THE THEORETICAL APPROACH TO THE DISCOURSE ON SEXUALITY IN GHANA: LAW, POWER, AND CULTURAL RESISTANCE: THE CASE OF MINORITY GROUPS (HOMOSEXUALS)

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ABSTRACT

This paper presents a critical discourse on sexuality in Ghana. It examines the religious, constitutional and legal arguments on sexuality. It also examines the issue of sexuality (Homosexuality) as a normal or an abnormal behaviour, private or public matter, as well as the place of morality in sexual matters. All these were examined in respect of power relations and law. The study used a letter written by the Christian Council of Ghana, internet news sources, and some responses that were gathered via informal discussions.

The study used various theoretical tools such as perspectives of queer theorists, Foucault, and Brock's writing on sexuality to interpret and interrogate the data. The paper explores the clashes in the legal orders i.e. it shows how the Ghana Criminal Code and other traditional norms criminalize 'Unnatural Carnal Knowledge' intercourse whilst at the same time the constitution and other international laws guarantee the right to freedom from discrimination. These legal ordersbring into sharp focus issues of legal pluralism as the normative orders contradicts a statutory order whilst at the same time the statutory orders clash each other. The study also shows that whilst the dominant group considers homosexuality as an abnormal sexual behaviour homosexuals through the theoretical perspectives consider their sexual orientation as one of the terrain towards sexual citizenship.

The study further shows how 'power' permeate the whole sexual discourse as to who even determines morality. The paper concludes by settling on recommending a balanced approach to dealing with homosexuality rather than adopting an abusive approach.

KEYWORDS: Theoretical approach; Homosexuality; Human Rights; Power; Morality

INTRODUCTION

In many parts of the world, homosexuals remain highly stigmatized minorities. Homosexual acts are still commonly criminalized, though declining in number (Sanders, 1996). According to the first and most recent UN study in 2011 about seventy-six (76) countries criminalizes or penalizes adult same-sex relations, including Ghana. While homophobia is increasingly compared to sexism and racism, discrimination against homosexuals is much more widely accepted than other forms of discrimination. Foucault and other historians disclosed how homosexuals were punished through legal and religious sanctions (Somerville, 1994:243). The criminalization or penalization of homosexuality in some countries as stated in the UN report is indicative that ostracism in various forms associated with homosexuality cross both national and ethnic lines (Kymlicka, 1995: 19), as it is not only a characteristic of some developing countries but also that of some developed nations.

There are numerous religious objections against homosexuality. The main religious denominations (Christianity, Islam etc.),and the dominant traditional cultures especially in Ghana are continued to be cited as basis for state sanctioned discrimination. Although dominant cultures are often cited as basis for discrimination, from other perspectives, the neglect of a particular culture (i.e. whether majority or minority culture) may leave people in the 'dark'. It will likewise raise critical issues such as how people should deal collectively with economic disadvantage, prejudice, and the dilemmas of procreating and raising families under such conditions (Sullivan, 1989).

Nonetheless, the neglect of a particular culture may not at all time leave people in the 'dark' since it may also lead to the emancipation of the 'self'. That is, others may also have the opportunity to express themselves without reference to a particular culture in a way that may please them. This devalues culture as a weapon to ensure conformity and acceptance of the status quo.

In Ghana the dominant culture or group does not give a nod to homosexuality. It is unambiguous that even in customary practices Ghanaian customs frown on gay and lesbian engagements because of the traditional understanding of the concept of marriage as between a man and a woman. By tradition, people who engage in homosexual activity are banished from the society. Furthermore, no religion in Ghana condones the act. It is viewed as an abomination and as a real threat to family systems and nationhood. Therefore, it is argued that the earlier the constitution is reconstructed to be explicit on the phenomenon, the better it will be for the nation.

These kinds of arguments form a part of the common expressions most politicians, some scholars and religious leaders of different ideological persuasions put forward as their perspective. The dominant groups usually flout the fact that the society is made up of diverse cultures and each culture needs recognition, tolerance and respect as the dominant groups or cultures warrant for themselves. Tolerance, recognition and its associated characteristics form a part of the civilization discourse on sexuality as agued by Brown (2006: Denike, 2010).This is suggestive that tolerance in its treasured state is quite acceptable rather than castigation, which in most cases leaves traces of pain on its victims.

On 18th March, 2013 a news item popped up on the Ghana News Agency website about how youth in Tamale (the regional capital of Northern region, Ghana) have threatened to lynch homosexuals. Part of the content read:

> "We the youth in Tamale are against lesbians and gays. Our religion and culture is against it, we are going to fight it to ensure that it does not gain grounds in Tamale".

Before this news item, some ministers of state (public officials) in Ghana declared war on homosexuals (Karim, 2011); inciting the law enforcers to arrest and prosecute all persons suspected to be homosexuals. This reaction from public officials is synonymous with the liberal view that those with public authority tend to abuse their power and invade the private spaces of individuals (Bonilla, 2006), though it is argued that what constitute private is determined by laws/norms. This reaction also establishes the power relation and the authority bestowed in some people in the Ghanaian society.

It likewise suggests, as pointed out by Nikolas and Valverde (1998:550), that legal mechanisms play a vital role in sexuality and the authorization of disciplinary and bio-political authority. This may mean that because public officials have been empowered by the constitution, and by the criminal code/law they can take legal actions against homosexuals; that is why some public officials are exhibiting their authority and power on issues of sexuality by way of so-called 'controlling the population' from falling into moral threat. It is noteworthy that it is not all public officials with influence who have attempted to stamp their authority on sexual matters; however, this paper does not support the response of those public officials and the angry youth in Tamale who have threatened to lynch homosexuals.

This is because subjecting homosexuals to physical abuse is a violation of basic human rights protected under international laws. There are also a lot of on-going debates on/about sexuality, the legality (which include individual rights), and the cultural relevance of homosexuality in Ghana and around the globe, hence, the need to be tolerant.

AIMS AND RELEVANCE OF THE STUDY

There are very few studies on sexuality in Ghana. Awotwi (2012) examined the rights abuses of female sex workers by law enforcement agencies whilst Danquah (2012) examined the legal arguments on same-sex marriages. A chunk of the few other studies are devoted to sexual health. These studies are important in their own rights; however, the neglect of the sexual discourse on homosexuality in respect of power relations, morality, normal or abnormal, and human rights through a critical, theoretically informed, and a socio-legal approach means that other constitutive components of sexuality remains inchoate.

This paper aims to present a discourse on sexuality (gay-sexuality or same-sex relation) in terms of constitutional and legal arguments (human rights discourse), sexual orientation as a normal or an abnormal behavior, gay-sexuality as a public or private matter, how power relations encompasses gay-sexuality, and finally how at times official and non-official state laws (local norms) contradict each other in respect of gay-sexuality.

These aims will be achieved while bearing in mind that power transcends politics and that it is an everyday, socialized and embodied phenomenon. I will raise some relevant questions that demand pertinent dialogue. I will argue precisely from the legal and sociological point of view. This study will contribute to the literature in this domain of study and to the understanding of sexual matters in Ghana.

METHODS

This study made use of some theoretical tools such as Deborah Brock's writing on sexuality, Foucault's writing on sexuality with reference to power (i.e., toward the idea that 'power is everywhere', diffused and embodied in discourse, knowledge and 'regimes of truth'), legal pluralism, as well as other theoretical frameworks. Secondly, this study made use of both primary and secondary data.

The primary data was collected via informal discussion with some residents in Ashaiman (a suburb of Accra), and with some students in the University of Ghana. The secondary data was collected via published articles, internet, news sources, and a letter written by the Christian Council of Ghana (CCG). Data was analyzed through the espoused theoretical frameworks. One of the limitations of the study was that the views obtained only reflected that of the dominant culture. This did not affect the study since the approaches to discussion were more of interpretive and interrogative. The other limitation was the limited availability of scholarly work produced in the context of Ghana on the subject matter.

As a result the study drew much from Western literature. However, this also did not affect the content of the study since the literatures used here were more appropriate and applicable to the context of Ghana.

THEORETICAL APPLICATIONS AND DATA ANALYSIS

A) RELIGIOUS, CONSTITUTIONAL AND LEGAL ARGUMENTS

In general many liberals and non-liberals have made constitutional arguments either in favor or not in favor of homosexuality. Constitutional arguments support Terry's (1995:161) assertion that the debate on homosexuality has shifted from biological discourse to legal discourse. To Terry, many who support Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex (LGBTQI)prefer to make their arguments by drawing analogies from constitutional case law that protects the rights of individuals to form associations and to practice the religion and culture of their choice. To invoke an example, the Hawaii Supreme Court's ruling of *Baehr vs. Lewin*(1993), that the state's denial of licenses violated the Hawaii constitution's equal-rights protections. This notwithstanding, many people and some institutions still do resort to religious positions. A case in point, the Christian Council of Ghana which acts as the mouth piece of some Christian churches in Ghana stated in a letter that:

> "We of the Christian Council in Ghana are responding to the homosexual question not as people who without sin but are doing so as sinners who have been saved by grace through faith in Christ Jesus, who is the means by which our sins are forgiven; and not only ours but the sins of the whole world…. Today, homosexuals have adopted an open lifestyle describing their otherwise shameful practice in a more 'positive' term as gay.
>
> We, of the Christian Community in Ghana, deem it unacceptable that people be frowned upon and described as ignorant, unreasonable, un-academic and unenlightened because they insist on proven standards of decency. The various English versions of Leviticus 18:22: "Thou shall not lie with mankind as with womankind: it is abomination" (KJV); "Do not lie with a man as one lies with a woman; that is detestable" (NIV); "You shall not lie with a male as with a woman; it is an abomination" (NRSV) are so clear that the verse needs no further interpretation or explanation.
>
> As the prophetic voice of the country, we wish to state that this ***detestable and abominable act***, if passed into law in Ghana, will bring the wrath of God upon the nation and the consequences will be unbearable."

It is clear that the Christian Council posits their argument from the biblical point of view. They regard homosexual acts as evil, unnatural, sinful, and as an unacceptable way of life. This position may deny individual rights as it contradict the constitution on rights and freedoms. The position of viewing homosexuality as a criminal behaviour and people [homosexuals] who need to be saved however fall in line with the criminal code of Ghana which makes homosexuality a criminal act. The position by the Christian Council of Ghana that man-to-man is an abominable act which implies that sexual orientation should be heterosexual as determined by God or nature is also in variance with the views of queer theorists that sexual desires and identities are not determined by nature, and therefore are not fixed and unchangeable, but malleable and fluid. These views presented by the former (CCG) and the latter (Queer theorists) are poles apart.

In Ghana, although litigation is rare, homosexual activity is illegal as stated in the criminal code. Chapter 6, Article 104 of the Sexual Offences Act in the Ghana Criminal Code states that whoever has unnatural carnal knowledge:

> "of any person of the age of sixteen years or over without his consent shall be guilty of a first degree felony and shall be liable on conviction to imprisonment for a term of not less than five years and not more than twenty-five years;" "of any person of sixteen years or over with his consent is guilty of a misdemeanor".

The unnatural carnal knowledge is interpreted to include consensual sexual intercourse between men which means that gay-sexuality is a criminal act. Notably, a part of the effects of this clause is that, it encourages discrimination and persecution against homosexuals on the basis of their 'unnatural carnal knowledge' intercourse and other consensual sexual behaviours. Furthermore, the criminalization of consensual same-sex conduct violates rights to privacy, which is protected under international law, and places States in material breach of their obligation to protect the human rights of all people, regardless of sexual orientation or gender identity.

In the light of Stoler's analysis of unnatural canal knowledge it is argued that "Ethnographies of empire should attend both to changing sensibilities and to sex, to racialized regimes that were realized on a macro and micro scale.... Such investigations may show that sexual control was both an instrumental image for the body politic ... and itself fundamental to how racial policies were secured and how colonial policies were carried out" (2002: 78). This means that some of the laws prohibiting same-sex relations are a legacy of colonial rule: imposed on the countries concerned during the 19th Century by the then colonial powers. For example, many of the laws used to punish gay men in Africa and the Caribbean were in fact written in Victorian London(Free and Equal United Nations for LGBT Equality, 2011).

In response to the criminal code, Chapter 5 of Ghana's 1992 Constitution guarantees the protection of all human rights for Ghanaian citizens.Article 17 of the constitution also guarantees the right to freedom from discrimination.

This means that, one cannot discriminate against anyone for being a homosexual while the criminal code says the direct opposite.[Note: Constitutional articles are macro directions therefore freedom from discrimination does not automatically involve sexual orientation although queer groups use this as a platform from where they pitch their argument].Whilst it can be argued that the constitution does not include sexual orientation, the constitution guarantees the right to freedom from discrimination. This means that if a person's right to privacy and non-discrimination is violated it breaches the constitution as well as the 1966 International Covenant on Civil and Political Rights. For example, in 1994, in the case of *Toonen vs. Australia*, the United Nations Human Rights Committee confirmed that laws criminalizing homosexuality violate rights to privacy and non-discrimination in breach of States' legal obligations under the International Covenant on Civil and Political Rights.

Where these laws are enforced, they may also lead to violations of the right to freedom from arbitrary arrest and detention. All this brings to bear the tension between the criminal code, the constitution, and the International Covenant on Civil and Political Rights which guarantees the protection of individual rights. This kind of uneasy tension between the laws is not common to only Ghana, but also to some Western nations including the United States. This calls for a critical legal study on how to reconcile conflicting laws or establish a common ground for opposing laws in the society.

In respect of human rights as shown in the case of *Toonen vs. Australia*(1994) individuals should have a choice whether or not to engage in the act of carnal knowledge intercourse. Despite this, it is worthy to point out as argued by Mutua (2008) that regardless of human rights as a part of the civilization discourse it inappropriately presents itself as a guarantor of eternal truths without which human civilization is impossible. The human rights corpus, though well meaning, but as argued by Mutua (Ibid), it is an Eurocentric construct for the reconstruction of non-Western societies and peoples with a set of culturally biased norms and practices. Therefore, if human rights movement is to succeed, it must move away from Eurocentrism as a civilizing crusade and attack on non-European peoples. Mutua (Ibid) further argues that it is only a genuine multicultural approach to human rights that can make it truly universal. Therefore, Ghana and for that matter Africa must be positioned to deconstruct – and to reconstruct a collective bundle of rights that the members of the society can claim as theirs.

Notwithstanding the critiques of human rights, between the constitution and the criminal code, the constitution automatically takes precedence since it is supreme to the criminal code. Aside from this, the intervention of international laws is also visible. The question is what will be the place of a nation's sovereignty when international laws are implemented? What must be recognized here is the conflict between the rights of homosexuals given by the constitution and international laws, the criminalization of homosexuality by the criminal code, and the resistance by the dominant culture through the lens of religion. It must be stated that the Christian Council has made it crystal clear in respect of human rights that:

"We cannot afford to destroy the future of this country in the name of human rights."

This matter brings into sharp focus issues of legal pluralism as the normative ordering (religious norms and customs) contradicts a statutory order whilst at the same time how the statutory orders clash each other. It similarly shows how plurality of traditions, norms and customs can co-exist but at times how these norms tend to illegalize other minority norms. This case of legal pluralism in Ghana is more likened to Moore's (1978) notion of the semi-autonomous social field, that is, one that "has rule-making capacities, and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes as its own instance". This may draw our attention to the fact that different legal orders exist in relation to each other and hence affect the way that each is able to operate just like how religious norms and local customs affect some aspects of the laws especially regarding human rights practices in Ghana.

What is also important here is the power and authority relations that are identified between these two sexual groups (heterosexual and homosexual), that is, as to who determines what is acceptable or unacceptable through legal debate and the type of regulations or laws to be accepted so far as a sexual practice is concerned. This power relation in terms of who determines what a particular law should be meant for is pointed out by Brock (2013:2),that the making of sexual meanings is entangled in a complex nexus of power and that sexual expression is often the target of specific regulatory practices. This is apparent in the case of the 'unnatural carnal knowledge' in Ghana's criminal code as it defines specific sexuality. This also brings to bear how sexual identity in general is seen as a product of power networks as well as how sex itself is seen as a product of the emerging arrangements of force relations as stipulated by Foucault (McWhorter, 2004:47). The question which arises from this power relation is who determines which sexual group is acceptable in Ghana? Who interprets the law? Who direct the discourse?

Foucault argues in *"The History of Sexuality"* with respect to the repressive hypothesis that those who control power or knowledge (NB: power not in terms of agency) obviously determine what must be approved. In Ghana, the dominant culture (heterosexual) clearly determines what must take place in main stream society whether with or without reference to the law. In this respect, as the dominant heterosexuals may control power and knowledge they tend or seem to be giving the homosexuals a strong resistance without taking into consideration the emerging dialogue on sexuality and the role of human rights in Ghana. This explains how the dynamic relation between power and knowledge shapes beliefs, feelings, identities, and actions, as well as the broader social context in which people live (Brock, 2013).

B) WHAT IS NORMAL OR ABNORMAL? THE CRITICAL VIEW POINT

In Ghana and most countries in Africa and that of the West, homosexuals consider their sexual orientation as an identity as well as part of their private sphere whilst the dominant culture consider homosexual acts as abnormal, filthy, un-African and feels threatened by the practice. As a discussant said:

> "Homosexuality is totally abnormal and those who engage in the practice are sick people who need serious medical attention. Such people must never be condoned in our [Ghanaian] society. …such people must be burnt alive to death*(Group Discussion, Ashaiman, January 3, 2014).*"

A similar but a little contradictory response was made by the Reverend Prof. Emmanuel Martey (moderator of the Presbyterian church of Ghana) in an interview with Joy fm(one of the nation's leading radio stations) and later published on the Ghana News Agency website on 6th January, 2014. He stated that:

> "…Witchcraft is a sickness and homosexuality is also a sickness and you help the sick person to get healed so why should you rather kill" (Rev. Prof. E. Martey).

Although these responses may seem the same in terms of victimization, the contradictory element is that the former was quite intolerant as the response suggests that homosexuals should be killed or should not be condoned in our societies whilst the latter response shows that homosexuals should not be harmed based on the kind of sexual orientation they share. This shows that not all Ghanaians are intolerant when it comes to issues related to homosexuality, but this does not also mean that all those considered tolerant are in favor of homosexuality as it can be deduced from the response below:

> "… I am against homosexual but that doesn't mean that homosexuals should be lynched or should be maltreated, no that is not what the Bible teaches" (Rev. Prof. E. Martey).

These responses show how some people are emotional about the subject matter in Ghana. The responses to a very large extent also reflect the views of the dominant culture. What the dominant culture neglect is the question about what constitute normality or abnormality. Brock (2013:6-7)argues that ideas of normality and its opposites are co-constituted; each can occur, and only make sense, in the context of the other. However, Brock (2013) was less explicit on the fact that what is considered a normal or an abnormal sexual practice is subjective and that what one considers to be a normal sexual behaviour will be abnormal in another sense. The dominant sexual group in Ghana fails to recognize from the perspective of homosexuals that their practice is normal and that their practice was only considered abnormal in the lenses of the heterosexuals.

This calls for a distinction between what is considered a normal and an abnormal sexual behaviour. Although to Brock (2013) the distinction between normal and abnormal sexual behaviour is no longer so clearly demarcated. Nonetheless, an attempt to distinguish this phenomenon presents another power relation. The emerging question is who controls the discourse on normal or abnormal sexual behaviour in Ghana? It is ostensible that whoever controls the discourse determines what is normal or abnormal and what the final decision should

be. Indeed if it is the dominant group then this puts homosexuals in a disadvantaged position since they are a minority group.

The reason for the disadvantaged position of homosexuals is that the dominant beliefs seem to reflect the interests of the most powerful groups. This does not necessarily mean that these beliefs are imposed upon the less powerful groups, but rather through cultural practices, consent is created. In examining the nexus between these two groups another power relation is identified in respect of how hegemony is achieved, that is, the assurance of the maintenance of the social order not through force or coercion but through cultural domination. This point out Foucault's idea that power is pervasive and multi-faceted, working within everything and not moving with a single direction or plan; as it is even evident in making this distinction between normal and abnormal sexual behaviour. What is important here is that whatever constitutes normality or abnormality should be a private and personal issue and not determined by the dominant group.

In respect of private and public sphere, from a conservative perspective, the dominant groups argue that since each individual directly or indirectly belongs to a family which may have a link with the dominant groups, whatever -whether positive or negative that affects the individual may therefore affect the major stream of society since individuals do not live in isolation. In all probability, the conservatives may believe that to codify the equality of men and women marriages would undermine the values upon which traditional marriages rests. These perspectives to some extent suggest that the private sphere of people should be invaded in as much as the link between the individual and the society still exist as a discussant said:

> "We live in a community in which whatever affects one person affects the other and the family. Therefore, if I sit down unconcerned because of a so-called privacy then I will be doing myself and the society a great disservice*(Group Discussion, University of Ghana, December 6, 2013).*"

The question therefore is, if private spheres are to be invaded what should be the limit of that invasion?

C) THE PRIVATE AND PUBLIC SPHERE: THE CONCEPT OF MORALITY

Another important point is the distinction to be made between what is private and public, and the limits of the state and the public in interfering in what is considered as an individual private space knowing that what is considered as a private space is based on laws/norms which to some extent places limit on sexual expressions. One common observation is that the debate between public and private matter is already skewed towards favoring the heterosexuals in Ghana, but what the dominant group does not recognize is that whether the criminal code makes the practice legal or not individual rights guarantee all persons the equal opportunity to participate in the political sphere and shield the private sphere so that all human beings can decide, question, and transform their life project (Bonilla, 2006). Therefore, homosexuality needs not to be opposed but be considered among the multiple normative so that homosexuals can negotiate as part of the terrain of sexual citizenship (Cossman, 2008) which is considered a legal right.

It is usually assumed that statutes about sexual regulations are largely negative in character especially from the 'moral' perspective. To the conservatives in the West which when stretched to Ghana and Africa, sexuality was largely considered as a disruptive force which needs to be repressed and regulated lest people fall into moral danger (Brock, 2013:4). The question is, how does Ghana regulate sexuality by law with respect to issues regarding morality or immorality?

The point here is that the term 'morality' is highly subjective, not absolute and changes with time. For example, in the time of slavery, the act of slavery was considered something acceptable and by a stretch moral. At that time, the act of helping slaves was 'immoral' by the standards of the societies concerned. Now, however, helping slaves is a good and moral act in modern acuity. This may mean that what may be considered as 'moral' can be subjected to a wide range of applications and extremes, and that some societal morals can be created from 'false' beliefs(Joseph, 2011), whilst at the same time it can be created from 'truth'. This is what makes the concept of morality a very complex one since the homosexual claim to rights can be considered a moral claim.

Adding to the debate, it will not take more than a simple understanding of the arguments being made by several public officials and religious leaders to acknowledge that they are confusing morals with law though law and morality might be inherent in each other. This happens when one's moral values are in direct conflict with a legal standing, just as the dominant culture tries to rule out the practices of homosexuals claiming the practice is immoral and illegal with or without considering how morally centred argument can cause pain, suffering and violates the rights of others (Denike, 2010).

The Christian Council argues through the constitution that:

> "Children and young persons have a right to 'receive special protection against exposure to physical and moral hazards' (Article 28 (1)(d) of the 1992 Constitution of the Republic of Ghana)."

Though the constitution made mention of moral hazards what is unclear here are which activities constitute moral hazards. This is an issue for constitutional lawyers, judges, as well as sociology of law scholars to battle with. If I may ask what is considered sexual morality or immorality? Who makes the law regulating sexuality? Who has the power to define morality in terms of sexuality? All this discourse as to who defines what, who has the power etc. falls in line with Foucault's idea that sexuality is a means of focusing, channelling, and transmitting power, and power is a creative force that determines the relationship between people and institutions. In the case of Ghana, the bourgeois or so-called moralist who effectively invents what one think of as "sexuality," uses this invention as a means of bolstering and extending their power.

The upper class or elite uses their power (being it political or knowledge) to determine how sexual morality or immorality must be understood. Meanwhile, within the many communities in Ghana people have what they consider moral or immoral. In addition, within the dominant cultures there are conflicts of interest, which are redolent, that what is considered moral or immoral must be understood as a private matter and not public though it is important that the larger community must sometimes agree to *what is and what ought to be*. Also, at times between and among the various religious units there are different beliefs and practices. It is therefore

imperative to state that no matter one's moral standing or cultural beliefs, the law remains law so far as it does not undergo change and one's moral belief is his/her belief whether expressly or impliedly given. Therefore, segregating or declaring war on one sexual group is not the way forward as it is stated by the Christian Council of Ghana and the Rev. Prof. E. Martey respectively:

> "We are opposed to the victimization of persons on the grounds of sexual orientation and recognize the social and emotional stress and the loneliness borne by many who are homosexual" (CCG);
>
> "If somebody confesses to be a homosexual or somebody comes out of the closet, as they say, that doesn't mean that the person should be lynched. We are not in the jungle" (Prof. E. Martey).

All this analysis of sexuality on the basis of the relationship between law and cultural beliefs and how power pervades our daily lives finds expression in the fact that state law penetrates and restructures other normative orders through symbols and direct coercion whilst at the same time non-state normative orders resist and circumvent penetration or even capture and use the symbolic capital of state law as argued by Merry (1988).

CONCLUSION

The idea that power is wielded by people or groups by way of 'episodic' or 'sovereign' acts of domination or coercion has been challenged by Foucault, seeing it instead as dispersed and pervasive which is in constant flux and negotiation (Foucault, 1998: 63). Well noted, Ghana is most often discussed in a way that is synonymous with social control or sovereign power despite the fact that the idea that power is pervasive and in constant unrest and arbitration is also made manifest in everyday life.

The arguments in favour or against minority groups are usually either centred on morality or law. In the case of morality most of the positions are drawn from the Bible, which can be deduced from the letters written by the CCG whilst most of the legal arguments are looked at from the human rights perspectives though in the case of Ghana the criminal code makes the practice a crime. It is important to state that morality is not only a religious claim since a claim to equal treatment could also be considered a moral claim.

The most important question at this point, which has already been asked by a number of scholars (John Gardner, Sarah Braasch etc.) in other jurisdictions is, what is the place of morality in law? Some scholars claim that law and morality are indivisible and that morality serves as the basis for any legal or political system. It is also argued that law is nothing if not a moral claim, a moral imperative and a moral prescription. Though other scholars may disagree I share in the perspective that law to some extent must have certain moral aims.

If it lacks those aims it may not be considered as law. It must aim to be just (Postema 1996: 80), or aim to serve the common good which usually has moral connotations (Finnis 1980: 276), or aim to justify coercion as a form of social control (Dworkin 1986: 93), or aim to be in some other

way morally binding or morally successful. I am of the point of view that there is a strong relationship between morality and law. The problem with my views as Gardner (2008) pointed out is that at least some intentional law-makers have no moral aims; therefore some laws may also have no moral aims. If laws have no moral aims, then I will like to argue in line with John Gardner that the whole legal systems may, indeed, be run by selfish legal thinkers for whom the system is primarily a complicated extortion hullabaloo.

As already stated, minority groups in most cases in Ghana usually prefer to argue from the constitutional case point on human rights, but as also argued that morality has a place in law, the two most important questions are, do human rights as implied in Ghana have moral aims? What will be the place of law when morally centered arguments deny others their liberty? Examining these questions I will therefore state that whether law is imbibed in morality or not it is a continuous battle for the legal brains and an interesting area for more scholars to explore.

This notwithstanding, whether the case of homosexuals is morally justified or not, whether it is legally justified or not, and whether it is a private or public matter I am of the liberal view that accommodating and respecting minority culture is very paramount. It is clear most Ghanaians are rooted in their cultures; yet one should not lose sight of the fact that everyone has what she/he believes in as well as our individual sexual identity and rights.

Therefore, recognising others as members of the community irrespective of their sexual orientation is one of the ways towards both cultural diversity and a multicultural constitution. Non-recognition of homosexuals and other minority groups such as women on the basis of morality, religion, law or who has the power can inflict harm, pain and suffering which can also be a form of oppression (Danike, 2010; Taylor, 1994). This can saddle victims with a crippling self-hatred, because due recognition is not just what one owe people but rather a vital human need (Taylor, 1994:26). The critical examination of governmentality approach has become very significant in terms of thinking about and the exercise of power regarding sexual discourse. Every sexual group require accommodation to protect them from domination. This can be responded to by implementing accommodating policies that concede jurisdiction over certain matters, such as sexuality and family law etc. Many multicultural theorists have embraced accommodation as the best way to protect minority groups from oppression by the state and the dominant culture. The overall effect of the analysis is to adopt a balanced solution, that is, whilst it is important to respect the minority groups, it is also important to protect and sustain the dominant cultural beliefs, assumptions and institutions.

REFERENCES

1) Bonilla, D. (2006). La Constitución Multicultural, Siglo del Hombre Editores – Instituto Pensar – Universidad de los Andes, Bogotá

2) Brock, D. (2013). 'Sexual Regulation' in Deborah Brock, Amanda Glasbeek, Carmela Murdocca, eds. Representation and Regulation,forthcoming 2014, University of Toronto Press.

3) Christian Council of Ghana <Available at: http://www.christiancouncilofghana.org/programmes/CC%20in%20Ghana.pdf retrieved on 30/12/2013>

4) Cossman, B. (2008). Sexual Citizenship. Princeton University Press

5) Denike, M. (2010). 'Homonormative Collusions and the Subject of Rights: Reading Terrorist Assemblages' Feminist Legal Studies: Issue 10: 85-100.

6) Duggan, L. (2002). The new homonormativity: The sexual politics of neoliberalism. In Materializing democracy: Toward a revitalized culture politics, ed. Russ Castronovo, and Dana D. Nelson, 175-194. Durham, NC: Duke University Press.

7) Dworkin, R. (1967).'The Model of Rules', University of Chicago Law Review 35: 14-46.

8) Finnis, J. (1980). Natural Law and Natural Rights (Oxford: Clarendon Press).

9) Foucault, M. (1978). The History of Sexuality (Volume One) Random House: 1-49.

10) Gardner, J. (2008). Law and Morality <Available at: http://users.ox.ac.uk/~lawf0081/pdfs/lawmoralityedited.pdf retrieved on 27/01/2014>

11) Kymlicka, W. (1995). Multicultural Citizenship: A Liberal Theory of Minority Rights, Clarendon Press & Oxford University Press.

12) McWhorter, L. (2004). Sex, Race, and Biopower: A Foucaudian Genealogy: Hypatia, Vol. 19, No. 3: 38-62.

13) Merry, S. (1988). Legal pluralism', Law and Society, Vol. 22, no. 5: 881.

14) Moore, S. F. (1978). 'Law and social change: the semi-autonomous social field as an appropriate subject of study', Law as Process: An anthropological approach: 56.

15) Mutua, M. (2008). Human Rights: A Political and Cultural Critique, Pennsylvania Studies in Human Rights: ISBN 978-0-8122-2049-0.

16) Nikolas, R. &Valverde M. (1998). 'Governed by Law? Social and Legal Studies7:4, 541-551.

17) Postema (1996). 'Law's Autonomy and Public Practical Reason', in Robert George (ed), The Autonomy of Law (Oxford: Oxford University Press 1999).

18) Sanders, D. (1996). Getting Lesbian and Gay Issues on the International Human Rights Agenda, Human Rights Quarterly 18.1: 67-106.

19) Somerville, S. (1994). 'Scientific Racism and the Emergence of the Homosexual Body',Journal of the History of Sexuality: 243-266.

20) Stoler, A. (2002). Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule. University of California Press. Berkeley. ISBN: 0-520-23111-2: 78.

21) Sullivan, M. L. (1989). "Absent Fathers in the Inner City", Annuals of the American Academy of Political and Social Science 501: 48-58.

22) Terry, J. (1995). 'Anxious Slippages Between "Us and Them" A Brief History of the Scientific Search for Homosexual Bodies' Deviant Bodies: Critical Perspectives on Difference in Science and Popular Culture Jennifer Terry and JacqulineUrla, eds.Indianna University Press: 129-169.

23) Taylor, C. (1994). The Politics of Recognition, in Amy Gutman (ed) Multiculturalism: Examining the Politics of Recognition, Princeton University Press.

24) 1992 Constitution of the Republic of Ghana

25) 1960 Criminal Code (Act 29): Acts of Ghana, First Republic < Available at: http://www.africanchildforum.org/clr/Legislation%20Per%20Country/ghana/ghana_criminal_1960_en.pdf retrieved on 03/01/2014>