

The Separation of Church and State under Ghana's Fourth Republic

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Abstract

Ghana is religiously diverse. Data from the country's Statistical Service indicates that as of 2010, 71.2% of the population was Christian, 17.6% was Muslim, and 5.2% were adherents of traditional religious beliefs. Non-believers accounted for only 5.3%. Believers other than believers of the three main religions were less than 1%. Despite the diversity, the country has enjoyed peaceful co-existence among all sects and denominations; sectarian violence is a rare phenomenon. Controversies about religious discrimination and stereotypes, and government over indulgence of religion are, however, not uncommon. This article examines the vexed question of separation of church and state in Ghana. It seeks to identify what the country's religious identity is—whether secular or otherwise—and the implication of that identity for religious expression in public life.

Keywords: Ghana, religion, Hijab, first amendment, establishment clause, secularism

1. Introduction

Ghana is still in its formative years as a constitutional democracy. Since the Fourth Republican Constitution ("the 1992 Constitution") came into force about 22 years ago, various issues have been shaping up the country's development into a mature democracy. In recent times, one of such issues has been the place of religion in public life.

The trigger for the recent religious controversy was the registration of Junior High School students for the 2015 Basic Education Certificate Examinations (BECE). The registration is an annual exercise undertaken by the West African Examinations Council (WAEC), the body that administers certification examinations for pre-tertiary students in Ghana (Note 1). The 2015 registration did not pass off without incident. The WAEC guidelines for the registration somehow got interpreted in some schools in the country as requiring Muslim girls to remove their veils ("*hijab*"), before taking passport-size pictures for the process. The reaction of some leaders of the Muslim community was fiery: "We want to be obedient to Allah. We are the custodians of these girls. So we say, we are not going to allow anybody to trample on our rights." (myjoyonline.com, 2015)(Note 2).

The President waded in when he delivered the 2015 State of the Nation Address to Parliament. He described it as "wrong under our constitution for Muslim students to be compelled to attend church services or for Christian students to be compelled to attend Muslim congregational prayers" (Mahama, 2015). And that "it is also wrong to prevent Muslim women from wearing the 'hijab' or Nuns from wearing their habits to work or to school". He then warned that "appropriate sanctions would be taken against any heads of institution who act contrary to the constitutional provisions." (Mahama, 2015)

The Christian establishment whose mission schools have usually been caught up in complaints of religious discrimination did not take kindly to the presidential threat of sanctions. The Catholic Bishops' Conference which is the governing body of the Catholic Church in Ghana, for instance, issued a statement the relevant parts of which were the following:

We, the members of the Ghana Catholic Bishops' Conference have followed with grave concern the recent developments in our dear nation with respect to calls for unregulated religious practices in our schools. We note, in particular, the unwarranted threats of sanction coming from Government circles...Consequently, we wish to assure Heads of our Catholic Educational Institutions to remain resolute and not feel unduly intimidated by threat of sanctions. We expect our Heads to continue to manage our schools in ways and practices that are in conformity with our Catholic identity and mission. (Badu, 2015)

With this, what started as a little misunderstanding over the registration process for school examinations had blown up into a turf war between the Christian and Muslim establishments with Government in the middle of it (Akweiteh, 2015). A public debate on the observance of religious practices in public life ensued. The main subjects of discussion were school prayer and devotions as well as the wearing of the hijab by Muslim women to work and school. Ultimately, the question turned on whether all students—regardless of their faith—had to observe the religious mores of “government subvented mission schools” including attendance at gatherings where the prayers or rituals of the religious missions are observed.

We look at the issue from a broader perspective. We consider what ought to be the relationship between the state and religion under a constitutional democracy. This is because religious expression in schools has not been the only issue that has often raised the question of how the state ought to relate to religion and the religious establishment. Complaints about prayer at national events, particularly, the observance or exclusion of the prayers of some faiths has, often, made it to the front burner of national discourse (Note 3). Questions have also been raised about government sponsorship of pilgrimages (Yeboah, 2013; Brefo, 2013) and the donation of livestock, drinks and even cash to support the celebration of religious festivals. There is then the annual one month ban on drumming and noise making which precedes the celebration of the *Homowo* festival by the Ga traditional councils. Charismatic Christian groups that adopt drumming, dancing, loud singing and prayers as part of part of their worship have long battled the ban. To avert the usual violent confrontations that attended its imposition, the government has since 2002 put in place a security task force to monitor its enforcement.

Is the state, together with its institutions, forbidden from engaging in such practices? If not, to what extent may the state relate to religion without trespassing the limits of non-discrimination in its dealings with the religious establishment? We examine the provisions of the 1992 Constitution that govern the relationship between the state and religion. We attempt to ascertain whether the Constitution seeks to establish a secular society along the lines of the American model, or a religiously plural society in which case the state is not necessarily forbidden from associating with religion. We then conclude with what ought to be the way forward on the specific controversies including school prayer, the wearing of the hijab, and the *Homowo* ban on drumming and noise making.

2. The Secularism-Pluralism Dichotomy

As previously hinted, “secularism” and “religious pluralism” do not mean the same thing. It should therefore be helpful at this point to attempt an explanation of the two concepts. We do so by illustrating how they are respectively understood in the United States and Europe. These two regions of the world offer the best case study on the subject due to their notorious history as far as the church-state relationship is concerned.

2.1 American Secularism

The religion clauses of the First Amendment to the United States Constitution provide that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof”(United States Constitution, Amendment I). The first part of the provision (i.e., *the establishment clause*) has been subject to two principal theories of interpretation. What has become the dominant theory (“*the separatist view*”) postulates a strict separation between the state and religion. It calls for the strict neutrality of government in all matters affecting religion. The idea is that the conduct of government must “have a primary effect that neither advances nor inhibits religion.” (*Lemon v Kurtzman* 403 U.S. 602, 612 (1971)). So, it has for instance been held that “neither a state nor the Federal Government can set up a church” (*Everson v Board of Education* 330 U. S. 1, 15 (1947)). That “neither can pass laws which aid one religion, aid all religions, or prefer one religion over another” (*Everson v Board of Education*, at 15). That “no tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion”(*Everson v Board of Education*, at 16). And that “neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa” (*Everson v Board of Education*, at 16)).

The other theory is the minority view of non-preferentialism. This view postulates that the establishment clause of the First Amendment was intended merely to prevent “the establishment of a national church or religion, or the giving of any religious sect or denomination a preferred status” (Cord, 1982, p. 15; Sullivan & Gunther, 2010, pp. 1277-78). It is then concluded that the government may “support religion in general so long as it does not prefer one religion over the other” (Sullivan & Gunther, 2010, p.1278). The two views on the interpretation of the First Amendment respectively illustrate the contrast between secularism and pluralism. While secularism commands a divorce of the state and religion, pluralism encourages a marriage of convenience in which the state is expected to relate to all religions in a fair and non-discriminatory manner.

In spite of the dominance of the separatist view today, it is instructive to note that the United States has not always been this secular. Indeed, in the early days of the American Republic, the understanding appeared to be that a non-preferentialist relationship between the government and religion was not a violation of the First Amendment. Practices of government contemporaneous with, and in the immediate aftermath of, the adoption of the First Amendment confirm this observation. For instance, almost all the early Presidents made prayer part of their official inaugural ceremonies (Scalia J in *Lee v Weisman*, 505 U. S. 577, 633 (1992)). Sessions of Congress, beginning with the First Congress, have always been opened with prayers by a chaplain (Scalia J in *Lee v Weisman*, at 633). As a matter of fact, the day after the First Amendment was proposed, Congress “urged President Washington to proclaim a day of public thanksgiving and prayer, to be observed by acknowledging with grateful hearts the many and signal favors of Almighty God” (Scalia J in *Lee v Weisman*, at 634-635). Now, the Thanksgiving Holiday has become part of American secular culture. But, in fact, when it was first proclaimed by President Washington, it was meant as “a day of thanksgiving to offer prayers and supplications to the Great Lord and Ruler of Nations, and beseech him to pardon [America’s] national and other transgressions.” (Scalia J in *Lee v Weisman*, at 634-635).

Notwithstanding these historical pieces of evidence, the U.S. Supreme Court has over the years adopted the secular (“separatist”) interpretation of the First Amendment. It has banned a number of practices which were for many years considered as part of American culture and innocuous under the Establishment Clause. Within the public school setting, it has banned officially sanctioned prayers (*Engel v Vitale* 370 U.S. 421 (1962)), scripture reading (*Abington School District v Schempp*, 374 U.S. 203 (1963)) and meditation of any kind (*Wallace v Jafree* 472 U.S. 38 (1985)). It has prohibited non-denominational prayers at public high school graduations (*Lee v Weisman* 505 U.S. 577 (1992)), outlawed the study of creation science (*Edwards v Aguillard* 482 U.S. 578 (1987)) and declared as unconstitutional inscriptions of any of the Ten Commandments on the walls of courthouses (*McCreary County v ACLU of Kentucky* 125 S.Ct. 2722 (2005)).

This posturing of the Court to the First Amendment may lead one to wonder whether it is not promoting irreligion and atheism at the expense of religion (see eg., Scalia J in *McCreary County v ACLU of Kentucky*, at 2758). If this is the case, as it indeed appears to be, then these very opinions of the Court violate strict neutrality which is the foundation of separatism or secularism. This is because by pushing religion out of the public space, one ends up promoting irreligion and atheism, which are beliefs and worldviews alternative to religion. Therefore it would appear that pushing one set of belief system out of the public space is not necessarily the right strategy for managing the church-state relationship. Perhaps the better approach is to develop an equitable and non-discriminatory relationship with religion. This brings us to the European approach to church-state interaction.

2.2 Europe’s Religious Pluralism

Europe is by far the region of the world that has been the worst victim of the atrocities of war, human suffering and abuses. The many religious wars including “The Thirty Years War” that ended with the 1648 Treaty of Westphalia come to mind. In modern history, Europe has been the theater of the two World Wars. But after the Second World War (precisely in 1949), European states came together to form the Council of Europe an organization designed as a vehicle for European cooperation in the fields of human rights, the rule of law, and democracy (Note 4). By deepening respect for human rights and the rule of law, the Council would have been instrumental in stemming the tide of any further destruction and human suffering similar to what Europe had experienced in the past—hence its establishment.

Within the framework of the Council of Europe, the Convention for the Protection of Human Rights and Fundamental Freedoms 1950 was adopted. Article 9 of the Convention guarantees the freedom of religion. The relevant portion of the article states: “Everyone has the right to freedom of thought, conscience and religion; *this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance*” (emphasis added).

The European Court of Human Rights, the judicial body charged with the interpretation of the Convention has interpreted this provision to include a negative right of the individual to resist any form of religious indoctrination (*Kokkinakis v Greece*, No. 14307/88 ECHR 1995, para. 31). The Court has however declined the invitation to “secularize Europe” in the American understanding of the term. The most recent case on this point is *Lautsi and Others v. Italy* [GC], No. 30814/06 ECHR 2011 (“the Crucifix Case”). The applicants in the Crucifix case complained that the practice whereby public schools in Italy were required to hang crucifixes in the classroom violated the principle of secularism. According to them, secularism required the “State to establish a

neutral space within which everyone could freely live according to his own beliefs”, however “by imposing religious symbols, namely crucifixes, in classrooms, the Italian State was doing the opposite” (*Lautsi v Italy*, para. 44).

Italy and its supporting *amici curiae* argued that, on a true interpretation of the Convention, state parties did not have an obligation to promote secularism. This argument was anchored on two main grounds. The first was that since strict neutrality is the pivot around which secularism revolves, it would require state parties to refrain from promoting not only a particular religion but also atheism. But given that atheism is an alternative worldview to religion, the promotion of secularism by the state would be no less problematic than religious indoctrination by the state. The second argument was, that “states should not have to divest themselves of part of their cultural identity simply because that identity was of religious origin” (*Lautsi v Italy*, para. 44). Consequently, the mere fact that the Crucifix is a religious symbol did not mean that the age-old Italian culture of hanging it in classrooms and other public places should be discontinued.

The Court preferred the arguments of the State of Italy and accordingly held that hanging crucifixes in the classrooms of public schools, without more, did not infringe the rights of the applicants and their children to practice their convictions whether religious or irreligious. Concurring with the opinion of the Court, Judge Anne Power observed that the applicant “may have taken offence at the presence of a crucifix in classrooms but the existence of a right ‘not to be offended’ has never been recognized within the Convention” (*Lautsi v Italy*, p.109). For her, the requirement that a state must be neutral when faced with competing religious viewpoints “required a pluralist approach on the part of the State, not a secularist one” (*Lautsi v Italy*, p.110). The aim must be to encourage “respect for all world views rather than a preference for one” (*Lautsi v Italy*, p.110). Accordingly, she held that “secularism (which was the applicant’s preferred belief or world view) was, in itself, one ideology among others” and so “[a] preference for secularism over alternative world views—whether religious, philosophical or otherwise—is not a neutral option” (*Lautsi v Italy*, p.110).

Europe has, therefore, chosen a different path as far as the relationship between the state and religion is concerned. The Court has been careful not to “americanize” Europe by yanking religion out of the public sphere and thereby creating an automatic void for irreligion or atheism to fill. Individual European states have been allowed some reasonable latitude to define their religious identity in a manner consistent with the history and traditions of their societies. Thus, in contrast to other European states, France, for instance, operates a strict secularist policy—the *Laïcité*. But on the whole, the prevalent view, as gleaned from the Strasbourg jurisprudence, is religious pluralism which requires the state to maintain a fair and non-discriminatory relationship with all religions or worldviews.

3. What is the Ghanaian Position? Secularism or Pluralism?

Article 21(a) and (c) of the 1992 Constitution provide respectively that “all persons shall have the right to: freedom of thought, conscience and belief, which shall include academic freedom and [the] freedom to practise any religion and to manifest such practice”. This right to practice any religion and to manifest such practice is reiterated in article 26 of the Constitution. In article 17, discrimination of all forms including discrimination on grounds of religion is prohibited. Article 35 imposes on the state a positive obligation to “actively promote the integration of the peoples of Ghana and prohibit discrimination and prejudice on the grounds of place of origin, circumstances of birth, ethnic origin, gender or religion, creed or other beliefs” (emphasis added).

Controversies regarding the meaning of any provision of the Constitution are resolved by the Supreme Court which doubles as the final appellate court and the constitutional court (1992 Constitution, arts. 2 and 130). Even though the Supreme Court has not yet given an opinion on the “religion clauses” of the 1992 Constitution, it can be safely concluded that the combined effect of those clauses envisages “religious pluralism” as opposed to secularism for Ghana. Two reasons support this conclusion. First, a look at article 33 (under the *Directive Principles of State Policy* in Chapter Six), reveals that the Constitution leans towards a religiously plural society. As already noted, article 35 imposes on the state a positive obligation to *actively integrate* the people of Ghana by bridging societal differences, including religious ones. This duty cannot be carried out with the state standing aloof. It would involve the state having to develop some relationship with various institutions including the religious establishment. Thus, a pluralistic approach whereby the state respects all religions and worldviews, and relates to sects and denominations on the basis of fairness and non-discrimination is a reading that best comports with the provision.

Secondly, “a written Constitution such as ours is not an ordinary Act of Parliament” (*Tuffour v. Attorney-General* [1980] GLR 637, 647). “It embodies the will of [the] people”; it “mirrors their history”; and “contains within it their aspirations and their hopes for a better and fuller life.” (*Tuffour v. Attorney-General*, at 647). Accordingly one

can, for instance, not ignore the preamble to the Constitution which is more or less a window to its spirit (Note 5). The preamble to the 1992 Constitution opens with the words: “*In The Name of the Almighty God We the People of Ghana.*” Though it is technically not part of the Constitution, the preamble expresses the values, ideals and aspirations upon which the Constitution is established. It serves as an important tool for interpreting and giving effect to the provisions of the Constitution. So for all intents and purposes, the preamble is an integral part of the Constitution. In this regard, the opening words of the preamble to the 1992 Constitution cannot be taken for granted. They reflect the kind of society the people of Ghana wish to establish for themselves. From all indications that society is one in which the people of Ghana want the belief in God to be a part of. In the face of this, one will have a tall order mounting a counterargument that the Constitution envisages a secular society in which the public expression of religion or belief in God is frowned on.

In any case, belief in God and its manifestation in public life has long been part of the culture and traditions of the people of Ghana (Abotchie, 2006, p.170) As a matter of fact, historically, the Ghanaian chief or traditional ruler was not only an administrator or military leader but also the “chief priest” of his people. In that role “he offered prayers for the prosperity of the community” at public functions (Brempong, 2001, p.2). This is why prayers are said at national or public events till now. Accordingly, in Ghana, the question is not whether there ought to be some relationship between the state and religion. Rather, it is what should be the nature and extent of such a relationship. Like Europe, one can possibly not annihilate an aspect of Ghanaian public or cultural life merely because it is religious in character. Ghana’s approach to the church-state relationship is, therefore, more in tune with the European model. American secularism as evidenced by the Supreme Court’s First Amendment jurisprudence will, in many respects, not sit well within the Ghanaian constitutional and cultural set up.

4. Dealing with Specific Cases of Controversy

By our analysis, Ghana is a religiously plural state, not a secular one. The legal effect of this label is that religion has a place in public life. But then, to what extent? And what answers does religious pluralism provide to the specific controversies like school prayer, the wearing of the hijab or government sponsorship of pilgrimages identified at the outset of this article? We now examine these questions.

4.1 Prayer at National Events and Government Sponsorship of Religious Activities

The Constitution frowns on discrimination of all forms including discrimination on grounds of religion (1992 Constitution, art. 17). The state can therefore not discriminate against a religious denomination in its dealings. All shades of religious opinion must be given equal representation in public life. Thus, as far as prayers at public functions are concerned, it would appear that if the prayer of a particular faith is consistently given prominence and visibility to the exclusion of others, there could be a valid charge of discrimination and unfair treatment. In view of the religiously plural society that the Constitution envisages, the best way to go might be to institute non-denominational prayers for state functions. A good model to follow, in this regard, is the prayer that is read by the Speaker to commence business in Parliament. (Note 6) That prayer makes general references to God without identifying with any particular religious or denominational creed. The institution of a similar prayer for national functions and ceremonies will remove any sense of exclusion and hopefully promote unity and tolerance.

Regarding the presentation of cash, drinks and other items by the Government to support religious festivities, the practice must be discontinued unless it can be equitably extended to all denominations. By the same parity of reasoning, government financial support for pilgrimages must also be discontinued unless such support can be made available to pilgrims of all religions. It will not be fair for the state to support some religious denominations, without supporting others. But in any case, considering that it would be impossible to give financial support to every religious denomination, the logical conclusion must be that none should be given to any. Religious pluralism denotes a relationship whereby the state equally relates with, and accommodates all beliefs within the public space. That relationship can however not be stretched to cover government funding or material support for private religious activity. Because the temptation of preferentialism would be irresistible in such cases, the practice must be avoided altogether.

Consequently, one cannot escape the conclusion that the church-state relationship envisaged by the Constitution is one that is meant to be within the confines of government’s traditional welfare functions. Government support for mission schools or hospitals that are open to all members of the public would, for instance, be well within the limits of pluralism. So would government collaboration with churches, mosques or other faith based organizations to restore peace in conflict areas, to provide relief to victims of humanitarian crises, or to generally develop and implement community based development projects. As far as these are concerned, there can hardly be a charge of government over-indulgence in religion. Anything beyond these would, very likely, border on unconstitutionality.

4.2 Prayer, Devotion and Other Religious Observances in Schools

Having established the premise that the 1992 Constitution envisages a religiously plural society and not a secular one, we can safely postulate that prayers and other religious observances in schools are not necessarily contrary to the Constitution. They cannot be banned entirely. To do so will be to impose atheism or irreligion on everyone in the school setting. It follows therefore that the solution to the standoff between the Christian mission schools, the Muslim community and the Government does not lie in banning prayers and religious observances in schools. Rather, there must be a regime that ensures fairness and respect for all faiths and religious persuasions in the school setting.

We suggest that in dealing with the problem, what we term “religious rituals” must be distinguished from “school gatherings at which religious practices are observed”. By “religious rituals” we refer to those special ceremonies, worship services or gatherings which are commanded by the precepts of a particular religious denomination and at which the prayers, doctrines, and other practices of the denomination are observed or propagated. By this reasoning we consider that the right of a student in a public school or government subvented mission school is infringed if he is compelled against his will to, say, attend a Catholic Mass, a charismatic vigil service, or a Friday Muslim prayer. This is particularly so if the student does not subscribe to the religious persuasion of the school authorities, or has not previously consented to attending the ritual in question as part of his school training. Such mandatory rituals are objectionable because they create the avenue for forced indoctrination which everyone is entitled to resist (*Kokkinakis v Greece*, No. 14307/88 ECHR 1995, para. 31). As practical way out, school authorities could allow only those students who are willing to attend the rituals. Those who object may be made to have their own devotions under the guidance of the school authorities, or be required to undertake supervised personal studies for the duration of the ritual.

On the contrary, we do not consider that “school gatherings at which religious practices are observed” are objectionable per se or necessarily in conflict with the right of a student to subscribe to, and exercise, a religion of his choice. Events that will generally come within this category include morning assemblies, graduation ceremonies, speech and prize giving days, and school anniversaries. These are school gatherings meant for everyone. They are not rituals of a any particular denomination. They serve significant educational and sociological purposes, and are not inherently religious or meant to be. To this end, a student should not necessarily be excused from such a gathering merely because a prayer, or a religious practice he does not subscribe to, is observed as part of the gathering. As mentioned earlier, prayers form an integral part of the Ghanaian culture. Therefore like the European Court of Human Rights endorsed in the *Crucifix* case, Ghanaians do not have to divest themselves of a particular part of their “cultural identity simply because that identity [is] of religious origin”. In advancing this view, we are not oblivious to the fact that in every human community including a school, there is likely to be a dominant religious culture and minority ones. In the greater number of cases, it is the prayer or other religious practice of the majority that may be observed at social gatherings. That the prayers and other religious practices of the majority dominate the public square does not necessarily mean that minority religious views are being suppressed. So long as the minority religious culture is tolerated, and its members are not compelled to observe the prayers and rituals of the majority at such public gatherings there should be no cause for alarm.

Consequently, if the purpose of the prayer or other religious observance at a school gathering is “to solemnize the occasion” and it is not employed as a tool, whether immediately or over time, to “proselytize”, promote one religion, or to disparage any other faith or belief, it should be acceptable and well within limits of the Constitution (Note 7). Alternatively, to avoid any semblance of bias in favor of or against one faith, a non-denominational prayer, like the one suggested for national events and ceremonies may be adopted for gatherings in the school setting. Again, not only would such a prayer dispel the sense of exclusion some students may otherwise feel, it would also inculcate in the entire school community the values of tolerance, respect and unity in diversity.

4.3 The Hijab and Other Religious Garments

The freedom of a person to adorn himself with the garments commanded by his religion is an essential component of the right to hold a religious belief and to manifest its practice. The right to freely exercise a religion of one’s choice has, however, been held to involve two things: “freedom to believe and freedom to act” (*Cantwell v Connecticut*, 310 U.S. 296, 303 (1940)). “The first is absolute, but in the nature of things, the second cannot be” (*Cantwell v Connecticut*, at 303-304). To permit the absolute freedom of people to act out whatever they believe “would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself” (*Reynolds v United States* 98 U.S. 145, 167 (1878)). Consequently, no state can, or does, permit the absolute expression of religious beliefs. Ghana can be no different. Being a

cosmopolitan nation made up of people of varied religious preferences, it cannot be expected, much less required, that there should be no rules regulating conduct generally in society, and particularly in schools.

Thus, a person cannot complain of discrimination simply because there is a school rule which requires all students to wear school uniform, or dress in a particular way, even if the rule indirectly prevents that person from wearing an apparel commanded by his religion (see *Dogru v. France* No. 27058/05 ECHR 2008 and *Leyla Sahin v Turkey* [GC] No.44774/98 ECHR 2005). From this premise, it naturally follows that the question of whether Muslim students should, or should not, be allowed to wear the “hijab” in schools does not arise where a school rule requires all students to follow a particular dress code. If the school rule imposing standards of dressing (i) is neutral on its face; (ii) does not appear to have masked any underlying discrimination, and (iii) serves legitimate purposes like school discipline, identification and security, it cannot be objected to simply because it makes it difficult for a section of the students to express their faith. To permit exemptions is to undermine the binding force of the rule on the entire school community. The fact that some are permitted to ignore such a rule will eventually undermine the resolve of those who choose to remain under it. In the end, school authorities would be rendered powerless to supervise students and to maintain discipline in schools. A contrary view that encourages unregulated religious expression within the school setting would hardly be a proper reading of the religion clauses of the Constitution.

4.4 The Ban on Drumming and Noise Making

The Ga people are the indigenes of Accra, the national capital. Legend has it that a period of drought and hunger hit their ancestors when they first arrived on the Accra land. The people believe that the survival of their ancestors following subsequent years of rain and good harvest was due to the mercy of the gods and ancestral spirits. The *Homowo* (the festival of ‘hooting at hunger’) is celebrated to commemorate the starvation their ancestors survived. The month preceding Homowo, is set aside as period of silence. Drumming, singing, dancing and all other forms of noise making are prohibited. It is believed that the month of silence creates an atmosphere of peace for the gods, and in return, they reward the people with bountiful harvests.

Charismatic Christian churches disagree with the ban. They see it as limiting their worship which normally includes drumming and dancing, loud singing and prayers, as well as outdoor church services (“crusades”). The Ga traditional councils on the other hand, have always insisted on enforcing the ban leading to violent skirmishes in some instances. In May 1998, a mob made up of some overzealous elements on the traditionalist side attacked a charismatic Christian church service, “injuring dozens of churchgoers and causing massive property damage” (U.S. State Dep’t, 1999). In 1999, another spate of violence associated with the enforcement of the ban was reported. There were three separate incidents this time. With the first one, a “group of men allegedly hired by the Ga traditional council entered the Living Light Ministry at Darkuman-Nyamekye in Accra during a worship service and began to forcibly remove music equipment” (U.S. State Dep’t, 1999). Fortunately, the Church and the assailants reached an agreement thereby preventing any violent confrontation. With the second incident, “a group of heavily armed men identified as Ga Wulome Council guards disrupted services at the Mount Zion Prayer Center at Abeka in Accra, wounding five members of the congregation” (U.S. State Dep’t, 1999). The church’s [offertory] for the day was stolen, and the church facility was vandalized” (U.S. State Dep’t, 1999). The third incident which occurred the following day on 30 May, 1999, saw a group of armed men attack worshippers at the Apostolic Faith Mission in Odorkor, a suburb of Accra. A member of the congregation was “knocked unconscious and several others sustained minor injuries” (U.S. State Dep’t, 1999). The armed men then “seized musical equipment and allegedly stole money from members of the congregation” (U.S. State Dep’t, 1999).

Similar acts of violence intermittently characterized the enforcement of the ban until 2001 when the government created a monitoring task force to enforce compliance and prevent further violent confrontations (U.S. State Dep’t, 2002). Residents of the capital are now warned ahead of time to respect the ban or risk being arrested and prosecuted for violating public order (modernghana.com, 2002; graphic.com.gh, 2015). Though, there has since been a cessation of the violence generally, the tension and uneasiness between the Christian groups and the Ga traditional councils is yet to abate.

The Homowo ban on drumming and noise making is one of the complex problems presented by religious diversity and multiculturalism. Here is Accra, a city that is the national capital and hence a national (or perhaps an international) melting pot for different cultures, lifestyles and worldviews. At the same time, you have constitutionally recognized traditional institutions (i.e., the Ga traditional councils) which insist on enforcing an age-old superstitious taboo without regard for individuals’ freedom of conscience. The result is confusion and tension. It would seem however that, the real underlying cause of this tension is the blurred distinction between customary law which the Constitution recognizes as part of the laws of Ghana, and mere customary taboos which have over the years been treated by traditional authorities as though they were rules of law.

We therefore suggest that the right approach to resolving this problem, is to draw a fine line between customary law properly so called, which both the state and traditional authorities are mandated to enforce, and mere superstition or traditional religious taboos that cannot be universally applied. That was the approach adopted in *Owusu v Amoa-Obeng* [1992] 2 GLR 293 when the court had to deal with a similar problem. In that case, the defendants who were the chief and elders of Mpatasie, a village in the Ashanti Region, published a list of customary rules and taboos to guide the conduct of the citizens of the town. Among the rules were the following: (i) that on certain days declared as sacred by their fetish nobody should go to the farm; (ii) that upon the death of a person in the town their fetish should be purified before anybody could go to his farm; (iii) that a woman in her menstrual period should besmear her arms or hands with white clay; and (iv) that since their fetish “Tano” despised goats, nobody in the village should rear goats. The plaintiffs, who included the pastor and some members of the True Faith Church, were found on their farms on one of those sacred days. The chief and his elders summoned them and demanded that they slaughter a sheep to pacify the fetish. Upon their refusal to do so, the traditional council began harassing them and threatened to burn down their church.

Agreeing with the plaintiffs that the defendants’ actions violated the plaintiffs’ freedom of conscience, the court held that “a person has every right to object to any act or rule if by performing that act or observing that rule, his right of freedom of religion or belief is thereby infringed” (*Owusu v Amoa-Obeng*, at 296). But more importantly, the learned judge, Mr. Justice Lartey, made an observation which is crucial to resolving the current tensions between the Charismatic Christian groups in Accra and the Ga traditionalists. He noted as follows:

I think it is important to distinguish between customary practices which are purely based on traditional religion or the belief in the supernatural (which are not capable of proof in our courts) and custom known and determined by the courts such as customary marriage, divorce, land tenure, etc. It does appear that in the matter before me, the defendant [and] his elders...were trying indirectly to impose their religious beliefs on the plaintiffs who also shared a different religious faith or belief (*Owusu v Amoa-Obeng*, at 297).

The view of the learned Justice in this case is in line with the religiously plural society which the Constitution envisages. Customary law is part of the laws of Ghana and should therefore be enforced (1992 Constitution, art. 11(3)). But at the same time one must be careful to exclude from it practices and traditions which are based on superstition and traditional religious beliefs. The Homowo ban on noise making is inspired by the traditional religious beliefs of the Ga traditionalists. In a multicultural and multi-religious country, the religious beliefs of a part of the population cannot be passed off as laws for everyone (see e.g., Human Rights Committee, *General Comment No.22*, paras. 9-10). From this premise, it is axiomatic that the continued enforcement of the Homowo ban on drumming noise making in the Accra metropolis, is inconsistent with the cosmopolitan nature of the city and the concept of religious pluralism on which Ghana’s constitution is based. Thus, unless the ban can somehow be limited to only those who subscribe to its superstitious ideals, its universal imposition without regard for the freedom of conscience of non-traditionalists must be discontinued.

5. Conclusion

The problem of prayer and other religious practices within the public space is complex. It must be handled tactfully. It behooves all Ghanaians, particularly politicians, religious and opinion leaders, and social commentators to avoid inflammatory language and the tendency to harp on about trivial differences in religious persuasions. Again, to prevent avoidable tensions, promote national unity and engender social cohesion, the relevant stakeholders ought to dialogue often and come up with positions that will be acceptable to all. Constitutional adjudication of religious matters must be reserved as a measure of last resort. The insistence on strict legal solutions may be right, but it may not necessarily be wise. One can never tell the course an unelected bunch of nine or eleven lawyers might take on a vexed question of church and state.

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Notes

Note 1. WAEC also administers certification examinations for pre-tertiary students in the other four Anglophone countries in West Africa, namely, Nigeria, Liberia, Sierra Leone and The Gambia.

Note 2. Remarks made by Alhaji Said Jallo, an Islamic opinion leader, in an interview with Joy FM on 21 January 2015.

Note 3. See Graphic Online, (2012, March 12), *Absence Of Libation At State Functions Has Repercussions - Archbishop Kwasi Sarpong*. Retrieved from <http://www.modernghana.com/news/382985/1/absence-of-libation-at-state-functions-has-repercu.html>

Note 4. It is important to emphasize that the Council of Europe is an entirely different institution from the European Union.

Note 5. “The “spirit”...is another way of describing the unspoken core underlying values and principles of the Constitution.”—*Asare v Attorney General* [2003-2004] SCGLR 823, 836.

Note 6. See the Standing Orders of the Parliament of Ghana, Appendix B—(“ALMIGHTY GOD, we humbly beseech Thee to look with favour upon this Parliament of the Republic of Ghana. Grant that it may perform its high duty as in Thy sight. Give Divine guidance to the President of the Republic; endow Members of Parliament and Ministers of State with discernment and vision, integrity and courage that through the labours of government this land and people may be well and truly served, and Thy good purposes for the common human life be realised in our midst. AMEN.”)

Note 7. See *Town of Greece v Galloway*, (Decided 5 May 2014) where the U.S. Supreme Court held, albeit outside the context of a school, that “prayer that reflects beliefs specific to only some creeds can still serve to solemnize [an] occasion, so long as the practice over time is not exploited to proselytize or advance any one, or to disparage any other, faith or belief” (*internal quotations omitted*).

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