2 Secularisation

The influence of the secularisation theory has been extensive and enduring until the recently general acknowledgement in scholarship of its being overstated. Jose Casanova observes that it is the only theory able to attain a truly paradigmatic status within modern social sciences.[10] In the spirit of what has been called, the 'Enlightenment critique of religion' (ECR),[11] many social scientists worked from the point of view that religion was a spent force and had no significance for public life. But the reality that has dawned on contemporary scholars is that many societies and individuals around the world have not been significantly secularized, although governments and state institutions have been secularized.

If secularisation means the 'loss of the social significance of religion,'[12] then the extent of its influence has been exaggerated. This may be illustrated by the following incident. In 1998, the British parliament discussed the Human Rights Bill, which was to be incorporated into the European Convention on Human Rights (ECHR). The debate itself evidenced the strong presence of the Church in the consciousness of the public, especially the Church's autonomy and integrity. Nothing illustrates this more vividly than the reported comments by the Duke of Norfolk, who wondered whether the religions of Europe that had existed for the 'past two hundred years should take second place to human rights conventions, which started in 1950?'[13] Referring to events in countries that have emerged out of the collapse of the former USSR, B. Rubin comments that 'no area of the world illustrates more clearly the fallacy of past beliefs that religion would be a steadily declining influence in society.'[14]

It appears that the process of modernisation is not hostile to the active presence of religion in the public space. Modernisation does not need a secularist viewpoint to thrive. Indeed, in most

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[6] Peter L. Berger, *The Desecularization of the World: Resurgent Religions and World Politics* (Grand Rapids: The Ethics and Public Policy Centre and Wm. Erdmann's Publishing Co., 1999) 10.

[7] Mark C. Taylor (ed.), *Critical Terms for Religious Studies*, (Chicago: The University of Chicago Press, 1998) 1&2.

[8] Peter L. Berger, *The Desecularization*, 2.

[9] Robin Horton, 'African Conversion,' *Africa* 41/2(1971):50 – 57.

[10] Jose Casanova, *Public Religions in the Modern World* (Chicago: Chicago University Press, 1994) 17-18.

[11] Casanova, *Public Religions*, (chapter 1).

[12] Bryan Wilson, *Religion in Sociological Perspective* (Oxford: Oxford University Press, 1982) 49.

[13] *HL Hansard*, vol .584, col. 1324, 19th January, 1998. Quoted by Peter Edge & Graham Harvey, *Law and Religion in Contemporary Society: Communities, Individualism and the State* (Ashgate, 2000) 72.

[14] B. Rubin, 'Religion in International Affairs' in D Johnston and C. Sampson, (eds.) *Religion, the Missing Dimension in Statecraft* (Oxford University Press, 1994) 23.

countries of the South there have always been both nationalists of secular and religious orientation, working together to build modern institutions of governance. In Ghana, for example, Kwame Nkrumah who claimed to be a 'Marxian socialist and a Christian' became the first president and led his country through a rather rapid process of modernisation, without shedding off the Ghanaian culture that was steeped in a religious worldview. The experience of Ghana has been one of a marriage between tradition and modernity; and there is no sign that the forces of modernity will completely obliterate tradition in the near future.

The resilience[15](not 'resurgence') of religion in public life in many parts of the world, and in world affairs, especially the increase in the number of conflicts linked to religion, has not only led scholars to revise their notes about secularisation but has also compelled commentators and policy makers to take serious account of religion. The engagement between religion and development that is taking place in the context of the World Bank initiative, World Faiths Development Dialogue (WFDD), is an important example of this trend. It is now generally conceded that the secularisation theory was overstated. Nevertheless, as it has been widely noted,[16] religion is still being viewed with suspicion.[17]

However, a new orientation seems to have emerged which, when not ignoring either the negative historical record of religion or its possible misuse now and in the future, maintains a positive perspective on religion.[18] For example, in 1994, the United Nations Educational, Scientific, and Cultural Organization (UNESCO) adopted a Declaration on the Role of Religion in the Promotion of a Culture of Peace in a Conference in Barcelona, Spain.[19] This could be seen as recognition of the role of religion throughout history as well as in modern times. Human rights have become an issue of significant concern to both leading practitioners of religion and scholars who study religion. Religious traditions on their own or as part of a wider interfaith forum, have formulated their own viewpoints on human rights.[20] Apart from that, the past decade

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[15] Peter Berger, sounding almost sarcastic writes, 'The assumption that we live in a secularised world is false.' And also, 'Strongly felt religion has always been around; what needs explanation is its absence rather than its presence. …The University of Chicago is a much more interesting topic for the sociology of religion than the Islamic schools of Qom.' Yet, he uses the term 'resurgence' to describe the development (Berger, *The Desecularization,* 2&12). I think with respect to Ghana and most parts of Africa 'resilience' should be more appropriate.

[16] Runzo, 'Secular Rights and Religious Responsibilities,' 9. See also Gerrie ter Haar, 'Religion: Source of Conflict or Resource for Peace?' in: Gerrie ter Haar and James J. Busuttil (eds.) *Religion, Violence and Visions of Peace* (Leiden/Boston: Brill, 2005) 3.

[17] See Samuel P. Huntington, *The Clash of Civilizations and the Remaking of the World Order* (New York: Simon Schuster, 1996).

[18] The number of conferences and workshops organized at the international, regional, and national levels on subjects such as Religion and Development, Religion and Human Rights, and Religion and Violence have increased since 2001. Publications that deal with religion and other aspects of international and national concerns such as politics, law, human rights, etc, have also increased since 2001. They include, Gerrie ter Haar and James Busuttil, (eds.)*The Freedom to do God's Will: Religious Fundamentalism and Social Change* (London: Routledge, 2003), Joseph Runzo, Nancy Martin and Arvind Sharma,(eds.) *Human Rights and Responsibilities in World Religions*(Oxford: One World Publications,2002) and David Herbert, *Religion and Civil Society: Rethinking Public Religion in the Contemporary World* (Ashgate, 2003) as well as the volumes edited by Martin Marty and Scott Appleby and published by the University of Chicago Press in the 1990s. For example, Martin E. Marty and R. Scott Appleby (eds.) *Fundamentalisms Observed* (Chicago: University of Chicago Press, 1991) and *Accounting for Fundamentalisms* (1994) by the same authors and publishers.

[19] http://unesdoc.org/images/001134/3455eo.pdf.

[20] Examples are 'The Precepts of the Order of Inter being' (Buddhist), 'The Universal Islamic Declaration of Human Rights' and 'The Cairo Declaration of Human Rights' (Islamic), 'Rabbis for human rights: Principles of faith'

or so has seen many religious traditions claiming human rights as an original part of their teaching.[21] Religious leaders and groups in many parts of the world have become, at the national and local levels, consistent advocates for human rights and, in conflict situations, effective brokers of peace.[22] Religion as a significant positive factor in public life in modern times may be a novel idea to the average Westerner, but in such places as Africa, religion and other aspects of life have always been interwoven.[23]

2.2 Definitions

Clarity in scholarship is non-negotiable. Subjects must be clearly demarcated to be put in their proper perspective and problematized if any discussion of them would be received as properly academic. What we may call 'methodological telescoping' requires that all phenomena that come to be investigated are properly defined or clearly mapped out in order to keep away all other variables from interfering. In recent times, a growing awareness among scholars of the near–impossibility of providing universal definitions of certain cultural phenomena,[24] such as religion, democracy, and human rights, has led to modifications in this position. Yet definitions are still deemed necessary.[25]

2.3 Religion

With specific reference to religion, generations of scholars have noted the difficulty with universally applicable or essential definitions. The sheer abundance of definitions[26] available at the market of religious scholarship can be both exciting and frustrating. The modern mindset of Western scholarship - whether religious or irreligious, conditioned to discern neat distinctions between the secular and the religious, the spiritual and the material worlds – has increasingly tended to conceptually separate the sphere of religion from other aspects of culture, even when the cultural context of the societies under study do not admit such neat dichotomies.[27] It is interesting to learn that in the context of Europe itself, such distinctions have not always existed. In a rather forceful manner, Peter Harrison has sought to prove that the terms, 'religion' and the 'religions' emerged in the context of the inter-confessional controversies of seventeenth century

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(Jewish) and 'Universal Declaration of Human Rights by the World's Religions' (interfaith). See Gerrie ter Haar and James Busutill (eds.), *Bridge or Barrier: Religion, Violence and Visions for Peace* (Leiden/Boston: Brill, 2005) 299 -370.

[21] Marcus Braybrook, *Stepping Stones to A Global Ethic* (London: SCM Press, 1992) 11-16; Louis Henkin, 'Religion, Religions and Human Rights' *Journal of Religious Ethics,* 26/2(Fall, 1998) 236.

[22] Hizkia Assefa, 'Peace and reconciliation as a paradigm: A Philosophy of Peace and its implications for conflict, governance and economic growth in Africa' in Hizkia Assefa and George Wachira (eds.) *Peacemaking and Democratization in Africa: Theoretical Perspectives and Church Initiatives* (Nairobi: East African Educational Publishers, 1996) 51 &52.

[23] Stephen Ellis & Gerrie ter Haar, *Worlds of Power*: *Religious Thought and Political Practice in Africa* (London: Hurst & Co., 2005) 17.

[24] Arie L. Molendijk, 'In Defence of Pragmatism' Jan G. Platvoet and Arie L. Molendijk (eds) *The Pragmatics of Defining Religion: Contexts, Concepts & Contests* (Leiden/Boston Köln: Brill, 1999) 9.

[25] Almost all the articles in the Arie Molendijk and Jan Platvoet (eds.), *The Pragmatics of Defining Religion* are in favour of defining 'religion' for one reason or the other.

[26] It said that as early as 1901 James Leuba listed forty-eight definitions in an article. See Molendijk, 'In Defence of Pragmatism' in *The Pragmatics of Defining Religion,* 3.

[27] W. L. King, for example, observes that the attempt to find 'some distinctive or possibly unique essence or set of qualities that distinguish the religious from the remainder of human life, is primarily a Western concern.' (W. L. King, 'Religion' in M. Eliade (ed.) *The Encyclopaedia of Religion* (New York: Macmillan, 1987) Vol. 12, 282.

Europe. These terms and the concepts they imply later came to be extended to include religions outside Christianity.[28]

Both social scientists and scholars of the phenomenology of religion school contributed in diverse ways to maintaining the general dichotomy between the religious sphere and others. The initial suspicion phenomenology of religion had of the reductionist inclinations of the social sciences- a suspicion that lingered for a long time- combined with other factors to conceptually, widen the chasm between religion and other spheres of life. Phenomenology of religion's almost doctrinaire anti-reductionist stance, which maintained that religion was *sui generis* served to present the religious sphere as fundamentally distinct from the secular one. the approach of the social sciences that churned out popular differentiating opposites such as, 'the "spiritual" versus the "material," the "natural" versus the "supernatural," the "sacred," or "holy" versus the "profane," the "empirical" versus the "meta-empirical'[29]contributed in no small measure to this development. With such preconceptions, much energy in the Western European scholarly enterprise on religion was expended on attempts to discover a general core essence of religion.

Modern scholarship, however, prefers multidisciplinary approaches to studying complex phenomena such as religion. The consensus among scholars of religion is that definitions that claim universal applicability must be viewed with skepticism, since the probability that such a definition will ever be found is very low.[30] A widely recognised related problem is the fading away of the distinctions between the religious mode and the secular mode, which previously were thought to be unambiguously clear. Molendijk observes,

> The clear–cut distinctions between a religious mode, on the one hand, and politics, science and aesthetics on the other, between the transcendent sphere and the secular sphere of everyday life… are no longer evident, although they still inform much research.[31]

Acknowledgements of new developments that are closely related to, but exceed the 'traditional boundaries' of 'religion,'[32] have combined with insights from non-Western cultures that do not draw sharp dichotomies between the religious sphere and the secular, to render the exercise of definition even more difficult.

Yet, the exigencies of modern scholarship and the growing complexities of contemporary societies demand that religion as a cultural phenomenon is, at least, isolated in an 'operational definition' for certain practical purposes. Such purposes may be different for the different sectors of society that may require a definition of religion.[33] Instead of definitions that pretend to be universally applicable, scholars opt for what has been called 'stipulative' or 'regulative'

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[28] Peter Harrison, *Religion and the Religions in the English Enlightenment* (Cambridge/New York: Cambridge University Press, paperback edition, 2000) 9&10.

[29] Jan Platvoet, 'To define or not to define,' Platvoet & Molendijk, *Pragmatics of Defining Religion*, 251.

[30] This is not just a recent lesson learnt. William James, the American Psychologist, in his *Varieties of Religious Experience* (1902) dismisses the viability of any attempt to arrive at universal definition of religion. (quoted by David Wulf, 'Psychologists Define Religion' in Molendijk and Platvoet, *The Pragmatics of Defining Religion*, 208).

[31] Molendijk, 'In Defence of Pragmatism,' 6.

[32] Molendijk, 'In defence of Pragmatism,' 6.

[33] Judges of the law courts, tax officials etc. in modern societies do need to clarify what constitutes religion and what does not in order to take important practical decisions.

definitions.[34] These are definitions that serve the particular purpose of the scholar. Pascal Boyer describes them as 'aspect-specific' and argues that such definitions do not limit but enhance the 'condition for better theorising.'[35]   This means, like the previous situation, there will be many different definitions of religion but the debate will not be about whether a definition is true or false. The appropriateness or otherwise of a definition is the more paramount issue.   By implication, the modern debate is different from earlier debates because the historical contexts have changed. Ellis and ter Haar argue in favour of this trend,

> Classical sociologists like Emile Durkheim and Max Weber developed theories
> with a different object from ours in their minds. Both men lived in an age when
> social scientists fully believed in the possibility of enunciating universal laws
> governing human behaviour in a manner that few of their successors would do
> today.[36]

Definitions are therefore instrumental and they are meant to draw boundaries around   the subject under reference in a particular context for appropriate usage – academic, administrative, legal, economic, psychological, sociological, political, or other.

2.3.1 Definition of Religion in Human Rights Instruments

International Human Rights instruments seldom attempt to define religion. But if they do, they take a broad approach to defining the term. The UDHR itself, and the ICCPR and the Declaration on the Elimination of All Forms of Intolerance and Discrimination based on Belief or Religion mention religion but do not define it; nor do they, at least, explain what is meant by the term. However, in discussing religion in the context of operating such instruments, it has often been found necessary to officially define it. Obviously, being legal documents, their drafters had in view a legal purpose; therefore, definitions of religion are, understandably, legal in intent.

However, defining religion for legal or juridical purposes is as difficult as when they are meant to serve the aim of anthropologists or historians. In the view of Philip Johnson, 'no definition of religion for constitutional purposes exists, and no satisfactory definition is likely to be conceived.'[37] In apparent recognition of the difficulties involved in isolating the religious mode from others, the UN Human Rights Committee in its general comments on article 18 of the ICCPR, proposed that the terms 'belief' and 'religion' must be 'broadly construed' and not limited to 'traditional religions[38] or religions and beliefs with institutional characteristics or practices analogous to those of traditional religions.'[39] There is an obvious concern in that statement to guard against the danger of defining religion in a way that is too narrow to legally protect groups and people who make a claim to being religious or holding a belief.[40] Elizabeth Odio-Benito, the UN special rapporteur on Religious Liberty, in a report in 1987, defined

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[34] Molendijk, 'In Defence of Pragmatism,' 9. See also, Platvoet, 'To Define or Not to Define,' 260.

[35] Pascal Boyer, 'Religion as an impure subject: A note on Cognitive order in religious representation in response to Brian Malley,' in *Method and Theory in the Study of Religion* 8/2(1996) 212.

[36] Ellis and ter Haar, *Worlds of Power,* 14 &15.

[37] Philip Johnson, 'Concepts and Compromise in First Amendment Religious Doctrine' in *California Law Review 72* (1984) 817 & 832.

[38]This term refers, in this context, to Christian mainline Churches and not 'African Traditional Religion.'

[39] Human Rights Committee, General Comments on Article 18, ICCPR/C/21/rev.1/add.4, 27, September 1993.

[40] See Masimo Introvigne, 'Religion as a Claim: Social and Legal Controversies' in Platvoet and Molendijk (eds.) *The Pragmatics of Defining Religion*, 41 -72.

religion as 'an explanation of the meaning of life and how to live accordingly.' She added, 'every religion has at least a creed, a code of action, and a cult.'[41]

The concern to make the definition of religion broad enough to take account of manifestations beyond 'traditional religions or religions and beliefs with institutional characteristics or practices analogous to those of traditional religions' follows a trend in modern scholarship that prefers to use terms such as 'religiosity,' 'world views,' or 'spirituality' instead of 'religion' in order to account for what Daniele Hervieu-Leger has called, 'the religious productions of modernity.'[42] In line with this concern, some works that discuss religion's role in public life distinguish between 'spirituality' and 'religion.' Scott Thomas, for instance, thinks that such a distinction is important in accounting for the impact of religion on politics in Western countries.[43] He sees 'spirituality' as a 'broader concept' which should be 'included as part of the consequences of religion for international society.'[44]

Douglas Johnston also draws a distinction between the two.[45] He defines religion as 'meant to imply the institutional framework within which specific theological doctrines and practices are advocated and pursued, usually among a community of like-minded believers.' Spirituality, he says 'transcends the normal parameters of organized religion, suggesting a less bounded and, at times, more far reaching scope of involvement.' Part of the distinction is that whereas religion involves an 'institutional framework' and a 'community of like-minded believers', spirituality does not require explicit allegiance to a particular religious tradition or even the necessity to belong to a believing community.[46] This division serves well his purpose of distinguishing between two different categories of religious players in public life: those who approach their work from the platform of a religious institution and those who work from personal commitment without necessarily deriving their authority from organized religion. Thus, the use of spirituality in this sense is meant to address the concern of not limiting religion to traditional institutional forms.

The approach echoes the work of Wilfred C. Smith, who distinguishes between external forms of religion passed from generation to generation, which he calls cumulative tradition and internal or personal forms, which he calls faith.[47] Smith argues strongly for a focus on persons rather than systems in the study of religion: '...in the study of religion one's concern is not primarily the doctrines and scriptures and prayers and rites and institutions but, rather, what these do to a man.'[48] The call for the recognition of the various forms of religion and their effect on the behaviour of believers implicit in the work of the authors cited above is worth heeding. It has an important bearing on the present work in the sense that included in the material for analyses is

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[41] UN Doc. E/CN.4/1987/26.

[42] Daniele Hervieu-Leger, 'Religion as Memory: Reference to tradition and the constitution of a heritage of belief in modern societies' in Platvoet and Molendijk, *The Pragmatics of Defining Religion,* 75.

[43] Scott Thomas, 'Religion and International Society' in Jeff Haynes (ed.), *Religion, Globalisation and Political Culture in the Third World* (London: Macmillan, 1999) 34.

[44] Thomas, 'Religion and International Society,' 34.

[45] Douglas Johnston, 'Beyond Power Politics' in Douglas Johnston and Cynthia Sampson (eds.) *Religion: The Missing Dimension in Statecraft* (Oxford: Oxford University Press, 1994) 4.

[46] Johnston, Beyond Power Politics,' 4.

[47] W.C. Smith, *Faith and Belief* (Princeton (N.J.): Princeton University Press, 1979) 12.

[48] W.C. Smith, "Traditional Religions and Modern Culture,' in C. Oxtoby (ed.) *Religious Diversity: Essays by Winfred Cantwell Smith* (New York: Harper & Row, 1976) 72.

how religious beliefs impact on the meaning that believers assign to events of this life and how such meanings affect the ways they relate to other beings, human and non-human in the world.

2.3.2 A working definition

In the Ghanaian context within which the present study is situated, the distinctions between traditional institutional forms of religion and the others may not be necessary. Common to the various phenomena to which the terms 'religion' or 'spirituality' or 'world view' or even 'ways of giving meaning to life' may apply, is a shared 'religious point of view.'[49] Central to religion in Ghana is the concern to relate properly to a spiritual universe, which is thought to encompass the material world. Since human beings themselves are believed to be part of this spiritual universe, they are not only credited with the capacity to communicate with it but are also regarded as, in a sense, vulnerable to the influences of spiritual forces, which are thought to wield effective power over the material world.[50] Max Assimeng, a leading Ghanaian sociologist, has recognised the centrality of the belief in spirit forces in the religious practices of West Africans. He identifies as a central feature of religious life in West Africa, the 'concern to ward off evil spirits from human affairs.'[51]

Though he overstates the case of 'evil spirits,' he has drawn attention to the central importance of 'spirits' as a definitive category of religion in West Africa. It is the category of spirit as such that defines the religious point of view in West Africa. Therefore its conceptual significance in discussing religion with respect to Ghana cannot be ignored in any serious academic work. Even though so much of contemporary West African religion expends considerable energy in rituals aimed at warding off evil that is believed to be caused by spiritual forces,[52] the more general concern is to ensure that there is a continuous free flow of the positive influence from the world spirits into the affairs of the material world.[53] In the light of this, our operational definition of religion in Ghana is that, it is concerned with the belief in, and presumed relationship with, spirit beings who, though thought invisible, are yet believed to participate in the material world, over which they wield effective power and whose affairs they palpably affect.

This view of religion closely follows a relatively recent definition put forward by Ellis and Ter Haar. In their study of religion and politics in Africa, they define religion as, 'a belief in the existence of an invisible world, distinct but not separate from the visible one, that is home to spiritual beings with effective powers over the material world.'[54] However, we find it necessary

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[49] Runzo, 'Human Rights and Religious Responsibilities,' 17.

[50] Writing about the Akan, Kwame Gyekye explains that their worldview is one of action and counteraction of potent spiritual forces: spirit acting upon spirit. The human being and other beings in the material world are the lowest beings in the general metaphysical framework of the universe they can be controlled by the stronger spirit beings. See Kwame Gyekye, *An Essay on African Philosophical Thought: The Akan Conceptual Scheme* (Cambridge University press, 1987) 88-95.

[51] Max Assimeng, *Religion and Social Change in West Africa* (Accra: Ghana Universities Press, 1989) 60.

[52] Abamfo Atiemo, 'Mmusuyi and Deliverance: A Study of Conflict and Consensus in the Encounter between Christianity and African Traditional Religion.' (Master's thes., University of Ghana, 1995) 129 – 135.

[53] Joshua Kudadjie, 'An Aspect of Religion and Morality in Ghanaian Traditional Society with particular reference to Ga-Dangme' in Max Assimeng, (ed.) *Traditional Life, Culture and Literature in Ghana* (London: Conch Magazine, 1975) 26 & 27.

[54] Ellis & ter Haar, *Worlds of Power*, 14.

to put forward a slightly different definition. While the point by Ellis and Ter Haar about 'belief in the existence of an invisible world that is home to spiritual beings' is right, the issues about presumed relationships with spirit beings and their participation in the material world do not seem to be explicitly recognised in their definition. Yet, in the context of Ghana, these aspects are important. However, the two definitions share the basic ideas of belief in spirit or spiritual beings and the existence of an invisible world. Such understanding of religion is not a barrier to discussing religion's role in public life; it actually enhances it. Perhaps few aspects of religion distinguish the field of religion better from other departments of life than the category of spirit does. The Contributors to Esposito and Watson in their volume, *Religion and Global Order*, working with the basic understanding of religion as meaning 'the major faiths considered as world religions,' find the category of spirit important. The editors explain: 'Religion in this respect deals essentially with matters of the spirit and the spiritual dimension of life, which involves a leading concern with good and evil and other ethical questions.'[55] They do not explain comprehensively, what they mean by 'matters of the spirit' and 'the spiritual dimension of life,' and might probably have in mind something different from 'spirit beings' and 'invisible world' as understood in the African context. However, the very use of the term 'spirit' represents its widespread recognition as a defining property of religion, not only in reference to preliterate traditions but also in reference to 'the major faiths considered as world religions.'[56]

Whatever the meaning they attach to these terms, it is clear that most readers from West Africa, including contemporary West African Christians and Muslims, would associate with 'matters of the spirit' and 'spiritual dimension of life' those aspects of humankind's experience that suggest or imply a non-material, invisible dimension of reality. This dimension of reality is also often associated with questions of good and evil, usually, the realm of religion.[57] In specific reference to Christianity in Ghana, Gifford in characteristic discerning manner writes,

> Many visiting evangelists or TV preachers mention witchcraft, by which they mean the occult; yet witchcraft is a different Ghanaian reality. Even if Rebecca Brown or Derek Prince might be speaking of water spirits and snake spirits, these are totally counter-cultural in the West. However, in Ghana, where water and snake spirits are everyday realities, stories of possession and witchcraft are not counter-cultural. So while nearly all Ghanaian Charismatics may find everything a visiting preacher says...totally compatible with everything encountered in their local Ghanaian culture, much of the visitor's preaching could be well received in a sense somewhat different from that intended by him.[58]

The category of 'spirit' delineates religion in most parts of the world. Joseph Runzo, though not writing in particular about Africa, locates what he has called the 'religious point of view' in the recognition of all humans as 'spirits' in their relationship with each other and the Transcendent.[59] He argues that, '…the ultimate grounding of spirituality is the felt realization of a single universal relationship among all persons as spirits – what we might call spirit-spirit relationship

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[55] John Esposito and Michael Watson (eds.) *Religion and Global Order* (Cardiff: University of Wales Press, 2000) 2.

[56] Esposito & Watson, *Religion and Global Order*, 2.

[57] Although modern Europeans may not attach meanings found in the Ghanaian context to terms such as 'spirit and spiritual,' when the 19th Century scholar, E. B. Tylor defined religion in a similar manner, he had in mind something close to the term in the Ghanaian sense.

[58] Paul Gifford, *Ghana's New Christianity: Pentecostalism in a Globalising Economy* (London: Hurst &Co, 2004) 199.

[59] Runzo, 'Human Rights and Religious Responsibilities,' 18.

and the Transcendent.'[60] Religious life in Africa draws heavily on the presumed relationships between humans and spirit beings. The world of spirits is presumed as overlapping with the physical world; and human beings are believed to share in both worlds at once.

Such postulated relationships imply communication between the world of spirits and the physical world; and people's thoughts and behaviour towards their fellow human beings are largely influenced by ideals shaped by norms drawn from the context of these relationships. The category of spirits in the present context include God, angels, deities, ancestors, ghosts, and other non-material components of a person such as the soul that, in most religions, is regarded as the primary life-giving component of the human being.

 The choice of a substantive rather than a functional definition of religion is intentional. Thus a functionalist path is deliberately avoided, for while functionalist definitions are useful in many instances, some of them are prone to yielding themselves to being overstretched, thus becoming elastic moulds into which too many things fit.[61] It is important that any definition of religion sufficiently marks out the phenomenon under study. The option, therefore, is for a monothetic approach, which is essentialist in character and focuses on a single specific element in a phenomenon to define it as religion. This study is not unaware of the usefulness and the easy acceptability of polythetic approaches in modern scholarship.[62] Polythetic approaches tend toward family resemblances.[63] However, in the Ghanaian context, a monothetic definition such as the one proposed here is more appropriate because what is referred to as belief in spirit or spiritual, invisible, or non-material beings or world is almost an indispensable aspect of Ghanaian religiousness.

2.3.3 Popular religion
In the discussion of how religion relates to issues of the public sphere, it has been the norm to dwell on religious institutions and what has been seen as conventional and therefore regarded as 'official' religion. The present work, however, focuses on the ideas and beliefs that underlie the ethical and other practices of religious people in Ghana, especially, and elsewhere in West Africa. The operational definition put forward is most appropriate since the focus is on 'religion' as it is defined in the context of Ghana. The concern is not with any of its specific traditions or functions. It is with what is designated in this work as 'popular religion.' While not ignoring the problems associated with this designation,[64] this work chooses to use it as an analytical category since it is deemed appropriate in context. This position is in agreement with Klaniczay who argues that 'popular religion' has an explanatory value in that it helps distinguish between 'popular culture'

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[60] Runzo, 'Human Rights and Religious Responsibilities,' 18.

[61] Platvoet, 'To Define or not to Define,' 258 – 259.

[62] T. Jeremy Gunn, 'The Complexity of Religion and the Definition of 'Religion' in International Law' Harvard *Human Rights Journal* Vol.16, (2003) 195.

[63] Ludwig Wittgenstein, *Philosophical Investigations*, 32e (paragraph 67), G.E.M. Anscombe trans. 3rd edition Blackwell, 1958). Cited by T. Jeremy Gunn, 'The Complexity of Religion,' 195.

[64] For examples of discussions raising issues with 'popular religion' as an analytical term see Pierre Bourdieu, 'The Genesis and Structure of the Religious Field,' *Contemporary Social Research*, 13 (1991) 1 - 44; Jacques Berlinerblau, 'Max Weber's Useful Ambiguities and the Problem of Defining "Popular Religion"' *Journal of the American Academy of Religion* 69/3 (September 200) 605-620; Manuel Mejido, 'The Illusion of Neutrality: Reflections on the Term "Popular Religion,"' *Social Compass*, 49/2, 295 – 311.

and 'elite culture' in the history of religion.[65] Discussion about the analytical value of the term is taken up again in chapter five.

2.4 Human Rights

The concept of 'human rights' like 'religion' does not yield itself to easy definition. In its normative form, as represented in the UDHR and related documents, the concept is taken as a given and ostensibly refers to a set of moral and legal principles that regulates relations between individuals, societies, and corporate entities such as the state. The growing complexity of the concept results from the ever-expanding referents of its application in intellectual discourse and international politics as well as its practical application to the complex needs of the peoples of the world. The first time the concept appeared in any recorded public discourse, it was used as a synonym for 'natural rights.'[66] The concept of 'natural rights' itself has a long history in intellectual discourse, bearing inputs from many different philosophers of various backgrounds and epochs. It was fine-tuned by John Locke who, in the seventeenth century sought to 'innovatively' weave together 'universal natural law and universal natural rights.'[67] Locke, a product of the Age of Enlightenment (an age driven mainly by the philosophical current of humanism), argued that prior to the emergence of organised society, individuals existed as autonomous persons who had 'natural rights' to life, liberty, and property.

These rights were deemed fundamental and to belong inherently to every individual. The authority of organised society should have no legitimate power to abridge them.   Governments had the duty to ensure that all human beings enjoyed those rights.[68] Subsequent thinkers built on this idea and Thomas Paine's use of the term 'human right'[69] was a remarkable moment in the history of natural rights discourse. It seems therefore that in its nascent stages, human rights as a concept referred primarily to freedoms and liberties that individuals were thought to possess by virtue of their being human and which were to be protected and not violated by the state. A government's fidelity to its people and the validity of its claim to continued legitimacy were to be measured by the extent to which it was perceived to have successfully   secured these rights.

Such ideas inspired the agitations and revolts of the seventeenth and eighteenth centuries in Europe against the absolutism of political and ecclesiastical authority. In almost all such revolts the primary concern was to secure civil liberties and political rights for the individual. Some of the binding legal documents that secured important concessions from various European monarchs for their citizens included the *Bill of Rights* passed by English lawmakers in 1689; the *Virginia Bill of Rights* of 1776; the *Declaration of Independence* issued by the thirteen American states, also in 1776. Others were the *United States Constitution* of 1789 and the *Declaration of the Rights of Man and the Citizen* passed by the Constituent Assembly of France in 1789.

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[65]Gábor Klaniczay, *The Uses of Supernatural Power. The Transformations of the Popular Religion in Medieval and Early Modern Europe*, tr. by Susan Singerman, (Cambridge: Polity Press – Princeton: Princeton University Press, 1990) 3.

[66] Paul Gordon Lauren, *The Evolution of Human Rights: Visions Seen* (Philadelphia Pennsylvania: University of Pennsylvania Press, 1998) 20.

[67] Lauren, *The Evolution*, 15.

[68] Jerome J. Shestack, 'The philosophical Foundations of Human Rights' in Janusz Symonides (ed.) *Human Rights: Concepts and Standards* (UNESCO, 2000) 37.

[69] Thomas Paine, *Rights of Man*, (Herfodshire: Wordsworth Editions Ltd., 1996) 31.

However, these landmark concessions gained did not apply to all human beings in the sense in which modern human rights are understood.

The specified rights were due to certain individuals only. They were essentially rights granted to a certain class of 'men' and 'citizens.' They were not understood as applicable to all races, social classes and genders. However, such documents and the struggles they inspired marked the beginnings of a sustained struggle that has spanned several decades in the universal human desire to end discrimination of all kinds. Such struggles were carried as seeds of worldwide protests into other parts of the world in the period of European colonial expansionism. When the time was ripe, such ideas served to reinforce similar ones in the local cultures of the colonised societies, providing not only justification for their struggles but also the language to express such libertarian aspirations. Rights ideas and language, together, served as effective tools for the struggles against foreign and local oppressive systems around the world.

Civil liberties and political rights were also at the centre of the concerns of the modern human rights movement at its birth in the late 1940s. This occurred notwithstanding the fact that issues of economic and social security had already been recognized in high circles as human rights issues. For example, in 1941 President Franklin Roosevelt of the United States of America spelt out four basic freedoms,

> Freedom of speech and expression – everywhere in the world... freedom of every person to worship God in his own way – everywhere in the world... freedom from want, which translated into world terms, means economic understanding which will secure to every nation a healthy, peaceful life for its inhabitants – everywhere in the world... freedom from fear – anywhere in the world....[70]

The UDHR of 1948 mentions the right to a 'standard of living adequate for the health and well-being' of everyone and their families, 'including food, clothing, housing and medical care and necessary social services, and right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood… .'[71] Yet it took the ideological disputes of the Cold War period and the influence of certain social and intellectual movements of the twentieth century, to make such issues mainstream human rights ones.

The then newly emerging countries, such as those that had gained independence in Africa, carried their own value perspectives, which were usually closer to the economic and social rights talk of the 'Eastern bloc' in the international arena, and thus helped in the cause of such rights. But such concerns were not central to what the Western world had been familiar with in the history of its rights discourse and activism; and in the context of the Cold War, the capitalist West saw the pushing of these rights as a ploy, led by the communist East, to extend its ideological influence. The difficult road to the compromise that was reached is reflected in the fact that efforts to provide legal grounding to the UDHR took so many years and resulted in not one but two documents – the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[72] One result of this development was the generational classification of human rights which, until recently, seemed to have gained purchase in human rights talk. 'First generation' rights are the

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[70] A. Cassese, *International Law* (Oxford: Oxford University Press, 2001) 351.
[71] UDHR.
[72] Towards the close of 2004, the USA was yet to ratify the ICESCR.

'traditional liberties and privileges of citizenship, covered by the first twenty articles of the [Universal Declaration of Human Rights]: free speech, religious liberty, the right not to be tortured, the right to fair trial, the right to vote and so forth.'[73] They are sometimes referred to as 'negative rights' because they are meant to prevent the state from interfering with the personal liberties of its citizens. Rights of the 'second generation' are called 'positive rights' because they oblige states to take steps towards the progressive realization of certain social and economic goals for their citizens. They include such rights as the right to quality education, the right to food, the right to shelter, the right to work and the right to fair wages. Third generation rights deal with collective and communal rights. They have been referred to as 'solidarity' rights[74] or 'group' or 'peoples' rights. Examples of rights in consideration here are rights to national self-determination, the right to cultural identity, and the right to development.

In spite of the formal acceptance of all the 'generations of human rights' in international instruments, some scholars still insist that the second and third generation rights are not actually human rights.[75] Rights classified as 'first generation rights' constitute what Gordon has described as the 'standard or dominant notion' of human rights.[76] Pleas have actually come from certain circles, especially legal positivists, for 'control' in the proliferation of human rights for the sake of quality.[77] Tomuschat, for example, argues that it is not everything that may serve to improve individual well-being that should be accepted as human rights. He calls for the scrutinizing of 'even well-established international treaties' with a watchful eye.[78] Joy Gordon observes that while the ICCPR contained requirements for immediate compliance by all states as well as mechanisms for enforcement, the ICESCR, originally, contained neither. He also notes that major Western NGOs such as Amnesty International and Human Rights Watch used to define human rights violations in terms of atrocities and political rights, not economic rights.[79]

Notwithstanding this situation of apparent lack of commitment to rights other than those that square with conventional Western understanding, the voices that stand for the extension of human rights to include wider interests and concerns are many and loud.[80] The vigorous involvement of religious actors and the continued discourse, involving not only scholars in law but theologians, sociologist, psychologists, anthropologists and economists, naturally broaden the concerns and needs that form the focus of human rights. Perhaps the Vienna Declaration and Programme of Action represent the outcome of the process of synthesising human rights made

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[73] Jeremy Waldron, *Liberal Rights 5* (1993) quoted by Joy Gordon, 'The Concept of Human Rights: The History and Meaning of its Politicization' in Robert McCorquodale (ed.) *Human Rights* (Ashgate: Darmouth, 2003) 58.

[74] See Bertha Esperanza Hernández-Truyol, *Report of the Conference Rapporteur,* (Final Report to the Conference on the International Protection of Reproductive Rights) 44 AM. U. L. REV. 1389, 1407 (1985).

[75] See Maurice Cranston, *What are Human Rights?* (New York: Basic Books, 1964) 40; and also, Hugo Adam Bedau, 'Human Rights and Foreign Assistance Programmes' in Peter G. Brown and Douglas MacLean (eds.) *Human Rights and US Foreign Policy* (Lexington, Massachusetts: Lexington Books, 1979) 38.

[76] Gordon, 'The Concept of Human Rights,' 62-63, 101.

[77] Philip Alston, 'Conjuring Up New Human Rights: A Proposal for Quality Control' 78 *American Journal of International Law* (1984) 607.

[78] Christian Tomuschat, *Human Rights between Idealism and Realism* (Oxford: Oxford University Press, 2003) 2.

[79] Gordon, 'The Concept of Human Rights', 62.

[80] See Roscoe Pound, *Jurisprudence* (St. Paul Minnesota; West Publishing Co., 1959) quoted by Shestack, 'The Philosophical Foundations,' 42. See also Berma Klein Goldewijk and Bas de Gaay Fortman, *Where Needs Meet Rights: Economic, Social and Cultural Rights in a New Perspective* (Geneva: WCC Publications, 1999).

possible and feasible, especially because the intense ideological disagreements of the Cold War no longer existed. The litany of human rights listed in the Declaration adopted in 1993 at the World Conference on Human Rights in Vienna, includes civil and political rights, economic, social and cultural rights, the right to development, the rights of refugees and internally displaced persons and so forth. The declaration removes all differences – hierarchical or qualitative - between the various human rights: 'All human rights are universal, indivisible, interdependent, and interrelated. The international community must treat human rights in a fair and equal manner, on the same footing and with the same emphasis....'[81] This study takes the position of the Vienna Declaration.

Another area of the modern extension of human rights practice, which further complicates conceptualisation, is the entry of non-state actors. Conventionally, human rights claims have been directed at the state as the primary duty-bearer. However, with the rise of globalisation, international and national non-governmental organisations (NGOs), multinational corporations and individuals have become players in human rights politics. Thus, the complex nature of the concept of human rights becomes obvious. Consequently, and not unexpectedly, different scholars have approached its definition from different angles. Theologians - Christian and others -, moral philosophers, lawyers and politicians have all defined the concept from their own perspectives and thus attached their own connotations to its meaning. Talking about 'concepts', instead of 'concept' of human rights is not unacceptable since people's experience and understanding of human rights have been shaped by their historical and other contexts and the purpose for which they invoke the term.[82]

However, extremely narrow definitions that restrict human rights to one or few aspects of its many dimensions only cannot be of much help. In reference here, for example, are definitions that make human rights purely legal[83] or purely moral;[84] or other definitions that confine the term to the 'dominant' or 'standard' notion of human rights and leave out the emergent ones, without which other rights mean little for the majority of the peoples of the world. For the purposes of this work, a definition offered by Joy Gordon is borrowed: 'human rights are those resources or conditions which constitute the minimal conditions for human existence.'[85] This definition is useful for certain special reasons. In the first place, it escapes the reductionist trap. It may fit the purposes of jurists as well as those of moral philosophers. More importantly, it also serves the purposes of scholars of presumed neutral disciplines such as historians, anthropologists and phenomenologists. Secondly, it does not restrict the concept to anyone of its contemporary multifarious dimensions; especially so, when the contemporary human rights regime increasingly sees its scope beyond just 'human' beings to include ecosystems.

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[81] The UN Secretary –General, *Report of the World Conference on Human Rights* (UN Doc. A/Conf. 157/24, 1993), paragraph 5.

[82]Tomuschat, *Human Rights*, 1; See also, Upendra Baxi, 'Voices of Suffering, and the Future of Human Rights' in McCorquodale (ed.) *Human Rights*, 163: She analyses the difficulties involved in attempts to define human rights in view of the many dimensions and the complex nature of the discourse and practice of contemporary human rights, and proposes that the 'contexts of domination and resistance' be allowed to 'articulate themselves as separate but equal perspectives on the meaning of 'human rights.'

[83] John Austin, *The Province of Jurisprudence Determined* (London: Weidenfield and Nicholson, 1954) 158-159. See also, Rex Martin, 'Human Rights and Civil Rights' *Philosophical Studies* 37/3 (1980) 391- 407. He argues that it is legal recognition and government protection that constitute the claim to a right.

[84] M. Cranston, *What are Human Rights?* (London: Bodley Head, 1973) 36.

[85] Joy Gordon, 'Human Rights,' 63.

The proposed definition is inclusive of all the so-called 'generations' of rights and has a relatively large capacity to accommodate any new rights that may come up in the future. As the author himself claims, it is 'reasonably less controversial.' This means, it has the capacity to address some of the concerns raised by scholars from non-Western countries. That is, it takes on board, in a fairly secure manner, concerns such as right to food, employment, development, clean environment, cultural and linguistic identity and so forth, many of which constitute the points of controversy in international human rights politics.[86] Thirdly, it renders redundant the 'foundationalist-constructivist' controversy. Left-liberal scholars, in a post-modernist fashion, object to theories that seek to justify human rights on the basis of metaphysical assumptions. They offer constructivist explanations as opposed to foundational accounts of human rights. The definition adopted in this study has space for both.

By defining human rights in terms of 'resources and conditions,' space is also created to include the non-material resources or conditions considered vital for the complete and meaningful existence of human persons. These include 'religious or spiritual' resources, which for so many cultures are necessary for securing a meaningful and quality human existence.[87] Such resources may be intangible but they appear to be a strong anchor of the sense of human dignity for many people. Finally, this adopted definition makes it possible to include rights directly due to human beings who are deceased but are believed to continue to exist as part of the community. In several traditional cultures of Ghana, for example, it is not only existence in the material world that makes human rights claimable. The deceased are entitled to their human rights. Living persons in the communities under study include the spirits of the deceased that are believed to continue to exist as part of the community. Their interests, including their rights, are considered as important as those of the persons that are alive. This is contrary to mainstream views about human rights. For example, Cohen thinks that a right at its most basic level is a 'safeguard prerogative because a person is alive.'[88]

2.4.1 The 'Human' in Human Rights
A fundamental problem in the discussions about human rights is the frustrating absence of a clear consensus on who the human being is, or what it means to be human.[89] Gerrie ter Haar discerns the problem powerfully:

> Scholarly debate on the Universal Declaration invariably turns upon the nature of these
> rights and ways of applying them, without questioning the notion of a human being. That

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[86] See Ebow Bondzie-Simpson, 'A Critic of the African Charter on Human and Peoples' Rights' *Howard Law Journal 31* (1988) 643, 658.

[87] Gerrie ter Haar, *How God Became an African: African spirituality and Western Secular Thought* (Philadelphia: University of Pennsylvania Press, 2009) 14 -17.

[88] Ronald Cohen, 'Endless Teardrops: Prolegomena on the Study of Human Rights in Africa' in R. Cohen (ed.), *Human Rights and Governance in Africa* (Gainesville: University Press of Florida, 1993) 4.

[89] The question of who/what the human being is critical to any discussion of the notion of human rights, especially in non-Western contexts. The history of human rights is filled with countless moments of the exclusion of many Western and non-Western populations. 'Icons of classical European liberal thought' provided, at various stages, the intellectual bases for the exclusion of the category of 'human' "slaves', 'heathens', 'barbarians', colonized peoples, indigenous populations, women, children, the impoverished, and the insane" (See Upendra Baxi, 'Voices of Suffering,' 167-168. In the 21st Century, many religious societies around the world continue to exclude large segments of populations from enjoying certain basic rights on the basis of a discriminatory definition of what constitutes a human being or who is more human.

is, in addressing the fundamental question of a human's rights and the application of these, the Declaration takes it for granted that we all agree upon what precisely *is* a human being.'[90]

Jack Donnelly observes that the very term 'human rights' points to 'humanity, human nature, being, a person or human being' as their source. The problem, as he diagnoses, is 'to specify what "human nature" means in this context and how they give rise to rights.'[91] In the international human rights instruments themselves, there is no real attempt to explain who the human being is. Yet the whole project of human rights is built on the conviction that all human beings have 'inherent dignity,'[92] 'dignity and worth,'[93] unique 'attributes of human beings'[94] and that all human beings are bound together by 'a spirit of brotherhood'[95] that makes them 'members of the human family.'[96] No attempt is made to explain what is meant by these attributes that qualify the human being as a bearer of rights. However, in both traditional and modern societies, different ideas of who is human and who is not; or at least, who is sufficiently human and who lacks that sufficiency have existed. The over-cited examples of the rather unfortunate views about the black person held by leading Western thinkers such as Montesquieu,[97] Kant,[98] Hegel,[99] Locke and Mill[100] need not be repeated here. The existence of views in several traditional communities that give rise to discrimination against children, women and the disabled as well as persons who look different(see discussions of our field data in chapter five) underscores the need to clarify as part of human rights discourse the issue of 'what precisely is a human being.'

There is no consensus in academic literature as to what it is about human beings that gives them the 'inherent dignity' from which human rights arise. In an era of post-modernism, in which fragmentation of 'reality' is preferred above essentialist perceptions, it is common to discard metaphysical aspects of the classic theories about human nature. From that point of view, nothing is really pre-given. There are only constructions of meanings; and the category of 'human' is also constructed.[101] Donnelly, for example, does not seem to be convinced by theories such as that of Locke, which present what he calls 'divine donation' as an answer to the problem.[102] Yet, despite the great appeal of constructivist and some of the other anti-foundationalist theories, there still

[90] Gerrie ter Haar, *Rats, Cockroaches and People,* 5.

[91] Jack Donnelly, *The Concept of Human Rights* (London and Sydney: Croom Helm, 1985) 27.

[92] Preamble to the UDHR (1948) and also the common preamble to the ICCPR and the ICESCR. (1966).

[93] The Vienna Declaration and Programme of Action (1993).

[94] African Charter on Human and People's Rights (1986).

[95] Article 1, UDHR.

[96] Preambles of UDHR, ICCPR and ICESCR.

[97] David B. Davis, *The Problem of Slavery in Western Culture* (Cornel University Press, 1966) 403.

[98] Kant does not accept that apart from white people other races have 'human dignity.' Johannes A. van der Ven, et al. *Is there a God of Human Rights? The Complex Relationship between Human Rights and Religion: A South African Case* (Leiden/Boston: Brill, 2004) 270.

[99] For Hegel, African men 'were not real beings' and apart from 'European male citizens' all the rest is really located between 'the animal and the human being, and cannot be mediated with history.' J. Hengelbrock, 'The Stranger between Oppression and Superiority: Close Encounter with Heinz Kimmerle. *Homepage IFK- Intercultural Communication,* http://home.concepts-ict.nl/kimmerle/ceintro.htm cited in van der Ven, et al. *Is there a God of Human Rights?* 270.

[100] Bikhu Parekh, 'Liberalism and Colonialism: A Critique of Locke and Mill,' in Jan Nederveen Pieterse & Bikhu Parekh (eds.) *Decolonization of Imagination: Knowledge and Power* (London: Zed Books, 1995) 81 – 88.

[101] Upendra Baxi, 'Voices of Suffering,' 176.

[102] Donnelly, *The Concept of Human Rights*, 27.

does not seem to be any construct with sufficient strength to give grounding to human rights among the masses in many parts of the world. Anti-foundationalist theories do not seem to have the popular appeal and the impact, which the metaphysical theories they dismiss had for political and social life in, and beyond, the ages in which they were propounded.

Many modern theorists strain themselves to be as 'scientific' and 'rational' as possible; and since by definition, the scientific and rational temper is synonymous to the secularist modernist stance, they avoid the use of 'traditional' or 'religious' language. That may have proved effective in the context of the Western world. Ideas give birth to mass movements when they have been understood and expressed in the common language and symbols of the masses. Perhaps Ter Haar had something similar to this view in mind when she wrote: 'It is becoming clear that legal instruments are not enough if human rights are to be firmly grounded in different cultures, as people's understanding of human rights is informed by their own world views and cosmologies.'[103] In the closing years of the twentieth Century and the early years of the twenty-first, the restatement of political ideas in the religious idiom of the ordinary people has seen the successful mobilization of large constituencies for one purpose or the other in many parts of the world in ways that have deeply affected world politics.

Indeed for most societies in the developing world, what constitutes human nature and what gives the human being special worth is supported by religious explanations.[104] Contemporary African ideas about the nature of the human being lean heavily toward the religious. In Ghana, for example, when people say the human being has dignity or worth or is sacred, they mean that the human being has been created by God and that there is something of the divine in every human being that links them with the world of spirits. Not everybody may express this concept in the same way, but all versions of the concept have in common the idea that every human being has worth because they are more than mere matter. The dignity derived from such ideas is both inherent and transcendent, as is illustrated below. Religious explanations also tend to view the human being as essentially integrated with the rest of creation and these explanations, therefore, extend to the the environment the right to be treated with a certain degree of respect.

However, it must be recognised that certain aspects of explanation, of whom or what the human being is, create grave problems. The belief in the superiority of a race, an ethnic group or caste has often led to gross abuses of human rights on wide scales. Such religious beliefs inspired the cruelties with which races, tribes and some social classes enslaved others and engaged in wars of ethnic cleansing. Religious explanations about individuals with a disability or who look different have also led to discriminations or even acts of cruelty, including murders against them in certain societies.[105] This fact makes it even more urgent for clear definition of the 'human being' in the context of human rights formulation and application. As Pobee, a leading African Christian theologian states,

> The first question should be "what is humanity?".... The question needs today's answer. Only then can we come to the question of what instruments, vehicles and rights will carry and secure the integrity, identity and dignity of the human being.[106]

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[103] ter Haar, *Cockroaches, Rats,* 3.

[104] ter Haar, *Cockroaches, Rats,* 3.

[105] See 'Albinos in Burundi flee Killings' *Daily Graphic*, Saturday October 4, 2008, 5; and hunchbacks in Ghana see '2 more arrested over hunchback killings,' *The Ghanaian Times,* Tuesday, September 2, 2008, 4.

[106] Pobee 'Africa's Search,' 393.

2.5 The 'sacred' and a 'validating foundation' for human rights

Contemporary Ghanaian conceptions of why the human being is sacred and worthy of dignified treatment are rooted in religious belief. For example, Southern Ghana societies such as the Akan, the Ga and the Ewe, in their traditional views of the human being, hold that the human being in essence is a composite being made up of material and immaterial components that link him/her to spiritual entities such as God, the deities and the ancestors. These entities constitute the highest possible sublime realities that can be conceived and are therefore worthy of reverence. To link the essence of the human being to these is to ascribe sacrality to a person. Commenting on the Akan maxim, 'all persons are the children of God; no one is a child of the earth,' Gyekye writes,

> The insistent claim being made in the maxim that every person is a child of God does seem to have some moral overtones or relevance, grounded as it must, on the belief that there must be something intrinsically, valuable in God. A person, being a child of God, presumably by reason of his having been created by him and regarded as possessing a divine spark called soul(*okra*), must be held as of intrinsic value, an end in himself, worthy of dignity and respect.[107]

The idea still has widespread influence in Ghana. The Ghanaian versions of the more modern traditions of Christianity and Islam hold views about humanity that are not significantly different from the indigenous views outlined above. Thus, the answer to what makes the human being sacred and, therefore, worthy of a set of rights that is measured by the category 'human' as a global standard, for most Ghanaians and others from similar backgrounds, is rooted in religious belief. In other words, religious belief supplies the ground for what we propose to call a 'validating foundation' of human rights[108]. A validating foundation provides justification for human rights. Such ground for justification often squares with a society's core beliefs about humanity. Therefore, what we refer to as a validating foundation for human rights may not be understood in a conventional foundationalist way. It does not include the idea of a single essential foundation of human rights applicable to all cultures; neither does it imply a theory of human nature universally conceived. A validating foundation for human rights aims at establishing a justifiable basis for universal human rights in local cultures. It attempts to answer for a given society, the question: 'what is it about human beings that makes them entitled to be treated in certain ways and not to be treated in other ways?'[109] Alternatively, why should the human being have rights? Conventional foundationalist positions provide explicitly essentialist metaphysical or religious answer to this question.

Since the earliest times, authors of human rights ideas have sought to ground them in a validating foundation. However, the use of such explicit religious categories is presumed to have been avoided

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[107] Kwame Gyekye, 'Person and Community in African Thought' in Kwasi Wiredu and Kwame Gyekye (eds.) *Person and Community* (Washington D.C.: The Council for Research in Values and Philosophy, 1992) 114.

[108] Focusing in traditional Hinduism, Lourens Minnema has argued that 'the doctrine of human rights cannot automatically count on meeting with approval from the part of world's religions' because the human rights doctrine as stated in the UDHR is an expression of a particular worldview in the same way as the various world religions are the expressions of particular worldviews. However, he does not deny that it is possible for individual thinkers withni the tradition to find elements internal to it, which may be developed in support of human rights See Lourens Minnema, 'Hindu Discourse and Human Rights Discourse,' *Studies in Interreligious Dialogue* 16/2(2006) 133 – 147.

[109] Perry, *The Idea of Human Rights,* 13.

in contemporary normative human rights discourse. Yet, it seems certain terms and phrases used in the various human rights documents resonate well with the religious or metaphysical meanings of the terminologies of the classic documents.[110] Michael Perry, on this basis, concludes that human rights are ineliminably religious.[111]

Significantly, in spite of the extensive influence of the secularisation theory in scholarship, interest in the concept of the sacred has not lost its appeal among leading scholars, including those that profess to be agnostics or even, atheists. In the 'Introduction' to a book on the concept of the sacred, Ben Rogers described the contributors, who included Richard Dawkins, Richard Norman and Ronald Dworkin, as people who 'can get on just fine without believing in the divine godhead, the devil, or the existence of the supernatural or transcendent realms. Yet most of them do not find it easy simply to jettison the concept of the sacred.'[112]

Dworkin maintains that the idea that human life is sacred may be held in a secular or a conventional religious way. He writes for example, 'for some of us, the sacredness of human life is a matter of religious faith; for others, of secular but deep philosophical belief.'[113]   Michael Perry[114] and others[115] contest this view. While not denying that there are non-religious people who hold the conviction that the human being is sacred, Perry maintains that the only intelligible versions of that conviction are religious ones. Following from that, he argues that the concept of human rights is ineliminably religious: 'If the conviction that every human being is sacred is ineliminably religious, it follows that the idea of human rights is ineliminably religious, because the conviction is an essential, even foundational, constituent of the idea.'[116]

The conviction that the human being is sacred, whether as a religious belief or a secular idea, seems to provide for many people a validating foundation for human rights. Included in the conviction that the human being is sacred is the idea, which the celebrated former president of the Czech Republic, Vaclav Havel, has called, 'self-transcendence.' This, he says is at the root of all cultures, and therefore holds the greatest promise of supplying a truly reliable path to peaceful coexistence in the multicultural context of the 'post modern' world.[117] There may be both secular and religious versions of the conviction that the human being is 'precious' or 'sacred' or is possessed of 'dignity' but the evidence is overwhelming that the religious versions of such ideas constituted the original grounds of the liberal theory of rights.[118]   In a speech in July 1994 in Philadelphia, Havel traced the genesis of the 'principle of inalienable human rights' to the notion that the human being is the pinnacle and lord of creation.[119] With characteristic poignancy in speech making, he declared,

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[110] Amy Gutmann, 'Introduction,' xxiv-xxv.

[111] Perry, *The Idea of Human Rights,* 29.

[112] Ben Rogers (ed.), *Is Nothing Sacred?* (London and New York: Routledge, 2004) 1.

[113] Ronald Dworkin, 'Life is Sacred: That is the Easy Part' *New York Times Mag*., (May 16 1993) 36 quoted by Perry, *The Idea of Human Rights,* 11.

[114] Perry, *The Idea of Human Rights,* 29.

[115]See articles by Nigel Warburton and Michael Clark in Ben Rogers (ed.) Is *Nothing Sacred?*

[116] Perry, *The Idea of Human Rights,* 29.

[117] 'The Need for Transcendence in the Post-modern World,' 4.

[118] Jeffries Murphy, 'Afterword: Constitutionalism, Moral Skepticism and Religious Belief' in Alan S. Rosenbaum (ed.), *Constitutionalism, the Philosophical Dimension* (New York: Greenwood Press, 1998)   248.

[119]   Vaclav   Havel,   'The   Need   for   Transcendence   in   the   Post-modern   World' (http://www.worldtrans.org/whole/havelspeech.html), 3. (Accessed 13-9-2005).

Politicians in international forums may reiterate a thousand times that the basis of the new world order must be universal respect for human rights, but it will mean nothing as long as this imperative does not derive from the respect of the miracle of Being, the miracle of the universe, the miracle of nature, the miracle of our own existence. Only someone who submits to the authority of the universal order and of creation, who values the right to be part of it and a participant in it, can genuinely value himself and his neighbours, and thus honour their rights as well. [120]

2.6 Globalisation

'Globalisation' defines the contemporary age. It does not only provide the context of most modern political, social and economic activism but has also become the most common conceptual framework for academic discourse shared across disciplines. It is too palpable and conspicuous a phenomenon to ignore in terms of its impact on, or its linkage to, any issue or subject of enquiry. Yet, few concepts in history have been so vigorously contested, though, in general terms its reality is taken for granted.[121] It is a concept with many different dimensions: economic, political, legal and cultural. Each of these different dimensions has evoked controversies of their own. Many people have greeted the emergence of globalisation with exhilaration. They find in it the solution to all the problems of the contemporary world: answers to poverty, bad governance, violent conflicts, environmental degradation, unjustifiable restrictions on movements of peoples and ignorance.[122] For others, globalisation represents a return to the primitive era of 'survival of the fittest' and the re-enactment of the anarchic philosophy of 'might is right.' It creates poverty and reintroduces imperialism and colonialism in disguised garments.

To clarify the issue further, globalisation is a phenomenon in which peoples - individuals and groups, nations and business entities - are linked in complex interconnections across national and continental boundaries. Defining characteristics of the phenomenon include the de-emphasising of national sovereignty; the spread of liberal democracy as the accepted model of governance; trade liberalisation, which creates a one world market–place, independent of domestic political controls; and the liberalisation of investment and corporate activities. Others are the deregulation of financial markets and capital flow; and rapid change and spread of technology, especially communication technology.

As a concept, a terminology or an ideology, globalisation may be new; but as a phenomenon, it is very old.[123] Amartya Sen observes that for over a thousand years the process of globalisation has

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[120] Vaclav Havel, 'The Need for Transcendence in the Post-modern World' (http://www.worldtrans.org/whole/havelspeech.html) 4. (Accessed on 13-9-2008).

[121] In a reader compiled by Frank Lechner and John Boli, none of the fifty-eight articles disputes that there is such a thing as Globalization. The debate is rather about the merits and demerits of the phenomenon and how to minimise its negatives and enhance its positives. (See, Frank Lechner and John Boli (eds.) *The Globalization Reader*, (Blackwell Publishing, 2004).

[122] Micklethwait and Wooldridge, for example, argue strongly in favour of Globalisation and see in it a great promise for the future of the world. (See John Micklethwait and Adrian Wooldridge, 'The Hidden Promise' in F. Lechner and Boli, (eds.) *The Globalisation Reader*, 9-15.

[123] Globalisation becomes an ideology when it is perceived as providing the channels of domination of weaker parts of the world by stronger forces through the spread of values and cultures that enable the economic rape of the weaker societies by the stronger. When globalization comes across as an ideology it provokes resistance. Ideologies beget opposing ideologies. Globalization as a phenomenon is when it is perceived as a situation of fact that must be

contributed to the 'progress of the world through travel, trade, migration, spread of cultural influences and dissemination of knowledge, (including that of science and technology).'[124] Much of the controversy surrounding globalisation is generated by the equation of it to westernization. However, as Sen points out, Europe itself has benefited tremendously from its openness to globalisation over the centuries. He says the decimal system in mathematics, for example, which was developed in India and later used by the Arabs, reached Europe in the tenth Century and contributed to the scientific revolution that helped transform Europe.[125] Whatever the merits and the demerits of globalisation, its various dimensions and layers have affected the world in relatively permanent ways. Its effects on societies and cultures worldwide continue to evoke different forms of responses.

2.6.1 Globalisation and Religion

Globalisation creates new pressures on world cultures, compelling individuals and groups to re-evaluate their local identities, loyalties and values in new ways. Such developments have often elicited responses that tend to reinforce religious and ethnic identity-consciousness, and have resulted in actions that are natural expressions of the human impulse toward self-preservation. In the face of the powerful force with which globalization is reaching out to spread a new world culture in very subtle ways, it is not unexpected that individuals and communities will feel threatened and will attempt to find ways to preserve their long-held and cherished values and identities.[126] But globalisation also enables a networking of religious interests in which local religious ideas and attitudes are influenced in many different ways. Such networking often results in the spread of movements across national and continental frontiers.

In many cases, identity-consciousness and cultural values are grounded in religious worldviews;[127] therefore, when cultures have to respond to new challenges, they often take the form of cultural or religious renewal or revitalization. This partly explains the proliferation of what some scholars have called 'fundamentalist' versions of old religious traditions in the age of globalisation. New religious movements come up when the official or orthodox tradition is widely perceived by believers as having lost its relevance or power.[128] They may also occur when the plausibility of a religious belief that has connections with the core values of a community or group comes under severe strain. For example, when witchcraft and associated beliefs that formed aspects of the explanatory framework of misfortune and other events in southern Ghana societies

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recognized and accepted together with the challenges it presents. In that case it is seen as neutral and comes with an international sense of responsibility to manage it for the good of all.

[124] Amartya Sen, 'How to Judge Globalisation' in Micklethwait and Wooldridge, *The Globalzation Reader*, 16.

[125] Amartya Sen, 'How to Judge Globalisation', p.17. He does not ignore the historical aberrations related to globalisation such as conquest, colonialism, and alien rule.

[126] Thanh – Dam Truong, 'Reflections on Human Security: A Buddhist Contribution' in Gerrie ter Haar & James Busuttil (eds) *Bridge or Barrier: Religion, Violence and Visions for Peace* (Leiden/Boston: Brill, 2005) 270.

[127] M. Castells, *The Information Age: Economy, Society and Cultures Vol.2 The Power of Identity* (Oxford: Blackwell, 1977) 9&10.

[128] This, for example, has been cited as several authors as one of the main reasons for the rise of the Charismatic movement in Christianity in Ghana and elsewhere. See e.g., Pobee, 'African Spirituality' in G. S. Wakefield (ed.), *A Dictionary of Christianity* (London: SCM. 1983), 213; Abamfo O. Atiemo, *The Rise of the Charismatic Movement in the Mainline Churches in Ghana*(Accra: Asempa Publishers, 1993) 31 – 33; E. K. Larbi, *Pentecostalism: Eddies of Ghanaian Christianity* (Accra: Centre for Pentecostal and Charismatic Studies, 2001) 316.

suffered plausibility crises under the forces of modernity in the first half of the twentieth century, new religious movements in the form of the anti-witchcraft shrines emerged and proliferated.[129]

Religious renewals in Ghana may take one of two forms. The first we may call 'fixative renewal;' and the second, 'dynamic renewal.' Fixative renewal movements are characterised by a nostalgic desire to return to a romanticised version of a tradition in a distant past when the tradition was said to have been at the height of its influence and greatness. Such renewals are often without the openness to reform the tradition's doctrines in the light of the changing needs of time. Neither do they show any openness toward proposals to create relevant supportive structures and institutions. They normally do not tolerate other interpretations of the tradition, and may exhibit aggressive attitudes towards other branches of the tradition that do not share their interpretation. In Ghana, both Christian and Islamic renewal movements have at one time or another manifested characteristics of 'fixative renewal.'

 In the early stages of the Charismatic renewal movement in the country, Christian groups whose views about the Holy Spirit were different from those of the movement were condemned. This sometimes led to conflicts between members of the movement and the leadership of the established churches.[130] In similar manner, the persistent condemnation of *Sufi* practices by the Islamic renewal group, *Ahlus Sunna wal-Jama'a* led to several incidents of violence in various parts of the country between the 1970s and the 1990s.[131] Claiming to hold a 'purer faith' than what had been mainstream Islam in Ghana for centuries, *Ahlus Sunnah Wal-Jama'a* waged a *jihad* aimed at restoring Allah's religion to 'good health.'[132]

Dynamic renewal refers to the situation of renewal that allows reinterpretation of doctrines and the reform of relevant supportive structures in an attempt to reconnect faithfully with the authentic heritage of the tradition without insisting on fossilised doctrinal and liturgical patterns. Fixative renewal sees a fixed, fossilised, 'purer' or ideal form of the tradition to which every generation of believers must rigidly conform. It often gets linked up with its own kind across national boundaries, disregards sentiments of ethnic or national identity, and is prone to be seized upon by people with an international or national political agenda.[133] When that happens it becomes an ideology. However, neither Islamic resurgence nor Christian Charismatic renewal in Ghana seems to have developed a definite political ideology, since the energies of reformers are mostly directed towards internal purification of the faith. Dynamic renewal allows for reinterpretation of doctrines and rearrangement of structures in response to new challenges. Each of these forms has its own implications for national as well as global politics.

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[129] Geoffrey Bing, *Reaping the Whirlwind* (London: Macgibbon & Co., 1968) 128.

[130] Cephas N. Omenyo, *Pentecost Outside Pentecostalism: A Study of the Development of Charismatic Renewal in the Mainline Churches in Ghana* (Zoetermeer: Boekencentrum Publishing House, 2003) 276 – 289.

[131] Nathan Samwini, *The Muslim Resurgence in Ghana since 1950* (Berlin: Lit Verlag, 2006) 198 -199.

[132] Husein Abdur –Rahim Husein, *Co-existence among Muslim groups in Ghana: A Case Study of Tijaniyya and Ahlussunna in Kumasi and Wenchi* (Diss., University of Ghana, 2003) 95 -96.

[133] The *Ahlussunna wal-Jama'a* in Ghana has over the years established links with radical Islamic sects such as the Shia in the Arab world that support their local missionary activities including the building of mosques and the setting up of schools. See Holger Weiss, *Begging and Almsgiving in Ghana: Muslim Positions towards Poverty and Distress*, (Uppsala Nordiska Afrikainstitutet, 2007) 49.

2.7 Religion, Globalisation, Universality and Cultural Relativism

Religion's importance to globalisation lies in the fact that individuals and groups, experiencing disorientation as a result of the invasion of their micro-cosmic domain by macro-cosmic forces, tend to appropriate spiritual values of their long-held traditions as part of their attempt to resolve the resulting conflicts. Since such values are often shared by individuals and communities across the world, religion itself assumes a trans-national character with political implications.[134] Confronting the analyst is the paradox of globalization reinforcing culture-particular consciousness and at the same time helping to spread core spiritual values that are deemed to transcend cultures.

Some values start as global values, while most begin within particular geographical and cultural contexts without any original intent to become global, though they may spread globally and attain universal acceptance later. Cultures tend to define themselves by certain values and thus deny that others may possess such values in the same way as they do. Most of the time when claims such as 'Asian values' or 'African culture' are made, an exclusive unique identity-consciousness is implied. At the base of the universality versus cultural relativism debate in human rights discourse is this claim that the dominant human rights norms as represented in the UN system are Western European and therefore foreign to other cultures. Such claims have not been made only by Asians and Africans but also by European scholars who believe that the values represented by human rights are uniquely theirs by origin and deny that other people had such values as an original part of their cultures.[135] In this way, the unfortunate attitude of sections of Western scholarship which previously denied that the African had either history or religion coincides with, and panders to, the cruelty of African political dictators and their intellectual collaborators, goading them on to oppress and suppress their own people with consciences that are falsely at ease.

The history of religions, often interwoven with the history of cultures, has taught us that religious traditions start off with visions that are global in scope. The three major religions that have been generally described as 'world religions' - Buddhism, Christianity and Islam - had, from the very beginning, the self-understanding of being universal.[136] Thus, they began with values, which they understood as universal and forming a standard of righteousness that fits all peoples everywhere. Taking the form of their community structure from the cultural context of their origins, and formulating their central doctrines in the language and idiom of the same context, they set out to reach out to the rest of the world, believing that what they taught as revealed truth

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[134] Thomas, 'Religion and International Society' 30.

[135] See A. Polis and P. Schwab (eds.) *Human Rights: Cultural and Ideological Perspectives*(New York: Praeger, 1979) 1, 4; Jack Donnelly, *Universal Human Rights in Theory and Practice*(Ithaca, NY: Cornell University Press,1989) 118; and R. Howard, 'Group Versus Individual Identity in the African Debate on Human Rights' in A. A. An-Na'im and F. M.. Deng (eds*) Human Rights in Africa: Cross-Cultural Perspectives* (Washington, DC: Brookings Institute, 1990) 159 & 167.

[136] Writing specifically about Christianity, Brinkman states, 'Christianity was never viewed as a faith that was bound to a certain territory. It was never viewed as the faith of a certain people who lived in a certain area. From the beginning it has always moved across borders and was universally inclined.' See Martien E. Brinkman, *The Non-Western Jesus: Jesus as Bodhisattva, Avatara, Guru, Prophet, Ancestor or Healer?* (London: Equinox, 2007) 18.

would find acceptance in other places because it is universal truth. Seeing religion in this light can lead to its appreciation as a natural vehicle for the globalisation of values.[137]

Similarly, modern human rights started off as representing a universal set of values. The drawing up of the UN Charter and the UDHR was a conscious process of establishing a regime of universal values to which all human beings, irrespective of their race, nationality, culture and creed could subscribe. The universalist versus cultural relativist controversy[138] presupposes that the UN human rights project has not been very successful in terms of the inclusion of all cultures. Scholars point to the emergence of regional human rights mechanisms and human rights documents by various religious and other groupings as proof of the near-inadequacy of the UDHR. But such positions seem to turn the evidence on its head in order to ferret for proof to justify the rejection of the universal validity of human rights. The emergence of regional mechanisms and, what seem to be attempts at drawing alternative declarations of human rights by religious and other groupings, may rather be seen as contextual expressions of the universal ideal. These represent acknowledgements of the desirability of human rights, a vote for the objective rightness of the concept as a universal moral standard.

If a set of values starts off as universal, it does not mean that everybody accepts every aspect of it and lives by it uniformly. The habitual reluctance with which the United States of America approaches the signing and ratification of international human rights instruments[139] and the existence of a 'margin of appreciation' in the European regional human rights system are good illustrations of the point we seek to establish. It does not even mean that such sets of values are incontrovertibly native to every culture in all its aspects. What it means is that it may be intuitively recognised as not only desirable but right when encountered by most people in other parts of the world; values on which different people from different religious, philosophical and ethnic backgrounds can broadly agree as being good. People are able to recognise and pursue such values because, most often, they strike a chord with and amplify similar ideals that have been relished in their own culture. Human rights are universal because they started with that self-understanding.

The fact that Western Europe and the United States led in the formulation of the initial instruments does not diminish the universal validity of human rights. The modern human rights regime has drawn on universal values from many different political, religious and philosophical backgrounds. In spite of the claim that human rights are a 'Western construct of limited applicability,' based on the rights traditions of America, Britain and France and which, therefore is not applicable to other cultures,[140] there is no direct evidence to suggest that human rights as they exist in the modern international system were ever envisaged by reformers of the Western

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[137] The spread of ideas such as the sacredness of the individual human person, respect for the rights of collectivities, incorporation of animal and environmental rights into human rights regimes and others, have partly been made possible through the teachings of the religions.

[138] American Anthropological Association raised issues with the draft UDHR in 1947, arguing that freedom may be genuinely enjoyed when it is defined contextually by the society in which it is lived. See. 'Statement on Human Rights,' in *American Anthropologist*, 49/4(1947) 539.

[139] For example, it took the USA more than four decades to decide to ratify with reservation the Genocide Convention (1948) and as at the time of this work, 2009, it was yet to ratify the 1989 Convention on the Rights of the Child (CRC).

[140] Polls and Schwab, eds., *Human Rights,* 1 & 4.

tradition. Whether in the lofty realms of the minds of the classical thinkers or in the mundane contexts of political and social realities of Western societies, there does not seem to be any evidence to prove that human rights, as they are understood in the modern system, are explicitly native to their value system.[141] Their histories are an exhibition of human rights negatives: religious intolerance, persecution of dissenters, witch-hunting and cruel burning of alleged witches, and racism. The political, economic and social arrangements of exclusion and discrimination justified by philosophies and theologies that also nurtured the slave trade and slavery and produced apartheid in the twentieth century were certainly not human rights-inspired.

The deep collective sense of superiority that produced the holocaust and sustained apartheid could not have developed unchecked in a context that is the exclusive native home of human rights. Human rights do not seem to be exclusively native to any culture, though seeds of the concept seem to have been present in every culture. They seem to represent the most excellent ideals of human values that undergird the concept of human dignity and the practices to protect it that have been implicit in the various cultures of the world. At the time European Christians were persecuting their minority rivals, Islam, at least recognised to some extent, the right of minority religious groups to exist and be protected by the Islamic state. It is said that it was only in 1925 that married women in Britain legally came to hold separate property;[142] yet, among many of the peoples of southern Ghana, it has been legal since time immemorial for women to own property separate from their husbands. This is not to set Africa, and for that matter Ghana, apart as epitomising virtue while the West is vile. The point here is that, historically, the situation in which what pertains in practice is often a direct contradiction of the ideal has been a characteristic of all human societies – developed, developing or under-developed.

2.8 Human Rights as Dream Values

The fact is that human rights have evolved in all cultures from imperfect seeds of customs and systems that assured the recognition and protection of the dignity of the human being, even if the category did not always extend to all. An illustration by K. Anthony Appiah is appropriate here:

> Free Asante citizens-both men and women- in the period before our state was conquered by Britain, as well as since, are preoccupied with notions of self-respect. Treating others with the respect that is their due is a central preoccupation of Asante social life, as is a reciprocal anxiety about loss of self-respect, shame, and disgrace. Just as European liberalism-and democratic sentiment- grew by extending to every man and (then) woman the dignity that feudal society offered only to the aristocracy, and thus presupposes, in some modern Ghanaian thinking about politics depends, in part, on the prior grasp of concepts such as *animuonyam* (respect). It is clear from well-known Akan proverbs that respect was precisely not something that belonged in the past to everybody. … But just as *dignitas*, which has grown into human dignity, which is the property of every man and woman, so *animuounyam* can become the basis of the respect for all others that lies at the heart of a commitment to human rights.[143]

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[141] MacIntyre, in arguing against the naturalist view of human rights, observes that until close to the middle ages, there could be found no evidence for the recognition of human rights anywhere in the world. (A. MacIntyre, *After Virtue*, second edition, (London: Duckworth, 1985) 69.

[142] J. B. Danquah, *The Ghanaian Establishment* (Accra: Ghana Universities Press, 1997) 29.

[143] K. Anthony Appiah, 'Grounding Human Rights' in Amy Guttmann(ed*.) Human Rights as Politics and Idolatry*, Michael Ignatieff(Princeton: Princeton University Press, 2001) 107.

The literal meaning of *animuonyam* is 'face-shine.' Its opposite is *animguase*, which literally means 'fallen face.' *Animuonyam* means 'respect,' 'honour,' and 'glory.' *Animguase* means 'dishonour,' 'disgrace,' and 'humiliation.' One of the Akan proverbs showing that in the past *animuonyam* did not have universal application is *animguase mfata okanni ba*, (dishonour/disgrace/humiliation does not befit an Akan offspring). However, as Appiah demonstrates above, 'animuonyam can become the basis of the respect for all others' just as *dignitas* has grown into human dignity and has become the property of every man and woman. Indeed Danquah, described by Wiredu as one of the 'two most celebrated expositors of Akan thought,'[144] while admitting that the maxim imposes the limit of group morality attempts to develop it to embrace humanity in general.[145]

Human rights are universal in the sense that they represent a universal project that has been inspired by the existence of ideals that have been drawn upon to promote and protect the dignity of individuals and groups in most cultures of the world. If the universality of human rights is understood in this sense, then it is consistent with the original aspiration of the UDHR as,

> a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures,… to secure their universal and effective recognition and observance….[146]

There is no statement in the Declaration that seems to suggest that its drafters and supporters saw it as representing values of a particular region or people. In fact, at the time of the drafting of the Declaration, many Western nations held whole populations of other races in a sort of bondage. Michael Ignatieff, who seems convinced of the exclusive European roots of the modern concept of human rights,[147] also acknowledges the 'natural propensity'[148] of all humans toward the evils against which human rights seek to offer protection.

It seems that the values that human rights seek to promote and protect are what we propose to call 'dream values.' We propose to call them dream values because they are values that are very high and desirable but mostly seem far away from actualization because of the natural human propensity to misuse power in social relations. In the history of cultures, prophets or sages have often emerged who try to propagate such values through teaching or legal reforms. They are values which thoughtful people, usually considered 'thinkers,' 'sages' or 'prophets' have envisioned and preached; with the majority of people ignoring or even resisting their practical infusion into social life because of the 'natural human propensities' which human rights are meant to counteract. In almost every society, most of such people, even if they are originally rejected, come later to be 'beatified.' Paul Gordon Lauren has drawn attention to how the idea of human rights has had its roots in the different religious traditions of the world and concluded that

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[144] Kwasi Wiredu, *Cultural Universals and Particulars: African Perspectives* (Bloomington /Indianapolis: Indiana University Press, 1996) 48.

[145] J. B. Danquah, *Obligation in Akan Society* , No. 8 in the series, *West African Affairs*, (published by the Bureau of Current Affairs, London, 1952.) 14.

[146] Preamble to the Universal Declaration of Human Rights (UDHR).

[147] Ignatieff, *Human Rights,* 91.

[148] Ignatieff, *Human Rights*, 80.

no single civilization or people can claim as uniquely theirs the core values that human rights promote.[149]

2.9 Conflicting Issues

A number of modern controversial issues have often set some religious constituencies on a collision course with advocates of certain freedoms in the public sphere. The most difficult of these are in the area of morality. While human rights, in many respects, may be treated in connection with morality in several forms of discourse, they are often informed by secular perspectives on morality. Religious institutions and personages have been, in several instances, flayed by human rights advocates that operate from a secular orientation. In the same way, religious constituencies have, sometimes viewed human rights workers as working against important traditional moral values.

Traditionally, human rights impose negative duties on individuals with respect to the freedom of others. Individuals are free to live their lives the way they want provided they do not affect the liberty of others. For example, the right to the freedom of expression, religion, and sex orientation must not be interfered with either by the state, a group or an individual. However, in societies that are deeply religious such issues often generate inner conflicts for several individuals. They also generate conflicts between sections of civil society that operate from secular platforms and those that draw motivation from religious sources. Certain officers of the state such as health workers and registrars of marriage whose religious and moral convictions are unfavorable to these issues face a quandary when the law seems to compel them to act against their moral convictions. Can the law, from the point of view of human rights, compel a registrar of marriage or a pastor to celebrate a same sex marriage or a doctor to carry out an abortion or euthanasia if their religious and moral convictions are against these? Would the rights of such doctors and registrars not be violated by the state if they were compelled to do so? Would their refusal to perform those acts on religious grounds be regarded as violation of other people's rights? Or would compelling them to act against their moral and religious convictions constitute abuse of their religious rights? An interesting example in this connection is the controversial ruling by an employment tribunal in Britain in which the tribunal upheld Miss Lillian Ladele's claim that her bosses at the Islington Council had discriminated against her by attempting to compel her to participate in same-sex marriage ceremonies against her 'Christian conscience.' The tribunal in its ruling concluded that the council allowed the rights of homosexuals to trump Miss Ladele's religious beliefs.[150] But different groups viewed the ruling from different angles as is illustrated by the headlines of the various news reports on the issue. One report captions it as follows: 'Secularism in peril as Christian Registrar Wins tribunal Case,'[151] while another report saw it as, a 'Victory for Britain's Quiet Majority.'[152]

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[149] Lauren, *Evolution,* 11.

[150] *Mail Online*, Saturday, July 26 2008, 'Mail Comment: A Victory for Britain's Quiet Majority.'

[151] A report on the Website of the National Secular Society (NSS), 'Secularism in Peril as Christian Registrar Wins Tribunal Case.'(secularism.org.uk accessed on July 28, 2008).

[152] *Mail Online*, Saturday, July 26 2008.

2.10 Conclusion

Human rights are thought of in secular terms most of the time; and they are mostly viewed as legal issues. Yet, there is a growing recognition of the fact that the human rights regime needs to be grounded in the value systems of the various cultures in order for it to thrive. Being non-native to any culture, the concept of human rights has existed as part of what Herbert has called, the 'social properties of all cultural systems.'[153] We have referred to human rights as 'dream values' in this work. They existed not in explicit form but as seeds to be developed or cultivated. The UDHR expects all peoples and nations to nurture themselves into maturity with respect to human rights. But this can happen more easily when human rights are embedded properly in the various cultures of the world. In countries such as Ghana, where in spite of the growth of modern secular institutions of governance, religion continues to play important roles in public life, the embedding of human rights cannot occur without reference to religious beliefs. In other words, for human rights to be inculturated attention must be paid to the largely religious orientation of Ghanaians. The concept of inculturation is borrowed from twentieth century Christian theology and, in this work, it forms the guiding idea of the theoretical framework. It is taken up again in the next chapter.

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[153] Herbert, *Religion and Civil Society,* 150.