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**The Development of a Truth Regime
on 'the Human': Human Rights in the Gold Coast (1945-57)**

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Doctor of Philosophy in Human Rights

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Statement

I hereby declare that this thesis has not been and will not be submitted in whole or in part to another University for the award of any other degree.

Signature

Isidore Bonabom

Date

Summary

The thesis proposes to approach the idea of human rights as a specific truth regime on ‘the human’ that contests those regimes of falsity which deny the essence of humanness on grounds such as race, sex, colour, gender, national or social origin. This theoretical proposition is supported by a case study of the deployment of the idea of human rights in the Gold Coast from 1945 up to Ghana’s independence from colonial rule in 1957. As such, the study analyses how the concept of human rights, affirmed in the 1945 United Nations Charter and the 1948 Universal Declaration of Human Rights and articulated in the 1950 European Convention on Human Rights, influenced domestic politics in one British colony in Africa. At the same time, the study highlights the way in which post-World War II nationalism produced some of the most important political changes affecting this region in this era.

Relying on a first-hand investigation of archival and primary sources, the thesis scrutinizes the formulation of demands for the collective right to self-determination which emanated from nationalist movements, the evolving drafts for a bill of rights in Ghana’s Independence Constitution and the debates on whether or not to extend the European Convention on Human Rights to the Gold Coast. The particular and disprivileged position of women in the colony is a subject of critical commentary throughout the thesis. By examining critically the emergence of the human rights idea, the study draws attention to the complex interplay of factors as well as actors that inspired a new-fangled notion of universal rights, while highlighting the way politics, including Cold War politics, contributed to define the subject of human rights in an ambiguous, incomplete but promising way.

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“A man can pay a debt of a herd, but he dies forever in debt to his wise teachers and loyal friends.”
Dagara proverb

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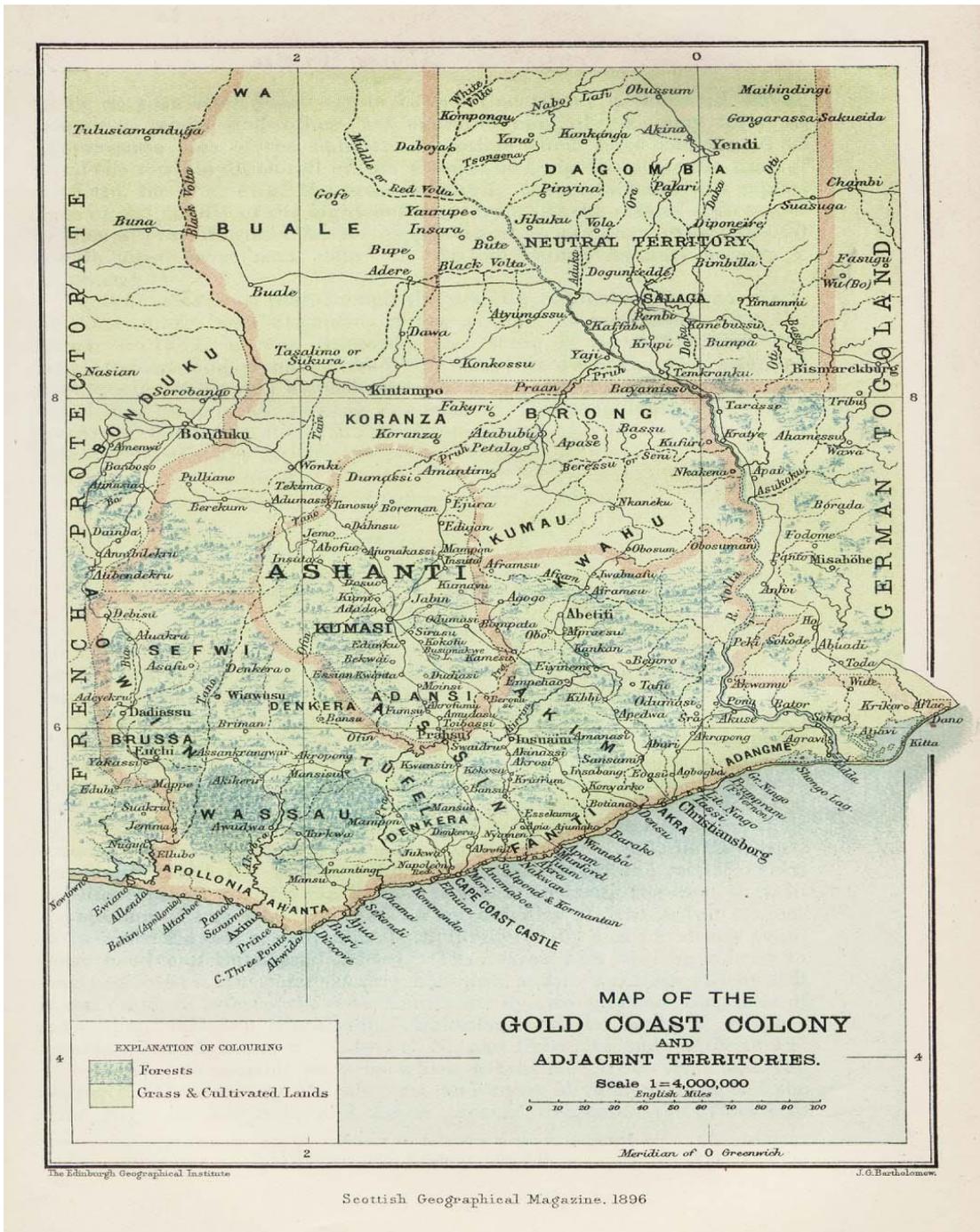
My mother, Mrs. Grace Bonabom, died while I was working on this thesis, but her words of encouragement continued to echo in my heart as I wrote the thesis, and it is to her memory that I dedicate this work.

Abbreviations and Acronyms

ACHPR	African Charter on Human and Peoples' Rights
ADPE	Accelerated Development Plan for Education
AYO	Anlo Youth Organisation
ARPS	Aborigines Rights' Protection Society
BDEEP	British Documents on the End of Empire Project
CO	Colonial Office
CPP	Convention Peoples Party
CYO	Committee of Youth Organisation
ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms
EOKA	<i>Ethnikē Organōs Kupriakou Agōnos</i> (National Organisation of Cypriot Combatants)
GCP	Ghana Congress Party
HMG	Her Majesty's Government
HMSO	Her Majesty's Stationery Office
MA	Master of Arts
MAP	Muslim Association Party
MP	Member of Parliament
MSc	Master of Science
NLM	National Liberation Movement
NPP	Northern Peoples' Party
PRAAD	Public Records and Archives Administration Department
TCP	Togoland Congress Party
UDHR	Universal Declaration of Human Rights
UGCC	United Gold Coast Convention
UK	United Kingdom

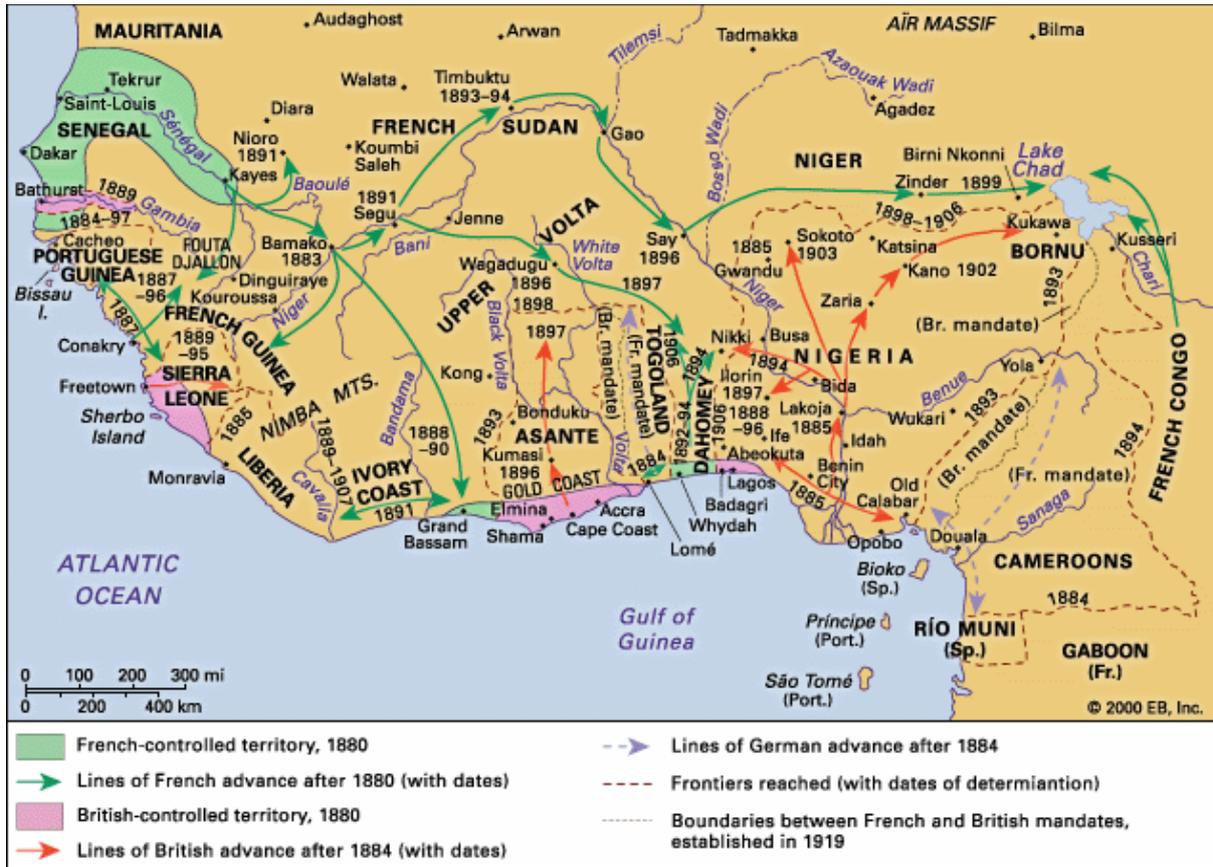
UN	United Nations
UNESCO	United Nations Educational, Scientific and Cultural Organisation
UP	United Party
USA	United States of America
USSR	Union Soviet Socialist Republic

Map of the Gold Coast



Source: British Empire <<http://www.britishempire.co.uk/maproom/goldcoast.htm>> (accessed August 17, 2011).

Map of British West Africa



Source: John D. Fage, *An Atlas of African History*, Teaneck, NJ: Holmes and Meier Publishers, 1978.

Maps of post-independent Ghana



Source: <<http://nashamapa.com>> (accessed August 17, 2011).

Chapter 1: Introduction

“If you judge people simply by their ethnic belonging or by the language they speak, then you will have no eyes to see them as members of the human family and no ears to understand them even if they spoke your native tongue.”

Dagara proverb

“You must not lose faith in humanity. Humanity is an ocean; if a few drops of the ocean are dirty, the ocean does not become dirty.”

Mohandas Gandhi

1.1. Human rights: An idea in need of defence

In the course of my pastoral work as a Jesuit priest in various countries, I have encountered many occasions of injustice suffered by people because of their ethnic belonging or gender or race and/or political opinion. Sometimes, people suffering injustice have asked: ‘Are we not human beings too?’ ‘Then why are we being treated so unfairly?’ Having grown up under four military regimes that suppressed civil liberties in Ghana, I know what it is to live under tyranny.¹ Coming from a marginalised ethnic group, I have had first-hand experience of being treated as ‘the other’ in school and in the work place in my country of origin. I am deeply aware that in the aftermath of 9/11 and 7/7, the idea of human rights has come under attack from several fronts, some old and some new. In the last ten years a new twist has emerged in the human rights debate in which the idea of rights is so badly caricatured that it is losing its post-World War II intended meaning as well as enduring potential.² In some cases, governments are contributing to the public misperceptions of human rights through inflammatory rhetoric and poor policies in the guise of the ‘war against terrorism.’ I fear that the real meaning and aspirational nature of human rights is gradually

¹ Following the overthrow of Dr. Kofi Busia’s Progress Party (PP) government in 1972, Col. Ignatius Acheampong’s National Redemption Council (NRC) ruled Ghana until 1978 when Lt. Gen. Frederick Akuffo ousted that government. Flt. Lt. Jerry Rawlings toppled Akuffo’s Supreme Military Council (SMC) in 1979 and formed the Armed Forces Revolutionary Council (AFRC), which handed power over to Dr. Hilla Limann in the same year following successful democratic elections. However, Rawlings overthrew Limann in a second *coup d’état* and formed the Provisional National Defence Council (PNDC), which was in power until 1992 when a home-grown constitution ushered the country back to democratic rule.

² See, for example, James Welch, “Theresa May’s twisted tale of a Bolivian’s cat” in www.guardian.co.uk/commentisfree/2011/oct/04/theresa-may-cat-human-rights-act?newsfeed=true (accessed November 14, 2011).

being abandoned on the platform of political expediency, with new thinking that has justified extraordinary rendition of terrorist suspects and complicity in the use of torture as an interrogation method being some of the primary examples.³ By creating loopholes in the human rights regime, such governments use the new thinking to rationalise their wiggling out of state obligations. The post-World War II human rights idea forms a specific picture of our shared humanity and offers a particular understanding of human beings' inherent dignity. These attacks and misperceptions are beginning to distort not only the idea of human rights but also the way 'the human being' of human rights is constructed.

This thesis derives from a dissatisfaction with the way the idea of human rights is deliberately being distorted in some political discourses and attacked in other quarters. The dissatisfaction is especially poignant when it is juxtaposed against the 'promise' of the Universal Declaration of Human Rights (UDHR) that one has rights simply by virtue of being human and the fundamental assumption that every human being is 'the human being of rights.'⁴ I believe that the core dilemmas of our time regarding human rights are as relevant today as they have been at any time in history. History is full of examples of how comparable constructions of 'the human' contributed to the subjugation of one group of human beings by another on grounds of racial, ethnic or gender difference. Colonial rule is one example of the way a group of people expressed their sense of superiority over the different other.

I have selected the Gold Coast as a case study out of a sense of frustration with the dearth of empirical studies on how the post-World War II idea of human rights influenced political discourses in this British colonial territory.⁵ The possibility of misunderstanding what the 'human' in the concept of human rights means is open-ended. This study interrogates how the understanding of the 'humanness' of the other shaped colonial rule in

³ Isidore Bonabom, "The Many Faces of Torture in Libya" in http://www.thinkingfaith.org/articles/20111012_1.htm (accessed October 19, 2011).

⁴ See, for example, Preamble and Art 1 of UDHR, G.A. res 217A (II), UN Doc. A 810 at 71 (1948).

⁵ I first became aware of human rights issues in Ghana, which until 1957 was called the Gold Coast.

the Gold Coast. It also explores the role of human rights discourse in the independence and emancipatory politics of the Gold Coast. The necessity for such a research is in the fact that the theme of human rights in this period in the Gold Coast remains under-researched. In another sense, this need has been identified by Ibhawoh, who acknowledges that the human rights regime facilitated transformative processes in the colonial context.⁶

I examine human rights texts in order to identify which idea of ‘the human’ is embodied in international human rights. Apart from interrogating the conventional history/debates of the human rights discourse, the thesis takes issue with the oft-repeated charge that human rights is a product of Western ethnocentrism imposed on the rest of the world. The research is an endeavour to discover the complex nature of international and domestic factors that influenced the emergence of the human rights idea, and also a way to discern the diversity of actors who shaped the ‘human rights’ debates in the Gold Coast. This case study leads me to argue that the idea of human rights is itself a truth regime about ‘the human’ which contested colonial rule as a specific regime of falsity.⁷ The idea that human rights is a specific truth regime on ‘the human’ is a proposal, indeed a stepping stone to the broader argument that the universal quest of the human being to be treated with dignity—and to treat ‘the other’ with dignity—is a normative basis for human rights. In other words, the idea of human rights brings out a universal quest of the human being to be treated with dignity.

1.2. The Gold Coast as the case study

I chose the Gold Coast in the period between 1945 and 1957 as the research focus for a number of reasons. It was the first British colony in Africa, south of the Sahara, to attain independence. The human rights ideas and anti-colonial nationalism, as I will prove in the

⁶ Bonny Ibhawoh, *Imperialism and Human Rights: Colonial Discourses of Rights and Liberties in African History*, Albany, NY: State University of New York, 2007, especially chapters 4 and 5.

⁷ Truth regime and regimes of falsity are frames of analysis explained in detail in section 2.5. of the thesis.

thesis, formed a nexus of emancipatory discourses in post-World War II domestic politics—and with British policies towards one of its colonies.⁸ Moreover, the Gold Coast was also a model of the way the British colonial administration was applying the policy of indirect rule in sub-Saharan Africa during colonial rule. The selected period, 1945 to 1957, corresponds to the emergence of a somewhat hesitant human rights vocabulary on the international scene, and some of the major political landmarks that led to Gold Coast's independence from colonial rule in 1957.⁹ This time frame is an open window from which to watch, as it were, and interrogate the understanding of human rights in colonial rule.

In focusing the research on the Gold Coast in the post-World War II period, I am killing two birds with one stone: studying the new-fangled idea of human rights introduced in the UN within a specific historical and political context and trying to understand how Ghana's early human rights history developed after World War II. The United Nations Charter (UN Charter) and UDHR championed specific ideas of human rights as rights one has by virtue of being human, with states having obligations to uphold the rights of their citizens. The UDHR, in particular, presupposed that being 'human' is synonymous with being a rights-holder by asserting in its preamble the inherent dignity of each human being and the inalienable rights of all members of the human family. Thus, the 'accidents',¹⁰ in an Aristotelian sense, of race, sex, gender, religion, political opinion or ethnic belonging were not preconditions for making claims to human rights. Human rights, as stipulated in the UDHR, are normative principles for safeguarding the rights of all human beings. Such an articulation of human rights inevitably questions the premises upon which discrimination on grounds of, for example, race or gender was legitimised.

As Minow has argued, human rights provisions such as those found in the UDHR

⁸ Cyril Lionel Robert James, *Nkrumah and the Ghana Revolution*, London: Alison and Busby, 1982, 133.

⁹ The two key human rights instruments are the United Nations Charter (1945) and the Universal Declaration of Human Rights (1948).

¹⁰ For Aristotle's idea of accidents, see Aristotle, *The Metaphysics*, trans. John McMahon, New York: Prometheus Books, 1991.

gave rise to rights' consciousness so that individuals and groups imagined and acted in the light of what was formally recognised or seemed enforceable in their domestic context.¹¹ In the specific Gold Coast situation, the colonial administration and the nationalist movements made claims mostly to civil and political rights. The right to self-determination was especially pivotal in the nationalist demands for independence, thus creating an important link in the trajectory of emancipation between the discourses of human rights and those of self-determination. Against this background, one aim of this research project is to clarify the emancipatory aspects of international human rights discourse among different interest groups and to analyse why the right of the people to choose for themselves the political and legal status of the Gold Coast trumped individual claims to civil liberties in the politics of independence.¹²

On the one hand, the idea of human rights rests on a repertoire of rights that are specified in, for example, the UDHR. On the other hand, it also represents aspirational goods, so to speak, that are not reducible simply to the provisions in the UDHR or other human rights instruments. Thus, there is an important dialectic that connects the aspirational gap in the positivist understanding of human rights with the pragmatic ways people living under oppression draw on a broader understanding of the rights to be treated as human beings with dignity. Some aspirational aspects of the struggles for rights in the colonisation context in the Gold Coast overlapped with the provisions in the UDHR and the ECHR. It is against this background that the thesis will examine the uses of 'human rights' as aspirations which are not reducible simply to a positivist understanding. By drawing attention to this dialectic, the contemporary understanding of human rights is not being projected on the main actors in

¹¹ Martha L. Minows, "Innovating Responses to Human Rights: Human Rights Institutions" in Nigel Biggar, ed., *Burying the Past, Making Peace and Doing Justice after Conflict*, Washington, D.C.: Georgetown University Press, 2001.

¹² For a discussion of the idea of rights as trumps, see Ronald Dworkin, *Taking Rights Seriously*, London: Duckworth, 1977; Ronald Dworkin, "Rights as Trumps" in Jeremy Waldron, *Theories of Rights*, Oxford: Oxford University Press, 1984, 153-67.

post-World War Gold Coast.

1.3. Human rights in Africa: Current approaches in the literature

Human rights has always been conceptualised in a variety of ways. Dembour's innovative study and proposal that there are four schools of thought is particularly useful in this regard.¹³ She proposes that 'natural scholars' conceive of human rights as *given*; 'deliberative scholars' as *agreed upon*; 'protest scholars' as *fought for*; and 'discourse scholars' as *talked about*.¹⁴ This classification reveals not only the diversity of perspectives in the human rights literature but also the complexity of outlooks that influence both political activism and apathy. The variety of human rights agendas which governments deploy is very much influenced by processes of conceptualisation as well. While Dembour's ideal types are themselves discursive, her contribution is a useful heuristic tool for understanding the extant human rights literature.

Most studies which consider colonialism, nationalism and human rights tend to focus on the provenance of anti-colonial nationalism and to sidestep the way post-World War II nationalism represented a specific rhetoric of human rights.¹⁵ This is understandable because of the focus taken by different academic disciplines on, for example, nationalism. One exception is in Ibhawoh's study of imperialism and human rights discourses from a historical perspective, which draws attention to the way Africans in one British colony deployed the idea of rights in their struggles for justice.¹⁶ This idea both contested and overlapped extant discourses of rights championed, for example, by the colonial administration and

¹³ Marie-Bénédicte Dembour, "What are Human Rights? Four Schools of Human Rights" in *Human Rights Quarterly*, 32(1), 2010: 1-20. Also see Marie-Bénédicte Dembour, *Who Believes in Human Rights? Reflections on the European Convention of Human Rights*, Cambridge: Cambridge University Press, 2006, 10-11.

¹⁴ Dembour, "What are Human Rights?"

¹⁵ See, for example, Adu Boahen, *Topics in West African History*, London: Harlow, 1975; Adu Boahen, *African Perspectives of Colonialism*, Baltimore: Johns Hopkins University Press, 1987; Adrian Hastings, *The Construction of Nationalism*, Cambridge: Cambridge University Press, 1997; Carola Lentz, *Ethnicity and the Making of History in Northern Ghana*, Accra: Woeli Publishing Services, 2007; and Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London: Verso, 1983.

¹⁶ Ibhawoh, *Human Rights and Imperialism*, 128-136.

missionaries. Another scholar who has critically studied the way bills of rights engaged the politics of decolonisation in some British colonies is Parkinson.¹⁷ Most debates about human rights in contemporary sub-Saharan Africa, however, tend to overshadow the idea that rights are inalienable to human beings by virtue of their humanity. This appears to be due to a suspicion that the language of human rights is a mere tool for some Western governments to advance their agendas in Africa.

There is also a plethora of writings on human rights in Africa generally and human rights in Ghana in particular.¹⁸ Much of this literature is inter-disciplinary, mostly engaging with human rights from the point of view of law, political science, anthropology and philosophy.¹⁹ In recent years, there have even been attempts to integrate human rights into

¹⁷ Charles O. H. Parkinson, *Bills of Rights and Decolonisation: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories*, Oxford: Oxford University Press, 2007, 104-5. Also see Kenneth Roberts-Wray, *Commonwealth and Colonial Law*, London: Stevens & Sons, 1966. Roberts-Wray examines colonial laws under the British Commonwealth system.

¹⁸ Brendalyn P. Ambrose, *Democratization and the Protection of Human Rights in Africa: Problems and Prospects*, Santa Barbara, CT.: Greenwood Press, 1995; Abdullahi A. An-Naim, and Francis M. Deng, *Human Rights in Africa: Cross-Cultural Perspectives*, Washington, D.C.: The Brookings Institute, 1990; Francis M. Deng and Terrence Lyons, *African Reckoning: A Quest for Good Governance*, Washington, D.C.: The Brookings Institute, 1998; Malcolm D. Evans and Rachel Murray, *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*, Cambridge: Cambridge University Press, 2002; Ibhawoh; Charles M. Lichenstein, "Human Rights and Namibia" in *World Affairs*, Winter 1986/87: 151-56; Julia Maxted and Abebe Zegeye, "State Integration and Human Rights in Africa" in *International Journal of Comparative Sociology* 38, 1997; Kidane Mengisteab and Cyril Daddieh, *State Building and Democratization in Africa: Faith, Hope, and Realities*, Westport, Ct.: Praeger Publishers, 1999; Samuel F. Ogundare, "Human Rights Orientation of Prospective Social Studies Teachers Nigeria" in *Social Studies* 84(6), 1993; George W. Shepherd, Jr. and Mark Anikpo, *Emerging Human Rights: The African Political Economy Context*, New York: Greenwood Press, 1990; George W. Shepherd, Jr. and Ved P. Nanda, eds., *Human Rights and Third World Development*, Westport, CT.: Greenport Press, 1985; Claude E. Welch Jr., C. E., *Protecting Human Rights in Africa: Roles and Strategies of Non-Governmental Organizations*, Philadelphia: University of Pennsylvania Press, 1995.

¹⁹ See, for example, Adamantia Pollis and Peter Schwab, eds., *Human Rights: Cultural and Ideological Perspectives*, New York: Praeger Publishers, 1979; Issa G. Shivji, *The Concept of Human Rights in Africa*, London: Codesria Book Series, 1989; Claude E. Welch, Jr. and Robert I. Meltzer, eds., *Human Rights and Development in Africa*, New York: New York University Press, 1984; Abdullahi A. An-Na'im and Francis M. Deng, eds., *Human Rights in Africa: Cross-Cultural Perspectives*, Washington, D.C.: The Brookings Institute, 1990; Evelyn A. Ankumah, *The African Commission on Human and Peoples' Rights: Practice and Procedure* The Hague: Martinus Nijhoff Publishers, 1996; Cohen Ronald, *Human Rights and Governance in Africa*, Miami, Florida: Florida University Press, 1993; Obinna Okere, "The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis with European and American Systems" in *Human Rights Quarterly* 6(2), 1986: 141-59; George W. Shepherd, Jr., and Mark O. C. Anikpo, eds., *Emerging Human Rights: The African Political Economy Context*, New York: Greenwood Press, 1990; Claude E. Welch, Jr., and Robert I. Meltzer, eds., *Human Rights and Development in Africa*, New York: New York University Press, 1984; Akwasi Aidoo, "Africa: Democracy without Human Rights" in *Human Rights Quarterly* 15(4), 1993: 703-715; Jack Donnelly, *Universal Human Rights in Theory and Practice* 2nd ed., Ithaca NY: Cornell University Press, 2003, 10; Rhoda E. Howard, "Is there an African Concept of Human Rights?" in R. J. Vincent, ed., *Foreign Policy and Human Rights: Issues and Responses*, Cambridge: Cambridge University

theological discourses in Africa.²⁰ The scholarship in this area has tended to exaggerate the abstract justification of rights over and above a critical exploration of the continuous interplay between universal human rights norms and the specific historical and political situations in sub-Saharan Africa. Moreover, the literature has been eclipsed by the kind of narratives from Amnesty International and Human Rights Watch about human rights violations without engaging with the complexity of competing agendas in post-colonial Africa. Since the African Charter on Human and Peoples' Rights (ACHPR) entered into force in 1986, human rights values seem to have been accepted, or sometimes simply acculturated, in African states as legitimate and universal concerns or as a public relations gimmick. With the establishment of the African Court on Human and Peoples Rights in 2004, the discourse of human rights has taken on a broad and legally enforceable dimension.²¹

In the first wave of the discourses on human rights in Africa, many of the scholars approached the gap between aspirations (as set out in the international standard-setting documents) and the reality on the ground in a curious way. For example, while Asante and Howard concentrated on the opposition between the rights of individuals and the entitlement of society as a whole, Donnelly highlighted the cultural relativism-universalism debate.²² In what could be termed a second wave, apologists of a specifically African human rights idea, such as Shivji and Rwiza, argued for a concept of rights that is in a continuous dialogue with changing cultural conditions.²³ The entry into force of the ACHPR also inspired significant

Press, 1986, 11-32; Ziyah Motala, "Human Rights in Africa: A Cultural, Ideological and Legal Examination" in *Hastings International and Comparative Law Review* 12, 1989: 373-410.

²⁰ See, for example, Aquiline Tarimo, *Human Rights, Cultural Differences and the Church in Africa*, Morogoro: Salvatorianum, 2004.

²¹ Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III).

²² Jack Donnelly, *The Concept of Human Rights*, New York: St. Martin's Press, 1985; S. K. B. Asante, "Nation Building and Human Rights in Emergent Africa" in *Cornell International Law Review* 2 (Spring), 1969: 72-107. Rhoda E. Howard, *Human Rights in Commonwealth Africa*, Totowa, New Jersey: Rawman and Littlefield Publishers, 1986; Bonny Ibhawoh, "Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in African States" in *Human Rights Quarterly* 22(3), 2000: 838-860.

²³ Richard N. Rwiza, *Ethics of Human Rights: The African Contribution*, Nairobi: CUEA Press, 2010, 155-168; Shivji, *The Concept of Human Rights in Africa*.

amounts of writing on human rights in Africa, basically analysing the application of Africa's regional system.²⁴ Present scholarship on the human rights situation in Africa is more or less a renewed effort to strengthen and further push for the implementation of the body of human rights instruments that have been constructed on the foundations of the international bill of rights.²⁵ This third 'wave' of human rights discourse engages with the universalism and cultural relativism debates, advocating obligations under international law to respect, protect and fulfil rights rather than the oft-overstated arguments regarding Africa's unique cultural heritage.

Because of the overlapping discussions on the subject, the construction of 'the human' in international human rights, including in the colonial Gold Coast context, remains under-researched.²⁶ An approach that takes into account the link between international human rights and a non-essentialist approach to human rights studies in colonial Africa generally seems under-developed at present. There are various reasons for this hiatus. In seeking to respect the African cultural heritage, some scholars have approached human rights discourse

²⁴ Evelyn A. Ankuma, *The African Commission on Human and Peoples' Rights: Practice and Procedure*, The Hague: Martinus Nijhoff Publishers, 1996; Nasila S. Rembe, *The System of Protection of Human Rights under the African Charter on Human and Peoples' Rights: Problems and Procedures*, Maseru: National University of Lesotho, 1995; Makau Mutua, *Human Rights: A Political and Cultural Critique*, Philadelphia: University of Pennsylvania Press, 2002; Malcolm D. Evans and Rachel Murray, *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000*, Cambridge: Cambridge University Press, 2005; George William Mugwanya, *Human Rights in Africa: Enhancing Human Rights Through the African Regional Human Rights System*, Ardsley, NY: Transnational Publishers, 2003; John Akokpari and Daniel Shea Zimble, eds., *Human Rights Architecture*, Auckland Park: Fanele, 2008; Paul Tyambe Zeleza, *Human Rights, the Rule of Law and Development in Africa*, Philadelphia: University of Pennsylvania Press, 2004; Frans Viljoen, *International Human Rights in Africa: National and International Protection*, Oxford: Oxford University Press, 2007.

²⁵ Chaloka Beyani, *Human Rights Standards and Movement of People within States*, Oxford: Oxford University Press, 2000; Abdullahi Ahmed An-Na'im, *Human Rights under African Constitutions*, Philadelphia: Pennsylvania University Press, 2003; Fareda Banda, *Women, Law and Human Rights: An African Perspective*. Oxford: Hart Publishing, 2005; Harri Englund, *Prisoners of Freedom: Human Rights and the African Poor*, Berkeley: University of California Press, 2006; Richard Amoako, *Human Rights in Africa: The Conflict of Implementation*, Lanham, MD: University Press of America, 2000.

²⁶ Timothy Fernyhough, "Human Rights and Precolonial Africa" in Ronald Cohen, Goran Hyden and Winston P. Nagan, eds., *Human Rights and Governance in Africa*, Gainesville: University Press of Florida, 1993. See also Nana Kusi Appa Busia, Jr., "The Status of Human Rights in Pre-Colonial Africa: Implications for Contemporary Practices" in George W. Shepherd, Eileen McCarthy-Arnolds, David E. Penna, and Debra Joy Cruz Sobrepenna, eds., *Africa, Human Rights and the Global System: The Political Economy of Human Rights in a Changing World*, Westport, Conn.: Greenwood Press, 1994; Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge: Cambridge University Press, 2003.

cautiously, fearing that the idea of human rights, as embodied in, for example, the UDHR, is a vestige of colonialism imposing an imperial worldview, ethos and ideology on post-colonial African states or, even worse, an idea which paradoxically permitted the exclusion of the ‘African person’ under colonial domination in the 1940s and 1950s.²⁷ Given this, my aim is to explore the African (Gold Coast) human rights discourses in a way which critically engages with the ideologies of ‘the human’ as well as the paradigmatic rights-holders in the concept of human rights in the UDHR. However, the literature on the Gold Coast is very limited indeed. Busia, Jr.’s article examining the structures and social forces of pre-colonial Africa and their role in shaping the protection and violation of human rights in post-independent Africa speaks for itself, in the sense that it discusses the situation in pre-colonial Gold Coast.²⁸

What the academic literature reveals is the diversity of ways in which human rights is conceptualised, not least as a language that can be employed as a legitimising tool in law-making in the colonial period but also as an idea that raises a certain amount of understandable scepticism.²⁹ Also, the legal character of international human rights provided for the principle of justiciability in domestic law, which became a normative basis for articulating rights in, for example, the Gold Coast constitutions. Although it would be far-fetched to talk about a clear ‘human rights culture’ at that time, the residuary discretionary powers of the British representatives in the Gold Coast in the 1940s and 1950s were counter-balanced by the growing awareness about human rights norms among the nationalist movements.³⁰

²⁷ Shivji, *The Concept of Human Rights in Africa*; Mutua, *Human Rights: A Political and Cultural Critique*.

²⁸ Busia, Jr., “The Status of Human Rights in Pre-Colonial Africa: Implications for Contemporary Practices”.

²⁹ Banda, *Women, Law and Human Rights*; Ibhawoh, *Imperialism and Human Rights*.

³⁰ F. A. R. Bennion, *The Constitutional Law of Ghana*, London: Butterworth, 1962, 37-62; Kofi Abrefa Busia, *Gold Coast Independence: Memo to the United Kingdom Government*, November 30, 1956. The memo was circulated among MPs on 30 November 1956 just before the debate on Ghana’s independence), November 30, 1956. At the time Busia was the official Leader of the Opposition in the Legislative Council.

1.4. Collecting ‘the human rights texts’ for this research project: research methodology

This case study has been conducted through researching primary and archival sources which have the potential to reveal how the idea of ‘human rights’ was deployed in the Gold Coast. The archival data provided the raw material for examining in detail how the human rights idea was used in the political discourse of the Gold Coast up to independence and a chance to witness, as it were, the actors and factors in the specific context of 1945 to 1957. It also proved an opportunity to scrutinise the effects of Western education on the nationalist movements, the impact of the debates about extending the European Convention on Human Rights (ECHR) to colonial territories on domestic politics in the Gold Coast, and the way the transition to political parties affected the discourse on incorporating a bill of rights into the Independence Constitution.

The material I use in the research are ‘human rights texts,’ in the sense that they are documents of historical and legal character. These documents are of three kinds: domestic, international, and a hybrid of the former two. The domestic documents include legislative debates, post-World War II Gold Coast constitutions, official documents of nationalist movements such as the United Gold Coast Convention (UGCC) and the Convention Peoples Party (CPP), and newspapers. The international documents are mainly the United Nations Charter (UN Charter) and the UDHR and the hybrid include policy/legal documents of the British colonial administration, jurisprudence on human rights law and those foreign newspapers that take up Gold Coast domestic issues. To my knowledge, this material has not hitherto been used to research the deployment of a human rights discourse in the Gold Coast.

The selected documents meet the research criteria as identified by Scott, namely, authenticity, credibility, representativeness and meaning.³¹ Scott argues that the decision to use a document or a set of documents rests on whether or not

³¹ John Scott, *A Matter of Record: Documentary Sources in Social Research*, Cambridge: Polity, 1990, 6.

the document is a primary or secondary document..., accurateness of the documentation, the reliability of the producer of the document..., whether it is a typical document... [and] meaning can be distinguished into the intended meaning of the author of the document, the meaning intended for the reader ... and the social meaning for someone who is the object of that document.³²

The human rights texts are also historiographical and archival, in the sense that they come from a particular historical and political context.³³ They are relevant for my research project not only because of their wealth of human rights information but also on account of the potential they offer me as a researcher in interrogating, for example, the role of human rights debates in the emancipatory politics of the Gold Coast.

Because the research deals with events which occurred more than 50 years ago, many of the people who were key players in the independence politics in the Gold Coast have now died.³⁴ I contacted two leaders from the pre-independence nationalist movements who are still alive, but discovered that due to poor health neither were in a position to grant an interview. This is probably related to the relatively short life expectancy of Africans born in the early to mid-twentieth century vis-à-vis people of the same generation, say, from Britain. The British who were serving in the Gold Coast colonial administration had taken up their positions after many years of work in other capacities and so were already well on in years by the time they were transferred to Accra. Key players in the post-World War II Gold Coast politics such as Alan Burns, Gerald Creasy or Charles Arden-Clarke have also passed away.

I have undertaken more than twelve months of archival research in the Ghana Public Records and Archives Administration Department (PRAAD) in Accra and in Cape Coast; the British National Archives (Public Records Office, Kew) in London, the British Library in Kings Cross/St. Pancras, London and the British Library Newspaper Collection at Colindale; the Rhodes House Library (University of Oxford) in Oxford, the library of the Institute of

³² Ibid.

³³ See Archival Materials <<http://archivemati.ca/2007/01/22/archival-materials-a-practical-definition>> (accessed November 10, 2008).

³⁴ Joseph Danquah died in 1965, Kwame Nkrumah in 1972, Kofi Busia in 1978 and Ebenezer Ako Adjei in 2002. The contributions and lives of these actors are treated in varying detail in the thesis.

Commonwealth Studies and the library of the School of Oriental and African Studies (SOAS) both in London.

There were some underlying assumptions to this research, which formed an integral part of the premises on which this project was initially conceived. Suffice it to acknowledge that the analysis of the research material has actually confirmed these assumptions. First, it is assumed that the international human rights regime developed an inclusive paradigm of the rights-holder when it reaffirmed in the preamble of the UN Charter “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small [and, as further specified in the UDHR, that] all human beings are born free and equal in dignity.”³⁵ The system of international human rights protection historically came out of a need to provide effective and universal protection of the rights of all human beings following the atrocities of World War II. The core values delineated by the nascent UN Charter and UDHR affirmed the fact that all human beings are “entitled to all rights and freedoms set forth in this Declaration without discrimination of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”³⁶ and set the stage for the universalisation of standards to include all human beings.

The second assumption is that awareness about fundamental human rights among the main actors in the Gold Coast, such as the colonial administration, the nationalist movements, women's groups and local chiefs, is one of the premises upon which the concept was appropriated and deployed in national discourses. Because specific ideas about what it means to be human beings informed colonisation, the UN human rights regime needed to make a paradigm shift in the conceptualisation of ‘the human’ in order for an inclusive idea of rights-

³⁵ Preamble of UN Charter and Art 1 of UDHR.

³⁶ Art 2 of UDHR. Regarding the question of human rights versus the rights a human being possesses because they are a citizen of a state, see, for example, Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights*, Oxford: Clarendon, 1995; Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens*, Cambridge: Cambridge University Press, 2004.

holders to represent a meaningful discourse for people. In this early phase of the history of international human rights, conceptual clarity about what human rights means and/or who the holders of these rights are in a colonial environment must have been elusive both for the colonial administration and for the ‘British protected persons.’ Of course, the gap between the promise that human rights makes to societies and the reality of human rights protection on the ground would have been quite wide.

It can further be assumed that the archival silence regarding gender equality, the rights of women or the rights of children reflects the historical situation of the Gold Coast in the period between 1945 and 1957. There were competing and overlapping discourses about human rights in the Gold Coast, leading sometimes to consensus-building, and sometimes to differences in interpretation or even conflict positions. This had implications on the way human rights could be a meaning-making tool in the lives of the subjects. These are reflected in debates on extending the ECHR to the Gold Coast and on whether or not to have the bill of rights in the Independence Constitution, these are taken up in detail in chapters 5 and 6 below of the thesis. These assumptions helped to narrow the focus for achieving the research objectives.

1.5. The ‘human rights texts’ as a window into human rights discourse

The human rights texts I have collected reflect ideas and practices about human rights which were embedded in a specific setting during a particular historical period. I have adopted a broad discourse approach for analysing them, as my data is both textual and contextual, allowing me to explore the various ways in which human rights were discussed, spoken about, written about or acted on in the Gold Coast between 1945 and 1957. A particular source of inspiration for my work has been Edward Saïd, a non-Western scholar who famously used the idea of discourse in order to analyse the relationship between the

coloniser and the colonised.³⁷ Interestingly for my own work, Saïd confined himself to literary texts to discuss ways in which the imperialists construct the ‘Orient’ and maintains power over it and the people in it. His understanding of a discourse as something that is not free of the conditions of its social production and the context in which it is transmitted is relevant to my analysis of the human rights texts I have collected.³⁸ So is his idea that the purpose of universal human rights is to put forward explanations using the same language employed by the dominant power to dispute its hierarchies and clarify what is obscured.³⁹

By engaging critically with the specific context and text of human rights in the Gold Coast, the activities of the nationalist movements and the colonial administration, and with the legislative debates, Gold Coast newspapers, the policies of the colonial administration and policy documents of the nationalist movements were analysed in their specific context. Ideas about human rights are also embedded in the context and the text of the UDHR and UN Charter as well as the underlying assumptions about who ‘the human being’ of rights is. It is through the analysis that the definition of human rights, as it were, is unearthed in the UDHR and serves as a heuristic device for evaluating other constructions of the human being, say, in a colonial territory.

This approach also helped me to interrogate the categories of race, gender and ethnicity, and at the same time question the validity claims of imperialist or masculine binaries or the grounds for gender imbalances. The preoccupations of marginalised constituencies such as the women in the Gold Coast are, thus, allowed to come to the fore in the analysis and are assessed in relation to others in the country. In this way, the human rights texts open up what Keto describes as “a hermeneutic discourse... [that] unfolds vistas of new

³⁷ Edward Saïd, *Orientalism: Western Conceptions of the Orient*, London: Penguin, 1978; Edward Saïd, *The World, the Text and the Critic*, Cambridge, MA: Harvard University Press, 1983.

³⁸ Saïd, 1983.

³⁹ Edward Saïd, *Reflections on Exile*, London: Granta Books, 2001, 430.

information”⁴⁰ in the research, situates the human rights idea in history as both timely and essential and serves as an axiological reference to engage with the idea of rights-holders in post-World War II Gold Coast. The range of meanings emerging from the text/context reveal an important dialectic about human rights, as a post-World War II idea that was shaped by complex forces but which also influenced discursive constructions of anti-colonial protest. It also helped to evaluate many of the shared perceptions, differences of opinion, collective actions and the diversity of ideologies based on the discourses embedded in the text/context. Human beings are free agents with the potential/power to shape the destiny of their societies, and the human rights discourse points to how human beings are capable of rising above their historical, political, cultural and social circumstances and transcending their specific group interests.

Consequently, in choosing one method of analysing the human rights texts over another, the research is done against the background of engaging on the one hand with the interface between the theory and the application of human rights and of interrogating on the other hand the human, political and historical realities which were shaped by complex factors such as language, social practices and the power dynamics in the Gold Coast.⁴¹ By using this discourse approach in analysing the human rights texts, I draw attention to the way human rights is also a meaning-making device, appropriated by different actors for diverse purposes in the Gold Coast.⁴² Subsequent chapters of the thesis demonstrate the way this discourse approach of interrogating the human rights texts *qua* data revealed the discursive aspects of a complex historical situation, political circumstances and social practices. Indeed, this

⁴⁰ Tsehloane C. Keto, *The African-Centered Perspective of History*, London: Research Associates, 1994, 16.

⁴¹ Michel Foucault, *Illness and Psychology* trans. Alan Sheridan, New York: Harper and Row, 1976; Foucault, 1980; David Grant, Tom W. Keenoy and Clifford Oswick, *Discourse and Organisation*, London: Sage Publications, 1998.

⁴² For the notions of domestication or ‘vernacularisation’ of rights in particular context, see Sally Engle-Merry, “Legal Pluralism and Transnational Culture: The *Ka Ho’okolokolonui Kanaka Maoli* in Richard Wilson, ed., *Human Rights, Culture and Context*, London: Pluto, 1997; Sally Engle-Merry, “Transnational human rights and local activism: Mapping the Middle” in *American Anthropologist* 108(1), 2006: 38-51; Judy L. Ledger and Kheang Un, “Global Concepts and Local Meaning: Human Rights and Buddhism in Cambodia” in *Journal of Human Rights* 2(4), 2003: 531-549.

approach to the analysis is both critical and dialectical, in the sense that it establishes the basis of human rights in context/text and engages in a dynamic process of gaining a deeper understanding of universal rights through the human rights texts.

1.6. The outline of the thesis

As I have pointed out above, the research will explore on the one hand the emergence of human rights in the Gold Coast after World War II and on the other hand its uses in the political discourse up to independence in 1957. This first chapter provides the theoretical and methodological framework of the thesis by explaining why the research is being done, how the thesis is located within the extant literature, what resources are used, where the data has been gathered, and how it is being approached and analysed.

The second chapter offers an understanding of human rights as a ‘truth regime’ after critically engaging with different perspectives. The term, truth regime, is adopted as a frame of analysis for conceptualising the idea of human rights. It answers questions such as how international human rights express a specific idea of the human being as a rights-holder and what ways the idea of human rights represents a truth regime among the plethora of regimes of falsity that undermine the essence of being human. I demonstrate how human rights is a truth regime by highlighting how the idea is an emancipatory tool for people to make rights claims in unjust situations.

The third chapter reviews the way the Gold Coast came to be institutionally constituted as a colonial territory of Britain. It examines how laws, policies and forms of imperial pragmatism discursively created the Gold Coast as a colonial territory between the 1750s and the 1950s and how colonial rule, in turn, prepared the grounds for resistance nationalism.

Chapter 4 discusses the way in which the colonial setting relied on highlighting and

inscribing differences between people to justify the imperial project. This raises questions as to how the colonisers understood the ‘humanity’ of the colonised and how the colonised understood and expressed their own ‘humanity’ in the politics of resistance and demands for education. This chapter also explores the significance of dignity and equality, which are at the heart of the meaning of human rights, and what they could denote in Gold Coast politics.

At the core of the analysis in chapter 5 is the paradigm of rights-holder and the normative promise of the UDHR that one has rights by virtue of being human. This is examined by reference to the way debates about extending the ECHR to the Gold Coast shaped political discourses in general and the 1950s constitutional reforms in particular.

Chapter 6 analyses the specific debates about incorporating a bill of rights into the Gold Coast Independence Constitution in 1957 and examines the positions of the main actors, the problem of ‘historicising’ human rights through a bill of rights, and the negotiation of meanings about fundamental rights.

Chapter 7 examines the articulation of ideas about constitutional/statutory rights and the rhetoric of human rights in the politics for self-determination. This way the link between anti-colonial resistance, the post-World War II ‘new world order’ and the emergence of party politics is clarified. I argue that nationalism represented a nuanced discourse of rights in the Gold Coast.

The gender question is taken up in every chapter of the thesis to underline the different ways in which gender imbalances shaped these historical and normative realities in human rights especially in the Gold Coast. The analysis around gender not only interrogates the validity claims of dominant discourses around race, sex and ethnicity but also puts in context strong, compelling reasons emanating from personal experience of discrimination against women and girls, including harmful traditional practices, gender-based violence, reproductive health inequalities and economic discrimination. Gender-based discrimination is

especially privileged over and above, for example, children's rights because of a number of reasons. First, gender equality was not a central part of the human rights discourse in the period between 1945 and 1957 but it was nevertheless a major problem in the Gold Coast. Second, according to available census data on the period between 1945 and 1957, more than 50% of the Gold Coast population was made up of women. Third, gender-based discrimination is still prevalent and persistent in contemporary Ghana even though Article 17 of the 1992 Constitution provides for equality and freedom from gender-based discrimination and the state is party to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

The conclusion recapitulates the idea that human rights represents a specific truth about the human being *qua* human being who has dignity that ought to be respected and protected. This understanding has creative potential to bring about change in societies where discrimination and inequality form part of the value system. It also asserts that the potential is only that, a potential. However, it is when it is harnessed by visionary human agents that it challenges those regimes of falsity that undermine humanity and provides at least one of the bases for building proper legal institutions and a better world.

1.7. Note on spelling and terminology

Because of the variance in spellings between English and African languages in the Gold Coast, terminologies and orthographies in the literature are sometimes a sticking point in scholarship. Even though attempts have been made to standardise much of the orthography in the last fifty years, it is preferable to retain some spellings from the source material because they form part of a specific historical discourse. Terms such as the Gold Coast rather than Ghana, Ashanti rather than Asante and the titles for the local chiefs (*Nana, Na, Nene, Kabachewura* or *Nii*) are therefore used in this work because they correspond with what is in the archival material and represent a key part of the discourse.

The expression ‘local chief’ is used in the thesis to refer to the traditional rulers whose authority was legitimate according to the customary law of their respective ethnic communities and also those appointed by the colonial administration as collaborators in government. The Gold Coast educated elite coined the term *intelligentsia* to distinguish themselves from the rest of the African community. According to Austin, the *intelligentsia* was a term coined within the Gold Coast

to [mean] the small southern group of lawyers and businessmen who, from an early date, were active among the limited electorates of Cape Coast, Accra and Sekondi, forming proto-nationalist associations like the Aborigines Rights Protection Society (1897), the National Congress of British West Africa (1920), the Youth Conference Movement (1930), and a number of municipal party groups.⁴³

Apart from being both the leaders and gatekeepers of some of the political discourses by virtue of their exposure to Western education, relative degree of wealth or life in the urban areas, they formed the main bulwark of anti-colonial resistance in the country. I will use *intelligentsia* and educated elite interchangeably throughout this work.

The term colonial administration is used in a restricted sense in the thesis to mean the configuration of political appointees of the British Crown as well as those civil servants, whether British or African, who governed the colony, protectorates and mandated territory. The civil service officials were mostly from the Colonial Office with a few technical staff coming from other UK government departments such as education, foreign affairs, transport and agriculture. However, the African civil servants straddled two conflicting positions in the colonial administration, neither enjoying British citizenship nor benefitting fully from the Crown’s public service. Moreover, many of them joined various waves of anti-colonial nationalism to resist colonial domination. Kofi Abrefa Busia, for example, went from being one of the first two Africans (along with A. L. Adu) to work in the colonial civil service in the Gold Coast as district commissioners between 1942 and 1949 to being at the forefront of

⁴³ Denis Austin, *Politics in Ghana, 1946-60*, London: Oxford University Press, 1964, xiii.

nationalism from 1951 onward. In instances where the term 'Gold Coast government' is used, it is always in relation to the colonial administration, which until 1951 comprised of British civil servants and political appointees and after the transition to an all-African legislature included a significant number of Africans.

Chapter 2

Human rights as a truth regime

“Where there is true justice, all are brothers and sisters.”

Dagara proverb

Human beings suffer,
they torture one another,
they get hurt and get hard...

History says, Don't hope
on this side of the grave.
But then, once in a lifetime
the longed for tidal wave
of justice can rise up,
and hope and history rhyme.⁴⁴

Seamus Heaney, Excerpt from *The Cure at Troy*

2.1. Introduction

Since the adoption of the UDHR, the idea of human rights is usually invoked in situations where human being's inhumanity towards other human beings arises and the basic standards that uphold the dignity of the human being are under threat. One of the useful frames of reference for this tends to be the provision to respect and protect the dignity of all human beings “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁴⁵ In this way, the concept of human rights helps to form a specific picture of our shared humanity and communicates the idea that human beings possess dignity that ought both to be protected and respected. By making the undertaking that the rights provided for in the UDHR serve as “a common standard of achievement for all peoples and all nations,”⁴⁶ something very important is emphasised, that human beings are less separated in reality than in imagination. Lessons of history and indignation toward the cruelty of one group of people dehumanising another contributed to the construction of the specific idea of human rights in the post-World War II context.

⁴⁴ Seamus Heaney, *The Cure at Troy: A Version of Sophocles' Philoctetes*, New York: Farrar Straus Giroux, 1991, 166.

⁴⁵ Art 2 of UDHR.

⁴⁶ Preamble of UDHR.

Every so often, problems arise when it comes to the application of human rights standards on the ground, sometimes with the state apparatus distorting meanings to suit their particular agendas. The idea of human rights may well be a victim of its own ambiguity in history, but this neither diminishes its normative power nor the fact that it is a truth regime specifying that every human being is a rights-holder.⁴⁷ Added to this is the controversial question whether or not human rights, as we understand it today, has an enduring link with historical discourses of justice. While the conventional history of human rights tends to situate the subject in the *Magna Carta Libertatum* of 1215, the English Bill of Rights of 1689, the American Declaration of Independence of 1776 and the French Declaration of the Rights of Man and of the Citizen of 1789, at least one school of thought described these antecedents as representing “a politics of citizenship at home”⁴⁸ and not necessarily ideas of universal human rights. The UDHR makes, as it were, a fundamental promise that one has rights simply by virtue of being human,⁴⁹ but the fact that these values neither created a strong enough symbolic embarrassment for governments that abused the rights of their citizens/subjects nor inspired a human rights culture acceptable to all people in all places raises, among other things, a question as to their receptivity.

Chapter 2 examines how human rights expresses a specific idea of the human being as a rights-holder and the way in which it represents a truth regime among a surfeit of many false claims about the human being. The analysis will first be situated squarely in the conventional history of human rights discourse in order to draw out what I mean by a truth regime. Then the historicist thesis which argues that human rights only made it as an internationally accepted idea from the 1970s onward will be presented and critiqued before I respond to the rather common charge that human rights is a product of Western

⁴⁷ For a detailed explanation of the idea of truth regime, see section 2.5. of this chapter.

⁴⁸ Samuel Moyn, *The Last Utopia: Human Rights in History*, Cambridge, Mass.: The Belknap Press, 2010, 12.

⁴⁹ Art 1 of UDHR. For a detailed discussion of this idea, see Donnelly, 2003, 7.

ethnocentrism imposed progressively on the rest of the world.⁵⁰ I will examine primarily those aspects of human rights history that bring out the relationship between the concept and specific ideas about rights-holders and the imbrications of rights in a state structure. I shall do all this in order to provide the context and background for explaining the understanding of human rights as an expression of certain core values about our shared humanity.

2.2. The human rights idea as an expression of ‘the human’

The intimate link between human rights, as it is understood today, and the denunciation of human being’s inhumanity to human being cannot be denied. Even in its forerunners, the discourses of justice that served as precursors to human rights developed out of situations of injustice. While the precursors are not ‘the real thing,’ they provide a ‘usable past’⁵¹ for constructing a meaningful history of human rights. Without them the idea would not have developed into what it eventually became in contemporary times. But in this historical frame, human rights is also ambiguous, representing either an outcome of a progressive, incremental understanding of the idea over time or a departure from what was before as evidenced by the fact that human rights becomes only universally persuasive from the 1970s onward. These apparently paradoxical ideas are reconcilable because they also present a both/and rather than simply an either/or idea as this section 2.2. will demonstrate.

Rights is an unstable concept in history. It has meant different things in different phases of history, depending sometimes on the context under which specific ideas of rights emerged. Even when the concept has significance for a community of human beings, the political circumstances may not necessarily be conducive for entrenching human rights norms. The argument that the notion of human rights is as old as civilisation itself has been

⁵⁰ See, for example, American Anthropological Association, “Statement on Human Rights” in *American Anthropologist* 49(4), 1947: 539-543.

⁵¹ Moyn, 12.

made by many scholars, among them Ishay, Lauren and Sellars.⁵² While such an argument is not really tenable from the way human rights is defined today, it alludes to the fact that human beings have long been travelling on the road to a more just society, “the milestones along its way formed by acts of individual heroism as well as by the great arguments of learned men [and women].”⁵³ Many of the discourses of justice that have come to be accepted as the precursors of international human rights flag up principles of individual freedom or even inherent equality in specific historical contexts. Those ideals spoke to and about particular historical situations of injustice or oppression, but also sometimes possessed, as it were, the normative seed of an international scope.

Scholars who argue that the *Magna Carta*, the Habeas Corpus Act, the English Bill of Rights, the American Declaration of Independence and the French Declaration of the Rights of Man and of the Citizen represent antecedents to the idea of human rights buttress their point by drawing attention to the normative scope of the ideas of justice in these precursors.⁵⁴ They point out that these forerunners of human rights advocated, to different extents, limits to the absolute powers of the sovereign or tyranny of the state. Three examples put in context the extent to which these documents secured ‘rights’ for specific groups of people in history. First, the *Magna Carta* protected the rights of the English barons against the arbitrary powers of King John, but had very little to say about the rights of the man/woman in the street in the England of that period. Second, the American Declaration of Independence made the powerful claim “that all men are created equal, that they are endowed by the Creator with certain unalienable rights”⁵⁵ while failing to end racial discrimination in the United States of

⁵² See, for example, Micheline R. Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era*, California: University of California Press, 2004; Paul Gordon Lauren, *The Evolution of International Human Rights: Visions Seen* 2nd ed., Philadelphia: University of Pennsylvania Press, 2003; also see Kirsten Sellars, *The Rise and Rise of Human Rights*, Stroud: Sutton Publishing, 2002, viii.

⁵³ Ian McGregor, *Human Rights*, Essex: The Anchor Press, 1975, 17.

⁵⁴ See, for example, Lynn Hunt, *The Invention of Human Rights: A History*, New York: W. W. Norton & Company, 2007.

⁵⁵ The Declaration of Independence in <<http://www.ushistory.org/declaration/document/>> (accessed March 29, 2011).

America (USA). Slaves were sold and bought like chattels partly because they were not constructed as ‘human’ in the same way that the buyers, for example, were. Third, even though the French Declaration of the Rights of Man and of the Citizen asserted that “men are born free and equal in rights,”⁵⁶ this universal claim to freedom and equality excluded many of the common people. Indeed, there were calls in France for Olympe de Gouges, an advocate of women’s rights, to be executed at the guillotine after she issued the Declaration of the Rights of Woman and Citizen in reaction to the use of the word ‘man’ in the 1789 declaration.⁵⁷

At the level of individual contributions to these contextual ideas of rights three names are typically cited by this school of thought: Thomas Hobbes thought natural law was vague and therefore open to different interpretations, so he proposed positive law as the basis of rights, meaning that they could be given, taken away and modified by the sovereign in accordance with society’s needs. John Locke and Jean-Jacques Rousseau took up in their writings the idea that human liberty ought to limit the absolute power of the sovereign or the arbitrary powers of the state.⁵⁸ They advocated a ‘social contract’ in which the consent of the governed is one of the preconditions for the legitimate exercise of authority by the ruler. Hobbes did not conceive of natural rights for the common person because of the powers that were given to the ruler in the social contract; but the ruler, according to him, also had the obligation to exercise authority over the governed in a responsible manner.⁵⁹ Locke, on the other hand, championed natural rights (especially the right to property) and the idea of the consent of the governed within the context of the social contract. The paradox of Locke’s

⁵⁶ Art 1 of The Declaration of the Rights of Man and Citizen, 1789.

⁵⁷ Lauren, 25.

⁵⁸ See, for example, Conor Gearty, *Can Human Rights Survive?* Cambridge: Cambridge University Press, 2006, 23, 73-7. For a detailed discussion of the contributions of Hobbes, Locke and Rousseau to the human rights discourse, see Thomas Hobbes, *Leviathan*, ed. by J. C. A. Gaskin, Oxford: Oxford University Press, 1996. John Locke, *Two Treatises of Government*, ed. by Peter Laslet, Cambridge: Cambridge University Press, 1988. Jean Jacques Rousseau, *The Social Contract and Other Political Writings*, ed. by Victor Gourevitch, Cambridge: Cambridge University Press, 1997. Also see Jack Mahoney, *The Challenge of Human Rights: Origin, Development and Significance*, Oxford: Wiley-Blackwell, 2007.

⁵⁹ Hobbes, 223.

idea, as Bates has pointed out, is that “[h]e did not advocate universal suffrage and was, after all, writing in the seventeenth century when the right to vote remained a privilege of very few in England.”⁶⁰ Rousseau extolled freedom as a value that derived from the general will or authority of the people, articulated in the laws of the land. While these thinkers or even the architects of the declarations were too radical in their beliefs to be children, as it were, of their time, they were nevertheless in many ways the products of their time even as they sowed the seeds of human rights through their writings.

The most conventional view about human rights history tends to emphasise how the notion of rights, especially natural rights, was ridiculed in the nineteenth century by Bentham, who argued famously that the idea was really “simple nonsense... nonsense upon stilts”⁶¹ without the protection of law and by Marx who pointed out that “the so-called rights of man... are nothing but the rights of the member of civil society, i.e., egoistic man, separated from other men and from the community.”⁶² Indeed, these two critiques were reinforced unwittingly by the nineteenth-century discriminatory practices against marginalised constituencies in many parts of the world, not least the USA where the rights of slaveholders to their ‘property’ was upheld in *Dred Scott v Sandford* in 1857.⁶³

The Enlightenment is another historical period upon which the conventional school of thought has drawn. The idea of rights, it argues, emerged out of the Enlightenment project, “as reason began to triumph... and the new sensibility embraced ideals of individual freedom and social equality.”⁶⁴ This ‘new sensibility’ is said to have inspired discourses of justice in which the justification for trade of human beings was questioned in, for example, the *R v*

⁶⁰ Ed Bates, “Foundations: History” in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran, *International Human Rights Law*, Oxford: Oxford University Press, 2010, 20.

⁶¹ Jeremy Waldron, ed., *Nonsense upon Stilts: Bentham, Burke and Marx on the Rights of Men*, London: Routledge, 1987, 53. For a detailed discussion of these perspectives, see Gearty, 21-5.

⁶² Waldron, 127.

⁶³ 60 U.S. 353 (1857). The US Supreme Court ruled, among other things, that Congress had no authority to outlaw slavery in the federal territories and that slaves by virtue of not being citizens could not sue in a US court of law.

⁶⁴ Sellars, viii.

Knowles, ex parte Somersett case of 1772.⁶⁵ This case, along with other political struggles, prepared the grounds for the eventual abolition of trade of human beings in the British Empire in 1807 and in the USA a year later but also constructed the human being as a potential rights-holder. It is important to note that the abolition of trade in human beings did not mean the outlawing of slavery in British territories. This happened later, and only gradually, with the Slavery Abolition Act, 1833.⁶⁶ According to Bates, expressing an idea which is typical of this school of thought, the abolition of trade of human beings “was... one of the earliest, if not the first, human rights related British foreign policy initiatives.”⁶⁷

The abolition of trade in human beings generated a new notion of the human being as one who should not be treated as a chattel. If this was indeed the case, then it is a paradox in human rights discourse, that the trade of human beings was immediately replaced by colonization of the territories where many of the slaves originated. Even though the League of Nations attempted to protect the rights of minorities in certain regions of the Western ‘world’, not only was the intervention in preventing the carnage of World War II too little, too late but it also paid no attention to the plight of colonised people around the world.

As is rehearsed in human rights histories as a litany, it is of course in the context of the atrocities of World War II that the idea of human rights proper emerged. Already in 1941, Franklin Roosevelt had spoken about a new world order founded on ‘four essential human freedoms,’ i.e., freedom of speech and expression, freedom of every person to worship God in his/her own way, freedom from want, and freedom from fear.⁶⁸ He disclosed to the United States’ Congress plans for a universal organisation to replace the weak League of Nations.

⁶⁵ 20 State Trials 1.

⁶⁶ 3 & 4 Will. IV c. 73. The northern states of the United States of America tried to abolish trade in human beings between 1777 and 1804. Under the auspices of the League of Nations, an International Convention on the Abolition of Slavery and the Slavery was passed in 1926. Also see Robin Blackburn, *The American Crucible: Slavery, Emancipation and Human Rights*, London: Verso Books, 2011.

⁶⁷ Bates, 28.

⁶⁸ See NARA, RG 59, Notter files, Records of the US Delegation to the UN Conference on International Organization, 1944-45, Box 215.

According to Hoopes and Brinkley, Roosevelt came up with the name, ‘United Nations,’⁶⁹ envisaging in it a body of nations that would guide the affairs of the world and would contain the possible violations of individual rights. The United Nations Conference on International Organization or the San Francisco Conference (April 25-June 26, 1945), which formally established the UN, was a decisive moment in international human rights discourse for three reasons. First, the atrocities of the war were formally acknowledged by the representatives of the newly-formed UN as a terrible scar on the conscience of humanity. Secondly, the UN Charter, which contained some building blocks for a new culture of rights, was adopted; and thirdly, the idea of setting up a body under the auspices of the UN to draft a separate bill of rights was debated and endorsed. From the inception of the UN, its charter reaffirmed *inter alia* “faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,”⁷⁰ thus singling out the upholding of human rights as one of its key functions. The UN Human Rights Commission was formed to draft an international bill of rights for the protection of human rights. This was a step of immense significance.

The representatives of the key players in the UN also had to negotiate, as it were, the meaning of human rights in such a way that it did not encroach upon their sovereignty and in some cases the possession of colonies.⁷¹ The issue of sovereignty also inevitably came up in Europe where colonial powers had to negotiate whether or not to extend the ECHR to their colonial territories. The debate about the suitability of extending the ECHR to colonial territories is taken up in some detail in chapter 5 below of this thesis.

After eighty-five sessions of debates by the Third Committee, the draft UDHR was

⁶⁹ Townsend Hoopes and Douglas Brinkley, *FDR and the Creation of the UN*, New Haven, CT: Yale University Press, 2000, 207. According to Hoopes and Brinkley, Roosevelt was so pleased with the name United Nations that he burst into the room of Winston Churchill, the British Prime Minister, who was a White House visitor at the time, to get his approval.

⁷⁰ Preamble of the UN Charter.

⁷¹ Sellars, 8. The fears about the doctrine of sovereignty led to the insertion of Article 15 in the UDHR, prohibiting the UN from intervening in matters within the domestic jurisdiction of member states.

adopted by the UN General Assembly at the Palais de Chaillot on December 10, 1948. Forty-eight voted in support of the declaration, eight abstained, two countries were absent from the chamber at the time of the vote and no one voted against it. South Africa not only opposed Articles 13 and 21 (i.e. freedom of movement and the right to participation in government respectively) of the declaration but also on the day of the vote abstained along with seven other countries. (South Africa's position on human rights at the time reflected the existing Apartheid policy.)

From the *Magna Carta*'s discourse of justice in the thirteenth century to a social contract idea in the eighteenth century, there emerged an incremental understanding of the fundamental idea that the human being is a potential rights-holder and that, therefore, trade in human beings ought to be abolished. This prepared the grounds for affirming the idea that every person possesses inalienable rights in a universal declaration on human rights. The ideas of justice in, for example, Roosevelt's four freedoms or in what came out of the revulsion to World War II atrocities were entrenched in a universal declaration to provide a normative framework of respect for every human being without distinction. In other words, the precursors to human rights represent historically specific ideas of justice while the UN human rights idea is theoretically universal in scope.

One of the central points of this thesis is that successive generations built on the ideas of earlier ones, in the process refining discourses of justice to become the international standards for the protection of human rights. At the centre of this process was the human being or the attempt to construct a paradigm of common humanity. A diverse community of human beings participated in articulating ideas in reaction to specific historical situations, sometimes thinking outside the box and in the process defining human beings as rights-holders. There is, thus, a tenuous inter-generational chain in the development of human rights' ideas.

2.3. An alternative understanding of human rights history

Moyn has recently proposed that each of the historical precursors represented a mere domestic struggle for the rights of citizens rather than an idea for all human beings to be protected by state law.⁷² He argues that human rights became an internationally accepted idea in the 1970s, as it captured the Western imagination. This accordingly is what allowed it to evolve into a global movement, becoming the standard discourse for engaging with situations of systematic injustice. Through the analysis of specific national and international situations, he concludes that a conceptual distinction could be made between those discourses that espoused citizenship rights under the state as the locus of rights and those about paradigmatic rights-holders, rights people have simply by virtue of being human. In his view, the precursors represent a “politics of citizenship at home”⁷³ and in the post-1970s a “politics of suffering abroad”⁷⁴ in which the state is also the source of the abuses. One has a domestic scope with a discourse of justice while the other is universal in latitude, international in outlook with a rather tenuous connection with the UN human rights idea.

Moyn’s thesis has become prominent in human rights discourse but is, in my view, contentious. I will therefore take issue with some aspects of his idea, especially as they relate to the core arguments of this project. The distinction made between ‘politics of citizenship at home’ and ‘politics of suffering abroad’ creates a conceptual dichotomy, another of those taxonomies that rights discourse has historically been susceptible to since the 1940s.⁷⁵ One of the problems with this kind of separation is a false dichotomy in which two alternatives are considered, when in fact there are shades of grey between the extremes. In actual situations of injustice, the need for human rights may be transcendent of collective or individual rights as

⁷² Moyn, 12.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ See Vienna Declaration and Programme of Action, A/CONF.157/23, 12 July, 1993, which deals in some detail with the slippery slope nature of conceptualising rights into taxonomies.

such and the demands are often for both. For example, colonial history follows the pattern of citizenship rights being extended through a series of constitutional reforms in the 1950s and that included the collective right to self-determination in some cases and individual rights such as the right to vote and the right to stand for election or the right to life, liberty and security of person. The reasons for collective and individual rights, at least in British colonies, ranged from the extension in 1953 of ECHR provisions with emphasis on first ‘wave’ rights to the anti-colonial demands for self-rule. To ask for rights as citizens is a collective demand and to realise other rights that come with self-determination could be individualist experience. As Ibhawoh has pointed out in his study of human rights discourses in colonial Nigeria, the language of liberties or rights serve a complex array of purposes.⁷⁶

Some examples of abuse are also to be found in countries where there are well established cultures of citizenship rights, hence the idea of a ‘politics of suffering abroad’ is only partially accurate. When a USA government adopts the tenet of extraordinary rendition in order to abduct and transfer persons from nations where torture is prohibited to places where they could be tortured by proxy that is as much a violation of human rights as torture in a prison “abroad.”⁷⁷ Thus, the argument that international human rights represents a ‘politics of suffering abroad’ is as insular as conflating the idea of human rights with awareness about individual rights. The distinction that is made between the idea of human rights and actual awareness about it in society is more polemical than practical. Moyn succeeded in constructing an argument around the *a posteriori* analysis of historical data. But in the development of human rights history a hypothetical case is made on the *a priori* basis, like that of Rorty’s, that violations of fundamental rights by themselves raise, among other things, moral questions.⁷⁸ While this is a normative element of human rights, it is at the core

⁷⁶ Ibhawoh, *Imperialism and Human Rights*, 1-28.

⁷⁷ Moyn, 12.

⁷⁸ Richard Rorty, “Human Rights, Rationality, and Sentimentality” in Stephen Shute and Susan Hurley, eds., *On Human Rights*, New York: Basic Books, 1993, 111-134.

of the sensitivity of people to, say, the gross injustice of torture of Iraqi prisoners in Abu Ghraib or gender-based ‘honour killing’ in some societies.

With regard to anti-colonial nationalism, Moyn maintains that “[a]ny attempt... to place anticolonialism in human rights history must face up to an era when human rights had no movement and anticolonialism, a powerful movement, typically took the new ‘human rights’ in the original, collectivist direction of earlier rights talk”⁷⁹ Thus, he takes issue with Ibhawoh’s title, *Imperialism and Human Rights: Colonial Discourses of Human Rights and Liberties in African History*, arguing that it is misleading and pointing out that Parkinson’s *Bills of Rights and Decolonisation* is a misnomer.⁸⁰ Nkrumah attended the Fifth Pan-African Congress held in Manchester in 1945 in his capacity as an anti-colonial nationalist where he made the famous ‘Declaration to the Colonial Peoples of the World,’ but Moyn’s assertion that Nkrumah claimed “only the ‘rights of all people to govern themselves’”⁸¹ but not human rights sounds like a fallacy of many questions. The right to self-determination was a precondition for the realisation of other human rights for people living under colonial subjugation. Moyn’s perspective also highlights part of the problem with some interpretations of Africa in history through a specifically Western monocle. By putting anti-colonial struggles for self-determination outside the human rights movement, he basically fails to acknowledge the historical evidence outside his particular purview on the way the nationalist movements, and in some cases the colonial administrations, in the post-World War II deployed the new-fangled idea of universal rights in the colonies.

Nationalist movements picked through minefields of colonial policies and controversial practices, and so their struggles tended to focus on the immediate need for self-determination as the basis for the realisation of other rights. The expression, bill of rights, was actually used frequently in Colonial Office documents when the suitability of extending

⁷⁹ Moyn, 107.

⁸⁰ Moyn, 263 note 7.

⁸¹ Moyn, 91.

the ECHR British colonial territories was discussed in the late 1940s and early 1950s. Parkinson's book title is, therefore, not an inappropriate designation. (This issue of extending the ECHR to the Gold Coast is treated in some detail in chapter 5 below). As a general critique of his approach, I think Moyn conflates two very different ideas in human rights discourse, the universal nature of human rights with the 'internationalisation' of human rights. His generalizable idea about anti-colonial resistance and human rights is, therefore, partially accurate.

Moyn enriches the understanding of the development of the human rights idea, but his alternative perspective does not fully emasculate the conventional history. Tracing human discourse prior to the 1970s is a project worth pursuing, because his argument that 'any attempt to place anti-colonialism in human rights' is not wholly valid. Indeed, the conventional history of human rights is still of value in the study of this important subject. How the idea is assimilated into discourses or deployed in activism is not limited to 'movements.' Its discourse power lies sometimes in the fact that it is a heuristic device in negotiating justice and equality. Indeed, human rights in the post-World War II context is an example of a truth regime which specified how every human being is a rights-holder.

2.4. The ethnocentric thesis

One of the charges against human rights is that it is a product of Western ethnocentrism imposed progressively on the rest of the world⁸² or that as an idea it "took the suffering of whites to force the powers that be into action... [whereas] slavery and colonialism [had] left the world indifferent."⁸³ The American Anthropological Association (AAA) picked up on this issue even before the UDHR was adopted when they asked,

⁸² American Anthropological Association, 539-543.

⁸³ Marie Dembour, "Foundations: Critiques" in Daniel Moeckli, Sangeeta Shah and Sandesh Sivakumaran, *International Human Rights Law*, Oxford: Oxford University Press, 2010, 81; David Slater, "Contesting Occidental Visions of the Global: The Geopolitics of Theory and North-South Relations" in *Beyond Law*, December 1994, 100; Mutua, 10.

“[h]ow... the proposed Declaration [can] be applicable to all human beings and not be a statement of rights conceived only in terms of values prevalent in the countries of Western Europe and America?”⁸⁴ The problem of the AAA is first about the difficulty of devising rights which will be relevant to the experiences of all human beings in all places and second about power. Indeed, the issue of how representative the UDHR drafting commission was has often been one of the reasons human rights is criticized as a foreign concept imposed on, for example, post-colonial African countries.⁸⁵

The distinction about the value of human rights for different environments was something that the AAA had raised when they took the UN Human Rights Commission to task for reifying ‘ethnocentric’ judgments into universal values, arguing that “what is held to be a human right in one society may be regarded as anti-social by another people, or by the same people in a different time of their history.”⁸⁶ The broad discourses about culture would find their way into the discussions about fundamental rights in non-Western societies. The charge that human rights is a Western construct could be interpreted in two ways. First, that human rights originated from the West (the argument from origins), and second that human rights rationalise and endorse the power of Western countries over their former colonies (the argument from power). It is true that the concept of human rights, as we understand it today, originated in the West in the aftermath of World War II. But it is difficult to see what the origins of an idea have to do with validity. For example, the concept of Pythagoras Theory originated from Greece during Pythagoras’ life time (570-495 BC) but it is now an integral part of the Mathematics’ syllabus in many schools around the world. Where an idea first

⁸⁴ American Anthropological Association, 539-543. The AAA adopted a declaration in 1999, “Declaration on Anthropology and Human Rights Committee for Human Rights,” in which they basically shifted their 1947 position on the universality of human rights values. For a comparative study of the two documents, see Karen Engle, “From Skepticism to Embrace: Human Rights and the American Anthropological Association from 1947-1999” in *Human Rights Quarterly* 23(3), August 2001, 536-539.

⁸⁵ See, for example, Mutua, *Human Rights: A Political and Cultural Critique* ; Shivji, *The Concept of Human Rights in Africa*; Amoako, *Human Rights in Africa: The Conflict of Implementation*.

⁸⁶ American Anthropological Association, 539-543.

comes up has no bearing on its truth or falsehood. The response to the argument from power is simple. History is full of examples of principles that were once reserved to the elite or only men and are now accepted as entitlements for every human being. Women's right to vote and to run for office was only recognised in the early part of the twentieth century in some Western countries.

At least two deductions could be made about the idea of rights-holders in universalism and cultural relativism from the above analysis. First, the ethnocentric argument is a slippery slope in human rights discourse and practice. It is true that culture is one of the keystones of public morality, but it can also be the cornerstone of human rights violations. History is full of examples where the argument of 'culture' is used to support abusive practices, especially towards people in marginal constituencies. For example, the facile condemnation of the rights of people with a homosexual orientation is typically framed along the lines of the culture argument. Also, culture has played a role in shaping patriarchal assumptions about women and in providing one of the metaphors of defence for human rights abuses in many societies.

Second, the gap between universalism and cultural relativism is somewhat abstract, because the value of human rights is really grounded on inherent dignity and equality. As Kofi Annan asserted, "[i]t was never the people who complained of the universality of human rights... It was often their leaders who did so."⁸⁷ Notions such as inherent dignity, equality of esteem or equal worth expose particular cultural perceptions of the human being that justify discrimination. It is true that the lack of a common understanding of the concept influenced how human rights norms were constructed in the UDHR, but the scope of human rights has increased steadily over time as societies have developed more democratic cultures. As Sachs has pointed out, "the universalism of human rights comes not from the globalized imposition

⁸⁷ Quoted in Jose Augusto Lindgren, "The Declaration of Human Rights in Postmodernity" in *Human Rights Quarterly* 22(2), May 2000: 478-500.

of one set of values on all humanity. Human rights are not exported from one centre to the rest of the world. Rather they are the product of the unabating struggle and shared idealism throughout the world.”⁸⁸

The conventional history of human rights has tended to privilege the Western ‘world’ with the origins of the human rights’ idea. But the ethnocentric thesis does not diminish the way human rights is a heuristic tool for engaging with problems of systematic injustice or inequalities or questioning the basis of social wrongs. Indeed, human rights has historically shaped many a debate about freedom, justice, equality and non-discrimination around the world. The idea that one is entitled to certain fundamental freedoms by virtue of being human is a promise which people, especially those whose rights are violated, are likely to find very attractive. To totally dismiss the concept of human rights would be like throwing away the baby with the bath water. Human rights represent the never-ending human resistance to injustice and the shared idealism of human beings for a more just world.

There were a number of discrepancies in the early history of the UN human rights regimes. For example, sub-Saharan Africa could not participate in negotiating the meaning of universal rights because they were still under colonial rule. The only African countries that were sovereign states during this period were Egypt, Ethiopia, Liberia and the Republic of South Africa.⁸⁹ Even though Africa’s colonial powers such as Britain and France participated in the debates about human rights in the UN they turned a blind eye to the politics of inequality and discrimination in their own colonies. USA, another key player in the universal human rights debates, had its share of problems. For instance, Jim Crow laws were still operational and lynching of black people was not uncommon during this period. Indeed, the American representative and chair of the Human Rights Commission, Eleanor Roosevelt, prevented a petition from the National Association for the Advancement of Coloured People

⁸⁸ Albie Sachs, *The Strange Alchemy of Life and Law*, Oxford: Oxford University Press, 2009, 92.

⁸⁹ This issue is taken up by Afrocentric scholars of human rights such as Shivji and Rwiza.

(NAACP)—‘An Appeal to the World’— from appearing on the UN agenda in October 1947.⁹⁰ Also, the USSR was trying to untangle itself from allegations of forced labour practices in the country. For example, Christopher Mayhew, Britain’s representative on the UN Third Committee, accused the USSR of having “instituted a slave system recruited from among its own citizens which in scope has no parallel in history.”⁹¹ What these examples illustrate is not only the issue of double standards of individual states but also the gap between the normative standards of protection and the actual implementation of universal rights principles. These problems have bedevilled human rights practice to this day.

2.5. The human rights concept as a truth regime

The concept of human rights is a truth regime, in the sense that it telescopes a universal quest of the human being to be treated with dignity and respect. This idea is captured by the UDHR as a promise that human beings have rights by virtue of being human.⁹² I adopt the idea of a truth regime as a frame of analysis in this thesis in a dialectic with Foucault’s pithy expression, ‘regime of truth,’ which was used only once in an interview in 1976 but was not really taken up in his subsequent writings.⁹³ He describes how “[e]ach society has its regime of truth, its ‘general politics’ of truth—that is, the types of discourse it

⁹⁰ The NAACP petition was submitted to the UN in October 1947. See the words of Walter White, then leader head of NAACP quoted in Mary L. Dudziak, “Desegregation as a Cold War Imperative” in *Stanford Law Review*, 41(1), November 1988, 95. The irony of the petition debacle was the fact that Eleanor Roosevelt was a member of the NAACP board at the time. Du Bois is quoted as having said that Roosevelt threatened to resign from the American delegation if the petition was brought up in the General Assembly agenda. See, for example, Gabrielle Kirk McDonald, “The Universal Declaration of Human Rights: The International and the American Dream” in Barred van der Heijden and Bahia Tahzib-Lie, eds., *Reflections on the Universal Declaration of Human Rights*, Leiden: Martinus Nijhoff, 1998, 182; another issue of great interest was the fact that Edward Lawson, an African-American section head of the UN Human Rights Division, applied for a lease in a Manhattan apartment complex in 1947 and the landlord turned him down because housing in that area was for whites only; also see Sellars, 20-1.

⁹¹ Christopher Mayhew, *A War of Words: A Cold War Witness*, ed. by Lyn Smith, I. London: Tauris and Co. Ltd, 1998, 135.

⁹² Art 1 of the UDHR.

⁹³ Michel Foucault, “Truth and Power” in Paul Rabinow, ed., *Essential Works of Foucault 1954-1984*, New York: New Press, 2000, 111-133. For a detailed analysis of the Foucault’s idea of regimes of truth, see, for example, Lorna Weir, “The Concept of Truth Regime” in *Canadian Journal of Sociology*, 33(2), 2008, 367-89.

accepts and makes function as true,⁹⁴ and the way in which these regimes are enforced by what he calls truth-generating apparatuses of society. Power/knowledge structures, for him, condense through institutions such as the laws, schools or hospitals of a society to frame the standards for behaviour and order, as it were, interactions within society. Truth here lacks objective quality, is embedded within power/knowledge structures and is, therefore, a problematic concept for Foucault. Foucault's idea is important for understanding the pragmatic ways in which some actors in Gold Coast politics appropriated and employed the human rights language in the struggle for self-determination.⁹⁵ To show how my use of the term truth regime is different from Foucault's use of 'regime of truth,' I will show how the notion of a truth regime is instructive for analysing human rights as an aspirational set of values for a world and also as a standard for assessing political activity. Then I will draw attention to five characteristics of the idea of human rights as a truth regime.

What gives human rights its real meaning is its universal significance and normative clout. While governments may distort the concept in order to discredit its power, its normative base is not diminished. The idea of human rights as a truth regime denotes that sense of correspondence between equality of dignity and a basic framework of respect for the sake of fairness and logic. The correspondence is a necessary requirement for the set of conditions, usually but not always of a political nature, to effectively regulate the actions of government or another institution in its interactions with society. The post-World War II idea of human rights underlined what Gearty describes as

the simple insight that each of us counts, that we are each equally worthy of esteem. This esteem is not on account of what we do, or how we look, or how bright we are, or what colour we are, or where we come from, or our ethnic group: it is simply on

⁹⁴ Foucault, 2000, 131. I acknowledge here the critical comments of Mr Zdenek Kavan which helped me to hone my understanding of Foucauldian thought.

⁹⁵ The idea of human rights was discarded by Nkrumah's government immediately after independence through, for example, the Constitution (Repeal of Restrictions) Act, 1958 (Ghana). Nkrumah's government also used the Preventive Detention Act (1958) to repress his opponents in politics.

account of the fact that we are.”⁹⁶

Human rights belongs in a repertoire of abstract norms, but provides two unifying principles in the real world. One is that respect for human dignity is a unifying principle for society because it underpins a specific way in which the human being is a rights-holder by virtue of his/her humanity. To recognise the values of dignity, equality and freedom of the human being is to realise the meaning of our shared humanity—not to recognise these values is to diminish this sense of our shared humanity. This is the reason why violation of human rights dehumanises not only the victim but also the perpetrator. The second is that human rights exposes the falsity of ideologies, policies and practices that historically have justified human being’s inhumanity to other human beings. This is derived from an understanding of human dignity and is a unifying lesson for our time as well as for future generations. A characteristic common to regimes of falsity is a constructed idea of ‘the different other’ as less deserving, as it were, of respect for dignity, equality or freedom. Such regimes come in many guises, time and again as expressions of a state’s foreign policy, at other times as the benign resolve to impose a particular concept of civilisation or democracy or a culture of human rights upon ‘the different other’, and sometimes as ideologies.

Against the above background, the idea that human rights is a truth regime both embodies and generates a number of characteristics. First, the idea that society creates ‘regimes of truth’ through its values and belief systems can be applied to human rights, in the sense that the UN provided a platform on which specific meanings of human rights were negotiated.⁹⁷ Article 2 of the UDHR stipulates that all human being are “entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property,

⁹⁶ Gearty, 4.

⁹⁷ For a detailed analysis of regimes of truth and overtones of reinforcement see, for example, Michel Foucault, *Power/Knowledge: Selected Interviews and Other Writings 1972-77*, ed. Colin Gordon, New York: Pantheon Books, 1980 and Ian Parker, *Discourse Dynamics: A Critical Analysis of Social and Individual Psychology*, London: Routledge, 1992, 28.

birth or other status.’⁹⁸ This idea contested regimes of falsity’ around race, sex, colour and other grounds of discrimination and inequality.⁹⁹ This is an opposite term to truth regime that helps to shed light on false and superficial claims about the human being around gender, race and other grounds. Such false claims have sometimes been exploited as the basis for rationalising the unfair or even cruel treatment of ‘the different other’ or even reinforced the ‘creation’ of human hierarchies to justify atrocities.

These ideas are relevant to the discussion about human rights, in the sense that a truth-generating apparatus (i.e., the UN) constructed the idea of human rights as a specific ‘regime of truth.’ As a community of nation-states, the UN could suitably be understood as representing a ‘structure of power’ but not necessarily in a negative sense. The idea of human rights is situated in the dynamic process of specific discourses. As Moyn has pointed out, dominant ideologies such as imperialism or anti-colonial nationalism have towered over others at different times in history,¹⁰⁰ becoming for extended periods the regimes of truth that shaped some of the major political changes around the world. Because of the values of inherent equality, human dignity and public morality that the discourse of human rights espoused, it posed a challenge to those ideologies that embodied a dubious moral character. The discourse of human rights could, thus, be said to be a ‘regime of truth’ for deconstructing bad ideologies, i.e., it provided a framework of meaning-making particularly in the face of various forms of systematic injustice, not least World War II atrocities.

Second, as a specific regime of truth, human rights had both transformative and creative potential for changing situations of injustice both in revolutionary and evolutionary senses. However, the potential was only that: a potential which needed to be harnessed

⁹⁸ Art 2 of the UDHR.

⁹⁹ I would like to acknowledge Prof. Marie-Bénédicte Dembour’s helpful comments which enabled me to clarify the term, regimes of falsity.

¹⁰⁰ Moyn, 195-203.

through human agency.¹⁰¹ World War II had provided a particular context for appreciating the idea of universal rights and seeing beyond the external differences between human beings. In negotiating the meaning of this new discourse, other forms of abuses inevitably caught the attention of the drafting committee of the UDHR. The nascent discourse of human rights represented, at least in theory, a paradigm shift in the understanding of the ‘human being’ of rights. This, along with varying degrees of political pragmatism in individual countries, shaped the content and contours of the discourses around human rights issues. For example, the British colonial administration in considering the suitability of extending the ECHR to its colonies in a symbolic way acknowledged that colonial subjects are potential rights-holders too.

Third, the human rights discourse was reality-constitutive,¹⁰² in the sense that it became like a mirror to the way states related to their citizens or subjects, and in the reflection offered the potential for transforming or re-creating reality. The consequences of this dimension of discourse are immense. People are given a voice to protest against domination¹⁰³ by others and the public space to ‘reconstruct’ their distorted collective identity. While the discourses that shaped colonial rule were hegemonic the human rights discourse had the “capacity to recreate a historically better reality and experience, for example freed from domination, repression, prejudice or exclusion.”¹⁰⁴

As a discourse, human rights embodies ‘speech acts’ or what Shi-xu calls socially consequential meanings.¹⁰⁵ In this case, speech acts are not de-contextualised statements but rather ways of speaking and acting with particular outcomes, intended or inadvertent, upon

¹⁰¹ Immanuel Kant, *Grounding for the Metaphysics of Morals*, tr. James W. Ellington, Indianapolis: Hackett Publishing, 1985. For another perspective of ‘the human’ of human rights, see Rorty, 111-134.

¹⁰² Shi-xu, *A Cultural Approach to Discourse*, Basingstoke: Palgrave Macmillan, 2009, 7.

¹⁰³ For a detailed treatment of the idea of human rights as a protest, see Marie-Bénédicte Dembour, “What are Human Rights? She argues that the protest scholars are concerned with using human rights claims and aspirations to contest as well as redress injustices in society.

¹⁰⁴ Shi-xu, 33.

¹⁰⁵ Ibid, 28.

society. Since discourse presents particular regimes of truth about a society, it is presupposed that the version of events would have certain effects on the recipients and change the situation for better or for worse. In other words, the power of human rights discourse is in the discursive practices that it produces in society. As Foucault has pointed out,

in any society, there are manifold relations of power which permeate, characterize and constitute the social body, and these relations of power cannot themselves be established, consolidated nor implemented without the production, accumulation and circulation and functioning of discourse.¹⁰⁶

Fourth, the human rights idea itself is a meaning-making tool through which people living under oppression can, for example, find an appropriate language of resistance to assert their claims to fair treatment or to negotiate justice. The truth of human rights lies in the recognition of ‘the human’ in human beings and in the way authentic respect for human dignity is both a unifying principle and a powerful norm for society. The power of human rights is normative, upholding the ethic that human beings are entitled to certain fundamental rights by virtue of being human, and also applicable, in the sense that entrenching human rights principles in a country’s constitution can provide a basic framework of respect for every human being without distinction.

Fifth, human rights’ ideas passed through a complex set of filters in order to qualify as a ‘regime of truth.’ The UN Charter prepared the grounds for a comprehensive declaration of universal human rights by contesting the binaries of the nobles/common people, male/female, colonised/coloniser or oppressor/oppressed that had come to be accepted as the norm. None of these filters was value-free or a homogeneous whole. Indeed, some of them embodied varying degrees of regimes of falsity about the ‘other’ which the UN idea of human rights questioned. Others too were linked with ideas of truth about the dignity of the human person or the need for fairness in society. When members of the UN Human Rights Commission attempted to dismantle, as it were, existing inequalities or structural injustices or

¹⁰⁶ Foucault, *Power/Knowledge: Selected Interviews and Other Writings*, 93.

discrimination on grounds of differences they did so from specific conceptual standpoints. Although the UDHR did not lend itself to wholesale application in colonial territories, its impact reinforced to a limited extent democratic processes in which colonial subjects could become rights-bearing citizens.

Of course, there were other forces at play besides human rights, but the rights' discourse was a very important way of legitimising the demands of the Africans to be recognised as rights-holding citizens in an independent country. These filters impacted in varying degrees on the knowledge about human rights or the understanding of the rights-holders, and indeed in some cases were replaced by others. As one scholar has asserted, the discourse that a group produces always has a history but also the potential to be appropriated for uses in institutions, in communities or by groups.¹⁰⁷

2.6. The UDHR as a fundamentally ambiguous proclamation and Cold War politics

Human rights was not only a truth regime, with the inevitable potential of denouncing false propositions, it was also a fundamentally ambiguous proclamation. On the one hand, the language of human rights is itself a structured system of meanings in which what emerged as a truth regime was based on an understanding that the human being of rights is every human being. Human rights is constructed on the basic assumption that because every human being has inherent dignity he/she ought to be treated as a rights-holder whether the person is male or female, white or black, able-bodied or disabled, Jew or Gentile. The unfair treatment of others based on their "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status"¹⁰⁸ is viewed as an antithesis of this 'truth.' Thus, human rights identifies discrimination on grounds of race, sex, gender, national or social origin as part of a regime of falsity and cannot but advocate a fresh basis for

¹⁰⁷ Shi-xu, 35.

¹⁰⁸ Arts 1 and 2 of UDHR.

recognising the inherent dignity of the human person. In a sense, the idea that human beings have a shared inherent dignity questions the basis of, for example, colonial domination.

But there is a contradiction here, in the sense that a specific regime of truth stipulates all human beings as being rights-holders and yet three-fourths of the world was under colonial rule at the time the UDHR was drafted. The use of the term ‘universal’ was especially significant in the UDHR discourse because of this three-fourths section of the human family that still lived under colonial rule at the time that the declaration was adopted. Therefore, to contest ideologies of domination was to contest regimes of falsity. By initiating the discourse of human rights, the UN proffered to the world community a new way of viewing the human being, as one who had certain fundamental rights by virtue of being human, and opened up in a new way debates about human dignity.

The affirmation of dignity or equality or universality in the UDHR is fundamentally ambiguous because of the gap between theory and practice, or even theory and theory. For example, many of the states that were at the forefront of drafting the UDHR defended their sovereignty and did not really address themselves to the glaring contradiction of colonialism, among other contradictions. The principle of sovereignty and the concept of human rights were viewed as fundamentally opposed to each other, one had to do with the rights of states and the other the rights of individuals. Also, as Morsink points out in his seminal study of the drafting of the UDHR, the work of the Human Rights Commission was not free of the underlying Cold War struggles over what rights to include and which ones to leave out.¹⁰⁹ Cold War politics polarised human rights into a dual system: the socialist groups championed a social justice agenda in the name of equality while the liberals pushed for individual rights and fundamental freedoms in the name of liberty. There are documents from this period that attest to the fact that the British colonies were already “part of the theatre of superpower

¹⁰⁹ Johannes Morsink, *The Universal Declaration of Human Rights: Origins, Drafting and Intent*, Philadelphia: University of Pennsylvania, 1999, 12-20.

ideological rivalries and attendant proxy conflicts.”¹¹⁰

The gap between theory and theory was especially manifested in the way the idea of state sovereignty was used during the Cold War period. Sovereignty basically defined the conditions under which states have rights and duties as recognised under international law, but after World War II this did not mean unlimited powers of the state to act willy-nilly. The UN Charter, for example, restricts the powers of states by emphasising their obligations to protect and respect human rights.¹¹¹ At the same, human rights instruments had a diverse binding nature, meaning that some were optional while others were binding only to a state that has ratified them. Even in ratifying a particular instrument a state could make a reservation to one or more provisions as long as that is not in contravention of the spirit of the instrument. During the Cold War period, the argument of sovereignty was used not only to distort the meaning of human rights but also to justify violations of human rights.

Cold War politics polarised the understanding and weakened the application of human rights standards in more ways than one, and went on to shape the contours of the discourse of human rights for the next forty or so years, deflecting from the universal power of fundamental rights and resulting to some extent in the categorisation of rights into civil and political liberties; social, economic and cultural rights; and environmental rights. Civil and political liberties reflected the notion of liberty, second generation rights meant the idea of equality and third generation implied the rights of the community. The term came to be used more or less as a synonym for taxonomy or classification. Klug has taken issue with the idea of generations by criticising it as a misnomer because, according to her, it creates too rigid a distinction between rights, creates an artificial sequential order, and exaggerates the external characteristics of rights over their universality, inalienability, indivisibility, interdependence

¹¹⁰ Nana K. A. Busia, Jr., “Ghana: Competing Visions of Liberal Democracy and Socialism” in Abdullahi Ahmed An-Na’im, ed., *Human Rights Under African Constitutions: Realizing the Promise for Ourselves*, Philadelphia: University of Pennsylvania Press, 2003, 54-55.

¹¹¹ Examples are Preamble, Arts 2, 33 and 55 of the UN Charter.

and interrelatedness.¹¹² She adopted the term ‘waves’ from feminist literature and used it to analyse the emergence of the notion of human rights.¹¹³ I prefer the expression ‘waves’ to the term ‘generations’ because it brings out the dynamism of the human rights idea, especially the incremental understanding over several generations into what Moyn described recently as “the last utopia.”¹¹⁴

From the above analysis, it could be said that the fundamental ambiguity of human rights is not in the normative idea *per se* but rather in the way Cold War politics reinforced state sovereignty and provided some of the arsenal for assaulting ideas of fundamental rights, including in post-independent Africa. One of the reasons human rights was able to withstand the attacks for so many years is because it offers the human family a specific ‘truth’ about the human being as a rights-holders and an ethic to respect for human dignity, equality and freedom.

2.7. Human dignity as a central reference point

At the heart of the UN idea of human rights is the notion of human dignity. The preamble of the UDHR asserted “the inherent dignity and ... the equal and inalienable rights of all members of the human family [as] the foundation of freedom, justice and peace in the world.”¹¹⁵ Between the UN Charter and UDHR, the term ‘dignity’ is used at least half a dozen times—once in the former and five times in the latter. The idea of equality is at the heart of the scope and application of fundamental rights. The link between human dignity and “the equal rights of men and women”¹¹⁶ is quite explicit in the preamble of the UN Charter. Both the UN Charter and the UDHR presented the concept of dignity as the frame of

¹¹² Francesca Klug, *Values for a Godless Age: The Story of the United Kingdom’s New Bill of Rights*, London: Penguin Books, 2000, 9-10.

¹¹³ *Ibid*, 9-10.

¹¹⁴ Moyn, 4.

¹¹⁵ Preamble of UDHR.

¹¹⁶ Preamble of UN Charter.

reference for which every human being has rights.¹¹⁷ However, because neither the UN Charter nor the UDHR defined the terms, they were at the mercy of the agents of rights discourses.

By not defining the term, human dignity, in the UN Charter and UDHR, the drafters of the two documents perhaps assumed that the human family would appreciate how "disregard and contempt for human rights have resulted in barbarous acts"¹¹⁸ and that way recognize the value of rights in unjust situations. This turned out not to be the case in many places in the world, but the idea of equality remains a heuristic device, serving as a guide in resolving the kind of inequalities that characterised life under unjust situations. The notion ties in well the Aristotelian idea of treating like cases as like,¹¹⁹ assuming that the subjects of equality are equal 'in relevant respects.' In other words, they share some objective quality—human dignity—that elicits the fairness and impartiality in the way they ought to be treated.

Kant's ideas may be relevant to the understanding of the idea of dignity in the concept of human rights as having universal applicability:

Every human being has a legitimate claim to respect from his fellow human beings and is in turn bound to respect every other. Humanity itself is dignity; for a human being cannot be used merely as a means by any human being (either by others or even by himself) but must always be used at the same time as an end. It is just in this that his dignity (personality) consists, by which he raises himself above all other beings in the world that are not human beings and yet can be used, and so over all things. But just as he cannot give himself away at any price (this would conflict with his duty of self esteem), so neither can he act contrary to the equally necessary self-esteem of others, as human being, that is he is under obligation to acknowledge, in a practical way, the dignity of humanity in every other human being. Hence there rests on him a duty regarding the respect that must be shown to every other human being.¹²⁰

These thoughts are helpful in at least two ways. First, human rights derive from a shared

¹¹⁷ The Preamble of the UN Charter affirms faith "in the dignity and worth of the human person" while the Preamble and Articles 1, 22 and 23 of the UDHR asserts its importance in human rights.

¹¹⁸ Preamble of UDHR.

¹¹⁹ Aristotle, *Nicomachean Ethics*, trans. By David Ross, Oxford: Oxford University Press, 1980.

¹²⁰ Immanuel Kant, *the Metaphysics of Morals* (1797) trans. By M. Gregor, Cambridge: Cambridge University Press, 1996, 209. This is indeed paradoxical because Kant says in another context that "Humanity is at its perfection in the race of the whites. The yellow Indians do have a meagre talent. The Negroes are far below them at the lowest point as are a part of the American peoples." So, who is the 'human being' of the categorical imperative?

understanding of dignity as a basis of equality and non-discrimination. Second, even though Kant does not state this specifically a broad reading of the quote points to the concept of dignity as the essential characteristic of being human and therefore providing the basis of respect and protection for universal rights.

Another interpretation of dignity that would be of interest to people living in unjust circumstances where the idea of rights-holders would particularly have practical import is Fukuyama's idea that

when we strip all of a person's contingent... away, there remains some essential human quality underneath that is worthy of a certain minimal level of respect—call it Factor X. Skin, color, looks, social class and wealth, gender, cultural background, and even one's natural talents are all accidents of birth relegated to the class nonessential characteristics... we are required to respect people equally on the basis of their possession of Factor X.¹²¹

In theory, the language of human rights highlights human dignity, what Fukuyama calls 'Factor X,' as the basis of universal rights. In statements such as, "all human beings are born... equal in dignity [and all human beings...] are endowed with reason and conscience,"¹²² it could be inferred that 'the human being' of rights is every human being irrespective of race, colour, sex, gender or ethnicity. Indeed, the lexical meaning of dignity is intrinsic worth. Thus, when the UN Charter uses 'dignity and worth' of the human being at the same time, it seems to be employing synonyms perhaps on purpose. Henkin's argument that "[t]he human rights idea and ideology begin with *ur* value or principle... the principle of *human dignity*. Human Rights discourse has rooted itself entirely in human dignity and finds its complete justification in that idea"¹²³ can help in the understanding of the contours of

¹²¹ Francis Fukuyama, *Our Postmodern Future*, London: Profile, 2002, 149.

¹²² Art 1 of UDHR.

¹²³ Louis Henkin, "Religion, Religions and Human Rights" in *Journal of Religious Ethics* (1998) 229, 231. The idea that human dignity is the underlying basis for rights is articulated in other human rights documents including the UN Covenant on Economic, Social and Cultural Rights, the UN Covenant on Civil and Political Rights, and the Helsinki Final Act, in which human rights and fundamental freedoms are said to "derive from the inherent dignity of the human person." *United Nations Covenant on Economic, Social and Cultural Rights*, adopted by GA Res. 2200A (XXI) of 16 December 1966; *United Nations Covenant on Civil and Political Rights*, adopted by GA Res. 2200A of 16 December 1966; Principle VII of the Helsinki Final Act, August 1, 1975.

human rights. But it is Brownsword's distinction of human dignity "in one case acting in support of individual autonomy (human dignity as empowerment) and, in the other case, acting as a constraint on autonomy (human dignity as constraint)"¹²⁴ that really emphasise the importance of recognising both rights and responsibilities in the scope and application of human rights principles.

The state is the duty bearer with regard to respect and protection of the dignity of the rights-holders. In other words, the relationship between the rights-holders and duty bearer is so important that any disparity of understanding between the two inevitably leads to the dearth of a human rights culture. If the above is juxtaposed with the UDHR idea that all human beings are rights-bearers, then the protection of rights is not contingent on whether the people are British 'citizens' in the United Kingdom or colonial 'subjects' in a British colony. This may be a simplistic way of putting it but it expresses the universal significance of human rights. To place this point in its proper context, it is important to draw attention to the fact that the Montevideo Convention on Rights and Duties of States, 1933 still held sway over the declaratory theory of statehood in the post-World War II period. The state is identified "as... possessing the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States."¹²⁵ Until 1957, the Gold Coast did not meet this criterion for statehood and therefore could not fulfil the obligation of upholding the dignity of 'rights-holders'.

The idea that everyone has rights by virtue of being a human being (i.e., irrespective of race, gender, skin colour, religious belonging, political affiliation, disability or social standing in society)¹²⁶ not only questioned the premises upon which colonial rule was

¹²⁴ Roger Brownsword, "Freedom of Contract, Human Rights and Human Dignity" in D. Friedmann and D. Barak-Erez, *Human Rights in Private Law*, Oxford: Hart, 2001, 191.

¹²⁵ Montevideo Convention on Rights and Duties of States, 1933, 135 LNTS 19.

¹²⁶ Art 1 of the UDHR affirms that "[a]ll human beings are... equal in dignity." I am aware that this is a post-World War II idea which should not be super-imposed on an ideology like the nineteenth-century colonisation of the Gold Coast.

legitimised but also contested the racialised or gendered identities that had justified excessive colonial or patriarchal practices.

2.8. Conclusion

Human rights is really about people and not just principles, and about inter-human relationships and not just laws. While principles and laws are important, in themselves they are not powerful enough to build a world where people can thrive in a human rights culture. The drafters of the UDHR built on an edifice which had been started by the framers of the *Magna Carta*, the Bill of Rights, the Declaration of the Rights of Man and Citizen and the other ‘usable past’ of international human rights. They, along with countless other people, championed different domestic discourses of justice in history, culminating eventually in the UDHR idea that one has rights simply by virtue of being human. Although situations of injustice inspired the discourse of human rights, to me the real driving force was the community of human beings with goodwill.

As a truth regime, human rights had the potential to help people articulate their claims to be treated fairly and also the power to transform unjust structures in society. The understanding of human rights in the UDHR also shaped other human rights ‘texts’ such as the ECHR and the official documents of the Colonial Office concerning the extension of the ECHR to some British dominions. It is from the plethora of early UN treaties that meanings about human rights were extrapolated. The discourse power of human rights lay in the fact that societies adopted and deployed it in debates regarding justice, equality, non-discrimination and freedom. In this way, the unremitting struggle of human beings in situations of injustice produced a discourse of human rights.

Chapter 3

Discursive creation of the Gold Coast as colony, protectorate and mandated territory

“We cannot trample upon the humanity of others without devaluing our own. The Igbo, always practical, put it concretely in their proverb *Onye ji onye n’ani ji onwe ya*: ‘He who will hold another down in the mud must stay in the mud to keep him down.’”¹²⁷

Chinua Achebe, *The Education of a British Protected Child*

3.1. Introduction

Having examined the conventional debates in human rights discourse, engaged with Moyn’s trend-bucking thesis and proposed that the UN idea of human rights is a truth regime among regimes of falsity, the objective of this chapter is two-fold: to provide the kind of historical framework that is necessary for understanding the discussions that come in subsequent chapters, and to situate the debate about the meaning of ‘the human being’ of rights within the specific political context of the Gold Coast. The narratives for the analysis in this chapter reflect the underlying struggles between the dogma of imperialism and the politics of anti-colonial resistance in a region that came to be known as the Gold Coast. Even though expressions of European imperialism in the Gold Coast go back to treaties such as the Bond of 1844, it was the series of pacts in Britain from 1874 onward and the 1884-5 General Act of the Berlin Conference on West Africa that wholly legitimised colonial rule. The term ‘Gold Coast’ is used in a historically specific and legally restricted sense to mean the four territorial entities in the West Coast of Africa that came under British jurisdiction between 1844 and 1914, viz., the Gold Coast Colony, the Ashanti Protectorate, the Northern Protectorate and the Trans-Volta Togoland.¹²⁸ The colonial administration governed these separate entities as a single administrative unit with a governor at the top, thus preparing unwittingly the grounds for a more or less unified nationalist front for the Africans in the struggle for independence.

¹²⁷ Chinua Achebe, *The Education of a British-Protected Child*, New York: Alfred Knopf, 2009, 136.

¹²⁸ For a more detailed legal analysis of the colonial configuration of the Gold Coast, see Bennion, 17-25. Bennion also gives a legal analysis of the colonial configuration of the territory.

3.2. Discursive ‘creation’ of the Gold Coast

In order to situate the ‘creation’ of the Gold Coast within its proper historical context, it is important to go back to specific legal and policy practices through which the British Crown created progressively territorial entities on which she exercised jurisdiction for over hundred years. Some of these processes, initiated between 1821 and 1914, had a legal character while many were more or less policy decisions driven by contingency. They were discursive insofar as they represented ideas and actions that had negotiated meanings among their users as well as political and legal significance at various levels.¹²⁹ Apart from the discourse power they embodied they were also context-based, having to do with relations between an emerging colonial power and the people who were discursively being created as ‘British protected persons’ in the Gold Coast.

Contact between Europeans and the people in the Guinea littoral region, the region that came to be known as the Gold Coast, go back to 1482 when explorers under the direction of Prince Henry the Navigator ventured down the coastline. A number of Portuguese merchants, not least Fernão Gomes, with permits for trading in the region, did business with the Africans in the Gold Coast from the 1480s onward, and in 1482 built the São Jorge Castle in a town they named *El Mina*, the mine.¹³⁰ Over time, the region gained a reputation as “the white man's grave”¹³¹ because of the prevalence of malaria. Many European explorers and merchants came here mainly for commercial reasons without a vision of eventual colonisation. In the intervening centuries, especially between the sixteenth and the nineteenth

¹²⁹ For a detailed analysis of the notion of discursive practice, see, for example, Ian Parker, “Introduction: Varieties of Discourse and Analysis” in Ian Parker and Bolton Discourse Network, *Critical Textwork: An Introduction to Varieties of Discourse and Analysis*, Buckingham: Open University Press, 1999, 1-12; Ian Parker, “Discursive Practice: Analysis, Context and Action in Critical Research” in *International Journal of Critical Psychology*, 2000(a): 150-173.

¹³⁰ William Walton Claridge, *A History of the Gold Coast and Ashanti from Earliest Times to the Commencement of the Twentieth Century*, Vol. 1, London: J. Murray, 1915, 76.

¹³¹ Kevin Shillington, *Encyclopaedia of African History*, Vol. 1, New York: Fitzroy Dearborn, 2004, 202.

centuries, explorers from Sweden, Denmark, Holland, Prussia and Britain built half a dozen forts along the Gold Coast coastline. The rivalries and conflicts that ensued were more about control over commerce or territorial rights and less about questions of colonisation as such.

William Hawkins undertook the first British trading expedition on the West Coast of Africa in the 1530s, returning to the United Kingdom with more information about these regions. However, Thomas Windham was the first British man to reach the area that came to be known as the Gold Coast in 1553.¹³² News of the commercial potential of the area spread in Elizabethan England, inspiring John Hawkins, William Hawkins' son, to pioneer what came to be known as the 'triangular trade' through the region in the 1560s. Two British chartered companies, the Royal African Company and later the African Company of Merchants, monopolised trade along this coastal region between the 1550s and 1750s.¹³³ The Glorious Revolution in England brought an end to the monopoly by the Royal African Company in the region, opening up trade in human beings (the slave trade) to all British citizens. British forts in the Gold Coast were maintained by the Royal African Company with government subsidies until 1750 when the African Company of Merchants took over the responsibility, but relinquished it in the 1800s.¹³⁴ The African Company of Merchants was a regulated company in which members paid a 40-shilling fee to a central body in order to trade as individuals along this coastline.¹³⁵

The eighteenth century marked a turning point in new discourses of justice, inspiring the anti-slavery movement in Britain and in particular the Abolition of Slavery Act, 1807, which led to the abolition of trade in human beings in all British possessions, and an agreement to a settlement at Sierra Leone for freed slaves. With the abolition of the trade in

¹³² See for example, Claridge, 101 and F. M. Bourret, *Ghana: The Road to Independence*, London: Oxford University Press, 1960, 14, among others who push this line of argument. For a more detailed description of this phase in the interaction between the British in the West Coast of Africa, see Bourret, 14-15.

¹³³ Colonial Office, *British and Foreign State Papers, 1842*, London, 1852.

¹³⁴ Bourret, 15.

¹³⁵ Ibid.

human beings, the African Company of Merchants lost its mainstay in trade within the region. It must be noted that the demise of the African Company of Merchants in 1821 triggered a transfer of their forts and settlements in ‘the Gold Coast’ fully to the British Crown. The Governor of Sierra Leone was authorised to administer them from Freetown until 1828 when the African Company of Merchants was converted into the Committee of London and given some authority over British settlements.

Britain’s decision not to abandon trade in the Gold Coast marked a shift in position regarding colonisation, a new phase in asserting jurisdiction over the area and therefore another discursive process of negotiating meanings with African chiefs and other Europeans. Captain George Maclean, a British army officer, who was employed as the first governor (1828-1843) of the Gold Coast, negotiated a treaty, the Bond of 1844, with a number of African chiefs in the coast. Through the Bond the British Crown assumed the power of jurisdiction over the Gold Coast colony.¹³⁶ Maclean is credited with "laying the foundation of [the Gold Coast] colony, which he accomplished with the paltry subsidy of £4,000 a year."¹³⁷ This Bond is significant as one of the first discursive practices in delineating the boundaries of the Gold Coast and redefining the identities of the diverse ethnic groups who occupied the area. In theory, the Bond also allowed the British limited judicial powers to try, for example, murder and robbery cases in what became technically a ‘British protected territory.’ It provided one of the first legal frameworks for the exercise of British jurisdiction over the people in the Gold Coast and prepared the grounds for subsequent colonial rule. It also gave Maclean’s regime jurisdiction mainly over the lands around the British forts and castles. Among other things, the Bond also delineated the land rights of the local people against limited infringement by the British and prohibited the British administration from acquiring

¹³⁶ PRAAD Accra, *Reports and Sessional Papers* in ADM 5/3; Also see G. E. Metcalfe, *Maclean of the Gold Coast: The Life and Times of George Maclean, 1801-1847*, London: Oxford University Press, 1962, 18.

¹³⁷ *Parliamentary Papers, The House of Commons, 1842*, vol. xi, “Report of the House of Commons Select Committee on the West Coast of Africa.”

further rights over land and judicial powers without the explicit consent of the signatories (the local chiefs).

From 1844 until 1914, the British further initiated a number of noteworthy practices with representatives of other European nations, some African chiefs in the coastal region and the League of Nations in the ‘creation’ of the Gold Coast as colony, protectorates and mandated territory (after World War II as a trust territory).¹³⁸ The House of Commons was drawn into the emerging politics over jurisdiction in the new British dominion and appointed two Parliamentary Select Committees to look into the situation and make recommendations to the British government. These committees inquired into the conditions of the British Settlements on the West Coast of Africa, and in 1865 drew attention to the fact that:

No protectorate, however, was proclaimed nor was there any mention of a territorial session. This treaty [Bond of 1844] is of importance in Gold Coast history as it was to have some influence on the subsequent relations of the British and the Africans. Since the chiefs were not conquered, but had voluntarily submitted to British power, they continued during later years to speak of their inherent rights and to maintain an attitude of independence towards unpopular British legislation.¹³⁹

Besides maintaining that British interest in the region did not require whole or immediate withdrawal, the Committee discouraged “all further extension of territory or assumption of government”¹⁴⁰ and proposed that the purpose of British policy

should be to encourage in the natives the exercise of those qualities which may render it possible for us more and more to transfer power to them the administration of all the governments [*sic*], with the view to our ultimate withdrawal from all, except, probably Sierra Leone.¹⁴¹

The House of Commons’ Select Committee, 1865, also recommended to the British Crown that another treaty be negotiated with the coastal chiefs in order to define more clearly British

¹³⁸ For a more detailed analysis of the League of Nations’ mandate territories, see James Crawford, *The Creation of States in International Law* 2nd ed., Oxford: Clarendon Press, 2006, 565-601.

¹³⁹ See, for example, *Parliamentary Papers, House of Commons, 1865, vol. v, p. iii*, “Report of the Committee Appointed to Inquire into the Conditions of the British Settlements on the West Coast of Africa” Also see *Parliamentary Papers, House of Commons, 1845, vol. xi*, 419.

¹⁴⁰ *Parliamentary Papers, House of Commons, 1865, vol. v, p. iii*, “Report of the Committee Appointed to Inquire into the Conditions of the British Settlements on the West Coast of Africa”.

¹⁴¹ *Parliamentary Papers, House of Commons, 1865, vol. v, 419*, “Report of the House of Commons Select Committee on the West Coast of Africa.”

jurisdiction over some coastal ‘protected areas.’¹⁴² One of the immediate results of the recommendations was the British Crown’s decision to assume control of the Gold Coast. The recommendation for eventual withdrawal was, however, not carried out until 1957.¹⁴³

Another phase of discursive practices in the creation of the Gold Coast as a colony, protectorates and mandated territory were initiated in 1874 and sustained through a number of legal frameworks, including the Berlin Conference of 1884-5 and the League of Nations mandate in 1914. Through the British Settlements Act, 1874, the Gold Coast was annexed as a colony and administered separately from Sierra Leone.¹⁴⁴ A new charter was then granted to the Royal Niger Company in 1886, separating the Gold Coast administratively from Nigeria. There remained some confusion over the meaning of ‘British protected territories’ and ‘British settlements’ in 1895, and Chief Justice Sir Joseph Hutchinson ruled that there ought to be no distinction between the two. However, the law officers in the Colonial Office overruled him, arguing that local government could not alter the status of Her Majesty’s possessions.¹⁴⁵

The latter viewpoint basically echoed the two Crown Orders, the Ashanti Territory Order in Council and the Northern Territories Order in Council, which were signed into law creating the Ashanti Protectorate and the Northern Protectorate under an existing Foreign Jurisdiction Act, 1890. Article 1 of the Foreign Jurisdiction Act stipulated the kind of authority Britain wielded over the Gold Coast colony and protectorates:

It is and shall be lawful for His Majesty the King to hold, exercise, and enjoy any jurisdiction which His Majesty now has or may at any time hereafter have within a foreign country in the same and as ample a manner as if His Majesty had acquired that

¹⁴² *Parliamentary Papers, House of Commons, 1865, vol. v, p. iii*, “Report of the Committee Appointed to Inquire into the Conditions of the British Settlements on the West Coast of Africa”.

¹⁴³ Bourret, 18; Denis Austin, *Politics in Ghana, 1946-60*, London: Oxford University Press, 1964; David B. Kimble, *A Political History of Ghana: The Rise of Gold Coast Nationalism 1850-1928*, Oxford: Clarendon Press, 1963.

¹⁴⁴ According to the *British and Foreign State Papers*, 1874, the Gold Coast became a colony of Britain in 1874; PRAAD, Gold Coast Confederation in S/S12/1/27 Encl.

¹⁴⁵ PRAAD Accra, *Sir William B. Griffith: A Note on the History of the British Courts in the Gold Coast Colony, with a Brief Account of the Changes in the Constitution of the Colony*, Accra: Government Printer, 1936 [written mostly in 1904].

jurisdiction by the cession or conquest of territory.¹⁴⁶

This Act was indeed instrument in the annexation of Ashanti and the Northern Territories in 1901 as ‘protectorates.’

Britain’s ratification of the Berlin Act of 1884-5 provided an international legal framework for the ‘creation’ of the Gold Coast as a colony and, to consolidate jurisdiction over the area, the first census was undertaken in 1891. The General Act of the Berlin Conference on West Africa was constructed on a particular idea of international law by what Crawford calls ‘the Great Powers of Europe’ setting out provisions relative to the partition, justifying the process of colonisation and determining the terms of trade and navigation.¹⁴⁷

The General Act outlined the rules for the partition, *inter alia* “to regulate the conditions most favourable to the development of trade and civilisation in certain regions of Africa,”¹⁴⁸ thus preventing conflicts from arising between European states in their joint colonisation of Africa. Indeed, the Berlin Conference represents a part of the corpus of international law that advanced the argument of civilization as a justification for colonisation and endorsed a ‘trustee’ role for the colonising countries, a role that was eventually superseded by the post-World War II UN trusteeship system. As a result, some scholars have argued that international law became the parent, rather than the child, of African colonies such as the Gold Coast.¹⁴⁹ Indeed, colonisation was shaped by both evolving British foreign policies towards West African coastal regions and an international process legitimised especially through the Berlin Conference as a far-reaching discursive practice.

The final phase of the discursive creation of the Gold Coast had an international character. The League of Nations mandated territory of Togoland fell to the British in 1914

¹⁴⁶ Office of Public Sector Information, Legislations and Acts 1801 to date, *Foreign Jurisdiction Act 1890*.

¹⁴⁷ See Crawford, 505 and the General Act of the Berlin Conference.

¹⁴⁸ Preamble to the General Act of the Berlin Conference on West Africa, 26 February 1885.

¹⁴⁹ Rajapogal Balakrishnan, *International Law from Below: Development, Social Movements and Third World Resistance*, Cambridge: Cambridge University Press, 2003; Antony Anghie, *Imperialism, Sovereignty and the Making of International Law*, Cambridge: Cambridge University Press, 2007.

after Germany's defeat in World War I, thus completing, as it were, the boundaries of the Gold Coast. The other half of Togoland went to the French and became the sovereign nation-state of Togo in 1960.¹⁵⁰ In theory, these Acts, along with the treaties the British government signed with other European nation-states, determined the boundaries of British jurisdiction in the Gold Coast as well as legitimised the process of colonisation.¹⁵¹ For example, the treaties entered into with France in 1889, 1893, and 1898, defined the frontier between *La Côte D'Ivoire* and the Gold Coast, and set the eleventh parallel as the extreme north boundary with the French in *Haute Voltaire*. Also, in the Heligoland Treaty of 1890 and again in 1899, a dividing line between the English and the Germans in Togoland to the east was agreed.¹⁵²

The treaties also formed part of a process of legitimising control over the Gold Coast in an emerging discourse of jurisdiction. A Eurocentric international law stamp on colonisation in sub-Saharan Africa was employed, in a process that Antonio Cassese calls imposing the “judicial conscience of the civilised world”¹⁵³ on others. The conditions that were taken into account included common institutions of government and justice that are suitable for the inhabitants and sufficient for the protection of the foreigners among them.¹⁵⁴ European nation-states such as Britain had developed a clear sense of sovereignty as an exclusive and inalienable concept.¹⁵⁵

The Gold Coast was constructed against a complex legal and practical background.

The colony comprised Accra, Cape Coast and Sekondi-Takoradi municipalities with

¹⁵⁰ Under the League of Nations arrangement, a Class B mandate which was applicable to Togoland, referred to the former German colonial territories (*Schutzgebiete*) in the West and Central African regions. The provision for a mandate system entailed responsibility for the administration of the territories without the construction of military and naval bases.

¹⁵¹ Bourret, 23.

¹⁵² See *Records Created and Inherited by the Foreign Office* in FO 367/11/26.

¹⁵³ Antonio Cassese, *International Law 2nd ed.*, Oxford: Oxford University Press, 2005, 31.

¹⁵⁴ Westlake, 103. He gives the example of Van Bokkelen, a USA citizen, who was imprisoned for debt in Haiti and the US intervened to obtain his release. Haitian laws unfairly discriminated against him on the basis of his being a non-Haitian and so justice was not only denied him but the principle of equality of treatment was also violated.

¹⁵⁵ John Westlake, *International Law*, Charleston, SC.: Bibliolife, 129. This understanding of sovereignty was similar to landed property ownership in which a proprietor alienates his/her property subject to the laws of the country.

populations that benefited from a relatively long history of contact with European explorers and mission education. While the Ashanti Protectorate covered the area inhabited by the Akan-speaking Ashanti, Bono and Ahafo groups, the Northern Protectorate embraced the Mole-Dagbani communities in the savanna grasslands bordering the French colony of *Haute Voltaire* to the north. It was administered broadly as one colony under a governor appointed by the British Crown with subordinate administrators stationed in the colony, the two protectorates and the mandated territory.

3.3. The Gold Coast colonial administration

Once jurisdiction was established over a 70-year period in the Gold Coast, the policy of indirect rule was adopted on the assumption that a policy of direct rule such as the French policy of *assimilation* would not be realistic in the administration of the colony, the two protectorates and the mandated territory. As a concept, the policy of indirect rule had theoretical roots in Edmund Burke's speech at the impeachment of Warren Hastings in 1788. Burke had argued that "[i]f we undertake to govern the inhabitants of India we must govern them upon their own principles and maxims and not upon our ideas; we must extend ours to take in their system of opinions and rites,"¹⁵⁶ suggesting that the commonly held idea that Frederick Lugard, Governor-General of Nigeria from 1914 to 1919, is originator of the concept of indirect rule is not entirely accurate. Besides, already in the 1880s the idea of indirect rule was mooted by Samuel Rowe, who was the governor of the Gold Coast from 1881-1884. When he adopted this policy in 1883, his argument was that "I think the proper way to administer the Gold Coast Colony is by acting through the Chiefs."¹⁵⁷ He enacted the Native Ordinance of 1883 with sweeping powers over all people "other than those commonly

¹⁵⁶ For Edmund Burke's speech, see William Jennings Bryan, ed., "The World's Famous Orations: At the Trial of Warren Hastings by Edmund Burke" in <www.bartleby.com/268/6/3.html> (accessed 8 March 2011). For more details on Warren Hastings' trial, see Alfred Lyall, *Warren Hastings*, London: Macmillan, 1920.

¹⁵⁷ Quoted in D. Kimble, *A Political History of Ghana: The Rise of Gold Coast Nationalism 1850-1928*, Oxford: Oxford University Press, 1963, 462.

known as Europeans.”¹⁵⁸

Undoubtedly, Lugard did apply the idea of “ruling native peoples on native lines”¹⁵⁹ as the suitable *modus operandi* in a territorially vast, culturally diverse Nigeria where he was governor. Instead of relying exclusively on the few trained British personnel, he decided that traditional rulers in the colonies should be co-opted into the administrative structure. The result was a system of indirect rule whereby the political, economic and social relations with their subjects could be regulated. Certain aspects of native law and custom were espoused while those that more or less undermined the colonial processes of administration were prohibited. Lugard went on to publish *The Dual Mandate in Tropical Africa* in 1922, where he justified colonisation as part of a wider European process of civilising Africans and where he outlined the methods that could be employed in administering the colonies in order to protect British interests from internal and foreign aggression. He also articulated “the policy of ‘trusteeship’ [which was based on the idea of] dual responsibilities and reciprocal benefits. Britain was to be a trustee to civilisation for the development of resources, and to the natives for their welfare, with indirect rule”¹⁶⁰ serving both groups.

These ideas about indirect rule were adopted in those places in the colony where chieftaincy already formed an integral part of existing traditional governance and imposed in acephalous societies within the Gold Coast. Where the institution of chieftaincy did not exist ‘chiefs’ were appointed and imposed on the communities to serve as conduits of the colonial administration.¹⁶¹ For example, the Dagara of the Northern Protectorate ruled through a council of elders until 1901 when the colonial administration appointed men to serve as chiefs in their communities. In communities where ‘chiefs’ were not appointed to serve as conduits of colonial rule, interactions between the local communities and the British

¹⁵⁸ *Native Jurisdiction Ordinance, 1883* section I.2; PRAAD Accra, *Cabinet Agenda* in ADM 13/2.

¹⁵⁹ M. Perham, *Lugard: The Years of Authority, 1898-1945*, Vol. II, London: Collins, 1960, 653.

¹⁶⁰ Frederick Lugard, *The Dual Mandate in British Tropical Africa*, New York: Frank Cass, 1922, 391.

¹⁶¹ *The British and Foreign State Papers, 1882-1883*, Vol. LXXIV, 605-16.

administration soon led to the evolution of chieftaincy. In *Great Things Happen*, McCoy describes in some detail the evolution of chieftaincy in Jirapa, a town in the Northern Protectorate:

Prior to the coming of the white men, the Gbare people kidnapped a woman from Jirapa. An expedition of warriors, led by one Ganaa, was sent out in pursuit and succeeded in rescuing her and restoring her to her family. When the British [colonial administrator of the area] arrived, intent on dealing with someone in authority, they inquired: 'who is the chief here?' At first there was no response. Then Ganaa stepped forward. 'I am,' he said, and no one moved to dispute it. Ganaa [was] still reigning [as the chief of Jirapa] at the time of the missionaries' arrival in 1929.¹⁶²

The imposition of chiefs by the colonial administration was significant at three levels. By constructing what essentially had been a traditional institution to aid the implementation of the indirect rule policy, the British administration used a discursive contingency to alter an egalitarian aspect of some ethnic groups, 'created' new categories of political leadership and degrees of belonging within the ethnic communities, and disrupted existing historical continuities within those ethnic groups. In the pre-colonial period, chiefs were the custodians of culture, in the sense that they tended to be occupants of sacred 'skins' or 'stools', while in areas without the institution of chieftaincy councils of elders were the guardians of the community's tradition and culture.

A legislative council was first inaugurated in the 'Gold Coast colony'¹⁶³ in 1850. As part of the policy of indirect rule, the executive council was separated from the legislative arm of government from the 1880s onward to aid the internal governance of the colony, protectorates and mandated territory. The two councils evolved progressively first in the colony and then later in all four territorial entities with membership in the executive council being eleven official members and nine *ex-officio* members between 1916 and 1920. Among the *ex-officio* members were three native chiefs, three educated Africans from Cape Coast,

¹⁶² Remigius McCoy, *Great Things Happen*, Montreal: The Society of Missionaries of Africa, 1988, 36. Ganaa's family is accepted as 'the royal family' in Jirapa and the present Paramount Chief of the area is a descendant of Ganaa.

¹⁶³ As pointed out above, the Gold Coast was, in principle, not a colony in the 1850s but the British exercised some jurisdiction around their castles and forts under the Royal African Colonial Corps.

Accra and Sekondi and three Europeans representing commercial interest appointed by the governor.¹⁶⁴

When the two Crown Orders were passed establishing the Ashanti Protectorate and the Northern Protectorate in 1901, the policy of indirect rule was formally adopted as the method of administration there as well. Authority was exercised through the medium of the local chiefs in the villages and towns under the supervision of European district commissioners. However, it was during the governorship of Gordon Guggisberg (1919-27) that the administrative structure in all four territorial entities was systematised and the Gold Coast (Constitution) Order in Council, 1925, passed.¹⁶⁵ The 1925 Constitution provided for the creation of provincial councils of chiefs in the Gold Coast colony, the Ashanti Protectorate and Trans-Volta Togoland. The Northern Protectorate was, however, excluded from this constitutional provision. These changes were significant in reinforcing the discourses of greater participation of the Africans in government. For example, the number of Africans in the twenty-two member Legislative Council went from one appointed member in 1888 to six appointed members in 1916 to nine elected members in 1925.

Because the Gold Coast comprised three types of dependent areas, the different territories were neither equally represented in the law-making bodies nor were their special policy concerns fairly taken on board at every stage. Of course, the configuration of the entities was not without administrative and legislative difficulties. Legislations for the colonies were passed in Britain and supplementary laws within the colony; legislation for the protectorates was enacted by the colony. The League of Nations agreement regarding mandate territories stipulated that Trans-Volta Togoland should have elected and appointed

¹⁶⁴ Gold Coast, *Legislative Council Debates*, 1920. PRAAD Accra, *Legislative Council Papers* in ADM 14/3.

¹⁶⁵ By this time, Lugard's *The Dual Mandate* was already published. Guggisberg is considered as one of the most innovative British governors in the African colonies, having established the first deep water harbour in West Africa, commissioned the construction of a fine and modern hospital in Accra (the Korle-Bu Hospital), and founded Achimota College for the training of native teachers in the outskirts of Accra. Arguably, many of his policies he adopted were for the local people rather than in pursuit of European capitalist interests. For more on Guggisberg, see <<http://www.britishempire.co.uk/biography/guggisberg.htm>> (accessed on 19 July 2009).

members in the legislative arm of the Gold Coast. This provision met the underlying principle that “the wellbeing and development of such peoples form a sacred trust of civilisation.”¹⁶⁶

The first four ordinances in the Gold Coast spelling out the way the policy of indirect rule would operate focused on the role of the chiefs and the local councils. For example, the Native Administration Ordinance, 1883, regulated the position of the chiefs in the colonial administration and clarified the areas of jurisdiction of the newly-established local councils. The Chiefs Ordinance, 1904 and Native Jurisdiction Bill, 1906 basically strengthened colonial jurisdiction over the different territories. While the Native Administration Ordinance, 1927, further shed light on the supervisory role of the colonial administration over local chiefs, the Native Authorities Ordinance, 1935, brought the central government and the local authorities into a single governing council with the governor at the helm of affairs. The Native Treasuries Ordinance, 1939, focused on the issue of taxation in native governance.

The Crown colony government had the governor as the chief executive authority for the Gold Coast, who was responsible to the Secretary of State for the Colonies to whom he referred all important matters.¹⁶⁷ The typical structure of indirect rule was pyramidal, with the Governor at the top, the Territorial Commissioners under him, the District Commissioners under them, and of course the traditional rulers at the local level. The Governor appointed his subordinates to positions of responsibility. Executive, legislative and judicial powers of government resided in the British officials and in varying degrees in the chiefs who served as the managers of the ‘African’ apparatus of government. Judicial matters in the different territorial entities were handled by the same people who constituted the executive and legislative arms of government. Lugard described the structure of the judicial system under indirect rule as comprising of Resident Officers with no legal training as the judges in the Provincial Courts. He pointed out that he was unhampered by legal technicality because he

¹⁶⁶ Art 22 of *Covenant of the League of Nations*, 28 June 1919.

¹⁶⁷ Gold Coast, *Annual Report, 1931-32*, 4.

brought to bear a strong common sense point of view, setting aside the Attorney General's recommendations.¹⁶⁸

The executive, legislative and judicial powers were exercised by some traditional rulers and/or the British resident officers without regard for principles of the separation of powers.¹⁶⁹ Lugard's assessment of the indirect rule as a form of 'rule of law' bears no resemblance to the way the rule of law actually worked in Britain at the time that he was Governor of Nigeria. The binary logic of colonizer/colonized is clearly evident in Lugard's understanding of indirect rule. His claim to 'long African experience and knowledge of native custom' and his idea of 'substantial justice' would have been entirely contrary to the legal conventions operating in Britain in the early part of the twentieth century. Also, the judicial procedure he presented as the 'rule of law' might well have been viewed as somewhat tyrannical in Europe at that time. More importantly, African communities had their own long tradition of judicial systems before the advent of colonialism. These were either changed to suit the colonial administrative structures or gradually abolished.

The nature of indirect rule required a high level of co-operation between the British administration and the local chiefs in spite of the intrinsic injustice of colonialism. The chiefs were a mixed group, including some who inherited the position because it formed part of the social and cultural organisation of their ethnic groups and others who were appointed by the colonial administration.¹⁷⁰ Among the chiefs who formed part of the colonial administration were influential traditional rulers of the Akan and Ga-Adangme ethnic groups, some leaders of the Mole-Dagbani chiefdoms and some 'elected' chiefs of the colony. For example, the 1945 Legislative Council comprised of the following chiefs: Nana Tsibu Darku IX

¹⁶⁸ Lugard, 387-405.

¹⁶⁹ PRAAD Accra, *Legislative Council Debates* in ADM 14/2; PRAAD Accra, *Executive Council and Cabinet Minutes* in ADM 13/1.

¹⁷⁰ See *Colonial Office Honours: Original Correspondence* in CO 448/34. Nana Ofori Atta II, the Paramount Chief of Akim Abuakwa and Provincial Member of the Gold Coast Legislative Council, was awarded a KBE by King George V in 1927 for under the 'Civil Services' category.

(*Omanhene* of Assin Atandasu and Provincial Member for Central Province), Nene Nuer Ologo V (*Konor* of Yilo Krobo and Provincial Member for the Ga-Adangme Section of the Eastern Province), Nana Amanfi III (*Omanhene* of Asebu and Provincial Member for Central Province), Nana Annor Adjaye II (*Omanhene* of Western Nzima and Provincial Member for the Western Province), Nana Kwame Fori (*Omanhene* of Akwapim and Provincial Member for the Akan Section of Eastern Province).¹⁷¹

There were no female chiefs among the traditional rulers co-opted into the colonial administration even though some Akan communities had women chiefs. The reasons for the absence of women in the colonial administration are not entirely surprising. The process of colonisation was dominated by men and the colonial administration in the Gold Coast comprised mainly of men, with the spouses of colonial officials constructed, according to Whitlock, as wombs of the empire rather than equal partners in the imperial project.¹⁷² By virtue of their race and gender, African women in the Gold Coast were rendered all the more subordinate subjects in the colonial regime and in their ethnic communities. The subjugation was located in many of the value systems that informed the practices of discrimination, exclusion and inequality at all levels of colonial society.

Thus, colonial policies, cultural practices and later nationalist discourses complemented each other in shaping the understanding of women's specific claims. Gender was at the interstices of colonial politics, culture and the nationalism discourse in the Gold Coast. For example, women were not absent from Gold Coast nationalism as such but the leaders of opinions did not always take specific gender interests and rights into account. While gender equality should ordinarily be part of a trajectory of human rights discourse, women in colonies, as Holst-Petersen and Rutherford have pointed out, were subject to a

¹⁷¹ Gold Coast, *Legislative Council Debates*, Session 1945, Vol. 1.

¹⁷² Gillian Whitlock, "Outlaws of the Text: Women's Bodies and the Organisation of Gender in Imperial Space" in Bill Ashcroft et al., *The Post-colonial Studies Reader* 2nd ed., London: Routledge, 2002.

‘double colonization,’ colonial domination and patriarchal domination.¹⁷³ The issue of gender will be taken up in greater detail in subsequent chapters of the thesis.

Although an educated class of Africans gradually emerged in the Gold Coast, they were not really brought on board in governance until the late 1940s. As a result, abiding tensions developed between the chiefs and the educated classes over control of political power on the one hand and between the latter group and the colonial administrators on the other. Caseley Hayford points out in his writings that the educated Africans argued for the kind of freedoms that the Europeans enjoyed in the Gold Coast and demanded not to be subjected to Native Jurisdiction.¹⁷⁴ As more and more Africans returned to the Gold Coast from Britain and the USA armed with university education, there was an increasing awareness of the injustice of colonial rule and the need for greater African participation in government. Among the nationalist leaders were Joseph Boakye Danquah and Kwame Nkrumah about whom there exists extensive literature. I will therefore use as illustrations of nationalist figures three people—*viz.*, Kofi Asante Ofori Atta, Archie Casely-Hayford and Ebenezer Ako Adjei—about whom very little is written.

Kofi Asante Ofori Atta was the son of Nana Sir Ofori Atta II (1881-1943), the influential chief of Akyem Abuakwa who was the first African member of the Legislative Council in 1916 to represent the Gold Coast Africans. According to Rathbone, Nana Ofori Atta II charted two paths in his life, “one firmly rooted in a concern for binding the state to the traditionally sanctioned method of multiple marriage and the other rooted in his strong case for ‘modernisation’ and progress.”¹⁷⁵ This son undertook his early education in England and then went back to the Gold Coast to head Abuakwa State College in his father’s chiefdom. He studied for a law degree at University College, Dublin. After he was called to

¹⁷³ Kirsten Holst-Petersen and Anna Rutherford, *A Double Colonization: Colonial and Post-Colonial Women’s Writings*, Aarhus: Dangaroo Press, 1985.

¹⁷⁴ PRAAD Cape Coast, *Rare books J. E. Caseley Hayford*, 1919 (file); PRAAD Accra, *Miscellanea* in ADM 5/4.

¹⁷⁵ Richard Rathbone, *Murder and Politics in Colonial Ghana*, New Haven: Yale University Press, 1993, 41.

the English Bar in 1950, he returned to the Gold Coast in 1951, joining the CPP and thus throwing

away, once and for all, the security and position his family connection would otherwise have given him but, in the same way as Archie Casely-Hayford, he was convinced that national independence could never be won by the conventional and constitutional methods which had been attempted and failed in the past. Kofi Asante Ofori Atta had no faith in the ability or integrity of the old style chiefs. National independence to him could only be secured by removing them from any real sphere of political influence.¹⁷⁶

Archie Casely-Hayford was born into the Casely-Hayford family. His grandfather, Joseph Hayford, had been a cabinet member of the Fanti Confederation who was arrested by the colonial administration in 1874. His father, Joseph Casely-Hayford, became the founder of the National Congress of British West Africa in 1920. Archie was given a typical British education—secondary school at Dulwich College after which he studied for degrees in law and economics at Clare College, Cambridge University, finishing with an MA from Oxford University and being called to the English Bar. He returned to the Gold Coast in 1947, taking up the position of a Senior Magistrate, which he later relinquished to join the UGCC, eventually regrouping with Nkrumah to found the CPP in 1949. Someone who knew him well notes that “[a]bout one thing only he was certain, the colonial system was bad and must be destroyed and he would, if necessary, sacrifice prestige, position and fortune to achieve it.”¹⁷⁷

Ebenezer Ako Adjei was born in 1916 and studied Political Science and Philosophy at Hampton University, graduating with a bachelor’s degree in 1942. A scholarship helped him to study at the Graduate School of Journalism, Columbia University, where he obtained an MSc in 1943. He also studied for the MSc in Political Science at the London School of Economics, and after being called to the English Bar at the Inner Temple in 1946 he served briefly as the President of the West African Students’ Union before returning to the Gold

¹⁷⁶ Geoffrey Bing, *Reap the Whirlwind: An Account of Kwame Nkrumah’s Ghana from 1950 to 1966*, London: MacGibbon & Kee, 1968, 121.

¹⁷⁷ *Ibid*, 119.

Coast in 1947. Although he declined a paid job as UGCC's Secretary-General he became a member, was imprisoned by Governor Gerald Creasy along with five other leaders of the party in the aftermath of the 1948 boycotts and joined the CPP in 1954.

The educated Africans such as the three described above formed a significant group of actors in the Gold Coast, becoming gatekeepers of various discourses and sometimes contesting colonial policies. In the post-World War II nationalist movements especially, there was no rapprochement between them and the chiefs, indeed they wanted to replace the chiefs as partners of the colonial administration although it was not always clear that they desired this as a first step toward self-rule for the Gold Coast or as partners of the chiefs, as the debates regarding the form of government to adopt after independence showed. This issue is taken up in chapter 6 of the thesis.

Although it is generally agreed that the system of government of the Gold Coast was indirect rule through local chiefs, there were aspects of direct rule by central government through the British colonial administrators stationed in major centres such as Cape Coast, Accra, Takoradi and Kumasi. Thus, entities were directly administered by a governor assisted by district administrators, staff with political and technical expertise, and executive as well as legislative councils. Even though the four territorial units were disparate, they were connected by a common administrative thread. As I emphasise in chapter 7 below, the administrative structure of the Gold Coast provided a national narrative of shared boundaries within which the nationalist movements could disseminate their discourse of independence, one nation and one destiny.

3.4. The issue of British 'protected personhood'

British colonial rule in the Gold Coast occurred against the background of a politics of difference that affected every facet of administration in the colony, protectorates and

mandated territory, not least citizenship laws that distinguished between rights-bearing British citizens working for the colonial administration and disenfranchised African subjects. Already during the process of colonisation in the 1890s, the status of the Africans vis-à-vis citizenship came up with regard to whether or not the areas under British jurisdiction were ‘protected territories’ or ‘settlements,’ an issue which had to be decided to undertake the first census in the Gold Coast. The Colonial Office lawyers, overturning a ruling of Chief Justice Sir Joseph Hutchinson, pointed out that the colonial administration had no power to change the status of Her Majesty’s possessions.¹⁷⁸ For example, the notion of ‘protected personhood’ was constructed legally to correspond with the indirect rule practices. This was entrenched in the British Nationality and Status of Aliens Act, 1914, reinforced in the British Nationality Act, 1948 and applied in the Gold Coast.¹⁷⁹ The British Nationality Act, 1948 conferred on the African people within the Gold Coast Colony, the Ashanti Protectorate, Northern Protectorate and Trans-Volta Togoland, British ‘protected persons’ or subjects without citizenship, meaning that they could not enjoy the status of citizen and citizenship rights.¹⁸⁰

Part 1 (section 1) of the Act stipulates that

Every person who under this Act is a citizen of the United Kingdom and Colonies or who under any enactment for the time being in force in any country mentioned in subsection (3) of this section is a citizen of that country shall by virtue of that citizenship have the status of a British subject.¹⁸¹

The countries listed under Part 1 section (1) subsection (3) were Canada, Australia, New Zealand, the Union of South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon. Under Part III section (32) subsection (1) of the Act, the following categories (that

¹⁷⁸ PRAAD Accra, *Sir William B. Griffith: A Note on the History of the British Courts in the Gold Coast Colony, with a Brief Account of the Changes in the Constitution of the Colony*, Accra: Government Printer, 1936 [written mostly in 1904].

¹⁷⁹ British Nationality and Status of Aliens Act, 1914 and British Nationality Act, 1948. See British Nationality Act, 1948, s 32(1), for example, where the ‘protected person’ is defined as a person who is a member of a class of persons declared by Order-in-Council made in relation to any protectorate, protected state, mandated territory or trust territory to be for the purposes of the Act British protected person by virtue of their connection with that protectorate, state or territory.’

¹⁸⁰ The British Nationality Act, 1948.

¹⁸¹ The British Nationality Act, 1948, Part 1 Section 1.

would have applied directly to the Gold Coast) were defined as follows:

‘British protected person’ means a person who is a member of a class of persons declared by Order in Council made in relation to any protectorate, protected state, mandated territory or trust territory to be for the purposes of this Act British protected persons by virtue of their connection with that protectorate, state or territory.¹⁸²

One of the caveats of this Act was that ‘colony’ was qualified “not [to] include any country mentioned in subsection (3) of section one of this Act.”¹⁸³ In the politics of citizenship, therefore, British citizens and African subjects were two distinct groups with the former acting as caretakers of the British Empire while the latter lacked the wherewithal to be active participants in the exercise of their land, democratic and fundamental rights. By distinguishing between British citizens and African subjects in the British Nationality Act, 1948, the Africans in the Gold Coast were classified as ‘British protected persons’ and therefore bereft of citizenship rights.¹⁸⁴ The notion of ‘protected personhood’ corresponded with the existing colonial practice of exclusion.

I have reviewed the provisions of the British Nationality Act, 1948 in some detail because it was passed in the aftermath of World War II when the rhetoric of equality had already been creeping into the discourse of the new international order. The gap between citizenship rights and the protection of citizenship rights was in the lack of appropriate judicial or institutional mechanisms in the Gold Coast. Entitlements to citizenship rights presuppose that the people live not only within the ambit of a state but also of a state that takes its human rights obligations seriously. This point flags up one aspect of the ambiguity of human rights in the ambit of international law.

When the Ghana Independence Act was passed in 1957, ‘Gold Coast’ was replaced in the British Nationality Act, 1948 with ‘Ghana’ in section 1(3), so that Ghana citizens would continue to be recognised in UK law as British subjects until the newly-independent state

¹⁸² The British Nationality Act, 1948, Part III Section 32 subsection (1).

¹⁸³ The British Nationality Act, 1948, Part III Section 32.

¹⁸⁴ The British Nationality Act, 1948, Part III Section 32 subsection (1).

passed its own citizenship laws. Alan Lennox-Boyd, the Secretary of State for the Colonies, explained this legal technicality around citizenship by pointing out with the change “no one will be rendered stateless [because of independence], and they [Ghana ‘citizens’] will all be British subjects.”¹⁸⁵ In the existing laws, those who were neither British citizens nor British subjects/protected persons but lived in the colonies were considered aliens. Although they owed allegiance to the Monarch and enjoyed some form of entitlement to protection of their person and property under the law, they could not enjoy the full array of ‘benefits’ of belonging to one of the two groups.

As Mamdani and Englund have argued, the distinction between rights-bearing citizens and subjects was significant, because the latter were instrumental in the success of colonial rule but without having the attendant rights.¹⁸⁶ In the Gold Coast situation, the idea of ‘protected person’ or subject became a double-edged sword, perforating what little allegiance there was among the Africans toward British colonial rule and cutting loose an introspective anti-colonial nationalism. These ‘subjects’ found what Bhabha calls unifying myths such as racial belonging, colonial domination, a common cause for self-determination, and a *lingua franca* that bridged the language barriers.¹⁸⁷ Significantly, the Gold Coast (Constitution) Council in Order 1946 had failed to respond to many of the demands of the nationalist movements, not least the question of citizenship even though the White Paper of the British government had stated that “[t]he 1946 Constitution was not a belated recognition of long standing demands, but a necessary and accepted step in constitutional advancement.”¹⁸⁸

¹⁸⁵ See *House of Lords Debates*, Vol. 206 cc. 1182-92, 16 December 1957.

¹⁸⁶ Englund, 40. A fuller development of this idea is in Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Colonialism*, Princeton, NJ: Princeton University Press, 1996.

¹⁸⁷ Homi K. Bhabha, (ed.), *Nation and Narration*, London and New York: Routledge, 1990, 45-65; also see Ronald Hyam, *Britain’s Declining Empire: The Road to Decolonisation (1918-1968)*, Cambridge: Cambridge University Press, 2006, 146-150 .

¹⁸⁸ *British Government White Paper to the Gold Coast (Constitution) Order in Council 1946* in CO 96/115.

3.5. Nationalism as a discourse against colonial rule

The discourse of nationalism is discussed in greater detail in chapter 7 of the thesis, but it should already be stressed how colonial rule in the Gold Coast provoked anti-colonial nationalism and the struggle especially for the collective right to self-determination. The politics around citizenship, for example, alienated especially the educated Africans who wanted to work in the civil service. Behind the nationalist movements were Western educated Africans and local chiefs. The robust awakening of nationalist consciousness over time must be viewed against the background of the unfair colonial policies, specific domestic resistance to colonial rule in the Gold Coast and incremental changes in the international world order. This had been long in the making.

The contours of anti-colonial resistance were shaped more by consciousness regarding statutory, land and constitutional rights rather than ‘human rights’ as such. One example of the earliest resistance was in the Ashanti-British war of 1865 and again in 1873-74, which led to calls for British withdrawal from the area. African nationalism grew out of the desire of the Africans in the Gold Coast to be treated fairly and as rights-bearing citizens in their own lands. For example, once the colonial administration established itself, the Crown Lands Bill (1896) and Lands Bill (1897) were passed, transferring land possession from the African people to the British Crown under a concession arrangement. A group of local chiefs and educated Africans in the colony formed the Aborigines’ Rights Protection Society (ARPS) in 1897 to oppose the colonial legislation on land that threatened the traditional land tenure system.¹⁸⁹ They also sent a deputation to London, leading to the withdrawal of the bills and the introduction of a Concessions Ordinance (1900) instead. The new bill stipulated that the indigenous people would retain their land and could make concessions in the customary courts as well as in the nascent colonial lands department if they had any grievances.

¹⁸⁹ PRAAD Cape Coast, “The Aborigines Rights Protection Society Papers: Petition for the Amendment of the Gold Coast Colony (Legislative Council) Order in Council, 1897.”

Like earlier anti-colonial movements, the ARPS founders tended to be the aristocratic coastal *intelligentsia* and traditional rulers. The ARPS is credited with founding the first indigenous, independent newspaper in the Gold Coast, *The Gold Coast Aborigines*, on January 1, 1898 with the motto “for the safety of the public and the welfare of the race.”¹⁹⁰ The first editorial stressed the fact that the newspaper would fulfil a desire to have a mouthpiece “[f]or... the members of the Gold Coast Aborigines Rights Protection Society, to have an organ of their own and the appearance of this paper before the public today is nothing else, but that wish, after all taking a practical shape.”¹⁹¹ In an article entitled ‘Female Education and its Bearing Upon the Improvement of the Race,’ Samuel Henry Brew Jr., an African from the coastal region, pointed out that “long years of unfair and unequal treatment at the hands of man has to some extent lowered the mental stamina of women, but this does not in the least affect the general question of the intellectual equality of the sexes.”¹⁹² The article raised the issue of education for the Africans as well as anticipated gender equality as an important issue, something that would be tangential to the nationalism discourse even in the post-World War II years. The politics of difference inherent to colonial rule produced an administrative structure in which chieftaincy became a tool in the hands of the British administration for controlling the diverse ethnic groups and polarising assertions for self-determination.

Nationalism took on a broader dimension when the National Congress of British West Africa (the Congress) was founded in March 1920 by Joseph Casely-Hayford, one of the Gold Coast African members of the Legislative Council. The Congress brought together representatives from the Gold Coast, Nigeria, the Gambia and Sierra Leone colonies to campaign for franchise and greater African representation in government. According to its constitution, its main objective was,

¹⁹⁰ *The Gold Coast Aborigines*, January 1, 1898.

¹⁹¹ *Ibid.*

¹⁹² *The Gold Coast Aborigines*, May 21, 1898.

to maintain strictly and inviolate the connection of the British West African dependencies with the British Empire and to maintain unreservedly all and every right of free citizenship of the Empire and the fundamental principle that taxation goes with effective representation.¹⁹³

The Congress authorised a delegation of West African students in London to deliver a petition to Lord Alfred Milner, the Secretary of State for the Colonies from 1919 to 1921, on the principle of elected representation.¹⁹⁴ Although Milner did not think the West African colonies were ready for franchise, Guggisberg, while he was governor, wrote that the “time had come for giving Africans greater and better representation”¹⁹⁵ in government. Guggisberg went on to introduce the Municipal Corporations Bill (1924) which provided for limited franchise to adults who owned and/or occupied a house of £5.00 value.¹⁹⁶ The bill was opposed in the urban areas, because of the fear that it would exclude a majority of the Africans in the electoral process who did not meet the set conditions, and so the Town Council Ordinance (1927) replaced it, providing for the inclusion of four elected Africans in the legislative organ of government apart from the five all-British official and five unofficial members appointed by the Governor.

The Congress did not possess an overarching ‘national ideology’ whereby the four very diverse colonies were coming together to demand ‘effective representation’ in government. Changes in government such as those initiated by Guggisberg came at the level of an individual colony. The Governors exercised separate jurisdictions over the different colonies and policy decisions varied significantly. The lifespan of the Congress was transient, but one can surmise that the seeds for future regional co-operation may have been sown through its activities.

One corollary to anti-colonial nationalist activities was the use of emergency measures by the administration. The British government had used such measures in its older

¹⁹³ National Congress of British West Africa, *Constitution*, self-published, 1920.

¹⁹⁴ See printed petition of the Congress of in PRAAD Accra, *Reports and Sessional Papers* in ADM 5/3.

¹⁹⁵ Gordon Guggisberg, *Events, 1920-1926*, 238.

¹⁹⁶ Municipal Corporations Bill, 1924.

colonies and the Gold Coast was not going to be different. For example, the Emergency Powers Act 1920, Emergency Powers Act (Northern Ireland) 1926, Emergency Powers (Defence) Act 1939, and Emergency Powers (Defence) Act 1940 were used in Ireland and in some of the Asian colonies in the run-up to independence.¹⁹⁷ These measures were not fully applied in the first phase of colonial rule in the Gold Coast when nationalism was not particularly forceful. However, between 1948 and 1951, the colonial administration used emergency powers' legislations and tight sedition laws to deal with many of the major nationalist activities. The most significant use of these powers was in the Emergency Powers Order, Regulation 29 of the Emergency (General) Amendment No. 2 which provided the legal basis for detaining without trial the 'Big Six' in 1948. One Gold Coast government report has drawn a comparison between 'Positive Action' in the Gold Coast with 'the General Strike of 1926' in Britain and the way emergency powers ought to be employed to deal with the two events.¹⁹⁸ The comparison is significant in bridging the gap between treatment of citizens and subjects by the British government.

According to the minutes of the Session 1 of the 1950 *Legislative Council Debates*, two ordinances on Emergency Powers were passed, the first was to provide for the imposition of curfews in the interest of public safety and the maintenance of public order and the second was an amendment to the Newspaper Registration Ordinance.¹⁹⁹ An example of the use of emergency measures is the debate on the Suipe shooting incident. A detachment of the Gold Coast Mobile Force, about 130 armed men, was sent by the colonial administration to Suipe on November 5, 1950. A number of people were killed, others wounded and many arrested. A one-man enquiry constituted by Ffouldkes Crabbe investigated the matter, and it came up

¹⁹⁷ For an illustration of Emergency Powers Act, see *Hansard*, House of Commons, 5th Series, vol. 195, col. 35. Also see, for example, Disturbances at Labadi in CO 96/778, Strikes and Disturbances in CO 96/779, and Strikes and Disturbances in CO 96/795.

¹⁹⁸ PRAAD Accra, *Reports on Districts* in ADM 11/1. Also see Bing, 118.

¹⁹⁹ Newspapers: Undesirable Press Articles in CO 96/818. Gold Coast, *Legislative Council Debates*, Session 1950 Issue no. 1.

for debate because there was some concern that neither due process nor the democratic rights of the victims were respected, to which Governor Arden-Clarke responded that

[t]he Leader of Government Business and other Ministers have represented to me that these men, however misguided, performed these acts in pursuance of ‘Positive Action’ campaign, the leaders of which have been released... I decided to remit the remainder of the sentences imposed on these men.²⁰⁰

While it was an internally accepted standard, the realisation of the right to a fair trial raises questions about the scope and context of human rights.

One of the problems with emergency powers is that it erodes human rights.

Emergency regulations not only affected existing laws that allowed government to detain, for example, anti-colonial nationalists for lengthy periods without trial. The nature of colonial laws meant that the ‘British protected persons’ already had very limited rights and liberties. But with emergency measures, the sweeping powers granted the government contributed to even greater disregard for the few due process provisions in the colonial laws.

3.6. Conclusion

This chapter has demonstrated how the Gold Coast was created discursively through processes of law, policies and pragmatism, and ways in which colonisation inspired particular assertions from the ‘British protected person’ for their statutory, constitutional and group rights. Anti-colonial nationalism provided a counter discursive practice to colonial policies. The underlying domestic struggles brought up a number of issues, not least the place of chieftaincy in society, the possibilities for discourse that Western education offers, the use of emergency powers by the colonial administration and the subject of gender inequality. The politics of difference inherent to colonial rule produced an administrative structure in which chieftaincy became a tool in the hands of the British administration for controlling the diverse ethnic groups and polarising assertions for self-determination. The absence of women was

²⁰⁰ *Legislative Assembly Debates*, Session 1951, Issue no. 2, Vol. I.

not limited to the colonial project but extended to anti-colonial nationalist movements as well. These issues flag up, among other things, questions about who 'the human being' of rights is in the post-World War II emerging human rights regime in a colonial territory and also the binaries of coloniser/colonised, chiefs/ordinary people, men/women and *intelligentsia*/ordinary people. One of the things that the analysis above highlights is the heuristic nature of discourses of justice in situations of subjugation.

Chapter 4

The ‘human being’ of human rights in the politics of difference

“Human dignity is like a baobab tree in the village; no single clan can claim it as their own.”

A Dagara proverb

I am a Jew. Hath
not a Jew eyes? Hath not a Jew hands, organs,
dimensions, senses, affections, passions? Fed with
the same food, hurt with the same weapons, subject
to the same diseases, healed by the same means,
warmed and cooled by the same winter and summer, as
a Christian is? If you prick us, do we not bleed?
If you tickle us, do we not laugh? If you poison
us, do we not die?²⁰¹

William Shakespeare in *Merchant of Venice*, Act 3 Scene 3

4.1. Introduction

At the heart of the politics of colonial rule in the Gold Coast was the way the colonisers understood the ‘humanity’ of the colonised—and the colonised their own ‘humanity.’ Among the diverse African communities themselves, the understanding of their shared ‘humanity’ did not necessarily preclude discrimination on grounds of ethnicity or gender. The understandings came out of a mishmash of ideas in history, philosophy and culture that contributed to the construction of race or gender identities. Colonisation reinforced, as it were, the identities of both the colonisers and the colonised in relationships that oscillated between dominance, resistance and negotiation. In the Gold Coast, rights-bearing British citizens determined what colonial practices should be adopted and policies implemented in the administration of the colony, protectorates and mandated territory.²⁰² Their African ‘subjects’ found ways of asserting, for example, their right to self-determination because their self-understanding did not tally with the identity projected on them by the colonial administration.

²⁰¹ William Shakespeare, *The Complete Works of William Shakespeare*, Hertfordshire: Wordsworth edition, 2007, 401.

²⁰² However, it has to be acknowledged that individual colonial administrators in the Gold Coast differed in their understanding of the ‘humanity’ of the Africans. The policy decisions they made suggest that Governor Gordon Guggisberg and Governor Gerald Creasy related to their African subjects differently.

The main discourses that form the basis for the analysis in this chapter reflect the agenda of the nationalist movements, the policies and practices of the colonial administration, the concerns of the traditional rulers, the UN Charter and UDHR and the preoccupations of the marginalised constituencies such as the groups in the Northern Territories or the Mandated Territory of Trans-Volta Togoland, and also the women. The narratives from these diverse groups about who ‘the human being’ is, or ought to be, were often a subject of contention in Gold Coast politics. In the legislative debates, rhetoric of the nationalist movements, policies of the colonial administration and the print media, questions about the meaning of the ‘human’ in human rights were debated more indirectly than directly. In those situations where they formed an integral part of the discourse, the conditions of social production were sometimes elitist and those who shaped the debates appeared as self-interested agents in some of the struggles. Thus, for example, both the colonial administration and the nationalist movements deployed the UN language of universal human rights in negotiating whether or not to incorporate a bill of rights into the 1957 Independence Constitution.²⁰³

4.2. Rights-bearing citizens in the politics of difference in the Gold Coast

As I have argued in chapter 3 above, practices such as the redrawing of boundaries, renaming of territories and redefining of existing communities in symbolic acts of domination characterised the beginnings of colonial rule in the Gold Coast. This process of re-labelling whole communities to fit colonial archetypes also puts in context the nature and scope of colonial administration, the type of educational policies that were made for the Africans, and the colonial administration’s attitudes towards Africans who were asserting their ‘humanity’ as rights-bearing citizens in the country. The paradox of colonial rule, as Mamdani has

²⁰³ See *Proposals for the Constitution of Ghana* in CO 554/822, Memorandum by the Prime Minister for onward Transmission to the Secretary of State for the Colonies, ‘Proposals for the Constitution of Ghana,’ 4 October 1956.

pointed out, is that while it had a legal framework, it eclipsed the rights claims of the people who were being colonised.²⁰⁴

Indeed, colonial rule gave expression to the belief in the superiority of one group of human beings over others, and therefore their subjugation by the ‘superior other’ as part of a broader civilizing enterprise. Marks and Clapham’s idea that the logics of racism, practices of racism and context of racism²⁰⁵ are significant for appreciating how race, or even gender, is sometimes a barrier to equality and is important for understanding why the ‘human’ in human rights is a riddle in the variety of discourses in Gold Coast even after the emergence of the UN human rights regime. Even though their idea does not answer the question why human beings often fall into the trap of defining themselves in opposition to the racialised other, gendered other, national other or ethnic other, it puts in context ways racial difference was historically a barrier to equality in the Gold Coast during colonial rule. According to Marks and Clapham, biologically-determined differences were at first the basis for a human hierarchy that unfairly disadvantaged others. Then a shift to a cultural idea of race led to cultural determinism,²⁰⁶ or what Žižek termed a ‘reflexive racism,’²⁰⁷ where a group projects racism on others while claiming for itself multiculturalism and cultural pluralism. They point out how the shifts in the *logics* of racism, i.e., from the biological to the culturalist premise of race dynamics, absorb each other’s critiques while at the same time revealing nuanced forms of dynamic tension. An important characteristic of the change was the way ‘race’ was cast in a legally-sanctioned framework of colonial rule in the Gold Coast and then was redefined for the Africans in nationalism as part of an anti-racial initiative or ideology. The ever-expanding

²⁰⁴ Mamdani, 109.

²⁰⁵ Susan Marks and Andrew Clapham, *International Human Rights Lexicon*, Oxford: Oxford University Press, 2005, 289-91. For another perspective on the question of race as a basis for alienation of the racialised other, see Gustav Jahoda, *Images of Savages: Ancient Roots of Modern Prejudice in Western Culture*, London: Routledge, 1998. Jahoda argues that racism and the alienation of a racialised other have their roots in myth, classical antiquity and pseudo-science and goes on to discuss how it is one of the most significant barriers to equality.

²⁰⁶ Marks and Clapham, 289.

²⁰⁷ See Slavoj Žižek, *The Fragile Absolute*, London: Verso, 2000.

judicial powers of Britain over the territories that came to be called the Gold Coast Colony, Ashanti Protectorate, Northern Protectorate and the Mandated Territory of Trans-Volta Togoland actualised a specific legal framework.

The third change that Marks and Clapham note is the *context* of racism in which racist and anti-racist discourses are encoded in domestic policies, written into legislation, and in some cases slipped into constitutions through an equality clause of one form or another. For example, some of the nationality acts conferred citizenship on white settler populations in British dominions while excluding the African ‘subjects.’ Administrative changes in the Gold Coast brought about and reinforced shifts in a complex process that actually concealed ethnic or gender discrimination both during colonial rule and in the decolonisation process. The ‘bigger’ struggle for self-determination in turn eclipsed the problem of gender, ethnic or sectional discrimination.

Nineteenth century colonisation of the Gold Coast paid very little attention to questions of inherent and equal dignity of human beings. The complex politics around the issue of race at the time justified to some extent the colonisation process itself. Thinkers such as Hume, Kant or even Mill made claims about racial differences that seemed to rationalise defining the racialised other as inferior. For example, Hume maintained that “the negroes and in general all the other species of men (for there are four or five different kinds) to be naturally inferior to the whites.”²⁰⁸ Kant took this idea further by arguing that

In the hot countries the human being matures in all aspects earlier, but does not, however, reach the perfection of those in the temperate zones. Humanity is at its perfection in the race of the whites. The yellow Indians do have a meagre talent. The Negroes are far below them at the lowest point as are a part of the American peoples.²⁰⁹

Mill’s assertion that “[e]xperience proves that it is possible for one nationality to merge and

²⁰⁸ David Hume, “Of National Character” (1748) in *The Philosophical Works of David Hume*, Vol. III, Bristol: Thoemmes Press, 1996, 228. Apparently, the above quote on the Negroes was a footnote to a revision “Of National Character” (1748) in 1753 in response to criticisms he received on the essay.

²⁰⁹ Immanuel Kant, *Physical Geography*, quoted in Emmanuel Chukwudi Eze, *Race and the Enlightenment: A Reader*, Oxford: Blackwell, 1997, 58-64.

be absorbed in another: and when it is originally an inferior and more backward portion of the human race the absorption is greatly to its advantage”²¹⁰ seems to justify colonialism as a civilising mission. Johann Friedrich Blumenbach reinforced the ‘othering’ of non-white people by asserting that “the white color holds the first place.”²¹¹

It was an extreme form of racial profiling that led to the World War II atrocities. Hitler had said that “the value of man [or woman] is determined in the first place by his [or her] inner racial virtues.”²¹² In *Mein Kampf*, for example, he argued that the Aryans were “the highest race... the master people.”²¹³ He went on to express his intention to suppress “the Marxist idea that men [and women] are equal [and he announced that] he was willing to draw the ultimate consequence of recognising the importance of blood.”²¹⁴ While the context of Hitler’s views is different from those of Hume, Kant and Mill they all ‘constructed’ a basis for a human hierarchy with varying implications for different groups of people. The idea of universal rights, as I have noted in chapter 1 above, was a reaction to Nazi atrocities but its influence extended to other forms of injustice. The idea that dignity is the essential characteristic of the human being, and therefore the underlying principle for universal human rights, serves a practical purpose of untangling inequality and unravelling discrimination.

The discourse on race identities assigned meanings to the racialised other against a binary of white/black, civilized/primitive, colonizer/colonized. In particular, the African continent was presented as a “[m]useum of Barbarism whose populations had stayed outside the laws of human growth and change through some natural failing or inferiority.”²¹⁵ As Lugard pointed out,

²¹⁰ John Stuart Mill, *Representative Government*, New York: Prometheus Books, 1991, 314.

²¹¹ Johann Friedrich Blumenbach, *On the Natural Varieties of Mankind* (1775), New York: Bergmann, 1969, 209. Blumenbach, who is considered the founder of anthropology, claimed to have come to his conclusion about the racial hierarchy based on a comparative study of races.

²¹² Adolf Hitler, “Selected Speeches” in *Political Ideologies*, ed. James A. Gould and Willis H. Truit, New York: Macmillan, 1973, 117.

²¹³ Adolf Hitler, *Mein Kampf*, trans. Ralph Manheim, Boston: Houghton Mifflin, 1971, 384.

²¹⁴ Hitler, 442.

²¹⁵ Basil Davidson, *Africa in History*, London: Phoenix Press, 1991, 3.

As Roman imperialism laid the foundation of modern civilisation and led the wild barbarians of these islands [Britain] along the path of progress, so in Africa today we are repaying the debt, and bringing to the dark places of the earth—the abode of barbarism and cruelty—the torch of culture and progress... we hold these countries because it is the genius of our race to colonise, to trade and to govern.²¹⁶

The specious understanding of the racialised other, gendered other or ethnicised other in the Gold Coast distorted the understanding of the ‘human being’ *qua* human being. British colonisation of the Gold Coast could also be said to have occurred against the background of what Marks and Clapham termed “the *logics* of racism.”²¹⁷ Citizenship laws, as I pointed out in chapter 3 above, was characterised by this logic.

4.3. The ‘racialised other’ in the politics of education and anti-colonial resistance

Defining the racialised other differently had implications on the philosophy of education and educational policies for the African subjects in the Gold Coast. The evolution of educational institutions went hand in hand with developments in the colonial administrative edifice. The objective of educating the African subjects under the broad policy of ‘native education’ vacillated between the integration of subjects into the colonial system in a way that they could retain their cultures and simply educating them for citizenship in the British Empire. This was done through the policy of native education. What did ‘native education’ really mean? Writing in *The Journal of the Royal African Society* in 1921 about ‘native education,’ Africanus noted that he “failed to find a real policy clearly defined by anyone; and in the outlines which have been suggested in a sketchy manner the tendency appears to me to be to insist on advanced twentieth century methods, which are not so suited to Africans.”²¹⁸ For example, the lack of a clearly defined concept of ‘native education’ opened it up to adaptations in the different colonies, which in some places meant ‘advanced

²¹⁶ Frederick Lugard, *The Dual Mandate in British Tropical Africa*, New York: Frank Cass, 1922, 619.

²¹⁷ Susan Marks and Andrew Clapham, *International Human Rights Lexicon*, Oxford: Oxford University Press, 2005, 289-91.

²¹⁸ Africanus, “Native Education in Central Africa” in *Journal of the Royal African Society* 2(78), 192: 95-100.

twentieth century method' and in others the barest minimum. An editorial of 30 November 1929 issue of *Nature* situated 'native education' within the broad understanding of the Africans during colonial rule thus: "native peoples can profit only by primary education, ... they reach a phase of mental stupidity or 'saturation' by the time they are adolescent."²¹⁹ However, some of the early colonial administrators believed that 'native education' would aid colonial rule in more ways than one.

'Native education' was the philosophy of education that shaped both the content and context of education for the Africans in British colonies. The aim of 'native education' was to help create complementary political and economic units for the Africans and guide them to the clerical jobs in the civil services. It created a racially segregated system of education for children in the Gold Coast. There was one school system for the children of the British colonial administrators and another for the 'other' children. African families such as the Casely-Hayfords or the Doves or the Ofori-Attas who could afford it sent their children to schools in Britain or in Sierra Leone. At the practical level in the Gold Coast, 'native education' was divided into religious and moral which was left to the Christian missionaries; clerical, and industrial and agricultural which were preserved for the colonial administration²²⁰ either through the public schools or the government-assisted mission schools.

Native educational policies began with the first Education Ordinance in the Gold Coast in 1852. This gave legal sanction to the provision of education for the inhabitants of Her Majesty's forts and settlements along the coast.²²¹ A second ordinance, passed in 1882,

²¹⁹ Editorial, *Nature*, Saturday, 30 November 1929, 3135(124). In South Africa, for example, 'native education' was legally-sanctioned through the Bantu Education Act of 1953.

²²⁰ Africanus, 95-100. Christian missionaries in the Gold Coast had superseded the colonial administration in providing Western education to the Africans, with the setting up of primary schools as early as 1836 and the first mission secondary school (Mfantsipim School) in 1876. Adu Boahen in *Mfantsipim and the Making of Ghana: A Centenary History*, Accra: Sankofa, 1989 analyses how Western education contributed to the consolidation of nationalism through those graduating from church-run schools such as Mfantsipim School.

²²¹ Education Ordinance, 1852.

introduced the categories of ‘government’ and ‘government-assisted mission’ schools in the British settlements.²²² These ordinances did not immediately affect educational policies in Ashanti and the Northern Territories even after both territories were annexed in 1901.

After the hiatus in legislations on education in the period between 1882 and 1919, the idea of ‘native education’ took a definite shape in the Gold Coast from the 1920s onwards. Governor Guggisberg set up the Prince of Wales School and College (later renamed Achimota College) in 1924 for both boys and girls. In a speech at the formal opening of the school, the Prince of Wales (Edward VIII) pointed out that “[t]he Achimota College will be run largely on our [English] Public School lines and its whole system of education will have for its primary aim the development of character.”²²³ There is a contradiction here. On the one hand, ‘native education’ presupposed that Africans ‘can profit only by primary education’ because, as the editorial of *Nature* stated, “they reach a phase of mental stupidity or saturation by the time they are adolescent.”²²⁴ Yet a college was being set up to educate Africans beyond the basic level. A quote from the school’s prospectus at its inception described it as

West Africa’s great co-educational boarding school, where 600 West African boys and girls receive as complete an education as European and American children. It is a secondary school, teacher’s training college and university rolled into one, and in planning, design and equipment it bears comparison with any education institution anywhere.²²⁵

On the other hand, if this was the case, then why did the children of those who worked in the colonial administration not receive their education from there? The school took as its motto, *Ut Omnes Unum Sint* (That All May be One) and as its emblem the black and white keys of a piano, to emphasise the idea of harmony of different groups of people. The idea of educating

²²² Education Ordinance, 1882.

²²³ His Royal Highness, The Prince of Wales, *The Prince of Wales African Book*, London: Hodder & Stoughton, 1926, 9.

²²⁴ Editorial, *Nature*, Saturday, 30 November 1929, 3135(124).

²²⁵ PRAAD Accra, *His Excellency the Governor, Brig.-General Sir F. Gordon Guggisberg, K.C.M.G. D.S.O. R.E., Formal Opening of Achimota, on Friday, the 28th January, 1927*. (Pamphlet). PRAAD Accra, Prince of Wales School, *Prospectus 1927*, ‘Introduction.’

girls as well as boys in the college was radical in the 1920s context. This is an example of individual governors having different attitudes to their African subjects in the same colony. Guggisberg's vision of accelerated development in the Gold Coast encompassed an innovative policy on education for the Africans. The objective of the Prince of Wales College included *inter alia*

to produce the type of student who is Western in his intellectual attitude toward life, with a respect for science and capacity for systematic thought, but remains African in sympathy and desirous of preserving and developing what is deserving of respect in tribal life, custom, rule and law.²²⁶

The philosophy of education that had inspired the establishment of this college transcended narrow colonial interests, even if its admissions policy did not fully break away from aspects of the binary characteristic of colonial rule in the Gold Coast. The school accepted African children from the colony and the Ashanti Protectorate, with a token coming from the Northern Protectorate and Trans-Volta Togoland. As Bing remarks in his analysis of the unequal opportunities for education in the Gold Coast,

The segregation of the North [Northern Territories] from the rest of the country, socially and educationally, was carried to the extent that it was considered a remarkable concession when the Government allowed three boys a year to be sent from the North to be schooled at Achimota [College] and trained as teachers. At the time of the Watson Commission [1949], throughout the North there were only 3,950 pupils enrolled in primary schools and only 80 receiving secondary education.²²⁷

Another example of 'native education' taking a definite shape in the 1920s was the setting up of an Education Committee by the Colonial Office. This Committee produced the 1925 *Education Policy in British Tropical Africa* report. The report pointed out, among other things, that the education of Africans should be adapted to their "mentality, aptitude, occupation and traditions"²²⁸ and that

²²⁶ PRAAD Accra, Prince of Wales School and College, *Prospectus*, 1927.

²²⁷ Bing, 350.

²²⁸ *Education Policy in British Tropical Africa*, 'Memorandum Submitted to the Secretary of State for the Colonies by the Advisory Committee on Native Education in British Tropical African Dependencies,' Cmd. 2371: (5337) Wt. 27630-1418 1,500 3/25, 1925. The committee that put together this memorandum was chaired by William Ormsby-Gore. See *Development of Education in Pre-Independent Africa* in MSS.Afr.s. 1755.

Education should strengthen the feeling of responsibility to the tribal community... since contact with civilisation—and even education itself—must necessarily tend to weaken tribal authority and the sanction of existing beliefs... teaching must be related to the conditions of life and daily experience of the pupils. It should find expression in habits of self-discipline and loyalty to the community. With such safeguards contact with civilisation may not be injurious, or the introduction of new religious ideas have a disruptive influence antagonistic to constituted secular authority.²²⁹

The vision of education proposed in the report was two-fold, to reinforce the traditional system through which British colonial rule was conducted and to produce people who will not be ‘antagonistic to constituted secular authority,’ what Paulo Freire in his philosophy of education would term a banking concept of education.²³⁰ ‘Native’ educational policies were not free from the philosophy of colonial rule as a ‘civilising’ enterprise. By pushing such a vision on the colonies, the report was not introducing a new idea as such—the existing education system in the colonies already fulfilled this vision.

Demands for the establishment of educational institutions formed an integral part of the nationalist agenda from as far back as the 1920s. For example, the Congress of British West Africa appealed to the British government “to found a British West African University on such lines as would preserve in the student a sense of African nationality.”²³¹ Even though this was said by the colonial administration in the Gold Coast to be “premature... and too expensive,”²³² the idea of setting up a university in Tropical Africa was later endorsed by the Lord Lugard Committee on Education in 1933.²³³ The Gold Coast Government’s response to that proposal three years later stated that the existing educational institutions were adequate for their purposes and that a university would only result in “an over production of

²²⁹ *Education Policy in British Tropical Africa*.

²³⁰ Paulo Freire, *Pedagogy of the Oppressed*, 30th anniv. ed., trans. Myra Bergman Ramos, London: Continuum, 2006, 71-86. In chapter 2, he discusses in great detail the banking concept of education as an instrument of oppression and the problem-posing concept of education as an instrument of liberation, with the latter aiding the process to be more fully human.

²³¹ PRAAD Cape Coast, ‘Congress of British West Africa,’ 1920.

²³² Gold Coast, *Original Correspondence: Despatches* in CO 96/115. Also see Rhodes House Library, Oxford (RHL.), *B. E. Carman: Gold Coast Education Papers* in MMS.Afr.s. 1098.

²³³ The Committee comprised Frederick Lugard (former Governor-General of Nigeria), James Currie (Director of Education in the Sudan), Michael Sadler (former head of the Calcutta University Commission), Hanns Vischer (the brain behind the educational system in Nigeria in the 1910-20s) and Joseph Houndsworth Oldham (a Christian missionary in India).

graduates.”²³⁴

The Gold Coast Education Committee noted that Western education had captured the imagination of the Africans in spite of severe reduction in the amount of supervision from colonial officials during the World War II years.²³⁵ The demand for schools was so high that hundreds of non-assistant primary schools were opened, with nominal supervision from the Education Department. The Committee’s report went on to emphasise that “the majority of [the schools] were ill-housed and almost without exception staffed with untrained teachers.”²³⁶ Three deductions could be made from the above, *viz.*, interest in education was high among the Africans; African initiative overtook the colonial administration in the setting up of educational institutions; and the absence of supervision and checks on the curriculum or even the qualifications of the teachers impacted on the quality of schools especially in the rural areas.

Indeed, there was an acknowledgment that the concept of ‘native education’ had failed to produce a mass of literate Africans. Thus, the Colonial Office needed to set up an Advisory Committee on Education in the Colonies to review the situation. In the 1943 *Hansard* of the House of Commons, Oliver Lyttleton, the Secretary of State for the Colonies, is quoted as saying that

In many Colonies we see first a mass of illiteracy among adults and secondly an all too small percentage of present day school population giving therefore little hope on present lines of reducing that mass of adult illiteracy. I believe if we are to get full advantage from the various reforms which we propose in the Colonial Empire that position has to be altered radically and it has to be altered urgently.²³⁷

Apart from noting the deficiency of the ‘native education’ policy, the Secretary of State for the Colonies is also pointing out the urgency of education in the colonies. The ‘Mass Education’ report drew attention to four areas for improving ‘native education:’ extension of

²³⁴ Gold Coast, *Response to Lugard Committee, 1936* in CO 96/115.

²³⁵ Gold Coast, *Education Committee Report, 1943*.

²³⁶ Quoted in Denis Austin, *Politics in Ghana: 1946-1960*, London: Oxford University Press, 1964, 15.

²³⁷ Oliver Lyttleton, *Hansard*, House of Commons 1943.

schooling for children with the objective of reaching as many as possible; spread of literacy for adults through development of literature and libraries; mass education of communities, including local community involvement; and effective co-ordination of welfare plans and comprehensive mass education plans.²³⁸ This report was followed by ‘Education for Citizenship in Africa’ in 1948, which had as its purpose to “study the technique needed to prepare people for responsibility, tolerance and objectivity in discussion and practice, and an appreciation of political institutions, their evolution and progress.”²³⁹ The changes during this period resulted in a rethink about higher education for the Africans in the Gold Coast. Arthur Creech Jones, for example, reflected a great deal on the question of education for the Africans when he served as the Secretary of State for the Colonial Office and the issue is taken up in other official documents.²⁴⁰ The Elliot Commission proposed that “there should now be set up a university college in Nigeria and a university college in the Gold Coast... the university college in the Gold Coast to include facilities of arts and science and an institute of education.”²⁴¹

The demand for education for the Africans came up very strongly in the work of the Watson Commission in the Gold Coast. The Commission noted that “[n]othing impressed us more than the interest of the people of the Gold Coast in education. Practically every African who sent in a memorandum or who appeared in person before us sooner or later started to discuss education.”²⁴² Even though the interest in education for the Africans seemed so palpable in the 1940s, the colonial regime’s efforts in developing educational policies to respond to the demands appear minimal, at least from a human rights texts’ point of view. The issue of education was closely linked to greater involvement of Africans in the colonial

²³⁸ *Mass Education, 1943.*

²³⁹ *Education for Citizenship in Africa, 1948.*

²⁴⁰ RHL., *Papers of Arthur Creech* in MSS.Afr.s. 332; RHL., *Thomas Hodgkin, Material on Higher Education, Gold Coast* in MSS.Afr.s. 2169.

²⁴¹ RHL., *Commission on Higher Education West Africa: Report.* June 1945. Rt. Hon. Walter Elliot; RHL, *Higher Education Archive (HEA)* in MSS.Afr.s. 1825.

²⁴² *Report of the Watson Commission* in CO 96/3.

civil service, which in itself was a positive development. As Governor Alan Burns pointed out,

it gives those ... educated persons, apart from the traditional rulers, an opportunity for more direct participation in the administration of their country and it provides useful outlets for the constructive energies of responsible men who might otherwise take up an attitude of irresponsible opposition to the traditions of native administration.²⁴³

This is an important point because a precondition for employment in the civil service or involvement in domestic politics was literacy. Tachie-Menson, the Municipal Member for Sekondi, reflected the mood of the educated Africans in post-World War II Gold Coast when he pointed out the need “to review the position [of the colonial administration] as regards the Africanisation of the civil service... It is time that the training of sufficient Africans to fill vacancies should be seriously considered.”²⁴⁴

Through the negotiations between the Colonial Office, the nationalist movements and other interest groups, educational policies in the Gold Coast continued to improve. For example, Governor Creasy announced at the 1948 Legislative Council session that 31 Africans were on scholarship in United Kingdom institutions.²⁴⁵ The Asquith Commission for Colonial Universities (1943-44) and the Elliot Commission for West Africa (1943-45) were also set up to review the educational needs of the Africans in the colonies.²⁴⁶ However, not only did these Commissions fail to read meaningfully the signs of the time, especially regarding the changes occurring all over the world as a result of post-World War II international politics and the growing influence of the domestic *intelligentsia* in the Gold Coast but they also overlooked genuine demands raised by the local populations to the Watson Commission. Both the Asquith Commission and Elliot Commission Reports pointed

²⁴³ Gold Coast, *Legislative Council Debates*, Session 1946, Issue no. 1; PRAAD, Accra, Papers of Sir Alan Burns in MSS. Burns. Also see Alan Burns, *Colonial Civil Servant*, London: George Allen & Unwin, 1949.

²⁴⁴ Gold Coast, *Legislative Council Debates*, Session 1947, Issue no. 1.

²⁴⁵ Gold Coast, *Legislative Council Debates*, Session 1948, Issue no. 2. Out of the 31, fourteen were studying at Oxford and Cambridge Universities, 1 at Durham University, 2 at the London School of Economics, 3 at St. Andrew's University, 1 at Queen's University Belfast, 1 at Birmingham University, 2 at Aberdeen University, 1 at Glasgow University, 2 at the University College Exeter, 1 at the University College Leicester, 1 at the University College Nottingham, 1 at Cardiff Technical College, 1 at Messrs. Cassleton Elliot and Company.

²⁴⁶ *Colonial Higher Education Commission* (Asquith Commission, 1943-44) in CO 958.

out that independence from colonial rule seemed at least twenty to thirty years ahead, which would have translated to self-rule in the Gold Coast either in 1965 or in 1975. Perhaps that explains why the Asquith Commission advocated the idea of a university as a place where the colonies would train their future rulers:

In the state preparatory to self-government universities have an important role to play; indeed they may be said to be indispensable. To them we must look for the production of men and women with the standards of public service and capacity for leadership which self rule requires.²⁴⁷

As it turned out, Ghana became independent twelve years after the two commissions fulfilled their mandates and handed in their findings to the Colonial Office. The idea that self-rule for the Gold Coast, for example, was a far-flung goal that turned out to be erroneous. Thus, the politics of nationalism was dominated by people such as Casely-Hayford, Danquah and Nkrumah who were educated in British and American universities. The Asquith Commission proposed the establishment of the University College Gold Coast, positioning university education within

the double purpose of refining and maintaining all that is best in local traditions and cultures and at the same time of providing means whereby those brought up under the influence of these conditions and cultures may enter on a footing of equality into the world-wide community of intellect.²⁴⁸

By an ordinance of August 1948, the University College of the Gold Coast was established in the outskirts of Accra ‘for the purpose of providing university education and promoting learning and research.’ The Secretary of State for the Colonies appointed Prof. David Mowbray Balme, a Cambridge Classical scholar, as first principal. While Balme did not fit the colonial administration civil servant mould, his views were in some ways representative of commonly held views about Africa at the time. Asked by one of his African students about non-European civilisations in a lecture, he pointed out that

The whole issue has been bedevilled by our careless use of the phrase ‘European

²⁴⁷ Asquith Commission Report, 1945 in CO 958.

²⁴⁸ Asquith Commission Report, 1945 in CO 958.

civilisation.’ It may be justifiable that the things which are studied at universities... are themselves the instruments of civilisation. If so, then it follows that there is only one modern civilisation. It happens to have started in Greece... and spread first through Europe. But it is high time we stopped calling it European as though there were some other from which to distinguish it.²⁴⁹

On another occasion, he argued that “I don’t think we need weep when national traditions go... it’s only a matter of pride in superficial things.”²⁵⁰ The paradox of Balme’s statements is that, as ‘a matter of pride in superficial things’ he introduced many of the medieval practices of Cambridge University such as the wearing of academic gown, a College Manciple, recitation of grace in Latin and the circulation of the port in the proper direction at High Table in the new university college in the Gold Coast.²⁵¹

As Gold Coast became internally self-governing in 1951, an Accelerated Development Plan for Education (ADPE) was drawn up while Kojo Botsio was Minister of Education. The ADPE stated as its aim “to provide as soon as possible a six-year primary course for all children at public expense”²⁵² and recommended, among other things, the introduction of universal free education and an increase in the number of teacher training colleges and technical schools.

The above analyses are related to the central argument that the politics of difference shaped colonial rule in the Gold Coast and in the attempts of the colonial administration to suppress Africans’ from asserting their ‘humanity’ and claims to being rights-bearing citizens in their own land. This is an issue that will be discussed in some detail in chapter 5. Such assertions were sometimes met with force or the use of emergency powers or even incarceration of the ‘ringleaders.’ Their quest for rule of law in the country could be described as something fundamental to their humanity. Examples of suppression include the use of fire arms on a group of demonstrators on February 28, 1948 (in the process killing

²⁴⁹ RHL., ‘Papers Relating to the University College of Gold Coast/Ghana.’

²⁵⁰ Quoted in Bing, 356.

²⁵¹ For a detailed discussion of Prof. Balme’s role as first Principal of University College Gold Coast, see ‘Papers Relating to the University College of Gold Coast/Ghana.’ Also see Bing, 355-7.

²⁵² Accelerated Development Plan for Education, 1951.

Sergeant Adjetey, Private Lamptey and Corporal Attipoe) and the use of Emergency Powers Order, Regulation 29 of the Emergency (General) Amendment to arrest and detain the leaders of the UGCC following the 1948 Accra riots. The Africans asserted their humanity in at least three ways. First, they employed ideas of nationalism from the onset of colonial rule by resisting the colonial infringement agenda. Second, the collective desire for greater representation in government and for exercise of the right to self-determination became the wellsprings of nationalism in the Gold Coast. Third, extreme forms of resistance such as strikes, boycotts and demonstrations were gradually integrated into the activities of the nationalist movements after attempts at suppression had failed.²⁵³

What the nationalist activities really expressed was an assertion of ‘humanity’ which the philosophy of colonialism had systematically denigrated. For example, the editorial of the *Gold Coast Independent* of January 13, 1945 discusses the reluctance of the colonial administration to “provide responsible posts for Africans, and there is almost a complete refusal to give Africans the same facilities as Europeans holding identical qualifications and possessing equal merits.”²⁵⁴ In the years leading up to independence, Nkrumah expressed the rationale for the politics of resistance thus:

Whatever camouflage colonial governments may decide upon, be it in the form of appeasements cloaked in 'constitutional reforms' or the 'Pan-Africanism' of Jan Smut, there is only one road, the road of the national liberation movement, to colonial independence. It cannot come through delegations, gifts, charity, paternalism, grants, concessions, proclamations, charters or reformism, but only through the complete change of the colonial system, a united effort to unscramble the whole colonial egg of the last hundred years, a complete break of the colonial dependencies from their 'mother countries' and the establishment of their complete independence.²⁵⁵

At least three conclusions about rights claims in the politics of difference could be drawn from the above analysis. First, through formal education a shared language was acquired and new networks created. One of the skills formal education offered to the African

²⁵³ Even though the right to protest is not guaranteed under the UDHR, it is implicit in at least the right to freedom of assembly, freedom of association and freedom of expression.

²⁵⁴ *Gold Coast Independent*, Saturday, January 13, 1945.

²⁵⁵ PRAAD Cape Coast. Kwame Nkrumah, *Towards Colonial Freedom*, (first published in 1962), 15.

people was the foundation of basic skills, the so-called three Rs of reading, writing and arithmetic. The English language in particular played an important role in reconfiguring identities and shifting the positions of the opinion leaders in the discourses in the Gold Coast. Meanings about the 'human' in universal rights could be articulated both directly and indirectly through the legislative debates, rhetoric of the nationalist movements, policies of the colonial administration and the domestic media mainly through the medium of English Language. Education became a weapon in the hands of the *intelligentsia* in particular to contest the race constructions that had characterised colonial practices, thus re-creating an enabling environment in which they could assert a shared 'humanity.' Second, education was one of the important ways of legitimising the Africans' demands to be recognised as rights-bearing citizens. English could no longer be an instrument of domination only for the colonial administration as an *intelligentsia* class emerged from a crop of educated Africans. But this also introduced a new politics of exclusion with consequences for some of the marginal constituencies.

Third, the use of English as the *lingua franca* in the country created a language of power negotiations from which those with limited or no literacy skills were, for the most part, excluded. With an education system that was unfavourable to women, English language reinforced patriarchy and gender inequality. Men, for example, remained traditionally the key agents of gender construction in mainstream politics. The exclusion of the majority of Africans added another dimension to the politics of difference around race, gender and ethnicity. These categories also served as new grounds for inequality and discrimination in Ghana even after independence.

4.4. Marginalised constituencies in the politics of rights

The rights of women in the Gold Coast were at the complex intersection of cultural and colonial domination. Although nationalist movements employed the language of rights for an agenda of realising democratic rights and the right to self-determination, there was no specific regard for the rights of women in a context where gender imbalances formed part of society. In one of the Legislative Council debates, Danquah argued that:

I would like to say, Sir, that I believe the time has come when some of the funds of the country should be used to establish a ladies college or a girls' secondary school apart from Achimota [College]. I do not think that any serious reflection can be published against the female products of Achimota [College], but I believe it has been the general rule for the women of Achimota [College] to strive to be like men. Now that, Sir, is not very healthy and a very welcome development in a country like this. We would like to see a happy educated female section of the population being produced, but the product must be a true female type, a true lady type, not women who are trying to be like men but women who are really women.²⁵⁶

As Saïd has remarked a discourse is not free of the conditions of its social production and the context in which it is transmitted.²⁵⁷ Danquah's point of view illustrates masculine perceptions of self-empowerment and gender equality. But the disclaimer in an otherwise good intervention in favour of girl-child education reflects the dominant discourse on gender and equality at the time. As a British colony, the Gold Coast women could only enjoy the crumbs that fell from the table of the gender struggles in Britain. The suffragettes' struggle for the right of British women to vote in general elections in the United Kingdom was only conceded in 1918;²⁵⁸ in the Gold Coast it would be granted in 1950 and the first woman (Mabel Dove) would be elected to the Legislative Assembly four years later.

Of course, there were varying levels of awareness about human rights principles in the nationalist movements because of different levels of education and degrees of exposure.

²⁵⁶ Gold Coast, *Legislative Council Debates*, Session 1948, Issue No. 2.

²⁵⁷ Saïd, 1983.

²⁵⁸ April Carter, *The Politics of Women's Rights*, London: Longman, 1988, 6. She points out that women acquired the right to vote after a protracted and militant struggle by the suffragettes and even then it was limited to women over 30 years old who were themselves householders or wives of householders. Votes for women over 30 in 1918, over 21 in 1923 and women acquired the right to vote on equal terms with men in 1928.

Busia, for example, could wax lyrical about the UN human rights discourse because of his education at Oxford University while Edusei, another Gold Coast legislator and one of the *verandah boys* in the nationalist movement, hardly engaged meaningfully in the human rights debates in parliament. Writing in the 1970s following his overthrow from power, Busia recalled his exposure to the concept of human rights while he was a student at Oxford University in the 1940s:

I recall that during the early years of the Second World War when the rest of Europe was made aware of the atrocities that had been suffered by minorities under the tyranny of Hitler, general interest was aroused in the question of Human Rights. The question which excited much discussion and controversy concerned the definition of Human Rights which would apply to all countries, and which all countries should endeavour to secure and protect for their citizens. It was considered an essential foundation for world peace and international relations that there should be a declaration of such rights... I remember at the time, in the summer of 1941, attending a conference at New College, Oxford, where this matter was discussed.²⁵⁹

His exposure to the intellectual discourses about human rights informed some of his interventions in the legislature. When he remarked that “we demand the right to tell you [the colonial administration] what we want. That seems to me to be democracy”²⁶⁰ he reflected a profound understanding of rights. He developed the link between human rights and democracy in an article several years later by arguing that,

There are, however, certain principles which would be regarded as essential criteria [for a democratic society]. Among these are... the recognition of the essential dignity of the individual and the equality of all men; the acceptance of the principle of free and fair elections with the offer of genuine choice; the deprivation [*sic*] of the just powers of government from the consent of the governed; the accountability of these governments to their electorate and the acceptance of the right of genuine opposition; the principle of justice and equity before the law; and the cherished freedoms of speech, association, movement, conscience and religion.²⁶¹

To some extent, education was really like a double-edged sword that empowered many leaders of the nationalism movements but at the same time created a quasi-politics of

²⁵⁹ Kofi Abrefa Busia in <<http://home.comcast.net/~amaah/writings/democracy-universal.html#note>> (accessed March 14, 2011).

²⁶⁰ Gold Coast, *Legislative Assembly Debates*, Issue 1951, no. 1.

²⁶¹ Kofi Abrefa Busia in <<http://home.comcast.net/~amaah/writings/democracy-universal.html#note>> (accessed August 16, 2011).

exclusion in which the marginalised constituencies such as women or illiterates were disadvantaged. This way education was an emancipatory tool in the hand of those Africans who were educated but it could also be a source of enchainment to Western values. The nationalist figures who were educated in Britain or in the USA had the skill to translate issues of rights into clear discourses for the colonial administration and fellow African subjects.²⁶² It is this internal resistance to colonial oppression that poked holes in racial ‘science’ locally, but at the same time gender inequality did not exert the same force on patriarchal structures. Ideas around race gradually came to be accepted as dangerous and embarrassing, but gender inequality was neither shaped by the same ideological drive in the colonial policies nor taken up expressly in the nationalist movements.

Furthermore, the politics of race and the dynamics of gender inequality came to represent two sides of the same coin, in the sense that they both elicited a search for equity in the colony. In one of the 1952 Legislative Assembly debates, Ampadu who was then the Ministerial Secretary to the Ministry of Defence and External Affairs pointed out that:

I have noticed in the press some criticism of the absence of any reference to Women Police. I would remind Honourable Members that they have already made financial provision for three women NCOs and nine women constables in the current Estimates. No women recruits have yet been enlisted, the reason being that Mr. Collens, the Commissioner of Police, who is at present on leave is studying the organisation and duties of women police in London.²⁶³

In the September 2, 1952 issue of the *Daily Graphic* the enlistment of the first batch of women to the police service was also reported. Also in the September 12, 1952 edition of the same newspaper there was an advertisement inviting one woman to serve in an 11-member national vernacular board. As Gadzekpo has argued eloquently, Gold Coast women countered patriarchy as well as colonialism through gendered discourses in the local newspapers.²⁶⁴

²⁶² See, for example, chapter 6 where I discuss the debates about incorporating a bill of rights in the Independence Constitution.

²⁶³ Gold Coast, *Legislative Assembly Debates*, Session 1952, Issue no. 2.

²⁶⁴ See Audrey Gadzekpo, “Gender Discourses and Representational Practices in the Gold Coast Newspapers” in *JENDA, Journal of Culture and African Women Studies*, 1(2), 2001.

The emergence of human rights offered at least one way out of gender inequality. Just like the category of race, gender was conceptualised in biological idiom and determinants. One's race or gender label determined whether or not one qualified as a rights-bearing citizen, and women in the Gold Coast were generally marginalised as a constituency. Gender inequality became a subject of debate many times in the Legislative Council. For example, Rev. Taylor, a Nominated Unofficial Member, drew attention to the problem of gender inequality:

I noticed from [the Director of Medical Services'] answer to my question that among the students who are at present studying in the United Kingdom or overseas are four female nurses, all of whom are undergoing nursing training privately, but that, at the same time, no Government scholarship has been provided for a similar purpose. I am wondering whether the Honourable ... Director of Medical Services would consider further the policy of providing training for nurses overseas as an addition to what is being given in this country.²⁶⁵

At the time Rev. Taylor made the intervention in the Legislative Council, the first Gold Coast woman was eight years away from being elected to the legislature. Marjorie Mensah, a Gold Coast woman columnist in the *West African Times*, criticised the limited access women had in the job market, and went on to argue that "I would like to see our girls filling some of the posts of the men also. I think it is about time that some institutions were established for the purpose of teaching such subjects that would enable candidates to qualify, be they women or men."²⁶⁶ There is a recognition in Mensah's words that a gender-sensitive education could aid the realisation of equality.

Another dimension of the inequality was the lack of opportunities for the benefit of the subjects in the Northern Territory or Trans-Volta Togoland. This ties in well with the thesis of Marks and Clapham that historical changes such as those in a racialised Gold Coast bring about and reinforce processes that conceal other forms inequality; in this case, it was hidden behind a seemingly more urgent struggle against colonialism. Variations in policies in

²⁶⁵ Gold Coast, *Legislative Council Debates*, Session 1946, Issue no. 1.

²⁶⁶ *West African Times*, April 15, 1931.

the Gold Coast into a colony, Ashanti Protectorate, Northern Protectorate and Trans-Volta Togoland resulted from the administrative configuration. This arrangement created a disparity of opportunities. The members of the Northern Protectorate and the Trans-Volta Togoland constituted marginalised groups with limited opportunities to challenge both dominant oppressive groups among the African communities and unfair colonial policies. The Northern Territories had a fifth of the Gold Coast population, but it was largely neglected by the colonial government. As an article in the *Ashanti Pioneer* argued regarding people in the Northern Territories,

These are the products of a policy, the *policy* [italics author's] that has recently denied the peoples of the NT the best that Africa needs if its people are to take a deserving place in the family of Man [and Woman]; education not only of the hands but [also] of the heart, nay mind—the intellect.²⁶⁷

E. Norton Jones, the Chief Commissioner of the Northern Territories, had cause to reclaim for the ‘northerners’ their full human identity when he said that:

I should like to nail in its coffin a misconception about the intellectual capabilities of the people whose interests I represent. The misconception has arisen from a two-way traffic over many years, the migration southwards in vast hosts of the Northerner in search of manual labour and the temporary transfer northwards of the Southerner to fill the supervisory and executive posts in the Government service and in Commerce. It is true that the Northerner is not ashamed of manual work... But as attributes to a robust frame he is gifted with boundless energy, acute perception and, when his mental faculties have been stimulated by education, an astonishing intellectual capacity.²⁶⁸

Jones’ intervention in the legislature emphasised the perception of one group of people by another. But more than the identity of the ‘Northerners’ is the nuanced way he underscored the lop-sidedness in opportunities for education and, by extension, in employment, thus raising the question of rights, equality and fairness.

The UN human rights regime presented a discourse that drew attention to the

²⁶⁷ *Ashanti Pioneer*, February 23, 1946.

²⁶⁸ Gold Coast, *Legislative Council Debates*, Session 1949, Issue no. 2.

principles of dignity and equality in a new way in the Gold Coast.²⁶⁹ For the colonial administration it may have been a source of symbolic embarrassment for Britain to play such an important role in the founding of the UN, the drafting of the UN Charter, the UDHR and the ECHR, and not apply the universal rights' principles in one of their colonies. This was more about Britain's public image rather than real guilt. However, for those sectors of the anti-colonial movements in the Gold Coast that knew about the human rights idea from the UN Charter and the UDHR the human rights language on occasion served as a political weapon to aid their demands for entitlements to freedoms of association, assembly, the right to vote and to be voted for, and other democratic rights. Just as the citizens of Britain could exercise their democratic rights through elected representatives in government, so the people of the Gold Coast could exercise similar rights within their domestic context if the colonial restrictions were removed. While it is within the context of states that human beings are recognised as citizens with duties and rights, the UN human rights concept was presented, at least in the treaties, as transcending citizenship, nationality and ethnicity. The rights-bearer is every human being.

In other words, post-World War II human rights politics inspired a new thinking about 'the human being' as one with fundamental rights "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."²⁷⁰ This idea theoretically signified a paradigm shift everywhere the binaries of coloniser/colonised, male/female or white/black affected the policy decisions or state practices. Even though in itself the normative idea of human rights did not stop violations of democratic, land or fundamental rights in the Gold Coast, the discourse, for those who knew about the UN Charter and the UDHR, became an ideological tool for the nationalist to challenge colonialism and a counteractive measure to the racial and

²⁶⁹ See, for example, the Preamble of the UDHR where there is an affirmation of faith "in the dignity and worth of the human person and in the equal rights of men and women."

²⁷⁰ Art 2 of UDHR.

patriarchal remnants of history. But they also deployed an aspirational idea of their rights to be treated as human beings in a situation that denigrated their humanity.

The different voices in the legislature or in the nationalist movements or in the media not only reflected the quest for equity but also produced a variety of discourses, sometimes to do with questions of rights. Several strands of identity politics were articulated in the discourses generated by the UN human rights regime, the policies and practices of the colonial administration, the agenda of the nationalist movements, the concerns of the traditional rulers, and the preoccupations of marginalised constituencies in the Gold Coast. While some of the discourses were obvious, others remained quite ambiguous. The UN human rights discourse, for example, was unequivocal. By affirming that “[a]ll human beings are born free and equal in dignity,”²⁷¹ the UDHR basically clarified the fact that the human being of rights is every human being, and not only those from the hegemonic race or gender or colour or ethnic group. Such an idea had a wide scope and held up a promise for those “members of the human family”²⁷² whose human rights were being violated.

Without formal education, many people from the marginalised constituencies in the Gold Coast lacked the capacity to participate fairly in shaping the discourses of anti-colonial nationalism and the formal space to articulate the issue of rights.²⁷³ Those who were illiterate, for example, had insights into their life situations, but could not articulate them directly in the media or in the legislative debates. Even though the people in the Northern Territories asserted their right to be treated fairly and challenged the dominant oppressive forces in the Gold Coast, much of their contribution to the rights’ discourse can only be found in oral tradition or in someone else’s voice, because of illiteracy. Jones became the voice of the people in the Northern Protectorate. The lack of formal or written records of the discourses of

²⁷¹ Art 1 of UDHR.

²⁷² Preamble of UDHR.

²⁷³ For a contemporary study of the issue of illiteracy in appropriating and deploying the human rights discourse, see Englund, 19-120.

the marginalised constituencies (illiterates) about human rights in the 1940-50s poses a great challenge to researchers like me.

4.5. Negotiating the meaning of dignity and equality in the Gold Coast

For the majority of the marginal constituencies, such as women's groups and the subjects of the Northern Protectorate their human rights claims comprised general issues of injustice that directly affected them in the country. Sometimes a class of educated people spearheaded their debates about the injustices of colonial rule, but at other times too the illiterate folks also expressed their dissatisfaction through demonstrations. Gendered discourses, as I have pointed out above, formed part of the debates in the media as well as the legislature. While these constituencies may have been ignorant about the UN idea of 'human rights' because of illiteracy or lack of awareness about the politics of the new world order, the issues they raised were nonetheless about violations of fundamental rights.

Terms such as dignity and equality may not have entered into everyday usage in the emancipatory politics of the Gold Coast, but their rights claims had everything to do with violations of human rights under a colonial dispensation. Human beings recognise an injustice when they experience it and with a bit of courage are willing to do something about it. The ethnic groups that occupied the territories that came to be known as the Gold Coast during the colonial period had their own conceptual understanding about the human being.²⁷⁴ As I have pointed out above, the Africans' self-understanding was not always in tandem with that of the colonial administrators.

²⁷⁴ For analyses of the concept of the human being among different ethnic groups in the Gold Coast, see J. B. Danquah, *The African Doctrine of God: A Fragment of Gold Coast Ethics and Religion*, London: Lutherworth Press, 1944; K. A. Busia, "The African World" in Jacob Drachler, ed., *African Heritage*, New York: Crowell Collier and Macmillan, 1963; Kwame Gyekye, "Akan Concept of Person" in *International Philosophical Quarterly* 18, no. 3, 1978, 277-87; Kwasi Wiredu, "The African Concept of Personhood" in Harley E. Flack and Edmund D. Pellegrino, eds., *African-American Perspectives on Biomedical Ethics*, Washington, D.C.: Georgetown University Press, 1992; Kwame Gyekye and Kwame Wiredu, *Person and Community: Ghana Philosophical Studies*, Washington, D.C.: Council for Research in Values and Philosophy, 1992; Carola Lentz, *Ethnicity and the Making of History in Northern Ghana*, Accra: Woeli Publishing Services, 2007.

Some analysis of one ethnic group's self-understanding could serve as an illustration of the way at least one African community in the Gold Coast 'constructed' themselves and also put in context the problem of inter-ethnic discrimination. The Dagara inhabited a part of what came to be known as the Northern Protectorate under British rule. For the Dagara,²⁷⁵ the defining characteristic of the concept of the human being is the possession of *sie*, transcribed as inherent dignity. This idea of dignity, along with *yan* (rationality), normatively reflects the human being as an individual entity with moral and metaphysical qualities within community. While equality in dignity is derived from human beings' *nirsaalu* (i.e., shared humanity, what in Bantu is called *ubuntu*, and not accidental characteristics such as clan belonging, ethnic group, disability, height or social status), the dynamic interaction between individuals on the one hand and the proper relationship between the individual and the community on the other is expressed in their *nirsaalu*. Indeed, this idea presupposes that equality of dignity between human beings is universal and not just something only for the Dagara people. Every human being has the same *nirsaalu* which has to be matched normatively by a baseline level of equal respect through positive rights (*yangfo*) that sustain life, and negative rights (*kyiiru*) that forbid, for example, the taking away of life or discourage discriminating against others on grounds of difference.²⁷⁶ *Yangfo* and *kyiiru* are regulated more by an internal law of morality, reason and *Naamwin* (the divine) than written laws as such. It is this lack of written tradition, however, that the colonial administration capitalised on as one of the bases of domination. The Dagara proverb that, 'human dignity is like a baobab tree in the village, and no single clan can claim it as their own' expresses the idea of

²⁷⁵ I chose the Dagara of northern Ghana for two interrelated reasons. First, I am from the Dagara ethnic group; second, the material on the Dagara people such as *Papers in Dagara Studies* in the National Archives of Ghana and the Electronic Journal of Africana Bibliography (the Dagara and their Neighbours) while limited meets the standards requirements of 'archival' documents in the sense that they are records of historical and/or legal, and memory aids that preserve the past and help others to engage with the discourse of that period. See Electronic Journal of Africana Bibliography: The Dagara and their Neighbours in <<http://ir.uiowa.edu/ejab/vol7/iss1/1>> (accessed August 26, 2011).

²⁷⁶ PPRAAD Accra, *Comments on the Interim Report on the Peoples of the Nandom and Lambussie Divisions of the Lawra District*, 1933 in ADM 11/1/824, para 8-9.

equality in dignity and the universality attached to the notion of *nirsaalu*. In defining the Dagara notion of *nirsaalu* in the English language, the richness of the terms may be lost in the transcription but it brings out one core meaning of Dagara anthropology.

It is important to note that *yan* (rationality), *yangfo* (positive rights) and *kyiiru* (negative rights) establish the egalitarian chain of interaction within the community in dynamic tension with individual differences such as age, gender, clan or status. These differences were sometimes grounds of discrimination in Dagara society, especially toward women and children.²⁷⁷ While this anthropological outlook is not synonymous with a perfect society, the idea of *nirsaalu* or equality in dignity normatively provided the underlying basis for the obligations of the community as well as the individuals. Of course, it must be noted that the conception of human relationships among the Dagara and with other people is very important and not just the words. The colonial administration discounted the self-understanding of African ethnic groups for a number of reasons, not least the absence of written tradition engaging with concepts such as dignity, rationality, equality, morality, or relations between individuals.

4.6. Conclusion

This chapter has demonstrated how the understanding of the ‘humanity’ of the Africans influenced the scope, policies and practices of colonial rule on the one hand, educational policies and how the Africans’ own self-understanding inspired a politics of resistance against colonial domination in the Gold Coast on the other. The construction of the racialised other was refused steadily by the Africans through processes of resistance. People consider the simple right to vote as something fundamental to their humanity. However, in the nationalist agitations colonial rule still impacted on the way resistance was expressed, in

²⁷⁷ For an analysis of the position of the woman in Dagara society, see Andrea Berhends, “*Pogminga*—The ‘Proper Dagara Woman’: An Encounter Between Christian Thought and Dagara Concepts” in *Journal of Religion in Africa* 32(2), May 2002: 231-253.

the sense that some colonial subjects oscillated between an understanding that the interest of the dominant group was synonymous with ‘the common good’ and the awareness that colonial rule, by its very nature, disenfranchised the African communities from exercising many of their basic rights.

While the demands for equity and autonomy in the country were rooted in several discourses, specific unjust situations shaped the negotiations for democratic rights and self-rule alongside the emerging language of human rights after World War II. The 1945-57 emancipatory politics anticipated some of the ordering principles that the UN later provided for in, for example, the Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960.²⁷⁸ In the interaction of ideas about race, gender, ethnicity, equality and dignity, new identities evolved in which relations of dominance and resistance were negotiated in tandem with some acknowledgment of human rights principles. In any case, the UN Charter and the UDHR made a promise that every human being is ‘the human being’ of fundamental rights and freedoms; that one’s race, sex, gender, ethnicity, colour or religion does not exclude one from being a rights-bearer; and that states have obligations to respect, protect and fulfil these human rights. Such a promise had an appeal for the nationalist movements, and also for the marginal constituencies who may not have had a comprehensive knowledge of international human rights politics. The issues of injustice and inequality that they raised reflected the need for fundamental rights in the Gold Coast.

²⁷⁸ Declaration on the Granting of Independence to Colonial Countries and Peoples, 1960. G.A. res. 1514 (XV), 15 U.N. GAOR Supp. (No. 16) at 66, U.N. Doc. A/4684 (1961). Article 1 stresses the fact that “all the subjection of peoples to alien subjugation, domination and exploitation constitutes a denial of fundamental rights.”

Chapter 5

International human rights instruments in the politics of Gold Coast

“A tree that grows in the shade of a bigger tree may remain a small tree.”

Dagara proverb

“We the peoples of the United Nations, determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...”²⁷⁹

Preamble of the United Nations Charter

5.1. Introduction

Ideas about human rights took on a normative character after World War II, resulting in the UN Charter and the UDHR with varying symbolic implications for different parts of the world. The UN human rights regime had some ripple effects on regional politics especially in post-World War II Europe. A year after the adoption of the UDHR, ten Western European countries came together to found the Council of Europe and initiate the drafting of a regional human rights instrument, which became the Convention for the Protection of Human Rights and Fundamental Freedoms. The idea of ‘British protected personhood’ in the colonies was considered as potentially having a stake in the provisions of this human rights instrument. For example, Article 63 contains a provision for the extension of ECHR to dependent territories specified the territorial scope of human rights.

Chapter 5 engages critically with the normative promise of the UDHR that one has rights simply by virtue of being human,²⁸⁰ analyses the problems in the extension of the ECHR to the Gold Coast, and examines the constitutional reforms that the debates generated in the 1950s. The analysis will be situated within the specific debates about extending the ECHR to the British protected persons in the Gold Coast and the key narratives for the analysis come from two sources: the Colonial Office documents on the negotiation about extending ECHR provisions to colonial subjects and the official response of the Gold Coast

²⁷⁹ Preamble of UN Charter.

²⁸⁰ Art 1 of UDHR.

administration. References will also be made to the ways in which human rights issues captured the imagination of some gatekeepers of discourses in the legislative arm of government and in the domestic media. These discourses illustrate some of the ways the rhetoric of human rights resonated with nationalist demands for collective rights and reflect the extent of awareness about human rights norms among the Africans.

5.2. The debates about extending ECHR provisions to the Gold Coast

The question of extending the ECHR to dependent territories of contracting states came up early on in the drafting process, and under Article 63 the states undertook to “extend [the Convention] to all or any of the territories for whose international relations it is responsible.”²⁸¹ Read in tandem with Article 1 *inter alia* that “contracting parties shall secure to everyone within their jurisdiction the rights and freedoms”²⁸² meant that by default the dependent territories included the Gold Coast. The general jurisdiction clause, however, had a caveat that “[t]he provisions of this Convention shall be applied in such territories with due regard, however, to local circumstances.”²⁸³ It is important to note here that Britain had “opposed the inclusion of a clause on [the right to] self-determination”²⁸⁴ in the instrument. Indeed, Ernest Bevin, the British Foreign Secretary (1945-51), expressed some misgivings about the idea of human rights at the drafting stages of the ECHR, pointing out that “If you open that Pandora’s Box you never know what Trojan ’orses will jump out.”²⁸⁵ But once Britain ratified the instrument in 1950 it engaged the Colonial Office and colonial governments in a somewhat lengthy debate about the suitability of extending the ECHR to its

²⁸¹ See the Working Party meeting on October 13, 1953 in CAB 134/974 IOC (HR) (53) 11 and 11 Add. 1 and IOC (HR) (53) 12. They agreed to notify Strasbourg of the simultaneous extension of the ECHR to dependent territories; Art 63(1) of ECHR, 213 U.N.T.S. 222, entered into force September 3, 1953.

²⁸² Art 1 of ECHR, ETS 5, 213 U.N.T.S. 222, entered into force Sept. 3, 1953.

²⁸³ Art 63(3) of ECHR.

²⁸⁴ A. W. Brian Simpson, *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*, Oxford: Oxford University Press, 2001, 528.

²⁸⁵ Roderick Barclay, *Ernest Bevin and the Foreign Office, 1932 to 1969*, London: Latimer, 1975, 67.

overseas territories.

Colonial Office documents corroborate in useful detail the shifting position of the British government regarding the suitability of extending the ECHR to the colonial territories.²⁸⁶ The process of negotiations with colonial administrations was fraught initially with conceptual and institutional difficulties but by 1953 some of these were more or less resolved with decisions either for, or against, incorporating aspects of the ECHR provisions into domestic legislations. For example, the colonial administrations in Brunei, Hong Kong, Aden, Southern Rhodesia and Tonga decided to reject outright the idea of extending the ECHR to their territories while the administrations in the Gold Coast and four other British dominions (*viz.*, Aden, Southern Rhodesia, Hong Kong and Brunei) wavered for some time before the Gold Coast administration accepted some convention rights for their subjects in 1953.²⁸⁷

In the specific case of the Gold Coast, the negotiations took place during the governorship of Charles Arden-Clarke (1949-57) while Arthur Creech Jones (Labour, 1946-1950), James Griffiths (Labour, 1950-51) and Oliver Lyttleton (Conservative, 1951-54) were Secretaries of State for the Colonial Office. The position of the Colonial Office was somewhat nuanced, because it took seriously Article 63(3) undertaking of “due regard... to local circumstances”²⁸⁸ in the negotiation process. In addition to that consideration, factors such as political pragmatism with regard to effective control over the colonies, the propaganda value of extending ECHR provisions, and the advice of the respective colonial administrations served as focal points in the way the British government dealt with the Article 63 stipulation. Indeed, these factors shaped both the negotiation and the outcome in

²⁸⁶ E/CN.4/364 and Addenda. The response from the Gold Coast, among other colonies, are in *YBHR* (1950), at 466 ff; *Council of Europe: Convention on Human Rights* in CO 936/67/3 and United States: Code 45 File 2 in FO 371/9586/US1733/30.

²⁸⁷ *Convention on Human Rights and Protocol* in CO 936/155-7 (Minutes of a meeting held on January 18, 1951).

²⁸⁸ Art 63(3) of ECHR.

the case of the Gold Coast.

The Colonial Office first dispatched a confidential memo to Arden-Clarke's government to find out their willingness to have the convention extended to the colonial subjects there in 1949.²⁸⁹ Behind this dispatch presumably was a provision made for 'a colonial clause' under Article 63. At the same time, Colonial Office deliberations also saw in the extension of the ECHR to colonial territories an underlying propaganda value. For example, the Colonial Office reiterated the position that "one of the main objects in inducing colonial territories to apply the convention was for publicity purposes at the United Nations in connection with the draft Convention on Human Rights."²⁹⁰ A 1951 document quoted a member of the Colonial Office staff as drawing attention to the fact that:

an important number of the signatories (France, Belgium, UK, Denmark) are powers with responsibilities for non-self-governing territories and with a lively understanding that what may be a reasonable provision in Europe does not necessarily make sense here and now for Africa. The outcome has been a document which, by virtue of provisos and careful phrasing, most states should be able to accept but which the adverse critic might attack as being too much hedged with restrictions to have real value. It has, however, propaganda value, and can at least be pointed to as something achieved, legally sound and ratifiable, in contrast to the dissension and unrealism which are so far the chief characteristic associated with the draft of the U.N. Covenant.²⁹¹

Another document points out that, "[i]t is obviously desirable that as many as possible, preferably all, territories should have this convention extended to them. It is a much more sensible and workable document than the UN Covenant."²⁹² This preference for the ECHR over the UN human rights regime seems paradoxical since literally all the 'first generation' rights provided for in the ECHR were modifications from the UDHR. Minutes from the same ministerial meeting held on February 13, 1951 expressed the view that "[i]t would not be desirable to treat the Convention as applicable only to Europe and to invite the Colonies to

²⁸⁹ See *Colonial Office and Commonwealth Office: Original Correspondence* in CO 936/67/3.

²⁹⁰ *Application of Council of Europe Convention on Human Rights to High Commission Territories and Federation of Rhodesia and Nyasaland: Letter* in DO 35/7008.

²⁹¹ *Convention on Human Rights* in CO 936/157.

²⁹² *Convention on Human Rights: Extension to Colonies (Minutes)* in CO 936/156.

adhere to the United Nations Convention if it were eventually approved. This view was approved by Ministers.”²⁹³

The reasoning from the above not only reinforces the issue of publicity but also points to an argument about symbolic embarrassment: that there ought to be consistency in applying, as it were, both the UN human rights principles and the European regional instrument; and that the Colonial Office wanted to avoid the double-standards that not extending convention rights to the colonies could imply. Extending human rights to the colonies could well be a face-saving measure against criticisms of colonial practices from home and abroad. The officials were invoking human rights principles in the colonies to neutralise attacks on its colonial practices in the UN, appease the minority *intelligentsia* making demands for fairer governance, and pacify critics at home.²⁹⁴ By arguing for the extension of the convention to its colonial territories, the British position on human rights was being clarified in at least two ways. As a key player in the fledgling human rights project Britain needed at least to follow ‘the rules’ it was helping to write for other states. Jim Griffiths recommended that “the Government should accept the Council of Europe Convention... If we did so, it was in his view essential that the Colonial Governments should then be consulted and encouraged to adhere to the Convention.”²⁹⁵ His words express well the claim that Britain was trying to walk its own talk. The idea of extending the ECHR reconciled conceptually the two identities of Britain, as a key player in the drafting of this convention and at the same time as a colonial power, even though at a practical level British colonial policies/practices only changed gradually in the Gold Coast.

By contrast, the brutal treatment of George Grivas and the *Ethnikē Organōs Kupriakou Agōnos* or the National Organisation of Cypriot Combatants (EOKA), a Greek

²⁹³ *Convention on Human Rights* in CO 936/157.

²⁹⁴ See Simpson, 825 and Kirsten Sellars, “Human Rights and the Colonies: Deceit, Deception and Discovery” in *The Round Table*, 93(377), 2004: 709-724.

²⁹⁵ *Convention on Human Rights* in CO 936/157.

Cypriots' nationalist grouping, in the 1950s, led to Greece complaining to the European Commission at least twice, the second time accusing Britain of torturing some nationalists.²⁹⁶ Also, the clubbing to death of eleven *Mau Mau* prisoners who had refused to dig irrigation ditches in Kenya on March 3, 1959 raised the question of interpretation and application of universal rights. When the issue came up for debate in the House of Commons, Alan Lennox-Boyd, the Secretary of State for the Colonies, defended the brutality of the prison officials by arguing that:

Experience has shown, time after time, that unless hard core detainees can be got to start working, their rehabilitation is impossible. Once they have started working, there is a psychological break-through and astonishing results are then achieved.²⁹⁷

To this, Sydney Silverman, the Labour MP for Nelson and Colne, is said to have asked him, “Who told the right hon. Gentlemen that? Stalin?”²⁹⁸ At the time of these atrocities the colonial administration in Kenya had not consented to having the ECHR extended there mainly because of the *Mau Mau* uprising. The debate reveals another nuance in human rights discourse, the disjuncture between the understanding of the concept (universal nature of human rights) and of the application (actual application of its norms). Silverman's intervention underlines an earlier assertion I made in chapter 2 above that human beings have long been travelling on the road to a more just society, “the milestones along its way formed by acts of individual heroism as well as by the great arguments of learned men [and women].”²⁹⁹

On the argument of political pragmatism, the Colonial Office took a number of practical steps to retain control over its colonies while negotiating the feasibility of ECHR provisions for the people there. For example, the Colonial Office clarified the issue of reservations by asserting that the colonial administrations “will have to forgo... reservations

²⁹⁶ For a detailed analysis of the Cyprus and Kenyan situations mentioned here, see Kirsten Sellars, *The Rise and Rise of Human Rights*, Stroud: Sutton Publishing, 2002, 86-97. Sellars, *The Round Table*.

²⁹⁷ *Hansard Commons*, Vol. 607, 16.59. Col. 270. Also quoted in Sellars, 96.

²⁹⁸ *Hansard Commons*, Vol. 607, 16.59. Col. 270.

²⁹⁹ Ian McGregor, *Human Rights*, Essex: The Anchor Press, 1975, 17.

and that we shall have to content ourselves with extending the Covenant only to those territories which can accept it without reservations.”³⁰⁰ This assertion was made against the background that the Article 15 provision for derogation in times of public emergencies and Article 63(3) allowance for a state to act “with due regard... to local circumstances requirements”³⁰¹ meant that the colonial administrations could use a margin of appreciation to circumvent convention provisions in those colonies where it was extended.

The response of the Gold Coast administration demonstrates a number of things, not least the fact that Arden-Clarke’s government took into account the specific context of the colony, protectorates and mandated territory before making their recommendations to the Colonial Office.³⁰² Indeed, the proposals determined the Colonial Office’s policy decisions regarding human rights norms for ‘British protected persons’ in 1953. According to Arden-Clarke’s unfinished autobiography, he had written to the Secretary for the Colonies during these negotiations informing him that “the country [was] on the edge of revolution”³⁰³ because of nationalist activities and influences from Cold War politics. The domestic resistance had elicited the attention of Earl Winterton in the late 1940s, who asked Rees Williams, the Secretary of State for the Colonies, in the House of Commons if “dupes of the Third International including Communists in this country”³⁰⁴ were involved in organizing the 1948 nationwide boycotts, to which he replied that there “was certainly Communist incitement in this case.”³⁰⁵ Suspicions about Cold War influences in the colonies were rife in the British government and the colonial administration.

Arden-Clarke’s administration raised three main concerns. Firstly, the colonial

³⁰⁰ Minute of S. M. Black of 12 Feb. 1951 in *Archives of Miscellaneous Commissions* in FO 317/95866/US 733/19.

³⁰¹ Article 63(3) of the Convention for the Protection of Human Rights and Fundamental Freedoms. Sellars highlights Cyprus to illustrate the way Britain extended the European Convention on Human Rights with one hand and took it back with the other in chapter 5 of *The Rise and Rise of Human Rights*, 86-113.

³⁰² See, for example, *Replies of the Colonial Administrations* in CO 936/156, CO 537/7157.

³⁰³ Unpublished and unfinished draft for an autobiography by Charles Arden-Clarke. It was written shortly before his death in 1962.

³⁰⁴ Parliamentary Debates, fifth series, *House of Commons*, No. 448, 1 March, 1948.

³⁰⁵ Parliamentary Debates, fifth series, *House of Commons*, No. 448, 1 March, 1948.

administration underlined the lack of compliance between ECHR provisions and existing domestic laws. Institutional mechanisms in the country were too weak to support the judicial application of human rights laws at the domestic level or to pursue remedies at the international level. In the Legislative Assembly debates of 1952, the Minister of Justice noted the lack of institutional mechanisms for fundamental freedoms by stating *inter alia* that “[t]he first signs of curbing freedom of speech were in the legislation, Order by the Governor in Council No. 34 of 1952 entitled the ‘Book and Newspaper Registration (Exclusion) Order, 1952.’”³⁰⁶ Arden-Clarke had passed this emergency measure to regulate the circulation of subversive literature. George Padmore’s *Africa, Britain’s Third Empire* became an easy target of this particular emergency measure. It had been tagged as seditious and the author described as a communist, which in Cold War politics raised serious suspicions in a British dominion.

Secondly, the administration was amenable to having the convention extended but with a caveat that reservations be made especially with regard to Article 2 on the right to life, Article 11 on freedom of movement and assembly, and Article 13 on due process because of existing emergency power laws.³⁰⁷ Accordingly, the convention could be extended but “without accepting the right to individual petition, or the jurisdiction of the court. In practice it made no difference to life... though it was appreciated that an independent Ghana could not be party to it.”³⁰⁸ In theory, the colonial government agreed for a limited number of rights such as non-discrimination and due process rights to be introduced into the 1954 constitution.³⁰⁹ This line of thinking, while withholding the exercise of the right to petition the ECHR institutions from Gold Coast subjects, puts in context the Europe-centred nature of

³⁰⁶ Gold Coast, *Legislative Council Debates*, June 17, 1952. Also see Book and Newspaper Registration (Exclusion) Order, 1952 and Literature Production and Distribution in CO 554/168/8.

³⁰⁷ *Convention on Human Rights: Extension to Colonies* in CO 936/156; *Convention on Human Rights* in CO 537/7157. Also see Simpson, 824-844

³⁰⁸ See *Fundamental Rights* (Minutes of G. Putnam of December 17, 1956) in CO 554/828. Also see Brian Simpson, 851.

³⁰⁹ Gold Coast (Constitution) Order in Council 1954 in SI 1954, No. 551.

the treaty and also the fact that at independence there is an automatic lapse under Article 65(4). In practice, the European Commission of Human Rights did not have the competence to receive petitions in respect of dependent territories until a declaration under Article 63(4) was made by the metropolitan state.

Thirdly, the country did not have enough lawyers to aid the process of implementing common law remedies or the principles of ECHR, especially with regard to remedies, once these were incorporated into domestic legislation. Bing, who served as the Constitutional Advisor to Nkrumah's government between 1955 and 1956 and as the first Attorney-General of post-independent Ghana, confirmed this line of argument when he pointed out that at independence, "Ghanaian lawyers could not be obtained for the Attorney-General's department partly because they were, in any case, in short supply."³¹⁰ Edsman, in his seminal study of the role of African lawyers in Gold Coast politics, asserted that a limited number of Africans lawyers practised law mainly in the colony and in the Ashanti Protectorate and drew attention to the way they were agents of change, shaping the contours of debates about emancipatory politics.³¹¹ According to the Roll of Court, 69 Africans lawyers practised law in the Colony in 1929, and with a new legislation passed allowing lawyers to practise law in the Ashanti Protectorate in 1932, 13 worked there while 48 were in the Colony in 1936. In the 1940s the number went up marginally to the 50s in the Colony and 20s in Ashanti.³¹²

An important corollary of the negotiation process was the degree of awareness about human rights norms in the Gold Coast. The introduction of universal adult suffrage in the 1950 Constitution had initiated the first broad-based elections in 1951 through which the first all-African Legislative Assembly was formed. The right to vote and to stand for election, as

³¹⁰ Bing, 313.

³¹¹ Björn M. Edsman, *Lawyers in Gold Coast Politics c. 1900-1945: From Mensah Sarbah to J. B. Danquah*, Uppsala: Historiska Institutionem vid Uppsala Universitet, 1979. Edsman argues that African lawyers in the Gold Coast were among the leading proponents of ideas of democracy in the pre-World War II period and of self-determination after 1945. They were invariably all trained in the United Kingdom and returned to the Gold Coast to practice law.

³¹² PRAAD Accra, Gold Coast Confederation 11 Slater to S/S 12/1/27 Encl.

Sachs has rightly argued, touches “deeply on the dignity of all human beings, voting united the highest and the humblest in a single polity, and declared quite literally that every person counted.”³¹³ The Gold Coast had effectively gained an internally self-governing status in 1951, meaning that Nkrumah as the Prime Minister was consulted on all major matters in the country. There is, however, no documentary evidence of Nkrumah’s exact position on extending the ECHR to the Gold Coast at this time of the negotiation, but as head of the parliamentary majority in government his party in the years leading up to independence vacillated between accepting and rejecting the idea of a bill of rights in the Independence Constitution.³¹⁴ The reason could be that Arden-Clarke’s government did not really consult Nkrumah on the specific question of extending the ECHR to the Gold Coast since it was a matter between his government and the Colonial Office. Even though Nkrumah’s critique of the 1950 Constitution as establishing “a very poor substitute for self-government”³¹⁵ cannot be interpreted as a statement on the negotiation process as such, it draws attention to the dissatisfaction with the pace of political change in this period.

However, in the Legislative Council debates and the domestic media of the time, human rights issues caught the attention of some colonial subjects in the Gold Coast. Plange, an African elected member of the legislature, called for a revision of the laws “in order to bring them in line with modern developments in the UN Charter, Universal Declaration and European Convention.”³¹⁶ He may have been a solitary voice in the legislature but the fact that the issue is raised and is linked to the fledgling human rights instruments at this time in the human rights history is very significant. The issue of emergency measures also elicited a lengthy discourse in the Legislative Council debates in July 1950, with Plange pointing out that:

³¹³ Sachs, 118.

³¹⁴ See Kwame Nkrumah to Alan Lennox-Boyd, 15 December 1956, *Fundamental Rights* in CO 554/828.

³¹⁵ Kwame Nkrumah, *I Speak of Freedom: A Statement of African Ideology*, Surrey: Heinemann, 1961, 20.

³¹⁶ Gold Coast, *Legislative Council Debates*, Session 1950, Issue no. 3.

In every country we have got what is known as liberty of speech or freedom of speech... Free criticism is the measure of democracy... It is therefore very disappointing to find that in the Gold Coast we have got a Sedition Ordinance or Bill which has made it very difficult for people to express their views, opinions and criticism on the actions of the Government, because the Sedition Bill in its elasticity does not very well define what is sedition and what is not sedition.³¹⁷

Plange may, or may not, have been aware of the UDHR Article 19 (or ECHR Article 10) provision for the right to freedom of opinion and expression; but his intervention reflects some understanding of the right to freedom of expression as a right of producers of discourse, a right of audiences who read these materials, the right to seek as well as receive information, and the right to impart the same to others. Danquah intervened on the issue of existing sedition laws by underlining how some colonial policies and practices actually infantilise the subjects, and pointed out that

That book [Padmore's *Africa, Britain's Third Empire*] has been forbidden by the Government in Council, and we feel strongly... that the situation created makes us look silly in the Gold Coast... The point is this: this George Padmore is a very clever person. He wrote a book about two years ago about Russia and the Gold Coast Government had the book prohibited and banned from being imported... We ought to be given the right of judging for ourselves unless a book is particularly obnoxious... We ask Government to withdraw the ban.³¹⁸

But the recognition that these situations were unfair clarifies why anti-colonial resistance was so robust in the post-World War II context. Embedded within these debates was also an evolving democratic process that was fostered by, as well as reinforced, the self-understanding of the Africans vis-à-vis the colonial administration.

Members of the Legislative Council such as Plange or Danquah who participated in the debate did so from the vantage point of exposure to Western education and being part of the *intelligentsia*. In more ways than one, their views, while not representative of many of the marginalised constituencies, did echo the shared concerns of the British protected persons. They could access the discourse, but the majority of Africans in the Gold Coast could not

³¹⁷ Gold Coast, *Legislative Council Debates*, Session 1950, Issue no. 3.

³¹⁸ Gold Coast, *Legislative Council Debates*, Session 1950, Issue no. 3.

participate in the political debates or even deepen their awareness about the plethora of rights they were said to be ‘entitled to’ by virtue of being British protected persons.

Sections of the local media drew attention to the relevance of fundamental rights for the Gold Coast people. The December 6, 1951 issue of the *Ashanti Pioneer* called attention to Article 6(2) of the draft ECHR on the right to be presumed innocent until proven guilty, and went on to point out that “throughout legal history, there are many examples of people being involved in charges of which they were guiltless.”³¹⁹ In addition, the December 27, 1951 issue of the same newspaper culled an article by Jose de Benito of the United Nations Educational, Scientific and Cultural Organisation (UNESCO) analyzing Article 11 of the UDHR on the presumption of innocence until proven guilty.³²⁰ This was especially relevant to the detention of the six nationalist leaders without trial under the Emergency Powers Order, Regulation 29 of the Emergency (General) Amendment No. 2 in 1948 or the Suipe shooting incident in which a detachment of about 130 armed men from the Gold Coast Mobile Force to quell nationalist resistance on November 5, 1950 led to the killing, wounding and arrest of several people.³²¹

Women’s participation in the negotiation process and the gender question in the debate is of importance here. From the Colonial Office documents at least, there is no evidence that specific women’s rights and freedoms featured in any particular way in the debates. The idea of sex as one of the illustrative grounds of discrimination is ironically reflected in the absence of women in the process. Apart from Edith Mercer who wrote some of the minutes of the Colonial Office minutes, there is no other woman in the negotiation. In the colonial administration, no woman was involved in the process. What featured throughout the correspondence between the Colonial Office and the Gold Coast administration is the broad idea of human rights rather than women’s rights. Gender-based discrimination already

³¹⁹ *Ashanti Pioneer*, Thursday, December 6, 1951.

³²⁰ *Ashanti Pioneer*, Thursday, December 27, 1951.

³²¹ On the Suipe shooting incident, see *Legislative Assembly Debates*, Session 1951, Issue no. 2 Vol 1.

existed in the colonies, in situations where women were at the intersection of a dual side-lining as women within patriarchal systems and as black women within colonial territories. But this was less of a colonial or cultural problem than a manifestation of the larger issue of gender-based inequalities around the world. As Englund argued concerning the understanding of human rights among marginalised constituencies in, for example, Malawi, such groups end up as “prisoners of a very specified idea of human rights.”³²²

In applying a hermeneutic of feminist theory which examines perspectives that have developed outside the established ways women are excluded or side-lined, it is worth noting that Gold Coast women were absent from the negotiations and their specific human rights’ concerns were neglected in the constitutional provisions following the decision to extend ECHR to the country. This state of affairs reveals something of the politics around gender in colonial rule, in negotiating the ECHR in Europe and in debating the suitability of extending convention rights for colonial subjects in the Gold Coast. Even though the head and some members of the UN Human Rights Commission were women, the human rights idea is not free of longstanding gender inequalities or notions of masculinity. Charlesworth and Chinkin highlight ways in which the absence of women in the development of international human rights legitimated gender inequalities in rights discourses around the world.³²³

5.3. Problems in the application of ECHR to the Gold Coast

It is against the above background that the ECHR was extended to the Gold Coast in 1953 in accordance with the Article 63 provisions. Three distinct but interrelated issues could be said to be implicit in the negotiations and the Colonial Office’s decision: the idea of the rights-holder (or who the ‘human being’ of rights is), the question of application (the

³²² Englund, 7.

³²³ For a detailed discussion of ways sex and gender are important in international human rights discourse, see Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis*, Manchester: Manchester University Press, 2000.

implementation of human rights principles) and the territorial limits of ECHR. The first is a prima facie basis of respect for human rights while the second meant improving the legal framework and institutional mechanisms to meet ‘human rights standards’ in the country. Second, the way the Colonial Office presented the idea to the Gold Coast administration assumed belonging to a state, or in the specific context a British colonial territory, in order for these two elements to come together. This recognition was at two levels—through the ECHR provisions that applied specifically to the colonial territory and the human rights principles that were incorporated in the 1954 and 1957 constitutions. Third, by asking the Gold Coast administration to consider the suitability of convention rights for the Africans in the colony, protectorates and mandated territory the Colonial Office theoretically recognised that the people there were, or could be, rights-holders, i.e., people who are entitled specifically to the rights set out in the ECHR.

In human rights parlance, the state has obligations to respect, protect and fulfil human rights. The Montevideo Convention on Rights and Duties of States, 1933 still held sway over the declaratory theory of statehood in this period. The state is identified “as... possessing the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other States.”³²⁴ At the time of the negotiations, the Gold Coast was a colonial territory that lacked the legal personality to negotiate legitimately human rights for the colonial subjects, which is the reason for the Article 63 undertaking. The Gold Coast did not meet the requirements for statehood, and so relied on Britain as the metropolitan to exercise authority legitimately and to serve as the ratifying party to the ECHR. What this meant, in theory at least, was that Britain ‘owed’ these obligations to its subjects in all four entities within the Gold Coast.

The Colonial Office documents referred to above make it clear that the state, at this

³²⁴ Montevideo Convention on Rights and Duties of States, 1933, 135 LNTS 19. For a detailed study of the creation of state in international law, see Crawford.

stage in the history of human rights, was pivotal in the application of human rights norms. In other words, “[m]embership as civil status appears, therefore, more crucial than bare humanity.”³²⁵ This is a very significant argument because the Colonial Office interpreted human rights principles as applicable to those people who were British citizens or, in the case of the Gold Coast, British protected persons. The fact that the colonial administration needed to be consulted about suitability illustrates the strength of membership in this particular British dominion for enjoying human rights. Such distinctions had implications on the way convention rights were applied in different colonies.

The idea of entitlement, as Englund argues, presumes “membership in a political society, institutional arrangements that ensure historically specific standards of life.”³²⁶ This produces a dialectic of bearer of human rights obligations (the state) on the one hand and holders of fundamental rights assumes entitlements and duty (groups and individuals) on the other. By distinguishing between British citizens and African subjects in the British Nationality Act, 1948, the Africans in the Gold Coast were classified as British protected persons and therefore bereft of ordinary citizenship rights.³²⁷ The notion of ‘protected personhood’ corresponded with the existing colonial practice of exclusion. If the above is juxtaposed with the UDHR idea that all human beings are rights-bearers, then the protection of rights is not contingent on whether the people are British ‘citizens’ in the United Kingdom or colonial ‘subjects’ in the Gold Coast. While the UDHR idea expresses the universal significance of human rights, the need to extend the ECHR to the colonies highlights one of the gaps between theory and practice.

On the face of it, the Colonial Office’s undertaking to extend the ECHR to the Gold Coast seemed somewhat dubious because the policy of indirect rule was not like the French policy of *assimilation* whereby colonies were theoretically an extension of France and the

³²⁵ Englund, 28.

³²⁶ Englund, 27-8.

³²⁷ The British Nationality Act, 1948, Part III Section 32 subsection (1).

‘colonial subjects’ notionally French citizens. For a convention that was conceived primarily for Europe and drafted for people under the jurisdiction of the countries that ratified it, the debate about extending the ECHR to colonial territories raises a number of questions about territorial limits and Cold War ideological struggles. Apart from demands within the UN for an inclusive human rights instrument, questions were being raised about the relevance of colonial rule in the new world order. These situations all impacted on the way a colonial territory such as the Gold Coast was at the intersection of many of the historical and political contingencies occurring in the new international order.

At the same time, the idea of extending human rights principles to British protected persons signified one way in which ‘colonial subjects’ could become rights-bearing citizens. It was also a bridging of the gap between the legitimacy and jurisdiction in human rights discourse. Since the judicial interpretation/protection of rights depends on particular institutional frameworks, attempts were made to introduce some fundamental rights norms into the 1954 and 1957 constitutions in varying degrees. The disjuncture between a normative idea and its application potential is also visible from the way the colonial administration gave the convention rights with one hand and took many of them away with the other hand in emergency measures through the power of Article 63(3). The Emergency Powers Order, Regulation 29 of the Emergency (General) Amendment was not expunged from existing laws even after the ECHR was introduced. Emergency Regulation 29 gave the governor powers to arrest and to detain anyone who was deemed a threat to security. These powers allowed for detention without trial, banishment, imprisonment without following due process. Human rights violations were rationalised in relation to the provision in Article 15 allowing for derogation in times of emergency and Article 63(3) on local circumstances.

Of significance too is the fact that at the height of the ‘Positive Action’ non-violent protests and non-cooperation in January 1950. Governor Arden-Clarke declared a state of

emergency in which a dawn to dusk curfew was imposed—and the *Evening News* newspaper offices were closed down and Nkrumah and some leaders of the CPP imprisoned. Even though the emergency laws entered into force before convention rights were extended to the Gold Coast, the fact that their passage coincided with the negotiation about extending the ECHR is of some interest here. By making reservations to provisions for individual petition, the compulsory jurisdiction of the court and inter-state complaint system the colonial administration was basically responding to a potential risk in extending the ECHR to the Gold Coast. Indeed, the rights provided for in the ECHR were the type of rights claims that the nationalist movements were making on the colonial administration in the 1940s-50s period.

5.4. Gold Coast constitutional reforms, 1949-1957

The debate about the extension of the ECHR to the Gold Coast and the subsequent provision of some fundamental rights in the constitution draws attention to the process of vernacularising human rights.³²⁸ Human rights language, in this case, moved from the universal to the national to the local. For example, in the debates about the suitability of extending ECHR the intermediaries in the process were the staff of the Colonial Office as well as the opinion leaders in the Gold Coast. These served as translators of a universal language of rights, speaking, as it were, to a particular colonial context and nationalist demands through constitutional provisions. Their political affiliations shaped both the translation process and the outcome of the vernacularisation while the depth of appreciation of the idea influenced how it was translated. In some cases, double or even triple meanings came out of the process with consequences on the application of human rights norms, for better and for worse.

³²⁸ See Sally Merry, “Transnational Human Rights and Local Activism: Mapping the Middle” in *American Anthropologist*, 108(1), 2006.

Coterminous with external influences such as the extension of the ECHR to the Gold Coast, was post-World War II nationalism which championed demands for greater participation in government before independence and the collective right to self-determination in the medium to long term. Expressions of discontent toward colonial rule led to the arrest and incarceration of a number of nationalist leaders in 1948. Gerald Creasy, who was governor briefly in the Gold Coast, reacted to the expressions of anti-colonial sentiments by issuing Removal Orders, 1948 to arrest and detain indefinitely the leaders of these movements without trial.³²⁹ The Colonial Office, however, responded to the situation differently by appointing a Commission of Inquiry with a mandate to investigate the reasons for the disturbance and make recommendations for continuing administration of the colony. The Commission was chaired by Justice Aikens Watson, a Recorder of Bury St. Edmunds, who along with Dr. Keith Murray, Mr. Andrew Dalglish and Mr. E. G. Hanrott recommended that as a prelude to self-government a new constitution should be drafted. Thus, the Colonial Office endorsed the idea of an all-African Constitutional Committee, and Justice Henley Coussey of the Gold Coast High Court was appointed to chair it in 1949.³³⁰ The Coussey Committee on Constitutional Reforms, 1949 recommended a radical review of the 1946 Constitution. The Committee's recommendations led to the introduction of the universal adult suffrage principle in the 1950 Constitution, a principle that changed the face of anti-colonial resistance politics in the Gold Coast. The draft constitution was passed on November 26, 1949 and entered into effect on January 26, 1950. This constitution, which only applied to the Colony and the Ashanti Protectorate, was significant because it provided for the right to equality, the right to freedom, the right to freedom from exploitation, the right to freedom of religion, cultural and educational rights, the right to constitutional remedies, the

³²⁹ *Riots after Parade of the ex-Servicemen in Accra* in CO 96/795/6.

³³⁰ *Report of the Commission of Inquiry* in CO 96/796/5.

right to property and introduced democratic rights into the country.³³¹ To provide for democratic rights was to offer the subjects non-discriminatory guarantees of a plethora of rights such as freedom of association, freedom of assembly, freedom of expression and freedom of movement. The rights provided for in the 1950 Constitution, while crucial to popular control in politics on the basis of equality, were only implied in the democratic rights but not provided for specifically. Provisions were made for an elected legislature and a racially mixed executive arm of government as part of the first tentative steps being taken toward self-governance in the Gold Coast.

The CPP described this constitution as “fraudulent and bogus but we want to give it a trial at this present stage”³³² but also threatened mass exercise of ‘Positive Action’ if the colonial administration went ahead with what it had presented to the rest of the world as ‘a carefully planned democratic experiment.’ ‘Positive Action’ agitations and a number of newspaper articles had led to the prosecution and imprisonment of Nkrumah and some of the CPP leaders in 1950. In the elections that year, the harmony of popular aspiration for political reform was unequivocal. The 1950 Constitution had stipulated that the new Legislative Council would have thirty-eight elected and forty-two nominated members, and the CPP were in a majority of sixteen.³³³ Hence, Arden-Clarke signed the ‘Bill of Release’ on February 15, 1951 liberating Nkrumah and the other CPP leaders from prison. Nkrumah who had won a seat in his Accra constituency was asked by the colonial administration to form the government and become Leader of Government Business in a Westminster-model legislature. Nkrumah announced the first inter-racial cabinet of 7 Africans and 4 Europeans, and with that the Gold Coast entered a new phase of internal self-government. The Colonial Office

³³¹ *Constitution of the Colony and Ashanti* in CO 96/820.

³³² Gold Coast, *Legislative Assembly Debates*, Session 1951, 2(I).

³³³ Arden-Clarke correspondence with the Secretary of State for the Colonies described Nkrumah as intelligent, idealistic, prepared to co-operate and as listening to advice. See *Colonial Office and Predecessors: Confidential General and Confidential Original Correspondence* in CO 537/7181, no. 3 to Cohen, 105 and 122. See CO 537/7181, no. 3 to Cohen, 105 and 122.

accepted Arden-Clarke's view that

We have only one dog in our kennel and the whole question is whether the tail (i.e., Nkrumah's supporters) will wag the dog or the dog the tail. It has a very big tail and not much guts. All we can do is to build it up and feed it vitamins and cod liver oil; and, as soon as the opportunity offers, some of that tail must be docked.³³⁴

The patronising tone of Arden-Clarke's analysis of the political situation betrays something of the colonial administration's view of the Africans in the Gold Coast, which contradicts his declaration—'that of one partner handing over the management of a business to another.'

Perhaps this is another rendering of "the United Kingdom [being] the elder and more experienced partner"³³⁵ of the two countries. As an official of the British imperial establishment he is a carrier of particular narratives about colonial 'subjects,' and especially of colonial subjects turned rights-bearing citizens. The pet metaphor is not only curious but also raises questions about the way the governor understood the *humanity* of the Africans who had become his 'partners' in the administration of the Gold Coast. To paraphrase the words of Saïd on the purpose of universal human rights, it is to put forward explanations using the same language employed by the dominant power to dispute its hierarchies, to clarify what is hidden and to pronounce what has been silenced or rendered unpronounceable.³³⁶

Indeed, the wording of Arden-Clarke's memo may well be a symptom of the paternalism of colonial rule and issues of injustice, inequality and discrimination on grounds of race. The paternalism and inequality inspired the Africans to question, and where necessary to overpower, colonial rule. Indeed, the thirty articles of the UDHR gave vent to the outrage toward injustice and also offered the inspiration to act for change. A plan to manipulate the process towards independence is implied in "[a]ll we can do is build it up and feed it vitamins and cod liver oil; and, as soon as the opportunity offers, some of that tail

³³⁴ *Colonial Office and Predecessors: Confidential General and Confidential Original Correspondence* in CO 537/7181, no. 5, 12 May 1951.

³³⁵ *Legislative Council Debates*, Session 1949, no. 4.

³³⁶ Edward Saïd, *Reflections on Exile*, London: Granta Books, 2001, 430.

must be docked.”³³⁷ Was the ‘building up of this dog’ and ‘docking of the tail’ intended to suit a particular Colonial Office agenda? It is beyond the scope of this chapter to speculate on what the agenda must have been. But see chapter 6 of this thesis on the way the Colonial Office stage-managed the Independence Constitution drafting process.

The introduction of an electoral culture created the first all-African elected Legislative Assembly. For the first time in Gold Coast history, the leader of the majority party in the Legislative Council assumed the mantle of Leader of Government Business. This title was changed to that of Prime Minister on March 5, 1952

in the light of the working of the present Constitution and on the advice of the Governor, Her Majesty’s Government have decided that the Leader of Government Business in the Legislative Assembly should disappear from the Constitution and the Office of Prime Minister should be formally recognised.³³⁸

The change was in accordance with the provision of Section 7(a) 22 of the 1950 Constitution, allowing for a review of the constitution. The constitutional developments in this period altered political culture in important ways. The gradualism that had characterised constitutional reforms in the Gold Coast altered after 1953.

For example, a constitutional review led to the 1954 Constitution and three years later the Independence Constitution which came out of processes of negotiation between the colonial administration and diverse nationalist parties for more democratic practices and the realisation of the right to self-determination in 1957. A Westminster model constitution was bequeathed to the Gold Coast, but with procedural limitations and substantive limitations. It did not provide for an independent judiciary arm of government, and thus enforced colonial legislations without constitutional restraints. As one legal scholar points out,

its members were active in the formulation of colonial policy and legislation; they depended for career advancement on reports of the colonial bureaucracy; and many of

³³⁷ *Colonial Office and Predecessors: Confidential General and Confidential Original Correspondence in CO 537/7181*, no. 5, 12 May 1951.

³³⁸ Speech of the Secretary of State for the Colonies given to the House of Commons, March 5, 1952 and read by Governor Arden-Clarke to Gold Coast Legislative Assembly, March 5, 1952. Full text printed in the *Legislative Council Debates*, Session 1952, Vol. 1 no. I.

their members as District, Provincial and Chief Commissioners performed at the same time judicial, executive and police roles.³³⁹

The 1954 Constitution did provide for freedom from discrimination (UDHR Article 2) under section 36(2) and became the structural foundation of the constitutional system constructed by Ghana at independence. Other fundamental rights such as equality in dignity and rights (UDHR Article 1) or freedom from torture and cruel, inhuman and degrading treatment (UDHR Article 5) were, however, not provided for in the constitution. Article 31(5) vested both the power of judicial review and original jurisdiction in the Supreme Court on matters concerning the validity of legislation. Under Article 32 of the constitution the legislature could not pass legislation to alter the boundaries of the regions or alter the provisions of the constitution without the approval of the regional assemblies. While the principle of parliamentary sovereignty, giving supreme authority in the country to the legislature with the power to enact or revise or end any law, was provided for in the constitution, there was no concomitant law to limit the application of this principle.

Indeed, the 1954 Constitution and Independence Constitution, 1957, the constitutional review processes took place against the background of the nationalist agenda of demands for the rights to freedom of assembly, freedom of expression, freedom of association, freedom of movement, and the right to vote and/or to stand for election. The 1954 Constitution was an ‘interim’ document in the sense that it was a review of the 1950 Constitution and was done in anticipation of a more elaborate process of drafting the Independence Constitution thereafter. Apart from a Section 4 provision about people who were eligible to be appointed to the Cabinet, a Section 36(A) provision for “appropriation of property without compensation”³⁴⁰ and a Section 36 (2) provision on freedom from discrimination of any type “subject to the provisions of this Constitution” the Gold (Constitution) Order-in-Council 1954 did not

³³⁹ Fui S. Tsikata, “Towards an Agenda of Constitutional Issues under the Kwame Nkrumah Regime” in Kwame Arhin, *The Life and Work of Kwame Nkrumah*, Trenton, NJ: Africa World Press, 1993, 210.

³⁴⁰ *Gold Coast (Constitution) Order-in-Council*, 1954 (SI 353). Also see *Proposals for Constitutional Changes Leading to Independence in the Gold Coast* in CO 554/805.

radically improve the human rights agenda in the country.³⁴¹ What this reveals is that while human rights discourses formed an integral part of the negotiations for democratic rights and the constitution-making processes this did not inspire an immediate change of attitude to the human rights idea.

The 1950s phase of constitutional reforms was particularly significant because Nkrumah's government had 'partnered' Governor Arden-Clarke in the constitutional review process. It must also be highlighted that the principle of parliamentary government was reversed, giving extraordinary powers to the Governor under Section 44 that:

if the Governor shall consider that it is expedient in the interests of the public order, public faith or good government... that any Bill introduced, or any motion proposed, in the Assembly should have effect, then, if the Assembly fail to such a Bill or motion within such reasonable time... the Governor at any time which he shall think fit, may ... declare that such Bill or motion shall have effect as if it had been passed by the Assembly.³⁴²

Under Section 45, the Governor had the power to send a message to the Speaker of the Legislative Assembly asking him to have a draft bill or motion "introduced or proposed not later than a date specified in such a message."³⁴³ However, the Governor could only exercise these powers with the approval of the Cabinet, and when he failed to get such approval, the concurrence of the Secretary of State for the Colonies. What this meant constitutionally was that the Cabinet was neither answerable to the Legislative nor responsible to the electorate as enshrined in the constitution, since the Governor could sidestep Cabinet and ask the Secretary of State for the Colonies to proceed with a course of action he deemed to be "in the interests of public order, public faith or good government."³⁴⁴

In spite of the clawback clauses in 1954 constitution, it must be emphasised that the introduction of universal adult suffrage in the constitutions of the 1950s came about partly because of the massive support generated for the construction of a prospective nation-state.

³⁴¹ *Gold Coast (Constitution) Order-in-Council*, 1954 (SI 353).

³⁴² Section 44, *Gold Coast (Constitution) Order-in-Council*, 1954 (SI 353).

³⁴³ Section 45, *Gold Coast (Constitution) Order-in-Council*, 1954 (SI 353).

³⁴⁴ Section 44, *Gold Coast (Constitution) Order-in-Council*, 1954 (SI 353).

Indeed, this improved the conduct of democratic exercises in the Gold Coast. The people now had an influential public voice in the ongoing struggle for equality and non-discrimination because they saw themselves as rights-bearing citizens with, for example, the right to vote and to stand for election. Although the traditional rulers and *intelligentsia* were at the forefront of the discourse on self-determination, their recognition of the lower classes as an electorate was somewhat ambiguous until the 1951 Constitution introduced a broader franchise in the Gold Coast. Out of the rights provided for in the UDHR, the democratic rights were the only ones accorded constitutional guarantees in the Gold Coast 1950s' constitutions, with the question of enshrining a bill of rights deferred to the negotiations for an Independence Constitution.

In the June 15, 1954 elections Nkrumah's nationalist party consolidated its hold on political power by once again winning a majority of seats in the Legislative Assembly. The governor recognised the Prime Minister's position as one that ranked "immediately after the Governor or the Officer Administering the Government as the case may be, and before any of the three *ex-officio* Ministers whose position in other respects... remain[ed] unchanged."³⁴⁵ Seven African members of the Legislative Assembly were appointed to the first inter-racial Cabinet, *viz.*, Kojo Botsio (Minister of Education and Social Welfare), Kobla A. Gbedemah (Minister of Commerce and Industry), A. Caseley-Hayford (Minister of Agriculture and Natural Resources), E. O. Asafu-Adjaye (Minister of Local Government), J. A. Braimah (Minister of Communication and Works), T. Hutton-Mills (Minister of Health and Labour), Ansah Koi (Minister of Housing). Three *ex-officio* members appointed by the Governor, but in principle answerable to the Secretary of State for the Colonies, held the Ministries of External Relations, Justice and Finance.

Nkrumah's government pushed for more constitutional reforms in the march toward

³⁴⁵ Speech of the Secretary of State for the Colonies given to the House of Commons, March 5, 1952 and read by Governor Arden-Clarke to Gold Coast Legislative Assembly, March 5, 1952. Full text printed in the *Legislative Council Debates*, Session 1952, Vol. 1 no. I.

independence. The period between 1954 and 1957 also marked a turning point in Gold Coast constitutional reforms as well as provided a situation to test the fledgling democratic culture.³⁴⁶ The State Council Bill, 1956, which was passed into law prohibiting traditional rulers from party politics and curbing their influence in post-World War II national politics in the country, also shaped the contours of the evolving democratic culture. The constitutional guarantee of democratic rights enriched the nationalist discourses in the period leading up to independence. For example, when Arden-Clarke announced that the position of Leader of Government was replaced by the title of Prime Minister, Ofori Atta, an Opposition legislator, pointed out that “if the British people really believe that it was a fundamental change... I firmly believe that they could have asked for the immediate dissolution of the House for a general election to be made to test the feelings of the people of this country.”³⁴⁷ Busia also called attention to the fact that

It was on the fundamental principle that they object as a people to be dictated to, by others, even if the things dictated were good for them. Our fight for freedom is fundamental and we disagree with any people however good or however excellent in themselves to take it upon themselves to decide our destiny; we regard it as degrading. That is why in the years of agitation the whole country was consulted in the constitutional changes that were made.³⁴⁸

These two members of the Opposition in the Legislature Assembly were critical of the way the creation of the Office of the Prime Minister was done without consultation.

Three issues could be highlighted in the interventions of Ofori Atta and Busia. First, the nature of the constitutional change itself, which was done without consulting the electorate and their representatives in the legislature. Consultation in a political process was important for the proper functioning of a fledgling democracy and the democratic process, and so for the Governor to make such a change without consulting the Opposition party deprived the rights-bearing citizens of the possibility of articulating their views. There was

³⁴⁶ See, for example, *Fundamental Rights* in CO 554/828; *Ghana's Inheritance of UK Treaty Laws and Obligations* in CO 554/811.

³⁴⁷ Gold Coast, *Legislative Council Debates*, Session 1952, Vol. 1 no. II.

³⁴⁸ Gold Coast, *Legislative Council Debates*, Session 1952, Vol. 1 no. II.

alertness to the implication of the Governor's action in replacing the position of Leader of Government Business by the title of Prime Minister; second, what the change would mean in terms of the role of Nkrumah's party as well as the Opposition in government; third, the relationship of the change to the goal of self-government for the Gold Coast. The shift was not just nominal it also signified greater powers for the Prime Minister.

The 1950 and 1954 constitutional changes constructed the Africans as rights-bearing citizens who, for example, could vote and participate in government in their own country. The concession to have more Africans in government reinforced the nationalist demands while the nationalist resistance, in turn, bore resonance to the idea that one had rights simply by virtue of being a human being.

5.5. Conclusion

What this chapter has done is situate the idea that one has rights simply by virtue of being human within the debates about extending the ECHR to British protected persons in the Gold Coast. Attempts on the part of the Colonial Office to consult the Gold Coast administration on the suitability of extending ECHR took into account the local circumstances, but indirectly the process of negotiation helped to redefine the colonial subjects as rights-bearing citizens. Even though the discourse about the right to self-determination was unequivocal, individual rights and fundamental freedoms provided for in the 1950 and 1954 constitutions reinforced the collective right. The post-World War II political circumstances in the Gold Coast, not least debates about extending ECHR provisions to the colonial subjects, had implications for the way the 1954 and 1957 constitutions were negotiated. Ongoing nationalist agitations for self-determination also contributed to the constitutional reforms. Political pragmatism was responsible for the Gold Coast administration's equivocation for some time before advising against a wholesale extension of

convention rights to the colonial subjects. At the same time, the rhetoric of rights-holder in the ECHR concealed entrenched inequalities in the colonies, which is why the pragmatism sometimes flew in the face of the definition of human rights as rights one has by virtue of being human.

The process of vernacularising human rights not only had consequences on the way a universal language was translated for colonial subjects in the Gold Coast but also on the receptivity of the nationalist movements to the idea. The framing of human rights as universal values that “penetrate the impregnability of state borders”³⁴⁹ is more receptive now than it was at the time of negotiating the suitability of the ECHR for colonial territories, but to consider the universal value of human rights is to call into question the unfair treatment of ‘the different other.’ The theme of a bill of rights and the judicial protection of fundamental rights in the 1957 constitution will be taken up in greater detail in the next chapter.

³⁴⁹ Moyn, 1.

Chapter 6

Making sense of human rights in the Gold Coast: debates on the bill of rights

“A person is a person because of other persons”

A Bantu proverb

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood [and sisterhood].”³⁵⁰

Art 1 of the UDHR

6.1. Introduction

I have argued in chapter 4 above that one of the fundamental flaws of colonial rule in the Gold Coast is the way the 'human being' was constructed against the background of race so as to justify the subjugation of one group by another. The way human beings are constructed within a state has consequences for the protection, respect and fulfilment of their fundamental rights. The influence of, for example, the UDHR on the domestic context had far-reaching consequences on the understanding of fundamental rights as rights one has by virtue of being a member of the human family rather than of a particular racial or gender group. Fundamental rights would not have much significance if they were not enforceable. Ellacuria highlights this point when he argues that the understanding of historicisation of human rights establishes a definite historical context aimed at correcting structural injustices and providing remedies in favour of human rights norms.³⁵¹ He identifies historicisation as one aspect of praxis in which concepts, values and practices are both shaped and transformed by their dynamic interaction with each other, which is what happened with the discourse on the bill of rights in 1956-57 Gold Coast.

The post-World War II changes in Gold Coast colonial politics, in particular the partial acceptance of the ECHR, broadened the discourses to include specific debates in order to accommodate the emerging concepts and practices of fundamental rights. For example, in

³⁵⁰ Art 1 of the UDHR.

³⁵¹ Ignacio Ellacuria, “The Historicisation of the Concept of Property” in John Hasset and Hugh Lacey, eds., *Towards a Society that Serves its People: The Intellectual Contribution of El Salvador’s Murdered Jesuits*, Washington, D.C.: Georgetown University Press, 1991, 109.

the year leading up to independence the Colonial Office, Nkrumah's government and the opposition parties explored the possibility of incorporating a bill of rights into the 1957 Constitution. But the inter-party negotiations oscillated between consensus on the importance of enshrining universal human rights in the constitution and dithering about when exactly to do so and suspicion of the idea of a bill of rights. Although the opposition parties made consistent demands for a bill of rights in the Independence Constitution, at the end they agreed in principle that the Indian example (i.e., introduce the bill of rights after independence) should be emulated.³⁵² The Colonial Office seemed prescriptive about the idea of a bill of rights from the start, stage-managing, as it were, the entire negotiation process and roping in Nkrumah's government as much as possible.³⁵³ Indeed, there was general agreement about the importance of appropriating and deploying the idea of fundamental rights in the Gold Coast in the Independence Constitution, but there was far less consensus about the reasons for a bill of rights, its relationship with existing laws and its interactions with the three organs of government. Moreover, the structured forum created in the 1950s for the transfer of power enhanced the candour in the negotiation process, reflecting the diverse ideologies of the colonial administration and political parties.

The 'human rights texts' provide an illustration of a bifurcation in 1945-57 Gold Coast politics, the first branch coinciding with the period between 1945 and 1950 when the policy of indirect rule effectively emasculated the majority of Africans from government and the second with the introduction of universal adult suffrage in 1951 as the basis of electoral

³⁵² The post-independent Indian Government under Rajendra Prasad tasked an elected Constituent Assembly with the responsibility of drafting a bill of fundamental rights and freedoms for the country in 1947; some members of the Constituent Assembly were appointed across a broad political spectrum to work with the elected members. The constitution that this Constituent Assembly drafted was passed on November 26, 1949 and entered into effect on January 26, 1950. Part III of the Constitution provided for fundamental rights and freedoms, *viz.*, the right to equality, the right to freedom, the right to freedom from exploitation, the right of freedom of religion, cultural and educational rights, the right to constitutional remedies and the right to property.

³⁵³ *Proposals for the Constitution of Ghana* in CO 554/822; *Fundamental Rights* in CO 554/828.

representation.³⁵⁴ Nationalist narratives of rights' claims made against colonial domination steadily diffused into openly contested versions of self-rule, with the CPP on one side and the UGCC (later regrouped as the Ghana Congress Party in 1952) on the other side of the divide. Indeed, the formation of mass political parties worsened existing ideological divides in the nationalist front after the 1951 legislative elections, with subsequent negotiations for power sometimes degenerating into ethnic and sectional rivalries.

Ellacuria and Tarimo's thesis that human rights need to be 'historicised' in order to be relevant to people's lives is significant in making the link in this chapter between the normative idea of fundamental rights and actually making provisions for them in a bill of rights. The notion of 'historicisation' is a relatively recent introduction to the human rights discourse pioneered by Ignacio Ellacuria and Aquiline Tarimo. According to Ellacuria, the historicisation of human rights consists

in seeing how what is abstractly affirmed as an ought to be of the common good or human rights is actually being realised in given circumstances... it consists in the establishment of those real conditions without which there can be no effective realisation of the common good and human rights.³⁵⁵

The process of negotiating a bill of rights between 1956 and 1957 is a good example of human agency in historicising universal human rights within a domestic context in a legitimate manner. Several factors shaped the contours of the discourse about creating an enforcement mechanism for human rights, or historicising, in the Gold Coast. They include excessive structural injustice in colonial rule, the political pragmatism³⁵⁶ of some nationalist figures, the fundamental belief that one has rights simply by virtue of being a human being,

³⁵⁴ See, for example, *Administrative Staff: Appointment of Africans* in CO 96/778; *Commission of Inquiry* in CO 96/793/3, *Labour Unrest* in CO 96/797/4; *Conditions of Service for Africans: Relationship between European and African Salary Scales* in CO 554/134/11 and *Criticism of English Law in the Gold Coast* in CO 554/785.

³⁵⁵ Ignacio Ellacuria, "Human Rights in a Divided Society" in Alfred T. Hennelly and John Langan, eds., *Human Rights in the Americas: The Struggle for Consensus*, Washington, D.C.: Georgetown University Press, 1982, 59.

³⁵⁶ I use the term 'political pragmatism' rather loosely in this chapter to denote the idea that the meaning of international human rights is in its practical implications for people in the Gold Coast. Charles Sanders Peirce in *The Collected Papers of Charles Sanders Peirce*, Vol. V para 12, Arthur W. Burks, ed. argues that a proposition or ideology is true if it works satisfactorily.

and the historical contingency of the human rights discourse in the post-World War II international world order. The Colonial Office, Nkrumah's government and the opposition parties had competing interests which shaped both the negotiation process and its outcome. Each group identified with specific aspects of human rights. For its part, the Colonial Office sometimes made the claim that

nearly all these fundamental rights are fully safeguarded by the basic principles of the common law which of course applies in Ghana. The protection afforded by the common law is really a much better safeguard against abuse than any enshrinement in the constitution—provided of course that the independence of the judiciary is safeguarded.³⁵⁷

Also, because of the fear that legislation passed prior to independence may not be valid after independence, James Griffiths, who was the Secretary of State for the Colonies at the time, in one of his parliamentary interventions asked if the

provisions for fundamental rights, which the Government have already indicated (*sic*) they will accept, be embodied either in a Bill [of Rights], or, if that is constitutionally impossible, in a White Paper and be debated in the Legislative Assembly and carried by a resolution which would indicate that they proposed to enshrine them in the Constitution after independence day?³⁵⁸

Although the negotiation failed at the end to produce the corresponding enforcement mechanism for fundamental rights, the fact that there was a historicisation process at all shows that the UDHR provided a common standard that sections of the Gold Coast community deemed critical for the proper functioning of a fledgling culture of democracy and self-government.³⁵⁹ For the opposition parties, one way to ensure respect, protection and fulfilment of fundamental rights was to enshrine them in a bill of rights. Consequently, they proposed a constitutional framework that would guarantee citizens' rights, some checks and balances in the exercise of state power and protection of the rights of minorities.

³⁵⁷ Christopher Eastwood, 3 January 1957, *Briefs for the Secretary of State's Visit to the Gold Coast* in CO 554/821.

³⁵⁸ *House of Commons Official Report*, Session 1956-1957.

³⁵⁹ Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House, 2001, xviii.

6.2. A bill of rights and judicial protection of fundamental rights and freedoms

The term bill of rights is not altogether unambiguous even in international human rights law and discourse. The corpus of literature on bills of rights in British colonies assumes that structural injustices, political pragmatism and the international bill of rights, especially the UDHR, influenced the content and scope of their independence constitutions.³⁶⁰ For example, Stanley de Smith, writing in the 1960s about fundamental rights in post-colonial constitutions, argues that bills of rights are more than symbolic documents ‘domesticating’ in a legitimate manner international human rights in different cultures. Klug’s thesis that bills of rights are “part symbolism, part aspiration and part law... fundamentally a set of broadly expressed entitlements and values”³⁶¹ of human rights is a helpful way of describing the concept. Parkinson defines the term “as a set of provisions in a domestic *constitution* protecting individual rights that can be enforced by a court and can restrict the actions of the legislature and the executive.”³⁶² For these three scholars at least, bills of rights may be justiciable in which case violations are liable to be decided by a court of law or non-justiciable, and therefore merely aspirational. A justiciable bill of rights creates positive legal rights for individuals or marginalised groups against the state.

For the purposes of this thesis, a bill of rights is a list of fundamental rights and individual freedoms enshrined in a national constitution that are justiciable and restrains the state and its agents from violations. As I pointed out in chapter 3 above, the ‘state’ in the colonial regime failed as a human rights’ duty-bearer towards its African subjects through legislations such as the British Nationality Act, 1948.³⁶³ In the politics of citizenship, British

³⁶⁰ See, for example, Parkinson; Gaius Ezejiolor, *Protection of Human Rights under the Law*, London: Butterworth, 1964; James S. Read, “Bills of Rights in the ‘Third World’: Some Commonwealth Experiences (1973) 6 *Verfassung und Recht in Ubersee* 21; James Norman Dalrymple, *Changing Law in Developing Countries*, London: Allen & Unwin, 1963; Stanley de Smith, “Fundamental Rights in the New Constitutions” in *Journal of the Parliaments of the Commonwealth* XLIII(1), Jan. 1962: 10-19.

³⁶¹ Francesca Klug, *Values for a Godless Age: The Story of the United Kingdom’s New Bill of Rights*, London: Penguin, 2000, 21.

³⁶² Parkinson, 4.

³⁶³ The British Nationality Act, 1948.

citizens and African subjects were two distinct groups with the former acting as the caretakers of the British Empire while the latter lacked the wherewithal to be active participants in the exercise of their political rights. Without a systematic official endorsement of human rights even after the British government's decision to extend the ECHR to its territories, Nkrumah's government inherited a skewed system in which the exercise of state power towards 'subjects' seemed unrestricted. Parkinson draws attention to one of the reasons for the decision to extend the ECHR to the colonies:

[it] had little to do with protecting rights. The Colonial Office believed that the colonial territories had the highest standards for the protection of human rights and consequently that these standards far exceeded the requirements set by the convention... It was noted at a joint meeting of the Colonial Office, the Commonwealth Relations Office and the Foreign Office on 9 April 1953 that 'one of the main objectives in inducing the colonial territories to apply the convention was for publicity purposes at the United Nations in connection with the draft Convention on Human Rights.'³⁶⁴

The issue of electoral representation before 1951 highlights the problems that arise when the system of government excludes the majority of people on grounds of race or gender or ownership of property. Anti-colonial nationalism historicised citizenship rights by advocating for universal adult suffrage for the Africans in the Gold Coast, something which was granted in the 1951 Constitution. By the same token, the agitations made by the opposition parties for a bill of rights in the Independence Constitution formed part of broader process of historicisation of fundamental rights.

Until the post-World War II era, the legal system in the Gold Coast was patterned on English common law tradition but without the constitutional guarantees for fundamental freedoms.³⁶⁵ The judiciary formed an integral part of the colonial administrative structure, with many of the territorial and district commissioners exercising not only executive authority but also legislative and judicial powers upon their subjects. In the colonial

³⁶⁴ Parkinson, 40.

³⁶⁵ *Judiciary* in CO 554/832. For a general analysis of constitutional developments in the British imperial colonies, see Stanley A. de Smith, *The New Commonwealth and its Constitutions*, London: Stevens, 1964, 174.

dispensation, doctrines such as rule of law, separation of powers or parliamentary supremacy were textbook concepts with little significance or no practical import for the people in the Gold Coast before 1951. Many of the constitutional drafting processes in this period were primarily characterised by popular demands for transfer of power from the colonial administration to the Africans and manifestations of sectional rivalries in the fledgling party politics. However, the Colonial Office was opposed to having a bill of rights in the constitutions for four reasons. The colonial administration did not want to create a litigious culture among the colonised populations, create expectations that could not be fulfilled in other colonies, and hinder the work of the colonial administration. The reason for this was the fear that it would be detrimental to the application of the indirect rule policy especially in times of crises.³⁶⁶ As a result, the opposition parties were those in the best position to demand for inclusion in the constitution a bill of rights. The debates, however, show a more complex political situation in the Gold Coast.

The outstanding feature of the decolonisation process in the Gold Coast from 1951 onwards was the constitutional process through which the colonial administration slowly transferred power to the African people while at the same time providing a forum for the political parties to, as it were, resolve their ideological differences. Rathbone argues that a weak colonial administration of Governor Creasy, sandwiched between the robust leadership of Governor Burns and Governor Arden-Clarke, impacted on the post-World War II politics of nationalism.³⁶⁷ Parkinson in his exhaustive work on bills of rights in decolonisation processes maintains that decisions about bills of rights reflected Her Majesty's Government

³⁶⁶ See Stanley de Smith, "Fundamental Rights in the New Commonwealth" in *International and Comparative Law Quarterly*, 10(2), Apr. 1961: 215-37. Also see Parkinson, 6.

³⁶⁷ Richard Rathbone, "The Government of the Gold Coast after the Second World War" in *African Affairs*, Vol 68(1968); also see Richard Rathbone, ed., "Ghana: Part I, 1941-1952" in *British Documents on the End of the Empire*, London: HMSO, 1992.

view of achieving successful transfer of power in colonies.³⁶⁸ What was the understanding of a bill of rights in Gold Coast nationalist discourses? In a memo of 1956 to the United Kingdom Government in which Busia clarified the position of the opposition parties, i.e, the National Liberation Movement (NLM), with regard to the independence constitution, he pointed out that:

The United Kingdom Government has rejected the suggestion that the new Constitution should make any provisions for individual rights or the rights of the minorities. In this they have apparently not even been prepared to go as far as the Gold Coast Government which... has said it wished to include in the Constitution fundamental rights guaranteeing personal liberty and the right of political and industrial association, together with freedom of speech and the press but that this was not agreed to by the United Kingdom Government. We suggest that the European Convention on Human Rights, which has been accepted by the UK Government for application to overseas territories, should be embodied in the Constitution. This Convention includes machinery enabling its provisions to be enforced through the Courts.³⁶⁹

Although the term, bill of rights, does not appear in the memo a significant number of references are made to fundamental rights and individual freedoms including allusions to Britain's acceptance of the ECHR for application in the colonies. The memo, 'Gold Coast Independence,' perceptibly argued that incorporating human rights into the new constitution would provide a safe mechanism for protecting the interests of minorities especially after independence. Under paragraph 8 of the memo, the demand for "fundamental rights guaranteeing personal liberty and the right of political and industrial association, together with freedom of speech and the press"³⁷⁰ is linked to "the European Convention of Human Rights, which has been accepted by the UK Government for application to overseas territories, should be embodied in the Constitution."³⁷¹

³⁶⁸ Parkinson, 1-20. Moyn takes issue with the title of Parkinson's book, *Bills of Rights and Decolonization: The Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories*, arguing that it is a misnomer.

³⁶⁹ Kofi Abrefa Busia, *Gold Coast Independence: Memo to the UK Government*, November 30, 1956. The UK Government gave notice under Article 63 of the ECHR that the Convention be applied to some of its 42 overseas territories.

³⁷⁰ Busia, *Gold Coast Independence* "Memo to the UK Government", November 30, 1956, para 8.

³⁷¹ Busia, *Gold Coast Independence* "Memo to the UK Government", November 30, 1956, para 8.

Opinions about the significance of a bill of rights in the constitution were shaped by the exposure of some of the nationalist leaders to political theories in Europe and the USA, the understanding of the UN human rights framework, the ECHR, and a growing appreciation of the constitutional developments occurring in those British colonies gaining their right to self-determination. The Colonial Office in Whitehall as well as the colonial administration in Accra vacillated between the demands of the two dominant political groupings, opting in the long run for elections to decide on the way forward for the Gold Coast. The colonial administration wavered on introducing fundamental rights to the Gold Coast, even when Britain ratified the ECHR in 1950. The Colonial Office taking into account the Article 63 provision that the Convention could be extended to overseas territories, wrote to the colonial government in the Gold Coast asking if they wanted the convention extended to that territory. According to one Colonial Office document, the colonial governments in Brunei, Hong Kong, Aden, Southern Rhodesia and Tonga rejected the idea of extending the Convention to their territories.³⁷² In theory, the colonial government agreed for this Convention to be implemented in the Gold Coast but not much else is said about this in the policy documents, the newspapers and constitutions of that period or afterwards. Indeed, human rights violations were rationalised in relation to the provision in Article 15 of the ECHR allowing for derogation in times of emergency. An example of the rationalisation is the use of the Emergency Powers Order, Regulation 29 of the Emergency (General) Amendment to arrest and detain the leaders of the UGCC following the 1948 Accra riots.

The 1951 Constitution had paved the way for an increased number of elected representatives in the legislative arm of government. With the June 15, 1954 elections the CPP consolidated its hold on political power by once again winning a majority of seats in the Legislative Assembly. Nkrumah's CPP government pushed for a constitutional review

³⁷² *Convention on Human Rights and Protocol* in CO 936/155-7 (Minutes of a meeting held on January 18, 1951).

process as part of the augmented demand for independence; while they were asking for a centralised system of government the newly-formed NLM demanded a federal structure and a bill of rights. The ‘Proposal for a Federal Constitution’ proposed six issues: constitutional guarantees for human rights, a federal legislature with an upper house established along the lines of regions and a lower house based on the population distribution, four bicameral regional parliaments, a council of state with the power to veto legislation that was discriminatory toward the minority, limited powers for the federal government, and constitutional amendment requiring a majority of electors in majority states.³⁷³ As Bing and Parkinson have pointed out, the British government had agreed to the transfer of power in the Gold Coast on the understanding that the majority of people supported the CPP.³⁷⁴ The emergence of the NLM as a force to be reckoned with, thus, raised questions about this assumption.

It is against the background of this ideological rift that the different actors framed the debate for/against the bill of rights in the 1957 Constitution. Internally, Nkrumah’s government also attempted to engage with the leadership of the opposition parties. A select committee was set up in April 1955 to review the 1954 constitution. After considering 279 memoranda and 60 written communications, the committee made at least one main concession to the NLM, namely, the setting up of regional assemblies with powers to comment on legislations before their enactment. The NLM pushed for general elections at this time on the assumption that they could win the majority.³⁷⁵ Interventions in the House of Commons in the United Kingdom prompted the Secretary of State for the Colonies, Alan Lennox-Boyd, to review the different perspectives and to appoint Frederick Bourne, who had served in the colonial administration as governor of the Central Provinces, East Bengal and

³⁷³ See *Proposals for a Federal Government in the Gold Coast* in CO 554/814; *Joint Resolution by Gold Coast Opposition Parties and Legal Measures in the UK Regarding the New Constitution* in CO 554/827.

³⁷⁴ Bing, 169; Parkinson, 107.

³⁷⁵ See *NLM Representations for a Federal System for the Gold Coast* in CO 554/804.

Berar a constitutional adviser, to broker a deal between the principal domestic actors.

While the CPP co-operated with Bourne by presenting a set of proposals, the NLM refused to meet him. According to the *Report of the Constitutional Adviser*, Bourne recommended devolution of consultative (and not legislative) powers, a centralised system of government, and a constitution without a bill of rights.³⁷⁶ In part because the NLM refused to be part of the process, the issue of fundamental freedoms and human rights was neither raised in the public discussions nor included in Bourne's report to the Colonial Office. In his autobiography, Nkrumah explains how he convened the Achimota Conference in February 1956 to discuss the Bourne recommendations with the NLM.³⁷⁷ Although the NLM boycotted the conference, the other participants endorsed the recommendations and discussed other political matters that were not in Bourne's Report. The *Report of the Achimota Conference* is quite revealing, in the sense that the issue of human rights is not discussed. Two months later Nkrumah's government released a White Paper setting down the constitutional proposals for an independent Ghana: a centralised system of government, a legislature with a national assembly and a house of chiefs with consultative rather than legislative powers in six regions, and constitutional amendment requiring two-thirds support of the Legislative Assembly. Again, there was no mention of a bill of rights. Nonetheless, a statement was included to the effect that "The Government is in favour of making provision in the new Constitution that citizens of independent Ghana shall have freedom of conscience and enjoy the full exercise of their modes of religious worship, subject to public order, morality and health."³⁷⁸

Sustained opposition from the NLM to the constitutional proposals led to the announcement by the Secretary of State for the Colonies in the House of Commons on May

³⁷⁶ Gold Coast, *Report of the Constitutional Adviser* in CO 554/821.

³⁷⁷ Kwame Nkrumah, *Ghana: The Autobiography of Kwame Nkrumah*, Nelson, 1957.

³⁷⁸ Gold Coast, *Constitutional Proposals for Gold Coast Independence and Statement on the Report of the Constitutional Adviser and the Report of the Achimota Conference* in CO 554/821.

11, 1956 that the matter would be resolved through a general election.³⁷⁹ The CPP and NLM election manifestos were the White Paper and the ‘Proposals for a Federal Constitution’ respectively, and the elections were held on July 12 and 17, 1956. Nkrumah’s party won a decisive victory, with 72 of the 104 seats in the Legislative Assembly, thus resolving the main conundrum to the independence constitution. On August 3, 1956, the NLM boycotted the sitting of the Legislative Assembly while all 72 legislators of Nkrumah’s party passed a motion requesting independence from Britain. The Secretary of State for the Colonies announced on September 18, 1956 that Ghana would become a sovereign nation-state under the Commonwealth on March 6, 1957. The date chosen for granting the independence was emblematic, because it was the anniversary of the signing of the Bond of 1844 which established British jurisdiction over the Gold Coast.

Even though the electorate resolved the sticking point between the nationalist parties, Busia in at least two letters to *The Times* of the United Kingdom alleged both incompetence and corruption in Nkrumah’s government.³⁸⁰ The NLM leadership sent a delegation to London to petition the Colonial Office on three subject matters: that the modus operandi for constitutional amendments be made more difficult than proposed in the government White Paper; that their demands in ‘Proposals for a Federal Government’ such as a bill of rights, a bicameral legislature and a council of state should be reconsidered; and that the powers of the proposed regional assemblies within independent Ghana should be equivalent with those of Northern Ireland in relation to the United Kingdom.³⁸¹ The delegation led by Busia met with the Secretary of State for the Colonies in London for talks on September 10 and 11, 1956. The NLM deployed the rhetoric of ‘regionalism’ around their support base in the Ashanti Protectorate and the Northern Protectorate. When the Secretary of State attempted to create new terms of negotiations between CPP government and the opposition NLM, Nkrumah

³⁷⁹ *Hansard, House of Commons Official Report*, Session 1955-1956.

³⁸⁰ Kofi Busia, “Letter to the Editor” in *The Times*, 14 and 22 September 1956.

³⁸¹ *Secretary of State’s Visit to the Gold Coast* in CO 554/820.

wrote to the Colonial Office asking the Secretary of State for the Colonies not to act as an intermediary between his government and the opposition.³⁸²

It is, however, obvious that independence rather than individual rights was the biggest concern of all the political parties. At the behest of Governor Arden-Clarke, the Attorney-General for the Gold Coast, Sir George Patterson, drafted an Order in Council on independence and tabled it at a cabinet meeting on September 21, 1956. The draft was discussed but rejected, and Geoffrey Bing QC was tasked with preparing another constitutional document. Bing was a former Labour MP in the British House of Commons who was appointed constitutional adviser to Nkrumah's government in 1956. He prepared what came to be known as the 'Secret Proposals'.³⁸³ The most innovative thing about the 'Proposals for the Constitution of Ghana' was the fact that it included a bill of rights which provided for rights as well as remedies.³⁸⁴ The seven articles in this proposal related to the right to personal liberty, inviolability of one's dwellings, freedom of religion, freedom of opinion and assembly, provision against appropriation of property without compensation, provision against retrospective laws and double jeopardy, and freedom from discrimination. Bing explains in his autobiography that he was instructed to draw material from other Commonwealth constitutions, so that he basically picked and chose material from the UDHR, existing Gold Coast constitutions, the Indian Independence Constitution and the Irish Free State Constitution. In the draft document, Bing included rubrics specifying where all seven articles drew their inspiration from. For example, Article VIII providing for the inviolability of one's dwelling has the following notation:

This article seeks to enact an old principle of British liberty—'that every man's home is his castle'—and that no one is entitled to force himself into the home of another. It provides a provision against arbitrary searches by the police. The wording follows Article Seven of the Irish Free State Constitution except that the words 'every person

³⁸² *Kwame Nkrumah to Alan Lennox-Boyd*, 22 September 1956, DO 35/6173.

³⁸³ Gold Coast, *Proposals for the Constitution of Ghana*, 1956 in CO 554/821.

³⁸⁴ Part II of *Proposals for the Constitution of Ghana*, 1956 in CO 554/821.

in Ghana' have been substituted for the words 'every citizen.'³⁸⁵

Article XII on the provision against retrospective laws and double jeopardy was based on section 20 of the Constitution of India while Article XIII on freedom from discrimination was drawn from Article 2 of the UDHR and section 36(2) of the Gold Coast (Constitutional) Order in Council, 1954.

The 'Secret Proposals' were passed on to the Secretary of State for the Colonies on October 4, 1956. In a memo the Secretary of State for the Colonies was requested to respond to the proposals by October 15, so they could be discussed with the opposition parties on October 16, debated in the Legislative Assembly on November 6, 1956 and gazetted for incorporation into the draft constitution.³⁸⁶ Internally, Sir Arden-Clarke supported the new proposals but was cautious about the provision that parliamentary authority ought to be supreme, something that would effectively undermine the justiciability of the bill of rights even if it was incorporated into the constitution.³⁸⁷

The Secretary of State for the Colonies had constituted a group in the Colonial Office, made up of J. S. Bennet, Christopher Eastwood, Ivan Watt and Z. Terry (West African Department), to deal specifically with the independence constitution. Sir Ralph Hone, the Assistant Legal Adviser, was appointed the lead adviser on constitutional matters and head of the group. The Secretary of State for the Colonies sought the advice of the group on the 'Secret Proposals.' Minutes of one of their sessions highlight one clear position, *viz.*, while they had a potential of redressing the grievances of the opposition preparing a new constitution by Order of Council in which they would be incorporated was not feasible, because independence was only five months away.³⁸⁸ Furthermore, Bing's position as

³⁸⁵ Article VIII of *Proposals for the Constitution of Ghana*, 1956 in CO 554/821.

³⁸⁶ *Memorandum by the Prime Minister for onward Transmission to the Secretary of State for the Colonies*, *Proposals for the Constitution of Ghana*, 4 October 1956 in CO 554/822.

³⁸⁷ Sir Charles Arden-Clarke to Alan Lennox-Boyd, 6 October 1956, *Proposals for the Constitution of Ghana* in CO 554/822.

³⁸⁸ J. S. Bennet, 5 October 1956, *Proposals for the Constitution of Ghana* in CO 554/822.

Nkrumah's government's legal adviser posed a constitutional dilemma to the Colonial Office. There was already a tacit use of the Gold Coast Prime Minister's prerogative of power in authorising Bing to draft an alternative constitution to the one being spearheaded by the Colonial Office. On October 10, 1956, the Secretary of State for the Colonies sent a telegram to Nkrumah's government drawing their attention to the fact that the April White Paper rather than the 'Secret Proposals' should form the basis of the independence constitution. He pointed out that he "cannot contemplate that the existing instruments should all be revoked and replaced by a comprehensive new constitution embodying many new features not in the present instruments such as the codification of fundamental rights and constitutional conventions"³⁸⁹ and reminded Nkrumah of his earlier acceptance of this in a memo to him (the Secretary of State for the Colonies) on September 7, 1956.³⁹⁰

Parkinson points out that the Colonial Office proceeded on the Independence Act for Ghana in two phases: the House of Commons passing an act that would grant parliamentary sovereignty to the Legislative Assembly and dominion status to the Gold Coast, and then the amendment of the 1954 Constitution to suit an independence context.³⁹¹ The British government was using its experience of granting independence to India and Ceylon to guide the way they dealt with the Gold Coast/Ghana transition. In a telegraph, the Governor of the Gold Coast notified the Secretary of State for the Colonies of a Cabinet decision taken on 15 October 1956 to use a modified version of the April White Paper instead of the 'Secret Proposals' in the new constitution.³⁹² (The cabinet had taken into account the Secretary of State for the Colonies' reply to Nkrumah concerning the 'Secret Proposals'.)

Nkrumah's government invited the parliamentary opposition to a constitutional conference in which the Revised Constitutional Proposals were discussed in line with the

³⁸⁹ Secretary of State for the Colonies telegram to Kwame Nkrumah, 10 October 1956, Proposals for the Constitution of Ghana in CO 554/824.

³⁹⁰ Nkrumah's Memo to Lennox-Boyd, September 7, 1956.

³⁹¹ See Parkinson, 114.

³⁹² Sir Charles Arden-Clarke to Alan Lennox-Boyd, 18 October 1956, CO 554/822.

position of the Colonial Office that the ‘Secret Proposals’ should be shelved. The leader of the NLM, Baffuor Akoto, guided the opposition while Nkrumah spearheaded the government position. Indeed, the revised proposals were a rehearsal of the April White Paper, namely provisions on non-discrimination on the grounds of race, guarantee of compensation for the compulsory acquisition of property, freedom of conscience and religion and the intent to incorporate a bill of rights after independence.³⁹³ The NLM, on the other hand, presented the same proposals they had given to the Secretary of State for the Colonies to the government, asking for the following provisions to be incorporated into the new constitution: justice; freedom of thought, expression, belief, faith, worship and association; equality of opportunity; recognition of the rights of minority groups; and subject to law, morality and good conscience that the UDHR shall apply in post-independent Ghana.³⁹⁴

Once again, the fundamental differences between the government and the parliamentary opposition were threatening to disrupt the talks. To avert this situation Nkrumah’s government sought and received permission from the Colonial Office to make public the telegram from the Secretary of State for the Colonies opposing the incorporation of a bill of rights in the new constitution. When talks resumed on October 24, the parliamentary opposition supported the proposal that a bill of rights should be incorporated into the constitution after independence mainly because of the position of the Colonial Office.³⁹⁵

Although the two parties did not agree on everything, for example, the guarantee of compensation for property acquired compulsorily, they both supported the inclusion of a bill

³⁹³ The provision on non-discrimination on the grounds of race was lifted from the 1950 Constitution; the guarantee of compensation for the compulsory acquisition of property was taken from the Secret Proposals; the freedom of conscience and religion provision was from the April White Paper and the Secret Proposals; and the intent to incorporate a bill of rights into the constitution came from the Indian bill of rights. Also see Minutes of meeting between the *Government and Parliamentary Opposition*, 16 October 1956, CO 554/825. See also Gold Coast, *The Government’s Revised Proposals for Gold Coast Independence* in CO 554/822.

³⁹⁴ *The Parliamentary Opposition, Notes and Counter Proposals on the Government’s Revised Constitutional Proposals for Gold Coast independence*, 19 October 1956, 10 in CO 554/825.

³⁹⁵ Minutes of the meeting between the *Government and Parliamentary Opposition*, 16 October 1956 in CO 554/825. The Colonial Office was allowing the Indian experience to guide the transition process in the Gold Coast.

of rights in the constitution after independence.³⁹⁶

Another important step taken by Nkrumah's government following the inter-party conference was a three-day session with the leaders of the regional assemblies. Representatives from the Asanteman Council, Joint Provisional Council of the Chiefs of the Gold Coast, the Northern Territories Council and the Trans-Volta and Togoland Council met with the government delegation. After studying the proposals of the government, the regional councils made formal submissions. The representatives of the Joint Provincial Council of Chiefs asked for a constitutional provision on freedom of religion and conscience while those of the Northern Territories Council demanded that "Fundamental rights of the individual should be declared before making the functional provisions... [because a] Constitution can claim obedience only in so far as it establishes a government in accordance with natural law."³⁹⁷ Parkinson draws attention to the way the assertion that natural law is the philosophical bedrock for a constitution served to reinforce the demands for the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights, the right to property, the right to constitutional remedies, the right to expression and freedom of speech to be incorporated into the Independence Council in Order.³⁹⁸ The government's position remained the same, namely, that "it would be impossible to include in the Independence Order in Council any codification of Fundamental Rights"³⁹⁹ and that the Indian constitutional experience should guide the negotiation process in the Gold Coast. Thus, the question of a bill of rights was deemed to be beyond the scope of two conferences, and as the Secretary of State for the Colonies said in his letter to the

³⁹⁶ Conclusions of Conference, attachment to Minutes of meeting between *Government and Parliamentary Opposition*, 27 October 1956 in CO 554/825.

³⁹⁷ Northern Territory, app F, attached to minutes of the meeting between the *Government and Representatives of the Asanteman Council, the Joint Provisional Council of Chiefs, the Northern Territories and the Trans-Volta and Togoland Council*, 30 October 1956 in CO 554/825. Also see Parkinson, ...

³⁹⁸ Parkinson, 117.

³⁹⁹ Minutes of the meeting between the *Government and Representatives of the Asanteman Council, the Joint Provisional Council of Chiefs, the Northern Territories and the Trans-Volta and Togoland Council*, 30 October 1956 in CO 554/825.

Governor of the Gold Coast, the attempt to resolve the differences between Nkrumah's government and other interest groups had not succeeded.⁴⁰⁰ In an undated comment, Arden-Clarke echoed the words of James Griffiths that "whatever the drafting difficulties or however unusual the procedure may be, the writing in of certain fundamental rights would go far to allay misgivings, particularly amongst the *intelligentsia*."⁴⁰¹

The government published the Revised Proposals for Gold Coast Independence on November 7, 1956 and initiated the debate in the Legislative Council. According to the debates, Nkrumah maintained the government position on the new constitution in the Legislative Assembly, arguing against the three main proposals of the opposition parties, i.e., regional assemblies having the same relationship as Northern Ireland to the UK in independent Ghana, the creation of an upper house and a council of state. However, the government conceded to the idea of a bill of rights in the constitution after independence.⁴⁰² Prior to the vote on the Government Revised Proposals in which the government won by 70 to 25, Nkrumah made a three and a half hour speech to the Legislative Assembly members outlining the vision of his government in independent Ghana. Not only did the Colonial Office accept the Government's revised Proposals but also Sir John Macpherson, the Permanent Under-Secretary in the Colonial Office, noted that Nkrumah's speech was excellent and that "if Nkrumah's action and conduct measure up to this speech all may yet be well."⁴⁰³

As the House of Commons tackled the drafting of Ghana's Independence Bill, the question of a bill of rights in the independence constitution came up again. Busia, one of the leaders of the NLM, raised the issue at a press conference held in London on December 10,

⁴⁰⁰ Alan Lennox-Boyd to Sir Charles Arden-Clarke, 23 November 1956 in CO 554/808.

⁴⁰¹ Office of the Governor of the Gold Coast, *Briefs for the Secretary of State's Visit to the Gold Coast* in CO 554/821.

⁴⁰² J. S. Bennet, *Ghana Independence Bill: Fundamental Rights, Briefs for the Secretary of State's Visit to the Gold Coast* in CO 554/821 (undated).

⁴⁰³ Sir John Macpherson, 29 November 1956, Proposals for the Constitution of Ghana in CO 554/823.

1956; he effectively accused the British Government of not supporting the incorporation of a bill of rights in the constitution, pointing out that “the Gold Coast Government was agreeable to producing a comprehensive constitution, including a guarantee of fundamental rights, to take effect at independence, but that they were prevented from doing so by the attitude taken by her Majesty’s Government.”⁴⁰⁴ In the *Hansard* of the House of Commons, James Griffiths, then the opposition spokesperson for colonial affairs, is quoted as saying that:

The Government of the Gold Coast have said that when they frame their Constitution after independence day that they propose to enshrine in it those provisions about fundamental rights which are incorporated in the Constitution of India... if those provisions for fundamental rights which are embodied in the Indian Constitution are enshrined in the Gold Coast’s Constitution, that may go a very long way towards removing many of the fears now expressed by the Opposition in Ghana. Can any steps be taken by the Gold Coast Government in advance of independence day?... I would put this suggestion to the Government of the Gold Coast, and I hope that the Secretary of State [for the Colonies] will give it some consideration. Cannot these provisions for fundamental rights, which the Government have already said they will accept, be embodied either in a Bill, or, if that is constitutionally impossible, in a White Paper and be debated in the Legislative Assembly and carried by a resolution which would indicate that they proposed to enshrine them in the Constitution after independence day? If that were done, it would go a very long way, I believe, towards meeting the fears which are being expressed...⁴⁰⁵

These words highlighted two key arguments as to why incorporating a bill of rights in the constitution should be given a second thought: first, the opposition parties in the Gold Coast pushed for it, and second, the Government had theoretically accepted the idea of a bill of rights. Parkinson has pointed out that Griffiths’ position did not represent the official Labour Party position on bills of rights but rather a personal pragmatic response to a problem.⁴⁰⁶

Lennox-Boyd’s response to Griffiths’ point was that

these fundamental rights—freedom from arrest, freedom of association, and things of that kind—are already implicit in the common law which extends throughout the Gold Coast, and their enunciation in the constitution would not add materially to that... Nonetheless, I have listened with sympathy and understanding to the arguments which have been used. I recognise that it may be that this ought to be looked at again. I will

⁴⁰⁴ Kofi Abrefa Busia, ‘London Press Conference,’ December 10, 1956 and J. S. Bennett, *Ghana Independence Bill: Fundamental Rights* in CO 554/821 (undated).

⁴⁰⁵ *Hansard*, House of Commons (Series 5) Vol. 562. Cols 1105-1211 (18 December 1956). Griffiths had served in Clement Attlee’s Government as the Secretary of State for the Colonies.

⁴⁰⁶ See Parkinson, 120-1.

give an undertaking that I will certainly look at it again, though I would emphasize that it would be unreasonable and impracticable not to take very full account also of the views of Gold Coast Government on all these matters, though on this particular matter it is true that both the Gold Coast Government and the Opposition at one time were in agreement that this should be done.⁴⁰⁷

Eastwood echoed a similar point two months prior to independence when he argued that

Nearly all these fundamental rights are fully safeguarded by the basic principles of the common law which of course applies in Ghana. The protection afforded by the common law is really a much better safeguard against abuse than any enshrinement in the constitution—provided of course that the independence of the judiciary is safeguarded.⁴⁰⁸

Nkrumah wrote a personal note to the Secretary of State for the Colonies protesting the unfairness of faulting his government for the dearth of a bill of rights and pointing out that

“we have both agreed that [a bill of rights] is a matter best left until after independence.”⁴⁰⁹

The Gold Coast Government also asserted that fundamental rights ought to have enforcement mechanisms guaranteeing the independence of the judiciary, judicial review and a realisable right to remedy, and the only way to safeguard fundamental rights is to accept the ‘Secret Proposals.’⁴¹⁰ Nkrumah also flagged up the fact that he was “firmly of the view that this is far too complicated a matter to be inserted in the Order in Council particularly in the short time available.”⁴¹¹

Although the House of Commons debate on a bill of rights for the Gold Coast had inspired a re-appraisal of the Gold Coast constitution-making exercise, the Colonial Office saw the issue of a bill of rights for its colonies as something to be approached with caution. As Christopher Eastwood, the Assistant Under-Secretary of State for the Colonies in-charge of West Africa, explained, “All our instincts are against trying to define fundamental rights

⁴⁰⁷ *Hansard*, House of Commons (Series 5) Vol. 562, col. 324 (11 December 1956).

⁴⁰⁸ Christopher Eastwood, 3 January 1957, *Briefs for the Secretary of State’s Visit to the Gold Coast* in CO 554/821.

⁴⁰⁹ Kwame Nkrumah’s to Alan Lennox-Boyd, 15 December 1956, *Fundamental Rights* in CO554/828.

⁴¹⁰ Kwame Nkrumah’s to Alan Lennox-Boyd, 15 December 1956, *Fundamental Rights* in CO554/828.

⁴¹¹ Kwame Nkrumah’s to Alan Lennox-Boyd, 15 December 1956, *Fundamental Rights* in CO554/828.

and if we do it for Ghana may it not set an awkward precedent for other places?”⁴¹² J. S. Bennett had also re-evaluated the issue of a bill of rights, situating it within the specific Gold Coast context and analysing the reasons for and against setting a precedent in Ghana.⁴¹³ The first reason underlined in Bennett’s file is the paradox of making provisions for fundamental human rights, while “any formulation of fundamental rights almost invariably ends by limiting them.”⁴¹⁴ On this point he raised the question of the judiciary having the power to either uphold or infringe upon individual rights depending on how freely it exercises its powers and the problem of the executive suspending a bill of rights during a state of emergency. Second, while the British government was the first to ratify the ECHR on March 8, 1951 it had not been keen to accede to the UDHR in 1948. (Greece had taken Britain to the European Court of Human Rights over its treatment of the Greek Cypriots in the same period.)

This position was defended by G. W. Putnam of the International Relations Department thus: “The reason why her Majesty’s government has become cool towards the United Nations draft covenants are (a) that since the 8th Session of the Assembly they have included a self-determination article and (b) that more and more rights have been added which would probably make it impossible for her Majesty’s government to ratify them.”⁴¹⁵ She went on to argue that “If Ghana becomes a member of the United Nations, I think it must automatically pledge itself to the [Universal] Declaration [of Human Rights], but the binding covenants have been on the stocks for ten years and if we have our way they are likely to be delayed as long as possible. Therefore I doubt whether any of the international Human Rights

⁴¹² Christopher Eastwood, 12 December 1956, Secretary of State’s Visit to the Gold Coast in CO 554/820.

⁴¹³ J. S. Bennett, *Ghana Independence Bill: Fundamental Rights, Briefs for the Secretary of State’s Visit to the Gold Coast* in CO 554/821 (undated).

⁴¹⁴ J. S. Bennett, *Ghana Independence Bill: Fundamental Rights, Briefs for the Secretary of State’s Visit to the Gold Coast* in CO 554/821 (undated).

⁴¹⁵ G. W. Putnam, 17 December 1956, *Fundamental Rights* in CO 554/828.

Covenants could provide any guarantee of human rights in Ghana.”⁴¹⁶ In a memo regarding fundamental rights, Sir Ralph Hone argued that including a bill of rights in the constitution “is not the British system.”⁴¹⁷

6.3. The problems with ‘historicising’ human rights through a bill of rights

The inspiration for a bill of rights in the 1957 Independence Constitution had its roots not only in the UN Charter and the UDHR but also in factors such as the constitutional experiences of former British colonies, excessive structural injustice and the domestic political pragmatism of some nationalist movements. But once the process of negotiation got under way it became clearer and clearer that these reasons were not persuasive enough for all the parties concerned. Also, the political and historical circumstances of the Gold Coast were not considered conducive enough for a bill of rights.

Ellacuria and Tarimo’s argument that the validity of human rights is in its application is relevant to the debate on introducing a bill of rights into the 1957 Independence Constitution.⁴¹⁸ The UDHR undertaking that “All human beings are born free and equal in dignity and rights”⁴¹⁹ provided a teleological basis for incorporating fundamental rights into the constitution of a country emerging from the shackles of colonial rule. The main proponents of the bill of rights considered that it would guarantee certain fundamental rights and give the new nation-state a legal framework for preventing state agents from violating the rights of individuals or minority groups.

While the opposition parties highlighted nine fundamental rights out of the thirty

⁴¹⁶ G. W. Putnam, 17 December 1956, *Fundamental Rights* in CO 554/828.

⁴¹⁷ Sir Ralph Hone, Memorandum regarding the including of Fundamental Rights in written Constitutions, 19 December 1956, *Briefs for the Secretary of State’s Visit to the Gold Coast* in CO 554/821.

⁴¹⁸ Tarimo, 75-6; Ignacio Ellacuria, “The Historicization of the Concept of Property”, trans. Philip Berryman, in *Towards A Society that Serves Its People: The Intellectual Contribution of El Salvador’s Murdered Jesuits*, ed. John Hassett and Hugh Lacey, Washington, D.C.: Georgetown University Press, 1991, 108-9. Tarimo used the expressions logical and semantic in very specific senses in relation to the validity of a concept and the full sense of meaning respectively.

⁴¹⁹ Art 1 of UDHR.

provided for in the UDHR in their ‘Proposal for a Federal Constitution,’ Nkrumah’s government specified only seven in the ‘April White Paper’ as well as in the ‘Secret Proposals.’ The ‘human rights texts’ dealing specifically with the issue of the bill of rights underline the reasons why the competing parties favoured some fundamental rights and not others. Firstly, there was a paradigm shift as anti-colonial nationalist front polarised in party politics. The 1951 Constitution paved the way for electoral representation under universal adult suffrage. With landslide victories in successive elections between 1951 and 1957, the CPP’s hold on state power changed independence politics in the Gold Coast. Thus, political pragmatism overshadowed the anti-colonial nationalist agenda that had previously characterised the activities of the UGCC and the CPP. The opposition parties united under the umbrella of the NLM with plans of changing the balance of power, improving their prospects for electoral success, and reversing the inequalities of pre-independence as the country transitioned into self-rule. The NLM attempted to shift the balance of state power through the constitutional means available to them. By arguing for the integration of fundamental rights into the Independence Constitution, they were seeking a safe mechanism through which minority interests would be protected.⁴²⁰ Secondly, Nkrumah’s government anticipated the threat that a coalition of opposition parties would pose to their fledgling hold on state power. Although the government’s position on the bill of fluctuated, political pragmatism shaped the negotiation process.

The wavering of the Colonial Office and Nkrumah’s government on having a bill of rights in the constitution shaped the way the independence bill was framed in 1956, giving sovereign power to the legislative organ of government rather than to the judiciary. The reasons were not always consistent, but documents from the Colonial Office and the Gold Coast highlight a number of reasons for the vacillation. First, the Colonial Office looked for a

⁴²⁰ See, for example, Kofi Abrefa Busia, *Gold Coast Independence: Memo to the United Kingdom Government*, November 30, 1956.

precedent upon which to construct the Gold Coast transition; second, they wanted a constitution in which the powers of the three organs of governmental could be weighed against each other in the model of Westminster; third, Colonial officials such as Bennett and Eastwood, Hone and Putnam wanted to wash their hands off any blame in the event a bill of rights backfired in post-independent Ghana; fourth, Nkrumah's government seemed certain about the need for independence from colonial rule but unsure about the benefits and detriments of a bill of rights under the new regime.

The British Government drafted a White Paper on the independence of Ghana in the weeks leading up to the visit of the Secretary of State for the Colonies to Accra. Apart from recommendations on job security for the expatriate civil servants and constitutional guarantees, the document reflected the Gold Coast Government's Revised Proposals.⁴²¹ During the Secretary of State's visit to the Gold Coast (January 24 to 30, 1956) he held discussions on the White Paper on the Independence Constitution with the Nkrumah's government and with the opposition parties. According to the minutes of some of the meetings, the issues that engaged the imagination of the three parties included safeguarding constitutional amendments to two-third majority of the Legislative Assembly as well as the regional assemblies, an independent body responsible for the service commission, and the question of regional assemblies. Eastwood, who had preceded the Secretary of State on the visit, noted that

We had there ten days of intense discussions on every conceivable subject, but the question of fundamental rights was only raised in very general terms by the Opposition and we had no detailed discussion on the subject as such with either the Opposition or the Government.⁴²²

After the Secretary of State's visit to Accra the Ghana (Constitution) Order in Council was issued on 22 February 1957. The recognition of the rights of minority groups, and

⁴²¹ Draft White Paper on the Ghana Constitution, 15 January 1957, *Briefs for the Secretary of State's Visit to the Gold Coast* in CO 554/821.

⁴²² Christopher Eastwood, 13 March 1958, *Fundamental Rights* in CO 554/828.

compensation for property compulsorily acquired by the state, and freedom of religion in the new constitution was the closest to providing for fundamental rights in new Ghana.⁴²³ Many scholars have pointed out that not including a bill of rights in the independence constitution or making it difficult to amend the constitution gave an arsenal of political weapons to Nkrumah's government to use against their critics after independence. Within a year of attaining independence, Ghana's new constitution faced a number of implementation challenges. The Constitution (Repeal of Restrictions) Act 1958 was passed expunging the three fundamental rights from the constitution.⁴²⁴

6.4. Question of justiciability and reasons for the choice of fundamental rights

The fundamental rights that the 'Proposal for a Federal Constitution,' the April White Papers, 'Secret Proposals' and Proposals for the Constitution of Ghana provided for were recognised as justiciable in the sense that, theoretically, they could be invoked in a court of law and applied by judges. For example, Article L of the *Proposals for the Constitution of Ghana* stipulated that

Subject to the provisions of Article Thirty-seven the right to move the Supreme Court for the enforcement of the rights contained in Part II of this Constitution is guaranteed to every citizen of Ghana wherever he may be and to every other person while in Ghana, and the Supreme Court shall have power to issue appropriate directions, orders or writs for the enforcement of the rights conferred therein.⁴²⁵

The applicability of human rights law is consistent with Edsman's view that Gold Coast had a small number of Western-trained African lawyers.⁴²⁶ An inevitable consequence of the number of lawyers in the country was that the judiciary could grow out of this group after

⁴²³ The minority rights clause was taken from the Gold Coast (Constitution) Order in Council 1950, SI 1950 No. 2094; Gold Coast (Constitution) Order in Council 1954, SI 1954 No. 551, s 36. The property clause was modelled on the Gold Coast (Constitution) Order in Council 1954, SI 1954 No. 551, s36A while the clause on freedom of religion was taken from Nkrumah's government's April White Paper.

⁴²⁴ Constitution (Repeal of Restrictions) Act, 1958 (Ghana). Nkrumah's government passed into law the Deportation Act and Emergency Powers Act (1957) and the Preventive Detention Act (1958) immediately after independence. These laws repressed the opposition parties and muzzled the independent press.

⁴²⁵ *Proposals for the Constitution of Ghana*, October 1956 in CO 554/822.

⁴²⁶ Edsman, 1979.

independence; also, the basic conditions existed for justiciability of the bill of rights to be realised since there was a growing understanding and spread of the litigation culture.

Although the complexity of factors that determine the appointment of judges may make this a simplistic position, it points to the fact that there was an enabling environment for a workable bill of rights.⁴²⁷ Thus, enshrining fundamental rights in the constitution seemed like a goal that the post-colonial government, in the estimation of the NLM, should aim for in an environment where rights would be protected by the courts. Jurisprudence from Gold Coast courts up to that point in history was understandably non-existent on the application of fundamental rights which is one of the reasons legal enforceability seemed an appealing option as the country moved toward independence.⁴²⁸

Apart from the question of justiciability is the constitutional and statutory nature of a bill of rights in a country emerging from colonial rule. A bill of rights is an extrapolation from the values of liberal democracy, something which the nationalist movements fervently demanded from the colonial administration. The provisions made in the Gold Coast (Constitution) Order in Council 1951 about universal adult suffrage served as a stepping stone for the demands for fundamental rights in subsequent constitutions. Busia pointed out in a memo to his parliamentary colleagues four months before independence the positions of the competing parties on the bill of rights:

In a recent statement by the Gold Coast Government in a white paper entitled 'The Government's Revised Constitutional Proposals for Gold Coast Independence', it is stated 'Originally the opposition proposed that there should be an entirely new and written Constitution, for Independence. The Government had much sympathy with this idea and in particular, like the opposition, wished to include in the Constitution fundamental rights guaranteeing liberty and the right of political and industrial association, together with freedom of speech and of the Press. The British

⁴²⁷ For example, sections 60-64 of the *Gold Coast (Constitution) Order in Council 1954* and Article XLIII of the *Draft Proposals for a Constitution for Ghana 1956*, judges are appointed by the Governor-General, "acting on the advice of the Prime Minister after consultation with the Chief Justice." At the time, Kwame Nkrumah was the Prime Minister, and he understood the political implications of having judges who were sympathetic to government causes.

⁴²⁸ Kofi Abrefa Busia, *Gold Coast Independence Gold Coast Independence: Memo to the United Kingdom Government*, November 30, 1956.

Government, however, took the view, that these were matters which should be put into the Constitution after Independence and after the British Parliament had conferred full sovereignty on the Parliament of Ghana.’ The opposition maintains its view that a proper written Constitution for the new State should be drafted before Independence.⁴²⁹

Without the structured forum for the transfer of power brought about constitutionally, the nascent democratic culture of debating and negotiating different political positions highlighted by Busia would not have been feasible.

A diversity of factors determined which fundamental rights were preferred by different competing parties on the bill of rights. Firstly, the racial composition of the Gold Coast formed the basis for a dichotomy between ‘British citizens’ and ‘British subjects,’ with the former having more rights than the latter. As a result, anti-colonial nationalism flourished as more and more ‘subjects’ became agitators for greater say in government and the right to be recognised as citizens with certain basic rights. Secondly, the colonial administration had a draconian legal framework for responding to civil disputes in the Gold Coast, including emergency measures under which those aspects of common law that protected rights were immediately suspended; also, local leaders who opposed colonial rule were sometimes deported.⁴³⁰ It should be noted that that the question of citizenship and declarations of states

⁴²⁹ Kofi Abrefa Busia, para 4 of *Gold Coast Independence Gold Coast Independence: Memo to the United Kingdom Government*, November 30, 1956.

⁴³⁰ See *Hansard* House of Common Debates, 28 January 1897 Vol. 47 cc 678-9. Michael Davit raised the following question: “I beg to ask the Secretary of State for the Colonies whether Prempeh... gave the assurances that he would make full submission and accept the British terms, and pay the indemnity demanded of him in due course, if a reasonable time were allowed; whether any resistance whatever was offered to the advance of the British troops by Prempeh or his chiefs, who had made proclamation throughout the King’s territory that all weapons should be removed to the interior, and that no opposition should be offered to the expedition; will he explain why, after these assurances, the King was deposed and made prisoner along with several of his chiefs, and the British soldiers who had been permitted to march without resistance to Kumassi afterwards looted the King’s house and dug up the graves of dead chiefs in search of treasure; and whether he will lay a copy of Prempeh’s petition upon the Table of the House.” To which Joseph Chamberlain, the Secretary of State for the Colonies, said that: “In December 1895 and January 1896, while the expedition was on its way to Kumassi [*sic*], the Governor sent messages requiring Prempeh to make full submission and to pay the cost of the expedition; no promise, however, was then made by Prempeh to pay his indemnity, and no reliance can be placed on the statement made in his petition that he would pay it... No resistance was offered at Kumassi [*sic*], but the Government received no message reporting the removal of all weapons... On December 25th, the King of Bekwai informed us that although he had pressed Nkrumah to comply with the demands of the British Government the latter had refused, and the reports from other chiefs proved the constant aim of Prempeh to have been the re-establishment of the old limits of Ashanti with its necessary consequences of slave-raiding and

of emergency are not only interconnected but also form part of the background for selecting only nine out of the thirty rights delineated in the UDHR.

The Opposition Parties theoretically situated their demands for a bill of rights on the forces that would bind the nation-state together after independence. Busia's memo to his parliamentary colleagues points out that

The only link which binds these four territories [Gold Coast colony, Ashanti Protectorate, Northern Protectorate and Trans-Volta Togoland] at the present time is British sovereignty. If that link is removed, there will be no bond either legal or political to hold together the proposed new State except upon the basis of general agreement."⁴³¹

Although Busia's argument is not really the full story about post-World War II Gold Coast, it provides a helpful context for understanding nationalist politics from 1950 onward and reveals the way sectional and ethnic interests shaped the contours of party politics in the years leading up to independence. The practice of party politics among the nationalist movements became a contentious site where ideas of colonial domination clashed with ideas of ethnic identity, sectional interest and self-determination. It should also be noted that the amalgamation of many of the southern-centred opposition parties into the NLM and formation of the Northern Peoples' Party (NPP) in 1954 highlighted the challenge of sectionalism over nationalism. Prior to the 1950s, however, nationalism had generated several unifying myths, and the nationalist leaders focused less on the dividing lines on party politics or ethnic belonging, as the basis for asserting the right to self-determination in the Gold Coast.

Thirdly, the underlying principle for the opposition parties coalescing into the NLM was to challenge the CPP, the ruling party, as the dominant nationalist party both in the eyes of the electorate and the British Government. Bing points out that the timetable for

human sacrifices. The deportation of Prempeh was under the circumstances necessary, and without it the expedition could not have realised the objects for which it was intended."

⁴³¹ Kofi Abrefa Busia, *Gold Coast Independence Gold Coast Independence: Memo to the United Kingdom Government*, November 30, 1956.

independence was constructed against the background of the electoral success that the CPP had had in the 1951, 1954 and 1956 legislative elections.⁴³² As a result, the colonial administration used “the CPP in the same manner as they once used the chiefs”⁴³³ in the policy of indirect rule. This created a sense of exclusion in the opposition coalition who found ways of asserting their power to the British and Nkrumah’s governments. The NLM ‘Proposals for a Federal Constitution’ reinforced the idea that the Gold Coast colony, Ashanti Protectorate, Northern Protectorate and the Trans-Volta Togoland should have bicameral regional parliaments apart from the federal legislature with an upper house based on regions and a lower house based on population distribution. Such an arrangement would have limited the powers of the federal government, made constitutional amendments difficult and given back to the chiefs a central role in government after the introduction of universal adult suffrage and the ‘new culture’ of electoral representation in the Legislative Assembly had practically eroded the power of the chiefs.

It is important to note that many of the nationalist figures, sections of the *intelligentsia* and the emerging domestic business class came from royal families. For example, Danquah was from the Ofori Panin Royal House of Akyem Abuakwa of which his brother, Nana Ofori Atta I, was *Omanhene* (King) while Busia descended from the Royal House of Wenchi.⁴³⁴ Nana Ofori Atta I was in fact one of the first Africans to be appointed by Governor Hugh Charles Clifford to the Legislative Council in 1916, and paved the way for the progressive increase in the number of chiefs in the legislature. Out of twenty-nine

⁴³² Bing, 169.

⁴³³ Quoted in Bing, 157. John Tsiboe, the editor of *Ashanti Pioneer*, made the remark “the British are using the CPP in the same manner as they once used the chiefs” to Richard Wright.

⁴³⁴ Nana Ofori Atta I (1881-1943) was enstooled *Omanhene* (King) of the Akyem Abuakwa in 1912. According to Rathbone, he charted two paths in his life, “one firmly rooted in a concern for binding the state by the traditionally sanctioned method of multiple marriage and the other rooted in his strong case for ‘modernisation’ and progress.” See J. A. R. Rathbone, *Murder and Politics in Colonial Ghana*, New Haven: Yale University Press, 1993, 41.

members of the Legislative Council in 1945, five were paramount chiefs.⁴³⁵ Members of royal households filled the leadership slots of the ‘movement,’ among them Danquah and Bafuor Osei Akoto, the chief linguist of the Asantehene. Danquah became more or less the mouthpiece not only of a centre-right *intelligentsia* but also of the chiefly class, advocating, in the ‘Proposals for a Federal Constitution’, for an upper house of parliament wholly for the chiefs.

Elected representatives took their place in the Legislative Council following the February 8, 1951 elections, and the State Council Bill 1956 curbed their already-limited influence in national politics. Although the policy of the NLM was not explicit about restoring chiefs’ power in national government, three elements highlight the influence of the southern royal households on the movement. The reason the coalition of opposition parties was called ‘National Liberation Movement,’ and not ‘party,’ is because of the influence of the chiefs. Bing points out that the reason for the choice of the term ‘movement’ over ‘party’ is because

[p]arty politics were contrary to the tenets of traditional rule and as a price for their [the chiefs’] support they insisted it should embrace feudalism also and thus propose the re-division of the country into its old provinces which had existed as almost separate entities in the heydays of Indirect Rule.⁴³⁶

Some analysis of the configuration of the Gold Coast Colony is useful to highlight why the issue of ‘minority rights’ came up in the demands of the NLM, as it points to ethnicity and sectionalism as a *raison d’être* for demanding protection for the rights of minority groups. In at least two memoranda, Busia underlined the issue of the disconnection between the four entities that made up the Gold Coast. For example, in ‘Judge for Yourself,’

⁴³⁵ The following chiefs were on the Council as part of the broader application of the policy of indirect rule: Hon. Nana Tsibu Darku IX (Omanhene of Assin Atandasu and Provincial Member for Central Province), Hon. Nene Nuer Ologo V (Konor of Yilo Krobo and Provincial Member for the Ga-Adangme Section of the Eastern Province), Hon. Nana Amanfi III (Omanhene of Asebu and Provincial Member for Central Province), Hon. Nana Annor Adjaye II (Omanhene of Western Nzima and Provincial Member for the Western Province), Hon. Nana Kwame Fori II (Omanhene of Akwapim and Provincial Member for the Akan Section of Eastern Province). See *Ghana Legislative Council Debates*, Session 1945 Vol. 1.

⁴³⁶ Bing, 159.

Busia argued that

The NLM and its allies stand for a unity of equals in a federation. *Federation is a unity of equals. We want the Northern Territories, Ashanti, the Colony and Togoland, each to be able to manage as much of its own affairs as possible, and at the same time walk arm in arm as equals, each helping the other, each contributing to the greatness and well-being of our country* (italics in the original).⁴³⁷

In ‘Gold Coast Independence,’ he highlighted the disparity between the four entities that would form an independent Ghana as the basis for incorporating the ‘Proposals for a Federal Constitution’ into the independence constitution:

The area of the proposed State of Ghana is neither geographically, historically or politically a single entity. It consists of four separate regions. In addition to the Crown colony of the Gold Coast are the separate regions of Ashanti and the Northern Territories. Up till 1901 Ashanti was a separate political unit and even after its annexation in 1901 continued to be administered separately from the Gold Coast colony. The Northern Territories constitute since 1897 a British protectorate. There is also a separate Trust Territory of Togoland. It is not sufficient if the Constitution meets with the approval of the majority of the Gold Coast colony. Unless it also commands the general support of the inhabitants of the other territories, by offering them the security and protection to which they are entitled, the new State will be open to grave internal conflicts at its very birth.⁴³⁸

Although the Gold Coast Legislative Council had African members from 1916 onward, it was not until 1946 that the Ashanti Protectorate sent its first representatives. The Northern Protectorate continued to “rely upon treaties made between Queen Victoria and their chiefs and to be governed directly by British officers under the colonial office, in alliance with their traditional authorities.”⁴³⁹ The position of Trans-Volta Togoland as a Mandate Territory, later a UN Trust Territory, under British control placed it in a unique territorial situation. Change in legislation enabled the Northern Territories and Trans-Volta Togoland to send their first representatives to the legislature in 1951, albeit for the former not under universal adult suffrage but rather chosen by an assembly of District Councillors.⁴⁴⁰ Even though people in

⁴³⁷ Kofi Abrefa Busia, “Judge for Yourself,” 1956.

⁴³⁸ Kofi Abrefa Busia, “Gold Coast Independence,” 1956.

⁴³⁹ “The Birth of Ghana” in *The Round Table: Commonwealth Journal of International Affairs*, 47: 48-56.

⁴⁴⁰ See *Administration of Togoland and Its Future Unification* in CO 554/1032; *The Togoland Plebiscite: Draft Order in Council* in CO 554/1045. The British Government had made it clear to the UN in 1954 that Trans-Volta Togoland could not be governed as a part of the Gold Coast (Ghana) after independence under the

the Gold Coast colony and Ashanti Protectorate elected their representatives by popular vote, it took another five or so years before the population in the northern half of the country could enjoy the same democratic rights. As an anonymous author indicated in the *Journal of African Law* in 1957, even though the Northern Protectorate was under the full jurisdiction of the British Monarch, it did not form “part of Her Majesty’s Dominion... [at] independence it... was agreed to adopt the alternative of terminating the various agreements with the native Chiefs in the Northern Territories upon which the protection accorded by Her Majesty to those territories was based.”⁴⁴¹

Given the differences in developments between the Gold Coast colony as well as the Ashanti Protectorate on the one hand and the Northern Protectorate, a federal system of government would have left the northern half of the country theoretically enjoying what Busia termed ‘unity of equals’ without the attendant infrastructural improvements. Aspects of pragmatism justified the different approaches taken by the political parties on the question of a bill of rights.

6.5. Negotiating the meaning of fundamental rights and freedoms

During the transition from colonial to self-rule in the Gold Coast a complex set of assumptions, expectations, conventions and frameworks shaped the way meanings of fundamental rights and basic freedoms were negotiated. Among the agents of negotiations, the principles of human rights were conceptualised against the backdrop of colonial domination, existing realities of politics and culture, and the post-independence future of the country. The idea that fundamental rights are rooted in ‘human dignity’ reinforced the claim

Trusteeship Agreement. Hence, the UN asked that the people in that territory vote in a plebiscite to decide whether to become part of the Ghana at independence or not. Majority of the people voted in favour of joining Ghana, and the UN General Assembly passed Resolution 944 (X) “The Togoland Unification Problem and the Future of the Trust Territory of Togoland under British Administration,” 15 December 1955.

⁴⁴¹ “The Legislation Providing for the Grant of Independence to Ghana” in *Journal of African Law*, 1(2) Summer, 1957, 99-112.

to the right to self-determination and a democratic culture in which all human beings are entitled to be treated with dignity and justice. It is worth noting briefly that the nine fundamental freedoms and rights that the Northern Territories Council proposed to Nkrumah's government were all guaranteed in the UDHR.

From the outset, the UN human rights framework gave prominence to the idea that all human beings have certain fundamental freedoms and basic rights. The UDHR, which underlined the fact that human beings are all equally entitled to human rights without discrimination on grounds of gender, race, sex, national or ethnic origin, religion, language or any other status, touched a nerve in the nationalist movements in the Gold Coast. It is the revulsion to the inhumanity of human beings toward other human beings that inspired the UN to express the determination

to affirm faith in fundamental human rights, in the dignity and worth of the human person, in equal rights of men and women and nations large and small, to establish conditions under which justice and respect for the obligations arising from treaties... can be maintained, and to promote social progress and better standards of life in larger freedom.⁴⁴²

The nationalist movements increasingly integrated the language of human rights into the existing emancipatory discourses, and in the period leading up to independence some nationalist movements demanded that these rights be guaranteed by law. In the case of the NLM, which consistently campaigned for a bill of rights, shaking off the shackles of colonial domination was only one of the steps necessary to build a democratic culture in the post-independent Ghana. These nationalist parties considered the matter of enshrining fundamental rights through a bill of rights important. In 'Judge for Yourself', for example, Busia asserted that Nkrumah's government had disappointed many people in the country

because [*inter alia*] they have seen threats of dictatorship... [and] a federal form of government for the Gold Coast ... [would] safeguard the country against dictatorship, provide constitutional checks against over-centralization of power, and do justice to

⁴⁴² Preamble of UN Charter.

the legitimate and manifest desire of each region for a large measure of autonomy.⁴⁴³

Collective fear of the opposition parties that without clear constitutional guarantees Nkrumah's government (or any other government for that matter) might deny their basic rights to minority groups and individuals holding different views from the party in power played a part in the struggle.⁴⁴⁴

The increasing penchant for the adoption of bills of rights among former British colonies also influenced the discourse of human rights in the Gold Coast. Indeed, this was part of the broadening awareness of the international political realities by the nationalist movements. In particular, the Irish, Indian and Sri Lankan constitutional examples were considered worth emulating in the Gold Coast. Some of the rights in the proposed bill of rights were inspired by the Irish Free State Constitution Act, 1922 and by the Constitution of India, 1949. Nkrumah's government seemed determined to follow the Indian example by arguing for the adoption of a bill of rights after independence. Bing substantiates this point by highlighting the sources of the fundamental rights in the 'Proposals for the Constitution of Ghana.'⁴⁴⁵ Constitutional provisions prohibiting discrimination against minority groups in Gold Coast (Constitution) Order in Council 1950 were replicated from the Sri Lankan constitution regarding protection for the Tamil minority.

A complex network of assumptions about international human rights, expectations for an independent Ghana, conventions about constitution-negotiating processes and the power of an enforcement mechanism influenced the debates, determined which rights were considered essential in the proposed bill of rights, and the agreement that Ghana should emulate the Indian example. The domestic colonial situation accounted for the type of rights

⁴⁴³ Busia, "Judge for Yourself", 1956.

⁴⁴⁴ History proved that the NLM fear of dictatorship in post-independent Ghana was justified, because Nkrumah's government changed from being a liberal democracy to an authoritarian regime in a very short time. Not only were the three fundamental rights in the constitution repealed [Constitutional (Repeal of Restrictions) Act, 1958 but the Deportation Act 1957, Emergency Powers Act 1957, and the Preventive Detention Act 1958 were passed by a CPP-dominated parliament.

⁴⁴⁵ See Appendix II of the thesis.

that caught the imagination of the negotiating parties. In the submission of the Northern Territories Council in 1956, a bill of rights is viewed as important because of the power of justiciability that a constitution would give it.⁴⁴⁶ It is not clear what exactly was meant here by 'natural law' but the philosophical undertone cannot be missed in the use of the term in the particular context. Natural law means the designate laws set 'by nature' and therefore valid in the Gold Coast as in other parts of the world. Be that as it may, the term got lost in the maze of the debates about when to introduce a bill of rights rather than about the precise philosophy of human rights. Indeed, this point draws attention to the symbiotic interplay between theoretical understanding and activism, two essential aspects of human rights discourse in a situation of injustice. In UDHR parlance everyone has the right to equality, but this may mean nothing to someone whose rights are not protected constitutionally at the domestic level. In this context, the idea of a bill of rights was intertwined with what the Northern Territories Council understood to be a concept of truth, a notion of the common good and the meaning of democratic culture.

Although Nkrumah's government and the opposition parties differed on the form government ought to take, they agreed on the value of a bill of rights in the constitution even if for different reasons. The repeated attempts to reach agreements with the NLM over the form of constitution to adopt for the country highlight a certain willingness to negotiate on the part of the political parties and openness to the normative principles of parliamentary democracy. The number of negotiation activities in 1956 alone underscores the nascent democratic culture in the work of government. For example, a select committee was set up in 1955 to consider the constitution, the services of an independent constitutional adviser were employed between 1955-56, the Achimota Conference was held in 1956, a Government 'White Paper' on the constitutional proposals for independence was released in 1956, general

⁴⁴⁶ Northern Territory, app F, attached to minutes of the meeting between the *Government and Representatives of the Asanteman Council, the Joint Provincial Council of Chiefs, the Northern Territories Council, and the Trans-Volta Togoland*, 30 November 1956 in CO 554/825.

elections were held in 1956 in which the CPP again won the majority in parliament, Alan Lennox-Boyd, the Secretary of State for the Colonies, paid an official visit to the Gold Coast, a delegation of the NLM met with the Secretary of State for the Colonies in London on the constitution in 1956 and Nkrumah's government's Secret Proposals on the constitution were forwarded to the Secretary of State for the Colonies in October 1956, among other activities.

While it did not provide constitutional guarantees for basic freedoms or principles of parliamentary democracy British common law tradition became a reference point for the Colonial Office in the debates about a bill of rights. For example, when Christopher Eastwood claimed that "fundamental rights are fully safeguarded by the basic principles of the common law which ... applies in Ghana,"⁴⁴⁷ he was effectively arguing that a bill of rights would be more or less superfluous. The position of the Colonial Office on fundamental rights adversely affected the efforts of the opposition parties and of Nkrumah's government to have fundamental rights entrenched in the independence constitution.

6.6. The gender question in the debates on the bill of rights

The particular position of Gold Coast women whose basic rights and fundamental freedoms were not prioritised in any specific way in the proposed bill of rights highlights the disjuncture between the theory and praxis of human rights, the actual experiences of people on the ground. The nationalists' discourses of human rights reflected broad frames of reference about self-determination that overshadowed the concerns of minority groups, including women and girl-children. In applying a hermeneutic of feminist research which examines perspectives that have developed outside the established ways in which women are excluded or sidelined, it is worth noting that Gold Coast women were absent from the negotiations and their specific human rights' concerns were neglected in the draft proposals

⁴⁴⁷ Christopher Eastwood, 3 January 1957, *Briefs for the Secretary of State's Visit to the Gold Coast* in CO 554/821.

for the bill of rights. This state of affairs reveals a number of things about the gender politics in nationalism in general and in negotiating a bill of rights in particular.

Although women played a crucial part in anti-colonial nationalism in the Gold Coast, their role was more predictable than discernible. Nowhere was this more noticeable than in the negotiation process for the bill of rights and the content of the draft proposals.⁴⁴⁸ Women in the country were legally, and often culturally, subordinate to men in the home and this disparity between the sexes was replicated at all levels of public life. Patriarchy (among some ethnic communities) and colonialism collectively constructed women as a subordinate group to the men. The different shades of discrimination by the state and the nationalist movements were further complicated by the transition from colonial rule to self-rule in the country.

Needless to say, national politics were dominated by men, with the leadership positions in the colonial administration and nationalist movements going exclusively to men. The reason why women were disadvantaged in the nationalist movements is that they were not involved in policy-making at the top levels.⁴⁴⁹ Even when the universal adult suffrage was conceded to the Africans in the Gold Coast in 1951 there was a caveat that those standing for public office had to know how to read and write in English Language, own some property and pay a basic electoral fee.⁴⁵⁰ These qualifications not only disadvantaged women but also worsened their already subordinate position in society. Lack of equal educational opportunities for girl-children especially in the protectorates and the mandated territory already excluded many of them from running for leadership positions.

⁴⁴⁸ Nira Yuval-Davis & Flora Anthias, *Women-Nation-State*, London: Macmillan, 1989: They point out that there are five forms of women's relations to nationalism: as biological reproducers of national groups or biological mothers; as symbols and signifiers of national difference in male discourse; as transmitters and producers of the cultural narratives as teachers, writers, mothers and artists; as producers of the boundaries of the nation by accepting or refusing marriage or sexual intercourse with men from prescribed groups; as active participants in national movements such political parties, armies, trade unions and community organizing.

⁴⁴⁹ See, for example, *Annual Report of Education in the Year 1956; Accelerated Development Plan for Education*, 1957; Takyiwah Manuh, "Women and Their Organizations During the Convention People's Party Period" in Kwame Arhin, ed., *The Life and Work of Kwame Nkrumah*, Trenton, NJ: Africa World Press, 1993, 101-28; April Carter, *The Politics of Women's Rights*, London: Longman, 1988, 43.

⁴⁵⁰ Gold Coast (Constitution) Council in Order, 1951.

Anti-colonial nationalism is one of the driving forces in the politicisation of Gold Coast women. Through it both urban and rural women negotiated new forms of access to experiences of political power, what political activities they could engage in, who they could vote for in elections, ways to assert their claims to be regarded as people entitled to the benefits of democracy, the meaning of fundamental rights and the application of the norms of human rights in their lives. At the same time, because “nationalisms are gendered”⁴⁵¹ it included a select few but excluded the majority of women in an intersectionality of gender, race and class. For example, even though the CPP appointed Mrs. Leticia Quaye, Mrs. Hanna Cudjoe, Madam Ama Nkrumah (not a relative of Kwame Nkrumah) and Madam Sophia Doku as Propaganda Secretaries of the party in 1951, it took another three years before the first woman, Mabel Dove Danquah, was elected (as the CPP Ga MP) to the Legislative Assembly.⁴⁵²

It is revealing that the human rights texts that served as the basis of analysis on the bill of rights said nothing about the role played by women in, for example, the Achimota Conference or in drafting the NLM ‘Proposals for a Federal Constitution’ or in Nkrumah’s government’s April White Paper. Takyiwah quotes Margaret Martei, one of the CPP women’s activists in the 1950s, as saying that her initial knowledge of nationalist figures such as Nkrumah was through various meeting venues “where she was cooking for them.”⁴⁵³ In other words, the gender-bias was manifested in the absence of women in negotiating the bill and also in the dearth of their specific interests in the submissions or draft proposals.

Although the vote was granted to women in the UK in 1918, the issue of feminism and gender politics remained unresolved at several levels in Britain as well as in their colonies. It is therefore not surprising that so few women were given senior positions in the

⁴⁵¹ Anne McClintock, “No Longer in a Future Heaven? Women and Nationalism in South Africa” in *Transition*, 51, 1991: 104-23.

⁴⁵² Gold Coast, *Legislative Assembly Debates*, 1954, 1.

⁴⁵³ Manuh, 124.

colonial civil service in the Gold Coast or even at the Colonial Office. On negotiating the bill of rights for Ghana, for example, G. W. Putnam became the lone voice of UK women, at least from the available human rights' texts available. An official of the UK International Relations Department, Putnam's position on human rights seemed somewhat paradoxical in two ways: a general scepticism about fundamental rights and no specific mention of women's human rights. Perhaps the scepticism reflected the British Government's position while the visor she wore over women's rights mirrored a broader international viewpoint on human rights. These two positions are captured in her argument that,

If Ghana becomes a member of the United Nations, I think it must automatically pledge itself to the [Universal] Declaration [of Human Rights], but the binding covenants have been on the stocks for ten years and if we have our way they are likely to be delayed as long as possible. Therefore I doubt whether any of the international Human Rights Covenants could provide any guarantee of human rights in Ghana.⁴⁵⁴

The UDHR anticipated the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) by emphasising the principles of non-discrimination and equality in 'dignity and rights' of all human beings. Having these provisions is one thing, promoting gender equality and women's human rights in line with relevant international treaties is quite another. The disjuncture between theory and practice remained a major challenge to achieving female emancipation and equality. To use Clintock's phrase to capture the Gold Coast situation, both colonialism and nationalism are constituted as gendered discourses that cannot be understood without theories of gender power.

6.7. Rights as an emancipatory discourse or just another hegemony?

Since its emergence, international human rights has meant all things to all people, time and again reflecting the requirements for justice when oppressive conditions in the power structure have existed. It also sought to provide remedies where violations of basic

⁴⁵⁴ G. W. Putnam, 17 December 1956, *Fundamental Rights* in CO 554/828. Also see *Ghana's Inheritance of UK Treaty Rights and Obligations* in CO 554/811.

freedoms and individual rights occurred. The concept of human rights has been used to protect the common interest of individuals as well as groups, which is why the question of human rights as an emancipatory discourse and/or hegemony is important here. The nationalist movement, in particular, appropriated and deployed the human rights language as an emancipatory discourse to question the underlying assumptions of colonial rule and assert their sense of human dignity through both dialogue with and protest against the colonial regime. The term emancipatory discourse is used here to mean frames or practices that free individuals and groups from structural injustice and oppressive situations which are limiting personal autonomy and restricting communal potential.⁴⁵⁵ For example, Habermas in discussing the dominance of economic and political institutions in society justifies a wide use of emancipatory discourse.⁴⁵⁶ One of the characteristics of this kind of discourse is its power to enlighten people through dialogue and to create a collective consciousness for action; Habermas calls this the processes of dialogue ‘communicative action.’⁴⁵⁷

The concept of international human rights, it could be argued, achieved dominance or hegemony through discursive processes in specific contexts. In the Gold Coast, the norms of human rights were increasingly accepted as frames with the potential to reverse the trend of colonial domination and create a more democratic culture. As more people recognised the possibilities created by appeals to fundamental rights, their participation became better focused and more forceful. In an article on emancipatory discourse as liberation, Raelin notes that “People join a dialogue provided they are interested in listening to one another, in reflecting upon perspectives different from their own, and in entertaining the prospect of

⁴⁵⁵ E. Fromm, *To Have or To Be?* New York: Harper and Brothers, 1976; Jürgen Habermas, *Theory and Practice*, London: Heinemann, 1974; Paulo Freire, *Pedagogy of the Oppressed*, New York: Continuum, 1989.

⁴⁵⁶ Jürgen Habermas, *The Theory of Communication Action, Vol. 2: Lifeworld and System: A Critique of Functionalist Reason* (T. McCarthy, trans.), Boston: Beacon Press, 1987.

⁴⁵⁷ Jürgen Habermas, *The Theory of Communicative Action, Vol. 1: Reason and the Rationalization of Society* (T. McCarthy, trans.), Boston: Beacon Press, 1984; Jürgen Habermas, *The Theory of Communication Action, Vol. 2: Lifeworld and System: A Critique of Functionalist Reason* (T. McCarthy, trans.), Boston: Beacon Press, 1987.

being changed by what they learn.”⁴⁵⁸ For example, the dialogue on incorporating a bill of rights in the independence constitution is an exercise in collectively negotiating the understanding of fundamental rights in the specific Gold Coast context.

The human rights discourse, thus, became for the nationalist movements a way of protesting against recognizable violations of individual or group rights under the colonial regime and a discourse of emancipation in the struggle for the right to self-determination. Of course, the ‘shared’ understanding of rights had other implications. The debate about extending the ECHR to British colonies was partly informed by a shared understanding of human rights in which the unjustified differences in provisions for ‘British citizens’ and for ‘British subjects’ in the Gold Coast seemed no longer tenable. When the exercise of universal adult suffrage became the norm, rather than an exception, colonial domination of the Africans was turned on its head. Anti-colonial nationalist movements became participants in the democratic process. The rule of law was viewed by both Nkrumah’s government and by the opposition parties as a valid principle in post-independent Ghana. It is this belief that fired many of the debates about the bill of rights.

6.8. Conclusion

This chapter has demonstrated the complex process of debates about incorporating a bill of rights in the Independence Constitution. While there were overlaps in the positions of the colonial administration, Nkrumah’s government and the coalition of opposition parties regarding the idea of a bill of rights their differences were significant enough to scamp the process of actually incorporating it in the constitution. Disputes about the meaning and significance of human rights in a democratic culture impacted on the negotiation for a bill of rights and eventually on the way Nkrumah’s government repealed some laws from the

⁴⁵⁸ Joseph A. Raelin, “Emancipatory Discourse in Liberation” in *Management Learning Quarterly* 39, 2008: 521.

constitution and replaced them with repressive legislation targeting those who were opposed to his style of governance. In such a situation, the concept of human rights lost its hegemony at the domestic level even though its power as an emancipatory discourse remained relevant. Indeed, the endeavour of the opposition parties to have fundamental rights guaranteed in the constitution anticipated the authoritarianism that characterised Ghanaian politics after independence. One of the things the process also reveals is the absence of feminine voices and concerns in many of Gold Coast political debates during the colonial period. The policies of exclusion against those who disagreed with the government failed to appreciate that by virtue of being human everyone has rights, “and the fact that all of us share these rights equally means that each of us has a corresponding responsibility to respect the right of our fellow humans.”⁴⁵⁹

⁴⁵⁹ Nicola Woods, *Describing Discourse: A Practical Guide to Discourse Analysis*, London: Horder Arnold, 2006, 81.

Chapter 7

The Nationalism discourse as a rhetoric of rights

“During the anti-colonial struggle they showed an unlimited capacity to unite around whatever leader or party best and most consistently articulated an anti-imperialist position.”⁴⁶⁰

Ngũgĩ wa Thiong’o

“in the struggle for [Ghana’s] independence, one market woman... was worth any dozen Achimota [College] graduates...”⁴⁶¹

C. L. R. James

“‘What is truth?’ said jesting Pilate and would not stay for an answer.”⁴⁶²

Francis Bacon

7.1. Introduction

Nationalism is a much-discussed subject, though it could be said to suffer from being examined in a limited way. The relevant literature on the Gold Coast has tended to focus on the provenance of belonging to the same polity, the anti-colonial consciousness that inspired new forms of social organisations, and the collective aspiration for an ‘imagined community’ (i.e., a self-governing nation-state) as distinctive elements.⁴⁶³ This literature, thus, fails to highlight how a nuanced discourse of rights evolved within the post-World War II demands for greater participation in government and for the right to self-determination.

This chapter will attempt to fill this gap in the literature by examining critically the articulation of ideas about constitutional/statutory rights and the limited rhetoric of human rights in the politics of independence. Nationalism, like a double-edged sword, cut both ways—British nationalism was important in the formation of colonial practice in the Gold Coast; at the same time, African nationalism eventually became the nemesis of colonial rule.

⁴⁶⁰ Ngũgĩ wa Thiong’o, *Decolonising the Mind: The Politics of Language in African Literature*, Oxford: James Currey, 1986, 23.

⁴⁶¹ C. L. R. James, *Nkrumah and the Ghana Revolution*, London: Allison and Busty, 1977, 56.

⁴⁶² Quoted in Jaakko Hintikka, “What is Truth? Stay for an Answer” in Richard Schantz, *On Truth*, Berlin: Walter de Gruyter GmbH & Co., 2001, 238.

⁴⁶³ Boahen, 1975; Boahen, 1987; Boahen, 1989; Kwame Gyekye, *Tradition and Modernity: Philosophical Reflections on the African Experience*, Oxford: Oxford University Press, 1997; Adrian Hastings, *The Construction of Nationalism*, Cambridge: Cambridge University Press, 1997; Carola Lentz, *Ethnicity and the Making of History in Northern Ghana*, Accra: Woeli Publishing Services, 2007; Craig Calhoun, *Nationalism*, Minneapolis: University of Minnesota Press, 1997; Ernest Gellner, *Nations and Nationalism*, Oxford: Blackwell, 1983; and Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London: Verso, 1983. The use of the term ‘imagined community’ as a ‘self-governing nation-state’ differs significantly from Anderson’s original idea of a community of anonymity, possible only in the imagination the way a fictional novel is, which he says is the hallmark of modern nations.

Indeed, nationalism in the 1945-57 Gold Coast reflected broad politics of resistance against colonial rule and claims by the African people for recognition as rights-bearing citizens of an imagined community, rather than as passive subjects of the British Empire. While much of the ‘human rights texts’ used in this chapter have a historical ring to them I shall not explore their broad historical relevance, but shall limit myself to analyse them solely in respect to what they reveal for nationalist discourses on rights.

7.2. Sowing the seeds of Gold Coast nationalism

The term nationalism is used here in two distinct but interrelated senses, as an ideology and as a discourse in the politics of independence. As an ideology, it helped to forge a sense of national unity among diverse ethnic and interest groups in the four territorial units (the Gold Coast Colony, the Ashanti Protectorate, the Northern Protectorate and the British Mandated Togoland). As a discourse,⁴⁶⁴ nationalism represented a set of social practices articulated through language and activism to resist the ‘dominant other’ (i.e., the colonial ruler) and to promote the collective interests of the African people against colonial subjugation. Mullins’ idea that an ideology is composed of four basic characteristics is important for understanding how the human rights idea contrasts with related issues of utopia and historical myth.⁴⁶⁵ According to him, an ideology must have power over cognition; must be capable of guiding one’s evaluations; must provide guidance toward action; and must be logically coherent. Thus, central to the question of nationalism is the way it was used to legitimise the idea of a social group and increasingly construct what Kohn described as “a prospective nation-state”⁴⁶⁶ with all the instruments of power (such as government, media,

⁴⁶⁴ For a detailed analysis of discourse in ‘Third World’ context, see Shi-xu, *A Cultural Approach to Discourse*, Basingstoke: Palgrave Macmillan, 2005, 1-12. Discourse is used in this chapter to mean ways of thinking, representing and acting upon nationalism.

⁴⁶⁵ Willard A. Mullins, “On the Concept of Ideology in Political Science” in *The American Political Science Review*, 1972.

⁴⁶⁶ Hans Kohn, *Nationalism—Its Meaning and History*, New York: Van Nostrand Co., 1955, 192-193.

education, military or the police). To prepare the grounds for the analysis, I will first review the delicate trajectory of nationalism in the Gold Coast as a form of resistance especially over land rights.

For the Africans of the 19th century, the idea of the ‘nation’ had practical clarity insofar as ethnic compositions were concerned, because ‘the Gold Coast’ initially consisted of four disparate territorial units under colonial rule.⁴⁶⁷ Conceptual ambiguity about the meaning of ‘nation’ was, however, exacerbated by imperialism. The two-fold link at the time comprised the new boundaries delineating ‘the Gold Coast’ territory from other entities and the colonial administrative structure. Thus, the earliest manifestations of nationalism and the self-determination discourse were fairly provincial, with a group of Fanti traditional rulers and educated people coming together under the leadership of Nana Ghartey IV of Winneba to form the Fanti Confederation in 1871.⁴⁶⁸ The British House of Commons had set up ‘the Committee Appointed to Inquire into the Conditions of the British Settlements on the West Coast of Africa’ which in its report in 1865 stated that the Africans should be left alone to govern themselves.⁴⁶⁹ The Confederation employed this resolution to oppose the British in the area, to resist the idea of British taking over territories from the Dutch and to rally opposition to infringement on their land rights. At least, one scholar has drawn comparisons between the resistance to British rule in the Gold Coast and a similar uprising that occurred in Japan in the same period, raising the question of a possible external influence:

those who overthrew the shogunate in Japan and those who founded the Fanti Confederation in the Gold Coast had many ideas in common. In both cases there was an attempt, successful in Japan and unsuccessful in the Gold Coast, by a section of the indigenous ruling class to overthrow the feudal order and build up a modern state upon Western lines.⁴⁷⁰

⁴⁶⁷ It is important to underline the fact that this situation, or even the lack of homogeneity, is not unique to the Gold Coast—Renan and Anderson, for example, have pointed out that nations are not natural entities. See Ernest Renan, “What is a Nation?” in Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London: Verso, 1983.

⁴⁶⁸ PRAAD Cape Coast, “The Fanti Confederation” (Handwritten Notes, 1872).

⁴⁶⁹ See Parliamentary Papers, *House of Commons*, 1865, Vol. V p. iii.

⁴⁷⁰ Bing, 80.

In my research, I have not found any other evidence to corroborate Bing's comparison but this assessment may not be far-fetched considering the similarities between the constitutions, the forms of resistance and the time at which the two movements emerged. For example, the constitution of the Confederation provided *inter alia* for a "King-President..., a Representative Assembly [with the power] of exercising all the functions of a legislative body..., [appoint] men of education and position [to form the Cabinet and] a Vice President"⁴⁷¹ who would be the executive head of government. The constitution of the Confederation outlined *inter alia* goals to

develop and facilitate the working of mineral and other resources of the country... establish schools for the education of all children within the Confederation... [and where missionary schools existed, enforce by law] the daily attendance of all children between eight and fourteen.⁴⁷²

The Shogunate Uprising likewise relied on the indigenous elite to overthrow the feudal order and replace it with a 'modern state' and the constitution specified the formation of a representative government. Spencer Salmon, the Administrator of the Gold Coast at the time, felt the Confederation posed a challenge to British expansion and so told the British government that "[t]his dangerous conspiracy must be destroyed for good or the country will become altogether unmanageable."⁴⁷³ As a result, the members of the Confederation Government were arrested and the organisation declared unlawful in 1874. To make legal British sovereignty over the coastal regions, the area was formally constituted as a British Crown Colony in the same year through the British Settlements Act, July 1874. In other words, expressions of African nationalism were thwarted both through legislation and by

⁴⁷¹ PRAAD Cape Coast, "The Fanti Confederation" (Handwritten Notes, 1872).

⁴⁷² PRAAD Cape Coast, "The Fanti Confederation" (Handwritten Notes, 1872).

⁴⁷³ Colonial Office, "British and Foreign State Papers," 1874, Spencer Salmon to the British Government, 1870s Kwaku Nti points out in a historical study of the relations between the coastal elite and the colonial administration that ARPS had smaller predecessors such as the little known *Mfantasi Amanbuhu Fekuw* which begun in 1889 as an association for Fantis. See Kwaku Nti, "Action and Reaction: An Overview of the Ding-Dong Relationship Between the Colonial Government and the People of Cape Coast" in *Nordic Journal of African Studies* 11 (1), 2002: 1-37.

military force.⁴⁷⁴ Hobson argues that the migration of part of a nation to a foreign land, with those emigrating carrying with them full rights of citizenship of the motherland as well as an imperial objective is an expression of nationalism.⁴⁷⁵ His argument is relevant to understanding a case of one expression of ‘nationalism’ clashing with another in the 1870s Gold Coast context.

From the above discussion, at least three points can be emphasised about the beginnings of nationalism in the Gold Coast. First, the idea of ‘nationhood’ served as a powerful site for the coastal ethnic groups to resist those outsiders who had an infringement agenda. Nationalism incorporated different shades of political opinion around a common agenda of resistance to colonial rule and represented a broad claim especially to land rights over the nascent colonial administration. In other words, land and the economy were important symbols in the discourse of this first phase of nationalism.

Second, the nationalism of this period was provincial, spearheaded by elite groups in the coast and conforming to what Hughes and Perfect described as a patrician model of nationalism.⁴⁷⁶ Even in the emergence of the Congress of British West Africa, the leadership was quite provincial—Joseph Casely-Hayford’s father had been a founding member of the Fanti Confederation and one of the cabinet members arrested by the colonial administration. The provincial nature of nationalism underscores the enduring process of conceptual clarifying that characterised the antecedent of post-World War II nationalism in the Gold Coast, a process that would continue until independence. Reactions to colonialism heightened and diminished ethnocentrism, depending on the balance of power and the nature of the ‘nationalist’ agenda.

⁴⁷⁴ See *Parliamentary Papers, House of Commons*, 1873, Vol. xlix, “Correspondence Relative to the Fanti Confederation.”

⁴⁷⁵ John A. Hobson, *Imperialism: A Study* in <<http://www.marxists.org/archive/hobson/1902/imperialism/intro.htm>> (accessed March 5, 2012).

⁴⁷⁶ Arnold Hughes and David Perfect, *A Political History of The Gambia 1816-1994*, Rochester, NY: University of Rochester Press, 2006, 78.

Third, while colonialism nullified boundaries and redefined identities, the force of this phase of nationalism attempted to validate the old boundaries and identities—and when that failed under the power of colonial domination, tried to transcend the old boundaries and identities in order to negotiate a collective meaning of an ‘imagined community’ constructed around the new borderlines. While the ideology of ‘national’ formation was neither prearranged nor systematic in its origins, the sense of difference between the British colonial administrators and the Africans generated at least one of the first unifying forces for nationalism, which explains why colonies as diverse as the Gold Coast, Nigeria, Sierra Leone and the Gambia could unite under the standard of ‘nationalism.’ Although pre-World War II Gold Coast nationalism actually seem to obscure the national narratives, for better and for worse these early experiences constructed a foundation upon which the subsequent nationalist discourses in the Gold Coast built on. These nationalist movements exhibited a predisposition to identify with the common struggle for land rights against the colonial regime, something that would be broadened in post-World War II Gold Coast to include the right to self-determination and democratic rights.

7.3. Post-World War II nationalism and the struggle for rights

The robust awakening of nationalist consciousness after World War II must be viewed against the background of the specific domestic resistance to colonial rule in the Gold Coast, the ‘new international order’ and British imperial history at the time. Ideologies of nationalism had already taken root in the Gold Coast through the social practices articulated through language and activism by, for example, the Fanti Confederation and the Aborigines Rights’ Protection Society (ARPS). More and more Africans were returning to the Gold Coast over time armed with British and American education, with an increasing awareness of the injustice of colonial rule and the measured discomfort of the British government,

especially under Clement Attlee's premiership, about colonialism.

As Mamdani and Englund have argued, the distinction between rights-bearing citizens and subjects was significant, because the latter were instrumental in the success of colonial rule but without having the attendant rights of citizens.⁴⁷⁷ In such a situation, the idea of 'subject' became a double-edged sword too, perforating what little allegiance there was among the Africans toward British colonial rule and cutting loose an introspective anti-colonial nationalism. These 'subjects' found what Bhabha calls unifying myths such as racial belonging, colonial domination, a common cause for self-determination, and a *lingua franca* that bridged the language barriers to employ in anti-colonial nationalism discourse.⁴⁷⁸ The Gold Coast (Constitution) Council in Order 1946 failed to respond to many of the demands of the nationalist movements, not least the question of citizenship even though the White Paper of the British government had stated that "[t]he 1946 Constitution was not a belated recognition of long standing demands, but a necessary and accepted step in constitutional advancement."⁴⁷⁹

Pressure from the international community, especially through UN politics, gradually raised questions about the essence of one group dominating another through colonialism in a new international order with a universal human rights agenda in a way that the British government could no longer ignore. For example, Andrei Zhdanov, Stalin's heir apparent, delivered a speech in 1947 in which he highlighted the "crisis of the colonial system [and the fact that] the peoples of the colonies no longer wish to live in the old way."⁴⁸⁰ One official of the British Colonial Office in reaction to the critical approach some states adopted towards

⁴⁷⁷ See Harri Englund, *Prisoners of Freedom: Human Rights and the African Poor*, London: University of Berkeley Press, 2006, 40. A fuller development of this idea is in Mahmood Mamdani, *Citizen and Subject: Contemporary Africa and the Legacy of Colonialism*, Princeton, NJ: Princeton University Press, 1996.

⁴⁷⁸ Homi K. Bhabha, (ed.), *Nation and Narration*, London and New York: Routledge, 1990, 45-65; Ronald Hyam, *Britain's Declining Empire: The Road to Decolonisation (1918-1968)*, Cambridge: Cambridge University Press, 2006.

⁴⁷⁹ British Government White Paper to the *Gold Coast (Constitution) Order in Council 1946* in CO 96/795.

⁴⁸⁰ Quoted in Yano Toru, "Who Set the Stage for the Cold War in Asia?" in *The Origins of the Cold War in Asia*, ed. Yonosuke Nagai and Akira Iriye, New York: Columbia University Press, 1977, 333.

colonialism observed that,

the antipathy toward 'colonialism' among influential governments in the world is such that it is a concrete and important factor affecting HMG's ability to maintain satisfactory foreign relations and to achieve the objectives of UK foreign policy... Anti-colonial opinion is so strong in international affairs that it has created a climate in which it is no longer possible for the CO and Colonial governments to pursue political, economic and social policies in the territories, without taking account of the repercussions of those policies on international opinion, since to do so may well, and often does, stimulate criticism and dissension which is fed back into the minds and attitudes of indigenous politicians.⁴⁸¹

British Foreign Office study papers no longer shied away from acknowledging the fact that nationalism in the colonial territories was indeed a serious issue. In a 1952 study paper entitled 'The problem of Nationalism' the Foreign Office highlighted the need to respond to the sticky situation of nationalism in their colonies through policy changes.⁴⁸² In the new international order, the emerging human rights discourse subtly reinforced nationalism and demands such as those for self-government in the Gold Coast. Also, many of the British colonies in Asia were in the threshold of attaining self-rule in the 1940s.

The concurrence of factors captured the imagination/energies of the nationalist movements, informing the ongoing attempts to negotiate a collective meaning of the national community beyond the one constructed by imperial powers. For the Africans returning to the Gold Coast after their education in Britain or the USA, the discrimination and inequality inherent to colonialism contradicted their knowledge of a fair society. The different groups in the colony, protectorates and mandate territory began to notice a common national narrative emerging out of the instruments of colonial power such as the education system, a *lingua franca*, the legal system, police and military agencies, and political organisations. Under the policy of indirect rule the four territorial units were indeed disparate, but a common

⁴⁸¹ Minute by W. G. Wilson, 6 October 1954, Goldsworthy, *Conservative Government*, pt 1, p. 336 (no. 136). For a more detailed analysis of the power of international criticism in the decolonization process, see D. Goldsworthy, "Britain and the International Critics of British Colonialism, 1951-1956" in *Journal of Commonwealth and Comparative Politics*, 29, 1991: 1-24.

⁴⁸² *Foreign Office Study: Problem of Nationalism* in CO 936/217; Goldsworthy, *Conservative Government*, pt 1, 13-19 (no 4).

administrative thread—with the Governor at the top, the Territorial Commissioners under him, the District Commissioners under them, and of course the traditional rulers at the local level—linked all the entities into a single ‘community’ with a potential for a prospective nation-state. In other words, the administrative structure of the Gold Coast provided a national narrative of boundaries within which the nationalist movements could disseminate their discourse of independence, one nation and one destiny. For example, writing under the heading ‘Toward Gold Coast Nationhood’ in the *Ashanti Pioneer*, Essiam K. Koomson argued that the “appointed time of [Ewe] national awakening has come with the clear conviction that unless they come together as one, their course with other tribes of this country towards national advancement will be considerably impeded.”⁴⁸³ As a result, dominant interest groups were now and again willing to sacrifice their parochial pursuit for the sake of ‘the common good’ and discourses of justice, equality, freedom, identity and unity ran counter to the practices of subjugation, exclusion, inequality, discrimination and injustice.

In the Legislative Council debates, for example, the Africans unequivocally expressed a collective sense in spite of the different shades of opinions they represented, especially after the Legislative Council achieved an African majority in 1951. Terms such as ‘this country,’ ‘our country’ and ‘Ghana’ entered into the nationalism discourse, largely reflecting the ideology of the imagined community of a nation. Nana Amanfi III, for example, described the 1946 Constitution as “the means whereby this country can be made to take a real and effective part in the race of nations towards the attainment of higher ideals.”⁴⁸⁴ Two years later another traditional ruler, Nana Frempong Manso II, responding to the report of the Commission of Enquiry into the 1948 riots said that “a new Constitution should be formulated and effectuated in such a way as to satisfy the political needs of the people of this country and in such a way as to prepare ... us ultimately to govern ourselves in no distant

⁴⁸³ *Ashanti Pioneer*, October 22, 1946.

⁴⁸⁴ Gold Coast, *Legislative Council Debates*, Session 1946, Vol. 1.

future.”⁴⁸⁵ A news’ report in the *African Morning Post* of June 2, 1952 notes that the “CPP brings respect to Ghana citizens in UK, says Blay”⁴⁸⁶ and goes on to discuss how “[t]he people of England now recognise the people of the Ghana as the most civilised and think of them as a people in a colony who can manage their own affairs in the Commonwealth of Nations, said Benibengor Blay, author and journalist.”⁴⁸⁷ The use of ‘Ghana,’ the name chosen by some nationalist movements for the post-independent Gold Coast, entering into the discourse could be interpreted as form of resistance to the colonial regime and an assertion of a new identity.

The gatekeepers of the dominant discourses tended to be the local chiefs and the *intelligentsia*. It is not clear whether or not the elite-driven nationalism in the Gold Coast took a cue from W. E. B. Du Bois’ concept of the ‘talented tenth’ in the colonies, the idea that an educated elite was destined to lead the masses to independence.⁴⁸⁸ Since there was some contact between Du Bois and some Gold Coast nationalists in the Pan-African movement, it is conceivable that the idea of the ‘talented tenth’ had a faint bearing on nationalism. However, this can only be a conjecture since post-World War II anti-colonial nationalism was elite-driven in most, if not all, British colonies. In the Gold Coast, the people who could best articulate the trajectory of rights and employ the unifying myths of a prospective nation-state were those with symbolic power such as chieftaincy and Western education. Nkrumah’s understanding of the nationalism situation in the 1940s was that

[t]he promoters of the United Gold Coast Convention (UGCC) came from the middle class. They were lawyers, doctors, academics, and indigenous business men, with little or no contact with the masses. When they invited me to become general secretary of the UGCC they hoped that I would help them bridge this gap, and to draw

⁴⁸⁵ Gold Coast, *Legislative Council Debates*, Session 1948, Issue no. 1.

⁴⁸⁶ *African Morning Post*, June 2, 1952.

⁴⁸⁷ *African Morning Post*, June 2, 1952.

⁴⁸⁸ W. E. B. Du Bois, “The Talented Tenth” in Booker T. Washington *et al.*, *The Negro Problem: A Series of Articles by Representative American Negroes Today*, New York: James Pott and Company, 1903. For a more detailed development of this perspective, see William Ackah, “Pan-African Consciousness and Identity: Reflections on the Twentieth Century” in Mark Christian, ed., *Black Identity in the 20th Century*, London: Hansib Publications, 2002, 17.

into their movement the growing anti-colonial, nationalist elements, particularly among the youth, which were at that time beginning to make their voices heard throughout the country.⁴⁸⁹

Nana Ofori Atta's challenge to "the Chiefs of the Gold Coast and Honourable Members of the Legislative Council [to] support their people in their legitimate demand for self-government, not by violence nor any unusual means but by constitutional means"⁴⁹⁰ reinforces the claim that the traditional rulers and educated Africans saw themselves as having a key role to play in the agitations for self-rule. The UGCC founders were very much aware of the issue of elite-led nationalism, and therefore laid emphasis on how the party "is neither an association nor a party exclusively for the Chiefs or for the *intelligentsia*. It is for, and belongs to, the people of the Gold Coast irrespective of tribe, clan, class, creed or sex."⁴⁹¹

In spite of the rhetoric that the UGCC would have a national character and move beyond an elite group, the choice of the first party executive failed both the inclusive gender and sectional tests. A newspaper report on the subject of the executive board illustrates how unrepresentative the party was at its inception: "George Grant [from the Western Province of the Colony] is Chairman, [the] Vice Presidents, Dr. Joseph Boakye Danquah (Accra) and K. Bentsi-Enchill (Central), R. S. Blay (Western), Awoonor Williams [from Accra] is Treasurer, Dr. [J. W. de Graft] Johnson [from Western] is Secretary, and Albion Mends [from Western] Financial Secretary."⁴⁹² As a matter of fact, not a single member of the executive board came from the Ashanti Protectorate or the Northern Protectorate or Trans-Volta Togoland. Women were marginalised from the upper echelons of the party. The *Ashanti Pioneer* reported that "Mrs. Sophia Eyeson and Mrs. Martey... [were] speakers"⁴⁹³ along with several men at the launch of the party at Saltpond on August 4, 1947. The tokenism with regard to women's

⁴⁸⁹ Kwame Nkrumah, *Towards Colonial Freedom* 2nd ed., London: Panaf Books, 1973, 51.

⁴⁹⁰ Gold Coast, *Legislative Council Debates*, Session 1950, Issue no. 3.

⁴⁹¹ Secretary-General, "United Gold Coast Convention: It is the People's Organization: Make it Your Own," Saltpond: UGCC, 1947. Also published fully in *Ashanti Pioneer*, July 15, 1947.

⁴⁹² *Ashanti Pioneer*, August 7, 1947.

⁴⁹³ *Ashanti Pioneer*, August 7, 1947.

participation at the launch may be pointing to a certain awareness about gender issues at this stage in nationalist politics, but the ‘human rights texts’ illustrate that it remained only an idea in the UGCC. Even though the patrician politics of the UGCC reflected the narrow interests of the elite, the agenda in theory was broad, embodying, according to the Constitution, “independence in the shortest time possible.”⁴⁹⁴

As a result of the dominance of the traditional rulers and *intelligentsia* in nationalist politics, the discourse of human rights tended to fluctuate, subject to the balance of power in nationalism vis-à-vis the colonial administration or other nationalist movements. At the same time, as the gatekeepers of nationalism discourses in local politics, any infringements suffered by the *intelligentsia* and local chiefs were more likely to be reported in the media or debated in the legislature than those of the masses. For example, the reportage on the 1948 nationwide boycotts and the shooting incidents tended to focus more on the detention of the six UGCC leaders under the Emergency Powers Order, Regulation 29 of the Emergency (General) Amendment No. 2 than on the 29 people who were killed and 237 injured.⁴⁹⁵ The issue came up in the Legislative Council debates on May 7, 1948 although under a point of order Danquah, who had raised the matter, was not allowed to proceed with what he desired to say. The bit he said was the following: “I wish to report to the Council that on the early morning of 13 March [1948] I was removed from my home... All that I want to do is tell my fellow Members of the Council what happened to me from the 13th of March to 11th of April.”⁴⁹⁶

Post-World War II nationalism in the Gold Coast while providing a good platform for articulating the independence discourse could not sustain a unified teleology for a long time. The major rupture occurred with the breakaway of Nkrumah in 1949 to form the Convention

⁴⁹⁴ The Preamble of *UGCC Constitution*, Saltpond: UGCC, 1947.

⁴⁹⁵ Gold Coast, *Riots after Parade of Ex-Servicemen in Accra* in CO 96/795.

⁴⁹⁶ Gold Coast, *Legislative Council Debates*, Session 1948, Issue no. 1. Danquah was one of the six men arrested and detained under the Emergency Orders, Regulation 29 of the Emergency (General) Amendment No. 2.

Peoples Party (CPP). According to Nkrumah, “[t]he CPP was launched in Accra on June 12, 1949 with over 60,000 members. Because it broke away from the UGCC, it incorporated the Gold Coast masses and embodied a less pretentious agenda of 'self-government now'.”⁴⁹⁷ He goes on to give the grounds for the breakaway: first, the other leaders of the UGCC failed to agree with Nkrumah on the agenda for independence and self-government; and second, the support base for the UGCC was mainly the *intelligentsia* in the urban areas and therefore not representative of the masses.⁴⁹⁸

With the background knowledge from working for the Pan-African movement and the UGCC that Nkrumah brought into the new party, he and the other leaders ensured that it had a mass-appeal, brought the young people into nationalist politics by forming a Committee of Youth Organisation (CYO), and created what wa Thiong’o described as “unlimited capacity [for people] to unite around ... [a] leader or party best and most consistently articulated an anti-imperialist position.”⁴⁹⁹ The party also articulated a clear programme of action in which subjects became rights-bearing citizens with a voice to demand their fundamental freedoms and human rights, and not merely asking for concessions to be made for a tiny educated class of Africans. By electing Kwame Nkrumah, Kojo Botsio, Komla Gbedemah, Mabel Dove Danquah and Akua Asabea Ayisi to the executive the party had managed to break new grounds in nationalist politics with a fairly representative leadership.⁵⁰⁰

Perhaps the major innovations were the setting up of a women’s wing in the party and the appropriation of Gandhi’s idea of *ahimsa* or non-violent resistance to nationalist politics.

⁴⁹⁷ Kwame Nkrumah, *Towards Colonial Freedom* 2nd ed., London: Panaf Books, 1973, 55.

⁴⁹⁸ *Ibid.*, 55-6.

⁴⁹⁹ Ngũgĩ wa Thiong’o, *Decolonising the Mind: The Politics of Language in African Literature*, Oxford: James Currey, 1986, 23.

⁵⁰⁰ Hastings, 154. The new nation took its name from the ancient Ghana kingdom that spread over the great Sahara between the fifth and twelfth centuries C.E.

According to the party constitution, “[t]here shall be no separate status of women in the Party.”⁵⁰¹ However,

"[i]ndividual women members of the Party shall be organised into women's sections. Women's sections may be organised on Branch and Ward basis. A General Council of Women's Sections shall be established to co-ordinate the activities of the women in the Party. Leaders appointed by each Women's Branch or Ward shall be responsible for the co-ordination of work amongst women in the Branch or Ward."⁵⁰²

It was also stipulated in the constitution that “[e]ach Party Branch shall have a Women's Section to cater for the special interests of women.”⁵⁰³ The CPP through its activities shifted the discourse of nationalism and politics of resistance away from the patrician group to reflect the aspirations and concerns of the masses. For example, Nkrumah introduced into nationalist politics a practical programme of resistance called ‘Positive Action.’ In ‘What I Mean by Positive Action,’ Nkrumah defined the concept as

the adoption of all legitimate and constitutional means by which we can cripple the force of imperialism in this country. The weapons of Positive Action are: legitimate political agitation; newspaper and educational campaigns; and as a last resort, the constitutional application of strikes, boycotts, and non-co-operation based on the principle of absolute non-violence.⁵⁰⁴

He developed this theme in *Towards Colonial Freedom* by acknowledging that he borrowed “the kind of tactics employed by Gandhi in India”⁵⁰⁵ and modified them for the Gold Coast context. The Watson Commission described ‘Positive Action’ as “a programme which is all too familiar to those who have studied the technique of countries which have fallen victims to Communist enslavement.”⁵⁰⁶ Indeed, ‘Positive Action’ led to the arrest of some of the CPP leaders in January 1950 and the eventual incarceration of Nkrumah for thirteen months. The CPP clarified the discourse to include a more robust discourse of rights for the wider population within the colony. The new party’s approach challenged the monopoly of an elite

⁵⁰¹ Convention Peoples’ Party, *Constitution of the Convention People’s Party*, Accra: CPP, 1949.

⁵⁰² *Constitution of the Convention People’s Party*, Accra: CPP, 1949.

⁵⁰³ Ibid.

⁵⁰⁴ Kwame Nkrumah, “What I Mean by Positive Action”, self-published, 1949.

⁵⁰⁵ Nkrumah, *Towards Colonial Freedom*, 85.

⁵⁰⁶ *Report of the Watson Commission* in CO 96/231.

group and broadened the self-understanding of the African people, giving them confidence in the new social practices of activism and lingo.

Scholars such as Hyam and Rathbone are of the opinion that the 1948 boycotts were not inspired by the nationalist movements but rather by a chief.⁵⁰⁷ It depends on their understanding of Gold Coast nationalism. A broad spectrum of people affiliated themselves with the nationalist movements—some were traditional rulers, others members of the *intelligentsia*, some joined the nascent political parties such as the UGCC and CPP, still others were free-standing and of course there were the masses. But all these people participated in diverse ways in the nationalism discourses. The argument that a traditional ruler by virtue of his role in the policy of indirect rule is not a nationalist in the strict sense of the word is simplistic. Nii Bonne was as much a nationalist leader as J. B. Danquah. They both led people under their influence with the collective aspiration for an imagined community. When Nii Bonne called on the masses “to fight and die for the liberty and freedom of your country... Strangers had come to the Gold Coast not for love of its people but only to take away the riches of the country by all possible means”⁵⁰⁸ his words echoed the message of other nationalist leaders from, for example, the *intelligentsia* class who were collectively calling for self-government.

The only relevant difference between the two is the fact that one is a traditional ruler and the other a member of the *intelligentsia*. In a memo to the Watson Commission, an anonymous Gold Coast African described how Nii Bonne organized the chiefs and masses to resist the post-World War II price increases:

⁵⁰⁷ Richard Rathbone, “The Government of the Gold Coast after the Second World War” in *African Affairs*,” Vol 68(1968). Hyam argues that Sir Gerald Creasy, who was Governor of the Gold Coast at the time of the riots, lacked field experience, and so interpreted the riotous activities to be Communist-inspired. He explains the underlying rationale for the riots to be the lack of employment for the 50,000 demobbed soldiers floating around the colony, the rise of food prices, shortage of retail goods, the spread of the ‘swollen shoot’ diseases of cocoa trees, and general resentment toward the report of the Elliot Commission of 1946. Although a majority of the Commission members had recommended the setting up of a university college in the Gold Coast, Creech Jones had instead acted on the minority report which pushed for one university for the whole of British West Africa to be situated in Ibadan, Nigeria.

⁵⁰⁸ Quoted in Bing, 101.

Nii Bonne stepped into the [nationalism] scene with his Anti-Inflation campaign which he personally financed and waged to a successful conclusion... The method adopted by Nii Bonne was very simple... The stubborn resistance of the firms did not deter him. He successfully applied our venerable Native Law and Custom which outmaneuvered the application of English Law. Nii Bonne needed no special legislation to do this... This cloth [wax print] sold by the whiteman at eighty-four shillings per piece and sold at the black market for six pounds piece cost the whiteman about fifty shillings landed here in these days. If the whiteman sells it at fifty shillings he would gain ten shillings profit more than the print cost him. Is the whiteman not cunning taking away your money for nothing? ... The people will reply, 'yes, the whiteman is stealing our money by tricks.' Nii Bonne will then say, 'Don't buy anything from the whiteman's stores and don't allow your fellow countrymen [and women] to buy. If they do swear the oath of the Omanhene on them.'⁵⁰⁹

To 'swear the oath of the Omanhene on them' is a loose translation of an Akan saying, meaning to pronounce the forbidden words reminding them of breaking a taboo and then ordering them to appear in the Chief's Court for prosecution according to customary law. Nii Bonne basically turned the colonial policy of indirect rule on its head, which according to Bing translates discursively to the following: "the Colonial administration had endowed the chiefs, to prosecute and fine those who would not take part in his boycott"⁵¹⁰ and Nii Bonne used the same powers granted him under the Native Authority to set up a special court to prosecute people who went to European-owned shops. He received the support of the Joint Provincial Council of Chiefs before calling on the masses to take collective action against the colonial regime and in his decision to set up parallel courts to support the boycotts.

The fundamental link in the resistance politics of traditional rulers and the *intelligentsia* is underscored in the way the UGCC Working Committee used the boycotts as a springboard to "ask in the name of the oppressed, inarticulate, misruled and misgoverned people and their Chiefs... to hand over Government to an interim Government of Chiefs and Peoples."⁵¹¹ The UGCC leaders sent the cable to the Secretary of State for the Colonies, Arthur Creech-Jones, explaining the effects of the boycotts and demanding the establishment

⁵⁰⁹ *Report of the Watson Commission* in CO 96/231.

⁵¹⁰ Bing, 100.

⁵¹¹ "Cable to the Secretary of State for the Colonies," published in the *Ashanti Pioneer*, January 2, 1948.

of an interim regime in place of the colonial administration.⁵¹² However, in response to their demands, Creech-Jones, in consultation with Governor Creasy, appointed a Commission of Inquiry under the leadership of Andrew Aiken Watson, K.C., to investigate the reasons for the 1948 boycotts and disturbances. The other members of the commission were Keith Murray, then Rector of Lincoln College, Oxford and Andrew Dalglish, an officer of the British Transport and General Workers Union. At least Bing and Hyam have pointed out that Watson had Fabian persuasions and that the commission's report was "above all, fearless, [and] was an outstanding analysis of colonialism not only in the Gold Coast but, by necessary implications, in the whole of British Colonial Africa."⁵¹³

The Watson Commission's Report basically re-stated some of the issues on the post-World War II nationalist agenda by criticising the gradualist timetable in including Africans in government and highlighting that the 1946 Burns Constitution was outmoded at birth,⁵¹⁴ they also pointed out that "a failure of the Government to realize that with the spread of liberal ideas, increasing literacy and a closer contact with political developments in other parts of the world the star of rule through the chiefs was on the wane"⁵¹⁵ and identified "an immense intense suspicion that the chiefs are being used by the Government as an instrument for the delay if not for the suppression of the political aspirations of the people;"⁵¹⁶ they also recommended that there should be a fully-elected legislature, with the Africans having a greater representation in the work of both the Legislative Council and the Executive Council, and that a new constitution should be drafted as a prelude to the people realising their full right to self-realisation. Two main critiques of the Watson Commission's report are, first, the recommendation that political reforms should be formulated and carried out by the colonial

⁵¹² "Cable to the Secretary of State for the Colonies," published in the *Ashanti Pioneer*, January 2, 1948.

⁵¹³ Bing, 106 and Hyam, 147.

⁵¹⁴ *Report of the Watson Commission* in CO 96/231.

⁵¹⁵ *Report of the Watson Commission* in CO 96/231.

⁵¹⁶ *Report of the Watson Commission* in CO 96/231.

administration, and equating routine activities of the CPP with communism.⁵¹⁷

Rathbone and Hyam have noted that the Watson Report “is one of the most significant documents of the end of empire,”⁵¹⁸ identifying it as evidence of the British Labour government’s post-World War II policy orientation toward African colonies. However, the British government’s comment on the Watson Commission’s Report stated *inter alia* that

In the very short time available to them in the Gold Coast the Commission were not, it is understood, able to travel extensively in the rural areas, and they can therefore have had less opportunity of hearing evidence from representatives of the rural communities which form the great bulk of the population of the Gold Coast. His Majesty’s Government therefore feel it necessary clearly to state that, while attach the greatest importance to modernizing the Native Authorities and making them fully representative of the people, they regard the Chiefs as having an essential part to play. In general the Chiefs of the Gold Coast are the traditional leaders of the people. Their functions in regard to local administration are based on popular support; and the transfer or delegation of any of their functions would require popular sanction, since the position of the Chiefs affects the whole system of relationships on which community life is traditionally based. Increasing numbers of Chiefs recognise the need for modernizing their institutions and in this every encouragement is given to them by the Gold Coast Government and their administrative officers.⁵¹⁹

The commentary is curious considering the fact that the Watson Commission highlighted how Nii Bonne employed his chiefly power to establish a legal basis to support anti-colonial agitations, the form of resistance that characterised nationalism at the time.⁵²⁰ Some of the local chiefs who recognised the need for modernizing the institution of chieftaincy had already taken sides, throwing their weight behind the CPP, “and among those later to be imprisoned with Kwame Nkrumah [in 1950] was one of the most prominent representatives of this class, Nana Kobina Nketsia IV.”⁵²¹

The appointment of Sir Charles Arden-Clarke as Governor in 1949, replacing Creasy, marked a new phase in Gold Coast nationalism. As David Rooney has pointed out, Arden-

⁵¹⁷ See *Report of the Watson Commission* in CO 96/231.

⁵¹⁸ Richard Rathbone, ed., “Ghana: Introduction” and “Ghana: Part I, 1941-1952” in *British Documents on the End of the Empire*, London: HMSO, 1992, xlv- xxxi-lxxviii. Ronald Hyam, *Britain’s Declining Empire: The Road to Decolonisation 1918-1968*, Cambridge: Cambridge University Press, 2006, 148.

⁵¹⁹ British Government’s Comment on *Watson Commission Report* in CO 96/796. Also see September 1949 *Minutes* in CO 96/800/1.

⁵²⁰ See *Report of the Watson Commission* in CO 96/3.

⁵²¹ Bing, 112.

Clarke summoned up goodwill among the Africans with “batons not bullets... bloody coconuts but not bodies.”⁵²² In one of his maiden speeches to the Legislative Council, he articulated the sense of partnership that ought to characterise post-World War II relationship between United Kingdom and the Gold Coast:

My understanding of the present position... is that of one partner handing over the management of a business to another. There has long been a partnership between the United Kingdom and the Gold Coast. The United Kingdom is the elder and more experienced partner; he appreciates that the younger partner desires and is qualified for greater responsibility and he now proposes to hand over management of affairs to the younger... But partners look forward to the day that when with complete responsible government the Gold Coast will reach its full stature, having learnt by experience with the new Constitution to maintain itself with dignity and secure self-reliance among nations of the world.⁵²³

His first set of policy decisions had to do with implementing the recommendations of the Watson Commission, such as support for the work of the Sir Justice James Henley Coussey Committee to review the 1946 Burns Constitution. Sir Creasy had appointed the Coussey Committee in December 1948 “to study conditions in the country and to make recommendations for changes in the constitution of the country such as might help us towards responsible government. This was purely an African committee.”⁵²⁴ Sir Coussey was a Gold Coast African Judge, appointed by the governor along with thirty-nine other Africans to the Coussey Committee. At least, eight members were chiefs while the others were divided between different interests’ groups. The radical section of the UGCC such as Kwame Nkrumah and Ako Adjei as well the ex-service men and the Trade Unions did not have representatives on the Committee. Indeed, the CPP was formed just before the issue of the Coussey Committee’s Report in October 1949.

Governor Arden-Clarke’s government had accepted the Coussey Committee’s Report, which recommended *inter alia* municipal elections between April and November 1950, and noted that “[c]ontrary to the view expressed in the Watson Report, we believe that there is

⁵²² David Rooney, *Sir Charles Arden-Clarke*, London: Rex Collings, 1982.

⁵²³ Gold Coast, *Legislative Council Debates*, Session 1949, Issue no. 4.

⁵²⁴ Gold Coast, *Legislative Council Debates*, Session 1949, Issue no. 4.

still a place for the Chief in a new constitutional set up.”⁵²⁵ There is some disparity between the recommendations of the Coussey Committee’s Report and the policy decisions of Arden-Clarke’s government especially regarding the composition of the Legislative Council as provided for in the Gold Coast (Constitution) Order in Council 1950. While the Committee recommended chiefs choosing one-third of the members of the legislature, the government changed it to chiefs electing thirty-seven members to the five to be chosen through direct election and the thirty-three to be chosen through electoral colleges.⁵²⁶ Moreover, two European members were also to join the legislature to represent the Chamber of Mines and the Chamber of Commerce besides the three ex-officio members to be appointed by the Governor. These measures effectively advantaged the colonial administration and nullified the idea of greater representation in government proposed by both the Watson Committee and the Coussey Commission. Reactions to the Coussey Commission’s Report and the Gold Coast (Constitution) Order in Council 1950 varied, with the leaders of the UGCC describing the constitution as “inadequate [and called] for action to be taken now to set up a special body to draft for the Gold Coast a constitution that will give us the kind of self-government we desire and which we know we must have.”⁵²⁷

For a context that historically operated on oral tradition, the media introduced another platform for the nationalism discourse especially among the educated Africans. The media became an emblem providing a functional tool for consolidating the nationalism discourse, to claim the freedom to express their views, and a defense against the racial and gender theories that had justified colonisation and legal prohibitions against representation in government. The editors, who tended to be Western-educated Africans, readily recognised the connection between the broader struggles for racial equality and non-discrimination in many parts of the

⁵²⁵ *Coussey Committee’s Report* in CO 96/820.

⁵²⁶ See *Coussey Committee’s Report* in CO 96/820 and the Gold Coast (Constitution) Order in Council 1950 in SI 2094.

⁵²⁷ Gold Coast, *Legislative Assembly Debates*, Session 1951, Issue no. 2. Vol. I.

world and the domestic agitations for self-government in the Gold Coast. Examples of the most vocal newspapers in the post-World War II era are the *Gold Coast Independent*, *Ashanti Pioneer* and *The African Morning Post* which serve as important ‘human rights texts’ for this research.

7.4. Changes in British policy after World War II

The role of the British Labour government in post-World War Gold Coast nationalism must also be acknowledged. The Labour Government had won a surprising victory in the post-World War II general elections in Britain and initiated as part of a broader foreign policy a “metropolitan new deal”⁵²⁸ with colonies such as the Gold Coast for the gradual transfer of power to the Africans. Attlee’s government focused on three policy goals, including securing the British people against aggression, sustaining a foreign policy that was resistant to Communist influence, and achieving rapid development for British overseas dominions.⁵²⁹ The third of the policy objectives represented a paradigm shift in British government’s relations with many of its colonies and there was a recognition that imperial Britain had to come to terms with the increasing power of nationalism in places such as the Gold Coast. Apart from the nationalist agitations for political independence there was also the campaign for economic development programmes in the colonies. Cold War politics already inhabited many aspects of international affairs in this period, with USSR making “a major drive against [the British] position in Africa”⁵³⁰ in the view of Ernest Bevin, the then Secretary of State for

⁵²⁸ The term ‘metropolitan new deal’ was used by Ronald Robinson to describe the new international order initiated by the imperial power in some of its African colonies in collaboration with the indigenous people in order for them to develop economically as well as attain political independence.

⁵²⁹ *Cabinet: Memoranda* in CAB 129/37(3), CP(49)245, Annex A, 18 Oct, 1949.

⁵³⁰ Foreign Office, Private Offices: Various Ministers’ and *Officials’ Papers* (Bevin Papers) in FO 800/435/116, conversation with Portuguese ambassador, 23 Oct. 1948 & FO 800/444/29, minute to Prime Minister, 16 Sept. 1947.

Foreign Affairs, and “an attempt to maintain the old colonialism would, I am sure, have immensely aided Communism.”⁵³¹

Gold Coast nationalism was increasingly influenced by a radical philosophy in the 1950s, due mainly to some of the ideas of Nkrumah. As James Griffiths, the Secretary of State for the Colonies, asserted “we [the British] had to face an ideological battle in the world, especially in the Colonies.”⁵³²

The experience of the colonial administration in Asia had become an important frame of reference for British government policy-makers regarding West African colonies. Indeed, the Labour Government wanted a “two-way teamwork”⁵³³ approach between Britain and the African colonies to prevent a repeat of the Asia decolonisation process from recurring in the West African colonies. Cold War politics also shaped British foreign policies towards its African colonies throughout the 1950s. Indeed, Hyam argues that the British government was preoccupied with swelling the Commonwealth with increasing numbers of newly-independent states as a way of shielding them from undue Russian influence, “since this would be exploited by Russia as a failure and would automatically diminish British influence throughout the world.”⁵³⁴

Indeed, in the Colonial Office there was an acknowledgment that military force against nationalist agitations was no longer a viable option. Trafford Smith conceded to this fact when he noted that,

This leads to the conclusion that the important ways in which we deal with nationalism, both inside and outside the Colonial sphere, are those which depend on

⁵³¹ *Prime Minister's Minutes* in CAB 21/2277, minute 29 Oct. 1946, & 2280, minute, 23 Dec. 1949; Committee on Commonwealth Membership in CAB 134/786, CCM (54)1; C. R. Atlee, *As it Happened*, London: Odhams Press Ltd, 1954, 189.

⁵³² *General Policy Towards UN On Colonial Questions* in CO 537/5699/89 A, 16 June, 1950.

⁵³³ *Administration of High Commission Territories of Basutoland, Bechuanaland Protectorate and Swaziland; the African Conference held in London* in DO 35/4023/62, Speech at the opening of the African Conference, 23 Sept. 1948. Atlee could not attend the conference because of ill health, so Creech Jones represented the British Government and read Atlee's speech.

⁵³⁴ Ronald Hyam, “Africa and the Labour Government, 1945-51” in *The Journal of Imperial and Commonwealth History*, 16(3), 1988: 148-172. See also *Atlee and Gordon Walker Papers* (Churchill Archives Centre, Cambridge) in ATLE 1/24/1.

publicity and propaganda, especially in the United States and the United Nations, and not by thinking in Edwardian terms of the use of military and economic power which we no longer possess.⁵³⁵

World War II reinforced nationalist consciousness, when a sizeable group of Gold Coast African veterans of the British Army returned to lend support to the aspirations of the *intelligentsia*. One of the first benefits of the nationalist struggle was that a number of legislations dealing specifically with a broad array of 'rights' were passed in 1951, 1954 and 1957 progressively opening the way for greater representation in the Legislative Assembly.

Three interrelated challenges affected the episteme, ways of thinking, about nationalism in the Gold Coast in the post-World War II era. First, ethnic and sectional interest framed many aspects of nationalism, especially with regard to the local chiefs and some indigenous elites being appointed to the Legislative Assembly in the period between 1946 and 1951; the interests of their particular communities were often at the forefront of the debates on 'national development' and policy implementation. Minority ethnic groups were threatened by the influence of the major ethnic groups, and responded by introspectively being ethnocentric. Since economy and land were controlled by political power, ethnic considerations came to play a central role in the political life of the nation. Second, the economy and economic development increasingly drove the political dynamics of the Gold Coast as ex-service men and indigenous elite vied for shares in the 'national cake', which hitherto was enjoyed by the colonial administration and a select group of local chiefs. Third, a class war was brewing between the dominant groups such as the local chiefs, the *intelligentsia*, and the urban poor and rural dwellers (so-called verandah boys).

⁵³⁵ *Foreign Office Study: Problem of Nationalism* in CO 936/217, minute by Trafford Smith, 22 July 1952; see also Goldsworthy, *Conservative Government*, pt 1, 22-4 (no. 26).

7.5. Party politics and the struggle for hegemony: A test case for respecting rights

The lines of opposition drawn between the different nationalist movements after 1949 represented an ideological symptom of multiparty politics. An incremental introduction of constitutional guarantees between 1951 and 1957 created rights-bearing citizens out of subalterns, strengthened the territorial framework for a nation-state and reinforced the contours of power struggles between political parties. For examples, the nationalist movements disagreed fundamentally on whether state power should be centrifugal or centripetal, with the UGCC advocating for a federal constitutional framework and the preservation of chieftaincy as an integral part of state power through an upper chamber of parliament. According to Danquah, “only two types of persons favour single chamber legislatures, the dictator and the imperialist.”⁵³⁶ His insight on a bicameral legislature preventing the risk of dictatorship is an extrapolation from history and the fact that post-independent Ghana failed to take a cue from it had dire consequences on those whose views differed from Nkrumah’s. The creation of sectional centres of power was predicated on the understanding of national unity versus ethnic fragmentation in Gold Coast nationalism. The ‘human rights texts’ provide an illustration of the ways the different interest groups negotiated the meaning of the right to self-determination and the implications of exercising democratic rights in the Gold Coast.

The nationalist agitations were not altogether free of interpellations, in the sense that the colonial rule ‘created’ subjects who oscillated between an understanding that the interest of the dominant group was synonymous with ‘the common good’ and the awareness that colonial rule, by its very nature, disenfranchised the African communities from exercising many of their basic rights. The chiefs were interpellated as the agents of the indirect rule policy in the Gold Coast but in a different sense from many of the *intelligentsia* who by and

⁵³⁶ Gold Coast, *Legislative Council Debates*, Session 1950, Issue no. 2.

large were products of Western education and felt they also had a stake in political power. The latter group were basically excluded from administrative positions in the civil service and appointments in government. In the years leading up to independence, for example, the degree of a group's interpellation took on sectional and ethnic significance.

A classic example of the way political groupings attempted to use hegemonic control is in the period following the provision in the 1950 Constitution effectively lifting the ban on party politics in the Gold Coast. Sir Arden-Clarke believed that successful direct elections would be one of the preconditions for granting the right to self-determination to the people of the Gold Coast. Inter-ethnic rivalry became more visible in the nationalist movements, with political parties emerging out of ethnic and sectional groups to contest with others for political power.

The Anlo Youth Organisation (AYO) was formed in 1952 to advance the sectional interest of the Anlo people. Modesto Apaloo, who led the party, advocated that the Ewe people in British Mandated Togoland vote in the plebiscite to stay within Ghana after independence. The party existed for only five years, from 1952 to 1957, and won one seat to the Legislative Council in the 1954 elections.⁵³⁷ The Togoland Congress Party (TCP), on the other hand, opposed the Anlo agenda by campaigning for a separate Ewe state, bringing together the Ewes in French Togoland and British Togoland. Although the party won two seats in the 1956 general elections, its overwhelming defeat in the 1956 plebiscite brought about the amalgamation of British Togoland into the Gold Coast (Ghana) at independence.

In the Northern Territory, the Northern Peoples' Party (NPP) emerged under the leadership of Simon Diedong Dombo, the paramount chief of Duori, to represent the sectional interests of the people in that territory within the Gold Coast. The emergence of a political movement in the Northern Protectorate coincided with the Colonial Office's

⁵³⁷ Modesto Apaloo won the seat to represent the Anlos in the Legislative Council. The Anlos are a group of the Ewes in both Ghana and Togo.

decision to annex the region to join the Colony, Ashanti Protectorate and the Trust Territory of Togoland in a new constitutional dispensation.⁵³⁸ The party contested both the 1954 and 1956 elections in which they won 12 and 15 seats respectively to the Legislative Council. It is important to underline the fact that the party only won seats in the Northern Territories. The Muslim Association Party (MAP) grew out of the Muslim Association which started in 1932 as a welfare society but metamorphosed into a political party in 1954. Although the party failed to win a seat in the legislative elections of 1954 it existed for three years, eventually merging with the United Party (UP) in 1957.

Disgruntled former members of the UGCC and CPP also came together to form the Ghana Congress Party (GCP) in 1952 to represent the concerns of the chiefs and sections of the *intelligentsia* against the rising power of the CPP. Kofi Busia became the leader of the party, and after winning one out of the 104 seats in the 1954 legislative elections, the party merged with the NPP, AYO, GCP, MAP to form the NLM in 1956 as part of a broader preparation for that year's legislative elections. Allegiance to this new party was so *tribalised* that the CPP was compelled to close its regional headquarters in Kumasi, the capital of the Asante Kingdom. The *Liberator* newspaper of December 20, 1955 reported that the NLM supporters in Ashanti referred to the CPP members as "those who belong to no family or clan, those who are strangers, not properly trained to appreciate the value of the true and noble Akan."⁵³⁹ Bing explained how Obetsebi Lamptey, one of the leading nationalist leaders and a Ga by ethnicity, described Nkrumah as "a 'stranger—a Nzima—a man from a far away (*sic*) tribe—who, as a non-Ga, had no right even to address a public meeting in the Ga stronghold of Accra."⁵⁴⁰ Danquah, another foremost nationalist leader, is said to "constantly return to the greatness, glory and power of the Akim Abuakwa state, the largest State in the

⁵³⁸ See *Proposed Annexation of the Northern Territories* in CO 554/890.

⁵³⁹ *Liberator*, December 20, 1955.

⁵⁴⁰ Quoted in Bing, 102.

colony [and so] must also be the greatest in the Land.”⁵⁴¹

The assessment of R. J. Vile, an Assistant Secretary and the Head of the West Africa Department at the Colonial Office, of the NLM after an official visit to the Gold Coast in March 1955 was that “so little is known about the internal politics of the NLM that it is difficult to know the importance of this core determined people, or the kind of control exercised by the Ashantehene (sic) over them.”⁵⁴² Vile went on to say in his report that “[i]t is possible that Dr. Nkrumah’s peaceful approach... may lead to the resolution of the differences between the NLM and the CPP on constitutional matters.”⁵⁴³ At the same time, he asserted that “it is quite possible that the core of determined young men will take to the forest and engage in guerrilla warfare from there if other methods fail.”⁵⁴⁴ Bing mentioned how the houses of CPP leaders such as C. E. Osei, Mary Akuamoah (wife of Krobo Edusei) and Archie Caseley-Hayford were targets of bombings in the Ashanti Protectorate.⁵⁴⁵

As the overview of the political parties in the 1950s has shown, many of the nationalist movements were at the intersection of the hegemonic struggles around ethnicity, sectionalism and class. The discourse of ethnicities became a tool of control politics among some nationalist movements,⁵⁴⁶ basically employing ethnic ‘otherness’ to create a discursive link between the struggle for political power and the understanding of who was more or less ‘human’ to run the affairs of the country. Indeed, the politics of Gold Coast nationalist movements between 1951 and 1957 affirm Mutua’s argument that the conceptual aspirations

⁵⁴¹ See Joseph Boakye Danquah, *Journey to Independence and After*, Vol. II, compiled by H. K. Acheampong, Accra: Waterville Publishing House, 1972, 29-31, 63-64.

⁵⁴² No. 22, para 11 of *Proposals for Constitutional Changes Leading to Independence in the Gold Coast: Constitutional Safeguards* in CO 554/805.

⁵⁴³ No. 22, para 12 of *Proposals for Constitutional Changes Leading to Independence in the Gold Coast: Constitutional Safeguards* in CO 555/805.

⁵⁴⁴ No. 22, para 12 of *Proposals for Constitutional Changes Leading to Independence in the Gold Coast: Constitutional Safeguards* in CO 555/805.

⁵⁴⁵ Bing, 409.

⁵⁴⁶ Michel Foucault, *Discipline and Punish: The Birth of the Prison*, London: Penguin Books, 1977; Michel Foucault, “The Incitement to Discourse” in A. Jaworski and N. Coupland, eds., *Discourse Reader*, London: Routledge, 1999; Michel Foucault, *Abnormal: Lectures at the Collège de France, 1974-1975*, London: Verso, 2003.

of the African upper classes in the colonies tended to be amphibian, with one part of them renouncing colonialism and another part extolling the trappings of power it offered them as the elite among the colonised lot.⁵⁴⁷

The struggle also highlights the way some of the nationalist leaders understood the concept of democratic rights in particular and human rights in general. One aspect of the poverty of understanding of a good concept is in the way it is turned on its head, with violence and ethnic hegemony becoming the tools for gaining political power. On the issue of ethnicity, there is also the underlying question posed through the political activities of the ethnically-based parties as to who in the Gold Coast is more or less 'human' enough in the scheme of things. In the midst of the political violence, the Secretary of State for the Colonies reaffirmed the need to understand the basic democratic processes as the starting point for self-rule:

I have told Nkrumah that if a general election is held, Her Majesty's Government will be ready to accept a motion calling for independence within the Commonwealth passed by a reasonable majority in a newly-elected legislature and then declare a firm date for this purpose.⁵⁴⁸

There is ample evidence of legislative discourses on the question of the preparedness of the Gold Coast for independence. This position is captured in the intervention of Nii Amaa Ollenu in Legislative Council debates in 1950:

We want self-government! Yes; every one (*sic*) of us is anxious that it should come within the shortest possible time... But we do not want self-government in a state of anarchy, in a state where we are all slaves... where we shall not be able democratically to express our views without fear of being assassinated or suffering some peril. Those who employ such methods to subdue the people of their own country for their own needs... are enemies of the country. I would say they are traitors. Like Hitler and Mussolini the might have appeared to be heroes, but in the end they shall be proved to be traitors.⁵⁴⁹

Busia asserted a similar but stronger position two years later when he said that:

The issues which are before us in the matter of self-government are many. As we look

⁵⁴⁷ Mutua, 116-7.

⁵⁴⁸ House of Commons Debates, 11 May 1956 Vol. 552 cc557-60.

⁵⁴⁹ Gold Coast, *Legislative Council Debates*, Session 1950, Issue no. 1.

back upon the various philosophies which have been expressed on that matter, I single out three as representing the three different camps on the matter of self-government for the colonies or particularly for Africans. There is the view which says that the African is by nature not fit to rule either himself or anyone else, and that he must be ruled by Whites... This is the view of the South African Government. The second is that the Africans have the right to self-determination and to govern themselves whether they are political experts or not, and that they should all be free at once; they should have Self-Government Now. This was the view which was held by the Convention People's Party at the time of the elections. ... There is another view that Africans should govern themselves, but that they have still a great deal to learn, and that it would be unwise of the Imperial Government to withdraw until the hard lessons have been learnt, that is the British view.⁵⁵⁰

Although the jurisprudence on the enforcement of human rights norms in the post-war Gold Coast political landscape is non-existent, the superior courts by following English common law tradition upheld the constitutional rights of some natives.⁵⁵¹ Nkrumah's CPP government enacted legislations that clawed back the limited rights provided for in the country's constitution. For example, the Deportation Act 1957, which I referred to in chapter 6 above, was passed immediately after independence, giving authority to the executive to issue deportation orders without consulting other organs of government. As Nana Busia has pointed out, "[t]his act... exposed the limitations of the [1957] Independence Constitution with respect to the protection of rights as well as the danger of leaving such rights to be determined by common law principles."⁵⁵² Within the first few months of independence, the implementation of the Deportation Act 1957 was challenged in the High Court in *Larden and Anor v. Attorney General*.⁵⁵³

This case is significant on several levels. First, it led to positive judicial developments in the immediate aftermath of independence. Second, Nkrumah's government passed a

⁵⁵⁰ Gold Coast, *Legislative Assembly Debates*, Session 1952, Issue no. 3.

⁵⁵¹ See, for example, *Patterson v. District Commissioner of Accra and Anor* (1948) A. C. 341 (Ghana) on ways in which a ministerial act requiring inhabitants of the Accra District to pay £321 16s. 11d in lieu of police stationed in the district infringed on the constitutional rights of people. Even though the case was lost on appeal, the fact that the inhabitants had the wherewithal to bring it against the colonial administration is an illustration of some awareness of their constitutional rights. In *Tamim v. Controller of Customs* (1951) 12 W.A.C.A. 254 (Ghana) on a trial without pleadings, a businessman had appealed against the ruling of two courts in favour of the Controller of Customs over unpaid export tax without the benefit of the pleadings from appellant.

⁵⁵² Busia, Jr., 55.

⁵⁵³ For the implications of this case on democracy in Ghana, Busia, Jr., 55.

legislation overruling the jurisdiction of the High Court to hear the case, which in turn was challenged on the grounds that the constitution did not confer parliamentary sovereignty on legislators with which they could pass the Deportation Act of 1957. The use of extraordinary powers by Nkrumah was a replication of colonial laws such as Sections 44 and 45 of the Gold Coast (Constitution) Order in Council 1954 which provided for the Governor to act unilaterally “in the interests of the public order, public faith or good government.”⁵⁵⁴ The judge in the case, however, held that the legislature was sovereign and therefore no court could question the exercise of its authority:

In England it is not open to the court to invalidate a law on the ground that it seeks to deprive a person of his life or liberty contrary to the court’s notions of justice, and so far as the Independence Constitution, Section 31(1) is concerned, this is the position I find myself.⁵⁵⁵

With a majority in parliament, the CPP increasingly used parliamentary sovereignty to pass repressive laws, neglecting in the process the obligations to enforce, respect, protect and fulfil human rights provisions in the country.

The Avoidance of Discrimination Act, 1957 (CA 38), for example, prohibited political parties that were formed to advocate specific ethnic, sectional or religious agendas from functioning. The timing of the bill raised questions as to why it was not passed before independence even though it controlled the activities of ethnically-based movements that posed a threat to the country’s unity. Bing points out how “[t]o the African Minister self-Government implied the right to use, in national interest, the same powers and methods of government which the Colonial authorities had employed”⁵⁵⁶ when he discusses in great detail Krobo Edusei’s decision not to approve the issue of a re-entry visa for Christopher

⁵⁵⁴ Section 44 of *Gold Coast (Constitution) Order-in-Council*, 1954 (SI 353).

⁵⁵⁵ 3 West African Law Report 114 (1958). This ruling had serious implications on the way parliamentary sovereignty was exercised in the newly independent Ghana. The enactment of the Preventive Detention Act (PDA) of 1958, giving power to the minister of interior to detain without charge any person suspected of threatening national security, infringed especially on individual rights and fundamental freedoms.

⁵⁵⁶ Bing, 222. Krobo Edusei took the decision in his capacity as Minister of the Interior. According to Bing (224), Shawcross was a “Queen’s Counsel, Recorder of Nottingham and an acute and able lawyer.”

Shawcross, a British lawyer, who had accepted a brief to defend the *Ashanti Pioneer* and Mr Ian Colvin in court for contempt. The case identifies the complexity of the politics of human rights and the way Nkrumah's government viewed the courts "primarily as the institutions through which a government, Colonial or otherwise, imposed its policy behind a cloak of magisterial propriety."⁵⁵⁷ Even as it took on an ideological scope, human rights became a source of controversy. On the one hand, international human rights inspired some of the political changes in the Gold Coast; on the other hand, post-independence balance of power affected the recognition of constitutional and human rights principles.

7.6. The question of gender equality in Gold Coast nationalism

C. L. R. James has argued that "in the struggle for [Ghana's] independence, one market woman... was worth any dozen Achimota [College] graduates."⁵⁵⁸ In spite of women's participation in nationalism their particular constitutional and human rights, as I have pointed out above, did not make an item in every nationalist movement's agenda. Rev. Bardsley, a member of the Gold Coast Legislative Council, noted the historical link between gender imbalance in England and that in the Gold Coast when he said that "[t]he country has got to learn democracy, and modern democracy is a very recent thing indeed... In England, it is only 83 years since the majority of English received the right to have a say in their own government. It is only 31 or 30 years since English women were enfranchised."⁵⁵⁹ And this was a literal truth, thus overlooking the limits of the franchise.

The women in the Gold Coast could not enjoy the vote conceded to their British counterparts in 1918 because British colonies, unlike the French *assimilé* territories, were not extensions of Britain and people there were denied British citizenship and its attendant

⁵⁵⁷ Bing, 225.

⁵⁵⁸ C. L. R. James, *Nkrumah and the Ghana Revolution*, London: Allison and Busty, 1977, 56.

⁵⁵⁹ Gold Coast, *Legislative Council Debates*, Session 1949, Issue no. 4.

rights.⁵⁶⁰ For example, the colonial education system exacerbated the subordinate role of women in the Gold Coast by laying emphasis on ‘feminine’ skills for girl-children. The employment sector was also characterised by unequal and discriminatory practices against women, such as working in the lower echelons of institutions as secretaries, clerks and telephone operators on lower salaries than their male counterparts, being excluded from management-level jobs in the civil service, and having to choose between marriage and remaining at home or a career. There was some awareness about the problem as Ampadu, the Ministerial Secretary to the Ministry of Defence and External Affairs, noted in a legislative intervention: “I have noticed in the press some criticism of the absence of any reference to Women Police.”⁵⁶¹ Even in matrilineal societies where women had political, economic and legal rights, the enjoyment of those rights was contingent more or less on whether or not one had ‘royal blood.’ Some scholars hold the generalisable idea that power resided in the female in matrilineal societies, but that is open to debate because chieftaincy was rapidly converted into a patri-centric institution to support the policy of indirect rule.⁵⁶² In other words, gender equality in the public sphere even in matrilineal traditional societies was suppressed. As Manuh has pointed out, “it is true to say that women occupied subordinate positions in all societies in [the Gold Coast] and were not regarded as the equals of men.”⁵⁶³

There was a slight improvement of gender roles in the media after 1949 and in politics and women themselves begun to articulate gender equality as a constitutional and human rights issue. Two women, Mabel Dove Danquah and Akua Asabea Ayisi, were elected to the executive of the CPP along with three men. As I have pointed out above, the party

⁵⁶⁰ April Carter, *The Politics of Women's Rights*, London: Macmillan, 1988, 6. She points out that women acquired the right to vote after a protracted and militant struggle by the suffragettes and even then it was limited to women over 30 years old who were themselves householders or wives of householders. Over 21 year-olds were given the same rights and by 1923 eight women had become MPs in the House of Commons, but it was only in 1928 that women finally acquired the right to vote on equal terms with men. Also see the British Nationality and Status of Aliens Act, 1914 and the British Nationality Act, 1948.

⁵⁶¹ Gold Coast, *Legislative Assembly Debates*, Session 1952, Issue no. 2.

⁵⁶² For a detailed analysis of this point, see G. Mikell, “West African Women and Men: Roles and Interaction” in *Ghana Studies Bulletin*, 3, 1985.

⁵⁶³ Manuh, 102.

constitution provided for a women's wing where the specific interests of the female members would be taken on board.⁵⁶⁴ The activities of women's groups and individual women played at least two functions in reinforcing the 'public spaces' in which women articulated their opinions in the nationalism discourse; there emerged in the 1940-50s a crop of women leaders such as Mabel Dove Danquah, Akua Asabea Ayisi, Leticia Quaye, Hanna Cudjoe, Ama Nkrumah and Sophia Doku, among others, whose roles were not tied to belonging to royal families; they shifted the locus of women's concerns to a national platform through involvement in the CPP. Writing in the *Daily Graphic*, Edith Wuver highlighted how the time of gender inequality should be a thing of the past, with women having an important role to play in an independent Ghana:

The time of regarding women below the standard of men is long past. Many responsible posts held by women of other countries are practically unheard of in ours. Lecturers of big universities consist of women who cover all subjects just as men. Many leading magazines are edited by women and even in the army women rise to the same rank as men. What holds us back?⁵⁶⁵

In the *African Morning Post* of July 31, 1952, Nkrumah was quoted as saying that "women should be left alone to choose their suitable husbands; there is no force in love and spinsters should not be arrested for not marrying."⁵⁶⁶ The fact that such an issue came up for comment is a reflection of a patriarchal society that was slowly waking up to the changes in the world.

In the 1950s, all the major newspapers had women's columnists. In the *Ashanti Pioneer* an article on unequal opportunities in education argue that "women's right to education is a human right."⁵⁶⁷ In the *Accra Evening News*, for example, Akosuah Dzatsui championed the cause of equal right to education for girl-children⁵⁶⁸ in one piece and in another challenged women to enter into the profession of journalism:

Women of Ghana it is a fifty-fifty world, men have been running it for centuries and

⁵⁶⁴ *Constitution of the Convention People's Party*, Accra: CPP, 1949.

⁵⁶⁵ *Daily Graphic*, June 11, 1955.

⁵⁶⁶ *African Morning Post*, July 31, 1952.

⁵⁶⁷ *Accra Evening News*, August 1, 1950.

⁵⁶⁸ *Accra Evening News*, August 1, 1950.

they have been doing it very badly, and we must help them whether they like it or not. We are the mothers of men and they have no more intelligence or sense than ourselves so enter journalism and play your part in this new brave Ghana of Ours.⁵⁶⁹

Dede Barkye observed in the *Daily Graphic* the increased number of girls getting an education that in the medium to long term would make them eligible for what she described as “men’s work.”⁵⁷⁰ Diana Korsah also raised the issue of equal opportunities for men and women in the Gold Coast, noting that women “talk of equal partnership in the home; and would like equality of opportunity in work and politics.”⁵⁷¹ Gender equality became a recurring theme in editorials and columns of many newspapers. There is, for example, an acknowledgment on the part of government in 1952 that

financial provision for three women NCOs and nine women constables in the current Estimates [was being made]. No women recruits have yet been enlisted, the reason being that Mr. Collens, the Commissioner of Police, who is at present on leave is studying the organisation and duties of women in London.⁵⁷²

The matter came up for comment because of “press criticism of the absence of any reference to Women Police.”⁵⁷³ Indeed, Gadzekpo maintains that Gold Coast women journalists in the print media “were particularly successful in publicly articulating ... viewpoints on various subjects in national newspapers.”⁵⁷⁴ Sadly, the same could not be said about women in politics, such as Mabel Dove who was the sole woman to be voted into the legislature in the Gold Coast.

Indeed, this is a symptom of the ‘double colonization’ suffered by women in the Gold Coast. The argument that discrimination against women intersect at race, gender and class—what Williams calls intersectionality—puts in proper perspective the way Gold Coast

⁵⁶⁹ *Accra Evening News*, May 2, 1951.

⁵⁷⁰ *Daily Graphic*, October 18, 1951.

⁵⁷¹ *Daily Graphic*, November 20, 1951.

⁵⁷² Gold Coast, *Legislative Assembly Debates*, Session 1952, Issue no. 2.

⁵⁷³ Gold Coast, *Legislative Assembly Debates*, Session 1952, Issue no. 2.

⁵⁷⁴ Audrey Gadzekpo, “Gender Discourses and Representational Practices in Gold Coast Newspapers” in *A Journal of Culture and African Women’s Studies* (2001): 1(2)

<<http://www.jendajournal.com/jenda/vol1.2/gadzekpo.html>> (accessed 14 June 2010).

women's experiences were negotiated and constructed in the nationalism discourse.⁵⁷⁵ The idea of intersectionality is highly relevant to the analysis of gender discourses in nationalism for two reasons. First, nationalist movements in the Gold Coast employed the language of 'rights' for a specific agenda, *viz.*, realising the normative principles of justice, equality, non-discrimination, freedom and self-determination but tended to be ambivalent about the particular rights of women in the discourse. Some of the discriminatory practices were products of both culture and colonialism, the 'gatekeepers' of what was appropriate or inappropriate for women to do or say. Second, at least the CPP attempted in small measure to enhance women's participation in politics by creating at the launch of the party a women's wing and electing women to the executive. What this proves is that change is possible where there is foresight and collective will.

7.7. Conclusion

What this chapter has done is demonstrate how nationalism in the Gold Coast formed part of a trajectory of constitutional, statutory and human rights discourses. It becomes clear that the fuller expression of nationalism occurred in the post-World War II period even though the beginnings of nationalism go back to the advent of colonial rule. In situating the different rights' discourses within the narratives that nurtured nationalist thinking I have highlighted how the nationalism process was neither orderly at all times nor the demands direct all the time. Indeed, most of the time the expression 'human rights' never featured in the demands made by the nationalist movements. As an ideology, nationalism grew out of the particular historical situation in the Gold Coast and in relation to changes taking place around

⁵⁷⁵ Angela Davis, "Reflections of the Black Women's Roles in the Community of Slaves" in *The Black Scholar*, December 1971, 14 pp; Kimberlé Crenshaw Williams, "Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color" in Martha Albertson Fineman, Rixanne Mykitiuk, eds., *The Public Nature of Private Violence*, New York: Routledge, 1994, pp. 93-118. Also see Charlotte Krolokke and Anne Scott Sorenson, "Three Waves of Feminism: From Suffragettes to Girls" in *Communication Theories and Analyses: From Silence to Performance*, London: Sage Publications, 2005, 24; Carol Gilligan, "In a Different Voice: Women's Conception of Self and Morality" in *Harvard Educational Review* 47(4), 1977: 481-517.

the world. Increasingly, the nationalist movements deployed the idea of a prospective 'nation-state' as a heuristic device and at the same time made more and more demands for constitutional guarantees of liberties. Through nationalism, deeply internalized inter-ethnic rivalries were sometimes transcended because of a collective perception of colonialism as 'a common enemy.' The question of gender is pertinent to any discussion of the human rights situation in the Gold Coast, or in any context for that matter, which is why I have given it the attention it deserves but too rarely receives.

8. General conclusion

“Truth is like oil; no matter how much water you add it always floats to the top.”

Dagara proverb

“Every time a poor, oppressed, tortured person uses the language of human rights — because no other is currently available — to protest, resist, fight, she draws from and connects with the most honourable metaphysics, morality and politics...[of our time].”⁵⁷⁶

Costas Douzinas

8.1. Human rights: an affirmation of every human being as a rights-holder?

This thesis examined the meaning of ‘the human’ in human rights discourse and the ways in which the idea of rights-bearers shaped the contours of independence debates in the Gold Coast between 1945 and 1957. The analysis has been based largely on an investigation of primary sources. It is important to return to the key questions for this thesis, and draw attention to the fact that the study has shown how the complex interplay of historical realities, a certain degree of visionary leadership, and political pragmatism inspired a new-fangled idea of universal rights. The UDHR presented to the post-World War II context an affirmation that ‘the human being’ of rights is every human being. This idea contested longstanding regimes of falsity that had rationalised and justified the ill-treatment of others on grounds of their “race, colour, sex, language, religion, political or other opinion or social origin, property, birth or other status”⁵⁷⁷ but also spoke a particular truth to politics.

The understanding of human rights principles in 1948 is not what it is today. Therefore, whatever the critiques of the precursors of human rights or the process of drafting the UDHR, the antecedents represent at least one way of understanding the evolving idea of human rights. The UN Charter, and the UDHR in particular, launched what its drafters termed “a common standard of achievement for all peoples and nations.”⁵⁷⁸ These treaties presented a discourse, indeed a ‘promise,’ that every human being is a rights-bearer. By defining the rights-holder as every human being, the UN human rights regime transcended

⁵⁷⁶ Costas Douzinas, *Human Rights and Empire: The Political Philosophy of Cosmopolitanism*, Abingdon: Routledge-Cavendish, 2007, 33.

⁵⁷⁷ Art 2 of UDHR.

⁵⁷⁸ Preamble of UN Charter.

extant constructions of people as racialised others, gendered others, colonised others, nationalised others or ethnicised others. This idea also contested the regimes of falsity that rationalised a human hierarchy or justified the binary logic of white/black, civilized/primitive, male/female or those more-deserving/less-deserving of human rights.

The idea of human rights has a link, however tenuous, with notions of justice, non-discrimination or equality in history. But the UDHR transcended what Moyn argues represented “politics of citizenship at home”⁵⁷⁹ to put the accent on the inherent dignity of all human beings and to emphasise the universality of fundamental rights norms. These provide part of the groundwork for the applicability of human rights principles in all places, underscore its ‘promise’ as a heuristic tool for asserting claims to be treated fairly and draw attention to the potential of fundamental rights for reform. One of the symbolic results of the nascent UN human rights regime was the Council of Europe’s ECHR, which inspired the debate between the Colonial Office and its administrations in British dependencies as to the relevance of the instrument for colonial subjects.

Colonial rule had basically constructed the colonised person as less deserving of land, statutory or constitutional rights, and the UDHR idea of rights contested that thinking and went further to affirm the inherent dignity of every human being. At the heart of the debate about extending ECHR to the colonial subjects were a number of complex issues, not least questions about ‘the humanity’ of the colonial subjects, indigenous agency in the nationalist movements and symbolic embarrassment around colonial rule vis-à-vis all human beings being rights-bearers. The debate itself came to represent, as it were, a process of ‘vernacularising’ the universal language of human rights into a Gold Coast dialect through a number of constitutional reviews in the 1950s.⁵⁸⁰

However, human rights as an idea was also at the mercy of the power brokers who

⁵⁷⁹ Moyn, 12.

⁵⁸⁰ Merry, “Transnational Human Rights and Local Activism: Mapping the Middle.”

debated the suitability of extending the ECHR to the Gold Coast and the nationalist movements, i.e., those doing the vernacularisation. The discourses of human rights are political. In other words, the domestic process was not free of the politics of colonial rule and competing claims in the nationalist movements. Even when the nationalist movements deployed the language of human rights as a tool for challenging colonialism and the unequal treatment of Africans by the colonial administration in the Gold Coast, it was characterised usually by some tentativeness. In other words, the universal significance of international human rights resonated well with the local politics of resistance against colonial rule, but was not deployed in its entirety by the anti-colonial movements. They only adopted those aspects that reinforced the discourse of independence such as better representation in government, the right to self-determination, freedom of association, the right to vote and to be voted for, freedom of assembly, freedom of movement and freedom of expression. Also, many of these demands already formed part of the language of nationalism before the emergence of the post-World War II idea of human rights.

Just as anti-colonial resistance eclipsed issues of gender or ethnic equality, the politics of demands for the collective right to self-determination overshadowed interests in individual rights. Even though anti-colonial nationalism served as a counter discursive practice to colonialism it did not integrate human rights principles fully into its discourses, begetting, for example, an independence constitution without a bill of rights. The reluctance to incorporate a bill of rights in the Independence Constitution points to the failure of the state, the poverty of cultures and partisan selfishness in the Gold Coast. All these factors as well as Cold War politics contributed to the level of ambiguity about the subject of human rights.

8.2. The duty of being human

The November 10, 1949 editorial of the *Accra Evening News* summed up the demand for the right to self-determination in the Gold Coast thus, “[s]elf-government is our inherent right... no nation has the right to take it away from us under the pretext of ‘protection and trusteeship.’”⁵⁸¹ Colonial policies and practices had inspired a politics of nationalist resistance among the Africans and reinforced specific discourses of justice about participation in government and ultimately the right to self-determination. In themselves, these discourses neither resonated entirely with the notion of individual rights proposed by the UN human rights regime nor represented an unequivocal expression of public interest in the idea of individual rights, as we understand it today. Even the two key debates dealing specifically with incorporating human rights principles into domestic legislation did not constitute struggles for individual rights as such. Indeed, the cause for the collective right to self-determination trumped the philosophy behind imperial domination, and increasingly, concerns about individual rights.

The normative objective of the “Universal Declaration of Human Rights as a common standard of achievement for all peoples and nations”⁵⁸² is as significant today as it was in 1948. True, there has been enormous poverty in the understanding of the concept of human rights in history, but it still has great potential as a language of protest against unfair treatment of others on grounds of their race, sex, gender, ethnic belonging or political opinion. The clout of human rights is in what it has helped people living under unjust situations achieve and what it stands for in the struggle for equality and fairness. When its standards are genuinely applied it has the power to restore ‘humanity’ to those who are oppressed and to those who are doing the oppressing. Processes of legal recognition make, as it were, the human being and human rights speaks to situations where a person is victimised

⁵⁸¹ *Accra Evening News*, November 10, 1949.

⁵⁸² Preamble of the UDHR.

because of her gender or tortured because he holds a political opinion that is different from the party in power. The guarantees through legal instruments are one way of asserting how human beings have rights.

History is full of examples of violations that raise questions of receptivity, but universal human rights contracts the distance of time just as the history of human rights is telescoped in human dignity. We human beings have sometimes fallen into the trap of denigrating each other on the grounds of our differences and disparaging the concept of universal rights for various reasons. The reasons for the unfair treatment of each other tend to be ignoble, polemical and egoistic, yet the truth is that the person who does the dehumanising also dehumanises himself/herself without recognising it. Hence, human rights norms help to restore 'humanity' in situations of abuses, the victim and the perpetrator of abuse benefitting in the process.

The human rights idea remains relevant in our world as a conceptual, political and ethical matter. As a regime of truth, it could be a transformative and creative force for change in societies where discrimination and inequality form part of the value system. But this potential is only a potential requiring human agents to harness it. It is when human agents appropriate and deploy the power of human rights that it can bring about change in thinking about who 'the human being' of rights is and the ways in which the idea of rights provides at least one of the bases for building a legal framework within a state. This way, human rights generate legal obligations that are justiciable in local courts while providing a normative baseline against which government accountability could be measured. In a world where 'naming and shaming' has sometimes inspired change, human rights could actually bring about legislative change. In human rights lies one of the duties of being human.

The thesis has approached the human rights discourse as a truth regime which helps in contesting regimes of falsity. When the language of human rights is deployed as a protest

against systematic violations of individual or group rights, it fulfils one of its key functions. In this way, it constructs rights-holders—‘the human being’ of human rights—through affirmations in human rights instruments and also through a process of state recognition. Rule of law, a strong state and some form of accountability are important in building an authentic human rights culture. But the driving force of human rights will always be a community of human beings with more than goodwill or tolerance for those who may be different.

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Appendices

Appendix I: Gold Coast timeline

1434	Contact between Africans in Guinea littoral region and European explorers
1470s	Fernão Gomes arrived with permit to trade in the region
1482	First European settlement, São Jorge Castle, built in Elmina
1530s	William Hawkins arrived in West Coast of Africa
1553	Thomas Windham reached area that came to be known as ‘the Gold Coast’
1560s	John Hawkins pioneered triangular trade in the region
1550-1700s	British Royal African Company monopolised trade
1750	African Company of Merchants regulated to trade in the coastal regions
1807	Act for the Abolition of the Slave Trade, 1807 passed
1821	Transfer of British settlements in ‘the Gold Coast’ to British Crown
1828	African Company of Merchants converted to the Committee of London with responsibility to administer ‘the Gold Coast’
1833	Slavery Abolition Act, 1833 passed abolishing trade in human being throughout most of the British Empire
1844	Bond of 1844 signed
1865	Ashanti-British war; House of Commons’ Select Committee recommended the signing of another treaty to the British Crown; British defined coastal region as ‘protected territories’
1873-74	Ashanti-British war
1874	‘Gold Coast’ formally declared a protected territory; through British Settlements Act, 1874; new Treaty negotiated with local chiefs
1877	Capital moved from Cape Coast to Accra
1883	Native Administration Ordinance, 1883
1884-5	Berlin Conference held
1888	First African appointed to the Gold Coast Legislative Council
1891	First census in the Gold Coast

- 1895 Chief Justice Sir Joseph Hutchinson settled confusion over the meaning of 'British protected territories' and 'British settlements'
- 1899 Heligoland Treaty agreed on the dividing line between the English territory to the east and Germans territory to the west
- 1901 British Crown Order, 1901; Ashanti annexed a 'protected territory'; Northern Territories created 'protected territory'
- 1904/1906 Chiefs Ordinance/Native Jurisdiction Bill
- 1914 League of Nations passed Togoland as a mandated territory to British colonial administration in Gold Coast
- 1925 The Gold Coast (Constitution) Order in Council, 1925
- 1927 Native Administration Ordinance
Achimota College (Prince of Wales School) formally opened
- 1935 Native Authorities Ordinance
- 1939 Native Treasuries Ordinance
- 1945 UN founded; UN Charter
- 1946 Gold Coast (Constitution) Council in Order, 1946
- 1948 UDHR
- 1950 Gold Coast (Constitution) Council in Order, 1950; introduction of universal adult suffrage; legislative elections held in Gold Colony and Ashanti Protectorate
- 1951 First all-African Legislative Assembly formed with Nkrumah as Leader of Government
- 1952 Nkrumah became Prime Minister of the Gold Coast
- 1954 Gold Coast (Constitution) Council in Order, 1954; elections held
- 1957 Ghana (Constitution) Council in Order, 1957
Independence from British colonial rule; Change of name from Gold Coast to Ghana
- 1958 Constitution (Repeal of Restrictions) Act, 1958 passed expunging the three fundamental rights from the 1957 Constitution.

Appendix II: Draft Proposals for a Constitution of Ghana, 1957

Part II: Fundamental Rights⁵⁸³

VII. The liberty of the person is inviolable and no person shall be deprived of his liberty except in accordance with law. Upon complaint made by or on behalf of any person that he is being unlawfully detained any Judge of the Supreme Court of Ghana may forthwith enquire into the same and may make an order requiring the person in whose custody such person is detained, to produce the person so detained before such court or Judge without delay and to certify in writing as to the cause of the detention and such a court or Judge shall thereupon order the release of such person unless satisfied that he is being detained in accordance with the law. Provided however that nothing contained in this Article is invoked to prohibit, control or interfere with any act of the Government of Ghana during the existence of a state of war, or when an emergency has, in accordance with law, been proclaimed.

VIII. The dwelling of every person in Ghana is inviolable and shall not be forceably entered except in accordance with the law.

IX. Every person in Ghana is equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality and health.

X. The right of free expression of opinion as well as the right to assemble peaceably and without arms, and form associations or unions is guaranteed for purposes not opposed to public order or morality. Laws may be made regulating the manner in which the right of forming associations and the right of free assembly shall be exercised.

XI. (i). No person shall be deprived of his property except in accordance with law.

(ii). No property, movable or immovable, including any interest in, or in any company owning any commercial or industrial undertaking, shall be taken possession of, or acquired for public purposes under any law authorising the taking of such possession or such acquisition unless the law provides for compensation for the property taken possession of or acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, the compensation is to be determined and given.

XII. (i). No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, not be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(ii). No person shall be prosecuted and punished for the same offence more than once.

(iii). No person accused of any offence shall be compelled to be a witness against himself.

XIII. Subject to the provisions of this Constitution every citizen of Ghana and every other person in Ghana is entitled to all the rights and freedoms provided in this Constitution without distinction of any kind, whether on the ground of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

⁵⁸³ This bill of rights was part of a bigger proposed draft constitution prepared by Nkrumah's government in 1956. It was sent to the UK government, with a dispatch to Charles Arden-Clarke, the governor of the Gold Coast, indicating the willingness of Nkrumah's government to have a bill of rights in the Independence Constitution. In a reply to Nkrumah, Alan Lennox-Boyd, the UK Secretary of State for the Colonies, said that the UK government was not amenable to Ghana gaining its independence on the basis of the proposed bill of rights in particular and the proposed Constitution in general.

Appendix III: Memo of the Opposition Parties in the Gold Coast on the Constitution⁵⁸⁴**Gold Coast Independence****Kofi Abrefa Busia**

30th November, 1956.

Attached hereto for your consideration is a memorandum setting forth in brief outline the standpoint of the Opposition Parties in the Gold Coast as to the safeguards which they consider to be essential if the peoples of the Northern Territories, Ashanti and Togoland are to be persuaded to accept union with the Gold Coast Colony. My colleagues and I would welcome an opportunity of explaining our case in detail, either to individual members of Parliament or to groups of members. In the meanwhile urgent steps are being taken to present a petition to both Houses of Parliament praying that the representations of the majority of the peoples of Ashanti, the Northern Territories and Togoland be considered by Parliament before any further action is taken.

Yours faithfully,

K. Busia

Leader of the Opposition,
Gold Coast Assembly**Gold Coast Independence**

1. The United Kingdom Government announced that the Gold Coast will be granted Independence in March 1957. It is essential that the Constitution of the new independent State should command general acceptance amongst its citizens. If it did not the consequences might be disastrous. The area of the proposed State of Ghana is neither geographically, historically or politically a single entity. It consists of four separate regions. In addition to the Crown colony of the Gold Coast are the separate regions of Ashanti and the Northern Territories. Up till 1901 Ashanti was a separate political unit and even after its annexation in 1901 continued to be administered separately from the Gold Coast colony. The Northern Territories constitute since 1897 a British protectorate. There is also a separate Trust Territory of Togoland. It is not sufficient if the Constitution meets with the approval of the majority of the Gold Coast colony. Unless it also commands the general support of the inhabitants of the other territories, by offering them the security and protection to which they are entitled, the new State will be open to grave internal conflicts at its very birth. The only link which binds these four territories at the present time is British sovereignty. If that link is removed, there will be no bond either legal or political to hold together the proposed new State except upon the basis of general agreement.

2. This agreement does not at present exist. The United Kingdom Government supports the proposal of the Gold Coast Government upon the basis that the Convention Peoples Party obtained a majority at the General Election held on the 17th July 1956. The proposals of the Gold Coast Government are, however, opposed by the National Liberation Movement and its allies. The latter include the Northern Peoples Party, the Moslem Association Party, the Togoland Congress and the Federation of Youth Association. These groups fought in the last

⁵⁸⁴ This memorandum was circulated to MPs before the debate in Parliament concerning Gold Coast Independence four months before Ghana's independence. Dr Kofi Abrefa Busia was then leader of the opposition in the Gold Coast Parliament. Paragraphs 5(3) and 8 are especially pertinent to the question of human rights in the new constitution.

Election under one manifesto and under one leader. In the Legislative Assembly they accept one leadership and a common Whip. Their views are shared by the Asanteman Council, which is the supreme authority of the Ashanti nation. The N.L.M. speaks for the majority of the peoples of the Northern territories and Ashanti and generally for the opposition in the Gold Coast Legislative Assembly. We also believe that it commands the support of the great majority of the inhabitants of the Trust Territory of Togoland who, while they wish to join the new State, only desire to do so provided regional and minority interests are properly safeguarded. At the General Election on the 17th July 1956 only 58% of the registered voters actually voted. Of these, 57% voted for the C.P.P. and 43% for the opposition and its allies. In the Gold Coast colony the C.P.P. had a majority but it was defeated in Ashanti and the Northern Territories. Ashanti and the Northern Territories constitute together with Togoland approximately three-quarters of the proposed total area of the new State.

3. The communities we represent wish to take part in the new independent State provided, however, that it is endowed with a Constitution which commands general support amongst its citizens and which gives real and firmly entrenched protection to regional, minority and individual rights and provides sound and stable Government.

4. In 1951 the United Kingdom Government gave an assurance that special consideration would be given to the wishes of the Northern Territories before any further constitutional advances were made. The United Kingdom Government has also agreed that an agreed Constitution is very necessary and that there should be provisions in the Constitution before Independence to safeguard regional and minority rights. The United Kingdom Government has not however, produced any proposals for a Constitution to give effect to these views. In a recent statement by the Gold Coast Government in a white paper entitled "The Government's Revised Constitutional Proposals for Gold Coast Independence", it is stated "Originally the opposition proposed that there should be an entirely new and written Constitution, for Independence. The Government had much sympathy with this idea and in particular, like the opposition, wished to include in the Constitution fundamental rights guaranteeing liberty and the right of political and industrial association, together with freedom of speech and of the Press. The British Government, however, took the view, that these were matters which should be put into the Constitution after Independence and after the British Parliament had conferred full sovereignty on the Parliament of Ghana". The opposition maintains its view that a proper written Constitution for the new State should be drafted before Independence.

5. Some of the more important questions which must be dealt with in the Constitution are as follows:

(1) The question of alterations in the constitution is vital. Whatever safeguards are given they are of no value if they can be removed easily at any time. It is not sufficient to say that they can only be removed by a majority. The whole object of safeguards is to protect Groups who, taking the new State as a whole, would be minorities. Under the Government's revised proposals it is suggested that certain safeguards be introduced into present Constitution by the time independence takes effect in respect of a limited category of subjects. The adequacy of these safeguards is discussed below. The present point is that wholly inadequate steps are taken to prevent even the Government's safeguards from being removed the day after independence. The Government still apparently proposes that constitutional change can be effected by a simple two-thirds majority of a single Chamber. Assuming the Government could obtain the two-thirds majority, and it might be able to facilitate its task in so doing by altering electoral districts and managing the voting register, it could immediately abolish all

the safeguards and could even change the provision in the Constitution itself which requires a two-thirds majority. It could, for example, alter that provision by providing that only a simple majority is required. There is no second Chamber to delay and give a second opinion on the point. There is no provision for any consent or agreement to be obtained from any of the Regional Assemblies or the Chiefs or from any other body.

(2). The Constitution itself

The U.K. Government has rejected the view that in the instruments conferring independence there should be embodied a new Constitution containing such safeguards as are proper. They merely contemplate that the present Constitution may be amended before independence in certain limited respects but exclude, for example, that the Constitution shall embody provisions as to fundamental rights and constitutional conventions. They indicate that these are matters for settlement by the new State after independence has been granted. By the time that stage has been reached, however, a simple majority will be able to dictate the whole position and none of those safeguards would probably ever be inserted at all. Even as regards the particular matters which the U.K. Government agrees should be inserted into the Constitution before independence it will be seen below that they are in many respects inadequate and for others there is no provision at all.

(3) Regional Assemblies

The Government's revised proposals leave the following matters to be determined by the Gold Coast Parliament:

- (a) The number of the regions and the boundaries thereof;
- (b) The authority, functions and powers of, the Regional Assemblies:

There is provision that certain specific matters are to be included in their powers but this is only "subject to the authority of Parliament". This means in practice that Parliament is entirely free to decide exactly what functions and powers the Regional Assemblies shall have from time to time. In fact Parliament could decide by changing the Constitution not to have any Regional Assemblies at all.

There is no provision or safeguard Assemblies. Nor, so far as can be seen, is there provision for the composition and membership of the Assemblies to be provided in the Constitution, Under the present proposals it would appear that the whole matter of the composition of these Regional Assemblies is to be left in the air for subsequent consideration by Parliament. This means again that the safeguards as regards Regional Assemblies are illusory.

(4) Position of Chiefs in Regional Government

The Government acknowledges in principle that the Chiefs should have a part in the Regional Government of the country and for that purpose state that the office of a Chief as existing by customary law and usage should be guaranteed and also provide for a House of Chiefs in each region. Nevertheless, the provisions made are wholly inadequate. The Regional House of Chiefs is only to have power to consider matters referred to it by a Minister or by the National Assembly and to offer advice with regard to certain specific matters. The National Assembly is under no obligation to refer matters (except in the case of Bills affecting the traditional functions and privileges of a Chief) and is under no obligation to accept its advice. The House of Chiefs is to play no part in the Regional Government of the Country. There is no definition of the rights and powers of the Chiefs which are to be guaranteed by the Constitution.

(5) Checks and balances in Central Government

There is no provision for any checks and balances. There is no Second Chamber, no Council of State and the Governor-General has always had to act on the advice of the Prime Minister. If this is to be the position as regards the Council of State and the Governor-General, it is particularly necessary that there should be a Second Chamber.

(6) Public Service

It is clearly essential to have an independent public service but the Government proposals do not secure this, in that they do not provide for the independent nomination of the members of the Public Service Commission. Furthermore, the members should be appointed on a regional basis so as to ensure adequate representation of minorities.

(7) The Judiciary

The same applies to the Judiciary. In particular the Government proposals enable the Government to appoint the Chief Justice, enable Judges to be removed on a bare two thirds majority of the Assembly and do not provide adequately for the independent character of the Judicial Service Commission.

(8) Human rights

The United Kingdom Government has rejected the suggestion that the new Constitution should make any provisions for individual rights or the rights of minorities. In this they have apparently not even been prepared to go as far as the Gold Coast Government which, as stated above, has said that it wished to include in the Constitution fundamental rights guaranteeing personal liberty and the right of political and industrial association, together with freedom of speech and the press but that this was not agreed to by the United Kingdom Government. We suggest that the European Convention of Human Rights, which has been accepted by the U.K. Government for application to overseas territories, should be embodied in the Constitution. This Convention includes machinery enabling its provisions to be enforced through the Courts.

(9) Police

If regional devolution is to be really safeguarded against abuse there should be an autonomous regional Police Force.

(10) Electoral Provisions

Much depends in a Constitution upon preventing the boundaries of regions or other areas from being adjusted so as to give unfair advantage to one party or the other. There should therefore be a Boundary and Electoral Commission to investigate boundaries and electoral matters. There is no such provision in the Government's proposals.

(11) Agreed Constitution

The Government has stressed the desirability of having a Constitution which is generally agreed and accepted. Nevertheless it is proposed to introduce independence without any of the above matters having agreed. The Government has even decided on the name for the new country and its flag and coat of arms without consulting the country.

In the light of the above considerations, it is the earnest hope of the majority of the peoples of the Northern Territories, Ashanti and Togoland that the Parliament of the United Kingdom, as trustee for the peoples of the four territories will insist that there be a constitution embodying such safeguards as would make it possible for the Northern Territories, Ashanti and Togoland to accept independence on the basis of a United Gold Coast. It is feared that if

no provision is made for such a constitution and H.M.G. take the step of declaring the Gold Coast independent on March 6th next, the effect of the removal of the ultimate control of the Parliament of the U.K. will be sever the only link between the four territories and bring about an extremely confused situation in which Ashanti, the Northern Territories and Togoland will have no alternative but to take the standpoint that they are independent, but as separate entities. It is within the power of the Parliament of the United Kingdom to prevent such a situation from arising, and it is submitted that effective measures should be taken, before it is too late, to insist upon such constitutional safeguards as will make it possible for Ashanti, the Northern Territories and Togoland to accept union with the Gold Coast Colony.