



# **Commentaries on Professor Sylvia Tamale’s Inaugural Lecture, “Nudity, Protest and the Law in Uganda,” School of Law, Makerere University**

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# Reflections on Sylvia Tamale's Inaugural Professorial Lecture

**Samson A. Bezabeh**

In her inaugural lecture Professor Sylvia Tamale focused on the relation between nudity and social protest. Engaging in a comparative analysis Sylvia focused on the case of Uganda. To make her case Sylvia discussed the April 18, 2016 event that unfolded at Makerere Institute of Social Research (MISR). On that day Stella Nyanzi, a research fellow at MISR, undressed herself in front of the director's office after the director decided to close her office following repeated refusals to teach in the MISR PhD program. In her lecture Sylvia claimed that she was initially horrified, embarrassed and ashamed by Nyanzi's action and rushed to MISR in order to remove Nyanzi from the scene. Upon reflecting, however, Sylvia said her understanding was transformed and that she began considering Nyanzi's action a form of protest.

Using the event as an entry point Sylvia explained the relation between nudity, law and protest in the Ugandan context. In order to do this Sylvia claimed to make use of a post-structuralist approach which she said had inspired her analysis. Right from the beginning Sylvia's paper quotes the work of post-structuralist scholars, notably that of Michel Foucault. In the main section of the lecture Sylvia also celebrates Foucault and what she says is his post-structuralist approach.

By placing Sylvia's lecture within the broader field of social sciences this essay will show the theoretical and methodological gaps in her lecture. By taking seriously Sylvia's claim of being inspired by post-structuralist scholarship, the author will focus on perceived inconsistencies. Even though Sylvia claims to be inspired by post structuralism and locates her lecture within the post-structuralist school, Sylvia's lecture fails to make proper use of the post-structuralist theoretical framework. Her lecture is marred by theoretical stances that are actually in contradiction with post structuralism, and particularly with the work of Michel Foucault which is quoted as a source of inspiration.

Such contradictions started to emerge right from the beginning, when the lecture engages in a historical analysis to explain the relation between body, law and protest. In this Sylvia drew on world history, colonial history and African history. The kind of historical analysis that Sylvia makes, however, assumes the presence not only of a past but also of an original past, where the true condition of a society can be discovered. Sylvia's lecture asserts the possibility of going backward through a historical analysis.

Claiming the possibility of going to origins is problematic when it occurs in an essay that locates itself within the post-structuralist stance. Sylvia's usage shows either reclusive eclecticism or complete disregard of post-structuralist thought, particularly the work of Michel Foucault which is critical of historical analysis that claims to return to origins. In the very first pages of *The Archaeology of Knowledge*, the book where Foucault makes his method explicit, he is critical of such an engagement. What we learn in the first few pages of that book is that discourse analysis, in which Sylvia claims to be engaged, does not relate to a form of historical analysis that focuses on origins.

In fact Foucault urges his readers to shy away from exercising a form of history that focuses on continuity. Instead of tracing traditions, as Sylvia does when she seeks to establish "African" practices, Foucault focuses on ruptures and discontinuities. Criticizing the concept of tradition as a notion that lacks 'rigorous conceptual structure' despite its attempt to create an artificial temporal unity.<sup>1</sup> Foucault advise us that in discourse analysis we should not look for an origin:

One last precaution should be taken to disconnect the unquestioned continuities by which we organize, in advance, the discourse that we are to analyze: we must renounce two linked, but opposite themes. The first involves a wish that it should never be possible to assign, in the order of discourse, the irruption of a real event; that beyond any apparent beginning, there is always a secret origin – secret and so fundamental that it can never be quite grasped in itself. Thus one is lead inevitably, through the naivety of chronologies, towards an ever receding point that is never itself present in any history; this point is merely its own void: and from that point all beginnings can never be more than recommencement or occultation ...

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<sup>1</sup> See Foucault (2007: 23)

By claiming that her chronologically oriented historical overview gives a historical reading of the African body (p.7); by making a claim that the way African bodies have been handled has been transformed by colonialist and international capital (p.4) ( and hence alluding to the presence of an authentic traditional African past), Sylvia engages in the naive exercise of searching for a chronology and a true origin. This search comes despite her intention to engage in discourse analysis *a la mode de Foucault*.

The contradiction that marks the inaugural lecture is not limited to the usage of history. Beyond searching for an origin, Sylvia's lecture also engages in macro–micro analysis. Both in her historical analysis and in the part of the lecture where she focuses on the contemporary period, Sylvia's lecture is filled with analysis that operates on different scales. Not only do we see a difference in scale but we also see a simplistic unidirectional analysis. Sylvia speaks of colonisers affecting the colonised, of state affecting society, of capital affecting Africans and so on. Such analysis lacks a grey zone where one can see the possibility of a two-way interaction. Recent scholarship on history and the postcolonial states of Africa, such as the work of Frederick Cooper and Anne Stoller (1997), Benjamin Lawrence, Emily Lynn Osborn and Richard L. Roberts (2006) shows the presence of an interaction where Africans are not only affected by colonial power or capital but are also engaged in the very process of colonization and the power dynamics of the post colonial state. Sylvia does not adopt such a perspective. But she also does not show awareness of current scholarly debates, nor give reasons for ignoring them.

Sylvia's engagement in a form of macro–micro analysis, beyond becoming problematic in and of itself, is also in contravention with the post-structuralist stance in which she claims to locate her lecture. Again, Foucault, whom Sylvia makes use of, is critical of such analysis. In *The History of Sexuality*, Foucault (1998) makes explicit how this form of analysis is not conducive to an analysis that focuses on the relation between body and power:

In general terms: rather than refereeing all the infinitesimal violence that are exerted on sex, all the anxious gazes that are directed at it, and all the hiding places whose discovery is made into an impossible task, to the unique form of a great Power, we must immerse the expanding production of discourses on sex in the field of multiple and mobile power relations... No "local centre", "no pattern of transformation" could function if through

a series of sequences, it did not eventually enter into an overall strategy. And inversely, no strategy could achieve a comprehensive effect if it did not gain support from precise and tenuous relations serving, not as its point of application or final outcome, but as its prop and anchor point. There is no discontinuity between them, as if one was dealing with two different levels (one microscopic and the other macroscopic)....( Foucault , 1998 : 97-100)

In the lecture, although not quoting the above passage by Foucault, Sylvia indicates the diffused nature of Foucault's analysis when it comes to power. Despite this awareness, her lecture contradicts this stance in a number of places. In Sylvia's lecture the colonialist bourgeoisies and international capital appear as a 'unique form of Power'. Sylvia does not ask how colonialist and the colonizer, the African post colonial subject and the post colonial state, among others, engage in creating discursive practises through mutual strategies that cannot be placed in hierarchal terms.

Beyond this, Sylvia's conception of society and culture is also problematic. Within the disciplines of sociology and anthropology where these concepts are developed, their usage has been a subject of debate starting in the 1960s. Anthropologists such as Raymond Firth (1967) criticised the usage of a reified conception of society. Fredrick Barth (1992) in *Conceptualizing Society* was critical of the creation of a congruence between a given territory, society and culture that is said to belong to that society, as society itself is marked with different forms of interaction and borrowing. Finding a bounded society with its own culture is an unfounded myth, we are told. In the 1980s this critique further extended within the field of anthropology with the publication of such works as *Writing Culture* (by James Clifford and George Marcus ,1986) and *Writing Against Culture* (Lila Abu Lughod, 1991). At present the so-called ontological turn in anthropology and what came to be labelled as perspectivism further present a critique of the concept of society and culture.<sup>2</sup> Within the field of sociology this critique has taken a more prominent place with the work of the French scholar Bruno Latour. In *Reassembling the Social*, Latour not only indicated how a bounded conception of a society is problematic but also showed how the notion of society was itself a conception of the bourgeoisie that was created at the turn of the 19<sup>th</sup> century for the purpose of social control.

Despite the presence of such advanced scholarly debates, Sylvia's lecture was bathed in reified conceptions of society. Sylvia speaks of Ugan-

<sup>2</sup> On the ontological turn, see Holbraad (2007, 2012) Amira Henare et al. (2007), among others. On perspectivism, see Viveriros de Castro (2004).

dan culture, African culture, etc. In view of the current scholarly debates and Sylvia's blatant ignorance of these, to accept Sylvia's analysis becomes problematic. Can we speak of a Ugandan culture, of an African culture, and so on? Professor Tamale does not relate to the relevant debates nor does she show awareness of these. Rather, we are asked to accept concepts as facts.

## References

- Amiria Henare, Martin Holbraad, and Sari Wastell. 2007. *Thinking Through Things : Theorizing Artefacts Ethnographically*. New York : Routledge.
- Barth, Fredrik. 1992. 'Toward a Greater Naturalism in Conceptualizing Society'. In Adam Kuper (ed.) *Conceptualizing Society*. London : Routledge.
- Benjamin Lawrence, Emily Lynn Osborn and Richard L. Roberts (eds.). 2006. *Intermediaries, Interpreters and Clerks: African employees in the Making of Colonial Africa*. Madison, Wis.: University of Wisconsin Press
- Cooper, Frederik and Ann Stoler. 1997. *Tensions of Empire: Colonial Cultures in a Bourgeois World*. Berkeley: University of California Press.
- Firth, Raymond. 1964. *Essays in Social Organisation and Values*. London School of Economics Monographs on Social Anthropology, no 28. London : Anthlone Press.
- James Clifford and George Marcus. 1986. *Writing Culture : The Politics and Poetics of Ethnography*.
- Abu Lugold, Lila, 1991. 'Writing Against Culture'. In Richard G. Fox (ed.) *Recapturing Anthropology : Working in the Present*. Santa Fee, New Mexico : Scholl of American Research
- Foucault, Michel. 1998. *The Will to Knowledge : The History of Sexuality : Volume 1*. London : Penguin Books.
- Foucault, Michel. 2007. *The Archaeology of Knowledge*. London and New work : Routledge.
- Holbraad, Martin. 2007. 'The Power of Powder : Multiplicity and Motion in the Divinatory Cosmology of Cuba Ifa( or Mana again). In *Thinking Through Things : Theorizing Artefacts Ethnographically*, edited by Amiria Henare, Martin Holbraad, and Sari Wastell, 189-225. New York : Routledge.

- Holbraad, Martin. 2012. *Truth in Motion : The Recursive Anthropology of Cuba Divination*. Chicago, IL: Chicago University Press.
- Latour, Bruno. 2005. *Reassembling the Social : An Introduction to Actor Network Theory*. New York : Oxford University Press.
- Viveiros de Castro, Eduardo. 2004. 'Perspectival Anthropology and the Method of Controlled Equivocation' , *Tipitti : Journal of the Society for the Anthropology of lowland South America* 2, no1 2-20.

# The Public Politics of Nudity

Lyn Ossome

## Abstract:

This working paper argues that nudity's appeal to a 'liberal public' via the law negates its claim as being a 'last resort' mechanism of justice. Partially in response to a recent paper examining the nexus between nudity, protest and the law (Tamale 2016), I argue that modes of political expression like nude protests ought to be understood as already interpellated into the very structures of power to which they appeal. This is because liberal politics of recognition cannot acknowledge a subject that is invisible to the structures of power/authority to which claims of oppression are directed.

## Introduction

Were a public protest to claim any form of 'publicness', it would need to properly name its subject: that is, make clear the objective claims which both constitute the possibility of its production as public<sup>1</sup> and ensure its legibility to the structures of power to which it appeals for resolution. Stated differently, outside of a clear *political question*, nude protest is easily interpellated into an identitarianism that holds up its subject (female in this case) as self-evidence of oppression, and in doing so, obscures the social, cultural, and political contexts that would properly situate the claims within a realm of transformative politics. Against much feminist critique, the association of the public to the political implies that the political is necessarily that which we cede to public scrutiny, and necessarily therefore, that which obtains qualification as amenable to critique, disgust, shaming, ridicule, awe and so forth. In this regard, it is paradoxically also that which is already beyond injury, to the extent that political identity and the politicization of identity may be seen as antecedents of protest.

This last point may be expanded by arguing further that the banal-

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<sup>1</sup> This is not so much to endorse the ostensible objectivity of public claims as to place them within broader philosophical debates that ascribe 'subjectivity' to the 'private' domain, and thus tacitly, 'objectivity' as the condition for transgressing the 'private' domain.

isation of those elements of our existence from which we are capable of distancing ourselves (such as the fear of appearing naked in public) begins long before the act that produces the spectacle. The symbolic order that begets nudity is in this regard, part of the structure that lends it legibility as an act of protest by guaranteeing its morality under public scrutiny, and thus its survival as a political act. At the core of the debate long sustained within critical feminist thought lies the idea that in practice, the 'public' conceals and corrupts the materiality of the private: that the problem with the liberal subject of rights held up to the state/public for redress is that it is always already abstracted from their social context, their actual 'lived' realities. This contention was also central to Marx's thesis *On the Jewish Question*, in which he showed the fallacy of political emancipation based on (religious) identity. To him, political recognition was a ruse, merely admission into a civic/public space that left intact the material relations against which identities became politicized. Extrapolated to our argument here, recognition of women as rights-bearing citizens does not in itself deal with the historically contingent or objective factors that compel women into publicly presenting themselves *as female*. To Marx, full human emancipation had to deal with the material realities that produce and stabilize identities as a form of politics.

To perform politics based on this abstract subject is nothing more than a romanticization that can no more approximate an emancipatory possibility than it can address the questions that necessitate the appearance of the (abstracted) subject in the first place. It is in this vein that I set out to critique the politics of nude protest, asking in the process the extent to which it might become productive of emancipatory feminist praxis, and the conditions that such a possibility render as necessary. In this, I restrict myself to an analysis of one institutional context – MISR in April 2016 – in which the deployment of nudity was enacted as a political act of protest. In my reading of a recent piece (Tamale 2016) on the MISR context, I draw attention to the question of immanence (Marx 2011[1906]) – the idea that feminist emancipatory politics can produce within them the dialectical possibility of social and political change. This, however, I view as impossible within the realm of a particular form of identitarian politics that asserts 'powerlessness' as the mode of staking broader political claims.

## Feminist identitarianism and the morality of nudity as 'Truth'

To deal with the *act* of nudity as the presentation of a political claim is to ignore broader questions that such an act foregrounds: that is, why does feminism lend itself to cultural appropriation in the ways that it does? Why do women's bodies remain as self-evident terrains of oppression guided purely by morality or the self-evidence of its 'Truth'? Tamale asserts just such a moral dichotomy in distinguishing between 'macro unequal power relations engendered by patriarchy and neoliberal capitalism' (which she terms as "negative power"), and 'localized empowerment exercised at the micro-political level by women who seek to disrupt dominant power and to transform society' (terming this as "positive power") (2016: 11). If nudity is a moral discourse that denies its links to power, nudity as protest then equates its moral statement to powerlessness, its appearance indeed suggesting its complete disarticulation from any power. In what Wendy Brown terms as 'feminism's complex relationship to Truth', her argument, following Nietzsche's idea of *ressentiment*, is here instructive and worthy of extensive citation:

...for the morally superior position issuing from *ressentiment* to "work," reason must drape itself in powerlessness or dispossession: it attacks by differentiating itself from the politico-ontological *nature* of what it criticizes, by adopting the stance of reason against power, or, in Marx's case, by adopting scientific objectivity against power's inherent cloaking in ideology (1995: 45-46).

The nude body demands reading within its embodied limits: the undeniability of the physiological differences between man and woman replaces reason and knowledge prior to or after the objective physical display of oppression. To Brown,

...this desire for accounts of knowledge that position us outside of power would appear to be rooted in the need to make power *answer* to reason/morality and to prohibit demands for accountability in the opposite direction. The supreme strategy of morality...is denial that it has an involvement with power, that it contains a will to power, or seeks to (pre)dominate it.

Brown is critical of what she views as a contemporary feminist strategy for legitimizing "our truth" through its relation to worldly powerlessness, and discrediting "theirs" through its connection to power. Pow-

erlessness is in this regard implicitly invested in the Truth while power inherently distorts. Truth is always on the side of the damned or the excluded; hence Truth is always clean of power, but therefore also always positioned to reproach power (1995: 46). Critical of the modernist feminist preference for moral reasoning over open political contest, Brown's interest turns our gaze instead to what would be required for us to live and work politically without such myths, without claiming that our knowledge is uncorrupted by a will to power, without insisting that our truths are less partial and more moral than "theirs" (pp. 46-47). The moral bullying that characterizes nudity as protest in this way functions to conceal rather than reveal the social context of its claims to oppression.

There is nothing we can particularly understand about a 'rape culture' or misogyny or violence outside of a concrete understanding of the lived circumstances that produce the subject of the violence as *subjugated* – that is, to a set of negative conditions (negative to one's freedom, happiness, well-being, etc). Subjection cannot of itself gain legibility in abstraction from a broader social context that constructs particular claims as violations around the liberal language and codification of a regime of rights. In other words, in what ways do we establish that the objective factor(s) driving sexual violence is gender and not something else? When we appear in and to the world, how do we go about determining which one of our various subjective positions acquires objective presence and a political semiotic?<sup>2</sup> Is this choice not itself inherently political? Responding to the feminist infatuation with the Lacanian symbolic order – 'the structuralist reduction of discourse to symbolic system' Fraser (2013) argues that making sense of the gender dimensions of social identity exceeds biological determinism that would ascribe inevitability to women's oppression, and psychology. Rather, she sees possibility in understanding the historical specificity of social practices that produce and circulate cultural descriptions of gender (Fraser 2013: 140). The performance of nudity cannot of itself reveal the social conditions under which it is taking place.

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2 To Arendt, for instance, "there is no subject that is not also an object and appears as such to somebody else, who guarantees its 'objective' reality. What we usually call 'consciousness,' the fact that I am aware of myself and therefore in a sense can appear to myself, would never suffice to guarantee reality" (1978: 19-20).

## Nudity as politics

A core concern for Tamale (2016) is to explore the extent to which Nyanzi's protest was also political. The "naked protesting body" is an abstracted notion in the paper, which never clarifies its source of power, as such inviting the question: do bodies 'do politics' on their own? While the assertion of politics implies agency – the idea, as argued above, that power already resides in public as well as private domains to which struggle is articulated – the view of nudity as a *prima facie* expression of politics does not interrogate its politicization. In this regard, a number of questions may be posed in relation to Tamale's other concern with the relationship between nudity and the law. Firstly, what happens when acts of nude protest heavily infused with a cultural dialectic, essentialist even, appeal to liberal, legal regimes of rights for redress? Second, is the appeal/appearance staged in relation to a cultural group, or is its appeal towards a liberal public? Both of these positions take on a particular distinction when understood in relation to the ways in which groups undermine individual expressions of rights, thus undermining the effect of a liberal public *qua* non. Thirdly, when does nudity function as politics and what determines its effect and legibility as protest?

Let us work with the example of the reproductive labour performed by women on a daily basis. Ample anthropological evidence suggests that sex/gender divisions of labour do not necessarily produce gender inequality. Rather, women's oppression emerges in relation to specific forms of social organization. We may further consider the meaning of a shift of domestic labour from a class analytical category to a descriptive term empty of analytical meaning. In this sense, if a working class woman does certain tasks in her own home for her family, she is doing unpaid non-market domestic labour that contributes to the production and reproduction of labour power on a daily and generational basis. If she does the same tasks in someone else's home for pay, she is a paid employee or a wage labourer. The distinction between the two lies in the social relations of the work, *not* in the tasks themselves or the physical/emotional exertions of the worker.

The point I seek to make here is that the nakedness of bodies, whether 'female' or 'male' or 'transgendered' in themselves carry no inherent political semiotic. Outside of a particular social context, nudity or nakedness is as mundane as say seeing a madman walking naked on the street: it provokes no particular aversion, no symbolic power to or from

the naked being (apart perhaps, from fear, which might be evoked by actions other than the nudity). As such, while Tamale (2016) historically locates nakedness as protest, by neglecting the particular conjunctures and contexts that produced the various stripping incidences *as injury*, and beginning the story from the stripping itself (focusing on the *act*), she ironically strips these forms of nude protest of the politics that thrust them into the public. The superficial distinction that Tamale draws between ‘nakedness’ and ‘nudity’ aside, how can we understand what the naked body was appealing to outside of the social context that led to the stripping? What tools, apart from the objective fact of nudity, do we have of actually understanding why it happened, and more importantly, the effect of the act as protest (that is, who or what structures of power it might actually have succeeded in apprehending)? While we know the subject of Tamale’s critique, the negation of its *object*, I believe, renders Nyanzi an impossible (or abstracted) subject that exists only for its own sake, one that demands to be taken seriously by the mere fact of its appearance – its embodied femininity. That is romanticism, not politics.

Drawing further from Tamale’s work, we could also interrogate why the fact that breastfeeding women in the West draws a particularly adverse public reaction, while as Tamale observes, “a publicly breastfeeding woman in Uganda....does not raise eye brows” (2016: 16). Rather than insist that the endurance of such practices in Africa “illustrate contradictions and paradoxes that are associated with the body as a site of cultural and political contestation” (Ibid), could this persistence not conversely be shown as functioning within the realm of materiality ascribed on particular *social relations*? The care ethic, long associated with lower classes of women as unpaid, underpaid, unrecognized reproductive labour, easily transcends gendered boundaries to encompass class contradictions, rather than sexuality, gender or race. Even if intersections between all four were acknowledged, the ways in which white and privileged women experience motherhood anywhere in the world has historically been highly mediated through labours of the enslaved, colonized, and at the current conjuncture of late capitalism, informalised and casualised labour of women of colour. To insist on a confluence of the mothering/nurturing experience across these historical boundaries is to precisely hold up to the law for redress, a subject of rights completely abstracted from the deserving subject that animates the liberal construction of law in the first place. Part of the law’s

ambivalence in defining nudity and addressing cases such as this likely relates to the overly subjective nature of these acts. The idea of justice without visible perpetrators, only visible victims is thoroughly modernist in its claim – a romanticism long debated within the legal establishment itself.

### **The public politics of nudity**

What, therefore, thrusts nude protests into the public and the realm of the political? On this, a long-standing debate within feminist thought has maintained (in its critique of the public/private dichotomy) that what appear as a set of subjective conditions and interpretations of the condition of women actually conceal the objective conditions and circumstances that reproduce subjectivity as gendered: that the 'personal is political'. The Marxian materialist conception of history showed that the social relations of production – the pattern of class relations/class structure that gives society its central character – arose out of the different modes through which societies produced and reproduced themselves. In other words, that our understanding of the ways in which people interact and relate to achieve their individual and collective goals could not be abstracted from the imperatives that drove different societies to define themselves culturally, socially, politically and economically in distinct ways. The cultural norms and traditions that animate societies *internally*, and in this way, differentiate one from the other, conceal long histories of contestations based on class, gender, age, etc. These histories already have an objective, and therefore public, dimension to them and as such, disrupt the public/private distinction.

I highlight this point in critique of a comparative one that Tamale (2016) makes between two communities in Uganda, referencing Buganda culture as one in which women inadvertently cover their bodies in conformity to a truth regime and in keeping with social acceptability, and Karamojong, where "women routinely move about half-naked." The suggestion is that Baganda women 'perform' docility at home and only through transgressive, non-conformist acts like public nudity can there be potential for social change. Noting the deference of public nakedness/nudity (based on Tamale's typology), what then politicizes the act of public nudity among Karamojong women, who by this suggestion have already transcended the private/public barrier? Upon what basis should we read the 'bodies' of women for whom public nakedness normatively constitutes

society's perception of female-hood? Is not the argument plausible that this particular case disrupts the idea that centers the female body as a locus of oppression, and therefore of struggle – outside of an understanding of the mechanisms through which power is distributed in that society?

This distinction implies an interpellation of femininity beyond the boundary markers of nudity/nakedness. In the 'capitalist-patriarchy' analytical framework, what tips the gaze in excess of a morality based on socially acceptable norms? It is in my view, impossible to establish this causality based simply on (public) appearance/presentation. Indeed, difference in the modes of understanding nakedness between these two communities suggests difference in the forms of social organization akin to each: that the primary difference lies in the political economies of social reproduction, to which female labour is articulated. Marx in *The Eighteenth Brumaire* articulated this materiality: "that men make their own history, but they do not make it as they please; they do not make it under self-selected circumstance, but under circumstances existing already, given and transmitted from the past." The modes of resistance that women have enacted against oppression and the power they have marshaled to this end cannot constitute politics without an illustration of conditions of its possibility *as political in a particular context*. The materiality of those struggles cannot make sense outside of concrete interpretation within the particular historical trajectories through which different women in different societies become constituted as worthy subjects of rights and justice. Turning to the MISR context, the various narratives offered that obscure the circumstances, contexts and conditions preceding the protest do no more than justify a moral claim that confounds public nudity as politics.

### **Limits of moral communities**

My argument in this text has sought to discount the possibility of marshaling a transformative feminist politics expressed through the moral discourse of nudity as an expression of women's ultimate powerlessness. Stripped of context and circumscribed from its inherent identification with power, nudity engages a morality that in fact, eschews politics. Wendy Brown's ideas again elaborate this point:

Feminists have learned well to identify and articulate our "subject positions" – we have become experts of politicizing the "I" that is produced through multiple sites of power and subordination. But the very practice

so crucial to making these elements of power visible and subjectivity political may be partly at odds with the requisites for developing political conversation among a complex and diverse "we." We may need to learn public speaking and the pleasures of public argument, not to overcome our situatedness, but in order to assume responsibility for our situations and to mobilize a collective discourse that will expand them. For the political making of a feminist future that does not reproach the history on which it is borne, we may need to loosen our attachments to subjectivity, identity, and morality and to redress our underdeveloped taste for political argument (1995: 51).

Our collective feminist struggles become legible precisely because we need to both master the power to understand the forces that are arrayed against us, and the power to apprehend those forces (Brown 1995). To stop at an identitarian point that holds up the oppressed as *the* evidence of oppression is to obscure the structures, conditions, histories and institutions that produce and normalize those identities. Nudity's moralist identification with gender oppression suggests transcendence, and ultimately (in bad faith), impossibility of freedom for those so identified. We must question the basis of a brand of feminism that increasingly hails gender solidarity as a moral imperative. Is the constructed moral community not in fact, the farthest point from emancipation of that community from its identitarian boundary? While transgressive politics such as nude protests may very well symbolize powerful feminist claims against structures of power, acts of nudity bereft of social context seem to conceal much more than they reveal about the transformative potential of these claims *as political*.

### References:

- Arendt, Hannah (1978), *The Life of the Mind*, San Diego: Harvest Books.
- Brown, Wendy (1995), *States of Injury: Power and Freedom in Late Modernity*, New Jersey: Princeton University Press.
- Fraser, Nancy (2013), *Fortunes of Feminism: From State Managed Capitalism to Neoliberal Crisis*, London & New York: Verso.
- Marx, Karl (2011 [1906]), *Capital: A Critique of Political Economy, Vol. 1*, New York: Dover Publications.

----- (1869), *The Eighteenth Brumaire of Louis Bonaparte*, Moscow: Progress Publishers.

----- (1977), 'On the Jewish Question,' in *Early Texts*, tr. By McLellan, D., Oxford: Blackwell.

Tamale, Sylvia (2016), *Nudity, Protest and the Law in Uganda*, Inaugural Professorial Lecture, Kampala: Makerere University

# A Comment on Sylvia Tamale, 'Nudity, Protest and the Law in Uganda,' Inaugural Professorial Lecture, October 28, 2016

## Mahmood Mamdani

Sylvia Tamale's Inaugural Professorial Lecture begins with a *mea culpa*, a regret that she responded to Stella Nyanzi's public nakedness with shame rather than solidarity: "I was shocked and horrified, embarrassed and ashamed ... I now realize that my emotive response to Nyanzi's protest was in keeping with societal attitudes that associate nakedness – especially the nakedness of a grown woman – with shame, perversity and taboo." (2) Ashamed by her own response to public nakedness of the female body, Tamale resolved to make a second and this time public response: "Nyanzi's protest might have appeared to be personal; what I want to explore today is whether, and the extent to which, it was also political." (3)

Tamale begins with a historicized account of nakedness and clothing in a place called "sub-Saharan Africa," focusing in particular on the context of anti-colonial nationalism. The context she sketches is marked by both place and culture. By the end of this account, Tamale's attitude towards Nyanzi's protest – and the general act of public nakedness as a form of protest – has moved from shame and silence to celebration and euphoria. The Inaugural ends with a policy recommendation: that Uganda follow New Zealand and inscribe naked protest as a constitutional right.

## Naked and Clothed Bodies

Tamale proclaims her methodological aspiration at the very outset: "The analysis is guided by post-structural feminist understanding of the human body as a site for both power and control." (vi) Yet, a few pages into the lecture, we find her evoking a line of argument common in colonial anthropology, made popular in Rousseau's expression: "the noble savage."

According to Tamale, the naked body is the original human condition in sub-Saharan Africa: "Historically, the largely consistent warm weather in sub-Saharan Africa did not require a lot of clothing." (4) Yet in Sudanic societies ranging from ancient Ghana to Mali, Songhay, Dar Fur, Sennar, to Abyssinia across the trans-Saharan belt, and even the city states of the East African coast, human bodies were clothed with yards and meters of cotton. While Tamale argues a form of environmental determinism, the differences of dress and clothing were explained more by social distinctions and cultural emphasis than warm weather. Furthermore, there is no single "sub-Saharan African" history of naked and clothed bodies as the region is made up of particular societies with each having a particular history.

From nakedness, Tamale moves on to a history of the clothed human body, again making sweeping sub-Saharan generalisations. This time, her account is laced with another assumption common to colonial epistemology: that when it comes to Africa, all change (whether defined positively as progress or negatively as corruption of an original natural order, as in Rousseau) is introduced from without.

According to Tamale's account, as quoted earlier, this original naked condition was "completely changed" as a result of external influence. Tamale cites the influence of missionaries of different persuasions, in Uganda in particular: "The missionaries designed an ankle-length Victorian dress (*gomesi* or *busuti*) for women and a similarly long tunic for men," she writes. (5) This, she continues, was followed by "the political Islam of the veiled woman we know today." (6)

Throughout the essay, one is struck by the clash between Tamale's intentions and the analysis she presents. If the ambition is post-structural, her account of social and political development is more often than not positivist and progressivist. This becomes clear in the next step of her historical narrative, which has to do with nationalism. Take, for example, how Tamale reads Anderson's *Imagined Communities*: "the concept of nationalism invents or imagines nations where they do not exist." (26) The implication is that Anderson distinguishes between two kinds of places: where nations actually exist and where they do not, but are instead invented or imagined by nationalism. Anderson's point, of course, is precisely the opposite: that *all* nations are a product of the imagination of nationalist intellectuals. Anderson adds that these intellectuals exist within a

historical context where print capitalism provides the technological infrastructure to spread this imagination to other social groups. Whereas Anderson challenges a positivist theory of nationalism – that some nations exist and others do not – Tamale turns to him for intellectual support to put forward precisely such a positivist claim, dividing Uganda into two parts, where nations existed in the precolonial period (as kingdoms in the South and West) and where they did not (the East and the North). Instead of diversity and plurality, we are presented with a hierarchy of historical development. Though presented as a sub-Saharan African point of view, this perspective is shaped from a very particular location: the South and West of Uganda.

This then is the setting in which Tamale chooses to understand nakedness as a language of protest: "Today, in the 'civilized' world of clothed bodies, stripping naked in public is guaranteed to draw immediate attention." (7) To make sense of "Nyanzi's stunt" (7), as Tamale calls it, Tamale gives us several examples of public stripping by women as a specifically African form of protest (7-10) during the colonial and the post-colonial periods. This is both the most informative part of the Inaugural Lecture and puts forward its most controversial and troubling claim.

### **The Uses and Misuses of "Culture"**

Tamale seeks to place the object of her query – public nakedness of grown women – in a context. That context – as I have already suggested – is sometimes a place, "sub-Saharan Africa," at other times a way of life, "culture." Both appear as unproblematized categories, with no internal tensions worth discussing and no historical discontinuities worth mentioning. There is no sense of difference, either temporal or spatial. Throughout the lecture, Tamale generalizes from Uganda to sub-Saharan Africa, and does so without a second thought. When it comes to a discussion of law, Tamale has no qualms equating "customary law" with "culture": "Uganda operates ... codified statutory law and uncoded customary law mainly rooted in culture." (22) Yet, there is an entire literature, starting with Martin Chanock, on the top-down translation of "custom" from a set of plural social conventions in the pre-colonial period to a state-enforced and authoritative "customary law" during the colonial period. If "customary law" is rooted in "culture," that is the culture of a patriarchal elite. Rather than placid ground, customary law during the colonial period was the site

of ongoing debates about what was “genuine” custom and what had been “invented” by the colonial power and local elites. The shaping of custom and identity is key to understanding the making of post-colonial subjectivity.

One result of this discussion is a growing consensus that there is no such thing as a singular and authoritative custom as claimed by power, whether colonial or postcolonial. Custom is ever-changing, and that change is shaped by relations and struggles, internal and external. The point is particularly important since Tamale’s object in the lecture is to sanctify Nyanzi’s action by locating it in a hallowed and frozen tradition: that of anti-colonial protest by women outside the power structure. In the process, Tamale dislocates the history she is writing, shifting the justification of protest from the object (anti-colonialism) to the mode of protest (the naked body) regardless of the content and purpose of protest. The consequence is to subvert the anti-colonial tradition and invent a new one. The protest in question is justified not because of the justness of its demands but because its carrier is the naked (female) body.

The breach between the justness of demands and its mode of transmission reaches its maximum in the conclusion where Tamale suggests that Uganda follow New Zealand in acknowledging that the “nakedness of protesters (or naturalists) does not amount to indecent behavior.” (28) Without any reference to the justness of demands, Tamale proclaims: “Deploying ... any criminal code against naked demonstrators under the patronizing guise of protecting the ‘public interest’ cannot be demonstrably justifiable in a free and democratic society.” (33)

Let us for a moment shift the discussion on the form of protest from nakedness to violence. We may defend resorting to violence as a form of protest, but that cannot be the same as claiming that a protest is justified because it is violent (or non-violent) in form. What justifies a protest is not its form (nakedness, violence) but its demands. The most we can say with regard to public nakedness is that its use can by itself neither legitimize nor delegitimize a protest. To make that judgement, we need to focus on the demands of the protesters. While it is true that Tamale at no point says that the mode of protest justifies a protest regardless of its aims, it is also true that Tamale at no point addresses the aims of Nyanzi’s protest and yet implies that it was justified.

With this distinction between the form of protest and its demands, let us return to Tamale's account of nude protest in colonial and post-colonial Africa (7-10). In each instance she refers to – Oyo empire in the 17<sup>th</sup> and 18<sup>th</sup> centuries, the Igbo in 1929, Cameroun in 1958, Soweto in 1990, Nairobi's Uhuru Park in 1992, Niger Delta in 2002, Kampala in 2012, Amuru District in 2015 – Tamale is careful to sum up the specifics of the case and the demands of protesters as justification for each instance of protest. This is true also of the only other individual protest she cites, that of Noerina Mubiru in 1996. The only exception is the case that inspired the Inaugural Lecture, that of Stella Nyanzi.

Tamale is silent when it comes to the object of Nyanzi's protest. Precisely when we expect Tamale to ask questions, she resorts to silence: What was Stella Nyanzi's demand? Did this demand amount to an assertion of rights (in that it could be generalized to all in a similar position) or was it a demand for privilege (non-generalizable, and thus constituting a claim to special and thus privileged treatment)?

### **The Uses and Abuses of Historical and Genealogical Analysis**

Let us sum up the argument in the previous section. Defending the right of using the naked body as a mode of protest, however, is not the same as claiming that nakedness legitimizes the demands of a protest. We can defend armed struggle as a legitimate form of resistance, but that does not legitimize the use of arms in every instance. Anyone claiming that the use of arms is justified will need to explain the circumstances and specify the grievances and demands of those resorting to arms.

Whether it is the right to bear arms or indeed any right, the legitimacy of its exercise depends on context, which means turning to the specifics of the case. What is striking about Tamale's Inaugural is how carefully she avoids the specifics of the Stella Nyanzi case. Perhaps this is because the subject of the Inaugural was in the first instance motivated by Tamale's overwhelming sense of guilt that her immediate response to the public display of a naked female body was shame. At no point does Tamale consider the rightness (or wrongness) of the demand asserted by Nyanzi.

We may go further and ask: what, besides public nakedness, is the shared ground between the string of examples Tamale chooses to construct, and thus create a narrative of women throughout this continent deploying public nakedness as a form of protest over this past century,

and Nyanzi's action at MISR? Apart from the fact that all resort to public nakedness to make their point, do they belong together? Or does the difference in their demands place these actions in entirely different categories? In my view, Nyanzi's act was not a protest against the denial of a right but a demand for privileged treatment. Indeed, resort to public nudity in defense of privilege in this particular instance suggests a discontinuity rather than a continuity. To place Nyanzi's "stunt" as the latest in a single line of protest by defenceless women over this past century is not only to seek to glorify Nyanzi's action but at the same time also to demean the actions of women who seek to defend themselves, their families and their communities.

### **Looking to a Contemporary Tarzan for an Answer**

Professor Tamale closes her Inaugural with a policy recommendation that naked protesting be declared "a constitutional right and freedom." She suggests that "Ugandan courts follow the New Zealand judiciary" (29), specifically the 2012 public nakedness case of *Pointon v. New Zealand Police*, and protect naked protest as a constitutional right. The first surprise for the reader is the realization that the case in question has nothing to do with public nakedness of the female body as a form of protest – which is what Tamale spends most of the Inaugural lecture defending. Instead, Tamale tells us, it is about a male: "Pointon was a naturalist who did not believe in covering the natural human body with clothing." (27)

The second surprise is this: Having spent most of her energy and time establishing the historical legitimacy of the naked female body as a form of public protest in sub-Saharan African culture and history, Tamale chooses to leave the terrain of sub-Saharan Africa, its history and culture, and leap across the ocean in search of a prescription abstracted from a context that has little to do with African culture or African history. If anything, this Tarzan-type preoccupation with naturalism is likely to evoke a settler-colonial history.

The third surprise is that Tamale should offer a legal solution to an admittedly social problem. Tamale assures us right at the beginning of the lecture that "there is absolutely no written law in Uganda that prohibits public nudity" (2). The real problem, she says, is social: "The written law may not prohibit public nakedness but the living law of most Ugandans – including law enforcement agencies – renders it not only 'illegal' but also

immoral and unethical to exhibit our bodies in this manner.” (3) So powerful was the social stigma that even Tamale found herself sharing it. So if the problem is more social than legal, why prescribe an exclusively legal ‘one-size-fits-all’ solution imported from New Zealand? Having spent a good part of the lecture on “the mobilizing potential of women’s naked bodies and their ability to rally against oppression” (26) – in addition to providing illustrations from different African contexts – why would Tamale turn to the court case of Pointon the male naturalist, “who did not believe in covering the natural human body with clothing,” to provide a legal solution to a social problem?

The takeaway from Tamale’s Inaugural lecture is that not only is the problem cultural and historical but so is the solution, in which case the example of New Zealand is not only irrelevant but also misleading. The Stella Nyanzi case shows that female public nudity can be used for opposed purposes – not just to defend rights but also to claim privileges. While the use of female public nudity as a means of protest should be defended, its use should not blind us from distinguishing and critiquing the nature of its demands. To fail to do so is to do a disservice to not only the feminist movement but also the larger progressive movement.

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3. Mahmood Mamdani, *The Importance of Research in a University*, April 2011
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28. Samson Bezabeh, Lyn Ossome, Mahmood Mamdani, *Commentaries on Professor Sylvia Tamale's Inaugural Lecture, "Nudity, Protest and the Law in Uganda," School of Law, Makerere University*, February, 2017

