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2010

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citation for published version (APA)

Atiemo, A. O. (2010). *Religion and Human Rights: Towards the Inculturation of Human Rights in Ghana*.

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6. HUMAN RIGHTS IN TRADITIONAL GHANA: EXPLORING INDIGENOUS IDEAS OF DIGNITY AND HUMAN RIGHTS

6.1 Introduction

Ghanaian concepts of human dignity have been based, largely, on the religious belief that all human beings are the children of God. In spite of the fact that traditional Ghanaian societies have generally been devoid of universal egalitarian arrangements, the more reflective segments of the population have always held the conviction that all human beings are essentially, equal. This is what is captured in the Akan proverb: *nyimpa nyina yâ Onyame ne mba; obiara nnyâ asase ne ba* (all human beings are children of God; no one is a child of the earth). In chapter one, we have called human rights ‘dream values’ because they are values that are very high and desirable, though in history most of them have seemed far away from actualization, due to the natural human propensity towards greed and misuse of power in social relations. They represent ideal values, which, the human spirit, represented by reflective individuals such as sages and prophets in various places and times, has yearned to reach in order to give practical expression to the concept of human dignity in the context of community life.

According to Ignatieff, who insists that human rights are uniquely Western in origin, there is a ‘moral intuition’ that recognises all humans as belonging to one species, which therefore makes all humans entitled to equal moral consideration.¹ Certainly, if there is such a thing as a ‘moral intuition’ that constitutes the basis of progress toward the recognition of the worth of all humans and the dignity that must be accorded them, it must be universal. Such moral intuition cannot be exclusive to Europeans only. It is universal not in the sense that every human being is consciously able to ‘intuit’ and treat all human beings as equal in practical terms. The point is that in that in every culture, there have been individuals who have arisen from time to time to demonstrate their ability not only to intuitively discover this fact (truth) but also to loudly proclaim or teach it. As Ignatieff argues, it is a move toward progress when such intuition gains influence over the conduct of individuals and states. In that case, we may talk about the ‘diffusion of human rights,’ not in the sense of a ‘global diffusion’ of uniquely Western cultural norms, but a global diffusion of a universal ideal or a universal ‘dream value’ gradually and progressively being made real to the global human family.

This chapter deals with how indigenous ideas about human dignity (and those cognate to them), and the normative concept of human rights, are already engaged, or may be engaged, in any form of dialogue. It examines how the values that the UDHR seeks to protect and promote have, implicitly or explicitly, featured in the context of traditional communities in Ghana. An attempt is made to extract from written and oral sources the specific variations of such values that were known before Ghana encountered the wider world through trade, missionary activity and colonialism. Finally, there is an exploration of how these historical encounters helped to activate these local values and influenced the vocabulary and shape of human rights culture in Ghana.

¹ Ignatieff, *Human Rights as Politics*, 3 & 4.

6.2 Handling some preliminary objections

Most of the scholars who refuse to accord to Africa any original familiarity with the concept of human rights have been non-Africans.² Therefore, when an African comes to a similar conclusion, his views must be taken seriously. For example, a work published in 2000 by the Ghanaian scholar Richard Amoako Baah under the title, *Human Rights in Africa: the Conflict of Interpretation*, draws the conclusion that, ‘the social conditions that foster human rights implementation are still non-existent in Akan society today.’ He states further that, ‘[B]y Locke’s assertions, especially, since the human rights concept rests mainly on his philosophical ideas, Akan society as it exists today is still in “the state of nature;” and that in this ‘state, rights do not exist.’³ Baah also believes that the evidence he presents exposes the mistake of authors who ‘claim that Africans have had human rights all along.’⁴ From his point of view, these authors either did not understand the concept of human rights or ‘confuse human rights with African societies’ means of administering social justice, or a means of securing human dignity among a particular people.’⁵

Baah’s real concerns seem to be the imperfections of the modern international system of human rights, especially since human rights, as contained in that system, do not seem to work very well in non-Western countries. He seems to have a good appreciation of the reasons why many non-Western countries do not seem to be able to implement the various instruments. He mentions obstacles such as poverty, the limited reach of central governments, absence of facilitating institutions such as the courts and agencies of human rights commissions in most of the rural districts and, above all, the unwillingness of Western governments to accord equal status to human rights that fall outside those that we have referred to as the ‘standard or dominant notion’ (ch.1). This leads him to adopt Donnelly’s definition, which delineates only the so-called first generation rights. Proceeding from there, he works on the basis of certain assumptions that have been the cause of much of the failure of succeeding regimes in Ghana to uphold human rights.⁶

What most readers will find strange with Baah’s work is that it does not seem to be based on in-depth interviews with ‘knowledgeable’ people as key-informants. According to him, he collected his data from ‘major Akan centres of Ghana’- Kumasi, Cape Coast, Sunyani, Accra, and Koforidua, where he made sure his respondents were Akans. Anybody who is familiar with developments in Ghana since colonial times will understand that most people’s knowledge about indigenous ways of life has been diluted by the influence of Western education and the non-indigenous religions, especially, missionary Christianity.

Baah would, probably, not agree with this position, which is similar to Howard’s view that African societies are no longer traditional or communal in the same way as they used to be.⁷

² Apart from the scholars and political ideologues of the 1960s who sought to provide justification for the elected governments that quickly turned dictatorial and oppressed their own people in the name of ‘African culture.’ Reference may be made here to scholars such as Asante and M’baye whom Baah cites.

³ Richard Amoako Baah, *Human rights in Africa: The Conflict of Interpretation* (Lanham/New York/Oxford: University Press of America, 2000) 89.

⁴ Baah, *Human Rights in Africa*, 89.

⁵ Baah, *Human Rights in Africa*, 38.

⁶ See G. P. Hagan, ‘Political Aspect’ in *Human Rights and the Democratic Process. Proceedings of the Ghana Academy of Arts and Sciences*, XIX, 1980 (Accra: Ghana Academy of Arts and Sciences, 1993) 35 - 44.

⁷ Rhoda E. Howard, *Human Rights in Commonwealth Africa* (Totowa: Rowman and Littlefield, 1986) 6.

While he concedes that those societies have ‘moved away from their various traditional starting points,’ he maintains also that ‘they are nowhere close to modern.’⁸ Certainly, to find out how Ghanaian traditional culture interprets human rights, researchers would need to talk to people recognised in the community as ‘knowledgeable’ about the particular community and its culture. Our suspicion should be deepened, especially, by Baah’s disclosure that his approach excluded ‘those who admitted to not having any knowledge about human rights.’⁹ If he had not dismissed other categories of human rights as valid, *Question 1* of his *Questionnaire 4*, would have been understood as referring to arrangements that ensure certain basic rights. The question reads: ‘Is there a certain minimum standard of well-being which society has to maintain?’ In its proper context, the question should have, in most cases, elicited answers other than ‘I do not know.’ In any case, when he spoke about the roots of human rights in the Western context he did not dwell on the ideas of people in the street. Thomas Hobbes, Jean J. Rousseau and John Locke in their time were not ordinary people. Certainly, the average person in their time would not have bothered themselves with the critical issues that engaged their mental energies. It is also hard to understand how he concludes that ‘majority of Africans still live in the rural areas’¹⁰ where not much change has occurred and, yet, decides to dwell on the cities and urban centres for his research about ‘traditional Africa?’

His excellent analytical exposition of thinkers such as Locke, Hobbes, Rousseau and others is admirable. What is difficult to appreciate is how he concludes, on the basis of his data and analysis of the views of these scholars, that the Akan society of the twenty-first century ‘is still in the state of nature’ and therefore cannot have the concept of human rights.¹¹

Definitely, Akan society, like other ethnic societies in Ghana, has not been static. It developed, even in pre-colonial times, some system of governance for the collective security of its members. In those arrangements, there would have been some implicit concern for individuals to secure human dignity, as they understood it in their own context. Though Baah, rightly, does not see human rights as meaning the same as human dignity, he insists that ‘any debate about human rights should ultimately be linked to how best human dignity can be protected.’¹² This is where we agree with him. Human rights are linked to human dignity, though the two are not the same. Even the UDHR begins with a clearly stated recognition of the ‘inherent dignity’ of ‘all members of the human family.’ We also agree with him that certain forms of political arrangements are more fostering of a human rights culture than others. But we disagree with him on his conclusion that human rights are not suited to the Ghanaian context because they have not been fashioned out for societies such as Ghana. Our position is that Ghana, like many other non-Western countries, has always had original cultural elements that make its society a fertile ground for the cultivation of values that find clear articulation in the UDHR.

The lack of capacity to implement human rights norms, especially economic and social rights, should not be equated with the non-existence of the concept. Akan and other societies in Ghana possess traditional political arrangements that contain seeds of affinity with the concept and

⁸ Baah, *Human Rights*, 32.

⁹ Baah, *Human Rights*, 66.

¹⁰ Baah, *Human Rights*, 33.

¹¹ Baah, *Human Rights*, 21.

¹² Baah, *Human Rights*, 9.

practice of human rights, which could be exploited in the service of building a human rights culture. Indeed, Baah seems to be aware of the possibility of developing *inculturated* versions of the universal. For example, he writes: ‘If the purpose of human rights is to protect human dignity, then different approaches to human rights should be formulated to protect the different dynamics for human dignity found in different societies, not only for those found in liberal ones.’¹³

6.3 Importance of Local of Histories

Mention of the pre-colonial era, colonialism, missionary activity, and trade brings into the discussion the importance of history.¹⁴ The history of Ghana encompasses all these experiences, which together constitute the wellsprings of knowledge that shape the course and goal of the country’s development. Therefore, we attempt an exploration of indigenous concepts and practices of human rights in Ghana, using, as case studies, the three traditional areas Anlo, Gomoa and La, as well as the cities of Accra and Kumasi. Since the traditional institutions claim continuity with the past,¹⁵ we shall consider both historical and contemporary situations with respect to ideas, institutions and practices that may be directly or indirectly connected to human rights in traditional governance, as distinct from modern government administrative institutions. Among the subjects to be discussed are the political arrangements, concepts of human dignity and the rights deriving from these, as well as the position of the individual in the context of the community. We shall then focus on the colonial and missionary encounters and their consequences for the re-evaluation of relationships between rulers and subjects, individual and community. In that sense, what we now call ‘indigenous’ cannot be regarded as ideas or practices frozen in time, since the absorption of new ideas in the period of the various historical encounters implies the practice of borrowing and inter-borrowing which has produced hybrid traditions.¹⁶

6.4 Traditional Political Arrangements

The assumption that human rights are best promoted and protected in the context of western type democratic regimes is widespread. That is, scholars and policy-makers believe that political arrangements of societies are important for the thriving or otherwise of human rights.¹⁷ As a result, the current global concern for human rights has also inspired advocacy in international

¹³ Baah, *Human Rights*, 92.

¹⁴ El-Obaid Ahmed El-Obaid and Kwadwo Appiagyei-Atua, ‘Human Rights in Africa: A New Perspective on Linking the Past to the Present,’ *McGill Law Journal / Revue De Droit De McGill*, 41 (1996) 821 & 822. See also Ter Haar and Ellis, ‘The Role of Religion in Development: Towards a New Relationship between the European Union and Africa’ *The European Journal of Development Research*, 18/3 (September 2006) 355.

¹⁵ Although there is abundant anthropological research to show that *claims* of continuity with the past do not usually constitute such continuity and that much change occurs without people even noticing it, such claims are still being made. The presumption of certain things being ‘customary’ hides that fact of discontinuities. (See Terrence Ranger, ‘The Invention of Tradition in Colonial Africa’ in Eric Hobsbawm and Terrence Ranger, *The Invention of Tradition* (Cambridge: Cambridge University Press, 1983) 247 -262.

¹⁶ Ellis and ter Haar, *Worlds of Power*, 145 -148.

¹⁷ Rhoda E. Howard and Jack Donnelly, ‘Human Dignity, Human Rights and Political Regimes’ *American Political Science Review* 80 (September, 1986) 891 -919. See also, Rhoda 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 – 183.

relations for the development of democratic institutions in all countries. ‘Good governance’¹⁸ has become an important subject in development co-operation between the countries and institutions of the North and those of the South, especially Africa. Indeed the Vienna Declaration and Programme of Action (1993) in paragraph 8 underscores democratic governance as a necessary condition for human rights to exist when it maintains that ‘democracy, development and respect for human rights and fundamental freedoms are mutually reinforcing.’¹⁹

This casts doubts on claims that concepts and practices similar to human rights existed in non-Western countries such as Ghana before its encounter with the West. Based on certain assumptions, several people hold and propagate the view that no such concept and practice existed in Africa at all before its encounter with Europe. G. P. Hagan has listed a number of these assumptions, which he prefers to describe as ‘misconceptions and fallacies’ on account of which attempts to foster human rights and embody them in Ghanaian institutions and practices have failed.²⁰ They include the view that the concept of human rights does not have roots in Ghanaian traditions but it is a European import meant to frustrate the nation’s authentic development. They also include the view that vast numbers of the people do not know what their rights are and, to that extent, do not insist on their rights; and that economic and social development should have precedence over other rights.

However, these views have been premised on a generally flawed historical assessment of African societies. Several societies in southern Ghana, including the Akan, Ewe, and Ga were societies with political systems that had in-built mechanisms of checks and balances. These societies have always had social arrangements that ensured a relatively high level of participation in governance and allowed a relatively large space for individual self-expression. As El-Obaid and Appiagyeyi-Atua have noted,

Africa’s pre-colonial history (up to the early 1800s) witnessed the prevalence of traditional ethnic communities living under various socio-political arrangements (called traditional African political systems). These arrangements, ranging from the simple to the complex, embodied elements of traditional forms of democracy and human rights embedded in the religion and culture of these communities. Pre-colonial history came to an end with European contact.²¹

In a 1931 survey report on the major ethnic groups which then formed the ‘Gold Coast Colony’ – and to which the three traditional areas of Gomoa, La, and Anlo belong – the Akan, Ga-Adangme and the Ewe, it is stated that:

The Akan form a social group organised on democratic, quasi-military lines, the men not being circumcised; the Ga-Adangbe practice circumcision and being in the intermediate cultural stage between the Akan and the Ewe, have a constitution which is semi-military and semi-sacerdotal and less inclined to democracy; the Ewe society is built on a religious base,

¹⁸ ‘Governance’ is defined by the World Bank as ‘the exercise of political power to manage a nation’s affairs.’ It requires the building of ‘a pluralistic institutional structure, a determination to respect the rule of law, and indigenous protection of the freedom of the press and human rights.’ See The World Bank, *Sub-Saharan Africa: from Crisis to Sustainable Growth* (Washington: 1981) 60 -61.

¹⁹ Thomas Buergenthal, ‘International Human Rights in an Historical Perspective’ in Janusz Symonides, *Human Rights: Concepts and Standards* (Aldershot/Burlington: Ashgate with UNESCO, 2000) 17 -18.

²⁰ G. P. Hagan, ‘Political Aspect,’ 35 – 44.

²¹ El-Obaid and Appiagyeyi-Atua, ‘Human Rights in Africa,’ 821.

circumcision is practised, a democratic form of government is non-existent, it not having yet wholly evolved from the patriarchal state.²²

The difference between the systems of the Ga-Adangme and the Ewe, on the one hand, and that of the Akan, on the other, gradually faded as various forms of interaction, especially inter-ethnic wars and other exigencies of the era, compelled the other ethnic groups to organise their political systems along the lines of the Akan. According to Nukunya, the Akan political arrangements and the philosophy supporting them are largely mirrored in the political systems of many ethnic groups in southern Ghana, with slight differences in detail.²³

Many of the British colonial administrators and visitors to Ghana in the nineteenth and early twentieth centuries were impressed by the system of governance they found. Most were convinced that it was a system that could be easily developed into a modern democratic form of government. In 1926, Governor Gordon Guggisberg justified the involvement of the traditional rulers - the chiefs - in the administration of the colony through the then newly created Provincial Councils of Chiefs in the following words:

Sovereignty in the Gold Coast tribes lies in the people themselves who elect their chiefs and can, if they so desire, deprive him of office. Each chief is, in fact, but the mouthpiece of his State (*oman*) Council without whose approval no chief can perform any executive or judicial act.... Could anything be more democratic or more representative of the people?²⁴

Similar observations were made by several other authors like Martin Wight who, in a description of the people of the colony, wrote:

In broad terms, Africans may be said to have two fundamental political attitudes. They are temperamentally law-abiding and they resent and resist government by dictation. There is no intrinsic disharmony between the indigenous institutions of the Gold Coast and the imported Western representative system. The purposes and methods of the indigenous and imported institutions are the same: both embody representative principle, and both are government by discussion.²⁵

R. S. Rattray, however, saw a 'fundamental difference' between African (Ghanaian) and Western political ideas. But this consisted only in the fact that the Ghanaian system 'reflected temporary military needs, was decentralized, and fostered lesser loyalties contrary to all the tendencies of the modern Western state.'²⁶

Differences that are even more fundamental existed that made the political and social environment not quite conducive to the exercise of human rights in the modern sense. The

²² A. W. Cardinal, *The Gold Coast, 1931: A Review of Conditions in the Gold Coast in 1931 as Compared to those in 1921, based on Figures and Facts Collected by the Chief Census Officer of 1931 together with an Historical, Ethnographical and Sociological Survey of the People of that Country* (Accra: Government Publishing Press, 1931.) 9..

²³ G. K. Nukunya, *Tradition and Change in Ghana: An Introduction to Sociology* (Accra: Ghana Universities Press, 1992) 71.

²⁴ Cited by Martin Wight, *The Gold Coast Legislative Council* (London: Faber & Faber, 1946) 35.

²⁵ Wight, *The Gold Coast*, 34.

²⁶ R.S. Rattray, 'The Present Tendencies of African Colonial Government,' *Journal of the African Society* xxxiii (1934) 29 -33.

underlying philosophy located the source of the ruler's authority beyond the people. Once a chief was enstooled, his person came to be considered sacred. He became the living link between the physical, visible world of the living and the spiritual invisible world of the ancestors,²⁷ who were considered the real custodians of the collective morality and property of the lineage. Therefore, no matter how young a person was, once he was enstooled, he assumed the title *Nana* among the Akan, *Nii* among the Ga, and *Togbe* among the Ewe. In that case the egalitarian outlook, so important for equality and equity in social and economic relations, not quite developed.

Originally, the Akan society was hierarchically structured, with chiefs occupying the highest position, followed by *mpanyimfo* (elders), and made up of sub-chiefs and then lineage and clan heads. After these came the *adehye*, that is the 'free', non-slave people who were members of the local matrilineal clans and were ruled and represented by the *mpanyimfo*. *Adehye* might also refer more narrowly to the members of the 'royal' *abusua*, that is, the matrilineal relatives of the local *hene*. Pawns and slaves followed in that order at the bottom of the structure.²⁸ In some cases, the constitution of the traditional state did not permit deposition. This, for example, was the case with respect to the *Ga MantsE* (the Ga paramount Chief). Field explains that since the religious processes involved in making him a chief could not be undone, the Ga paramount chief was chief for life. He could however, be removed by being killed or sent into isolation or ignored completely by his councillors and subjects.²⁹ It seems, however, that this provision did not always hold, for it is recorded that a chief by the name Nii Tackie was destooled by the people of La in 1918.³⁰

Yet the European commentators referred to above were largely right in their view that the indigenous political system of Ghana contained several elements that, conceptually, shared affinities with modern democratic principles. All of them mentioned important modern democratic principles as features of the Ghanaian indigenous system. They mentioned, for example, election, representation, discussion, or consultation; they also mentioned the right of the people to depose. There were also the 'two fundamental political attitudes' of the people (law-abiding and aversion for government by dictation), which, combined with the nature of indigenous political arrangements, could serve as a powerful environment for the nurture of a human rights culture.

The process of electing a chief may look undemocratic on the surface, even anti-democratic. However, the truth is that, though the chief must come from a particular family, (a matrilineage in the case of the Akan, and a patrilineage in the case of the Ga and Ewe), the process might be fairly democratic. In the Akan system, for example, when the office of a chief becomes vacant, the next in command summons a meeting of all the sub-chiefs and clan heads or elders of the town or the state. This gathering will send a delegation to the queen mother, whose constitutional right it is to nominate a candidate for the office, and they will ask her to make a nomination. The queen mother will call a meeting with all adult men and the senior women of the branches of the

²⁷ For information about the ancestors see, Peter Sarpong, *Ghana in Retrospect: Some Aspects of Ghanaian Culture* (Accra-Tema: Ghana publishing Corporation, 1974) 33 – 44.

²⁸ See J. B. Danquah, 'Obligation;' Edward Reynolds, *Trade and Economic Change on the Gold Coast, 1807 – 1874*(London: Longman Group, 1974), 18 -19; Akosua Perbi, *Domestic Slavery*, 117.

²⁹ M.J. Field, *Social Organisation of the Ga People* (London: Crown Agents of the Colonies, 1940) 76.

³⁰ Field, *Social Organisation*, 183.

royal lineage to discuss the issue subjecting all the eligible candidates to scrutiny and finally selecting the most suitable.

When they have made a choice of candidate, the name of the nominee is presented to the meeting of chiefs and elders, who may approve or disapprove of the choice. In the case of a disapproval or rejection, the process will start all over again and continue until an acceptable candidate has been found.³¹ This means that it is not automatic for a particular eligible person of a royal lineage to become chief. Logically the eldest person among the eligible candidates should be considered the most eligible; yet it does not work that way most of the time. As Arhin explains, all the members of the royal lineage have a hereditary right to the stool but the representatives of the common people have the right to accept or refuse to be ruled by a particular member of the lineage.³² Hereditary rights are matched by practical considerations such as personal fitness for the office. Personal qualities of ‘tact, leadership, intelligence and knowledge of lineage affairs’ determine the choice of a candidate most of the time.³³ Nevertheless, it is clear that accession to political office depended also on accident of birth; that is, to be born into a particular lineage that has the fortune of being considered royal, though there are in-built mechanisms to ensure that the person finally chosen is not only qualified but also acceptable to the majority of the people in the community.

The representativeness of the Ghanaian traditional political system is manifest in its conciliar nature. That is, the various lineages are represented on a council at the village or town level, while the various villages and towns have representatives on the divisional council, with each division having representatives on the council of the paramount chief. Each level has a recognised head with autonomy in most local matters but with clearly spelt-out procedures on how it is linked to the higher levels of the hierarchy. In Anlo there are two councils: the War Council which advises the *Awoamefia* (the king of Anlo) on matters of security, and the council of the leaders of clans resident in Anloga, the capital seat that assists the *Awoamefia* in the day to day administration of the state. The War Council is made up of the leaders of the three military wings of the state and is headed by the *Açadada* (literally, ‘War Mother’). The Akans and the Ga have similar arrangements.

The conciliar system makes it difficult for the chief to abuse his power. It also ensures that the best ideas available in the land are tapped for the common good and provides an opportunity for wider participation in governance and a channel for free expression of sectional concerns. Underlying the conciliar practice is the traditional wisdom expressed in the proverb in Ewe: *Ta deka media adanNuo*; and in Akan (Mfantse): *Tsir kor mpam* (literally meaning, ‘one head does not decide’). Without the authority of the council, the chief could neither pass any new law nor

³¹The Ga and the Ewe followed a similar system though the major officers involved were different. In fact at the time I was conducting this research, both Anlo and La were confronted with chieftaincy crisis. In Anlo attempts to elect a new *Awoamefia* (the Paramount Chief of Anlo) had sparked off riots that had become fatal claiming the lives of some policemen and some citizens. The usual consensus that needs to be reached on such matters had not been reached and a section of the Royal Adzovia clan, in attempt to enstool the candidate they favoured resulted in fatalities. The case was still not resolved when I last visited the area in March, 2008. In La, some elders had decided to destool the *La Mantse* (the Paramount Chief of La). Among his charges was that he had refused to perform certain rites associated with his office on the basis that he was a Christian.

³² Kwame Arhin, *Traditional Rule in Ghana in Ghana: Past and Present* (Accra: Sedco, 1985) 31.

³³ R. S. Rattray, *Ashanti Law and Constitution* (London: Oxford University Press, 1929) 82.

abrogate or amend an existing one; neither could he rule in any civil or criminal case. Among the Akan, the queen mother is usually an important member of this council, which has legislative, executive and judicial powers. The council deals with all matters of everyday nature, but in matters of great importance an assembly of the people is summoned for discussion. In such assemblies, every individual citizen, no matter their socio-economic status, has the right to express their view.³⁴

Political office holders in traditional areas of Ghana know that the tenure of their office is guaranteed only if they play the game according to the rules. By this mechanism, the chief is subject to the democratic control of the queen mother, his elders and the common people.³⁵ If a ruler consistently acted in ways that did not agree with those approved by his people, he would be deposed. However, while any citizen can initiate the process of destoolment, it requires the consent of particular sub-chiefs and elders, who have the constitutional mandate to investigate and rule in such matters. The process involves filing charges against the chief before the appropriate body and succeeding in making a case against him. A chief can lose his office if found guilty of offences such as drunkenness, graft, dealing in evil medicine or magic, using intemperate language, consistently ignoring the advice of elders, a habitual tendency to disclose the slave ancestry of any of his subjects, and cruelty. Others are cowardice, adultery, stealing and extravagance.³⁶ A chief can also be destooled if his policies result in general discontentment and unhappiness of his people.³⁷

Destoolment is normally a formal and orderly constitutional process. However, there have been times when misrule has provoked spontaneous sanctions against chiefs. Arhin refers to these as 'diffused sanctions.'³⁸ They are unorganised methods of public expression of disapproval of a ruler's actions; forms of protest against misrule or the immoral life-style of a ruler. The weapons used are rumours, ridicule and gossip. These can be distressing to people in authority because they are indicative of a loss of respect and affection of their people and they usually presage a more damaging course of action from them. These, therefore, have the potential to compel a ruler to change his ways. Other forms of protest, in previous times, were emigration,³⁹ withdrawal of service by courtiers and the citizenry, and the boycott of meetings called at the instance of the chief.

Nevertheless, indigenous political arrangements of Ghana are a complex mixture of democratic and autocratic elements. The sacred nature of the system tends to obfuscate its democratic aspects in fundamental ways:

³⁴ Benjamin Ewuku, 'African and Western Philosophy: A Study,' in Richard Wright (ed.), *African Philosophy: An Introduction* (Lanham: University Press of America, 1984) 173.

³⁵ Alexander K. D. Frempong, 'Chieftaincy, Democracy and Human Rights in Pre-Colonial Africa: The Case of the Akan' in Irene K. Odotei and Albert K. Awedoba (eds.) *Chieftaincy in Ghana: Culture, Governance and Development* (Accra: Sub-Saharan Publishers, 2006) 384.

³⁶ K. A. Busia, *The Position of the Chief in the Modern political System of Ashanti*, (Oxford: Oxford University Press for the International African Institute, 1951) 22.

³⁷ J. B. Danquah, *Akan Laws and Customs* (London: 1928) 117.

³⁸ Arhin, *Traditional Rule*, 80.

³⁹ Most of the people that form the Akan, Ga-Adangme, and Ewe ethnic groups claim in their stories of origin that they had moved out of their original homes in order to escape the scourge of tyranny. It is also reported that in 1827 and 1875, there were large movements of people from the Ashanti sub-division of Juaben to Koforidua near Akuapem and Akyem in rebellion against the *Asantehene*.

Chiefly authority was validated not solely by the consent of the governed but by the special relation of the chief to God in His manifestations and to the spirits of the departed ancestors.... Even significantly democratic processes were often carried out behind an autocratic facade. Thus, the election of a chief resulting from extensive consultation was announced by the Queen Mother as if the choice were hers alone. Similarly, important decisions of state policy representing a patiently sought consensus were declared by the chief's linguist as if they sprang full-blown from the brow of Jove.⁴⁰

The rights discussed above were in most cases exercised by citizens; foreigners or strangers could not exercise most rights, as illustrated by the proverb: □*nanani nkasa* (a foreigner does not have a say); though, in certain matters of legal nature a foreigner is given the benefit of the doubt or may be excused: □*h□ho nto mmara* (the stranger does not break the law).⁴¹ In that sense, discrimination was not completely absent. Indeed, discrimination also occurred in several other instances; for example, sometimes the collective might of the community was mobilized against the individual's legitimate concern and interests. In certain circumstances in the past, interference by the community in the life of an individual member was justified through the notion of collective responsibility, according to which the misbehaviour of one member put the lives of other members of the community in jeopardy. For example, among the Ewe innocent members of a lineage could be punished for the offence of another member.⁴² Among the Akan, and also almost all the societies in southern Ghana, the practice of panyarring⁴³ was widespread before the advent of colonialism. There was also a practice whereby people who owed a debt sent their children or nephews or nieces as pawns for the debt. In desperate situations, people pawned themselves.⁴⁴ In some other instances, ascriptive criteria such as age and social status determined the extent to which a person could participate in governance.⁴⁵

Yet, Wight's description of Ghanaians in 1946 as people who 'resent and resist government by dictation,' was based on traditional attitudes toward political office holders and this fact is echoed in people's self-understanding as citizens of a modern Ghana. The soldiers and police officers who led the coup that toppled Kwame Nkrumah's CPP government claimed to have acted in accordance with 'the oldest and the most treasured tradition of the people of Ghana, the tradition that a leader who loses the confidence and the support of his people and resorts to arbitrary use of power should be deposed.'⁴⁶ Even in the pre-colonial context and before the

⁴⁰ William B. Harvey, *Law and Social Change in Ghana* (Princeton: Princeton University Press, 1966) 361.

⁴¹ J. B. Danquah, *Obligation*, 9.

⁴² In an environment in which all aspects of life were heavily charged with a strong belief in the involvement of spirit beings, the prospect that a lineage member's offence could bring the wrath of the spirits against the whole lineage, there would have been serious apprehensions at a relative's repetitive misbehavior. In times past, the communities discouraged such lineage members by executing them or selling them into slavery (See for example, D. K. Fiwoo, *Tōkō Atalia* (London: Longmans Green, 1968).

⁴³ Panyarring was the forcible seizure of a person for debt. The person seized could be the debtor or a kinsman of the debtor; or sometimes, somebody who came from the same village as the debtor.

⁴⁴ P. E. Lovejoy and Toyin Falola (eds.) *Pawnship, Slavery and Colonialism in Africa* (Trenton/Asmara: Africa World Press Inc., 2003) 29; see also, William Bosman, *A New and Accurate Description of the Gold Coast* (London, 1967) 176.

⁴⁵ Nana Kusi Appea Busia, Jr., 'The Status of Human Rights in Pre-Colonial Africa: Some Implications for Contemporary Practices' in Eileen McCarthy-Arnolds et al. (eds.), *African Human Rights and the Global System: The Political Economy of Human Rights in a Changing World* (London: Greenwood Press, 1994) 236.

⁴⁶ A Nation-wide Broadcast by Lt. Gen. J. A. Ankrah, Chairman of the National Liberation Council (NLC) on 28th February, 1966, in *Ghana Today* 10/2 (23rd March, 1966) 1.

advent of the Atlantic slave trade and its subsequent abolition, the various categories⁴⁷ of slaves and pawns in the communities had some rights.⁴⁸

The exercise of certain political rights by the people - the right to have a say in who becomes chief, the right to express one's views about public issues, and the right of the ordinary people to initiate the process to depose a chief - meant that the traditional political system was open enough for some kind of rights to be claimed by ordinary citizens. The practice of taking decisions by consensus through exhaustive discussion of issues, the establishment of governance by a council of representatives of various lineages and divisions of towns and chiefdoms, and the checks placed on the exercise of chiefly authority are indeed elements of Ghana's indigenous political culture that have undisputable affinities with the democratic environment deemed conducive for the nurture of human rights.

However, human rights are much more than open and participatory political arrangements. They are concerned with securing the dignity of human beings, both as individuals and groups. Moreover, the civil government of the nation-state has superseded the traditional political system, since Independence. The chiefs are now regarded as symbolic representatives of the country's traditional culture, with no real power over their citizens under the country's constitution. Nevertheless, they are the most visible symbols of political authority in many communities, even in contemporary times. They remain very much connected to local governance, in formal and informal ways; and, though they have neither executive nor judicial power, many citizens fall back on them for arbitration in civil disputes. Actually, their influence in society far exceeds what the current national constitutional arrangements are prepared to grant them.⁴⁹ The original indigenous social units such as the lineage, village or town and chiefdom still exist and though they are subsumed under the administrative units of the modern state such as district assemblies and unit committees, they wield more extensive influence over their citizens than these modern local government institutions.⁵⁰

6.5 Traditional Legal System

The nature of law-making processes, law enforcement systems, and the judiciary is of critical importance for the functioning of any human rights regime. As hinted at earlier, the chiefs and their elders combined in their offices functions of the legislature, the executive and the judiciary. The questions that interest us are: 'did the indigenous judicial processes contain ideas and procedural patterns that were supportive of the human rights of the people?' 'Did the judicial

⁴⁷ In the stratified society of the Akan, especially, Asante, there were categories of the slaves. In Asante, there were: *akoa*, *ôdônko*, *domum*, and *akyer*. The first two terms simply mean 'slave,' with the second one, *ôdônkô*, mostly used of people from the North but applied also to purchased slaves. *Dômum* is a war captive; and *akyer* referred to people 'who lived in designated villages that were looked upon as human reservoir for sacrifice.' See Rattray, *Ashanti Law*, 34 -36.

⁴⁸ Edward Reynolds, *Trade and Economic Change*, 19; Cruikshank, *Eighteen Years on The Gold Coast*, ii, 240.

⁴⁹ For an exhaustive discussion about the contemporary significance of chieftaincy in Ghana see Odotei and Awedoba, *Chieftaincy in Ghana*, John Dunn & A.F. Robertson, *Dependence and Opportunity: Political Change in Brong Ahafo*, (Cambridge: Cambridge University Press 1973); Arhin Brempong, *Transformations in Traditional Rule in Ghana: 1951-1996*, (Accra: Sedco Publishing Limited, 2001) and Oseadeeyo Addo Dankwa III, *The Institution of Chieftaincy in Ghana — the Future*, (Accra: Gold Type Ltd., with the support of the Konrad Adenauer Foundation, 2004).

⁵⁰ Chris Abotchie, 'Has the Position of the Chief become Anachronistic in contemporary Ghanaian Politics?' in Odotei and Awedoba, *Chieftaincy in Ghana*, 178.

process recognise and affirm the dignity of parties by adhering to the basic principles of equality before the law, fair hearing, and presumption of innocence until proven otherwise?’

The indigenous legal arrangements that existed prior to colonialism, and which continued to evolve throughout the colonial period and in the post-independence era, have not gone completely out of use. Laws that are part of those arrangements continue to be recognised by the country’s constitution as part of the legitimate laws of the land, under the rubric of ‘customary law,’ which is defined as ‘the rules of law which by custom are applicable to particular communities in Ghana.’⁵¹ Though in application customary law is limited in the context of the overall national judicial system, it constitutes an important influential element of the legal order of contemporary Ghana. This means that the indigenous judicial system still operates in many communities in Ghana, albeit in a limited way.

The procedures of traditional law making, application, and enforcement in Ghana were oral and not written. Laws and related procedures were ‘handed down by oral tradition and developed by usage.’⁵² Yet the law was not static but continued to evolve, since the communities took notice of changes and adjusted their laws to suit new conditions. However, change was slow due to certain fundamental features of the system. In the first place, the process of law-making involved both the direct issuing of laws and the invocation of immemorial custom. Secondly, administration of justice, though secular in the main, could not be isolated from the complex religious worldview. In a sense, the judicial role of the chiefs and elders could not be separated from their religious ritual functions. Thirdly, the communal and religious inclination of the society meant a relish for stability and harmony as fundamental values; and where stability and harmony become the most important goals of a community, change is accepted only slowly. In such contexts, radical individuals who pursue their parochial but legitimate interests through litigation are bound to be considered troublemakers. Nevertheless, the law, in its secular aspects under the traditional arrangements, was personal. It governed the individual as a member of the community.⁵³

The chiefs and their elders constituted the courts. Minor cases could be handled at the courts presided over by lineage heads and elders; but major cases involving offences such as murder, stealing and adultery were handled by the chief’s court. Important legal principles and judicial practices were observed. For example, the laws were predictable because they were published before they came into effect; they were published through the traditional channels, especially the beating of the gong-gong in public places.⁵⁴ This fulfilled the general principle that, in fairness to those to be affected, any legal standard before it is applied must be promulgated in advance.

The principle of fair hearing was also an important pillar of the traditional legal system. According to Mensah Sarbah, this principle was learned by the Mfantse the hard way, when the authorities mistakenly executed the innocent son of the chief priest of their national oracle.⁵⁵ There was also room for appeal. When one of the parties in a case was not satisfied with the ruling they could appeal to a higher court; that is, if the case had first been heard by the court of

⁵¹ Article 11(3), *The Constitution of the Republic of Ghana*, 1992.

⁵² John Mensah Sarbah, *Mfantse Customary Law*, 23.

⁵³ Harvey, *Law and Social Change*, 352.

⁵⁴ Azu Crabbe, *John Mensah Sarbah – 1864 -1910* (Accra: Ghana Universities Press, 1971) 56.

⁵⁵ Sarbah, *Mfantse National Constitution*, 52 -53.

an elder or a chief of lower status. In the Akan areas, cases involving capital punishment permitted an appeal to be made by invocation of the state oath.⁵⁶ Trials were held in the open; the general public was permitted to be present as spectators; and though they did not take part in the proceedings, as Abotchie observes, 'their shouts or murmurs of approval, disapproval or protest tend[ed] to influence the final decision of the court.'⁵⁷

In spite of the relatively fair, transparent and dynamic nature of the traditional legal regime, certain aspects of it seriously involved the potential for the abuse of human rights. In certain cases, the communal and religious perspectives of the society generated intolerant and abusive attitudes. That an individual's attempt to pursue justice could be misconstrued as trouble making has already been alluded to. A practice in Gomoa provides an interesting example. Gomoa Antseadze used to be the highest court of the various Gomoa chiefdoms. It was there that the most serious crimes such as treason and murder were tried. In most cases, offenders who were taken to the court there did not return to their hometowns; they were sentenced to prison terms and remained there or were sold into slavery or executed. The executions took place in two shrines, which represented the two types of offenders that were executed at Antseadze. There was the general shrine for the execution of all offenders found guilty; and there was the shrine called, *Edzibem Posuban* (the shrine of the not guilty), where people considered as troublemakers were executed. These people indeed, were not guilty but wanted to insist on their rights. Sometimes, the only basis for their execution was that they had previously won three cases; this was interpreted to mean that they were troublemakers. In other cases, they were condemned because they refused compensation packages recommended by the elders or a chief at a lower court.⁵⁸ The *Edzibem Posuban* still stands in the middle of the town; and though it is no longer the site for the execution of the 'not-guilty,' it is a reminder of the traditional aversion to litigation.

Another aspect of the traditional judicial systems of the past that would evoke extreme condemnations in modern times was the manner of punishing certain categories of offenders. We have already mentioned the decapitations, banishments and sale into slavery of the guilty. A practice in Anlo history known as *Nyiko* is one example. Like other traditional societies, the Anlos looked with repugnance on certain types of crimes, especially crimes that had the potential to undermine the security, reputation or cohesion of the traditional state.⁵⁹ *Nyiko* was used against those who repeatedly flouted the laws and customs of the land. In the *Nyiko* customary punishment, offenders were buried alive. Greene lists offences considered so grievous to deserve the severest punishment. These included taking away another person's life through witchcraft or the use of black magic, stealing, meddling with somebody else's wife, incurring debts, disobedience to parents, and untruthfulness.⁶⁰

⁵⁶ Hagan, 'The Political Aspect,' 38.

⁵⁷ Chris Abotchie, 'Legal Processes and Institutions,' in Agbodeka(ed.), *A Handbook of Eweland, Vol. 1*, 79.

⁵⁸ I am grateful to Nana Obentsir-Kumah VIII, Adontsenhen and Vice-President of the Gomoa Traditional Council, Nana Okra Tawia, Odzekro of Gomoa Sampah, and Nana Amoasi, Queen-mother of the Adontsen division of the Gomoa Traditional Area for the information about the judicial processes of Gomoa. See also, Crayner, *Borbor Kunkumfi*, 78-79.

⁵⁹ F. Kwasi Fiawoo, *The Fifth Landing Stage*(Accra: sedco, 9183) vii –ix.

⁶⁰ Greene, 'Sacred Terrain,' 6.

A limitation of the traditional judicial system was its methods of investigation. In certain cases that required some investigation to arrive at the truth, there was a resort to trial by ordeal. This did not ensure fairness to suspects, since it was difficult to prove or disprove the outcome. Yet evidence obtained through such practices was admitted and cases were judged based on it.⁶¹ Sometimes the process involved the drinking of poison, which was presumed to cause the death of the culprit while it was presumed not to harm those who were innocent. In certain other cases, the ancestors and the gods were invoked by the offended against those who had offended them. These metaphysical beings are believed to be the ultimate custodians of justice and to be able to deal directly with culprits, especially if these intend to hide and not own up to their crimes.⁶² Since the ultimate authority was believed to rest with the ancestors and the deities, it meant the chiefs and elders who were the administrators of justice were accountable to them. Any deliberate act of unfairness or injustice could result in the death of the members of the panel of chiefs and elders or of the witnesses who sat on the case. Such deaths were interpreted as the ancestors summoning them to appear before their court to explain their actions.⁶³

6.6 African Communalism and Modern Human Rights

If the political arrangements from pre-colonial times have been open to, and compatible with, democratic principles, ensuring some measure of respect for the right of citizens to participate in governance at the level of ethnic states, was that alone sufficient for the fostering of a human rights culture? The communal nature of African societies has been used in the past by certain ideologues and politicians as the basis for declaring human rights unsuited to the African context. This plea became a smokescreen that prevented the rest of the world from seeing the abuses that African political elites of the 1960s and 1970s unleashed on their citizens. Since this dichotomy - Western culture being individualistic and African culture communal - came to be seen as defining the difference between Western Europe and Africa, such abuses were not only tolerated by the rest of the world, but they were also rationalised as better than any interventions that might disturb the stability of those societies. The characterisation of African society as radically communalistic was combined with the 'bread before liberty' cry in order to present human rights as alien to Africa. The 'bread before liberty' cry said that development needs of Africa at that stage were so urgent that a focus on civil liberties was to be regarded as luxury.⁶⁴

Martin Chanock has questioned the basis of the dichotomy drawn between Western cultures that emphasise individuality and others such as African ones that emphasise communalism in human rights discourse. He relates the widespread acceptance gained by that view to the ideological disputes of the Cold War era in which the critique of individualism became a weapon in the hands of the socialist block in their attack on capitalism. On the other hand, communalism was understood as a mode of social organisation of primitive peoples and, therefore not meant for civilised European societies.⁶⁵ However, human rights have emerged because of the social nature of human beings; by their nature human rights are meant to apply in the context of community life. In fact, they are meant to mediate competing claims in the context of group life.

⁶¹ J. A. Annobil, *Mfantse Ebirempon* (Cape Coast: Methodist Book Depot, 1955) 15 – 25; see also Abotchie, 'Legal Processes,' 80.

⁶² Abotchie, 'Legal Processes,' 75.

⁶³ Mike Oquaye, 'Human Rights in Africa in the Global Order: A Dilemma, (A Ghanaian Viewpoint),' In Dani W. Nabudere (ed.), *Globalisation and the Post Colonial African State* (Harare: AAPS Books, 2000) 88.

⁶⁴ Howard refers to this as 'the full-belly' thesis (See Howard, 'Group vs. Individual Identity,' 180.

⁶⁵ Chanock, 'Human Rights and Cultural Branding,' 47.

The official documents⁶⁶ of the UN system of human rights envisage an international community of individuals recognising their own inherent dignity and that of others and behaving towards one another as is appropriate: 'Classical liberalism from which rights flow, does not subordinate the group to the individual, but is concerned with the kind of group to which individuals belong.'⁶⁷ Human rights are communal in the sense that they make life in the context of group life more orderly, with claims of rights and demands of responsibility on one another. It protects the individual as a social being, and, by that, ensures that society itself is protected. The clearest statement in support of this is found in the preamble to the UDHR,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind....

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.⁶⁸

It is a core feature of African life that for the peace and stability of the community, the individual as a member of the community is protected and his needs are catered for as long as resources are available. However, this is not peculiar to Africa; human beings are social beings everywhere, and recognition of one another as equally free and of inherent worth cannot belong exclusively to one region or race of the world.

This does not dispute the clear bias of the UN system of human rights toward individual rights. The emphasis on the individual in the UN human rights instruments is too obvious to escape the eye of even the most casual of readers. Nevertheless, just as individuals make up groups in the West, so are groups made up of individuals in Africa. That is, in the same way as human rights in the individualistic culture of the West do not necessarily set the individual against the group, likewise the communalistic culture of Africa does not swallow up the individual in complete anonymity. In the introduction to the second edition of Brodie Cruickshank's *Eighteen Years on the Gold Coast of Africa*, Busia wrote about the Mfantse kinship system,

This kinship system emphasised group solidarity, and the individual found fulfilment only as a member of the group; the isolated individual is a nobody; *but the individual as a member of the group was a human being, a personality*, and the group was always there to offer protection and security, as well as make demands when the occasion arose.'⁶⁹[Emphases are mine].

And Chanock writes about modern Western societies,

...the attempt to depict Western societies as individualistic misses the point that these very societies, with their powerful cohesive ideologies of nationalism, patriotism, collective action and welfarism, have been and are far more 'successful'

⁶⁶Articles 27 to 29 of the UDHR are communitarian. The last paragraph of the preamble to the ICCPR reads: 'Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in present Covenant.'

⁶⁷ Chanock, 'Human Rights and Cultural Branding,' 48.

⁶⁸ UDHR, Preamble, paragraphs two and three.

⁶⁹ K. A. Busia, 'Introduction,' B. Cruickshank, *Eighteen years on the Gold Coast of Africa* Vol. I (London: Frank Cass & Co., 1966) 17.

groups on a larger scale over long periods of time, with better working consensual traditions of government than the often fragmented, authoritarian, familistic, localistically-based societies which invoke their cultural attachment to groupness.⁷⁰

With respect to human rights, the controversy about individualism and communalism ought to be understood in the context of the capacity of the different states and the level of development of their political and economic facilities. Africans are not so innately communalistic as to be indifferent to their sense of individual identity and aspirations. In many matters of life and death, governments of many African countries do not have the capacity to cater for the greatest number of people most of the time. In such situations people naturally fall on the systems of obligations, rights, and reciprocities in the traditional social arrangements.

When the social and economic climate permits, individuals in Africa are prepared to stake their claims against the community. A visitor to the then Gold Coast in the first half of the twentieth century is reported to have ‘observed that there was a ‘plague of litigation’ in the Gold Coast and almost every development of public works was held up by lawsuits.’⁷¹ Long before the onset of formal colonialism, individualistic tendencies engendered by nascent capitalism in Asante had sparked off widespread and sustained challenges to existing power-holders.⁷² Even so, communalism and a human rights culture need not be regarded as incompatible. It is only when the Kantian imperative of duty toward humanity as the bearer of dignity becomes combined with right claims that human rights may find their true fulfilment. In that case, the rights of people become also the duty of one another; and human rights become part of the culture of the people, not manifesting solely in litigation and protests but also in the day to day interactions between persons in mutual recognition of each other’s rights.

Modern human rights culture emphasises the state’s role as the duty-bearer of most rights. However, the lack of capacity of most African governments to provide physical and social security for the majority of their people makes such an orientation dangerous. Undue focus on the state and emphasis on personal autonomy tend to undermine the altruistic and voluntary spirit that is an indispensable social capital for the building of a dynamic civil society – so critical for the flourishing of a human rights culture. Not only African societies, but also most religious traditions, attempt to condition their members to be sensitive to their neighbours’ needs in the same way as they would want people to be sensitive to theirs when in a similar situation. This is in keeping also with the indigenous social arrangements in the small communities of the various chiefdoms, where everybody’s welfare was the concern of all. The observable fact of practicalities often falling apart with the idealistic teachings of religious traditions and traditional ethnic communities does not undermine the point we make here, the visions and the ideals have been present and yield themselves to be nurtured into actualisation in the right environment.

⁷⁰ Chanock, ‘Human rights and Cultural Branding,’ 48.

⁷¹ Barbara Bush, *Imperialism, Race and Resistance: Africa and Britain 1919 -1945*(London/New York: Routledge, 1999) 113.

⁷² Kwame Arhin, ‘Some Asante Views on Colonial Rule’: As Seen in the Controversy relating to Death Duties,’ *Transaction of the Historical Society of Ghana*, 16/2, New Series no. 1, 157-158.

6.7 Human Dignity

To be able to determine how the concept of human rights or ideas cognate to the concept featured in Ghanaian traditional society, we will first need to discuss the concept of human dignity. Human rights are usually linked to the concept of human dignity. It has become a generally accepted view that ‘what is called “human dignity” is simply the acknowledgement that people are entitled to rights.’⁷³ The UDHR starts with the recognition of the ‘inherent human dignity... of all members of the human family;’ and the International Covenant on Civil and Political Rights (ICCPR) states that human rights are ‘derived from the inherent dignity of the human person.’ So the United Nations human rights system has, as a central objective, the protection of human dignity.

Arvind Sharma relates the concept of human dignity to human rights in three ways. First, he says, human dignity is the product of the successful assertion of human rights; secondly, participation in the political process enhances both human dignity and human rights; and thirdly, human dignity could be regarded as a source of human rights.⁷⁴ But in what does human dignity consist? What is it about the human being that makes them beings with dignity? This question leads us to revisit what we described as a ‘validating foundation’ in chapter one. It appears that throughout most of the history of organised societies, it has always been the case that human beings have considered themselves unique among all other beings. Whether in the great civilisations of antiquity or in the twentieth century international diplomacy of the United Nations, leading thinkers have maintained that there is something about the human being that makes them special specie, deserving of society’s mandatory honour and protection. In Western European scholarship, philosophy and theology in particular have, mostly, supplied the standard for the measurement of human dignity. In that sense, the content of human dignity in Western European traditions has been derived from both religious and non-religious sources.

A sketch of the history of the concept of human dignity in Western scholarship, as has been thought in the different periods by different thinkers, reveals several positions. Among the more influential are the ideas of Kant and Cicero, which we discuss below.

One of the earliest views on human dignity was that it consisted in human rationality, which includes the ability to make the right choice between good and evil. The Stoics, who represented this view, made a distinction between an extraneous and an inward basis of dignity. Extraneous bases of dignity included such things as the social and political position a person occupies and the reputation that comes with it. Cicero, a leading figure of the Stoics thought that dignity based on extraneous circumstances made a person dependent on those extaneous things. In that case, when there is a loss of position and of the wealth, power and honour that come with it, the person is left broken and tormented mentally in such a way as to hamper the cultivation of his or her humanity. Therefore, Cicero maintained that it is better to keep one’s sense of worth in oneself and not link it to anything outside the person. In that sense, human dignity is embedded in a quality of ‘self-government,’ of the individual, which is deemed intrinsic to everybody. Men, women, slaves and freeborn: all are endowed with this dignity, rooted in self-sovereignty. It is rationality that distinguishes the human being from other creatures such as animals. For

⁷³ J. Feinberg, *Rights, Justice and the Bounds of Liberty* (Princeton: Princeton University Press, 1980) 151.

⁷⁴ Arvind Sharma, ‘The Religious Perspective: Dignity as a Foundation for Human Rights’ in Joseph Runzo, et al. *Human Rights*, 67 -76.

example, human rationality and discerning abilities provide ‘a therapeutic effect’ that empowers human beings to be composed and self-controlled in order not to fall for temptations from within and without. This enables the ‘self-government of the soul,’⁷⁵ meaning that human dignity is radically based on individual autonomy and that it springs from within; it is not dependent on any circumstances outside a person so that ‘no longer are we winning fame in public space; we act to maintain our sense of worth in our own eyes.’⁷⁶

Another view says that human beings are priceless; that is, they have an intrinsic value that cannot be measured in terms of market prices. This makes the human being unique and sets them apart from all other categories. Therefore, all other categories can be priced but not the human being. This is the view of Immanuel Kant who draws a difference between human beings, other beings, and other categories that may apply to human beings such as status. The human being has value that cannot be priced, whereas other beings or things may be priced. But anything that has a price is subject to price fluctuation and the laws of supply and demand. For example, in times of war the price of soldiers will increase because there will be a high demand for them; but in times of peace, their price value might fall.

However, according to Kant, human beings are priceless; they have an intrinsic value that cannot be diminished by any circumstances. Therefore, human beings are an end in themselves, hence the categorical imperative: ‘Act in such a way that you always treat humanity, whether in your person or in the person of any other, never simply as a means, but always at the same time as an end.’⁷⁷ Human dignity requires that people act toward humanity in accordance ‘with duty’ and ‘from duty.’ One who acts ‘from duty’ does not use people simply as a means but also at the same time as an end, as beings that have value in themselves.⁷⁸

In Kantian philosophy, the value of the human being is derived from no other source than the human beings themselves. The moral will to act toward humanity in accordance with the categorical imperative is a quality that comes from self-sovereignty or autonomy. Individual autonomy carries with it the idea of moral self-sovereignty, in which the human being does not submit to anything outside himself or herself and yet does not give in to immorality. The way to determine whether our moral decisions are sound or not is to submit them to the categorical imperative of ‘universalisability.’ ‘Act only on that maxim through which you can at the same time will that it should become a universal law.’⁷⁹ If the criterion of universalisability is met, human beings achieve genuine autonomy. Dignity linked to autonomy of the individual ensures that the appropriate borderlines around each individual are recognised, and that humanity is not violated in the person of none since all are of equal dignity.

But Cicero’s self-government of the individual soul and Kant’s categorical imperatives deriving from the intrinsic value and the autonomy of the individual as the basis of the concept of human dignity do not contradict theological formulations that ground human dignity in metaphysical

⁷⁵ Martha Nussbaum, *The Therapy of Desire: Theory and Practice in Hellenistic Ethics* (Princeton: Princeton University Press, 1996) 316 – 358.

⁷⁶ Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge: Harvard University Press, 1989) 152.

⁷⁷ I. Kant, *Groundwork of the Metaphysics of Morals* (New York: Harper & Row, 1964) 96.

⁷⁸ John Rawls, *Lectures on the History of Moral Philosophy* (Cambridge: Harvard University Press, 2000) 177 -180.

⁷⁹ Kant, *Groundwork*, 88.

realities. From the very beginning of the Christian era, theologians combined biblical insights with philosophical ideas such as that of the Stoics of whom Cicero was a prominent representative. Christian thinkers such as Augustine and Thomas Aquinas located human dignity in the image of God. What constitutes the 'image of God' is itself a subject of unending controversy among Christian theologians. The image of God has been located in several motifs. For some theologians, the image of God is reflected in the spirit of the human being as distinct from the body; for others it consists in the 'natural' image of God given to Adam, the first human being created, which was lost at the fall in the Garden of Eden (Genesis 1-3) but was recovered, no more as 'natural' but 'supernatural' through Christ.⁸⁰

Another view links the image of God to the Christian doctrine of the Trinity. This explanation is traced to Augustine. It identifies the ability to remember God, the knowledge of God, and the love of God as the manifestation of the image of God in human beings. Relating human dignity to the image of God was the dominant way of conceptualising the inherent value of the human being until the Renaissance and the Enlightenment. Beyond these eras into the present period, the concept lives on and is expressed in several different forms by Christian theologians, extending the discussion to the idea of God's immanence in creation. Nevertheless, the new responses to the question of human dignity have provided new grounds of legitimation for many people, but they have not superseded religious explanations such as those derived from the doctrine of creation and the image of God. The current situation provides a plurality of explanations or justifications, some religious, others secular. This is natural in the present context of plural values. People must find their own justification for upholding the values that are common to all:

Some advocates of human rights may derive their commitment to human dignity from religious ideas or assumptions – for example, from the creation of persons by God in the image of God – but the human rights idea itself does not posit any religious basis for dignity.⁸¹

6.8 Human Dignity in Ghana

What does 'human dignity' mean in Ghanaian culture? As we established in chapter four, what constitutes Ghanaian culture is made up of elements drawn from the cultures of the many ethnic groups that form the nation and the various historical experiences of encounter through trade, colonialism, and inter-ethnic cultural encounters and wars. This means the people's belief systems and concepts about God, the universe, and human beings are influenced by all these factors. A great chunk of elements constituting Ghana's common culture is made up of ideas, values and standards that have been left with the people through the colonial experience. Projects aimed at reconstructing national identity embarked upon by the country's first president after Independence, sought to synthesise the different strands of culture that have affected the historical process of the country's evolution. These strands are the various indigenous cultures, Christianity, and Islam. However, whatever changes resulted from the colonial experience have not obliterated or invalidated values that existed before the onset of colonialism.⁸²

⁸⁰ J. De Gruchy, *Liberating Reformed Theology: A South African contribution to an Ecumenical Debate* (Grand Rapids: Eerdmans, 1991) 135 – 136.

⁸¹ Louis Henkin, 'Religion, Religions, and Human Rights' *Journal of Religious Ethics*, 26/2 (fall, 1981) 232.

⁸² A. Hansen, 'African Refugees: defining and Defending their Human Rights,' in R. Cohen et al. (eds.) *Human Rights and Governance in Africa* (Gainesville, FL: University Press of Florida, 1993) 161-162.

Data from the field reflect this contemporary reality. In all three traditional areas that served as research locations, the traditional and the modern exist side by side and combine to shape the lives of individuals and communities. People are still sharply conscious of their ethnic origins and identity; and institutions such as the extended family unit, chieftaincy, and religious beliefs that connect strongly with indigenous belief systems form the context within which most Ghanaians, including those in the cities, live their lives. However, the opening up of these areas to the wider world through trade, colonialism and other factors has also brought about some alteration in their worldviews. Current Ghanaian worldviews are hybrid, combining foreign elements with originally indigenous ones. This calls for alertness in data analysis in order to discern the various strands to determine how much ‘inculturation’ is already taking place in communities in Ghana, with respect to the subject-matter of this work. Discussants in the traditional areas were carefully chosen; they were mainly people who were identified as knowledgeable in the indigenous history and customs of their areas, having lived there over a considerable length of time.⁸³ In all cases, traditional authorities— chiefs, elders and priests/priestesses- were included.

6.8.1 What is a human being?

With regard to concepts of humanity, Ghanaians see three dimensions: the physical or material dimension, the spiritual dimension, and the social dimension. Though the traditional views persist, they often get mixed up with biblical or Christian ideas, revealing how much Christianity and local indigenous beliefs are in dialogue. The fact that most of the custodians of custom in the traditional areas under discussion have received some level of Western education and are Christians, or at least have been in contact with Christianity over a long time, affect their interpretation of traditional ideas. This is illustrated by the following conversation that ensued between the researcher and Togbe Zewu III,⁸⁴ a Senior Chief in Anloga:

Researcher (res.): from the point of view of Anlo culture, who/what do you say the human being is?

Togbe Zewu (Togbe): The human being is a creature of God, higher than all other creatures.

Res.: Are all human beings equally human?

Togbe: Yes, since all of us are descendants of the same parents.

Res.: Who are these parents?

Togbe: Adam and Eve; is that not what the Bible says?

Res.: Yes, but is that also what the Anlo tradition says?

Togbe: No, Anlo tradition is different but what it says is confirmed by the Bible.

⁸³ Rev Lawulivi of Anloga was of immense help. His knowledge of the Ewe language Anlo customs helped me clarify my own understanding of some of the concepts I came across in the process of data collection. Rev Lawulivi is a native of Anlo and a minister of the Evangelical Presbyterian Church, which more than any institution has helped preserve Ewe culture and identity. A renowned educationist, he has been among other things, the headmaster of Anlo Secondary school in Anloga. In 2004 when I first met him he had already retired but was very actively involved in community life, commanding great respect and influence. I am also grateful to Mr. J. B. Crayner, a retired educationist and an acknowledged authority of Mfantse culture and history. He is the author of several books published in the Mfantse language, including, *Bɔ̃rɔ̃r Kunkumfi* and *Akweesi Egu Nananom Mpɔ̃w*.

⁸⁴ Togbe Zewu III who in 2004 said was seventy-four years old had a secondary school education and is a practicing Roman Catholic.

Although Togbe Zewu continued with an outline and an explanation of the Anlo view of the human being, he kept referring to the Bible to illustrate or confirm his points. I found similar behaviour in Gomoa. In response to the question, ‘how are human beings related to, or different from other creatures, for example, animals?’ The following conversation with Nana Okra Tawia⁸⁵ ensued:

Nana: All other beings were called into being by God or were created by God; but the human being was created by God and was given the breath of God.

Res.: So is there a relationship between human beings and animals, for example?

Nana: God realised human beings could not live alone on earth so he created other things to make life in the world easy for them. According to the Bible, animals are meant to be used and manipulated by humans.

Like Togbe Zewu, Nana Ôkra Tawia clearly knew the custom and history of his traditions, but it seems his Christian background and education have become part of his identity-consciousness, and he draws more naturally on his Christian background than on his identity as a traditional chief. The cases of these two chiefs mirror the changes that are taking place in the concepts, ideas and values of Ghanaian people. This is not surprising, given the view that has gained currency in African scholarship that the accommodating nature of African belief systems makes it easy for the people to absorb new religious ideas without any feeling of contradiction.⁸⁶

Generally, the concept of the human being in the research areas and most parts of southern Ghana falls into what Vroom has termed, *religious anthropologies*⁸⁷ a three-dimensional being of matter, spirit and with complex kinship relationships, explained in physical and metaphysical terms. In their physical dimension, the human being is matter, which constitutes the body (*nutili* in Ewe; *honam* in Akan; *gbɔmɔtso* in Ga); in their spiritual dimension, human beings are believed to possess non-physical components, which also define their kinship links in the society for them. Among the Ewe, every human being possesses *gbɔrgbɔr* or *luɔ*, which is translated ‘spirit.’ But there is also the *se*, which is translated ‘soul,’ and which is regarded as a double of the individual and the bearer of the individual’s ‘destiny;’⁸⁸ the term *se* is actually translated as ‘destiny,’ and is thought to have great significance for the life of the individual in this world as it is believed to keep the person company from cradle to grave, protecting, guiding, and animating them. On the death of a person the *luɔ* returns to God, who is believed to be its original source.

The Ga and the Akan have similar ideas. In addition to the *gbɔmɔtso* the Ga believe that two elements constitute the non-physical aspect of the human being. These are the *kla*, which may be translated ‘soul,’ and the *susuma*, normally translated ‘spirit.’ Strong influences of Akan concepts about the human being can be discerned in the Ga concept. The Akan talks about *ɔkra* and *sunsum* as constituting the non-physical aspect of the human being. The *ɔkra*, which is like

⁸⁵ Nana Okra Tawiah was sixty-four years old in 2007. He trained and worked as teacher and local preacher in Presbyterian schools for several years.

⁸⁶ Christian Gaba, ‘The Religious Life of the People,’ in Francis Agbodeka (ed.), *A Handbook of Ewes, Volume 1*, 102.

⁸⁷ Vroom observes that in what may be termed, *religious anthropologies*, there is the idea that the human being consists of two or more parts, of which only the physical part can be observed empirically. See Hendrik M. Vroom, ‘Religious ways of Life and Human Rights,’ in Abdullahi A. An-Na’im, et al (eds.), *Human rights and Religious Values: An Uneasy Relationship?* (Amsterdam, Rodopi, 2004) 25.

⁸⁸ The idea involved in *se as ‘destiny’* is similar to that of the Akan which we discussed in Chapter four.

se in Ewe and *kla* in Ga, is also translated ‘soul,’ and the *sunsum*, like *gbɔrgbɔr* or *luɔ* and *susuma*, is translated ‘spirit.’ Apart from these, there is an element which is usually translated as ‘blood.’ The Akan call it *mogya*, the Ga *la*, and the Ewe *ewu*. The three-fold composition of the human being carries with it ontological links with various metaphysical entities and social units. For example, in the Akan concept, the human being is considered a child of God because it is God who is believed to give the *ɔkra*. In fact the *ɔkra* is regarded as a spark of God⁸⁹ in the human being, returning to God after the death of a person. This is also the case with the Ga and, as we have already seen, the Ewe. This means that the human being, in the sense of the individual person is believed to possess something of the divine essence.⁹⁰ The *ɔkra* as a spark of God is also thought to endow humans with immortality, and this is what is expressed by the Akan *adinkra* symbol, *Nyame bewu ansa na mawu* (if God can die, then I would too).

This concept of the human being has certain implications for kinship relations. Kinship is determined primarily by blood in all three research areas. Among the Ewe and the Ga, a person’s primary kinship group is that of the father. This means, in matters of succession to office and inheritance of property, they follow the patrilineal principle. The Gomoa, an Akan group, being matrilineal have a different arrangement. Inheritance to property and succession to office is through the mother’s line. Notwithstanding the categorisation of the various groups in terms of patrilineality and matrilineality, there are always arrangements that connect persons to the father’s kinship group in the case of the Akan, and to the mother’s kinship group in the case of the Ewe and the Ga.⁹¹ These kinship relationships are underpinned by certain customary beliefs; and personal behaviour within the groups is believed to be sanctioned by the supernatural.⁹² The Akan especially have an elaborate system of metaphysical links with various entities. The *sunsum* is believed to put a person in a social unit called *ntor*. Each *ntor* is regarded as linked to a specific *ɔbosom* (deity) which is thought to sanction people’s behaviour within the unit. The Akan-Mfantse actually call the *ntor*, *egya bosom* (father’s deity).

This represents the traditional conception of the human being in Southern Ghana. Each person is thought to have been created by God with an independent soul that is said to carry something of God’s essence. Each soul is viewed as unique in relation to other human beings and creatures and their unique destinies. But people are born into the world of humans, which is deemed to interact unceasingly with the world of the deities and the ancestors. An old tradition found among the Akan and the Ewe, and which is still very much alive in some communities in both Anlo and Gomoa, suggests a pre-natal existence of humans prior to their birth into the world. The Ewe call the realm of that existence *BɔmE*; the Akans call it *Asamando*, which is the same as the word used for the world of the spirits of the deceased. It is believed that there is a female spirit in that pre-natal world, called in Ewe *BɔmEn* (Mother of *Bɔm*),⁹³ and in Akan, *Ena Saman* (Ghost Mother). This belief is sometimes invoked to explain the belief in reincarnation.

⁸⁹ Kwame Gyekye, *African Cultural Values: An Introduction* (Philadelphia, Pa. /Accra: Sankofa Publishing Company, 1996) 13.

⁹⁰ Gyekye, *African Cultural Values*, 13.

⁹¹ Nukunya, ‘Social and Political Organization’ in Francis Agbodeka, *A Handbook*, 52; J. B. Danquah, *The Ghanaian Establishment* (Ghana Universities Press, 1997) 298 -299.

⁹² Nukunya ‘Social and Political Organization,’ 54; J. B. Danquah, *The Ghanaian Establishment*, 299.

⁹³ Harry Lawson K. Agbanu, ‘Moral Evil and “Cremation” Among Mafi Ewe of Ghana,’ (Master’s thes., University of Ghana, 1999) 48.

Those who die in infancy are sometimes said to have been taken away by their ‘ghost mother.’ Thus, the community into which a person is born transcends the realm of the physical world. Depending upon a person’s level of knowledge and commitment as a Christian or Muslim, some of these ideas may be mixed up in ways that affect their perspectives on life.⁹⁴ However, in all situations, the view of the human being as essentially a spiritual being plays an important part in the way they behave.

6.8.2 In what is human dignity constituted?

What are the implications of the view of human being discussed above for the concept of human dignity and, by extension, human rights? Human dignity, as we saw above, is rooted in the very constitution of the human person as a being thought to have been created by God, who is said to carry something of God’s essence in the form of the ‘soul,’ which is viewed as the bearer of a unique destiny. In addition, every human being is believed to be in a continuous, unbreakable relationship with the kinship group and to be a member of the wider community, which is said to include the gods and the ancestors. Flowing from these convictions is a complex, extensive and sometimes ambivalent set of ideas, behavioural patterns and attitudes toward human beings. In all three traditional areas, there are taboos with respect to the human being. Such taboos indicate that human beings are never to be subjected to certain forms of treatment because they are seen as sacred. These are different from taboos that relate to particular persons due to their sacred status such as chiefs and priests. The taboos in question apply to all human beings as a specie.

There are also certain conditions that are believed to rob people of aspects of the quality of humanness, or undermine their sense of dignity. These include certain diseases, physically challenging conditions, and scandalous moral lapses. While it is not a straight-forward matter to determine what constitutes the content of human dignity in traditional thought, it seems that the concept of dignity itself may be captured in what the Akan calls *enyimyam*, the opposite of which is *enyinguase* or *fEr* (shame/dishgrace/dishonour). *Enyinguase* is traditionally so detested that death is to be preferred to it, as expressed in the Twi proverb, *FEr nye enyinguase dze nkyE Efanyim owu* (between shame and death, death is to be preferred).

Among the Ewe, the Ga and the Akan, there are certain prohibitions or taboos with respect to the treatment of a human being. They are part of what the Akan-Mfantse generally call *akyiwadze* (Twi: *akyiwade*). This may be translated as ‘hateful things,’ or more appropriately, ‘abominable things.’ There are different categories of *akyiwadze*. There are those that apply to every human being, and there are those that apply to people because of their status as adults, office-bearers, men, women, children, twins or a new mother. For the purposes of this work, our interest is mainly in those *akyiwadze* that apply to human beings based on their being ‘human.’ These are called, *egudodoamE* by the Ewe. The word, *egudodoamE* has two parts: *egudodo* – ‘reduce,’ ‘disgrace,’ ‘demean,’ ‘degrade,’ and *amE* – ‘human being.’ This gives it the meaning of, ‘things that degrade, demean or disgrace human beings.’ They are things that are thought to take some quality away from one’s humanity and to undermine human dignity. They include hitting somebody with a broom, kicking somebody with the feet, spitting on another person, using foul

⁹⁴ As Gilbert explains, for example, ‘...the introduction of Christianity has merely widened the range of categories which can be invoked or chosen in the ever-changing interplay between category and practice.’ Michelle Gilbert, ‘Sources of Power in Akuropong-Akuapem: Ambiguity in Classification’ in W. Arens & Ivan Karp (eds.) *Creativity of Power* (Washington/London: Smithsonian Institution Press, 1989) 59 -90.

language on another person, and invoking the slave-ancestry of another person in order to humiliate them. Others are: hitting somebody with a shoe or with sandals, illegally taking another person's life, taking one's own life, and subjecting a person to any form of cruelty or torture.

In order to appreciate how these taboos are linked to human dignity, it is important, first to understand the meaning of some of them in the context of the traditional culture. *EgudodoamE* or *akyiwadze* of the type under discussion are considered very grievous acts, because their implications are regarded as potentially disastrous for both the victim and the community. Their negative effects are believed to go beyond the physical and to affect the soul and the spirit of the victim. Since the 'soul' (*□kra/luç□kla*) is believed to be the person's double and the main life-giving aspect of a person, its moods are said to be affected by certain experiences and events in life. Prolonged illness, near-fatal accidents, public shame, insult, slander, fright and trauma are said to be able to affect the condition of the 'soul' negatively. When the soul is so affected, its vitality and life-giving activity is thought to become undermined and, as the belief goes, might further affect the confidence, health and spiritual security of a person. It might even result in a person's death.

The 'soul' is believed to be pure crystal or, in the local symbolism, 'white' in colour. It is thought that any of the incidents and events mentioned above could cause a change in its colour or mood. It is actually believed that such things cause a temporary separation, though not a parting, between the essential components of a person – the body, the soul and the spirit. In such circumstances, the wholeness of a person's being is believed to be fundamentally affected; and in the experience of the people, it reflects bodily on the mood of the person involved. It is in such circumstances that the paleness of a person resulting from illness or depression is explained as *ne kra aguan* (her/his soul has deserted him/her), *ne kra abotow* (his/her soul is low in spirit), or *ne sunsum ayE har* (her/his spirit has lost its weight). The close-knit kinship system in which individuals and groups are joined in an extensive and complex network underpinned by metaphysical explanations means that an insult or abuse suffered by one person is thought to affect many people at the same time.

Those found guilty in traditional courts of causing any offence of such nature to another person were, therefore, punished severely. In the case of slander, for example, among the Mfantse the punishment was severe. Sarbah reports:

An effective way of punishing a person guilty of slander of serious consequences, is to make him walk through the town or village carrying a heavy stone in front of an officer of the Court, who, at convenient halting places, beats a gong: the guilty slanderer is compelled to recant his base falsehoods, and confess his disgraceful behaviour, amid sneers and jeers of the multitude. The heavy stone so carried is called *oturbiba*.⁹⁵

Usually, the customary judicial process in such matters has both a compensatory and a pacificatory element in favour of the victim, in addition to the punishment the offender receives. The offender may be commanded to add a sheep, eggs or gin, or some or all of these together, to the fines to be paid. These additional payments are meant for pacificatory rites in order to restore

⁹⁵ John Mensah Sarbah, *Mfantse Customary Laws*, (London: Frank Cass & Co., 1968) 283.

the soul or the spirit of a person to its proper state of health and functioning. The rites are also meant to restore the harmony of the community.

The acts that are classified as *egudodoamE* are taboo-offences because their effects are believed to be devastating to the vital life forces of the individual and the community. For example, to hit a human being even with the hand is bad enough. However, to hit them with a broom or with sandals or a shoe from under one's feet is regarded as a terrible form of violence. The meaning of the act is the issue. Brooms are used to sweep refuse, garbage, the dross we do not want near human habitation. That is what they must be used for; not on human beings. To use a broom on a human being is to draw an equation between the person and refuse. It is humiliating. In outlawing such a practice the community affirms human dignity. The same could be said about using your feet or your sandals or shoe on another person. The foot is not only the lowest part of the human body but, metaphorically, also the dirtiest. It is a show of the grossest disrespect to use one's feet on any human being, for whatever reason. It is even a taboo to step across a person who is lying down.⁹⁶

Those who engage in certain unacceptable behaviour are also regarded as having undermined their own sense of dignity as human beings. Traditionally, the rapist, especially the defiler of a minor, those who commit incest and adultery, the murderers, alleged witches or wizards and practitioners of evil magic were treated in ways that suggested a depreciation of their humanity. In the olden days, those guilty of sexual offences such as rape, adultery,⁹⁷ incest and defilement, as well as those who broke taboos, including those categorised as *egudodoamE*, were taken through rituals of cleansing and restoration after their punishment. Those guilty of murder, witchcraft and the use of evil magic, and incorrigible thieves were condemned to death or banished from the community.⁹⁸

Rituals would be performed for both the perpetrator and the victim. Rituals were performed on the victim because it was assumed that the humiliation and trauma suffered had violated their dignity and affected the proper and integrated functioning of their essential components - the soul, body and spirit. The perpetrators also had to go through the rituals because it was held that their behaviour veered way off what was expected of a normal member of the human family. In Ewe, the popular phrase, *etsi B□mE* (part of you is left in *B□mE*, the pre-natal world of spirits) would be used of such people; the Mfantse would say, *□nnyE nyimpa* (he/she is not human). In Ewe, the ritual to correct *egudodoamE* is called *gudedenamE*, which literally means 'cleansing a person of evil.'

The view of humanity in terms of the sacred puts the human being in a unique category and entitles them to certain basic forms of respect. By specifying certain taboo-acts as 'never to be done' to any human being, traditional society showed that it believed in a threshold of dignity below which no human being should fall. In holding certain moral failings in extreme abhorrence, these societies underscored the dignity that comes with the exercise of responsibility in human communities. Perhaps Kant's 'priceless value' of the human being and Cicero's

⁹⁶ See Atiemo, 'Mmusuyi and Deliverance,' 19.

⁹⁷ Adultery, if it was committed against the chief attracted the capital punishment.

⁹⁸ Abotchie, 'Legal Processes and Institutions,' 81.

‘ability to discern between good and evil’ combine to provide some insight into what it means to be human and to possess dignity in the Ghanaian traditional worldview.

6.8.3 The differently-able, the differently-looking and human dignity

Does every person possess human dignity in equal measure in traditional Ghanaian societies? Most discussants insisted that traditional ideas of dignity encompassed all members of the community. Granted that everybody is presumed to have dignity, do traditional societies in Ghana recognise and respect everybody’s dignity equally? Initially, it was difficult to find a way of ascertaining in our research the factuality of the claim that all humans are equal in dignity. Eventually, the decision was taken to focus on how the various categories of people are treated at important landmark stages in life, such as birth and death. The underlying assumption of this method was that the rites that are performed at those stages often give some indication of the community’s views and beliefs about the person with respect to their standing or status in the community.

Understanding the various symbolic acts and objects involved in the rites can reveal something about the community’s assumptions about their members who are, in one way or another, different in appearance and in other ways from the generality of the people. For example, a newborn child that has not been given a name is not regarded as having yet attained personhood because its identity is not fully defined. If it dies before the eighth day when, customarily, it should have been named, it is buried without ceremony. Having a name means having an identity; having an identity is considered an important part of being human. In the traditional areas studied, a person’s basic identity is defined by belonging to the lineage. The act of naming the child is an expression of its being accepted by, and incorporated into, the community.⁹⁹ Thus, for a child to die before it was named meant that it had died when it was not yet fully human.

In traditional communities, in the past, babies born with serious deformities were not allowed to live; they were killed shortly after birth. They were considered not properly human; and sometimes, they were considered as spirits that had come in this form to punish the parents for some offence. A female discussant at Gomoa Antseadze claimed that such babies were taken to a river or to a lake side and when rituals had been performed for them they would turn into a snake or a fish and swim into the water. However, an elder explained that this was the story normally told to the public, but that the babies were actually killed. Twins and albinos are traditionally looked upon as carriers of special spiritual power. Twins, especially, have elaborate rituals performed for them in all three traditional areas. It is believed that they bring prosperity to their father if they are well-treated; but that the father’s fortunes may worsen if they are maltreated. It is even believed that they might die in infancy if their soul (*Ɔkra*) feels offended. But while twins were traditionally almost always regarded as mascots bringing good luck when well-handled, albinos¹⁰⁰ and hunchbacks were regarded as persons who carried a rare sacred quality that made them the most preferred candidates for rituals involving human slaying.¹⁰¹

⁹⁹ The UNCRC, in Articles 7 and 8 provides for the right to have name from birth and be granted nationality and makes it the state’s duty to protect the child’s identity.

¹⁰⁰ Reported murders against albinos in Burundi (see ‘Albinos in Burundi flee Killings’ *Daily Graphic*, October 4, (2008) 5.

¹⁰¹ Recent reported murders of hunchbacks in Ghana were believed to have been carried out for ritual purposes. See ‘Two more arrested over hunchback killings,’ *The Ghanaian Times*, September 2 (2008) 4.

A study of burials and funeral rites is important to help determine how a society regards categories of human beings. By observing and analysing the way communities bury different categories of human beings, one may arrive at a particular society's concept of what makes a person properly human. In all three societies studied, it was observed that the deceased also have a dignity that must be protected. They have a right to a decent burial and funeral. Those who are denied the full range of honour due the dead are those regarded as having lost the right to be accorded a funeral that befits their dignity as human beings. For example, in the past, and in a few cases in modern times, among the Ewe, people who were thought to be witches or wizards or to use evil magic were denied decent burial and funeral rites. In some cases, even after they had been buried, if it was revealed that they were guilty of such offences while they were alive, their bodies were exhumed and burnt.¹⁰² This was to prevent the reincarnation of such evil persons. For the same reason, persons who had died of suicide, as well as murderers, were also not accorded normal funeral rites.

While it is not too difficult to understand why people who are known or believed to be guilty of serious offences should lose their dignity, it is not so easy to understand why similar treatment is given to persons who through no fault of theirs are born deformed.¹⁰³ For example, in some of the research areas, persons with deformities such as cripples and hunchbacks were also treated differently in burial. The explanations given by discussants were the same in all cases. It is to send a message to the spirit world that the society is not tolerant of such conditions and that those buried should not reincarnate in the same or similar form. Thus, they were buried disgracefully in order to discourage such people from coming back to be born into the family in the same condition. This means that although such people might possess dignity in and by themselves, that dignity is undermined in the eyes of the society by their unfavourable and challenging physical condition.

However, traditional attitudes toward the disabled or physically challenged people and the deformed whilst they are alive are generally positive. The belief that the world is both physical and spiritual and that there is constant traffic between the two worlds, means that it is thought that the gods and the ancestors may sometimes appear as strangers; for example, as a lunatic at your door. The way you treat such a stranger would lead to a blessing if you treat them well and to punishment if you treat them badly. Such beliefs discouraged public mistreatment of the disabled and the deformed in traditional society.

Nevertheless, the expectation that families should protect their physically challenged members as a matter of duty was a more effective incentive than motivations derived from the fear of divine retribution. By traditional norms, it is cruel and shameful to neglect the weaker members

¹⁰² According to Agbanu, the ritual of cremating alleged witches, sorcerers and those who practise bad medicine is still practised among the Mafi Ewe. See Agbanu, 'Moral Evil and Cremation,' 86; Martin O. Ejidike reports from Nigeria: 'Those who died with swollen stomachs or struck by lightning were believed to have incurred the wrath of the gods and were therefore denied burial and cursed never to reincarnate. They lost any claim to burial and remain thrown into the forest.' See Martin Okey Ejidike, 'Human rights in the Cultural traditions of the Ibo of South-Eastern Nigeria.' *Journal of African Law*, 43 (1999) 75.

¹⁰³ Ahorator's study among the Ewe of North Tongu gives an important insight. Disability is explained as being the result of moral failings or wickedness or activities of evil spirits. Such views inform that social attitudes toward people with disabilities. See, Godson Ahorator, 'Traditional Beliefs and Attitudes towards Disability Among the People of North Tongu,' (master's thes. University of Ghana, 2000) 50 – 64.

of your family.¹⁰⁴ Maltreating any disabled or vulnerable person could result in courting the anger of their families. This is underscored by the Mfantse proverb: *ƆbƆdamfo mpo wƆ owura* (even the lunatic belongs). One of the most formidable mechanisms for the protection of individual rights in Ghanaian traditional societies was the family. For example, parties in marriage could always count on the extended family to defend them against marital abuse.¹⁰⁵

Among the Mfantse, it was the chief who catered for the welfare of the deformed and others who had come of age but were not able to fend for themselves because of their challenging physical condition. Mostly, such people became part of the palace servants and performed light duties such as entertaining people at gatherings at the palace. Sometimes they depended on the traditional priest at the state shrine to cater for them. This seems to have been an old Ghanaian practice. When individuals were in distress and could no longer depend on their families, they became the responsibility of the community. Reports about Efutu in the Gold Coast of the seventeenth century show that in the then emerging urban communities the increasing number of destitute citizens were catered for by the imposition of special taxes and from court fines; and the chiefs were obliged to provide the physically handicapped with employment.¹⁰⁶ It is also said that the 'priestly estate of the *abosomfo* and *asumanfo* assumed responsibility for the material welfare of the destitute.'¹⁰⁷

Traditional ideas of human dignity did not apply to everybody in equal measure. Again, this is evident in some of the practices that attended the burial and funeral of kings and chiefs. The belief that the human being has a soul and a spirit that survive their sojourn in the material world implied that when people died they moved on to settle in another world. Traditionally, the dead are said to embark on a journey to another world, where they would continue to live in ways similar to life in this world. Therefore, cloths, ornaments and money were usually buried with the dead. This was done for all who died, including the commoner.

In pre-colonial times, the practice existed where the remains of dead kings and chiefs were buried with a retinue of servants, presumably, to accompany and serve the dead ruler in the world of the dead.¹⁰⁸ Probably, the idea of a chief or a king appearing in a new world with a retinue of courtiers was meant to assert the dignity of these great persons. While they lived in this world, kings and chiefs were not supposed to go anywhere alone, and a large army of servants of different categories – slaves, pawns, and volunteers, served them. So, it was concluded that they ought to be accompanied also in their journey to the world of the spirits; therefore, some people were killed by decapitation to accompany them. The number of people killed for this purpose depended upon the greatness of the particular king or chief.¹⁰⁹

Was this a case of ensuring dignity related to the status of the king by disregarding the inherent human dignity of the ordinary person? One of the paradoxes of religion is how it affirms life to

¹⁰⁴ Ahorator, 'Traditional Beliefs,' 68 -72.

¹⁰⁵ A. N. Allott, 'Marriage and Internal Conflict of Laws in Ghana' *Journal of African Law* 2 (1958) 177.

¹⁰⁶ Ray A. Kea, *Settlements, Trade, and Politics in the 17th Century Gold Coast* (Baltimore/London: The Johns Hopkins University Press, 1982) 303-305.

¹⁰⁷ Kea, *Settlement and Trade*, 305.

¹⁰⁸ Wiredu, 'An Akan Perspective on Human Rights,' 258.

¹⁰⁹ E.g. at Bantama during the annual *Odwira* for the former *Asantehemfo* (Asante kings), victims of such ritual killings were despatched with the sending-off command *ko samandow ko som* (go serve in the world of the dead). See R. S. Rattray *Religion and Art in Ashanti* (Oxford: Oxford University Press, 1927) 139-143.

the point of making it sacred and yet provides the basis for its destruction in ritual and other contexts. The taking of human life for ritual purposes was resorted to, presumably in order to achieve some communal goal. Among the Mfantse, there is the tradition of the priest, Egya Ahor, who, according to tradition, offered himself to be killed ritually to stop a plague that threatened to decimate the Mfantse population. He is celebrated throughout the land of the Mfantse in the rather elaborate and sombre *Ahobaa* festival that is held every year.¹¹⁰

Ritual killings and human sacrifices, both in cases in which the victim offers him/herself voluntarily and in cases in which they are forcibly seized and killed cannot, either in modern times or in the past, be justified in the context of the idea of human dignity. Even in the context of the traditional religious practice, a pointer to the wrongness of the practice was the resort to ritual fumigation and bathing with herbs by executioners in order to escape harm by the vengeful spirit (*sasa*) of their victim.¹¹¹ Egya Ahor is still mourned today throughout the land – a signal that the taking of an innocent person's life, even if it is for the good of the community, is not seen in the context as normal. Indeed, the sense of human dignity or the belief in the sacredness of human life is so embedded in the consciousness of traditional Ghanaian societies that the taking of human life was a taboo, which demanded elaborate rituals as remedy. In war situations it was only when the humanity of the enemy was denied that combatants found it easy to kill. But even in that case, elaborate rituals followed quickly.

We may conclude that there have been ideals of human dignity and a general recognition that such dignity ought to be protected, although the idea of dignity was not applied equally to everybody. Yet, the presence of such ideals in Ghanaian culture should serve to facilitate the development of a modern human rights culture in Ghana that is not in tension with the ideals enshrined in the various human rights instruments of the UN.

6.9 Colonial encounters and human rights

Traditional societies in Ghana produced their own paths to social change before the onset of colonialism and during the colonial era. Social change occurred both as a result of internal promptings and in response to external stimuli.¹¹² Though the encounter between the peoples of present day Ghana and Western Europe started in 1471, it was only in 1844 that a formal relationship between the British and the people began, which eventually resulted in the colonisation of Ghana. Several chiefs of the coastal ethnic states, apparently, impressed by the pacifying effects of the administration of George Maclean, the President of the Council of Merchants appointed by the British Committee of Merchants to administer the forts and castles in 1830, readily appended their signatures in 1844 to a declaration that came to be known as the Bond of 1844.¹¹³ The document acknowledged and regularised British jurisdiction and power that had been exercised irregularly by Maclean. The text of the declaration reveals how much, by that time, a self-evaluation of indigenous customs and practices, prompted by the encounter with

¹¹⁰ J.D.K. Ekem, 'Concepts of Atonement in the Letter to the Colossians Examined in Relation to Abura-Mfantse Sacrificial Ideas: Implications for an Incarnational Christology' (M.Phil thesis, University of Ghana, Legon, 1987) 93, 118 -121; Crayner, *Bôrbôr Kunkumfi*, 80 -93.

¹¹¹ Rattray, *Religion and Art*, 5, 22, 27n, 132, 153; See Atiemo, 'Mmusuyi and Deliverance,' 45.

¹¹² J. Max Assimeng, *An Anatomy of Modern Ghana: J. B. Danquah Memorial Lectures, 28th Series, March, 1995* (Accra: Ghana Academy of Arts and Sciences, 1996) 15.

¹¹³ Boahen, *Ghana: Evolution*, 40 – 41; G.E. Metcalfe, *Maclean of the Gold Coast, 1801-1847* (London: Oxford University Press, 1962), VI-X.

the West, was already yielding fruits in the direction of human rights. Declaring that ‘the first objects of law are the protection of individuals and property,’ the document acknowledged as ‘abominations’ and ‘illegal’ customs such as ‘human sacrifices’ and ‘panyarring.’

British colonial rule came with new ideas and values that combined with other factors such as the missionary enterprise to create an environment that facilitated a speedy activation and development of indigenous ideals that showed affinity with the values of freedom and dignity of the individual and the rule of law.¹¹⁴ The modest success of the British judicial system, introduced by Maclean, meant that the traditional system of administering justice had been exposed to critical evaluation and would in due time have to undergo serious reform or naturally die. A natural love for freedom and justice, which had lain uncultivated all along, began to be unleashed when the time was ripe. By 1842, a picture emerges of a people increasingly conscious of their individual identities and fired by a sense of fairness and justice: ‘people brought “palavers of all kinds, law suits, complaints of servants against their masters, masters against their servants, wives against their husbands, and law suits relating to the owning of ground etc.”¹¹⁵

The formal establishment of British colonial authority in 1874 was accompanied by a tremendous improvement in the security situation of the country, which enabled the flourishing of trade and a significant progress in missionary work. The individualist tendencies in the Ghanaian, which had become manifest since the trade with the Europeans started, matured with great speed. Competition in economic endeavours was keen; and though people still counted on traditional social units such as family and lineage for support, individual consciousness became more pronounced.

In the previous chapter, we discussed how certain factors, including the work of the Christian missionaries led to the emergence and growth of individual consciousness in the colonial era. In Asante, where colonial rule was established much later in 1902, similar developments occurred: ‘Mission training, education, and increase in trading and cocoa cultivation’ led to the spread of ideas linked to modern concepts of democracy and human rights.¹¹⁶ The communalism of pre-colonial times came to be resented by the ordinary people. Arhin writes about the illiterate sub-elite in Asante:

It is clear ... that the apparent support of the *akonkofo* for colonial rule was specific: it was limited to what was believed to be a feature of colonial rule, which was to protect individual enterprise and property against state aggrandisement. Correspondingly, criticism of the traditional authority was limited to that aspect which the *akonkofo* thought prevented personal accumulation of wealth.¹¹⁷

In the end, these developments undermined the indigenous institutions and led to widespread protests against both the traditional political system and colonial rule. By the beginning of the twentieth century, criticism of both the traditional order and the colonial system had become a passion of the educated elite and the merchant class of the country; and newspapers emerged that

¹¹⁴ Kimble, *A Political History*, 131.

¹¹⁵ Boahen, *Ghana: Evolution*, 39.

¹¹⁶ Arhin, ‘Some Asante Views on Colonial Rule,’ 157; Busia, ‘*The Position of the Chief*,’ 124.

¹¹⁷ Arhin, ‘A Note on the Asante *Akonkofo*,’ 28.

were fiercely critical of both traditional and colonial institutions and policies.¹¹⁸ The result was the emergence of new groupings around new interests, such as economics, politics and Christianity. They included the Aborigines' Rights Protection Society (ARPS) and the National Congress of British West Africa (NCWA). There were also literary and reading clubs as well as ladies' associations that brought together educated women.

The rigorous enforcement of the emancipation order by the colonial government, and the encouragement and support given to slaves by the missionaries¹¹⁹ began to sweep away the distinctions between the various strata of the traditional social structure. The stress on the equality of all human beings, and the constant use of terms such as 'freedom' in the crisis period of the emancipation helped nurture the ideas and vocabulary for the articulation of universal ideas at the grassroots level. This is illustrated by an incident that reportedly happened at the Kyebi Basel Mission School in 1876. It is said that one day when it was the turn of a pupil who belonged to the royal family to fetch water, a child of a former slave told him, *Kɔ̃saw nsu no bra, afei yEn nyina ayE pE*. (Go and fetch the water, for we are all equal now).¹²⁰

Assimeng lists a number of 'internal and external' factors that contributed to these developments. He mentions, among other things, the Christian gospel, with its emphasis on equality of all people before God and the one God who is supreme over all nations; he also mentions literary education, geographical mobility, journalism and mass communication, and visits by Africans to Europe and America.¹²¹ However, these factors worked with the speed they did because the soil that was ploughed was already fertile and contained the seeds of values supportive of the new ideas. A memorandum written by J. C. deGraft Johnson, an Assistant Secretary for Native Affairs, paints a picture of what had become a general characteristic of the Ghanaian 'native' by the end of the second decade of the twentieth century,

...no freeborn Gold Coast (Ghanaian) native, who was not in want, would condescend to carry loads or do manual work for any man for wages. He will work or farm for himself, but to be hired out on a wage-system goes against the grain of his conception of freedom....Generally speaking he takes his liberty so seriously that he will rather starve than be regarded as menial.¹²²

With such level of consciousness about their personal liberty, the culture of the then emerging modern nation-state had already reached a high level of dialogue with ideas cognate to human rights. It appears that the power and influence that made the prominent individual a patron of others, in a new era of opportunities inspired a general ambition in people to want to be economically independent.

¹¹⁸ Some of the newspapers that emerged from the 19th Century onward were, *the West African Herald, the Gold Coast Chronicle, the Gold Coast Methodist Times* and *Gold Coast Echo*.

¹¹⁹ For a detailed account of the Basel Missionaries' involvement in enforcing the Emancipation order, see Peter Haenger, *Slaves and Holders on the Gold Coast* (Basel, 2000,) and also, Perbi, *A History of Indigenous Slavery*.

¹²⁰ Peter Haenger, *Slaves*, 135.

¹²¹ Assimeng, *Foundations*, 40 -47.

¹²² J. C. deGraft Johnson, 'Memorandum on the Vestiges of Slavery in the Gold Coast,' (National Archives of Ghana, Accra, ADM11/1/975, 17 October, 1927.

6.10 Conclusion

Seeds of human rights did exist in pre-colonial Ghana. The political arrangements and social structure of the various traditional societies were relatively open; and several Europeans who visited the country were fascinated by the level of the rule of law and the sense of freedom they found. Underlying these aspects of political and social life in pre-colonial Ghana was a foundation of religious beliefs concerning the universe, the human being and the workings of the various components of the social and political set-up.

Prominent elements in the nurturing of the seeds of human rights were devices that were meant to ensure the protection of human dignity. These included formal arrangements by which the vulnerable in society were protected and catered for. They also included taboos that prohibited the meting out of certain forms of treatment to human beings, based on the belief that human beings have a dignity that cannot be violated. Yet, these existed side-by-side with beliefs and practices that violated, rather than upheld, the dignity of certain categories of human beings. Encounters with new ideas during the period of European presence in Ghana served to challenge some of the negative aspects of the Ghanaian culture and helped to activate and develop ideas cognate to human rights.

In the next chapter, we turn our attention to exploring what fruits various historical processes have yielded in the area of human rights and the possibilities of further development of a human rights culture in Ghana.